

## 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

We welcome the opportunity to comment on the guidance for foster carers. The significance of the role they play in the children's hearings system cannot be overstated and this guidance is an important source of support and advice to help them navigate through what can often be complex and challenging legal processes. In line with our statutory function, our most significant comments are on sections and issues relating directly to the children's hearings system. However, we also have a number of comments on other parts of the guidance, and for ease of reference these have been attached to a copy of the Guidance document itself which we have submitted with this response. We hope these additional comments are useful and are happy to discuss them with Scottish Government colleagues in more depth if needed.

## **Chapter 1**

### **Section 1.2**

The sentence which reads:

*“The CPO is very short-lived being only 2 working days if it is not continued by a children’s hearing for another 6 working days it will cease to have effect”* could be more clearly worded as follows:

*“A CPO is short lived. It lasts initially for 2 working days until considered by a children’s hearing. It can last for a further 6 working days if the hearing think this is necessary.”*

### **Section 3.1**

The guidance jumps straight into the issue of capacity, which can be quite a tricky subject. This section might benefit from a brief introduction which summarises decision making by and for children more generally. The introduction would include decision-making by (i) children themselves, (ii) those with PRR’s, (iii) those delegated to make them within local authorities and (iv) foster carers.

## **Chapter 2**

### **Section 5.3**

The wording here, which refers to “a number of advantages” of Movement Restriction Conditions risks being seen as promoting their use in day to day situations. We do not believe that this is the correct approach. MRCs should be made in very limited circumstances and only where absolutely necessary.

### **Section 5.5**

We wonder if this section could/should be expanded a little to ensure that foster carers understand that if they have prevented or are considering preventing Hearing/Sheriff ordered contact due to risk to the child, they need to speak to the Social worker asap. We note that there is more detail later on in the Contact section but it could usefully be referenced here too. We suggest the following wording:

*“No. It is wholly inappropriate to do this. There are situations where contact – whether as a result of an order or not - may require to be restricted because of concerns for the child’s welfare. In urgent situations – e.g. a parent is drunk or the child is extremely distressed you have discretion not to adhere to the arrangements. If such a situation arises you should contact the social worker as soon as possible. See section 7 on Contact.”*

### **Section 7.9**

In line with our suggestion above, use of the phrase: “ you should be wary of using contact with a parent or family member as a means of control” is wholly inappropriate and risks confusing the clear message that needs to be given that using contact as a form of control is never acceptable.

### **Section 9.1**

Referral to a children’s hearing for a decision on access to electronic equipment should be an extremely rare occurrence indeed and it is probably not helpful to include it here lest it set unrealistic expectations about what matters ought to be referred to the hearing.

### **Section 9.3**

We suggest the addition of the following wording:

*“If the child needs to go to children’s hearings then posting any information online concerning those hearings may be a criminal offence. If you become aware of any such posting you should advise the child’s social worker immediately.”*

### **Section 12.1.2**

We suggest the following wording:

*“It should be possible to resolve any differences of opinion through discussion, particularly where the child is keen to take part in an activity. For children subject to a CSO, where parental consent is essential, and there is no other way of resolving matters, a hearing can be requested to discuss the need for a measure permitting the child to participate.”*



### **Section 12.3.1**

In relation to holidays outwith the UK and parental permission, this section states “Where that permission is unreasonably withheld, a children’s hearing or a court can make an order allowing the holiday to take place.” This is incorrect. A children’s hearing has no such power.

## **Chapter 3**

### **Section 14**

We suggest a new section headed: *“Information to be withheld by decision of a Children’s Hearing”*. Text as follows:

*“There are a range of options available to children’s hearings which restrict the information that is to be passed to parents or others. The most common situation is where a children’s hearing order that the place where the child is living is not to be disclosed to a parent or other family member. The options which are available to children’s hearings are discussed in more detail in Chapter 4.”*

## **Chapter 4**

### **Section 2.1**

It may be useful to include information here about how the foster carer can help to prepare the child for the hearing. SCRA produces a booklet for foster carers which contains exactly this information ([http://www.scra.gov.uk/sites/scra/cms\\_resources/Fostercarers%20eBook.html](http://www.scra.gov.uk/sites/scra/cms_resources/Fostercarers%20eBook.html)) and a link could be inserted into the guidance document. Perhaps the most important part relates to helping the child consider their views and how best to communicate them to the panel members.

At the end of Section 2.1, we suggest that the following text be inserted:

*“The children’s hearing normally consider it important for you to be present at the hearing so if you are unable to attend you should advise both the social worker and the reporter to the children’s panel.”*

### **Section 2.2**

We suggest the following redraft:

*“In addition to attending a hearing following an invitation as the child’s carer, the child may ask you to attend in a more formal capacity as their representative. If you agree to this then you have the right to attend the hearing. However it is possible that your role in providing information to the hearing as the child’s carer may conflict with your role as the child’s representative. If you think this is a possibility you should discuss the child’s request with them and with the social worker. If it is appropriate and you agree to it then you should be allowed to speak if the child wants you to. You do not have any other rights as such, your role is to assist the child to understand and participate.”*

### **Section 2.3**

We suggest that the final paragraph be deleted and that the first paragraph be replaced with the following text:

*“If you think that you have significant involvement in the child’s upbringing you can ask a children’s hearing to consider deeming you to be a “relevant person”. This would give you a particular legal status in the children’s hearing proceedings. Being a relevant person carries with it significant rights and obligations. These include:”*

We suggest that a section 2.4 on “Non-Disclosure and Children’s Hearings” be added here. While it may not strictly be about decision-making, this seems the most obvious place for it to be inserted. Non-disclosure is an issue that often concerns foster carers and there can be some confusion over the purpose of the provisions and the threshold that must be reached before they can be initiated. The crucial message is about the test for a measure being put in place – that disclosure of the information would be likely to cause *significant harm* to the child – and how that might include considerations around the security or stability of the placement. It will be important to stress that although a carer may



feel uncomfortable that the family will know their address, this is *not* per se something that the hearing can take into account. There is clearly a role for the local authority here, both in terms of explaining the purpose and application of non-disclosure measures, and providing support and reassurance to a carer who has concerns about their address being known to a family.

**SCRA**  
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