



22 September 2010

Summary Response

SCRA welcomes the opportunity to comment on the Administrative Justice and Tribunals Council's discussion paper – Options for Tribunal Reform in Scotland. We have responded to a number of the specific questions posed by the discussion paper but wish to make the following general points:

It is important to recognise that the Children's Hearings System differs in many respects to other Scottish tribunals. While it is clear that a number of the principles identified in the Philip Review are applicable to the Hearings System – most obviously the ideals of access, accountability and transparency - there are a number of key differences from other tribunals. Some of the most important include:

- The Children's Hearings System provides a forum for making decisions about the need for state intervention in the life of a child, it is not a system of administrative justice or of dispute resolution
- Unlike some other tribunals, Children's Hearings are the key locus for decision making in the system. They do not exist to review decisions already made by other bodies
- Children and young people do not approach the Hearings System themselves, they are referred first to the Reporter by frontline services (mainly the police and social work), then by the Reporter to the Hearing itself based on a determination of the need for compulsory measures of supervision
- The sheer volume of the case load dealt with by the Hearings System sets it apart from many other tribunals – in 2009/10 there were 43,614 Children's Hearings in Scotland, involving 19,843 children

Furthermore, the Scottish Parliament is currently considering the Children's Hearings (Scotland) Bill, which proposes a number of structural reforms to the Hearings System, not least of which is the creation of a National Convenor (supported by an NDPB – Children's Hearings Scotland) to take responsibility for recruitment, appointment, training, support and monitoring of Panel Members. We believe strongly that this legislative process is the right vehicle for bringing forward the necessary reforms to the Children's Hearings System. We also wonder whether Children's Hearings Scotland might offer an opportunity for provision of support to other tribunals that do not fit comfortably within any of the proposed models.

Detailed response

Would you agree with the proposition that in creating a coherent tribunals system for Scotland the distinctiveness of the Scottish legal system should be preserved.

Do you agree that the distinctive way in which tribunals operate should be safeguarded?

We would agree absolutely that both the distinctiveness of the Scottish legal system and that of individual Tribunals (in particular the Children's Hearings System) need to be preserved. Any proposal should ensure that the unique strengths of individual tribunal systems are not sacrificed on the altar of conformity. We strongly believe that the Hearings system meets the standards of openness, fairness and

impartiality and that work currently underway, both legislatively and in terms of culture and practice will further strengthen that compliance.

In particular, we would be concerned should there be any move to take policy responsibility for the Children's Hearings System away from the Children, Young People and Social Care Directorate. There are sound reasons why the Hearings System is placed where it is within the Scottish Government – responsibility for both child protection and youth justice rests within that Directorate and it would be inappropriate for specific policy responsibility for the Hearings System to be vested elsewhere.

What would be the advantages and disadvantages of ensuring that all tribunal members are appropriately remunerated?

SCRA believes that the wishes of Tribunal members should be an important factor here and notes that this issue has been raised a number of times recently in the context of the discussions around the Children's Hearings reform process. The clear message from Children's Panel Members has been that they do not wish to be paid for sitting on Hearings. Their wishes should not be overridden simply in the interests of promoting consistency across Scottish tribunals.

Do you agree that routes of appeal against the decisions of tribunals in Scotland should be rationalised?

SCRA believes that the routes of appeal which exist for the Children's Hearings System are appropriate and effective. We are aware of the recommendation of the Gill Review that "district judges" would be able to handle Children's Hearings business. Should these judges be given special training and become more experienced in the relevant issues, we can see some potential for improvement here. However, we do not believe that any additional changes to the Hearings System's appeal route are necessary.

Tribunals System Models

Given the points we have made above regarding the unique nature of the System, SCRA does not believe that it would be possible to incorporate the Children's Hearings System into any of the models suggested, particularly in light of the progression of the Children's Hearings (Scotland) Bill which contains specific proposals for a National Convener, supported by a new NDPB, to head up a national children's panel.

Panel Members have stressed repeatedly how much they value the local provision of support and the Hearings Bill seeks to ensure that these local links are retained. We doubt whether a unified, centralised administrative support service covering all Scottish tribunals would be able to deliver this.

We acknowledge that there may well be some scope for sharing of more generalised training and good practice between children's panel members and members of other Tribunals. This is however, a matter on which the views of the CPCG and the Children's Hearings Training Units should be sought and will be for the new National Convener to consider when he/she comes into post.

Conclusion

While recognising that there are efficiencies to be gained by reforming the tribunals sector, and that there is a need to look at how good practice can be shared across different tribunals, SCRA continues to have concerns about how easily the Children's Hearings System could be incorporated in any new arrangement for tribunals in Scotland and the potential impacts on the system of doing so. We do not believe that any of the models described in the discussion paper present an entirely acceptable solution.

