



SCOTTISH  
**CHILDREN'S REPORTER**  
ADMINISTRATION

## **“Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour”**

### **Response by Scottish Children’s Reporter Administration**

#### **E**xecutive Summary

The Scottish Children’s Reporter Administration’s response to the Scottish Executive’s consultation ‘Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour’ comprises:

- This executive summary
- An introduction covering the existing powers of the Children’s Hearings’ System to address anti-social behaviour by children and young people, and the key issues facing the Hearings System.
- Our detailed responses to the questions posed in the consultation paper that relate to children, young people and families.

#### **Key points**

- ❑ **The Children’s Hearings System remains the best means of addressing the anti-social behaviour of children and young people because it is integrated, wide-ranging, flexible and community based.**
- ❑ **The Children’s Hearings System, as a community based system, already has the remit and many of the powers to address anti-social behaviour by children and young people, and poor parenting**
- ❑ **Virtually all new measures that the Scottish Executive is seeking to address anti-social behaviour by children and young people can be achieved through the Children’s Hearings System - as long as service delivery is improved so that existing powers can be used more creatively and fully.**

## **Summary of response**

### Introductory Comments

- Anti-social behaviour by children and young people is a serious problem that has multiple causes and that requires joined-up solutions
- The Hearings System has wide powers and an integrated and flexible approach, aimed at challenging unacceptable behaviour and delivering good outcomes for children, families and communities
- Any new measures to address anti-social behaviour must also be integrated, flexible and able to differentiate between those requiring low-level input and those requiring intensive intervention
- There is an urgent need to consider extending demand-led funding to address the major service delivery problems, affecting both prevention and intervention, that are currently impeding the Hearings System
- The Scottish Executive's forthcoming review of the Children's Hearings System provides the appropriate opportunity to clarify purposes and outcomes of the System, and to clarify roles and powers of its key actors.

### Acceptable Behaviour Contracts

- ABC's should be used in the Children's Hearings System and elsewhere to specify both the expectations of children and their families, and the supports they will receive.

### ASBO's for under 16s

- Most children engaging in anti-social behaviour should still be dealt with through the Hearings System
- Legislation and guidance should clarify that ASBO's are aimed at the high end of the spectrum of anti-social behaviour
- Sheriffs should have the power to remit cases to Hearings if a more comprehensive package of challenge and support is required
- There is no need to empower the courts to grant support orders.

### Electronic Monitoring

- The limited positive evidence about the use of monitoring for under 16's has to be balanced against significant concerns about its effectiveness and consequences
- The current secure accommodation criteria are appropriate and sufficient; any extension could carry major human rights implications
- Any use of monitoring must be as part of a package of measures and very carefully assessed for risks and for the child's capacity

### Parenting Orders

- Children's Hearings already engage with and state clear expectations of parents
- The key requirement is to provide improved services for struggling parents
- The power to apply for Parenting Orders should lie with local authorities, with the Reporter's role considered in the context of the Scottish Executive's planned review of the Children's Hearings System
- Parenting Orders should be piloted in the first instance to assess what value they add to existing provisions.

#### Local Authority Accountability

- Service difficulties are the key challenge facing the Hearings System and require a committed and sustained approach
- The meaning of "supervision" and of the duty to give effect to supervision requirements should be spelled out in law
- Legislation should also spell out more clearly a process by which authorities account to the Hearing and to Ministers for any failure to give effect to a supervision requirement
- Authorities' performance on giving effect to supervision should become a key performance indicator for local government
- Authorities should receive demand-led funding for these services
- SCRA's influencing role will be strengthened through this clarification of expectations and accountability
- A major objective of the Executive's forthcoming Review of the Hearings System should be to strengthen the position and authority of the Hearings themselves.

Douglas Bulloch  
Chairman, SCRA

11 September 2003



## Introductory Comments

The Scottish Children's Reporter Administration welcomes the opportunity to respond to the Scottish Executive's consultation paper "Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour". The Children's Hearings System has since 1971 been the central formal system in Scotland for challenging and changing both criminal and anti-social behaviour by children and young people, and inadequate care and control by parents. We welcome the attention the Executive is bringing to this issue and will continue to develop joined-up and effective strategies and responses to improve the lives of Scotland's children and young people, families and communities.

Anti-social behaviour is undoubtedly a serious problem in Scotland today. We know from our experience that it often affects disproportionately those communities already characterised by multiple social exclusion and major problems for children and young people. Addressing crime and delinquency is about both working for the best interests of the child or young person and achieving better outcomes for his or her family and community. Care and justice for children promotes social justice for communities.

The Children's Hearings System itself is currently in a period of change and development. Over the last 3 years, we have worked closely with the Executive and other partners to deliver more effective responses to youth offending, and to persistent offending in particular. The early reports from the new Fast-track pilots indicate real success in changing behaviour, reducing offending and stabilising lives amongst a difficult and challenging group of young people. Child protection services are also undergoing review and improvement. More remains to be done on issues such as child health and mental health, drug and alcohol misuse.

The Scottish Children's Reporter Administration welcomed the broader influencing role that the Executive invited us to undertake following our PFMR review in 2002. Through that role, we are determined to work with the Executive and other partners to achieve our revised mission: *world-class care and justice for Scotland's children*. We are clear that part of that role lies in promoting the effective implementation within the Children's Hearings System of improved responses to anti-social behaviour.

