Introduction

SCRA and CHS welcome the opportunity to respond to the Scottish Government’s consultation on the Draft Statutory Guidance for Parts 4, 5 and 18 of the Children and Young People (Scotland) Act 2014. We have worked together in order to produce a single response which reflects the views of both agencies and focuses on the impacts of the guidance on the Children’s Hearings System. With that in mind, we have particularly considered issues around wellbeing, the Named Person service and the Child’s Plan.

A summary of key points is set out below:

• It is critical that the role of the Hearings System within GIRFEC is appropriately reflected in the guidance by ensuring that consideration of compulsory measures becomes an integral part of assessment, decision making and planning.

• The relationship between the concepts of welfare and wellbeing must be clarified to avoid confusion or differing interpretations.

• Guidance should be clear about the relationship between the Named Person and the Lead Professional, including actions to be taken as the child moves along the continuum of concern and transitions into and out of child protection and children’s hearings processes.

• The Child’s Plan needs to meet the needs of the Hearings System by ensuring that the relevant information is available and in particular that consideration of the need for, and purpose of, compulsory measures is clearly presented.
Response

We are especially concerned to ensure that the guidance recognises the place of the Children’s Hearings System within GIRFEC. As such, we are concerned about the lack of reference to the Hearings System throughout the guidance. Just as it is important to make clear that there are particular statutory thresholds that trigger a child protection response, so too must the criteria for referral to the Reporter appear clearly in the Guidance. Consideration of the need for compulsory measures of supervision needs to become an integral part of the culture of assessment, decision making and planning to support and address the needs and risks of children and young people. This support needs to apply both into and out of more targeted or statutory interventions, rather than the Hearings System being considered as a “last resort”. Decisions by children’s hearings should be seen as the most appropriate intervention in response to particular needs and risks. With that in mind, it may help to frame the test for referral in terms of the SHANARRI indicators, clearly placing consideration of compulsory measures in a wellbeing context.

Wellbeing

While the 2014 Act places “wellbeing” at the heart of its operation, other legislation including the Children’s Hearings (Scotland) Act 2011 refers instead to welfare. There is the potential here for confusion and unnecessary litigation if the relationship between the two terms is not made clear. The internal consultations that we conducted to inform this response made clear that some people regard the two concepts as interchangeable, while others consider welfare to be a more narrowly defined term with a specific meaning grounded in case law and in practice. We would suggest therefore that if the Scottish Government intends there to be a difference between the two concepts, then that difference needs to be made clear in the Guidance, otherwise it is likely that agencies will take different views and interpretations which may affect understandings of levels of concern and decisions about when to refer a child to the Reporter. Similarly if the intention is that the concepts mean the same, this should be explicitly stated within the Guidance.

Named Person service

We are supportive of the concept of the Named Person and can see some potential benefits to the Children’s Hearings System of an effectively delivered service, working with agencies/ lead professional where more targeted intervention is required. In particular it offers the potential to help ensure that children are referred to the Reporter at the right time and that the information provided both to the Reporter and to the Hearing is comprehensive. It is important to reflect that the Named Person’s role should include collating information about supports and strengths as well as concerns. We appreciate that this is statutory guidance and therefore the role of the named person is the focus of attention but the role and relationship with the Lead Professional could helpfully be clarified. We raise this later on too.
In order for this to be achieved, the Named Person will require to develop particular skills and knowledge which may currently lie outwith their existing professional responsibilities. Dealing with, and making assessments, supporting plans, understanding different criteria for action and developing common understandings, especially between different professional roles and between different LAs, will be crucial.

We note that the guidance contains little information on the role of the Lead Professional. While we understand that the Lead Professional role is not statutory, if the child’s needs are understood in SHANARRI terms along a continuum, then the Named Person will need to understand what action to take when levels of concern moves up or down that continuum. Part of that is being clear when a child needs a Lead Professional and what the relationship between the two roles should be. The Named Person will also need to understand when to link in to other procedures such as coordinated support plans, child protection procedures and when a referral to the Reporter needs to be made. We would suggest that illustrative examples would be helpful here though recognise that it may be intended to cover this in more detailed practitioner guidance.

Along with the potential benefits for the children’s hearings system, there are also a number of risks that must be monitored. While we are fully supportive of moves towards multi-agency consideration of referrals and the role of the Named Person and Lead Professional in taking those decisions, the most important factor for the Children’s Hearings System is that referrals are made in a timely manner and the quality of information supports Reporter and Hearing decision making. There needs to be a clear message that the police and the local authority retain their statutory duties to refer to the Reporter under section of the Children’s Hearings (Scotland) Act 2011. Where the referral criteria are met, a referral should be made and administrative delay must be avoided. There should be no expectation that all referrals must come through the Named Person. Conversely, there is a risk of over-referral if agencies and the Named Person do not fully understand the criteria and the compulsory measures test.

We recognise that for those cases where the criteria for referral are not met based on information held by any individual service, then the Named Person may be able to put together a jigsaw of information that does meet the test, allowing a referral to be made. However, we consider that there will be a significant challenge for the Named Person in collating, assessing and storing what may be a drip feed of information that comes in over a period of time. We note that the experience in Highland has been that it is unusual for the Reporter to receive a referral from the Named Person.

