

26 July 2013



SCRA response to the Education and Culture 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 comment on the Scottish Government's Children and Young People (Scotland) Bill. We have set out our comments in line with the Bill's sections but suggest that there are opportunities to consider the legislation in a more holistic way and promote better links between the different parts of the Bill, in particular between Part 1 (Children's Rights), Part 3 (Children's Services Planning), Part 4 (Named Person) and Part 7 (Corporate Parenting), in order to more effectively deliver the policy goals.



Children's rights

Children's rights are at the heart of the Children's Hearings System and much emphasis is placed on giving effect to Article 12 of the UNCRC by facilitating the child's effective participation in the Hearings process. SCRA is fully committed to protecting and enshrining children's rights in everything that we do. Our internal Participation Group has done some excellent work over the last two years to improve the ways in which children and young people can participate, both in their own hearings, and in driving improvements to the system as a whole. The involvement of our Modern Apprentices has had a hugely positive impact on this area of work, allowing the voices of children and young people to directly impact and influence policy and practice. We therefore agree wholeheartedly with the Policy Memorandum, which sets out the Scottish Government's aspiration to ensure that children's rights are respected across the public sector.

However, we are disappointed that the proposals in this section do not appear to give full effect to that aspiration. In particular, we are unclear as to why the provisions have been diluted to such an extent over the course of the two formal consultations, despite there being apparently clear support at each stage for enshrining a stronger commitment to children's rights in the legislation, including by placing duties on public bodies.

SCRA's Equality Network, a staff group that is charged with ensuring that the organisation complies with its responsibilities under the equalities legislation, has begun to consider how a children's rights approach could be incorporated more fully into our own strategic decision making. For example, it does not seem impossible when performing an Equalities Impact Assessment, to include consideration of the effect of any policy on children's rights in that assessment. While these discussions are at an early stage, we do not believe that a requirement to more actively consider and take action in relation to children's rights should be seen as a significantly onerous burden on the public sector.

Children's Services Planning

We are supportive of the proposals to place duties on public bodies to work together to design, plan and deliver jointly their policies and services to ensure that they focus on improving children's and young people's wellbeing. SCRA sees itself having an important role locally and nationally in supporting the planning and delivery of services. We can also see that the duty might have the potential to help move the Lead Professional role out of social work and into other agencies, such as health, where appropriate. It would be helpful however for this section to link with other parts of the Bill. Please see our response to the Corporate Parenting section for more detail on how this could be achieved.

Provision of Named Person

We recognise that the Named Person role is considered to have worked well in Highland, where it has driven a shift in culture and practice, resulting in people being more aware of their (and others') responsibilities. Our understanding is that the Named Person role works very much in tandem with that of the Lead Professional as they have complementary roles (albeit very distinct responsibilities) and as such it will also be necessary to ensure that there is clarity of differentiation between the Named Person and Lead Professional roles, and the responsibilities of other professionals, in particular the Chief Social Work Officer.

It is critical for the role of the Named Person to be meaningful in terms of the benefits that it provides for children. It should not, in our view, simply be an administrative exercise that results in a child having a Named Person that they have no meaningful contact or relationship with. We would suggest that there is a need for clear guidance for professionals in terms of what is expected of the Named Person, and also for clear and concise information for children which tells them what they have a right to expect from that individual. We would also suggest that the Highland experience be utilised to establish which aspects of the role have been particularly valued by children and young people so that good practice can be identified and built into the national model. Finally, we note the issues raised by other agencies (e.g teachers) about the potential impact of this responsibility on their 'day job' and are concerned that unless these are properly addressed, the role may not achieve all that is intended.



Child's Plan

Again, we recognise the broadly positive experience in Highland, where increasingly Child's Plans have come to reflect multi-agency contributions and have been put in place at an earlier stage, which can often provide a better basis for consideration of referral to the Reporter.