### The Children's Hearings System and Anti-Social Behaviour

While the Hearings System is continuing to develop and improve, it is nevertheless built on key elements that we know from our experience must be part of any effective response to the behaviour of children and young people. The Hearings System is

- Integrated – we deal with both the behaviour and the family and care issues from which it often springs, all in one process; we both challenge unacceptable behaviour and support the strenuous work of personal change; we deliver care and justice

- Wide-ranging – the grounds for referral cover a wide range of behaviours including offending, being beyond parental control, bad associations, drug or alcohol misuse, and truancy
- Efficient – average costs and timescales in the Hearings system are significantly better than in the criminal justice system or in existing ASBO processes
- Involving – children and parents do not get the option of escaping close involvement in the process, so that their commitment to change can be tested and developed
- Gradated – outcomes range from informal action for those whose behaviour is transient to secure accommodation for those whose behaviour most threatens their own or others' safety
- Flexible – based on an understanding of the whole picture, a supervision requirement can include conditions covering the child's behaviour, contacts, residence or compliance with interventions
- Persistent – supervision requirements must be reviewed to check on progress or further problems, and to consider what further measures may be needed
- Community-based – to a unique degree, members of local communities are involved at the heart of the System; it is they, not professionals, who take the key decisions.

From these features and based on over 30 years' experience we are convinced that measures to address anti-social behaviour must

- Deal with both causes and effects together – which often means addressing child offending and child protection at the same time
- Confront unacceptable behaviour but at the same time offer motivation and real support to change
- Address these issues face-to-face
- Have the flexibility to come up with tailored packages and to cover a wide range of appropriate outcomes
- differentiate clearly between those who require minimal “steering” and those who create the greatest risk to themselves or others
- Track people through the process of change – there are few if any “quick-fix” solutions in any system for those at the serious end of the range
- Wherever possible, promote improved community relations and mutual responsibility and respect. For instance, there is huge potential to develop informal street-work mediation approaches as developed in Denmark, thus building community solidarity and reducing fear and mistrust. Just as importantly, such approaches can free up formal systems and services to focus more intensively on those who require more intensive supervision and challenge. Without the opportunity for such focussing it is difficult to

foresee front-line agencies providing the quality of challenge and intervention that the Executive is seeking.

### **The Children's Hearings System: Key Issues**

By far the greatest challenge facing the Hearings System today is not a system issue as such but concerns the difficulties experienced by service providers in matching staffing to demand and thus in prioritising and dealing with cases and issues effectively. This is far from being a universal difficulty but it is a major problem in several of the larger local authority areas in particular. It affects both the provision of preventive support to avoid risk and the provision of intervention to address it. Similar problems are likely to affect any new anti-social behaviour measures that require input of support measures by key agencies.

However, the underlying difficulty is about more than staff recruitment and retention. It is also about the absence of anything more than a broad shared awareness of the System's objectives, the outcomes it is seeking to achieve, and the standards of practice needed to achieve these outcomes.

There are also a number of specific issues about roles, powers and procedures that need to be updated to allow the Children's Hearings System to address anti-social behaviour more effectively. For instance, just as there is a clear case for giving Sheriffs the power to issue interim ASBO's, there is an equally clear case for giving Hearings wider and more flexible interim powers than they currently possess. There is also a good case for clarifying Reporters' investigative powers, and for being much clearer about what Supervision actually means and how it is effected. The Scottish Executive's forthcoming Review of the Children's Hearings System offers an opportunity to put these issues right.

At the same time as considering the introduction of new powers and processes, we expect the Executive will wish to take the opportunity to revitalise existing measures. We therefore recommend that immediate consideration be given to

- Examining the feasibility of adopting a demand-led resourcing regime (such as the 100% funding regime for criminal justice social work services) for services dealing with children and young people who offend and behave anti-socially
- Building into the remit for the Review of the Hearings System a requirement to establish clear and over-arching outcomes, objectives and standards for all agencies in the System, and clear and effective processes for services to be held accountable for delivery
- Clarifying beyond doubt what is meant by supervision and the requirements for implementing supervision requirements, and for service accountability (see further our response below to questions 27 – 29 in the consultation paper).

Our comments that follow focus on the questions in the consultation paper that relate to children, young people and families. We have throughout taken care to answer the questions as they are posed, offering wider comment where specifically requested. We have also identified ways in which the Hearings System can and does address some of the concerns underlying the consultation proposals.

# Responses to Consultation Questions

## **Anti-Social Behaviour Strategies**

1. *Should the formal duty to participate in the preparation of anti-social behaviour strategies be extended to Registered Social Landlords (RSL's), particularly where major stock transfer has taken place? Should there be a formal duty on other community planning partners to be involved? Or is it sufficient that involvement of other community planning partners be referred to in guidance only?*

Yes. Given the proposal to extend to RSL's enforcement powers such as applying for an ASBO, it is essential that they become fully engaged at strategic level with all other key partners.

2. *What more should be done to promote effective information exchange to prevent anti-social behaviour?*

The framework provided by data protection legislation makes sense in many contexts, but has also created very real difficulties over the use of sensitive personal data where cross-sector partnerships of agencies are working together to address issues such as youth offending or child protection. We appreciate that data protection is a reserved issue but would welcome national-level attention to these issues and how to overcome them. A dedicated framework of guidance would undoubtedly assist.

## Acceptable Behaviour Contracts (ABC's)

### *Action in the Hearings System*

There is considerable experience in the Children's Hearings System of approaches along the lines of ABC's. The majority of cases are dealt with by diversion for informal action (NB not "no action").

Firstly, decisions by Reporters to refer children for voluntary intervention can involve clear agreements with the child and/or parents. Intervention measures such as victim/offender mediation may also produce such agreements.

Secondly, Children's Hearings can and do include conditions in supervision requirements to make clear their expectations about the child's behaviour. More specific agreements can be attached to the supervision requirement to give them legal status and enforceability.