We consider that there should be an expectation that the Named Person service (not necessarily the Named Person themselves) is invited to attend the Children’s Hearing if they are actively involved with the child. This would reflect existing practice in most areas where education and health professionals are invited as a matter of course. It will be important to ensure that a positive decision about whether to attend should be made by the Named Person or Lead Professional based on the contribution that person could make to the discussion. There may be a particular value where the Hearing relates to a younger child, of having the Health Visitor or other health professionals attend the Hearing. The Named Person’s input may also
be especially valuable in situations where there is not yet a Child’s Plan in place. Again some clarification of the respective roles of the Named Person and Lead Professional would be helpful as it is unclear what role the Named Person is expected to play once a Lead Professional is in place.

If the Named Person/Lead Professional does attend the Hearing, then Panel Members will need to balance their contribution against the risk of overloading the room with adults and losing the child’s voice. Careful management of the hearing by panel members will be necessary to balance information provision to the hearing with the need to ensure the child’s effective participation and it is important that the Named Person/Lead Professional is aware of this. Having relevant quality information in the papers supporting the plan will be of particular importance.

We recognise however that there will be resource and capacity issues here for the Named Person and that this will particularly be the case for primary teachers in the school holidays. The Reporter however will need to be able to access this information on a year round basis and so provision needs to be made to ensure that this is possible.

**Child’s Plan**

The Child’s Plan is vitally important in supporting hearing and reporter decision making and reasons for decisions. We recognise that there is a challenge in having one plan with multiple uses as some information will not be relevant for all fora. On balance though, the benefits probably outweigh the disadvantages – having a single universal plan encourages all children to be considered on the GIRFEC continuum. This means of course, as noted above that it becomes more important to think of the Hearings system as an integral part of that process. There should be no need to adapt the Plan for a Children’s Hearing, but there is a need to consider what is relevant for the Hearing and where issues of compulsion might be appropriate and how that might be drawn out.

While we recognise that there is no intention in the short-term to move towards a standardised national plan, we believe that national consistency and identification of a best practice model for the child’s plan should be a longer-term aim. As national agencies we are conscious that there are very different models in existence across the country and that the quality of these can be variable. A single national plan would assist with training, and where children move between local authorities.

Currently, Reporters and Panel Members tell us that some plans involve too much repetition, including repeated reference to address details which present risks relating to non-disclosure cases. Chronologies can be too long and lacking relevance, with excessive cutting and pasting, while in some areas the Plan does not allow progress to be tracked and reviewed. We see potential for a clear relationship between the Child’s Plan and any Compulsory Supervision Order. The plan should define the support and/or direction which children, young people and their families need, create a visible timeline for delivery of key interventions and a description of the intended outcome for that child/young person.
This demonstrates that content and quality are just as important as format and that there is a need for training on how to complete the plan well. Good chronologies and assessments along with clear fully justified recommendations, actions, timescales and responsibilities are key and can all support the Reporter and Panel Members in making decisions. It is particularly important that the Plan includes reference to the need for and purpose of compulsory measures and that any disagreements or differing views between agencies are reflected. Ensuring that all the necessary information is present in the plan is important for the Reporter as it supports their investigation and independent function and for the hearing in considering all the available options for the child.

We believe strongly that the guidance should set a clear expectation that the Plan will be available to children and families in different formats where needed (e.g. alternative languages, large print etc.) though we note that often literacy is a barrier to understanding. In addition there should be a clear expectation in the Guidance that the contents of the Plan and recommendation to the hearing are discussed with the child and family in advance of the hearing. The guidance should also reflect Rule 8 of the Children’s Hearings (Scotland) act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013, which requires all documents provided to the hearing to contain the child’s views as known to the report writer.

Additional detailed comments

Paragraph 10.2.13 states that information should not be shared if it is likely to prejudice the conduct of a criminal investigation. However, we believe that this paragraph should be reworded to make clear that there may be situations where the needs and safety of the child override any potential prejudice. This section should also refer to consideration of any ongoing investigation being conducted by the Reporter.

In Paragraph 11.7.7, reference should be referral to the Principal Reporter (or children’s reporter) not to SCRA. Furthermore, this paragraph states: “Every effort should be made to ensure that the decisions of hearings and courts are in line with the actions identified in the Child’s Plan.” This sentence does not appropriately reflect the role of children’s hearings and courts, nor the role of agencies in providing information to them. Rather, the opposite should be true, with the plan reflecting the decisions made by hearings or courts. Therefore where a decision is made contrary to the recommendation in the Plan there must be a mechanism to update the Child’s Plan to reflect the hearing or court decision.

Paragraph 11.7.8 risks causing confusion. It is targeted at decisions which the relevant authority considers would adversely affect the wellbeing of the child. However, there is a danger that it will be read as decisions with which the local authority does not agree or decisions which do not accord with the child’s plan. The fact of a hearing not agreeing with a recommendation does not mean there is anything to ‘resolve’. The way this paragraph is worded implies that the Hearing’s decision needs to be changed. In addition, there is no route for the local authority to ‘raise the matter with the children’s hearing’. The implementation authority can
require a review where a CSO is in force, however, requiring a review just because the implementation authority disagrees with the hearing’s decision is not appropriate.

Paragraph 11.2.1 needs to be considered in light of the definition of Implementation Authority that a children’s hearing will consider. Under the Children’s Hearings (Scotland) Act 2011 the children’s hearing must name the Authority which is to implement the order made by the hearing. There is a risk of confusion if the ‘responsible authority’ is different.

Conclusion

We are supportive of the guidance document with the changed identified in this response and would be happy to engage further with Scottish Government colleagues to assist with its ongoing development. This could be done either bilaterally with our respective agencies, or collectively via the Children’s Hearings Improvement Partnership.

SCRA and CHS
1st May 2015