

STRENGTHENING FOR THE FUTURE: A CONSULTATION ON THE REFORM OF THE CHILDREN'S HEARINGS SYSTEM

SCOTTISH CHILDREN'S REPORTER ADMINISTRATION: RESPONSE

Introduction

The Scottish Children's Reporter Administration (SCRA) is responsible for the Children's Reporter service and for providing the facilities for Children's Hearings across Scotland. As such, the role and functions of SCRA will be central to any new arrangements for the Children's Hearings System.

SCRA's primary concern with any new arrangements for the Children's Hearings System is that their principal focus is on children and families and that any changes to the system demonstrably deliver better outcomes for children and young people. SCRA believes that this is the policy intention behind the consultation exercise. To achieve this aspiration will require greater clarity, detail and a wider strategic vision than is set out in the consultation document.

In light of the importance of these proposals to all our 580 staff and the organisation as a whole, SCRA engaged in an extensive exercise with staff to obtain their views on the proposals. Over 100 members of staff took part in ten focus groups to discuss the proposals and 20 teams within SCRA provided further comments. SCRA also discussed the proposals and their implications with a range of partners and individuals with an interest and/or involvement in the Children's Hearings System including Children's Panel leaders; youth justice and child protection professionals; social work leaders; academic interests; other public bodies and the legal profession. This response is also informed by these discussions. The consultation document has also been the subject of discussion at two sessions attended by members of SCRA's senior management team and Board Members and these individuals have also contributed to the compilation of this response.

This response therefore, reflects the views of SCRA's staff, its senior managers, the Principal Reporter/Chief Executive and the SCRA Board.

Overview

The policy intention behind the current proposals of improving the life chances of children, young people and families is welcomed and supported.

Recent policy developments in child protection and youth justice and a new focus on delivering outcomes provide an ideal opportunity to position the Children's Hearings System as an integrated part of the children's services arena. Expectations for these proposals were high given the commitment of Scottish Ministers to the Children's Hearings System. The consultation document falls short of these expectations and the opportunity of realising the ambition and aspiration of Ministers to strengthen the Children's Hearings System and improve outcomes for children may be lost.

SCRA would wish to see a much more fundamental examination of how the Children's Hearings System does and could operate even more effectively within an integrated children's services framework. The 2006 draft Children's Services (Scotland) Bill attempted to address this point. SCRA strongly recommends that these previous proposals are re-visited and, where appropriate, incorporated into the current legislative opportunity. SCRA believes that this will be one way of ensuring that the Children's Hearings System operates as an effective component of the wider children's services arena which, in turn, will lead to improved outcomes for children and young people.

SCRA also recommends that any review of the Children's Hearings System covers the more practical implications of any changes. For example, property and facilities are fundamental to the effective operation and delivery of the Hearings System and on its service to children and families but do not figure in the current proposals.

Previously, SCRA broadly supported national arrangements to facilitate the independent functions of the Principal Reporter and Children's Panel. SCRA is keen to engage with plans for new arrangements for the Children's Hearings System if doing so will, demonstrably, deliver better outcomes for children. However, the lack of detail in the consultation document makes it difficult to understand the benefits and rationale behind the proposals to establish a single national body for the Children's Hearings System. In this response, SCRA offers an alternative option which it believes is sufficient to meet the policy intention while avoiding a number of difficulties and problems that could arise from the proposal set out in the consultation document.

On the specific proposal relating to the role of the Reporter, for reasons explained later in this response, SCRA does not support there being two types of Reporter (one in a Hearing and one outside a Hearing).

What must remain

SCRA agrees that the following three overarching principles governing the Children's Hearings System, that are outlined in the consultation document, must remain:

- "the welfare of the child is the paramount consideration;
- The child's views must be taken into account where major decisions are to be made about his or her future;
- no Supervision Requirement should be made unless to do so would be better for the child than making no Supervision Requirement at all."

SCRA also welcomes the policy intention to "retain the position of Reporters and the Principal Reporter and the commitment to retain the involvement of unpaid trained volunteers, representative of Scotland's communities, as the Panel Members who make the decisions at local Children's Hearings". The commitment to maintain local delivery of the Children's Hearings System is also supported.

What else must be retained

The Children's Hearings System must also remain focused on those children who are most likely to require compulsory intervention, whilst operating within the wider shared agenda of improving the life chances for all of Scotland's children and young people.