Our experience suggests that it is important for such agreements to specify the action that will be taken both by the child/parents and by the agencies working with them. This helps to achieve "buy-in" from the child and parents, to make a clear link between problems and solutions and to re-enforce the focus on positive change.

**Further action:** the effectiveness of ABC's and of diversionary measures generally in the Hearings System would be enhanced by

- Clarification of the legal duty on local authorities to service voluntary intervention referrals from the Reporter
- The application of national standards about effective case assessment and intervention planning to these cases
- A requirement in national standards for local authorities to report back to the Reporter on the implementation of voluntary supervision plans and on their effectiveness.

### *8. Do you support wider use of ABC's?*

We do support the wider use of ABC's and believe that the setting of clear expectations with regard to those types of behaviour that are and are not acceptable is a crucial aspect of addressing such behaviour.

We also believe, however, that in order to be effective ABC's should outline not only the responsibilities which fall on children and young people to change their behaviours, but also the support and guidance which they can expect to receive. This element of reciprocity helps ensure that the agreement promotes action to tackle the underlying causes of the behaviour as well as the symptoms.

9. *What are your views on the range of situations where ABC's would be appropriate? For example, do you support use of ABC's in the hearings system? In schools?*

As stated above, ABC's or equivalent approaches already play a valuable role in the Hearings System, both at the stage where a Reporter is making a decision on a child or young person, and in relation to those young people whose cases are being considered by a Children's Hearing.

Whilst we acknowledge that a key feature of ABC's are that they are undertaken on a voluntary basis, we do not regard them as incompatible with compulsory measures of supervision (i.e. an ABC agreed outwith the Hearing is endorsed by the Hearing and treated as one element in an overall package of supervision). Where an ABC is linked to a supervision requirement by means of a condition, failure to fulfil the terms of the arrangement would thus prompt a review of the child's supervision requirement as a whole; allowing possible alternative measures to be considered.

10. *What are your views on the relationship between ABC's and legal options such as ASBO's and Parenting Orders? For example, should the court be required to consider the failure or refusal to participate in an ABC or a Parental Contract when considering an application for a Parenting Order?*

A key element of the flexibility inherent in the Hearings System is that Hearings can take account of the full background in each case. The success or failure of any previous voluntary interventions is clearly relevant to the Hearing's decision about the need for compulsory measures, and is therefore sought as part of the information to put before the Hearing.

Given that the test for granting either an ASBO or a parenting Order should be that it is "necessary", the courts will likewise require to consider the effectiveness of past interventions or agreements. The court is entitled to expect that the applicant will place all the relevant information before it. In such circumstances, it is difficult to see the need for a specific requirement to consider those matters specified.

## **Anti-social Behaviour Orders (ASBO's) for Under-16s**

### ***Action in the Hearings System***

Reporters and Children's Hearings have a wealth of experience in addressing anti-social behaviour by children and young people. The grounds on which children and young people can be and are referred to a Children's Hearing include

- Being outwith parental control
- Falling into bad associations or moral danger
- Committing an offence
- Misusing alcohol, drugs or solvents
- Requiring special measures

Most instances of anti-social behaviour will in fact constitute an offence such as vandalism or breach of the peace.

Apart from offences, all grounds for referral can be established on the civil standard of evidence. Reporters can and do combine different grounds to present an accurate picture to Hearings, and are skilled at bringing together different sources of information to identify overall patterns of behaviour or risks.

Once the formal grounds for referral are accepted or established, Hearings can look at the whole situation without having to take further evidence. Hearings challenge young people about their behaviour and challenge parents about their responsibilities.

When a Hearing makes a supervision requirement, they can specify both the level of intervention and any conditions on the child that they think are appropriate. For instance, these may cover the child's behaviour, contacts, residence or compliance with interventions. The child is legally obliged to comply with the conditions, and the local authority is legally obliged to bring the case back for review if the conditions are breached. Hearings also do not flinch from making clear to parents their responsibilities and the consequences if they fail to do so.

Over the last 2 – 3 years enormous progress has been made in the effectiveness of services (often project-based) to challenge offending and anti-social behaviour by young people and to enable them to change. The Fast-Track pilots are demonstrating what the System can do when resourced and focused. However, there are still significant problems in mainstream services that require strategic actions such as those set out in our introductory comments.

**Further action:** in order to improve the effectiveness of action in the Hearings System to address anti-social behaviour by young people, we

propose that

- The opportunity should be taken in the Executive's forthcoming Review of the Hearings System to consider (1) whether the current range of grounds for referral covers all necessary issues to allow effective action and (2) the potential benefits and implications of extending the civil standard of evidence to the offence ground for referral
- Hearings should be given more effective interim powers (just as the courts now have the power to grant an interim ASBO)
- The meaning of compulsory supervision and the importance of the legal duty to implement should be spelled out both in statute and in guidance.

#### *11. How should ASBO's be extended to under-16s?*

In answering this consultation question we have focussed our response on mechanisms for the implementation of ASBO's.

We believe that any extension of ASBO's to under-16s must be based on the understanding that the Children's Hearing System continues to offer the best means of addressing anti-social behaviour by children and young people whilst also meeting their needs for guidance, treatment or protection. As long as effective services are available to implement the decisions made by Reporters or Hearings, the Hearings System can positively engage with the vast majority of young people involved in anti-social behaviour.

Consequently, we anticipate that the number of children and young people who will require to be made subject to an ASBO – in many instances in addition to an existing supervision requirement – should be relatively small. In particular, we note that the test for granting an ASBO is that the order is 'necessary' (Crime & Disorder Act 1998, Section 19(1)(b)) and that in most cases the pre-existence of a supervision requirement will have to be considered in determining whether a further order is required.

