SCRA response to the Justice Committee’s call for evidence

Background

The Children’s Hearings System is Scotland’s distinct system of child protection and youth justice. Among its fundamental principles are:

- whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
- a preventative approach, involving early identification and diagnosis of problems, is essential
- the welfare of the child remains at the centre of all decision making and the child’s best interests are paramount throughout
- the child’s engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children’s Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service, the legal profession and the courts system.

SCRA’s vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard.
- Our hopes and dreams for the children of Scotland are what unite us.
- Children and young people’s experiences and opinions guide us.
- We are approachable and open.
- We bring the best of the past with us into the future to meet new challenges.

Response

SCRA welcomes the opportunity to respond to the Justice Committee’s call for evidence on the Victims and Witnesses (Scotland) Bill. We are fully supportive of the drive to improve the experience of both victims and witnesses in whatever context.

Vulnerable witnesses

We agree with the proposal to extend the definition of a child witness to 17. SCRA’s Practice Instruction makes clear that Reporters should not to call child witnesses to give evidence unless it is absolutely necessary (SCRA’s policy statement on child witnesses is attached as an appendix to this submission). Therefore, while this provision may result in a small number of additional vulnerable witness applications in children’s hearings court proceedings, we expect the overall financial impact on SCRA to be minimal. The potential costs are accurately reflected in the Financial Memorandum.
The Bill makes a number of additional provisions in relation to vulnerable witnesses. Specifically it provides that:

- Adult witnesses whose quality of evidence is at significant risk of being diminished either as a result of a mental disorder, or due to fear or distress in connection to giving evidence, are treated as vulnerable
- Victims of alleged sexual offences, human trafficking, domestic abuse or stalking who are giving evidence in proceedings which relate to that particular offence are to be “deemed” as vulnerable witnesses
- Witnesses who are considered by the court to be at significant risk of harm by reason of them giving evidence are treated as vulnerable
- There is an automatic entitlement to special measures for “deemed” vulnerable witnesses

We note that the application of these provisions is restricted to victims giving evidence in the criminal justice system. All children’s hearings court proceedings are civil proceedings and thus not covered by the above provisions. However, victims of crime and other potentially vulnerable witnesses will also give evidence in children’s hearings proofs (and possibly other court proceedings such as appeals). For example, grounds may relate to a sexual offence committed against the child, or concerns that the child may be exposed to someone who has carried out domestic abuse. In these kinds of cases, it would not be unusual for an adult victim to be called to give evidence in order to allow the grounds to be established. It is important therefore that the protections being introduced for witnesses in criminal proceedings are available when appropriate in children’s hearings court proceedings as well.

We have raised this matter with the Scottish Government and further discussions are planned to explore whether any of these improvements could be extended to the children’s hearings system. Our clear view is that it is possible to apply these provisions distinctly to the hearings system without them automatically applying across the rest of the civil justice system.

On a related topic, the Criminal Justice and Licensing (Scotland) Act 2010 contains provisions (in sections 54 and 85) which:
- allow the Crown to provide a witness who is likely to be cited to give evidence copy of their statement, or access to it.
- allow the court to grant permission to a witness to refer to his statement during the giving of evidence provided certain conditions are met.

These provisions however are specifically disapplied from children’s hearings court proceedings. We are unclear as to why this decision was taken – had there been no specific mention of children’s hearings proceedings, there would have been a strong argument that if the Crown can do this in a trial, then reporters can adopt a similar approach. However, this argument cannot be made when the sections have been expressly stated as not applying to our offence proofs. We believe that witnesses in our proceedings should not be disadvantaged compared to witnesses in criminal trials. We hope that this Bill could offer an opportunity to include similar provisions for the children’s hearings system where the proof relates to an offence ground for referral.

**Victim information**

We note that the EU draft directive only applies to criminal proceedings. However, there is still a need to consider what information should be made available to victims of offences by children who are dealt with in the Hearings System or via other interventions – and how to strike the appropriate balance between the rights of children and of victims. Section 53 of the Criminal Justice (Scotland) Act 2003 enables the Principal Reporter to provide such information, subject to certain reservations that balance the rights and interests of the child with the victim’s right to information. More detail on SCRA’s Victim Information Service is available on our website (www.scra.gov.uk).
The principles of the Children’s Hearings System are very different from those of the criminal justice system and it would not be appropriate therefore to simply transpose provisions designed for one system across onto the other. We consider that the current legislative provision in this area allows the appropriate balance to be struck and remain committed to building on the existing law and practice to improve the experience of victims of offences committed by children.

**Conclusion**
We welcome the Scottish Government’s proposals to improve the experiences of victims and witnesses but consider that there is a need to extend the vulnerable witness provisions to ensure that individuals giving evidence in children’s hearings proof and appeal proceedings can be granted the same degree of protection as those in the criminal justice system. We see no reason why this should be outwith the scope of the Bill and would be happy to give oral evidence to bring further detail or clarity to the points raised above if the Committee would find that helpful.

SCRA
April 2013
Appendix A

SCOTTISH CHILDREN'S REPORTER ADMINISTRATION POLICY ON CHILD WITNESSES

1. The Reporter will not ask any child to give evidence in person in court where there is other evidence available that will satisfy a court as to the fact or facts in issue.

2. The Reporter will not ask any child to give evidence in person in court where to do so would cause the child significant emotional harm or distress.

3. SCRA and Reporters have the same responsibility for the welfare and wellbeing of all children who are asked to be witnesses in the Reporter’s court process, whether or not they are children who are referred to the Reporter.

4. SCRA is committed to ensuring that a child witness is supported before, during and after the court process.

5. Reporters will identify and deliver individual measures of support for child witnesses to facilitate their ability to get to court and give evidence in proceedings.

6. Preparation of child witnesses for court is an essential part of the Reporter’s role in any court case.

7. Reporters will not compound any distress to a child witness by any action or inaction in court proceedings.

8. Reporters will not take any action or be involved in any activity that contaminates or could be reasonably perceived to contaminate a child’s evidence.

9. Reporters will act with integrity in any court proceedings and will not compromise the proceedings by any action in respect of a child witness that causes unfairness or prejudice to any party involved.

10. Reporters will provide information about the court process, including written information in the form of leaflets, to child witnesses and their carer or carers.

11. Reporters will identify a person, be that carer or other, who can support the child during the court process to whatever extent permitted by the court in each individual case.

12. Reporters will offer all child witnesses an opportunity to visit the court room or court that the child will be asked to give their evidence in.

13. Reporters will not attempt to prevent or inhibit a child from access to therapeutic services required for that child, before a proof is, or may be, underway.

14. Reporters will not interview a child witness about traumatic events unless interview is unavoidable if the related court proceedings are to continue.

15. SCRA will actively promote the sharing of information to parties, where appropriate and competent, where this will prevent further unnecessary interview of the child.
16. Reporters will work with agencies and professionals involved with a child witness, for the benefit of that child’s welfare.

17. Reporters will establish and maintain clear communication lines with others involved in and directly affected by the court process.

18. Reporters will attempt to avoid delay in proceedings that involve a child witness.

19. Reporters will make themselves available to a child witness and their carer after the court proceedings have been concluded, should the child wish to clarify any issue about their experience as a witness.

20. Reporters will afford every child witness and their carer an opportunity to comment on the support provided by SCRA and the Reporter.