It is the view of SCRA that in reforming and strengthening the System, it is vital that the founding principles of the Children's Hearings System set out in the Kilbrandon Committee Report are retained. In addition to those above, the following principles must be retained:

- That Principal Reporter's status and independence in terms of decision-making should be maintained.
- An integrated holistic approach is taken to children and young people who offend and/or are in need of protection, within the same system.
- The flexibility of the Children's Hearings System to respond to the needs of the child as they change over time and with changing circumstances.
- The ability to have continuing oversight and scrutiny of the outcomes achieved for a child or young person through regular review.
- The participatory nature of the Hearing which recognises the vital role of the child and family in addressing children's difficulties.
- Local community involvement and engagement.

The Children's Hearings System is unique in terms of its nature and operation. Any changes to reform and strengthen the system will require extreme care to ensure that the existing aim and purpose and current strengths are not inadvertently undermined.

Strengthening current arrangements: an alternative approach

SCRA recognises the difficult challenge of creating a new arrangement which accommodates the independent decision-making roles while also attempting to facilitate a more integrated and streamlined approach that delivers tangible benefits to children and families and greater support for panel members.

The consultation document invites fresh thinking and, in response, SCRA considered a number of options and alternative models which could be introduced to strengthen the Children's Hearings System, while protecting the independent decision-making roles. In addition to considering the benefits and drawbacks of each of the options, SCRA reached a view that it is the governance arrangements (including issues of accountability) which are the central consideration of any new arrangement going forward. SCRA has concluded that the following alternative approach is the most appropriate way to proceed.

A shared service support platform should be created to underpin these new arrangements and provide support to the separated functional areas of the Reporter Service and the Panel Members Service. This would ensure the independence of the decision-making functions is maintained while preserving the broad and integrated approach of the Children's Hearings System.

What is critical to the success and acceptability of this proposal, from an ECHR perspective, is an explicit understanding that the roles of President and Principal Reporter are independent and are not accountable to any Board that would be established to oversee the shared service support platform.

As public appointments, the roles of President and the Principal Reporter would be held to account, in relation to their independent decision-making on children's cases, through the process of appeal and through the law.

What then becomes key is the governance arrangements put in place to facilitate the relationship between the roles of President, Principal Reporter and the Chair of the Board. This relationship should be set out in a number of critical documents including Framework Documents, Partnership Agreements and respective Schemes of Delegation. The relationship would be one of partnership and respect (especially for the independent decision-making functions.) SCRA recommends that the Government examine the documents that have been developed specifically for this purpose in a number of current Tribunal Service arrangements.

Questions posed by Scottish Government

Question 1 – The role of the Scottish Government

The roles outlined for the Scottish Government in the consultation paper are as follows:

- Setting the strategic direction of the new body(ies)
- Providing resources
- Sponsorship through a set of corporate governance arrangements.

SCRA considers that those are entirely appropriate and in line with the proposed Non Departmental Public Body (NDPB). However, SCRA considers that the Scottish Government's role can and should be drawn more broadly and with a greater reference to the wider children's services agenda.

It is SCRA's view that the Scottish Government bears responsibility for setting the broad policy context in which any new arrangements, the Children's Hearings System and the wider children's services system will operate and interact. This is a broader consideration than setting the strategic direction as there are a wide range of policy areas which impact on the Children's Hearings System (for example the diverse range of policies which impact children and young people either directly or indirectly and the wider public services reform policies including policies on community planning, performance management, information sharing, scrutiny, shared services, etc). SCRA believes that it is important that the Scottish Government's role extends to ensuring that the various policy threads which will impact on the new arrangements for the Hearings System are brought together and taken forward in a fully integrated way.

The Scottish Government has made clear its support for the Kilbrandon principles which underlie the Hearings System. In line with this support, SCRA also considers that the Scottish Government has an important role in promoting the Children's Hearings System at a national and international level.

Finally, SCRA believes that the Scottish Government has responsibility for ensuring that policies and structures are aligned with Scotland's international obligations in terms of the ECHR and UNCRC.

Question 2 - What is your opinion on the proposals for local government's role?

Roles for local government in the Children's Hearings System

The consultation document identifies two key roles for local government in relation to the Children's Hearings System:

- "giving effect to the decisions made by a Children's Hearing; and
- promoting the Children's Hearings System".

The importance of the role of local authorities in the Children's Hearings System must not be underestimated. However, the current consultation does not make the extent of local authorities' role clear. SCRA suggests that the full role of local authorities is made explicit in any new arrangements for the Children's Hearings System and that local authorities are supported to achieve this.

