

CHILDREN (SCOTLAND) ACT 1995
PRACTICE GUIDANCE

1. CODE OF PRINCIPLES AND GOOD PRACTICE

1.1 PURPOSE AND STATUS OF CODE

1.1.1 This Code serves as an introduction to the more detailed Practice Guidance for Reporters. It places it in a broader context of professional principles and roles. Its purpose is to define what is meant by good professional practice and thus to enable Reporters to carry out their professional functions both creatively and confidently in the interests of children.

1.1.2 The Code draws on a number of main sources:

- the Association of Children's Reporters Code of Practice (1992);
- the principles set out in the Scottish Office White Paper "Scotland's Children" (1993);
- the United Nations Convention on the Rights of the Child (1989) and associated texts;
- the European Convention on Human Rights (1950);
- the Fundamental Purpose of the Scottish Children's Reporter Administration; and, most importantly
- the Children (Scotland) Act 1995 itself.

1.1.3 The Code should be used in two ways. Firstly, it provides a lens through which the detailed guidance should be read. The guidance should always be applied in a way that promotes fulfilment of the Code. Secondly, the Code acts as a tie-breaker if the guidance is unclear, contradictory or unhelpful to the interests of an individual child in a particular situation. In those instances the possible courses of action should each be weighed up against the Code to determine how best to proceed. **The only basis on which a requirement stated in the guidance should not be followed in an individual child's case is if (a) to do so would be likely to be detrimental to the child's interests, and (b) another course of action is available which is in accord with the Code and better secures the child's interests.**

1.2 THE ROLE OF THE REPORTER

1.2.1 Legislation and practice have created seven key functions for the Reporter:

- (i) Recipient of referral
- (ii) Investigator
- (iii) Decision maker
- (iv) Administrator
- (v) Legal Agent
- (vi) Advocate for children's interests
- (vii) Partner with other agencies and services

1.2.2 In the performance of all these roles, the Reporter is guided primarily by legislative provision and by the best interests of the child, as interpreted by Practice Guidance.

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- 1.2.3 In the role of **recipient**, the Reporter shall receive from any person or agency, information about a child, which requires the Reporter to consider whether the child may be in need of compulsory measures of supervision.
- 1.2.4 The Reporter will pursue such **investigation** as is necessary in the circumstances of the individual case to enable a constructive and appropriate outcome to be achieved.
- 1.2.5 The Reporter's **decision** may have a major impact on the welfare of the child and requires to be taken after proper evaluation of the available evidence and in the best interests of that child. Such a decision is reached by the Reporter, not merely on the deed which has brought the child to the Reporter's attention, but also on an assessment of the child's needs having taken account of the child's social and environmental circumstances. That assessment should in turn be informed by relevant research material and professional information.
- 1.2.6 As **administrator**, the Reporter is required to keep an accurate record of any child referred and to ensure that any information kept is only passed on to those entitled to receive it. In addition, the Reporter has responsibility for arranging Children's Hearings, ensuring that those entitled to them received appropriate papers on time, advising Panel Members on points of law and procedure when required, keeping a record of proceedings at the Hearing and ensuring that all who require to know the outcome of that Hearing receive timely and accurate notification of it.
- 1.2.7 The Reporter has a general duty to respect the rights in law of children and parents and to ensure that they are upheld during proceedings raised by the Reporter. Furthermore, on application or appeal to the Sheriff from a Children's Hearing, the Reporter is a full party in the proceedings with particular responsibility to promote the best interests of the child throughout. On such occasions the Reporter has a duty to put all the relevant facts before the Court to enable the Court to reach a decision based on an informed understanding of the child's situation.
- 1.2.8 As a recipient and transmitter of information, and as a decision-maker about resources needed for children, the Reporter acts as a link between differing systems relevant to children. As such, the Reporter has a part to play in co-ordinating the provision of service to the child and in influencing the development of strategy, policy and practice. The Reporter's professional independence should be exercised so as to support the co-ordination of all agencies within Scotland's child care and justice systems and the common objective of more effective service provision for children.

