

SCOTTISH

**CHILDREN'S REPORTER**

ADMINISTRATION

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# **✱ Movement Restriction Conditions in the Children's Hearings System**

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## EXECUTIVE SUMMARY

### Background

The Children's Hearings System is the care and justice system for children in Scotland. Children are referred to the Children's Reporter if there are concerns about their care, protection, behaviour or they are alleged to have committed an offence. The Reporter decides whether compulsory measures of care may be needed to protect the child and/or address their behaviour. In these cases, the child is referred to a Children's Hearing which may make a Supervision Requirement. Specific conditions can be attached to a Supervision Requirement, such as engagement with a specific project or the place where a child is to live.

The power to include a Movement Restriction Condition (MRC) as a condition of a Supervision Requirement was introduced by the Antisocial Behaviour (Scotland) Act 2004. The conditions by which a child can be made subject to an MRC are the same criteria as those for secure authorisations, namely section 70(10) of the Children (Scotland) Act 1995:

*“(a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk: and  
(b) that the child is likely to injure himself or some other person.”*

An MRC is a condition within a Supervision Requirement “*restricting the child's movements in such a way as may be specified in the supervision requirement*”<sup>1</sup>. The MRC also requires the child to comply with monitoring arrangements for the restriction of movement. The prescribed method of monitoring compliance is by way of an electronic tag. Movement Restriction Conditions form part of the Intensive Support and Monitoring Services (ISMS), constituting the monitoring aspect. As the name suggests, along with an MRC the child must receive intensive support. The responsibility for delivering the intensive support package rests with the local authority. The Scottish Executive has taken a phased approach to the introduction of MRCs, beginning from April 2005 in seven local authority areas.

The Scottish Children's Reporter Administration (SCRA) carried out this research to learn more about the backgrounds of children who have received MRCs and the reasons for this, and to analyse the decision-making process within the Children's Hearings System leading up to the MRC being made.

### Methodology

The sample consisted of 28 children, 23 boys and five girls, aged between 12 and 16 years who had had MRCs included in their Supervision Requirements in the year April 2005 to March 2006.

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<sup>1</sup> Section 70(11)(a) Children (Scotland) Act 1995, as amended by the Antisocial Behaviour (Scotland) Act 1995 s135(4).

Two main methods were used:

- A review of case files held by SCRA for each of the 28 children.
- Semi-structured interviews with 14 Reporters who had had at least one case where an MRC was included in a Supervision Requirement, and semi-structured telephone interviews with 16 Panel Members who had chaired a Hearing where an MRC was included in a Supervision Requirement.

## Key findings<sup>2</sup>

### *Children*

- Four children had always lived in the family home. The other 24 children had more **complex living histories**. Eleven had been in both residential accommodation and secure accommodation at some point in their lives, a further five had spent time in secure accommodation and six in residential accommodation. Immediately prior to receiving MRCs, the most common place for the children to be living was in the family home.
- For 27 children (96%) there were significant concerns around their **alcohol use**. Six also had main carers with alcohol issues; all of these children themselves had concerning alcohol use.
- 23 of the children (82%) had used **drugs** at some point in their lives. Six had main carers who had, or had previously had, misused drugs; five of these children had personal drug use issues.
- 26 children (93%) had histories of **non-attendance at school**. For most, this was a situation that had endured for some years prior to having their movements restricted. Seven of this group had poor literacy and/or numeracy skills.
- For 26 of the children (93%), there were concerns regarding their **peer groups**.
- 22 children (79%) had a history of **absconding** from residential establishments; this is 92% of the children who had lived in residential accommodation.
- Eleven children (39%) had **physical and/or mental health problems**. For five of these children (18%) **self harm** was a particular issue.
- Seven children (25%) had **behavioral difficulties**; typically this was a confirmed diagnosis of ADHD.
- Fourteen children (50%) had main carers with **physical and/or mental health problems**.

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<sup>2</sup> From information from SCRA case files. It should be noted that just because information is not recorded in a case file does not mean that this particular factor is not present in a child's life.

- Sixteen children (57%) were recorded as having a **problematic relationship with at least one parent**. Nineteen main carers (68%) had concerns about their **parenting** recorded, 13 of whom (46%) were also noted as having a problematic parent/child relationship.
- Eight children (29%) had suffered **neglect and/or abuse**.
- Ten children (36%) had suffered a **significant family bereavement**.
- Ten children (36%) had a history of **domestic abuse** in the family home.
- Eight children (29%) had a **family history of offending**.
- All except two children were aged 12 years or under at the time of **first referral to the Reporter**. The youngest age of first referral was two months, the oldest was 13 years. The most common **ground/s of first referral** under the Children (Scotland) Act 1995 were alleged to have committed an offence (ten children), victim of a Schedule 1 offence (seven children), lack of parental care (five children), and being beyond the control of a relevant person (four children).

#### ***Movement Restriction Conditions***

- The most common statement recorded by Hearings in support of decisions to include MRCs within Supervision Requirements was the benefit to the child of the intensive support package. This statement was made by Hearings in 71% of cases. The second most common consideration (57% of cases) was to address the risk of the child's offending. In 15 of the 26 cases (58%) where the child had been identified as a persistent young offender, one of the statements recorded by Hearings in support of their decision to include the MRC was to address offending behaviour. Similarly four of the 22 children with a history of absconding (18%) had their movements restricted to address the risk of absconding.
- In some cases, the practice of restricting the child's movements to the family home was a concern to Reporters interviewed. Seven of the 13 children who had both a main carer with parenting problems and a problematic relationship with at least one parent had their movements restricted to the family home.
- Where an alternative to the MRC was considered by a Hearing this was always an intervention away from the family home. The lack of alternatives offered to a Hearing was a source of frustration to Panel Members interviewed, as was the apparent lack of secure accommodation places available.

#### ***Process in the Children's Hearings System***

- The quality and quantity of information provided to Hearings to make decisions on MRCs was the main area that received praise over the first year of the implementation.

- It was suggested by some Reporters interviewed that a section should be added to assessment reports setting out why the young person meets the conditions contained within section 70(10) of the Children (Scotland) Act 1995.
- A further positive was the preparation both Panel Members and Reporters received prior to the implementation of ISMS. However, it was suggested by some Panel Members interviewed that some further 'refresher' training may now be necessary.
- Not meeting the section 70(10) conditions was one of the most common reasons recalled by Reporters for more MRCs not being included in Supervision Requirements. There were differences in opinion about whether the section 70(10) conditions represented the correct threshold to allow an MRC to be used. There was a tension between the MRC being a significant restriction of liberty and the benefit of intensive support that automatically follows the inclusion of an MRC within a Supervision Requirement, which was viewed as advantageous for the children.
- There was a general consensus amongst those interviewed that everything possible should be done to secure a legal representative for the children where an MRC is being considered by a Hearing.<sup>3</sup>

## Conclusions

The benefit of the intensive support package was a common theme amongst both recorded considerations by Hearings, and Reporter and Panel Member interviews. This is further emphasised by the complex needs of some of the children identified during the case file analysis. For example for the majority of children identified as persistent young offenders during the year they had the MRC included within their Supervision Requirement, addressing their offending behaviour was not recorded as a statement in support of their decision by the Hearing. However the MRC being a deprivation of liberty was a concern to some. It was suggested by some of those interviewed that the intensive support could be used before the child meets the section 70(10) conditions with an MRC being available for those children who require it and meet the section 70(10) conditions. The existing funding link between MRCs and intensive support meant that there was some unease about the level, and to a lesser extent, the wording of the section 70(10) conditions. This research suggests that if the funding link is to remain then consideration could be given to changing the emphasis of the conditions to be more welfare based. If funding for intensive support could be made available without the MRC then slightly lower conditions, perhaps based on the child's welfare could be employed for access to intensive support, with the section 70(10) conditions remaining as the criteria for an MRC being included within a Supervision Requirement.

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<sup>3</sup> Since these interviews were carried out, this provision has been proposed in the draft Children's Services (Scotland) Bill s12(4)(b).

## INTRODUCTION

### Children's Hearings System

A child or young person can be referred to the Children's Reporter by any person or agency if they have concerns about their care and protection, behaviour or if they are alleged to have committed an offence. Where the Reporter considers that one or more of the grounds in section 52(2) of the Children (Scotland) Act 1995 has been met and that compulsory measures of care are necessary, the child will be referred by the Reporter to a Children's Hearing. A Children's Hearing consists of three volunteer Children's Panel Members, a mixture of men and women, and it is these Panel Members who ultimately take decisions about whether, and what, compulsory measures of supervision are necessary. If the Hearing's decision is that compulsory measures of supervision are necessary for the child, a Supervision Requirement can be made.