In practice there will thus be considerable overlap between the Courts and the Hearings, with many young people involved in parallel proceedings. Additionally, it may become clear during one set of proceedings that the young person would better be dealt with in the other setting. For instance, a Sheriff hearing an ASBO application may discover a history of serious parental neglect or behaviour that is inextricably linked with the young person's behaviour.

To ensure that anti-social behaviour is addressed in a coherent and effective way, it will be vital, firstly, to clarify in both legislation and guidance that ASBO's are intended for situations where anti-social behaviour is unusually serious or persistent; and, secondly, to put good links in place between parallel processes. Such links already exist between criminal courts and Children's Hearings and these ensure that cases can be transferred swiftly without the core facts having

to be established all over again. In addition to the suggestion that the Reporter should be consulted prior to the application for an ASBO, we therefore propose that

- S.54 of the Children (Scotland) Act 1995 (power of the Court to refer to the Principal Reporter) should be extended to include ASBO and Parenting Order applications
- The Sheriff should be empowered to seek advice from the Reporter or Children's Hearing on any child subject to an ASBO application, and required to seek a Hearing's advice if the child is subject to a current supervision requirement
- Subsequently, the Sheriff should also have the power to remit the child's case to the Children's Hearing for disposal.

12. *Do you support the introduction of individual support orders linked to ASBOs for under-16s?*

No. It is undoubtedly the case that many young people who engage in anti-social behaviour also have a range of needs that also have to be addressed if changes in their behaviour are to take root for the long-term. We believe that these are precisely the cases where it would be more appropriate for Sheriffs to be able to remit to a Hearing than to have to try to ascertain support needs themselves. Any power to include support conditions in an ASBO would also have to take account of

- The wider range of information Sheriffs would require in order to make such decisions and what duties would need to be applied to which services in order to ensure this information was provided (RSL's in particular will not have direct access to much of this information)
- The need to prescribe responsibility for the provision of these support services
- The need to differentiate the consequences of breach of a support condition rather than a prescriptive condition – for instance, would the power of arrest still apply?

13. *Are there any implications of extending ASBO's to under-16s in relation to the power of RSL's to apply for ASBO's?*

Yes. RSL's by their very nature are primarily concerned with housing provision and housing management issues. Whilst staff working in RSL's may have wider information about a young person and/or their family, this will not generally cover the full circumstances of the child/family that may be relevant to addressing anti-social behaviour. For this reason, we propose that RSL's should be required to consult with both the Reporter and the relevant Local Authority prior to any application for an ASBO on a person under the age of 16, and to make their responses available to the court.

Behind the issue of information-sharing is a wider issue about the capacity of RSL's to make sense of this wider information and to work collaboratively with other agencies who are seeking to address a young person's behaviour and needs. We look for guidance to emphasise the need for all agencies (including RSL's) involved in the local strategies referred to earlier to commit to joined-up solutions. (See also the answer to question 1 above.)

14. *Do you agree that the Youth Court model, where this operates, should be amended to include young people under-16 years of age who are referred to the criminal justice system by the Procurator Fiscal for breach of an ASBO?*

No. It would be premature at this stage to make such a specific amendment to the current pilot model for the Youth Court until (1) the Youth Court pilot has been evaluated and (2) an assessment can be made of the use being made of the extended ASBO powers and the extent of breach of ASBO's by under 16's.

15. *How should the applicant ensure that they take the full circumstances of the family into account?*

We agree that it is imperative, when considering whether to apply for an ASBO, that the applicant does take the full circumstances of the child and family into account. Such consideration is necessary in order to ensure that the most appropriate measures are used in each case, be they an ASBO, a supervision requirement or a change of service approach. We believe that the measures proposed in response to questions 11 and 13 above would help achieve this purpose, and could be supplemented by guidance on a requirement for the Local Authority to consider convening a multi-agency case discussion where either it or an RSL is proposing to make such an application.

However, it should be recognised that once an application is made the focus of the ASBO proceedings will properly be on narrower issues of behaviour alone; by definition, the purpose of an ASBO is to ban the subject of the order from behaving in certain specified ways. The role that wider information (such as the views of the Reporter or local authority, or advice from a Hearing) will play will be to enable the Sheriff to determine whether it is most appropriate for the court to deal with the case, and if so whether an ASBO is the most effective outcome.

### **Greater use of Reparation in the Children's Hearings System**

16. *What are your views on our proposals to consider increasing the emphasis on reparation both as action that may be taken by the Reporter and as a condition of a supervision requirement made by the Children's Hearing?*

We welcome the increasing emphasis on reparation as an integral feature of the Children's Hearing System. We see restorative justice approaches as entirely

consonant with the purposes of the Hearings System and also as a vital way of addressing the needs and concerns of victims of youth crime. A number of schemes which use reparative and restorative approaches to address young people's anti-social behaviour have already been established with the support and active involvement of SCRA staff.

To date, the use of reparation has focussed primarily on the Reporter's decision-making options but we believe that such approaches can also form a valuable aspect of a supervision requirement made by a Children's Hearing. In this regard, some care is required to integrate what is an essentially voluntary arrangement into an overall framework of compulsory measures, but we are confident that this can be achieved through the framing of suitable conditions depending on the circumstances of the case. We believe that Children's Panel Members would welcome the opportunity for further training in relation to the use of such reparative measures.