SCRA (as a national body) is aware of significant differences across the country in the way such plans are put together and populated. There is an opportunity off the back of this legislation to clearly identify best practice in terms of what a single Child's Plan should contain and to ensure that this is rolled out across Scotland. We do not believe that there is any compelling argument that individual Local Authorities require significantly different content in their Plans and consider that sufficient flexibility could be built into a standard Child's Plan. We understand that the Highland Child Protection Committee (CPC) has agreed to develop a revised and simplified version of the single Plan and suggest that this could be used as a basis for an agreed national Child's Plan.

Within that context, we would strongly support the provision of a specific section covering consideration of referral to the Reporter and outlining what is intended to be achieved by compulsory measures of supervision if such are considered necessary. We would also be strongly supportive of a section clearly stating the child's views, both at the stage of assessment of need and agreement of action. A critical consideration must be that the Plan is simple, straightforward and usable, not just for professionals (including children's panel members), but also for children and families.

We also believe, based on our professional experience, that it is essential for the Child's Plan to be set out in a way that allows it to be used within the legal process, for example by Reporters when seeking to establish grounds for referral. This may for example require sections where the evidence or views of individual agencies is explicitly marked out. Sufficient information needs to be included to allow effective decision making and a good chronology is one key aspect.

Corporate parenting

We are fully supportive of the concept of corporate parenting, and of the need to legislate for a clear definition. In particular, we agree that there is a lack of shared understanding about the definition of corporate parenting and consider that this particularly applies to looked after children themselves. One of the aims of this Bill should, in our view, be to allow children to be clear about who their corporate parents are and what they can expect from them. However, we do not believe that this has been achieved.

We note that the concept of corporate parenting originally came about to explain that local authorities had particular responsibilities towards children for whom they were acting (to one degree or another) *in loco parentis*. It recognised the poor outcomes experienced by looked after children and attempted to remedy this by encouraging local authorities to act towards the children in their care in the way that a parent would. The concept applies to local authorities precisely because they have those legal responsibilities in relation to looked after children.

We recognise that there may be a superficial attraction in defining large numbers of public sector organisations as "corporate parents", with the laudable aim of improving permanence planning and ensuring that the needs of looked after children are prioritised and accorded due weight in all decision-making. However, the majority of the organisations listed in Schedule 3 are not exercising any of the duties or responsibilities of a parent (corporate or otherwise). This then has an impact on the drafting of the duties in section 52, many of which do not apply to various of the organisations listed in Schedule 3, including SCRA. This is likely to lead to confusion and a lack of clarity over what is expected from these "corporate parents". We are particularly concerned that by expanding the scope of the definition of "corporate parenting", the Bill risks diluting the core concept to the point that it loses all meaning, risking undermining the good work that has been done by the Scottish Government, CELCIS and Who Cares? Scotland to ensure that local authorities understand their particular responsibilities towards looked after children.



There are of course specific issues in relation to corporate parenting and the Children's Hearings System, which requires a degree of independence and separation of functions from those organisations delivering universal services. The Hearings System has a role in holding local authorities to account in relation to the delivery of statutory supports and interventions for children on supervision and we would not want to risk blurring that clear delineation and independence of function. Placing corporate parenting responsibilities on SCRA or on Children's Hearings Scotland would risk the Hearings System being seen as a gateway to services, rather than allowing it to maintain its focus on determining whether children are in need of compulsory measures of supervision. It is significant that the Scottish Government guidance - "*These are our Bairns*" – clearly does not envisage that the Children's Hearings System is exercising a corporate parenting role.

It is critically important however not to miss the opportunity to ensure that the wider public sector attaches appropriate weight to the needs of looked after children and young people and prioritises them in decision making. SCRA recognises that it has a legitimate role in seeking to improve the life chances of children, both through the decisions made by Reporters in relation to referrals and in terms of organisational policy and strategic decision-making. We believe that other organisations throughout the public sector would share those aspirations. However, we do not believe that this is best expressed in corporate parenting terms. We believe that there are other, more effective, ways of more capturing that contribution and ensuring that all relevant public sector organisations work with corporate parents to deliver better outcomes.