### Movement Restriction Conditions

The power for a Children's Hearing to include a Movement Restriction Condition (MRC) as part of a child's Supervision Requirement was introduced by the Antisocial Behaviour etc. (Scotland) Act 2004. The Scottish Executive is taking a phased approach to the introduction of MRCs, starting from April 2005 with seven local authorities; namely City of Edinburgh, Dundee City, East Dunbartonshire, Glasgow City, Highland, Moray and West Dunbartonshire.

An MRC is a condition within a Supervision Requirement "*restricting the child's movements in such a way as may be specified in the supervision requirement*".<sup>4</sup> The MRC also requires the child to comply with monitoring arrangements for the restriction of movement. The prescribed method of monitoring compliance is by way of an electronic tag. Along with an MRC, a Hearing may also impose additional conditions, prescribed by Scottish Ministers, within the Supervision Requirement where they consider this to be necessary in the child's case. These prescribed conditions include the accommodation at which the child is required to reside, the days of the week and hours of the day during which the child's movements are to be restricted, any address or location the child must not enter, the duration of the MRC providing this does not exceed six months, any conditions relating to the arrangements for monitoring compliance and any conditions in relation to the child's participation in or co-operation with services.<sup>5</sup>

The conditions by which a child is made subject of an MRC are those specified in section 70(10) of the Children (Scotland) Act 1995, the same criteria as have to be met for an authorisation for secure accommodation to be considered.<sup>6</sup> The conditions are:

*"(a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk; and*

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<sup>4</sup> Section 70(11)(a) Children (Scotland) Act 1995, as amended by the Antisocial Behaviour (Scotland) Act 1995 s135(4). See also The Intensive Support and Monitoring (Scotland) Regulations 2006, SSI No. 15.

<sup>5</sup> The Intensive Support and Monitoring (Scotland) Regulations 2006, SSI No. 15, r6.

<sup>6</sup> Hereinafter 'the section 70(10) conditions'.

*(b) that the child is likely to injure himself or some other person.”*

The Hearing must also be satisfied that it is *necessary* for an MRC to be included in the Supervision Requirement.

The way in which electronic monitoring operates for children within the Children’s Hearings System is unique to Scotland, in that it does not operate as a punitive measure. This is in contrast to electronic monitoring in the adult criminal justice system and other jurisdictions. The principles that apply to decision making within the Children’s Hearings System also apply to MRCs; these are that the welfare of the child is the paramount consideration of any Children’s Hearing making a decision about them under Part II of the Children (Scotland) Act 1995, that the child must be given an opportunity to express his/her views and that no Supervision Requirement should be made unless it would be better than making none at all.

In accordance with the welfare focus of the Children’s Hearings System, MRCs form part of the Intensive Support and Monitoring Service (ISMS), constituting the ‘monitoring’ aspect. As part of the arrangements to monitor compliance with an MRC the local authority must prepare a movement restriction care plan which addresses the immediate and longer term needs of the child. This plan must also detail the services which are to be provided to meet the care, education and health needs of the child. Therefore along with an MRC there must be an intensive support package for each child. The responsibility for delivering this package rests with the local authority. A Hearing should be provided with a copy of the MRC care plan detailing the immediate and longer term needs of the child and how it is intended that these needs are addressed. The Scottish Executive has provided funding to local authorities for the provision of this intensive support linked to the use of an MRC. At the time of writing this report, the electronic monitoring is being carried out by Serco. From April 2005 to March 2006, the period from which the research sample was drawn, the monitoring provider was Reliance.<sup>7</sup>

The ISMS is the subject of a Scottish Executive evaluation. This Scottish Executive evaluation seeks to evaluate the effectiveness of ISMS in reducing offending behaviour, responding to the needs of children at risk of absconding and who are at risk of causing injury to themselves or others, and in improving the longer term outcomes for them. The Scottish Executive evaluation also seeks to determine the cost-effectiveness of the measure. This SCRA research is intended to complement the Scottish Executive evaluation. The SCRA research has been designed, solely by SCRA, to be different in its focus, looking at the backgrounds of the children who had MRCs included in their Supervision Requirements and at the decision making process within the Children’s Hearings System.

## **Aims**

- Firstly, to profile the social backgrounds of a sample of children who have had MRCs included in their Supervision Requirements.
- Secondly, to analyse the decision-making process within the Children’s Hearings System which leads to an MRC being included in a Supervision Requirement.

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<sup>7</sup> The Intensive Support and Monitoring (Scotland) Regulations 2006. SSI No.15, r4.

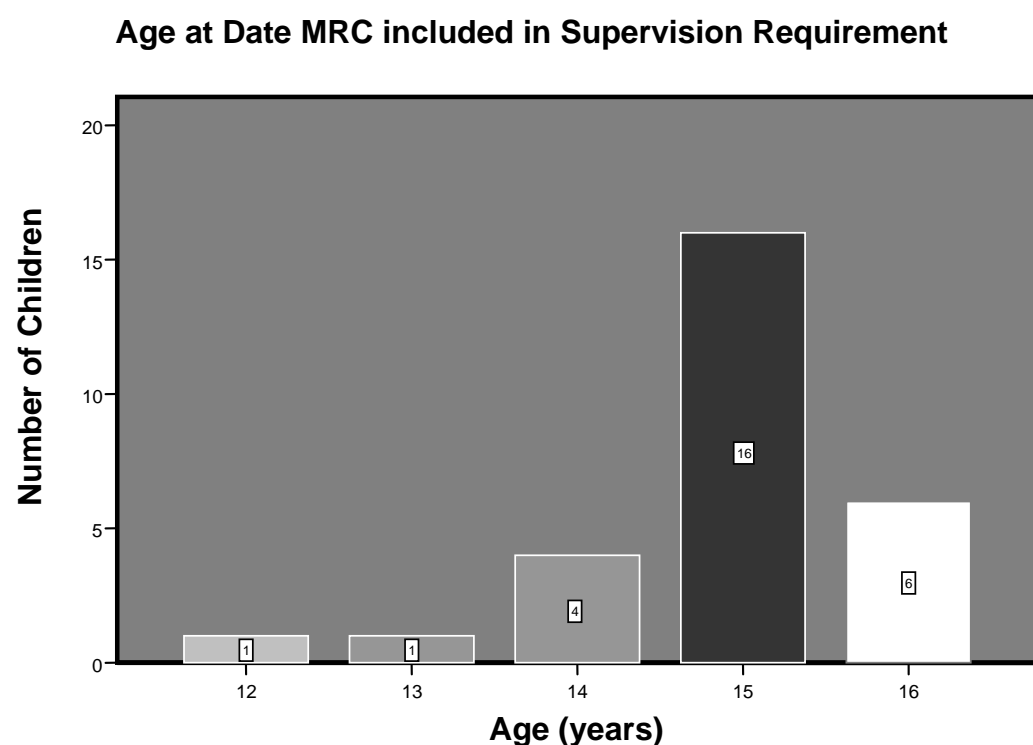
## METHODOLOGY

### Children

The sample consisted of 28 children, 23 boys and five girls. The cases were selected on the basis of all those children who Reporters notified SCRA Headquarters had had MRCs included in their Supervision Requirements within the first year of the pilot.

Chart 1 shows the ages of the children on the dates they received MRCs. All of the girls had their MRCs included in their Supervision Requirements when they were aged 15 or 16 years of age. There was at least one child from each of the seven pilot local authorities.

#### CHART 1:



#### Case file review

A review of the case files held by SCRA for each of the 28 children was undertaken. SCRA case files contain all information requested by the Reporter from other agencies (e.g. social background reports, school reports, police reports and health reports) together with all Hearings decisions and any court proceedings in relation to the child or young person. It should be noted that just because a piece of information is not recorded in the SCRA case file does not mean that that particular factor is not present in the child's life.

The data collection was carried out using a defined set of variables recorded on a SPSS datasheet. All case file information was anonymised at the time of extraction. The variables were pre-determined using known risk factors from previous research of this nature as well as the SCRA Framework for Decision Making by Reporters (SCRA, 2004, 2006a, 2006b). In addition, field

notes were taken from each case file to provide further information on the variables recorded and to note any other circumstances. This ensured that any patterns between case files were recorded and could be identified at the analysis stage. The variables were then analysed using SPSS, a statistical package for social science research.