## **Electronic Monitoring of Under-16s**

### *17. What are your views on making electronic monitoring a disposal for the Children's Hearings System?*

We recognise and understand the concerns behind the suggestion that Hearings should be empowered to order electronic monitoring. We share the desire for outcomes from Hearings to be increasingly effective in addressing youth crime and its causes. But we caution that the limited positive evidence about the use of monitoring has to be balanced against significant concerns about its effectiveness and consequences in relation to

- Foreseeable risks associated with its use for children and young people
- The use of secure accommodation
- The legal framework for Children's Hearings.

### Evidence

Existing evaluations of the use of electronic monitoring for children and young people are mostly drawn from England and Wales, where the context is a court-based youth justice system with a focus on punishment. It is in that context that some families of offenders and offenders themselves have seen monitoring as a viable alternative to a custodial sentence. Evaluations have also drawn attention to the cost of monitoring, to the reality that monitoring of itself does not address the offending behaviour or its causes, and to the high rates of breach of monitoring by younger children in particular.<sup>1</sup>

Given the suggestion to focus the use of monitoring on children and young people at risk of secure accommodation, it is also important to review what is known about these young people. The SWSI's review of secure accommodation<sup>2</sup> identified that 81% of boys and almost all girls in secure accommodation were a risk to themselves, with 67% of the boys also being a risk to others. Relationships with family were a major problem for 71%, as was running away for 73%. The circumstances in which children run away from home or care have subsequently been further explored in the guidance on Vulnerable Children and Young People recently published by the Executive.

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<sup>1</sup> (2001) Home Office Findings 140.

*A year on the tag: interviews with criminal justice practitioners and electronic monitoring staff about curfew orders* by Isabel Walter, Darren Sugg and Louise Moore

(2000) Home Office Occasional Paper

*Electronically monitored curfew for 10- to 15-year-olds – report of the pilot* by Robin Elliott, Jennifer Airs, Claire Easton and Ruth Lewis

(2002) Home Office Online Report 15/02, *Evaluation of the national roll-out of curfew orders* by Isabel Walter

(2000) Barnardo's *What works with young offenders in the community?* David Utting and Julie Vennard, pp48-51

<sup>2</sup> "A Secure Remedy: A review of the Role, Availability and Quality of Secure Accommodation for Children in Scotland", Social Work Services Inspectorate (Scottish Office, 1996)

## Risks

This evidence demonstrates two things. Firstly, children at risk of secure accommodation typically present a complex intermingling of both offending risks and welfare risks. Secondly, the level of disturbance and unpredictability of these children is such that the risks of self-harm, harm to others or both are very acute.

In addition, electronic monitoring places very specific responsibility on the child or young person being monitored to control and regulate their own behaviour. But it also places responsibility on the adult or adults responsible for the child's welfare. To an extent, "tagging" a child means tagging their main carer as well.

Taken together, these issues about the life circumstances of children at risk of secure accommodation and about the family implications of monitoring raise real question marks about the risks involved in requiring a child to remain in a particular place (typically, their home). These risks relate to

- The safety of the home environment for the child/young person, given the prevalence of serious family problems in this group of children
- The safety of a monitoring arrangement for other members of the child/young person's family
- The ready availability of services and supports to help contain and address these risks – the purpose of secure accommodation is not simply to contain but to do so in order to support behaviour change in a safe environment.

## Use of Secure Accommodation

Secure accommodation is a finite and high-cost resource. The Executive's current plans will increase the number of places by about 30% but it will remain a high-intensity intervention. Separately from this consultation process, there remains a clear need to establish a more rational basis for prioritisation of the allocation of secure resources.

The focus of secure accommodation to date has been on challenging the behaviour and meeting the needs of a particularly difficult group of children and young people. The accommodation requires to be secure because that is the only safe basis on which the welfare of these children, and thus their impact on the wider community, can be addressed.

The criteria for use of secure care are of a piece with this approach. They focus attention on the very risk factors (to self or others) that explain why the use of security is needed in order to address behaviour and needs.

The proposal to authorise the use of security as a response to breach of a monitoring requirement breaks this essential link between risk and outcome. Children whose offending is persistent and dangerous, such as repeat joyriders, almost certainly meet the existing secure criteria. But it is likely that many children would breach monitoring requirements in circumstances that indicated little or no risk to others, whether through inability to maintain self-control or through testing out the system.

One implication of adding a new criterion for secure accommodation would thus be a considerable increase in demand for places, with many children joining the queue whose levels of risk and need would fall short of the level that would justify use of a highly specialised and expensive resource.

### Legal Framework

The potential use of electronic monitoring, and the use of secure accommodation as a direct consequence from breach of a monitoring order, also require very careful consideration in relation to the legal framework for Children's Hearings. In the human rights test case of S v Miller<sup>3</sup> the Court of Session confirmed that Children's Hearings do not "determine a criminal charge" in terms of Article 6 of the European Convention as they do not punish children for their acts per se; instead, they seek to address children's behaviour and the circumstances which may have led to it by engaging children and their families with service provision which will meet their needs and address their behaviour. The Court recognised that even when secure accommodation is used, the basis and purpose of that outcome is welfare-focused.<sup>4</sup>

Looking at the Court's analysis of Article 6, the availability of secure accommodation as a consequence of breach of a monitoring order appears much more akin to a punitive outcome rather than a welfare-based one, as the nexus between risk and outcome is broken. In these circumstances there is a real prospect of a future court taking the view that a Hearing which authorised secure accommodation on that basis would now be determining a criminal charge.

The same risk may arise in relation to the use of monitoring itself. Taken on its own, monitoring is clearly intended to restrict movement and does not directly address offending or underlying needs.