In addition to the two areas identified in the consultation document, local authorities have further duties in relation to:

- referral of children to the Reporter (section 53(1) of the Children (Scotland) Act 1995);
- the provision of reports to the Reporter and Children's Hearing. (section 56 of the Children (Scotland) Act 1995); and
- attendance at Children's Hearings in a professional capacity. Social workers, teachers, etc. have a vital role in providing information to the Hearing to inform its decision making. Social workers, and others, often help prepare the child and their parents/carers for their Hearings and this support is very important in helping a child understand and participate in their Hearing¹.

SCRA agrees that local authorities should retain these functions and that they should be supported and enabled to deliver them effectively. We also suggest that an audit is carried out of local formal and informal service provision for children and their families to identify strengths and gaps, and gain an overview of what is available and what works.

The consultation document considers the role and contribution of local authorities in a very limited way and not within the wider shared agenda of improving the life chances of children, young people and families at risk and the Getting it Right for Every Child (GIRFEC) agenda. Local authorities and local partners have a critical role to play in early intervention and the early years agenda and the recent advances in multi-agency collaboration (pre-referral) should be recognised and strengthened by any proposals coming forward from this consultation exercise.

¹ Scottish Executive (2006) Big Words and Big Tables. Children and young people's experiences of advocacy support and participation in the Children's Hearings System.

As the leading partners in community safety under the community planning agenda, local authorities have a role in protecting every child so must have mechanisms, including information-sharing protocols, which alert them to lower level risk long before the need for a Children's Reporter to become involved. If this broader role is not considered when focusing on the Children's Hearings System there is a danger that public services provide only a last-minute safety net (which does not necessarily catch all needy cases) rather than a proactively preventative service.

The consultation document refers only to local authorities, but other local services such as health and the police have vital roles in identifying and meeting the needs of vulnerable children. This was acknowledged in section 1 of the draft Children's Services (Scotland) Bill but is not reflected in the current proposals. The roles of these agencies should also be recognised and considered in any reform of the Children's Hearings System.

SCRA requests that consideration is given to including within the proposed Children's Hearings (Scotland) Bill the policy intentions of Part 1 of the draft Children's Services (Scotland) Bill. This would place a range of duties on all agencies with regards to the 'well being' of children and children with unmet needs. We also suggest that consideration is given to creating accountability for providing interventions and delivering outcomes in relation to both children who are subject to Supervision Requirements and those who require additional support and services in line with the existing responsibilities of local authorities.

Training for Panel Members and expenses

It is important that Panel Members are equipped and supported with the knowledge and skills required to make good decisions for children and young people. SCRA therefore agrees with a national responsibility for training of Panel Members, payment of their expenses, and their recruitment and retention. This will strengthen the ability to ensure the quality and consistency of decision-making. SCRA can reflect on the benefits and improvements in service quality and consistency resulting from a national approach as evidenced, for example, by its practice audit and development arrangements.

We also consider that training in partnership with local government and other key local partners must be maintained. There will still be a need for local involvement in training to ensure that Panel Members are informed about local services and issues specific to their local community areas. It will be important to retain this local dimension as part of the support for Panel Members to ensure that they remain representative of the local communities of the children and young people for whom they make decisions and help maintain effective local delivery of the Children's Hearings System.

Partnerships

SCRA welcomes the proposals that local authorities should have an enhanced role in developing effective partnerships to meet the needs of vulnerable children and would suggest that this is extended in two ways.

- Local authorities should be the lead agency in planning and co-ordinating services for children and young people at local level; and
- the Children's Hearings System is recognised more widely as operating within the wider context of children's services and is integrated within this framework at a local and national level. It will be especially important in any move to new arrangements, to reflect the current role and involvement of Children's Reporters in local networks and joint planning. Their knowledge of local communities and services contributes to outcomes for children and the development of service to children and their families.

SCRA suggests that clearer direction and support is given for the role of local authorities in the leading and co-ordination of partnerships and planning arrangements at local level, and in their critical and central role of giving effect to Hearings decisions.

Promoting the Children's Hearings System

SCRA welcomes the view that all partners in the Hearings System have a shared responsibility for raising awareness and understanding of it. It is to be expected that any new body, in whatever form, would have a key role in promoting itself and raising awareness of the Children's Hearings System. Consideration needs to be given as to how this equates with the proposed enhanced role of local authorities in promoting the Hearings System. SCRA suggests that the promotion of the Children's Hearings System is best co-ordinated and led out nationally to ensure consistency in the messages and information communicated, supported by local authorities and other agencies.