### **Interviews with Reporters and Panel Members<sup>8</sup>**

A series of semi-structured interviews were conducted with Reporters who had had at least one case where an MRC was included within a Supervision Requirement. Fourteen Reporters and Authority Reporters were interviewed. There was at least one Reporter from each of the seven pilot areas. The Reporter interviews took place face-to-face in SCRA offices and were recorded and transcribed for analysis.

Semi-structured telephone interviews were undertaken with Panel Members. All the Chairs of the Hearings that had initially included MRCs within the Supervision Requirements for each of the children in the sample were invited to be interviewed. Sixteen Panel Members agreed to be interviewed. It was not possible to record the Panel Member interviews and so they were documented by the researcher taking notes during the conversations.

### ***Analysis***

Data obtained from the Reporters and Panel Members interviews were analysed using Framework, a qualitative analytical process developed by the National Centre for Social Research (Ritchie and Lewis, 2003). This involved a process of managing the data by sorting and identifying themes or concepts running through it. The data were then labeled and arranged by the identified themes or concepts, before being summarized in preparation for reporting. All interview transcripts and notes were anonymised and treated in confidence. All were destroyed following analysis.

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<sup>8</sup> Interview topics are attached at Annex 1.

## FINDINGS

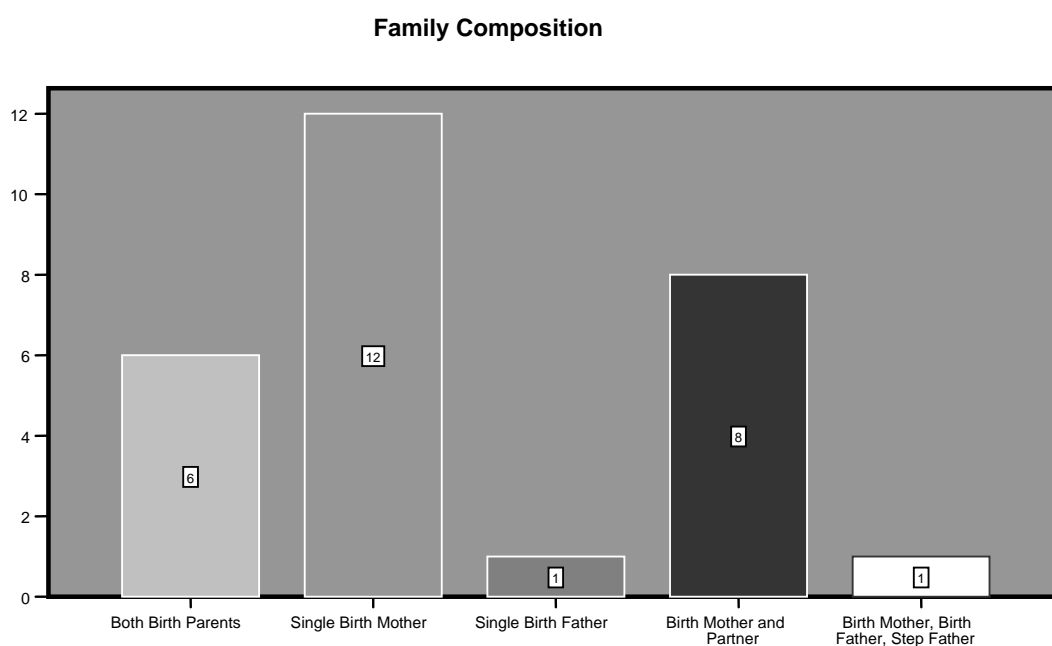
### Children

The sample consisted of 28 children, 23 boys and five girls, aged between 12 and 16 years. This section describes their backgrounds, the various factors in their lives that gave rise to concerns about their welfare and behaviour, and their contact with the Children's Hearings System.

#### ***Family characteristics***

As shown in the chart below, the most common 'types' of family composition were single birth mother (12 children), birth mother and partner (eight children) and both birth parents (six children).

CHART 2:

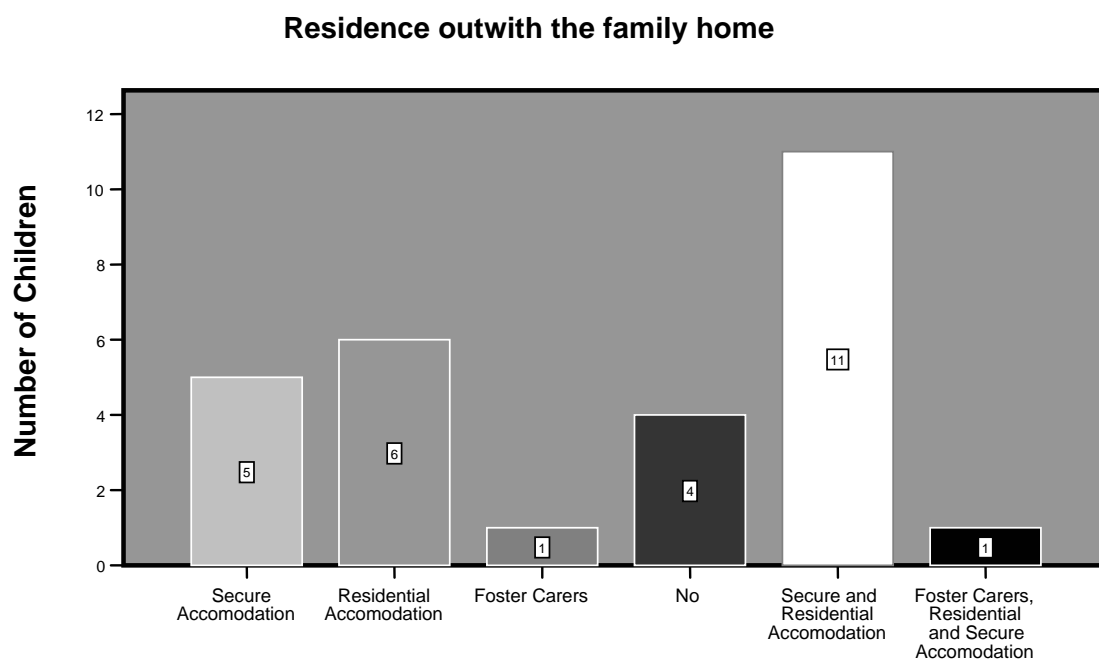


Two children in the sample did not have siblings. Seven had either a brother or a sister and 19 children had a mixture of brothers and sisters. The economic status of the family was not recorded in all cases. Of the cases where it was recorded, seven families had at least one parent in employment and 15 families were dependent on State benefits.

#### ***Living group***

A minority of four children had always lived in the family home - two 14 year olds and two 15 year olds. However, most of the children had far more complex living group histories. Eleven had been in both residential accommodation and secure accommodation. A further five had spent time in secure accommodation and six in a form of residential accommodation. For most in this 'accommodated' group, this accommodation was through the Children's Hearings System, either *via* a Supervision Requirement or Warrant. However, one child had spent time on remand through the adult criminal justice system only. All of the girls in the sample had spent time in both secure accommodation and residential accommodation.

CHART 3:



Immediately prior to the inclusion of the MRC, the most common place for the child to be living was in the family home (13 children). In addition, two children were living with other relatives. Eleven were resident in secure accommodation and two children were in residential accommodation.

### ***Children's characteristics***

- For four of the children concerns were recorded about their **physical health**.
- For seven children there were concerns about their **mental health**.
- For five of these children **self harm** was a particular issue.
- Twenty three children (82%) had been noted as using **drugs** at some point in their lives. Where the type of drug was recorded this was typically cannabis, although cocaine, ecstasy and valium use was also recorded.
- More significant, however, was **alcohol** use among the sample. For 27 of the children (96%), there were significant concerns around their alcohol use. The remaining child had nothing related to personal alcohol use in their case file, although equally there was nothing to rule this out. For most children with recorded offences alcohol was specifically linked to their offending.
- Seven children were recorded as having **behavioural difficulties**; typically this was a confirmed diagnosis of ADHD at some point in their lives.

- Four children were recorded as having **learning difficulties**. For 23 children, learning difficulties had been specifically ruled out, in the remaining case the existence or not of learning difficulties was not recorded.
- Twenty six children (93%) had a history of **non-attendance at school**. For most this was a situation that had endured for some years prior to the inclusion of the MRC. Seven were noted as having significant problems with their literacy and numeracy; all of these children were among those with a history of non-attendance at school.
- For 26 of the children (93%), there were concerns around their **peer group**. For four of these children this was noted to be gang-related, three of them from the west of Scotland.
- Twenty two children (79%) had a history of **absconding** from residential establishments; this equates to 92% of the children who had lived in some form of residential accommodation outwith the family home.