If this point appears rather abstruse, it is anything but that. If some (but not all) Hearings are determining criminal charges then very specific procedural guarantees apply in these cases, including the full availability of legal aid. Under these circumstances it becomes very difficult to see how the integrated jurisdiction of the Hearings, covering both care and offending issues, could survive in any meaningful form.

### Conclusions

- (1) The current secure criteria are appropriate and sufficiently wide-ranging to address the concerns raised in the consultation paper. We urge the Executive not to add any additional criteria unless they are explicitly based on risk factors that inherently require the use of secure provision to address them
- (2) If after consideration it is considered necessary to give Hearings a power to require electronic monitoring as a condition of a supervision requirement, this

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<sup>3</sup> 2001 SLT 531

<sup>4</sup> Lord President (Rodger) at p.547

must be done in the context of a requirement that the Hearing should first obtain

- Confirmation that the monitoring will form an integral part of an overall package of measures of supervision
- A risk assessment covering the risk factors mentioned above, and
- Confirmation that the child/young person understands the proposed monitoring arrangements and the implications of their breach, and has the capacity to adhere to them.

(3) Although not addressed directly here, there remains a clear need to promote the further development of services that are now working on an extended-hours basis with high-risk young people at the places and times when they are most at risk, such as out on the street on Friday or Saturday evenings.

18. *Do you think that the option of electronic monitoring should be available alongside disposals other than secure accommodation?*

As stated above, we doubt that electronic monitoring could be targeted for use as a direct alternative to secure accommodation, given the very acute and challenging needs of children and young people who meet the secure criteria. If electronic monitoring is introduced, it is thus an inevitability that it will be used on a somewhat wider basis.

The conclusions stated above in response to question 18 also apply to this question.

### **Extending Restriction of Liberty Orders (RLO's) to Under-16s**

19. *Do RLO's for the under-16s in court require any additional support arrangements?*

Yes. The small number of children whose offending is serious enough to require prosecution in the criminal justice system are very likely to have significant educational, medical and social needs which impact on their offending behaviour. Consideration of making an RLO on a child should therefore be informed by a full background report, which should also stipulate how the child's needs will be met.

As the positive experiences of RLO's with adults is primarily due to their use as an alternative to a custodial sentence, we assume that they will only be used for children who are found guilty of an offence that would ordinarily result in a custodial sentence.

20. *The period of restriction for an adult to a place is 12 hours per day and/or from a place for 24 hours a day for a period up to 12 months. What should be the period of restriction for an RLO for those under-16s?*

When formulating the maximum period of restriction for children and young people subject to an RLO there are some additional considerations that are specific to this age group.

- i) the impact the RLO will have on parents/ carers and other children
- ii) the age of the child and their level of maturity
- iii) compliance with regulations around permitted working hours of children where relevant

As a general rule we would expect that the maximum period of restriction for children would be substantially less than for adults.

## Parenting Orders

### *Action in the Hearings System*

From our experience in the Hearings System, we acknowledge that parents are a critically important influence in children's lives and that the environment they provide for children is crucial in exacerbating or preventing anti-social behaviour. We also recognise that parents may need support with their parenting from time to time, and some need to be challenged to fulfil their responsibilities properly.

Many children come into the Hearings System precisely because of concern about the actions of their parents. In 2001-2002, 22% of all referrals to Reporters were about allegations of lack of parental care. Parental care issues are also central to many referrals about abuse or neglect and other concerns. It is also notable that 24% of all children referred for offending were, in the same year, also referred for non-offence reasons.

Even where concerns about parental responsibility do not feature directly in the original grounds, the background information collated on the child will include an examination of parental care and should identify issues that need to be addressed.

Many diversionary disposals are expressly predicated on parental action or parental co-operation with voluntary interventions. Any non-co-operation will be taken into account if the child is referred again.

Parents are required by law to attend any Hearing arranged about their child, and Panel members expect them to play a full and honest part in discussion about what is going wrong and what needs to be done to put it right.

Although a Hearing cannot directly place legal requirements on parents, the assessment of parental responsibility and parental action will be central to the decision about the child. The Hearing will also make the parents aware of any specific expectations on them and that their actions will be scrutinised and taken into account when a future Hearing reviews the supervision requirement.

#### **Further action:**

- the key gap is in the provision of supportive services to parents. Executive strategies have significantly increased support during the pre-school phase, but too many parents of older children are not prioritised for help until a crisis hits the family. This issue needs to be addressed in the context of wider workforce and service planning strategies across the care sector

- the question of Hearings having power to add parental conditions to a supervision requirement should be fully considered in the context of the Review of the Hearings System.

21. *Do you agree that local authorities and the Reporter should be given the power to apply to the court for a Parenting Order? Should the Reporter be able to make an application at his own initiative or at the direction of the hearing?*

The available evidence on Parenting Orders is drawn entirely from England and Wales, which lacks any integrated system such as the Children's Hearings. It is therefore hard to draw any conclusions from English experience about the need for Parenting Orders in Scotland.

In Scotland, children can already be dealt with in the Hearings System because of poor parenting, and parents may be prosecuted in the criminal justice system if their behaviour amounts to wilful neglect or exposure of their children. In addition the Children (Scotland) Act 1995 also gives local authorities power to seek other relevant orders such as a child assessment order, an exclusion order and a parental responsibility order.

We therefore suggest that legislative provision for Parenting Orders in Scotland should be piloted in the 1<sup>st</sup> instance so that an evaluation can be made of the extent to which they add to existing powers and procedures. It will also be essential to assess the consequential demands on all services working with these parents and how they should best be met within the context of children's services planning.

