

25 September 2012

## 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 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

SCRA welcomes the opportunity to comment on this revised guidance for all children's and adult service practitioners working with vulnerable children and families where problem alcohol and/or drug use is a factor.

### General comments

We feel strongly that there is a need for the guidance to include clear and explicit references to the requirement for agencies, at all stages of their assessments, to consider whether a child may require compulsory measures of supervision, and whether therefore a referral should be made to the Reporter.

We would also suggest, in line with that comment, that there be reference to the role of SCRA, the role of the Reporter as a decision maker and the role of compulsory measures of supervision in ensuring the welfare and protection of vulnerable children. It is particularly critical for all professionals to understand when and why a child should be referred to the Reporter. In particular, the brief section on referral to the Reporter contained in paragraph 230, which refers to a “risk of significant harm” is factually incorrect and needs to be revised as a matter of urgency (see below for more detail).

## Specific comments

We believe that the Reporter should be mentioned in paragraph 96, and in paragraph 334.

In relation to paragraph 135 on information sharing, it is important to note that, where there is legislative authority for sharing information, consent need not be sought, though it is good practice generally to inform the individual concerned. For example, there is no need to seek consent before making a referral to the Reporter or where responding to a request for information by a Reporter investigating a referral. This general point is picked up in paragraph 145 but could usefully be referenced earlier as well. Likewise it should be included in the flow chart under paragraph 152.

The concept of implied consent is rather more complicated than is explained in paragraph 150. Consent may for instance be inferred from a person's actions and the facts and circumstances of a particular situation. It does not relate simply to the absence of any express objection.

One of the key practice points on p39 should include the question "May there be a need for compulsory measures of supervision?"

The flow-chart on p54 should include, at a number of points "Need for compulsory measures of supervision / referral to the Reporter".

The key practice points on p55 should include explicit reference to questions which would help establish whether compulsory measures of supervision may be required (e.g the seriousness of the concerns / non-engagement / lack of acceptance of help / willingness / ability to change / insufficiency evidence of required improvements via voluntary supports etc).

Paragraph 197 should include the following text; "...or indicate there should be consideration as to whether compulsory measures of supervision may now be required".

Paragraph 2 of the key practice points on p63 should include the following text; "... or may indicate a need for consideration of compulsory measures of supervision".

On page 63, the Reporter is described as "a service with responsibility for protecting children's welfare", and on page 73, the guidance refers to the social worker / local authority advising / seeking advice from the Reporter. However, in neither case is there mention of making a referral to the reporter, or any clear linking of the reporter to the role of deciding whether a child may require compulsory measures of supervision.

The section on p69 headed; "Difficulties in maintaining contact and seeing children" should include more explicit reference to the making of a referral to the Reporter to consider if compulsory measures of supervision are required, e.g.

- the inclusion of "... consideration should be given as to whether a referral should be made to the Reporter" in paragraph 221
- the inclusion of "... or refer to the Reporter for a decision as to whether compulsory measures of supervision are required" at the end of the first sentence in paragraph 223
- the inclusion of "... and the Reporter" after "practitioners should contact the social work service" in paragraph 224



As noted above, the reference to "compulsory measures of supervision" in paragraph 230 states that "The threshold for this kind of action is reached when there is evidence or suspicion of a lack of parental care or supervision, or abuse or neglect which may cause a child to suffer significant harm". This is not the case and mis-states the threshold for referral to the Reporter at a much higher level than it actually is. It is critical for all agencies to understand the appropriate thresholds for referral and the specific role that the Reporter and the Children's Hearings System plays. The legislative basis for referral to the Reporter can be found in s.53 of the Children (Scotland) Act 1995. In essence, that "compulsory measures of supervision may be necessary in respect of a child". We suggest that this paragraph is amended to more accurately reflect the circumstances where a child may be referred to the Reporter.

Also, in the "Mending relationships" section on p74 where the guidance considers the level of contact a parent should have with a child, reference is made to the local authority making the decision about family members continuing contact with children placed away from home. In fact, if the parents are not in agreement to reduce contact, compulsory measures are required and a children's hearing should be making decisions about levels of contact (allowing parents to be heard and to challenge decisions made).

Paragraph 10 on p95 should include the following text at the end of the second sentence; "... by way of compulsory measures of supervision".

The summaries on p100, p101 and p103 should include the following text at various points; "Consideration should be given as to whether compulsory measures of supervision may be required and a referral made to the Reporter".

## Conclusion

We would be happy to discuss further any of the points raised above.

**SCRA**  
**September 2012**