#### ***Children's life experiences.***

- Eight children (29%) had suffered **neglect and/or abuse**. Five had been neglected by their parents or main carers earlier in their lives. Five had been physically abused and a further two sexually abused during their lifetime. Of the five children who had suffered neglect, two had also been physically abused, one had also been sexually abused and one child had suffered neglect, physical abuse and sexual abuse. This provides an illustration of the traumatic lives some children had led prior to the inclusion of the MRC in their Supervision Requirements.
- Ten children (36%) were recorded as having suffered a **significant family bereavement**. For four of these children this was the death of a parent or step parent and for a further five this was another close relative. The relationship of the child to the deceased was not recorded in the remaining case.
- Eight children (29%) were noted as having a **family history of offending**. For all these children this was close relatives such as parents, step parents, siblings or, as in two cases, a mixture of these groups.

#### ***Contact with the Children's Hearings System***

The youngest any of the children in the sample were first referred to the Reporter was two months, the oldest were 13 years. All except two children were aged less than 13 years at first referral. Nearly half of the children were first referred to the Reporter between the ages of ten and 13 years. Three of the five girls were first referred between the ages of ten and 13 years.

**TABLE 1: Age at first referral to the Reporter\***

Age at first referral	Number of children	% of sample
Less than 1 year	2	7%
1 year to 5 years	5	18%
6 years to 9 years	8	29%
10 years to 13 years	12	43%
14 years and over	0	0

\* This was unknown for one young person.

The grounds of referral to the Children's Reporter are contained in section 52(2) of the Children (Scotland) Act 1995:

### **Grounds for referral in the Children's Hearings System.**

At the time of the Fast Track pilot, under the Children (Scotland) Act 1995 s52(2), children and young people could be referred to the Children's Reporter on one or more of the following grounds:

- (a) is beyond the control of any relevant person
- (a) is falling into bad associations or is exposed to moral danger
- (c) is likely (i) to suffer unnecessarily ; or (ii) be impaired seriously in his health or development, due to a lack of parental care
- (d) is a child in respect of whom any of the offences mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children to which special provisions apply) has been committed
- (e) is, or is likely to become, a member of the same household as a child in respect of whom any of the offences mentioned in paragraph (d) above has been committed
- (f) is, or is likely to become, a member of the same household as a person who has committed any of the offences referred in paragraph (d) above
- (g) is, or is likely to become, a member of the same household as a person in respect of whom an offence under sections 1 to 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest and intercourse with a child by a step-parent or person in position of trust) has been committed by a member of that household
- (h) has failed to attend school regularly without reasonable excuse
- (i) has committed an offence
- (j) has misused alcohol or any drug, whether or not a controlled drug within the meaning of the Misuse of Drugs Act 1971
- (k) has misused a volatile substance by deliberately inhaling its vapour, other than for medicinal purposes
- (l) is being provided with accommodation by a Local Authority under s25, or is the subject of a parental responsibilities order obtained under section 86, of this Act and , in either case, his behaviour is such that special measures are necessary for his adequate supervision in his interest or the interest of others.
- (m) Is a child to whom subsection (2A) below applies:<sup>9</sup>

(2A) (a) s requirement is made of the Principal Reporter under s12(1) of the Antisocial Behaviour etc. (Scotland) Act (asp 8) (power of a Sheriff to require Principal Reporter to refer case to Children's Hearing) in respect of the child's case; and

(b) the child is not subject to a Supervision Requirement.

**TABLE 2: Ground/s of first referral to the Reporter\***

Ground of first referral under s52(2) Children (Scotland) Act 1995.	Number of children in the sample	% of sample
(a)	4	14%
(b)	1	4%
(c)	5**	18%
(d)	7**	25%
(e)	0	0
(f)	0	0
(g)	0	0
(h)	1	4%
(i)	10	36%
(j)	0	0
(k)	0	0
(l)	0	0
(m)	0	0

\* Unknown for one child.

\*\* One child was first referred on both (c) and (d) grounds.

Nine of the ten children first referred because they were alleged to have committed an offence were aged between ten and 13 years, the remaining child was aged nine years.<sup>9</sup>

Seven children were first referred to the Reporter because they were the victim of an offence; this is 25% of the sample. 18% (five young people) were first referred because of lack of parental care.

### ***Persistent young offenders***

Twenty six of the 28 children had been identified as persistent young offenders at some point in their lives.<sup>10</sup> Nine children, just under one third of the sample, had been identified as persistent young offenders over three years - in 2003-04, 2004-05 and 2005-06, seven boys and two girls.

Twenty five children were identified as persistent young offenders in 2005-06, the year during which they were made subject to MRCs. It should be noted that although the child may have a history of offending this was not necessarily the reason why the MRC was included in their Supervision Requirement. In 15 of the 25 cases (54%) where the child was identified as a persistent young offender in 2005-06, was 'addressing the risk of offending behaviour' recorded as a consideration in support of the Hearing's decision to include an MRC in the Supervision Requirement.

Twenty one children who were or had been persistent young offenders did not have a family history of offending recorded in their SCRA case files.

One boy and one girl were never identified as persistent young offenders and both were aged 15 years.

<sup>9</sup> The age of criminal responsibility in Scotland is eight years. Criminal Procedure (Scotland) Act 1995 s41. Therefore this ground is only applicable to children aged eight years and over.

<sup>10</sup> A child is identified as a "persistent young offender" if they are referred to the Reporter for allegedly committing an offence/s five or more times in the previous six months (Scottish Executive, 2002).

## **Main carer characteristics<sup>11</sup>**

- Fourteen of the children had parents/carers with physical or mental health problems recorded in their files. Four of the children had main carers with **physical health problems**. More significant however is the number of children with main carers recorded as having **mental health problems**, ten young people (36%). Four of these children were themselves recorded as having mental health issues.
- Six of the children (21%) had main carers with **drug abuse** issues. Five of these children were recorded as having concerns around their personal drug abuse.
- In addition six of the children's main carers had **alcohol abuse** issues (21%). All of these six children had personal alcohol abuse concerns.
- For three of the children (11%) both **drug and alcohol abuse** was a feature of their main carer's life. Personal drug and alcohol abuse were both features of these three children's lives.
- Ten children (36%) were recorded as having a history of **domestic abuse** in their family home. When compared to the estimated national average figure of 10% for children living with domestic abuse this figure is strikingly high (Scottish Women's Aid, 2002). However, previous SCRA research into the backgrounds of children in the Children's Hearings System found that 43% of children were, or had been, living with domestic abuse (SCRA, 2004).
- Sixteen children (57%) were recorded as having a problematic relationship with at least one parent. Nineteen parents (68%) were recorded as having problems with parenting, 13 of whom (46%) were also noted as having a problematic parent/ child relationship.

## **Conclusions**

From this analysis of the lives and experiences of these 28 children we can get some indication of the chaotic nature of their lives. The level of personal alcohol abuse for the children in the sample was very high. There was also a clear link identified by many of the professionals involved in these children's lives between their alcohol abuse and offending behaviour. The level of alcohol and drug abuse amongst the main carers of these children was also significant. Five of the six children whose main carers had, or previously had, drug abuse problems themselves had problems with drug abuse and all six of the children whose main carers had misused alcohol also had concerning personal alcohol use. The levels of domestic abuse in the family home and family bereavement suffered by the children were high.

Most of the children had had many years contact with the Children's Hearings System prior to having their movements restricted. 86% had experience of living outwith the family home at some point in their lives. 79% had a history of absconding from residential establishments, this is all but two of those children who had been accommodated and so had the opportunity to

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<sup>11</sup> There was a main carer in 27 of the 28 cases in the sample.

'abscond'. A significant number had a history of non-attendance at school, often for long periods of time. Some of these children also had particular problems with their literacy and numeracy skills. There were a number of the children who had had a confirmed diagnosis of ADHD at some point in their lives. Perhaps as expected there were a considerable number of children who had concerns expressed about their peer group, usually this was to do with offending behaviour but there were also instances of children associating with older adults. Problematic parent/child relationships and identified concerns around parenting ability was a common feature, nearly half of the main carers of the children had a problematic relationship with their child and had identified concerns around their parenting skills.

Taken as a whole, the background information for these children demonstrates the important role intensive support packages may have in helping children to turn their lives around.

## **Movement Restriction Conditions**

This section of the report seeks to analyse the MRCs in more detail, including the statements made by Hearings in support of their decisions and the attitude of the children and their main carers to the decisions.