Given the existing powers of local authorities as stated above, we consider they would be best placed to apply for a Parenting Order. We welcome the recognition given here to the role of the Reporter and suggest that this should be explored further in the Executive's forthcoming Review of the Children's Hearings System so that all aspects of what would amount to a significant development in role can be considered.

As with ASBO's for children, it will be essential to ensure that new and existing processes can work together effectively to address parenting issues. We therefore suggest that

- S.54 of the Children (Scotland) Act 1995 (power of the Court to refer to the Principal Reporter) should be extended to include Parenting Order applications
- The Sheriff should be empowered to seek advice from the Reporter or Children's Hearing on any child whose parent is subject to a Parenting Order application, and required to seek a Hearing's advice if the child is subject to a current supervision requirement

- Subsequently, the Sheriff should also have the power to remit the child's case to the Children's Hearing for disposal.

22. *Should courts be able to impose a Parenting Order at their own initiative when dealing with other proceedings in relation to a child and their family?*

Yes. However this power should be subject to a requirement to obtain a report from the local authority and to the requirements proposed above about seeking advice from or remitting the case to a Children's Hearing.

23. *Are the grounds we describe sound? Should the welfare of the child be grounds for a Parenting Order as well as behaviour?*

Over-specification of the grounds for any legal order tends to create more legal argument and less focus on the central issue. Whether the presenting problem is the child's welfare or the child's behaviour, the central concern in both cases is whether the parent is addressing his or her responsibilities toward the child's interests. A second requirement for the grounds for a parenting order should be to ensure that a compulsory order is only granted if voluntary measures, or measures through other processes such as the Children's Hearings System, have already been tried and rejected.

We therefore suggest the tests for granting an order should be that

1. The parent has persistently failed to co-operate with measures in the interests of the child, and
2. the order is necessary in the interests of the child.

24. *Should the failure to ensure attendance at school be grounds for a Parenting Order? How should this work alongside existing powers to make attendance orders?*

No – the central issue would be sufficiently captured by our suggestion above. The specific issue of poor school attendance can be and is already addressed through the Hearings System.

25. *How long should a Parenting Order normally last for? Should it be capable of renewal?*

As the consequences of any failure to comply may include prosecution and conviction it is important that Parenting Orders should have a defined period. An appropriate analogy can be taken from the provisions in the Children (Scotland) Act 1995 for exclusion orders sought by local authorities, where breach may also result in prosecution. Section 79 specifies that an order shall last no more than 6 months. This could be extended to 12 months for Parenting Orders given their

focus on active intervention. Any need extending beyond that period could be dealt with by a further application. However, by that stage it is likely that other measures will need to be taken in respect of the child under other, pre-existing, powers.

*26. How should applicants for Parenting Orders ensure that all relevant information about a parent is first taken into account?*

By ensuring that the application for Parenting Orders is restricted to local authorities applying to the court, the full information should be available. In carrying out this function we expect local authorities would wish to consult with key partners such as the Police and the Reporter. In that regard please see also our comments on question 2.

## **Local Authority Accountability**

27. *Do you agree it would be desirable to require local authorities to comply with supervision requirements?*

The single change that would transform the effectiveness of the Children's Hearings System today in addressing crime and anti-social behaviour would be the guarantee that decisions by Reporters and Hearings would be implemented. There are in fact areas of Scotland in which local authorities are able to implement all Hearing decisions, but there are still too many that fall short of this standard. We recognise the serious consequences of this position for public confidence as much as for service effectiveness.

However, this situation has not arisen overnight and has been influenced by a wide range of factors. We believe that every local authority is aware of the existing legal duty to implement supervision requirements. Compliance is already required and desired: the challenge is how to make it happen.

We believe this will require a comprehensive and committed approach. There is no simple solution; if there were, it would already have been identified and acted on. The strategy to be developed and delivered must learn lessons from service areas marked by greater consistency and confidence, such as the impact of national standards on criminal justice social work services. It must also build on the strengths of the System and enable key partners to act pro-actively and strategically together in a committed and focussed way. Finally, it must happen in a joined-up way. Implementation of a supervision requirement should encompass addressing educational and health needs as a matter of course.

In our view, the key elements of this strategy are

1. **a clear statement of the overall outcomes the Hearings system is to deliver should be agreed, along with core objectives and standards.** This work could be developed from the existing youth justice standards together with current work on child protection standards. Clarifying the overall focus of the System and the essential performance requirements of its constituent bodies is fundamental as the starting point for all the following steps.
2. **The meaning of "supervision" and of the duty to give effect to both compulsory supervision requirements and voluntary arrangements instituted by the Reporter should be spelled out in law, backed up by guidance.** This needs to be done with sufficient clarity so that there is no doubt what supervision is to deliver, but without being unduly mechanistic or process-driven (as is the case with some aspects of the National Objectives and Standards for Criminal Justice Social Work). The definition should encompass health and educational requirements.
3. **Legislation should also spell out more clearly a process by which authorities account to the Hearing itself for any failure to give effect to a supervision requirement;** this is vital to ensure that the position of Hearings

is enhanced and not bypassed. This process should cover failure of any provision required for the child, including educational provision.

4. **Authorities' performance on giving effect to supervision should become a key performance indicator for local government**, thus clarifying the line of accountability (for overall service performance) to Ministers and to the public and ensuring that poor performance can be swiftly addressed by the Accounts Commission and the appropriate Inspectorate or Inspectorates.
5. **Authorities should receive demand-led funding for these services.** While we appreciate there may be difficulties in defining which services would be funded in this way, the starting point has to be the recognition of the relative strength of criminal justice social work services under a regime of national standards backed up by demand-led funding.
6. **A major objective of the Executive's forthcoming Review of the Hearings System should be to strengthen the position and authority of the Hearings themselves.** The decision-making tribunal must have the authority invested in it to specify what services are required, and to ensure that its decisions are carried out. While all of the above steps will help achieve that position, the Review offers the opportunity to look at this issue in terms of the structure of the System and of the key roles within it.

