

SCRA response to the Scottish Government's consultation

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

Our response will be focused on the proposal to transfer jurisdiction for children's hearings court business to the new post of summary sheriffs. We consider that the proposal has the potential to drive real improvements in the delivery of justice. However, we also have a number of concerns about the practicalities of such a change, and whether those potential improvements can actually be realised. In order to assist our consideration of the proposals, we have identified a number of requirements that the summary sheriff role would have to meet and have held these requirements in mind as we have considered the consultation paper.

We consider that, in order to be effective, summary sheriffs would need to be:

- Capable of highly effective case management, both in terms of their own skillset and having sufficient authority within the courts structure

- Available in sufficient numbers across Scotland to ensure proper access to justice and the timeous allocation and hearing of cases in both large urban, and smaller rural, courts
- Genuinely interested, engaged and experienced in the specialist areas of law for which they would be responsible
- Effectively quality-assured, both in terms of recruitment, appointment and ongoing performance

Contextual background and data

If the child and/or their relevant persons do not accept some or all of the grounds for referral which form the basis of the Children's Hearing, or the child does not understand the grounds, the Children's Hearing may direct the Reporter to apply to the Sheriff to establish the grounds for referral (under section 68 of the Children (Scotland) Act 1995). This was the case for 66.5% of initial ground Hearings and 5.9% of continued ground Hearings in 2011/12. Overall, 3,795 applications were concluded for 3,691 children in 2011/12 and 91.4% were held to be established by the Sheriff.

We have seen over recent years a pattern of proofs, where evidence is led, becoming increasingly complex and lengthy with more reference to European case law on issues such as contact and procedural fairness. We expect this pattern to continue.

Children and/or their relevant persons can appeal to the Sheriff against decisions made by Children's Hearings. In 2011/12, 990 appeals were made about 714 children. At appeal, 61% of the Hearings' decisions were upheld by the Sheriff. We expect the numbers of appeals to increase over the next few years for the reasons outlined below.

The Children's Hearings (Scotland) Act 2011 comes into force on 24 June 2013. We expect one of the impacts of the new legislation to be an increase in children's hearings court business, as the Act introduces new appeal rights, as well as new grounds for referral and legal processes which will be tested in court. We have estimated that there may be an increase in children's hearings court business of between 5-10% in 2013/14 as a result of the new legislation. The Act will also result in an increase of court business with very tight timescales attached. For example, appeals from decisions of Pre-Hearing Panels to deem or not to deem someone a Relevant Person need to be heard and disposed within seven days, while other appeal rights have three day timescales attached. This is likely to add to the pressure of business on the courts and will present challenges around the management of cases.

Management of cases

We are aware that in some court areas there are currently considerable delays to children's hearings court cases including particular problems with scheduling proofs and appeals. Such delays can have a significant impact on children and families, resulting in increased pressure and distress. It can also mean that sometimes children have to remain subject to what ought to be short-term emergency measures for a considerable length of time, with all the uncertainty that entails. Even relatively short delays can be significant in the life of a child.

We would strongly argue that there is a need therefore for children's hearings cases to be prioritised and dealt with expeditiously so that impacts on children can be minimised. The need for prompt decision making is increasingly being recognised via Scottish Government policy for Looked After Children and the Early Years. It would be helpful therefore if this Bill could support the policy drive by placing the need to proactively manage cases and reduce delays and adjournments at the forefront of any new judicial role. Note that this is not the same as the "simple procedure" to which we refer elsewhere in our response.

In relation to the criticality of good case management, we would draw the Scottish Government's attention to the Practice Note recently issued by the Sheriff Principal for Glasgow and Strathkelvin. It recognises the special status of children's hearings proceedings, which *"...concern children who appear to be vulnerable and may be in need of compulsory supervision. It is vital in the interests of the child that such referral proceedings are conducted and concluded as fairly, efficiently and expeditiously as possible"*.



The Practice Note provides for a three step approach which promotes active case management at an early stage by a group of five sheriffs who have particular expertise and knowledge of the hearings system, relevant statute and case law (including European case law). We are hopeful that this approach, developed in partnership between SCRA and the Sheriff Principal's office, will reduce delays and adjournments. Should it prove successful, we intend to seek similar arrangements in other Sheriffdoms.

Numbers

We are concerned that the proposals seem to envisage a limited number of summary sheriffs (which would, we imagine, include even fewer who would be specialists in children's hearings proceedings). As noted above, delays are a serious concern in relation to children's hearings court proceedings and if the summary sheriff role is to have a meaningful impact, there would need to be sufficient numbers across the country to enable cases to be allocated and heard expeditiously.

Jurisdiction and complexity

We note the suggestion that children's hearings court business should be shared in terms of jurisdiction between the Sheriff and the summary Sheriff. We question whether this arrangement suggests that the summary Sheriff would not be considered capable of hearing "complex" cases. The explanatory notes to the Bill say that the purpose of introducing summary sheriffs is "*...to relieve sheriffs of the burden of dealing with the more routine, low value and straightforward civil cases and to thus permit sheriffs to be available for more serious casework*". This does give the impression that the cases within the competence of summary sheriffs have been downgraded in importance, with the implication that they are less "serious". This is not helpful and seems to contradict the assertion elsewhere in the paper that: "*The Scottish Government is clear however that summary sheriffs are intended to be a new type of judge, and are not in any way intended to represent a downgrading of justice. They will be drawn from the ranks of practitioners who have been qualified for at least 10 years (the same requirement as for a sheriff) and have experience of the kinds of cases which will fall within the competence of the summary sheriff.*"

We would argue strongly that children's hearings court proceedings are by no means always routine and straightforward – they can be extremely challenging to hear and decide. It may be that a case raises a particularly complex point of law (and one of the recent trends within the hearings system is the increasing influence of European case law) or it may be that the complexity lies more in the need to carefully manage the case.

We would perhaps draw a distinction between non-contested court business, which represents a significant portion of the cases that go to proof or appeal, and those in which evidence is heard. Even if this distinction is drawn, the benefits that strong case management can bring include restricting the scope of cases in which evidence is heard, or even ensuring that some cases that would otherwise have progressed can be resolved at an early stage.

Permanence cases

We question why there is a distinction drawn between permanence cases and children's hearings cases, with permanence cases being left within the jurisdiction of sheriffs, while children's hearings cases would mostly be dealt with by summary sheriffs. These cases often involve similar issues and there is a concern that decision making may diverge if a sheriff is dealing with a permanence case and a summary sheriff is simultaneously dealing with a children's hearings proof or appeal. We question if permanence cases are seen as "more serious" than children's hearings cases, and if so, on what basis this conclusion has been arrived at.

Simple procedure

Finally, we assume that the "simple procedure" set out in sections 72 and 86 is intended to apply to children's hearings proceedings. The explanatory notes state that the aim is that "the summary sheriff role should offer the opportunity to evolve and develop a new style of judging in civil cases, with a greater emphasis on problem solving." This new style is not appropriate for children's hearings court proceedings where the sheriff's role is limited to the determination of fact. Whilst we want sheriffs to actively manage cases, as noted above, they cannot problem solve the case in the same way that would be possible for a



low value civil claim. The primacy of the children's hearing as the key locus for decision making on the child must be respected.

Conclusion

While we would like to be supportive of the proposals relating to summary sheriffs in the draft Bill, there are a number of questions we consider need to be answered before any more detailed proposals are brought forward. We would welcome an opportunity to discuss these matters with the Scottish Government with a view to identifying whether, and how, the summary sheriff role can meet the criteria we have outlined and deliver the kinds of improvements we would like to see realised.

SCRA
May 2013