Question 3 - We invite views on the nature, functions and title of the new body

Nature

On the assumption that the functions of the proposed arrangements can be delivered by a NDPB, SCRA agrees that the proposed new arrangements be a NDPB overseen by a Board appointed by Scottish Ministers.

As noted in the answer to Question 2, the proposed new arrangements should not be regarded in isolation from wider children's services. This applies at a national level as well as local.

Title

SCRA suggests that the wider functions of the Children's Hearings System are reflected in the title.

Functions

Previously, SCRA has been broadly supportive of the policy intention to create a national structure to provide support to the independent functions of the Principal Reporter and Children's Panel, and SCRA will continue to be supportive if new arrangements mean better outcomes for children. However, to assess whether the current proposals will achieve this greater detail is needed on the governance and organisation of the functions within the proposed new arrangements.

The current proposals consider bringing together existing structures and give no consideration of:

- how these functions operate;
- how this will be affected by bringing them together in terms of the Hearings System and wider children's services; and, most importantly,
- how this will affect delivery of services to children.

There must be a clear understanding of how any new arrangements will operate within wider children's services provision and the GIRFEC reform programme. The wider impact of improving children's lives must be demonstrated and evidenced.

There will be a need to balance a national strategic approach with local delivery, and to maintain links at local level. SCRA supports the national-local balance presented by the Scottish Government. SCRA suggests that this needs to be considered further in terms of how the proposed arrangements will work to deliver a service at a local level within the wider context of community planning partnerships and single outcomes agreements whilst maintaining national leadership.

It is important that the planned changes can demonstrate improved outcomes for children and families. To ensure that these are captured SCRA recommends that the resultant changes are evaluated directly or are reviewed as part of outcome agreements.

SCRA's vision is that any new arrangements build on existing partnership working at local level to improve services for children and we are very keen to participate in further discussions with national and local government on how this can be achieved.

The roles of the Board and those senior officers accountable to it are critical in defining the governance and structure of the proposed agency, but the detail on these is not clear. As presently proposed each 'head' is at the same level and directly accountable to the Board. This leads to questions in terms of leadership, accountability and decision making at a strategic level.

It is critical to identify those aspects which must be separate to ensure independence, the extent to which this separation must extend to the most senior and junior levels, and who will be responsible for maintaining this separation and independence. This must be led from consideration of front line service delivery as this is the strength of the Hearings System and of greatest relevance to children and families. Without such bottom up consideration there is a danger that the structure and administration of the System will not support delivery of its service and may lead to an increase in bureaucracy and costs.

The proposed functions of Chief Executive Officer, Principal Reporter and Reporters are discussed in answers to Questions 5, 6 and 7.

Safeguarders and legal representatives

It is SCRA's view that safeguarders and the legal representative scheme would benefit from co-ordination and support at a national level to ensure consistency and accountability through training, monitoring and accreditation. However, including them in the same structure as the functions that are responsible for decision making on children's cases would compromise the independence of those who are responsible for representing children (this issue on independence also applies to other decision-makers in the Children's Hearings System).

SCRA does not agree with the proposal that safeguarders be part of the proposed single arrangements or the possibility that they also encompass legal representation of children at Hearings. SCRA views on the proposals on safeguarders and legal representatives are discussed in more detail in the answers to Questions 8 and 9.

Question 4 – Independence of functions and ECHR compliance

The consultation document acknowledges that current arrangements within the Children's Hearings System are ECHR compliant. However, the proposed model creates several areas that could erode this independence of functions and does not offer any solutions to these. Without clarity on the structure and function of the proposed national arrangements it is difficult to comment on how the necessary separations can be achieved. There will be a need for very clear definition of roles and management structure of the Board, President, Chief Executive Officer and Principal Reporter. The question of where the role of the accountable officer(s) will reside in any new body(ies) will be essential in determining these governance and management arrangements.

SCRA's main concern is that the Principal Reporter's status and independence in terms of decision-making should be maintained and not compromised in any new arrangements for the Children's Hearings System.

Question 5 – The Chief Executive Officer

SCRA considers it vital that the roles, responsibilities and lines of accountability for the Chief Executive Officer are clearly marked out, particularly where there is interaction with the Principal Reporter and the proposed President of the Children’s Panel. The CEO’s relationship with the Board must also be very clearly defined.