### ***Assessment***

An assessment for suitability for an MRC, including an ISMS package, is carried out by the local authority, most of which have dedicated ISMS teams to carry out the assessment and implement Hearings decisions. Assessments can be initiated by the local authority or by a Children's Hearing.

In 22 of the 28 cases there was a clear assessment recommendation to include an MRC within the Supervision Requirement. Of the remaining cases the result of the assessment was not recorded in two of the case files and no clear written opinion was offered in a further two of the cases. Interestingly in the remaining two cases the recommendation from the assessments was not to include an MRC within the Supervision Requirement. In one of these cases the opinion of the social worker concerned was that the risk of the young person being in the community was too great, and in the other secure accommodation was the preferred option. However, in the first case the Hearing felt that the child had made significant progress in secure accommodation and a community alternative to secure accommodation was now appropriate. It is not clear from the records available why the Hearing in the second case preferred an MRC to secure accommodation although the package of intensive support being offered to the child as part of the ISMS programme was cited as a material consideration in the written Hearing decision.

### ***Hearings' statements in their reasons for decisions***

When a Children's Hearing makes a decision, reasons for this decision are recorded in writing. The reasons are written by the Hearing Chair, or less commonly by another member of the Hearing, at the end of the proceedings. These reasons are not, however, a verbatim account of the decision. The reasons merely reflect the material considerations, rather than all considerations, that ultimately informed the Hearing decision based on the information available to them.

For the purposes of the research the statements made by the Hearings in decisions for the cases in the sample were categorised. There are no universally defined categories for Hearings' decision making. The categories used solely for the purposes of this research were defined during the course of the project, on the basis of the text of each Hearing decision. This ensured that no material consideration by a Hearing in each of the cases within the sample was excluded.

**TABLE 3: Statements recorded by Hearings in decisions to include MRCs in Supervision Requirements**

Reason recorded by the Hearing in support of the inclusion of the MRC in a Supervision Requirement	Number of cases	% of sample
Offers the chance of intensive support	20	71%
Address the risk of offending	16	57%
Community-based alternative to secure accommodation	12	43%
To assist the transition from secure accommodation to the community	6	21%
Final option before secure accommodation	6	21%
Address the risk of absconding	4	14%
Child is at risk in the community	1	4%

As shown in Table 3 the most common statement given by a Hearing for the inclusion of an MRC within a Supervision Requirement was the package of Intensive Support that the use of an MRC entitles the child to. For 71% of the children in the sample this was one of the material considerations recorded by the Hearing in its decision. The second most common consideration recorded (57% of the cases) was to address the risk of the child's offending behaviour. Four of the 22 children with a history of absconding had this as a specific recorded consideration for the inclusion of the MRC in their Supervision Requirement. While it may be the case that absconding was not a live issue at the time of the Hearing, it may also indicate that an MRC is not generally viewed by Hearings as a means of preventing children from absconding.<sup>12</sup>

The fact that the same legislative criteria have to be met for the child to receive an MRC and to be the subject of a secure authorisation is reflected in the recorded considerations. In 12 cases, MRCs were viewed as a community-based alternative to secure accommodation, in a further six cases the MRCs were used to assist the transition from secure accommodation and in another six it was viewed as the final option before secure accommodation for the children.

In 15 of the 26 cases (58%), where the child had been identified as a persistent young offender at some point in their life, 'addressing the risk of offending behaviour' was recorded as a consideration in Hearings' decisions. Of these 26 cases, 25 were identified as persistent young offenders in 2005-06, the year during which they had MRCs included within their Supervision Requirements. Therefore there were ten children identified as persistent young offenders in 2005-06 for whom offending behaviour was not one of the material considerations recorded by the Hearings which included MRCs within their Supervision Requirements.

<sup>12</sup> By way of contrast the fact that the young person was likely to abscond was a reason for admission to secure accommodation provided by social work services in their decision to implement a Hearing decision in 73% of cases studied by Walker et al 'Secure Accommodation in Scotland: Its role and relationship with 'alternative' services'. (Scottish Executive) (2006) at p 64.

### ***Alternatives considered by Hearings***

Where an alternative was considered by the Hearing that initially included the MRC within the Supervision Requirement, this was always an intervention away from the family home, either a residential unit or a secure unit. Where Hearings had been continued specifically for an ISMS assessment it was not common for serious consideration of alternatives to be recorded by the Hearing that included the MRC in the Supervision Requirement.<sup>13</sup>

According to Panel Members interviewed, the lack of secure places available was a common reason why they favoured MRCs over secure accommodation. One Hearing Chair described secure accommodation as “*the preferred option*” of the Hearing as they felt that this would better meet the needs of the child. However the Hearing was advised that there were no secure places available and that there was not likely to be one in the foreseeable future. Therefore any secure authorisation would not be implemented.<sup>14</sup> Therefore an MRC was included within the Supervision Requirement as the only credible alternative to keep both the child and the community safe.

### ***Attitude of the child and their main carer***

Where the attitude of the child at the Hearing was recorded (27 cases) this was usually positive. In three cases the child was noted to be unsure about the MRC but agreed at the Hearing to engage. Two children were noted to have particularly negative attitudes towards the MRCs.<sup>15</sup>

Many Reporters and Panel Members interviewed suspected that some of the children appeared to have had a positive attitude at the Hearings as they were aware that the alternative was to be accommodated away from their family home, in some cases many hundreds of miles away due to the location of their family home in relation to available secure accommodation places.

Where the main carer was present at the Hearing (26 cases) their attitude towards the MRC was recorded in 21 cases. Again this was mainly positive, with only one main carer being noted as unsure about the MRC.<sup>16</sup>

### ***The MRC***

The decision made by the Hearing to include the MRC within the child’s Supervision Requirement was recorded as unanimous in all but one of the cases.<sup>17</sup> Where the decision was not unanimous the dissenting Panel Member was of the opinion that the child should be sent to secure accommodation.

When the MRC was first imposed typically this was for seven days a week. In two cases it was for four and five days of the week respectively. The rationale

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<sup>13</sup> A similar conclusion has been reached in relation to decisions surrounding secure accommodation (Scottish Executive) (2006).

<sup>14</sup> A Children’s Hearing has no power to require a child be detained in secure accommodation, a Hearing only has the power to authorise secure accommodation. The local authority is then required to implement this authorisation.

<sup>15</sup> It is not a legal requirement for the young person to consent to the MRC. However, in practice due to the nature of the disposal some degree of co-operation from the child is required.

<sup>16</sup> Again it is not a legal requirement for a relevant person to consent to the MRC. However where the young person’s movements are to be restricted to their home they will have to agree to the installation of the monitoring equipment.

<sup>17</sup> It should be noted however that it is not a legal requirement for the Hearing to record the fact that the decision was by a majority.

behind this was to address certain ‘trigger’ days for the child, for example the weekends.

In some cases the MRC was subsequently varied to exclude certain days of the week from the restriction, to give the child a ‘day off’ from the curfew. Where the MRC was subsequently varied by a Children’s Hearing it was also common for the hours of restriction to be varied. This was usually to allow an extra hour or two in the evening on at least one of the days of restriction. This was seen by the Reporters interviewed as a reaction to improvements in behaviour.

The number of hours the child’s movements were restricted when the MRC was first imposed are illustrated in Table 5.

**TABLE 5: Number of hours per day child’s movements initially restricted**

Number of hours movement restricted per day	Number of children	% of sample
6	1	4%
9	1	4%
9.5	9	32%
10	4	14%
11	3	11%
12	9	32%
12 (5 days a week) and 14 (2 days a week)	1	4%

For one child their hours of restriction were increased for an extra two hours for two of the seven days of restriction. It was considered that these two days were that child’s particular ‘trigger’ days and the MRC was tailored accordingly.<sup>18</sup>

In all but one of the cases the times of restriction ran concurrently. However, in one case the restriction was one hour in the early evening (5pm to 6pm) followed by the main period of the restriction later (9pm to 7am). The Reporter in this case felt that the reason behind the restriction being used in this way was to attempt to provide some structure in the child’s life by requiring them to be in the family home around one meal time.

The length of the restriction for some children was a concern to Reporters in that perhaps the strictness of an early curfew was setting young people up to fail.

