

28 July 2010

## Summary Response

SCRA welcomes the opportunity to comment on the draft National Contract for Secure Care. Generally, we have some concerns that there is very little reference to the Children's Hearings System in the guidance. This may be due to the contract being adapted from the English version. We have not sought in the limited time available to highlight every section where reference to the Hearings System needs to be made, but consider that the document should be reviewed in detail by the working group with this in mind. Some of the more obvious gaps are included in our detailed comments below.

## Detailed response

### Definitions (pp 5 - 9)

SCRA suggests that including definitions of some Children's Hearings System terminology might be helpful. For example "children's hearing", "safeguarder", "reporter" etc.

The definition of "child" needs to include those young people over the age of 16, but who are still subject to compulsory measures of supervision via the Children's Hearings System (as per the Children (Scotland) Act 1995).

The definition of "parent" would benefit from being linked to a definition of "relevant persons" (see s.93(2)(b) of the Children (Scotland) Act). There is a need throughout the contract to ensure that the terminology used is consistent and legally accurate. The contract frequently uses the terms parent and/or carer but does not refer to "relevant person" at all.

### Children and young persons' rights (p11)

SCRA questions why only Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) is referenced at paragraph 4.2. It would seem that any provider should be ensuring compliance with all the rights enshrined in the Convention.

There appears to be no reference in the contract to Legal Representatives or Safeguarders who may be appointed through the Children's Hearings System and the need/right of a young person to have privileged contact with them during their stay in a secure unit.

### Confidentiality and data protection (pp 18 – 19)

Paragraph 11.3 provides that information may be disclosed to "relatives" (subject to certain provisos) but does not appear to include advocates, safeguarders or legal representatives, whether appointed by a Children's Hearing or not. We further note that "relatives" is not defined at all and could therefore be interpreted very broadly indeed. The contract does not appear to provide any guidance for when a parent/carer or relevant person might have the right to receive information on the child where the child's age or capacity precludes the seeking of informed consent.

SCRA assumes that the phrase "a court of competent jurisdiction" in paragraph 11.4 is intended to include a Children's Hearing, but believes that it would be clearer if this was made explicit.

See also the point (below) regarding reports for Children's Hearings, which will usually include personal and medical information about the child.

### **Other issues**

The circumstances around emergency transfers into secure care do not appear to be dealt with in any detail within the contract. For example, in section 2.10 (on p39), there is no reference to the requirement for a Children's Hearing to review the child's placement within 72 hours.

We note that there does not appear to be any clear requirement on the Provider to produce either discrete reports for Children's Hearings or a clear contribution to multi-agency plans and consider that this is a gap.

We believe that there should be an explicit recognition within the contract that Children's Hearings should be held outwith the establishment unless there is good cause to do otherwise. We question whether the transport/escort arrangements will help to ensure that this takes place.

We welcome the links made between outcome targets and GIRFEC. However, the use of the term "young people" throughout that section suggests that it only applies to those aged 16-18 (reading it alongside the definitions section at the start of the guidance). Clearly all outcomes should apply equally to children and young people. Further, we consider that in Outcome 6, it could be made more explicit that the child or young person is intended to be able to participate in the ongoing development of their care plan as well as to ask questions about it.

### **Conclusion**

SCRA feels strongly that there is a need to revise the contract to properly take account of the important role of the Children's Hearings System in relation to children who are placed in secure care.

**SCRA**  
**28 July 2010**