SCRA recommends that the delivery of support functions to the Principal Reporter, President of the Children’s Panel and Board is considered in determining how these will be structured and managed in any new arrangements, as well as how the senior posts will operate in relation to each other and the Board.

Financial considerations can often affect operational decision-making, so it will be important for budgetary responsibilities to be properly defined between the heads and for the role of accountable officer to be clarified.

SCRA considers that it is essential for the independence of the Principal Reporter in terms of decision-making to be maintained and similar considerations will be necessary for the proposed President of the Panel. As stated above, this must be set out clearly and unambiguously in statute.

Question 6 – Principal Reporter and Reporters

SCRA considers that this is an area where there could be a risk of unintended consequences. The Children’s Hearings System is unique in terms of its purpose and operation. In assessing ECHR compliance, regard must be had to both the formal provisions and the way the System operates in practice. A feature of this is the overall interaction of different aspects of the System. If any one part of the System is changed it can affect the overall balance of the Children’s Hearings System and its ECHR compliance.

SCRA is of the view that removing the Reporter from the Hearing creates new and significant difficulties (and risks) which are far greater than the perceived difficulty it seeks to solve (an example is that this would introduce new issues with ECHR compliance). The basis for removing the Reporter from the Hearing or changing the Reporter’s role in the Hearing must therefore be clear and robust and outweigh the attendant disadvantages and new problems that would arise. The same considerations apply to any change to the Reporter’s role.

SCRA considers that it is important that the perceived difficulty with ECHR compliance under the proposed new structure is clearly identified and the robustness of the concern or concerns fully evaluated. The consultation document states that the Scottish Government believes that the current arrangements conform with the requirements of ECHR. However, the consultation document then states that it seems clear that to protect the independence of advice and support given to children and families, the role currently fulfilled by Reporters during different elements of a Children’s Hearing requires to be separated both in terms of practice and accountability. This is on the basis of “commentators” expressing concern about the current practice of the Reporter offering legal or procedural advice to Panel Members and the proposed new structure bringing Reporters and Panel Members together in a single organisation.

Given the Scottish Government accepts that the current arrangements are ECHR compliant, the basis for the view that separation of the role of Reporter is necessary is not clear. If the bringing together of Reporters and Panel Members into a single organisation is the significant feature and is sufficient to require the role of the Reporter to be separated, then this raises questions about the overall robustness of the proposed new structure in terms of its ability to maintain the independence of Reporters and Panel Members.

It should be noted that the consultation document identifies the concerns of “commentators” as relating to the provision of legal or procedural advice to Panel Members by the Reporter whereas, separation of the role of the Reporter is being proposed to protect the independence of advice and support given to families. During a Children’s Hearing the Reporter currently provides procedural advice which is openly provided to all persons present at the Children’s Hearing. The Reporter’s current role in relation to providing advice is defined by the Principal Reporter as supporting fair process. This means supporting the fairness of the Hearing overall, not simply providing advice to Panel Members. The consultation document identifies the independence of advice and support given to children and families as a key issue. This raises its own considerations around advocacy, representation and legal representation. Independent advice for Panel Members and independent advice for children and families may give rise to different approaches. At present, the Reporter provides procedural advice openly available to all and for the sole purpose of supporting the Children’s Hearing as a fair hearing in terms of ECHR Article 6 in which parties’ rights are respected and upheld.

SCRA considers that it is essential that any changes to the structure of and functions within the system ensure that, in addition to independence, the fundamental principles of the Kilbrandon Committee Report and the 1968 and 1995 Acts are maintained. At present, the independence of the decision-making responsibilities of the Panel Members in each Children’s Hearing, has, quite properly, been recognised as one of the fundamental strengths of the Children’s Hearings System.

SCRA seeks further explanation of the view offered in the consultation document that the role of the Reporter in the Children’s Hearing requires to be separated. Changing the Reporter’s role in the Hearing will have a number of significant disadvantages for the child and family and for the operation of the Children’s Hearings System, all of which must be weighed against the strength of any case for change. The basis for changing the role must therefore be clear and robust.

The consultation document invites comments on the options outlined within it.

Option 1 – Two teams of Reporters

SCRA does not support this option. It raises considerable difficulties both in principle and in practicality.