<sup>18</sup> While it may have been the intention behind the legislation to restrict a child’s movements for a maximum of 12 hours in a day, it is the view of the Principal Reporter that this is not what has been achieved in the legislation. When a Hearing chooses to include an MRC within a Supervision Requirement it may also include any other conditions in the Supervision Requirement they think are necessary for the child. Taking a literal interpretation of the legislation, the Regulations in which the 12 hour maximum is imposed do not relate to the movement restriction condition, they only relate to any other condition contained in the Supervision Requirement that the Hearing thinks necessary in the child’s case. s70(12) Children (Scotland) Act 1995 and The Intensive Support and Monitoring (Scotland) Regulations 2006 R. 6. In the absence of judicial precedent this interpretation has been informed by the principles and operation of the Children’s Hearings System. Therefore there is no maximum period to which a child’s movements can be restricted by an MRC. However, any period of restriction should be necessary, proportionate and consistent with the child’s welfare.

The type of accommodation to which the child's movements were restricted varied. In 17 cases the restriction was to the family home and a further three cases it was to the home of another relative. Several Reporters questioned the appropriateness of restricting the child's movements to the family home for long periods where in many cases problems in the family home may be one of the underlying problems for the child. For example one Reporter described one instance where the restriction was to the family home, despite the fact that this would mean the family home became desperately overcrowded. In situations where poor family relationships were a particular issue, a potential restriction in the family home for a long period of time could also be a cause of anxiety for the child's family.

In two cases the restriction was to both the family home and the home of another relative, in an attempt to address exactly these sorts of issues. This was seen as appropriate in both cases as relations at home could be difficult, and at times of crisis the child could notify the monitoring provider and leave the family home to go to the home of the other relative.

In a further five cases the restriction was to some form of residential establishment such as a young person's hostel or other supported accommodation. In another case the restriction was to the open unit of secure accommodation.

A lack of suitable accommodation for the group of children whose movements could not be restricted to the family home was a perceived problem amongst Reporters.<sup>19</sup>

#### ***Variation of the MRC***

Nine of the 28 children had their MRCs subsequently varied. Typically this was to vary the hours of restriction, although the days of restriction were also varied as was the place of restriction in one case.

#### ***Termination of the MRC***

Twenty seven of the 28 children had had their MRCs terminated at the time of reporting. The shortest time an MRC was a condition of a Supervision Requirement was 13 days and the longest was 203 days. The mean length of the MRC was 86 days and the median length was 74 days.

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<sup>19</sup> See also Glasgow City Council (2006) where a lack of suitable accommodation was noted as a particular issue for ISMS in Glasgow.

A breakdown of the lengths of the MRCs is given in Table 6.<sup>20</sup>

**TABLE 6: Length of MRC\***

Length of MRC (days)	Number of children in sample	% of sample
0-28	3	11%
29-56	6	21%
57-84	9	32%
85-112	2	7%
113-140	2	7%
141-168	2	7%
169-196	2	7%
197-224	1	4%

\* One case in the sample was still ongoing at the time of reporting and so has been excluded from this analysis.

Where a Children’s Hearing considers that it is necessary, when making an MRC it may also impose an additional condition specifying the duration of the MRC. Where duration is specified this must not exceed six months. It is the view of the Principal Reporter that where no condition specifying the duration of the MRC is made, the MRC will endure in the same way as any other condition, which is until the Supervision Requirement is next reviewed.<sup>21</sup> The children in Table 6 who had MRCs for longer than six months did not have durations specified in their Supervision Requirements.

Ten children (36%) subsequently spent a period of time in secure accommodation after the MRCs were included in their Supervision Requirements.

### **Conclusions**

The most common general consideration recorded by Hearings in support of decisions to make MRCs as conditions of Supervision Requirements was the access to the intensive support package the MRC provides.

The second most common consideration was to address the risk of the child’s offending behaviour. However, only 15 of the 25 children identified as persistent young offenders during 2005-06, the year in which the MRCs were included in the Supervision Requirements, had the MRC to address the risk of their offending behaviour. Therefore although the children had been identified as persistent young offenders, having an MRC included in their Supervision Requirements was not necessarily a response only to their persistent offending behaviour. Rather the MRC was considered to be an appropriate response to other aspects of their lives. In addition addressing the risk of the child absconding was not a widely recorded consideration by Hearings for the inclusion of MRCs within Supervision Requirements.

<sup>20</sup> This analysis was based on the amount of time between the MRC being included in the Supervision Requirement and it being deleted by a subsequent Children’s Hearing. No account was taken of any time when compliance with the MRC was not monitored.

<sup>21</sup> A Supervision Requirement must be reviewed once a year. Children (Scotland) Act 1995 s73(2).

Where alternatives to MRCs were considered by Hearings they were always a form of residential or secure accommodation. However the lack of alternatives offered to Children's Hearings was a source of frustration to some Panel Members interviewed, as was the lack of secure accommodation places available.

The attitude of the child and their main carers to the Hearing decision to include an MRC within a Supervision Requirement was generally positive, although this should be viewed against the likely alternatives being residential or secure accommodation.

It is clear that MRCs were generally tailored to meet each child's needs. The approach of altering the movement restriction based on co-operation was used by Hearings and favoured by some Reporters interviewed. There was a concern expressed by some Reporters interviewed that this should be balanced with not setting the initial curfew too strictly which they feared may set the child up to fail.

57% of the children had a problematic relationship with at least one parent. Therefore the practice of restricting the movement of child to the family home was understandably a concern to some Reporters interviewed. Restricting the child's movements to more than one place, for example to the family home and that of another relative living close by, was one way of addressing this issue.

## **The process**

In this section the introduction of MRCs and ISMS to the Children's Hearings System is described through the views of Reporters and Panel Members, specifically their views of certain aspects of the process based on their experiences of individual cases of children who were made subject to MRCs.

### ***Role of the Reporter***

Generally the role of the Reporter in cases where an MRC was being considered was viewed as similar to that for any other referral. However, most Reporters interviewed acknowledged that where an MRC was being considered this had meant more work for them both in terms of preparation and during the Hearing itself. All the Reporters who made this point felt that this was the case as the legislation was new and as such not as familiar to themselves or Panel Members. This was confirmed by those Reporters who had been involved in multiple cases where MRCs were included in Supervision Requirements, who opined that the level of preparation required had reduced over time, although the same could not be said about the amount of advice they required to give to Panel Members, who differ between each Hearing.

One Reporter was invited to attend initial assessment meetings for the first case in their area. The Reporter felt that this presented a good opportunity to discuss with others involved in the process for the first time what the broad expectations of the information contained in the assessment for the Hearing were.

### ***Preparation for the new measure***

Reporters and Hearings Chairs interviewed were asked about the preparation they had had prior to their first case involving an MRC. Every Reporter who offered an opinion on this subject felt that they had been provided with enough information prior to having their first MRC case. The practice guidance issued by SCRA was viewed as very useful, with the sample forms and cases at the end of the guidance being identified as of particular use. The measure was generally viewed as more complex than most other measures and some Reporters identified strategies they had personally used in order to prepare. These included speaking to colleagues, phoning the practice helpdesk at Headquarters, preparing a 'checklist' for use in Hearings and taking copies of existing Supervision Requirements which included an MRC to Hearings to use as templates to ensure all the legal requirements were met.

Panel Member training, received through local authorities, was generally perceived by the Panel Members interviewed to be useful, being variously described as "*very good*" and "*a day well spent*". In particular the materials provided were viewed as very useful to refer back to. However some Hearing Chairs interviewed felt that the training had been received too early and that refresher training would now be useful, particularly as this, like the other measures contained in the Antisocial Behaviour (Scotland) Act 2004, is likely to be used by Panel Members relatively infrequently. Some felt that the training had been too crammed in one day but yet had not been specific enough, principally about the wording required on a Supervision Requirement to include an MRC.

The issue of the increased preparation time required by Panel Members was also raised. One Hearing Chair estimated that for one case where an MRC was being considered around two to three days was required for preparation whereas two to three hours would be the norm. This was principally due to the fact that there was a lot more reading involved prior to the Hearing where the MRC was to be considered.

### ***The section 70(10) conditions***

Opinion was split amongst Reporters and Panel Members interviewed as to whether the threshold of the section 70(10) conditions which have to be met by children before they can have MRCs included in their Supervision Requirements are the correct criteria, in that they are the same as the criteria for secure accommodation. Five Reporters felt that the conditions were pitched at the right threshold and five felt that they were pitched too high. There was a small majority of Hearing Chairs who argued that the conditions were pitched at too high a threshold, while the others thought that they were the correct test.

Of those Reporters who regarded the conditions to be around the right threshold, this was generally based on the fact that an MRC is restricting the child's liberty and that both an MRC and intensive support involves an interference with private and family life. Therefore they argued that it is correct that MRCs are equated with secure accommodation as a 'high tariff' disposal.

