

## 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 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 comment on the general principles of the Apologies (Scotland) Bill. SCRA's Complaints Handling Procedure encourages staff to resolve complaints at the front line wherever possible and recognises that making an apology can be an important part of this process. Our training provides that apologies should be clear and direct, should acknowledge any distress or dissatisfaction caused and explain what steps are being taken to resolve the issues raised. From that point of view we are supportive of the policy intention of the Bill to drive a culture change in which meaningful and timely apologies are encouraged.

However, we note that some legal proceedings are quite properly excluded from the scope of the Bill, including all criminal proceedings, Fatal Accident Inquiries and defamation proceedings. We strongly urge the Committee to ensure that court proceedings under the Children's Hearings (Scotland) Act 2011 are added to this list.

Within the Children's Hearings System, where grounds for referral are denied by a child and/or relevant person, or the child is too young to understand them, the case goes to court. The Reporter is required to

lead evidence to establish the grounds before the Sheriff. For non-offence grounds, the standard of proof is 'the balance of probabilities', while for offence grounds it is 'beyond reasonable doubt'. However, it is important to note that all children's hearings court proceedings are civil in nature, even where the grounds relate to an offence committed by the child. As such, all of our court proceedings fall within the scope of the Bill as currently drafted. We also note that the definition of an apology in the Bill is quite broadly framed and could cover a range of different circumstances and statements which might arise in the context of a children's hearings proof.

If children's hearings court proceedings were not excluded from the Bill's scope, there would be potentially significant consequences for the children's hearings system, in relation both to child protection and youth justice concerns. For example:

- An apology made by an adult during a police interview for assaulting a child would be inadmissible as evidence for the Reporter seeking to establish grounds of referral under section 67(2)(b) of the 2011 Act. Should grounds not be established, there would be no statutory basis to bring the child to a children's hearing in order to consider what compulsory measures should be put in place to protect them.
- An apology made by a child for committing an offence would be inadmissible as evidence for the Reporter seeking to establish grounds of referral under section 67(2)(j) of the 2011 Act. Again, should grounds not be established there would be no legal basis to bring the child to a children's hearing in order to consider what compulsory measures should be put in place to address their behaviour.

We do not believe that the intention of the Bill is to inhibit the Reporter from being able to establish grounds for referral, as it would clearly not be in the public interest to do so. However, as currently drafted, this is the effect of the provisions. We suggest therefore that the arguments for excluding criminal proceedings from the Bill's scope also apply to court proceedings under the 2011 Act. We would be happy to expand on these points in oral evidence to the Committee if members would find that helpful.

**SCRA**  
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