- a) If the person providing legal or procedural advice at a Children's Hearing is accountable to the President of the Children's Panel and is not acting under delegated authority from the Principal Reporter then that person will be independent from the Principal Reporter. However, they will not be independent from the Panel Members. Indeed they will be allied to the Panel Members and may be regarded as part of the tribunal, as is the case with clerks to the District Court. It will therefore be difficult to perceive them as providing independent advice to all present at the Hearing. They will be in a less favourable position to do this than Reporters are at present. In trying to solve one perceived problem significant additional difficulties would be created. As a result, far more robust advocacy, representation and legal representation would require to be routinely available for children and relevant persons, with consequential implications for personnel and finance.
- b) The practicality of option 1 must take account of the breadth of the Reporter's role both before and after the Hearing and for the overall role of the Reporter, to clearly demarcate responsibilities. Preparatory work carried out by the Reporter includes obtaining relevant information to enable the Hearing to make a decision, deciding what information to provide to the Hearing, identifying who is to be notified as a relevant person, identifying who is to be invited, arranging a business meeting if necessary and applying non-disclosure provisions as appropriate. Most children's cases dealt with by Children's Hearings are subject to ongoing consideration by the Hearing, often over a period of years. Further Children's Hearings will be arranged for a variety of reasons, such as: remit from the Sheriff to consider established grounds, consideration of renewal of a warrant, review of the Supervision Requirement, remit from the Sheriff following an appeal, new grounds for referral, consideration of a warrant to secure the child's attendance at a Children's Hearing. Several different situations may apply and overlap with each other at any one time. Preparatory work by the Reporter is required for every Hearing. After the Hearing, and on occasion during an adjournment of the Hearing, the Reporter takes action in response to the decisions and expectations of the Hearing. If the intention is to better define the independence of the respective "reporters", the requirement to move pre-and post-Hearing tasks would blur the distinction and independence between the person providing advice and the Reporter.
- c) In addition, the 'handover' of the case pre- and post-Hearing would require to be carefully managed and increases the opportunity for additional bureaucracy and error. The information which should be made available to the person providing advice, beyond that provided in the hearing papers, requires careful consideration to avoid blurring the distinction between that person and the Reporter. A Reporter would require to be available to undertake action post-Hearing or during an adjournment, which has resource implications particularly where Hearings take place outside normal working hours and urgent action is required.

- d) If the Reporter is not present in the Hearing, there are knock-on consequences for dealing with appeals against the decisions of Children's Hearings. The Reporter would have no first hand knowledge of events at the Hearing. The person who provided advice to the Hearing would require to provide information to the Reporter to enable an appropriate response to the appeal to be made. The person would also require to be available to give evidence for a party to the appeal or to be examined by the Sheriff. These aspects all have significant resource implications. The Reporter in an appeal will defend the Hearing's decision if it is defensible and in the best interests of the child or children, but the Reporter is not acting on behalf of the Hearing. There is likely to be ongoing action required in relation to the child's case during the currency of any appeal against the decision of a Children's Hearing, for example review of the child's Supervision Requirement, new grounds for referral, consideration of warrants, and the different processes will impact on each other. As identified in paragraph (b) above, children's cases do not necessarily follow a neat linear process and several different 'processes' may apply and overlap with each other at one time in relation to a child's particular situation. It may be helpful to make clear that, unlike a Prosecutor's role with an accused person in the adult justice system; the Reporter has an ongoing relationship with any child referred more than once or subject to compulsory measures due to the requirement to investigate and deal with new referrals and to review existing measures in place.
- e) At present the role of the Principal Reporter provides a continuous link to the child's case and the child and family throughout the involvement of the child in the Children's Hearings System. In addition, the knowledge and skills gained from carrying out other functions of the Reporter contribute to the ability of a Reporter to provide sound procedural advice at a Children's Hearing. This continuous link contributes to minimising the risks to children and should therefore not be broken without good reason. The existence of two teams of Reporters would likely result in an increase in bureaucracy, confusion for children and families, and a lack of clarity in roles and responsibilities.
- f) A Reporter is a Reporter by reason of carrying out statutory functions of the Principal Reporter under delegated authority from the Principal Reporter. If the person providing legal or procedural advice at a Children's Hearing (or to Panel Members) is accountable to the President of the Children's Panel, it is difficult to see how that person could be regarded as a Reporter.
- g) Organisationally, splitting the roles of a Reporter into two could be problematic in terms of workload division and personnel development. These issues are not insurmountable but have the potential to involve the organisation in greater cost and bureaucracy.