For those Hearing Chairs who viewed the conditions as pitched at the right threshold, this view was also primarily based on the MRC being a significant restriction of the child's liberty. None of these Hearing Chairs could recall a situation where they had wanted to include an MRC in a Supervision Requirement but could not as the child did not meet the section 70(10) conditions.

In addition, one Reporter thought that a high test was essential to maintain the value of an MRC as a serious response to a particular set of circumstances.

For the Reporters interviewed who viewed the section 70(10) conditions as too high a test for an MRC, this was typically based on the availability of the intensive support package that goes along with the MRC. The view was that this package may be better used as an earlier method of intervention.

For those Hearing Chairs who thought the conditions posed too high a test this was also typically based on the view that the intensive support should be available as an earlier intervention tool, before the child reaches the stage of meeting the criteria for secure accommodation. One Hearing Chair suggested that the intensive support could be available to a Hearing at a slightly earlier stage, with the MRC, or other monitoring aspect, being brought in if the child subsequently went on to meet the secure criteria. They further argued that having the intensive support and monitoring available separately would allow the programme to be tailored to each individual child. Consequently cases where it is not possible to electronically monitor children for reasons outwith the child's control, for example a lack of suitable accommodation, would not be a bar to the child receiving intensive support.

The section 70(10) condition around absconding was also thought by some Reporters to be preclusive for certain children due to existing case law suggesting that a child cannot abscond from home, only from a residential establishment.<sup>22</sup>

A further three Reporters expressed concern about the emphasis and wording of the section 70(10) conditions rather than the threshold. They argued that the test should be more welfare or harm-based. This could also allow persistent young offenders, or those involved in persistent gang related activity, to meet the test. For example, one Reporter cited a case he was currently dealing with which involved a young female who had acquired over 100 petty theft based offences, most of which occurred in the evening. The nature of her offences did not allow the section 70(10) conditions to be met, she was not absconding from the residential establishment she was staying in, nor was she injuring herself or any other person. Therefore she could not be considered for an MRC, despite the fact that she could be viewed as an ideal candidate.

One Panel Member also questioned the focus of the conditions, citing an example of a child who is in moral danger but was not absconding, but who could benefit from ISMS.

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<sup>22</sup> For example *GT v Children's Hearing for Tayside Region* Unreported. Forfar Sheriff Court, 24<sup>th</sup> November 1987, where Sheriff Kermack held that a child did not have a history of absconding when he ran away from his own home or somewhere he was staying voluntarily.

### ***Legal representation***<sup>23</sup>

At the time of writing one of the instances where a child will have a legal representative appointed for them is where residence in secure accommodation is likely to be a genuine consideration by their Hearing, or an existing secure provision is being reviewed.<sup>24</sup> Given that the same criteria in the Children (Scotland) Act 1995 have to be met before an MRC can be included in a Supervision Requirement, and in the absence of a legal statement, Reporters and Panel Members were asked for their own view on whether a legal representative should also always be appointed where an MRC is a genuine consideration. There was a consensus on this issue amongst Reporters and Hearing Chairs interviewed who had had some experience of MRCs. Only one Reporter interviewed was of the opinion that a legal representative was not always necessary when a Hearing was making a decision to include an MRC. The justification for this view was based on the fact that the children likely to be considered for MRCs will have been in the Hearings System for a period of time, will be informed about the System and therefore a legal representative would not be necessary to allow their effective participation. Similarly only one Hearing Chair interviewed thought that a legal representative is not always necessary. Their view, similar to that of the Children's Reporter, was based on the opinion that legal representatives should only be considered where they are necessary to enable the child to understand what is being discussed.

However the prevailing viewpoint amongst both Reporters and Hearing Chairs was that if at all possible a legal representative should be present when a restriction of a child's movement is being considered. Typically this view was based on the opinion that an MRC is a considerable restriction of liberty and as such children are entitled to have legal representation to ensure that their rights are protected.

One Reporter questioned the argument put forward for legal representatives not being necessary. They queried whether a young person could be said to be able to effectively participate in their Hearing in cases where complex legal tests are being considered, as in the case of MRCs. The same Reporter did, however, acknowledge that the same line of argument could be applied to many other areas of the Children's Hearings System where legal representatives are not routinely appointed.

Several Reporters raised the issue that it was not always possible to secure the services of a legal representative, for example during holiday periods or if a Hearing has to be arranged quickly. However, these Reporters were still very clear in their view that everything possible should be done to secure a legal representative for the child.

Amongst Hearing Chairs the view that legal representatives should be appointed where an MRC is being considered was unanimously based on the fact that the MRC is a significant deprivation of liberty and therefore it is essential to ensure that the rights of the child are protected as far as possible. Several Hearing Chairs opined that had a legal representative not been present they would not have gone ahead with the inclusion of the MRC,

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<sup>23</sup> Since these interviews were carried out, this provision has been proposed in the draft Children's Services (Scotland) Bill s12(4)(b).

<sup>24</sup> The Children's Hearings (Legal Representation) (Scotland) Rules 2002, SSI No.63. See also *Martin v N* 2004 SLT 249 and *S v Miller* 2001 SLT 531. The second criteria for appointment of a legal representative is where it is required to allow the child or young person to effectively participate in the Hearing.

instead they would have continued the Hearing to allow the appointment of a legal representative.

This issue has become of particular interest in light of section 12(4)(b) of the draft Children's Services (Scotland) Bill. This draft Bill seeks to amend the current arrangements with regard to legal representation with the effect that a child must have a legal representative appointed for them where an MRC is being considered by a Hearing.

### ***Information available to the Hearing***

Reporters and Panel Members interviewed were generally satisfied with both the quality and the quantity of information provided to Hearings faced with consideration of an MRC. Social Background Reports in particular were praised as being of a very high standard. A common reason for this view was that the child was already very well known to services in the area and so there was a lot of existing information around about them, which enabled comprehensive reports to be compiled. However, some Reporters interviewed expressed concern that all of the information was not available on time.

The absence of a specific section within MRC assessment reports for information as to why the child meets the section 70(10) conditions was a particular issue raised by some Reporters. It was also suggested that just because a child was being assessed for an MRC this should not preclude alternative options being offered to the Hearing.

Similar thoughts were echoed by one Hearing Chair interviewed who would like to see an independent view of suitability of the child for an MRC, a person who serves a similar purpose to a Safeguarder.<sup>25</sup> This Panel Member felt that everyone who assessed the child as suitable for an MRC had a significant interest in an MRC being made over other disposals.

Hearing Chairs who could recall the reports, were very high in their praise for the reports they were given for the initial MRC Hearing, although one Hearing Chair was not impressed by the quality of the review report. Indeed some questioned why reports of this quality could not be provided in other cases. In addition to the reports, the presence at the Hearing of the ISMS team and other agencies to be involved in the delivery of the child's care plan was viewed as very helpful, despite the fact that this often meant many people present at the one Hearing. Having representatives of all the professionals involved at the Hearing allowed Panel Members to have any further questions they may have answered.

When asked about any further information they would liked to have had, most Hearing Chairs were forceful in their view that they would not have made such a serious decision unless they had all the information they required in front of them. Instead the Hearing would have been continued for any further information the Hearing felt necessary. One Hearing Chair suggested that given the nature of ISMS in that children are required to co-operate with the measure in order for it to be successful, perhaps children could sign a form of 'contract' to provide a commitment to engage with the intensive support and abide by the curfew. This may also serve the purpose of emphasising the seriousness of the situation to the children and giving them some ownership over the ISMS package.

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<sup>25</sup> Only one child in the sample had a Safeguarder appointed prior to the initial MRC Hearing.

### ***Alternatives to MRCs***

Reporters were asked to consider in their professional experience what alternatives may have been available for the children who had an MRC included in their Supervision Requirement had ISMS not been available. A number of Reporters felt that the children would not have gone to, or remained in, secure accommodation. These Reporters speculated that the Hearing may have decided that a residential school would have been more appropriate for the young people. The remaining majority of Reporters viewed the ISMS as a direct alternative to a period, or a further period, in secure accommodation.

### ***Consequences of non-compliance***

The nature of an MRC means that a child is required to be self-disciplined in abiding by the movement restriction. Where the child fails to comply with the MRC the case will be brought back to a Children's Hearing. It was questioned by some Reporters whether this was a robust enough consequence for children who met the section 70(10) conditions. Further, one Reporter was very concerned about the consequences of non-compliance with the MRC being secure accommodation, which is not intended to be an automatic consequence of non-compliance.

