



## SCRA response to the Scottish Legal Aid Board'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 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

We welcome the opportunity to comment on the Scottish Legal Aid Board's draft Code of Practice. We are supportive of the majority of the content of the Code, but feel that there are some areas where additional content might be beneficial in order to focus it more clearly on Children's Hearings proceedings. At present it reads very much like a standard Code of Practice that could apply to a variety of different circumstances.

We note that the summary document contains a reference to the Code being drafted in a manner which will "enable subscription to the ethos of the Children's Hearings System", however the Code of Practice contains no reference to the ethos of the system or to anything that might help solicitors understand what it might be. We suggest that more content in this area would be a useful addition. In a similar vein, explanations of the different roles of SCRA and Children's Hearings Scotland would also in our view be helpful for solicitors working in the Hearings System.

As a general point, while we recognise that there may be a desire to distinguish between Children's Hearings and other types of hearing at which children may be legally represented, we would prefer "Children's Hearings" to the phrase "children's panel hearings" which is currently used in the draft Code. Though we appreciate that "children's panel hearings" may have widespread currency amongst solicitors.

It is important to distinguish between the role of a solicitor acting for a client in Children's Hearings court proceedings, and a solicitor taking part in a Children's Hearing. They are two distinct situations and require a different approach. For example, the role of a legal representative in a Children's Hearing is focused on enabling the client to effectively participate in the process. In court, the role is much closer to what might be regarded as a "traditional" solicitor's role – representing and advocating on behalf of their client (with the client taking more of a "backseat" role). It would be helpful for the Code of Practice to reflect that differentiation. This is where some content on the ethos of the system might be particularly helpful.

Finally, we would encourage the Scottish Legal Aid Board to consider a "child-friendly" companion to the Code of Practice, perhaps along similar lines to SCRA's "Your Rights" document, which sets out in simple terms what a child should be able to expect from their lawyer.

We also have a number of more specific comments on the Code.

### **Part 1**

We wonder whether the category of "consultant" should be included in the list of individuals.

Paragraph 1.5 refers to "firms and individual solicitors", a catch-all term of "registrants", meaning those who are on the register, could be used to simplify the Code.

### **Part 2**

We are aware that there have been some preliminary discussions about the need for solicitors to be members of the Protection of Vulnerable Groups Scheme in order to be registered to carry out Children's Hearings work. We would be supportive of this being a requirement for registration and suggest that it be incorporated in this section.

The Pre-registration requirements in Section 2.2.4 refer to solicitors demonstrating that they have observed Children's Hearings proceedings. While we recognise the value of a solicitor seeing a Hearing before actually being required to take part in one themselves, we believe that the most appropriate way for such observation to be facilitated would be for trainees to attend with a more experienced solicitor and observe them in action. We would not be able to support individual requests from solicitors to observe Hearings on an ad hoc basis. We would also suggest that Children's Hearings Scotland will need to be involved in discussions on this matter as it will be down to the discretion of the Hearing Chair to determine whether an observer is allowed in.

In paragraph 2.3.3.1, we would suggest that the Compliance Partner should be registered. The Code should also make clear how long the Compliance Partner is required to retain records for.

### **Section 3**

Use of the "registrant" or something similar, to refer to a solicitor or firm could simplify this section of the Code of Practice.

We would suggest that paragraph 3.2 could be worded as follows: "A solicitor is also an officer of the court and as such has obligations and duties to the Court. A solicitor should always act to a similar standard towards the Children's Hearing, recognising the quasi-judicial nature of the proceedings."



Likewise, we would suggest the following wording for paragraph 3.5.1: “A firm or solicitor shall have appropriate resources available, including suitably qualified staff and technical and administrative support, to give proper attention to each individual case involving children’s legal assistance, and to ensure that Children’s Hearings and court callings are attended by an appropriately qualified member of staff. A firm or solicitor shall not accept instructions where they are unable to adequately represent their client resulting in for example, inappropriate requests for employment of counsel or repeated use of external agents, or failure to attend a Children’s Hearing or court calling.”

In paragraph 3.3.4, the Compliance Partner should be required to record the details of any breach of standards and the corrective action taken.