Within this clearer and more performance-focused framework, Ministers would rightly expect SCRA to continue to develop its influencing role to help ensure the System as a whole deals effectively with problematic children, young people and families and to inform Ministers and the public about its effectiveness.

28. *Do you agree that at the Hearing's direction a Reporter request a Sheriff to make an order to enforce implementation of the supervision requirement?*

Recourse to the Sheriff Court would already be possible through an action of Specific Implement. Any court proceedings would, however, inevitably focus on the specific circumstances of one case, or a small number of cases.

The possibility should not be discounted that such action may be effective in certain circumstances. Nevertheless, it is hard to see how recourse to the courts would address the wider issues that have contributed to the current situation (or, indeed, how such action would avoid getting bogged down in legal argument about the impact of these issues). The impact on influencing relationships and inter-agency strategies to improve services also need to be weighed up carefully.

We would welcome further discussion of this question in the context of a wider discussion about our proposals above.

29. *Should the Hearings and Reporter have a role in alerting Scottish Ministers to failure by a council to ensure a child before them receives appropriate education?*

We believe that, supported by our enhanced data systems, SCRA can increasingly provide strategic information and data to Scottish Ministers and service partners. As a starting point, however, specific cases generally require to be resolved at local level through the relevant management structures.

We see no reason to differentiate between Councils' duties towards children under education legislation from their duties under other legislation. The strategy set out in response to question 27 offers an integrated approach to all these issues.

## **Anti-social Behaviour and Housing**

42. *Should RSL's be given a statutory duty to participate in the production and implementation of anti-social behaviour strategies?*

Yes, we believe that RSL's should be engaged at a strategic level to ensure the development of appropriate responses regarding anti-social behaviour. See also our response to question 1.

45. *Do you agree that existing provisions in legislation on housing and homelessness linked to ASBO's should apply to ASBO's involving under-16s?*

We would seek to avoid the possibility of a situation where a child's anti-social behaviour is a deciding factor in the reduction of the security of their parents'/ carers' tenancy. Significant powers already exist or are proposed elsewhere in the consultation paper that would allow the family's position to be addressed in its own right. Action taken on the basis suggested would have potentially serious implications for other children in the family.

## **Fixed Penalty Notices for Anti-social Behaviour**

47. *Should such penalties (Fixed Penalty Notices) be imposed on under-16s?*

No We are unaware of evidence demonstrating the effectiveness of this measure particularly with children. Children, by definition, have no means of their own to pay these penalties and therefore should not be treated in the same way as adults. Parents/ carers may end up paying these fines these fines on the child's behalf.

## **Dispersal of Groups**

48. *How can we strengthen the powers of the police to tackle disorderly behaviour amongst groups?*

We do receive Police reports on incidents of group breach of the peace, and we are also aware that the Police deal with many potential incidents on a preventive basis. The Police themselves will be best placed to respond to this question but we have no evidence to indicate that change is required.

49. *Do you agree that it would be useful to extend police powers in respect of groups of young people in the way proposed?*

We believe that existing powers available to the police are adequate and support the continuing development of positive relationships between police and children and young people in the community. We see this positive engagement as central to efforts to prevent and deter children from carrying out anti-social behaviour.

Police officers and youth workers have a vitally important role to play in reducing the mistrust between children and young people on the one hand, and the wider community on the other.

Where there is no evidence that a particular group of children and young people are causing intimidation or harassment, it is difficult to see firstly on what basis action could be taken against them, and secondly how this will contribute to the process of building trust between different members of the community.

As stated in our introductory comments, the issue is better viewed as one of strategy than as a question of powers. We consider that the experience of street-based mediation approaches as developed in many Danish communities offers a positive and inclusive approach for working with the great majority of young people who are willing and able to learn respect for others in their community.

### **Making Anti-social Behaviour Orders More Effective**

*50. Do you agree that the power to apply for ASBO's should be limited to local authorities and registered social landlords (in consultation with the police)?*

Yes. In addition, as stated above, there should be a requirement to consult the Reporter before applying for an ASBO in respect of a child.

*51. Do you agree there should be a statutory power of arrest for breach of an ASBO?*

Given that most anti-social behaviour also constitutes an offence, we are not aware of the necessity to add a further power of arrest.

*52. Do you agree that the court should have the power to impose an ASBO on conviction for a criminal offence, where there is evidence of persistent anti-social behaviour?*

Yes, subject to the need for appropriate links with the Hearings System when the subject of the prosecution is a child (see also the response to question 11).

*53. Do you think the court should have the power to grant an ASBO in related civil proceedings, such as an eviction hearing, where there is evidence of anti-social conduct?*

In circumstances where a child is subject to civil proceedings we agree that an ASBO could be granted in appropriate circumstances. However we re-iterate the need for robust links with the Hearings System and the process outlined in our response to question 11.

54. *Do you agree that the prohibitions in an ASBO should be able to extend beyond a local authority area, where this is necessary to protect persons from further anti-social acts by the individual concerned?*

Yes. Our understanding is that an order granted by a Sheriff would in fact have validity throughout the Sheriffdom.

In this context it is notable that a supervision requirement remains valid throughout the UK and that requirements can be transferred from one area to another if or when the child moves home.

Douglas Bulloch  
Chairman, SCRA

11 September 2003