One Reporter also raised the issue that there was nothing in the legislation to permit an emergency Hearing to be arranged if, for any reason, the MRC broke down. This Reporter had had experience where one child's movements were restricted to their family home, where relations could be strained. The placement eventually broke down and the child had to be immediately removed from the family home. The Reporter felt that the addition of legislation permitting the arrangement of an emergency Hearing would be beneficial in situations such as this, to allow the MRC to be varied as soon as possible.

### ***Reasons measure not used in other cases***

Both Reporters and Hearing Chairs interviewed were asked if they had had any experience of consideration being given to an MRC but where the child ultimately did not go on to have an MRC included in their Supervision Requirement. Various reasons were given for the child not having their movements restricted, many of which were case specific. For example, where there was a lack of suitable accommodation for a child who could not reside in the family home, where the child was not willing to have an electronic tag attached to them or to engage with the intensive support and where parents had refused to allow the monitoring equipment to be installed in their home. However, there were also some general reasons which several respondents gave.

The child not meeting the section 70(10) conditions was one of the most common reasons. It was a typical view amongst both Reporters and Hearing Chairs interviewed that MRCs serve a different purpose to secure accommodation and that it is likely that it would be different children who are considered for secure and who are considered for ISMS. It will only be certain children who meet the section 70(10) conditions, are capable of being in the community and who are willing to engage with the MRC and intensive support who will be considered as suitable for ISMS. In addition there was the view that perhaps initial negative experiences with using the measure had contributed to subsequent thinking about its use. Further some Reporters

interviewed opined that they had observed an initial hesitancy around using the measure.

At least one local authority has subsequently begun to offer the intensive support element without the need for an MRC and one Reporter interviewed felt that this is contributing to the low numbers of children being assessed as suitable for an MRC, as the children who require only the intensive support element are receiving this without the need for a Hearing to include an MRC in the Supervision Requirement.

Another common reason for MRCs not being used according to the Reporters and Panel Members interviewed was that simply going through the assessment process was enough for some children and their families to look at changing their behaviour.

### **Conclusions**

The main area of the process which received praise in the first year of the first phase of implementation of MRCs was the quality and quantity of information provided to the Hearing to make its initial decision to include an MRC within a Supervision Requirement. It was also generally the case that this was provided on time for the Hearing, although it was clear that this sometimes remains a problem in some of the local authorities. The addition of a specific section within Assessment Reports for details as to why the child meets the section 70(10) conditions would be a useful addition in the eyes of some Reporters interviewed. A further positive was the preparation both Reporters and Panel Members received prior to the introduction of ISMS.

Not meeting the section 70(10) conditions was one of the most common reasons why MRCs were not included in more Supervision Requirements, according to Reporters interviewed. There was a clear split in opinion amongst those interviewed around the section 70(10) conditions. Respondents who thought the conditions were pitched at the correct level typically based this view on the MRC element of ISMS being a significant deprivation of the child's liberty. The view that the conditions were pitched at too high a level was generally based on the opinion that the intensive support which goes along with the MRC could be better used as a method of early intervention. The emphasis and wording of the conditions was questioned by some Reporters who thought that more welfare based conditions would allow MRCs to be used to protect the welfare of the child, allowing a wider range of children to be considered for MRCs and ISMS, particularly some persistent young offenders not currently within the section 70(10) conditions.

There was a clear consensus amongst Reporters and Panel Members interviewed that wherever possible a legal representative should be present when a Hearing is giving consideration to including an MRC within a Supervision Requirement. This view was based on the MRC being a significant deprivation of liberty which requires children to have their rights protected. It was also questioned whether children could effectively participate in a Hearing where complex legal tests were being considered without the aid of a legal representative. Therefore the intention within the draft Children's Services (Scotland) Bill to require a legal representative to be appointed where an MRC is being considered would appear, on the basis of this research, to be welcome.

## CONCLUSION

The first aim of this research was to profile the backgrounds of the children who had had MRCs included within their Supervision Requirements during the first year of the implementation of ISMS. The second aim was to analyse the process within the Children's Hearings System which leads to the inclusion of an MRC. Both of these aims were with a view to informing SCRA for the purpose of further phases of the implementation of MRCs and ISMS.

The analysis of case files held by SCRA has shown that MRCs are not included in Supervision Requirements solely on the basis of offending behaviour. While 25 of the 28 children in the sample were identified as persistent young offenders during 2005-06, the year in which they had MRCs included in their Supervision Requirements, 15 had a link established in the considerations recorded by the Hearing between the MRC and an attempt to address their offending. Similarly, addressing the risk of the child absconding was not a reason recorded by the Hearing as to why it took the decision to restrict the child's movements. Instead it was the perceived benefit of the intensive support package that led many Children's Hearings to include MRCs in Supervision Requirements. This was the most common specific reason cited by Hearings for the children and was a common theme in both the Reporter and Hearing Chair interviews. There was a tension amongst those interviewed between MRCs being a significant deprivation of liberty and access to the package of intensive support that an MRC brings which was undoubtedly viewed as advantageous for that child.

The profile of the social backgrounds shown in this research emphasises the need for a form of intensive support for this group of children. Consideration could be given to having the intensive support element available separately, perhaps before the child meets the section 70(10) conditions, with an MRC being available as an extra for those children who require it. At least one local authority has begun to offer the Intensive Support without the need for an MRC, as part of the ISMS programme. Taking this approach throughout Scotland would accord with the welfare ethos of the Children's Hearings System and would mean that children for whom an MRC could not be used, for example where there was a lack of suitable accommodation, would still be able to access the intensive support package to help them turn their lives around. This is particularly the case as a lack of suitable accommodation was a perceived problem amongst those interviewed, as was restricting children to a family home in which there are other particular issues which require to be addressed such as overcrowding or poor familial relations. Problematic parent/child relationships and parenting problems were a feature for many of the children in this research. Over two-thirds of main carers for the children had problems with parenting and 57% were reported as having a problematic relationship with their child. Nearly half of the children in the sample (46%) had both a problematic relationship with their parent and their main carers had problems with parenting. This is an important observation when it is considered that seven of these 13 children had their movements restricted to the family home.

The link between intensive support and MRCs means that there was an unease amongst some Reporters interviewed about the level, and to a lesser extent the wording, of the section 70(10) conditions. The high threshold that requires to be met before the child can be considered for an MRC, and

consequently the intensive support, and the lack of focus of the condition on welfare means that some children who may benefit from the programme are denied the opportunity. Indeed failing to meet the section 70(10) conditions was one of the most commonly cited reasons amongst those interviewed why MRCs were not being included in more Supervision Requirements. It is not suggested that the criteria for inclusion of an MRC within a Supervision Requirement are lowered, however, if the funding for intensive support is to remain linked to the use of an MRC then this research suggests that consideration be given to changing the emphasis of the conditions to be more welfare-based. If intensive support was made available without the MRCs then slightly lower conditions, perhaps based on the child's welfare, could be employed for access to intensive support, with the section 70(10) conditions remaining as the criteria for an MRC being included in a Supervision Requirement.

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## **Interview Schedules**

### **Children's Reporters**

Describe involvement to date with MRCs.  
Describe experience of Reporter role, is this role the same as for any other referral?  
Preparation for the new measure coming into force.

#### *Case Specific*

Opinion of why the child met the s70(10) conditions  
Consistent application of s70(10) conditions (If multiple cases)  
Unanimous or majority Hearing decision?  
Alternative disposal considered by the Hearing.  
Alternatives for that child/children had ISMS not been available.  
Reaction of child and relevant persons to the Hearing decision.  
Participation of child in Hearing.  
Legal Representation. Why/Why not?  
Availability of relevant information.  
Other information needed.

#### *General*

Good points/points of improvement in the way the process has operated in the past year. (If multiple cases)  
Reasons measure not implemented in other cases.  
Awareness of any cases where the Hearing has not followed the recommendation to include an MRC in a Supervision Requirement. If yes, reasons.  
The s70(10) conditions as the basis for inclusion of an MRC.

## **Panel Members**

Describe involvement to date with MRCs.  
Preparation for new measure coming into force.

#### *Case Specific*

Why was an MRC considered the most appropriate method of disposal for the young person?  
Follow the recommendation of the SW Dept? If no, why not?  
Unanimous or majority decision.  
Consideration of alternative disposals. If yes, what?  
Receipt of Reports.  
Other information required.  
Legal Representation. Why/Why not?

#### *General*

Consideration of MRC but not included in a Supervision Requirement. If yes, reasons for non-inclusion.  
S70(10) conditions as the basis for inclusion of an MRC.

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