

June 2015

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.

Summary response

SCRA welcomes the opportunity to contribute to the consultation. We wholly support the policy intention that lies behind the proposals and we note that the Hearings System plays a critical role in protecting children who experience and are affected by domestic abuse. SCRA is currently working with Scottish Women's Aid to develop specialist training for Reporters on the issue in order to ensure that practice and decision making is informed by the most up to date understanding of the issues.

Our response focuses primarily on the proposal to create an offence of domestic abuse. While this relates specifically to the criminal law, it should not be forgotten that changes to the law in one area can have unintended consequences elsewhere. Domestic abuse is one of the grounds for referral to the Reporter and the term is currently interpreted very widely within the hearings system. We do not disagree with the proposal but would encourage the Scottish Government to consider carefully what impacts the creation of an offence might have elsewhere in the legal system and in particular whether it might lead inadvertently to a narrowing of the definition of what constitutes domestic abuse within the hearings system.

Background and context

The Children's Hearings (Scotland) Act 2011 introduced for the first time a specific ground of referral to the Reporter on domestic abuse. While children who experience domestic abuse could always be referred and protected within the Hearings System, the new ground provides us with a more appropriate basis for intervention and a much clearer picture about the extent to which children and young people are impacted.

The 2011 Act came into force on 23 June 2013. From that point to March 31 2014, 3,275 children were referred on the ground that they had a close connection with someone who had carried out domestic abuse. Over a fifth (21.5%) of the children and young people referred on this ground were aged between birth and two years.

Detailed response

Domestic abuse offence

The term "domestic abuse" is not defined in the 2011 Act or anywhere else in statute, although it does appear in other legislation, for example section 11(7C) of the Children (Scotland) Act 1995 and section 1 of the Domestic Abuse (Scotland) Act 2011. In his chapter on "Children's Hearings" in the book "Domestic Abuse and Scots Law", Professor Kenneth Norrie says that domestic abuse

"...is one of these concepts that, however difficult to define precisely, tends to be easy to recognise. To ensure that it achieves its protective function the concept as it appears in the Children's Hearings (Scotland) Act 2011 ought to be given a wide definition."

He goes on to say that "The parameters of "abuse", though not set out in the 2011 Act, are likely to be very similar to the definition of "abuse" contained in the Protection from Abuse (Scotland) Act 2001. Section 7 of that Act defines "abuse" to include "violence, harassment, threatening conduct, and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress"; "conduct" is defined to include speech or presence in a specified place or area."

In relation to the 'domestic' nature of the abuse, he says "the definition given in other legislation is less helpful. The Domestic Abuse (Scotland) Act 2011 limits its operation to partner abuse and so excludes, for example, intergenerational abuse. Words and phrases need to be read within their own contexts and the protective nature of the Children's Hearings (Scotland) Act 2011 suggests a wider reading of 'domestic abuse' is appropriate than is given in the Domestic Abuse (Scotland) Act 2011. Abuse by a man of his daughter, witnessed by younger children, is as able to found the 'domestic abuse' ground of referral of the younger children to a children's hearing as his abuse of their mother. 'Domestic abuse', it is submitted, includes but is not limited to the abuse of one family member by another family member (whether or not they live together), or of one member of a household by another member of that household, or abuse committed by familiars within the child's home environment."

SCRA believes strongly that however an offence of "domestic abuse" might be defined in terms of an offence, the concept should continue to be defined for the purposes of the Hearings System in the broad terms advocated by Professor Norrie. However, we note that a narrower statutory definition contained within an offence might lead to arguments to restrict this interpretation of the domestic abuse ground. We would welcome an opportunity to discuss this with Scottish Government colleagues in order that the potential consequences can be fully considered.

Non-consensual sharing

We are broadly supportive of the proposal to create a specific offence of non-consensual sharing of intimate images. However, we note that the consultation paper does not consider in any detail how best to respond to such an offence where the offender, the victim, or both are children. Or indeed how the proposed offence might interact with the existing offences on making and distributing indecent photographs of children.



In any case, we suggest that the Scottish Government consider whether to add any new offence to Schedule One of the Criminal Procedure (Scotland) Act. The effect of this would mean that a child victim could potentially be referred to the Reporter under section 67(2) (a), (b) or (c) of the Children's Hearings (Scotland) Act 2011 if they were considered to be in need of compulsory measures of supervision to protect and support them.

Conclusion

We would welcome the opportunity to discuss with Scottish Government colleagues in more detail the implications for any proposed legislation on the children's hearings system, and in particular the potential impact of a new domestic abuse offence.

SCRA

19 June 2015