1.3 THE KILBRANDON REPORT

- 1.3.1 The genesis of the Reporter Service and the Children's Hearing System lies in the Kilbrandon Report 1964 with its recognition of the need for a child-

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centred approach to decision-making in order to deal more effectively with both juvenile delinquency and other difficulties associated with childhood. To achieve this, Kilbrandon recognised the need to move away from strict adherence to processes of criminal law in dealing with children who offend so that the effect of social and environmental factors on the child can be taken into account.

- 1.3.2 The responsibility of parents for the care of their children was another essential feature of Kilbrandon's thinking as was the consequent need for measure of social education where parents were unable or unwilling to exercise the necessary responsibility, whilst applying discretion in other cases where parents were able to exercise the necessary care.
- 1.3.3 Kilbrandon identified the problems present in a narrowly based Court structure which had rendered impossible the type of decision making identified above. This required an individualised and more informed approach to the needs of the individual child in the family and community context.
- 1.3.4 As a consequence the specialised role of the Children's Reporter was created to provide an initial sift of children referred together with the concept of a Children's Panel by which members of the public with special aptitudes or interests in children's problems could be involved in decisions about how to address them.
- 1.3.5 The Kilbrandon Report was written in 1964; since then, many changes have taken place both in society and in the law. The complexity of problems faced by children has become more recognised with greater awareness of the extent of child abuse in its different forms and there has been a growth in the complexity of case law and secondary legislation. In addition the impact of obligations under the United Nations Convention on the Rights of the Child and the European Convention on Human Rights has been recognised. Throughout, the Reporter service has sought and will continue to seek development of the best laws and practice to cater for the interests of the individual child in keeping not only with these changes, but also with the fundamental principles of Kilbrandon which remain as valid today as in 1964.

1.4 THE RELATIONSHIP BETWEEN AGENCIES WITHIN THE CHILDREN'S HEARING SYSTEM

- 1.4.1 The independence of the Reporter in decision making is a key element of the Children's Hearing System, but the proper discharge of that role within the context of the System depends on mutual inter-dependence and mutual

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respect. A good working relationship with such agencies is, therefore, essential for the Reporter as is a mutual understanding of the differing professional responsibilities.

- 1.4.2 Reporters have striven to work with other agencies not only in the course of their decision-making on individual cases, but also in the wider area of the development of local and national policies in the field of child care. The importance of proper inter-agency communication has been recognised in various Child Care Reports and examples of such inter-agency collaboration in practice have been in the establishment of Child Protection Committees, development of Youth Strategies and Children's Services Plans, and the creation of joint interview guidelines in cases of suspected abuse.
- 1.4.3 The key **objectives** for Reporters in contributing to the development and maintenance of inter-agency liaison are:
- (a) The promotion of mutual understanding of respective roles, responsibilities and strategy.
 - (b) The setting in place of effective and efficient links between the practices and procedures of different agencies including arrangements for the timeous transmission of relevant information between appropriate agencies.
 - (c) The creation of appropriate consultation mechanisms which value the particular expertise of each agency without undermining professional independence and which in particular allow for the development of single and multi-agency strategies, policies and resources in order to respond to the needs, behaviour and rights of children and young people.
 - (d) Participation in the development and delivery of joint training initiatives between agencies which create a better understanding of professional responsibilities, enable relevant skills and knowledge to be shared and support the improvement of systems and services for children.
- 1.4.4 The main source of referrals to the Reporter is the **police**. The majority of referrals received still relate to children alleged to have committed offences. The police are closely involved in child protection investigations and in referring children on the basis of a wide range of concerns, or in providing evidential or background information.
- 1.4.5 The **local authority** has key statutory responsibilities within the Children's Hearing System. It firstly has the statutory duty to make initial enquiry into the case of any child who may need compulsory measures of supervision, and for passing on any relevant information to the Reporter. It is then required to provide a Social Background Report for any Children's Hearing arranged by the Reporter and to give effect to any supervision requirement

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decided upon by a Children's Hearing. The social work department normally leads on these responsibilities.

