



20 April 2011

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, because they are often the same children
- That the welfare and best interests of the child are at the centre of all decision making
- That the child's views must be taken into account

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters and support staff who operate throughout Scotland in every local authority area and who work in close partnership with other professionals in areas such as social work, education, the police, the health service and the courts system.

Summary Response

SCRA has been entirely supportive of the Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011. We are pleased to see the Scottish Government moving ahead with the guidance which will allow organisations to begin work on training and enable the legislation to be implemented as soon as possible. Generally we believe that the draft guidance contains most of what is required to meet its stated aims, though we do have a number of detailed comments that are set out below. We also recognise the need to consider our own practice and training needs in relation to forced marriage cases in light of the issues raised in the guidance.

Detailed Response

Audience

We assume that SCRA and the new NDPB Children's Hearings Scotland are included within the scope of paragraphs 17 and 18. We suggest that more explicit reference be made to health professionals in paragraph 17.

The concept of significant harm

We suggest that specific reference be made to the Scottish Government's Child Protection guidance in paragraph 28. The guidance contains much helpful information on the definition of significant harm which will be of assistance to those using this guidance.

Adult

Paragraph 29 needs to be drafted in line with the definition of "child" in paragraph 25 which recognises that in some circumstances, 16-17 year olds may be treated legally as children.

Forced marriage

Paragraph 32 states that some adults cannot consent to marriage. It should also contain a clear statement that children cannot consent to marriage. We note that this does appear later on in the guidance (at paragraph 88).

The Legal position

In paragraph 54, we suggest that it should be made clear that anyone can refer a child to the Principal Reporter where they believe the child may be in need of compulsory measures of supervision. In addition, the way paragraphs 54 and 55 are currently drafted may lead to a perception that children experiencing forced marriage can only be protected via the new ground in the 2011 Act when it comes into force (likely to be around summer 2012). A clear statement that the Reporter can and will use existing grounds in the 1995 Act to protect such children may help to make things clearer and provide additional reassurance to those working with children in this situation.

The order of the information in paragraphs 54-57 is also a little confused. It may be better to have explanation of all the measures available directly through the Children's Hearing listed together before moving on to CPOs, child assessment orders, interdicts etc.

We would also note in passing that much of this section will need to be revised when the Children's Hearings Act comes into force in 2012.

Victim-centred approach

The guidance states that managers should ensure that: "victims' wishes are considered about the level of information they require". Reference could be made here to Article 12 of the United Nations Convention on the rights of the Child which provides that the child's views should be sought and taken account of.

Confidentiality

We suggest that a specific section on confidentiality and information sharing be created within the guidance and that it be drafted in line with the equivalent section in the Child Protection guidance. As currently drafted the guidance appears confusing. For example, paragraph 80 states: "...the individuals' confidence and privacy should be respected at all times". This might appear to conflict with paragraph 78, which states: "consideration should always be given to sharing information with other agencies such as the police."

We consider that paragraph 99 is overly general regarding the power of a Hearing to speak to a child in private. Currently it is possible, but in all circumstances the substance of the discussion must be fed back to the relevant person(s). Under the 2011 Act, Hearings will have the ability to withhold information given to them by the child if they believe that to reveal it to the relevant person would place the child at risk of significant harm. It is worth noting that there is still much work to be done on how this power would be exercised in practice.

The final sentence of this paragraph states: "current practice allows for a single hearing... [to allow] a child and relevant person to attend separately". This may give a slightly misleading impression – attendance would still be at the same time on the same day, it would just involve different groups coming in and out of the hearing at different times, something that can be difficult to manage particularly in outreach hearings centres with limited facilities.

Paragraph 113 mentions siblings or other family members for the first time. It would be helpful if reference were made earlier in the guidance about the need to consider protection for these children.

Chapter 6

While the understandable focus for adult services is the protection of the adults they are working directly with, SCRA believes that they also must be aware of the need to protect children they may come into contact with in the course of that work. We suggest that the guidance reflect that point.

Conclusion

SCRA believes that, subject to the comments made above, the guidance will be helpful in assisting senior managers to respond appropriately to the implementation of the Forced Marriages Act and to concerns over the safety of children who are experiencing or at risk of experiencing forced marriage. As noted above, as part of our preparations for the implementation of the Children's Hearings (Scotland) Act 2011, we will be considering our practice and training requirements in light of the issues raised. We look forward to contributing to the more operationally focused guidance which we understand will be produced in the coming months.

SCRA
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