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 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

Committee members will be aware that legal assistance for children in the Hearings System is being dealt with as part of the reform programme related to the implementation of the Children’s Hearings (Scotland) Act 2011. We will therefore be restricting our comments to Part One of this Bill.

Context - Children’s Hearings court proceedings

SCRA has a clear interest in this area of policy and in the effective and efficient operation of the civil courts system, as Children’s Hearings business accounts for a significant element of the work of the civil courts in Scotland.
In 2011/12, there were 3,795 proof hearings (where grounds for referral are sent to the Sheriff to be considered before a Hearing can dispose of the case, either because the child or relevant persons do not accept the grounds or due to the child being too young to understand them). It is notable that, despite an overall pattern of decreasing referrals to the Reporter, it appears that proofs are becoming increasingly complex and lengthy, often requiring more court time and resources to conclude.

2011/12 also saw the courts consider 990 appeals of Children’s Hearings decisions. We expect one of the impacts of the Children’s Hearings (Scotland) Act 2011 to be a further rise in the number of appeals, due to a combination of factors, including the granting of appeal rights to a broader constituency of individuals. There were also 9 appeals to the Sheriff Principal in 2011/12 and a further 2 to the Court of Session.

Sheriffs may also grant Child Protection Orders (CPOs) and applications for these are also on the increase, with 781 being made in 2011/12. There has also been an increase in applications to recall or vary CPOs.

Scottish Civil Justice Council

We are fully supportive of the proposal to create a single Civil Justice Council for Scotland and of the range of activities that it is suggested that it should undertake.

We agree that the primary focus of the Council’s workload over the initial years of its operation should be the implementation of the reforms recommended by Lord Gill. A number of those reforms are of relevance to the effective operation of the Children’s Hearings System, in particular the proposal to create an office of “district judge” within whose remit the majority of Children’s Hearings Court proceedings would sit. There are significant challenges as well as opportunities opened up by the implementation of these recommendations and SCRA therefore has a clear interest in the Council’s work in this area.

We welcome the flexibility for the Lord President to ensure that a range of relevant interests are represented on the Council by providing for a number of limited term “Lord President’s members”. As we anticipate the Council’s work in the first few years may relate closely to the implementation of the Gill reforms, we may consider putting ourselves forward as a potential Lord President’s member of the Council for a single term of three years at its inception. In addition, we trust that provisions will be put in place to allow the Council to engage appropriately and effectively with other stakeholders who may not be Council members at any stage of its work plan.

We note the intention for the Civil Justice Council to take over the responsibilities of the Scottish Committee of the Administrative Justice and Tribunals Council when the Lord President becomes responsible for Tribunals in Scotland. One of the tribunals under the AJTC’s jurisdiction is the Children’s Hearings System. However, there is currently no proposal that we are aware of to incorporate the Children’s Hearings System within a unified tribunals structure. Indeed, we have stated very clearly in our response to the Scottish Government’s consultation on Tribunals Reform (attached) that we do not believe it would be appropriate for the Hearings System to be incorporated into any such structure. We are unclear therefore whether it is intended for the Civil Justice Council to have any kind of responsibility for the Hearings System, either in terms of reviewing its operation (currently one of the AJTC’s functions) or producing its procedural rules (currently a responsibility of the Scottish Government). We would welcome some further clarification here.

Conclusion

We are supportive of the Bill and look forward to further discussions on the issues raised above as matters progress.

SCRA
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