- 1.4.6 The Kilbrandon Report underlined the important role **schools** play in the socialisation of a child. Many referrals come through the Education system to the Reporter. School Reports are provided for both the Reporter and the Children's Hearing and the Education system also provides specialist services for children such as education welfare and child guidance. Youth strategy developments have seen imaginative forms of collaboration between education and social work services and the Reporter established in some areas.
- 1.4.7 The increasing number of referrals for child abuse and neglect has led to increasing contact between Reporters and **health professionals**, including general practitioners, health visitors and consultant paediatricians. Mental health problems facing children or parents also appear more evident requiring the Reporter to be in contact with child and adult psychiatrists for assessment and treatment of such problems.
- 1.4.8 Following the Reporter's initial decision to refer a child's case to them, the **Children's Hearing** has the ultimate responsibility for deciding what measures of supervision are in the best interests of the child. A Hearing consists of three Panel Members and responsibility for the conduct of the Hearing rests ultimately with the Chairman of that Hearing.
- 1.4.9 A **Children's Panel** exists within each local authority to provide Panel Members for Children's Hearings. The Panel also has an important voice in the development of child care practice, policy, and resources. The links between Reporters and the Children's Panel are an essential axis of the local functioning of the Children's Hearing system and Reporters are committed to fostering a good working relationship with their local Panel.
- 1.4.10 The **Children's Panel Advisory Committee** is formed by the local authority and the Chair and at least two members must be appointed by the Secretary of State. Their basic duties are to advise the Secretary of State on the suitability of persons referred as possible members of the Children's panel, to monitor the performance of serving Panel Members and make recommendations about their re-appointment and to make recommendations to the Secretary of State on such issues relating to the administration of Panels as he may refer to them.
- 1.4.11 **Social Work Services Group** is the Division of the Scottish Office Home Department which has as its main remit policy formulation and advising the Secretary of State on social work related matters. Whilst it has no direct control over the professional work of Reporters, it holds an influential position in relation to the functions and duties of Reporters, through the development of proposals for legislation, formal guidance and policy oversight.

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1.5 FUNDAMENTAL PURPOSE AND GOALS OF THE SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

1.5.1 The fundamental purpose of the Scottish Children's Reporter Administration is:

Within the framework of Scotland's child welfare and justice systems, to pursue with care and creativity the best interests of children who are or may be referred to the Reporter.

1.5.2 To help it achieve its fundamental purpose, Scottish Children's Reporter Administration will seek to:

promote the interests and welfare of all children referred to the Reporter by

- understanding their needs
- seeking good outcomes
- where necessary, pursuing for them compulsory measures of supervision.

fulfil our statutory responsibilities by

- protecting the interests and rights of children and their families
- being thorough and accurate
- being fair and timely

work in partnership with other agencies concerned with children by

- promoting the development of the Children's Hearing System
- communicating clearly and consulting whenever relevant
- collaborating with measures to help children

maintain and develop the performance of our staff by

- developing their skills and competence
- fostering teamwork
- defining and promoting good performance

make the best use of the resources available to us through

- good planning
- effective management
- seeking value for money

1.6 STATEMENT OF FUNDAMENTAL PRACTICE PRINCIPLES

1.6.1 Children

Each child is unique and has unique needs

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The child is a person and not an object of concern.

We deal with children, not cases.

1.6.2 Care and Justice

Each child has a right to care and justice

Respect for child's rights (including participation, protection and privacy) promotes the child's dignity and self-worth.

The primary responsibility for the child's welfare lies with the parent and should be respected at all times.

All discrimination is to be avoided, whether in attitude or outcome and whether deliberate or due to unconscious bias or misinformation.

1.6.3 Partnership

Working in partnership promotes the welfare of the child

We will enable children and parents to contribute actively to processes and decisions through clear communication, fair procedures and listening to their views.

We will work together with other agencies on a basis of mutual respect for each agency's responsibilities and expertise.

We will join with other agencies in approaches to improve the position of children who are or may be referred to the reporter, such as by developing preventive services or targeting resources more effectively.

1.6.4 Intervention

Decision making will be fair and timely

Delay in dealing with children's cases undermines the value of intervention.

Case actions and decisions should be based on relevant, reliable information and objectively justifiable.

1.6.5 Outcomes

The least intervention possible will be used to ensure the best possible outcome for the child

All actions, processes and decisions should promote the long-term well-being and inherent worth of the child.

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Formal proceedings should be taken if more likely to promote better life opportunities for the child than any alternative.

Removal from home should be sought for the minimum period necessary in the interests of the child.