Option 2 – Local arrangements for advice

The consultation document does not make clear what arrangements would be considered appropriate however the option does not fit with the proposed national approach to supporting Panel Members. The option does however highlight the need to be clear about what legal and/or procedural advice a Children’s Hearing requires to have available to ensure the Hearing can be a fair hearing in terms of ECHR Article 6. The consultation document assumes that some support is required. SCRA agrees with this assumption and considers that it would be unreasonable to leave a tribunal of lay volunteers without ready access to legal and procedural advice. SCRA does not support this option.

Question 7 – President of the Children’s Panel

SCRA believes that the establishment of a national leader for the Children’s Panel would be a positive move with a number of anticipated benefits for Panel Members and the wider Children’s Hearings System.

The President will be able to drive greater consistency in Panel Member training and support, which should lead to better and more consistent decision-making. This, in turn, should result in better outcomes for children and families.

A national level support structure would lead to improved efficiency and better administrative support. It would be important to retain involvement of local authorities in informing and contributing to this support.

In addition, the role of President would also help to lend greater profile and credibility to the Children’s Panel, as well as contributing to greater public awareness of the work of Panel Members and the Children’s Hearings System. This greater stature and visibility could be seen as an opportunity to empower Panel Members.

The President’s role and national profile could present an opportunity to support an evidence-based sharing of information, knowledge and best practice across local authority areas, as well as a degree of internal scrutiny of quality. Greater consistency in terms of the availability of information would only be of benefit to Panel Members, and by extension to children and families.

It is likely that the President will need full-time professional support to properly discharge his/her functions in terms of assessment of quality and the development of national standards.

A national President might be seen as having implications for the role of local, volunteer Children’s Panel representatives. The Children’s Hearings System is built on the foundations of local level input and it is important that this not be lost. It is important that a national leader would be able to bring together national and local dimension to promote and support the Children’s Hearings System.

SCRA is content with the use of the term “President” as it is consistent with the equivalent position in other tribunals.

Question 8 - Safeguarders - what are your views on these proposals?

SCRA supports the proposal for a single national panel (register) of safeguarders and questions whether the independence (real and perceived) of safeguarders could be maintained within a structure that is also responsible for Children's Hearings and Reporters.

To act in the best interests of children and young people, it is vital that safeguarders are independent of those who make decisions on children. The perception of this independence by children and young people is essential in establishing a trusted relationship with them. Even if the legal issues on separation can be overcome and safeguarders can be part of the same organisation as Reporter and Children's Panel functions, there is a danger that by doing so will weaken the perception by children and families of the independence of safeguarders. This would be detrimental to their role and most importantly to how children's interests are represented in Children's Hearings.

SCRA does not support the inclusion of safeguarders in the proposed single national structure but suggests that consideration is given to having an existing regulatory body assume responsibility for the registration and review of approved safeguarders.

Question 9 - We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people who are involved in the Children's Hearings System.

SCRA supports the proposals for a code of practice and specialised training for legal representatives for children and takes the view that as with practising solicitors and advocates, the Law Society or the Faculty of Advocates could be responsible for their professional conduct and for matters of indemnity. This would lead to greater protection of children's rights through improved consistency and quality of representation. However, SCRA does not support the suggestion that legal representatives should be part of the proposed 'Children's Hearings Agency'. To protect children's rights to fair Hearings, legal representatives must be independent of the organisation that administers Children's Hearings.

Advocacy support for children

SCRA fully supports all attempts to ensure that children's rights to fair Hearings (under Article 6 of the ECHR) are protected and agrees that in some circumstances that the appointment of legal representatives is the best way to do this.

In terms of effective participation of the child in relation to the Hearing, it is SCRA's view that an advocacy-based approach would be more effective. SCRA suggests that, as part of this review of the Children's Hearings System, that wider consideration of the most effective means to protect children's Article 6 rights is made. This should cover more radical solutions on how best to ensure that children can effectively participate in their Hearings and also to make sure that it applies to all children attending Children's Hearings. SCRA previously commented on this in our response to the Scottish Executive's consultation on the draft Children's Services (Scotland) Bill². Reference should also be made to the research 'Big Words and Big Tables' for children and young people's views on representation and advocacy support in Children's Hearings³.

Question 10 - Withholding information

SCRA supports this proposal provided it fits with our understanding of the provision in section 14 of the draft Children's Services (Scotland) Bill which is:

- The disclosure of new information that has come to the attention of Panel Members during the Hearing.
- The withholding of that information during the course of the Hearing and in the reasons given for the decision.
- Use by Hearings where a non-dispositive decision is made.