Paragraph 3.7.2 states that consultation with an adult client in their own home should only take place in exceptional circumstances. We would suggest that this criteria be broadened to reflect the content of 3.8.2 in relation to children and provide for such consultation to take place where it is in the client’s best interests.

Paragraph 3.8 could be strengthened as follows: “A solicitor should ensure that instructions are taken and advice given in circumstances, as to manner of communication, and timing of meeting, which are conducive to the child/young person being able to give considered and proper instructions. Unless in exceptional circumstances, a solicitor should make arrangements to consult with a client at a date and time not immediately prior to the time of commencement of a Children’s Hearing and/or court calling, to ensure that instructions are taken and advice given without undue time pressure being placed on a child or young person and to ensure that the Hearing and/or court proceedings are not delayed.” Similar wording could be added to paragraph 3.7 as well.

We would suggest an addition to paragraph 3.9 to provide that solicitors should comply with legislation, best practice and Scottish Government guidance as regards child and other vulnerable witnesses, and in particular sharing of precognitions of child/vulnerable witnesses, so as to reduce the number of precognitions, and expeditiously providing Reporters with a list of witnesses and productions intended to be relied on.

#### **Section 4**

Paragraph 4.2.2 sets out a list of service standards. Standards 4 and 6 refer to providing advice to the client. We suggest that more explicit reference should be made to ensuring that such advice is provided to the client in a way that they are likely to understand using appropriate language. This is particularly important in relation to children. The Code should also include a requirement to take account of any disabilities or impairments the child might have.

In relation to standard 5, the word “timeously” might be better than “within a reasonable timescale”, so as not to cause delay to the proceedings, and so that matters can be dealt with by the Hearing, or the court as the case may be, in the best interests of the child

In standard 8, we would prefer “appropriate timescales” to “reasonable timescales”.

In line with our general comment above, we would suggest that Standard 9 separate out Children’s Hearings from court proceedings in terms of what is expected of solicitors in each situation.

Standard 12 refers to obtaining a provisional list of witnesses in court proceedings, but we would like the standards to make clear the corresponding obligation on the solicitor to provide their own list of witnesses to the Reporter. We would also suggest that where reference is made to undertaking expeditiously all necessary and reasonable preparations, it should be made clear that this is to be done bearing in mind the fundamental principle of the child’s best interests being central to proceedings.



We would suggest that Standards 14 and 17 make explicit reference to the need to adhere to statutory timescales. We would also suggest that compliance with these timescales might be an area the Board would be interested in monitoring.

In relation to paragraph 4.4.5.1, we consider that there should be explicit reference to Children's Hearings as well as court calling to ensure that there is no unnecessary delay in submitting ABWOR applications.

We would also like to see some principles deriving from the Ormston and Marryat research study – "Review of the Children's Legal Representation Grant Scheme: Research Report". We would suggest the following additions based on the report's findings.

- Young people and professionals gave examples where legal representatives had advised young people not to speak – solicitors should therefore be under a duty to promote children's participation in a Hearing.
- Reasons young people gave for feeling dissatisfied with their legal representatives centred on a perception they had 'just sat there' and had not represented their views adequately in the Hearing – solicitors should be under a duty to properly represent children's (or other vulnerable client's) views to the Hearing.
- There were examples of legal representatives making inappropriate contributions to Hearings and getting 'bogged down in legal jargon' – solicitors should be under a duty to communicate in a manner that will be understandable to children (and other vulnerable clients) both before, during and after the Hearing.

## **Section 5**

Paragraph 5.1 has some words missing after "establish and maintain..." We assume that reference to "a system of management" is intended.

We would suggest that there be some reference to the need for clear rules on data protection and information security. This will be particularly important in relation to ABWOR where the Hearing has identified a need for legal representation and where the solicitor may have information about an individual before that individual has agreed to become their client.

5.6.1 refers to "the nominated solicitor". It seems that this reference should be to the Compliance Partner.

## **Conclusion**

We welcome the Code of Practice and are supportive of its content, subject to the comments above.

**SCRA**  
**June 2012**