We would suggest therefore that a three-tiered approach be adopted. The first tier would be made up of corporate parents, with the statutory definition of corporate parenting being drafted more tightly and restricted to those organisations from whom the Named Person could be drawn. This would ensure that the concept was linked appropriately to GIRFEC, while protecting the core corporate parenting definition and allowing the duties imposed on corporate parents to be clearer and more meaningful, both for those organisations exercising them and for looked after children themselves. The second tier (including SCRA and CHS) would consist of the children's services planning partners, who would be under a duty to ensure that the children's services plan demonstrated clearly how the wider children's services community would support corporate parents in the performance of their duties. The third tier would include the rest of the public sector, and we would suggest that their responsibilities could be best defined by imposing duties within the children's rights section of the Bill, perhaps framed similarly to the existing equalities duties or around a "best interests" requirement in relation to decision making. We believe that this would ensure that the different sections of the Bill are linked together in a more effective and holistic way and would allow everyone (public sector organisations and children alike) to be clear about roles, responsibilities and expectations.

Aftercare

We recognise that the transition points in a child's life can be particularly challenging. For children who are ceasing to be looked after, loss of support and security can render them particularly vulnerable. It is crucial therefore to ensure that continuing supports are provided and can be easily accessed to see children and young people safely through this stage of their lives.

Support for Kinship Care

We are supportive of the policy intent of these provisions, and the desire to bring security of placement to some children who are residing with kinship carers. We would caution however, that residence is often only one of a number of significant issues that may result in a child becoming looked after. It should not therefore be assumed that a successful application for this order will automatically result in the child not requiring to be subject to a Compulsory Supervision Order. Many children will continue to need compulsory measures of supervision to address other needs in their lives.



Other Reforms – Children’s Hearings

We are entirely supportive of the proposals in this section. We recognise that Local Authorities have a crucial role to play within the Children’s Hearings System and that the support they provide is highly valued by panel members and by other partners, including SCRA. It is important to acknowledge that this role goes beyond provision of support to panel members and encompasses involvement with children and families, engagement in community planning processes and a wider role within the child protection system.

SCRA has a clear and legitimate interest in the efficient and effective operation of the Children’s Hearings System and we are fully supportive of the proposals, which provide the National Convener with the power to determine the structure of Area Support Teams (ASTs) and place a duty on local authorities to continue to provide support to those ASTs.

The purpose of an AST is to provide high quality and consistent levels of support to members of the national children’s panel. It is right, in our view, that it is those who directly represent the panel community, and who will be held accountable to Ministers and to the Parliament over the successful discharge of their statutory responsibilities, who should have ultimate decision making authority. It is hard to see how the Convener and CHS can be held accountable for the discharge of their statutory functions if they do not have the final say over what the AST structure should look like.

Similarly, the Convener needs to have the ability to review and redefine the AST structure in order to maximise its ability to deliver the kinds of improvements to the system, to the experience of children and families and ultimately to outcomes, that were envisaged by the Parliament when the legislation was passed. This will enable the Convener and CHS to respond quickly to emerging issues and learning as the new structures bed in.

Given the important role that Local Authorities play, it will clearly remain important for the Convener to seek to engage with them and, wherever possible, to get their agreement to her preferred AST structure. However, we consider that ultimately the Convener needs to have the authority to determine that structure herself in the knowledge that local authorities are required to provide the same levels of support as they always have done. We note that Local Authorities will still be represented on the AST and will be guaranteed a voice.

Conclusion

While we are supportive of the majority of the Bill’s proposals, we do believe that there is scope for improvement to more effectively deliver the policy intentions by considering the legislation in a more holistic and joined-up way.

**SCRA
July 2013**