SCRA's view on this is described in our response to consultation on the draft Children's Services (Scotland) Bill. We would be happy to engage further with the Scottish Government on any proposed extension to provisions to withhold information about a child.

Question 11 - Streamlining grounds

SCRA supports this proposal which would minimise impact on children and families and result in more efficient and better use of Reporter and court time.

Question 12 – Procedural changes to the Children's Hearings System

Release from detention

SCRA supports this proposal and considers that it will be of benefit as it allows the Reporter sufficient time to conduct an investigation of the case without requiring the child to attend a Hearing to consider a warrant.

² Scottish Children's Reporter Administration (30 March 2007). Draft Children's Services (Scotland) Bill Consultation. SCRA Response to Consultation.

³ Scottish Executive (2006) Big Words and Big Tables. Children and young people's experiences of advocacy support and participation in the Children's Hearings System

Warrant provisions

SCRA supports the policy intention to simplify warrant procedures, and would be happy to engage with the Scottish Government on how best to achieve this. SCRA suggests revisiting sections 17 and 20 of the draft Children's Services (Scotland) Bill and SCRA's response to these proposals on simplification of warrant procedures and interim Supervision Requirements.

Question 13 - Papers for children - do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

SCRA broadly supports the proposal that the current scheme is formalised and questions whether primary legislation is required to do this. It is our view that this could be achieved under existing provisions in section 42 of the Children (Scotland) Act 1995.

Consideration must be given to whether there should be an automatic right for children to have access to reports. Some of the information in reports may not be known to the child (e.g. about their parents) and may be distressing and detrimental to their welfare. A balance between the rights of the child to information about themselves and their welfare must be considered in the development of legislation to give children right of access to reports.

Question 14 - Are there any other issues which you think might be addressed in the reform programme or proposed legislation?

Draft Children's Services (Scotland) Bill

SCRA requests that some of the proposals in the draft Children's Services (Scotland) Bill are considered in the proposed legislation. It is noted that some of the aspects originally proposed in the draft Children's Services (Scotland) Bill are included in this consultation:

- New statutory system on the legal representation of children.
- Withholding information provided by the child.
- Streamlining the establishment of the grounds for referral.
- Procedural changes to the Children's Hearings System.

SCRA has commented on these in our answers to Questions 9 to 12.

In addition, SCRA requests that consideration is given to amending the grounds for referral to the Reporter and Children's Hearings System; and to change the approach to referral to ensure a clear and consistent approach by agencies towards all children. SCRA also requests that the duties on wider agencies in children's services that were proposed in the draft Children's Services (Scotland) Bill be considered here. For further detail on these requested changes, please refer to SCRA's response to the draft Children's Services (Scotland) Bill, a copy of which is attached.

Movement Restriction Conditions

SCRA requests that the proposal that was included in the draft Children's Services (Scotland) Bill⁴, that a legal representative is appointed when a Children's Hearing is likely to make a Movement Restriction Condition is introduced.

Additional issues

SCRA suggests that the proposed Children's Hearings (Scotland) Bill could offer an opportunity to make provisions to address a number of issues in addition to those which are currently proposed. SCRA suggests that the following additional issues are considered:

- Clarification and potential extension of the information sharing powers of agencies to share information with each other and the Principal Reporter, and consideration of the power of the Principal Reporter to share information. . In this respect, SCRA also suggests that this is an opportunity to re-visit the related recommendations on information-sharing for child protection contained within HM Inspectorate of Constabulary for Scotland's thematic inspection report on intelligence and information sharing – '*Common Knowledge*' – published in March 2007
- The availability and desirability of Legal Aid to relevant persons attending Children's Hearings.
- Court arrangements/procedures for the management of Children's Hearings Court proceedings.
- Amendment to section 51(7) of the Children (Scotland) Act 1995 to ensure that this section only applies to the frivolous appellant.
- Amendment to allow the Sheriff to hear an appeal that has been lodged late.
- Amendment of the reciprocal arrangements for the transfer of orders between Scotland, England, Wales and Northern Ireland.
- Consideration of a provision that allows for the recognition of judgements/findings in care proceedings in other jurisdictions.
- Amendment to Rule 6(2) of the Children's Hearings Rules to add to the types of Hearings where less than seven days notice can be given.
- Amendment to section 63(5) (b) of the Children (Scotland) Act 1995 to remove Hearings' direction to the Principal Reporter to bring grounds.

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⁴ Scottish Executive (2006) Getting it Right for Every Child. Draft Children's Services (Scotland) Bill Consultation.