

SCRA response to the Scottish Government / WithScotland 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

SCRA welcomes the opportunity to input to the refreshed national child protection guidance. While we are supportive of the majority of the content as currently drafted, we would suggest that there is scope for considerably more detail and information on the children's hearings system and on the need at all stages for practitioners to consider whether compulsory measures of supervision are required. The Hearings System is a critical part of the child protection system and provides a means by which early intervention may be achieved. For that reason, we believe that it merits greater visibility within the Guidance. To that end, our specific comments are as follows.

Para 12. We suggest that the following test be added: "It must be remembered that early intervention and Compulsory Measures of Supervision are not mutually exclusive, early use of Compulsory Measures of Supervision may help ensure compliance and prevent concerns from escalating."

Para 14. We suggest that the following text be added: “Similarly Children’s Reporters can only arrange for Compulsory Measures of Supervision to be put in place if children who might require Compulsory Measures of Supervision are referred to them.”

Para 40. We suggest that the following text be added: “It should be remembered that the threshold for referral to the Children’s Reporter is not the “significant harm” threshold but when it is considered that a child is in need of protection, guidance treatment or control and Compulsory Measures of Supervision requirement might be necessary. A child may be made subject to a Supervision Requirement even if not deemed to be at risk of significant harm.”

Para 54. We suggest that the following text be added after “...warrant an inter-agency Child Protection Plan”. “If legal safeguards are required to protect the child or ensure compliance then a referral must be made to the Children’s Reporter to allow consideration as to whether Compulsory Measures of Supervision are required.”

Para 72. We suggest that the following text be added: “It must be remembered that early intervention and compulsory measures of supervision are not mutually exclusive, early use of Compulsory Measures of Supervision may help ensure compliance and prevent concerns from escalating.”

Para 76. We suggest that the following text be added: “There are also certain circumstances in which the law allows / requires the sharing of information, e.g. when referring a child to the Children’s Reporter when there might be a need for Compulsory Measures of Supervision.”

It is also important to note that consent should only be sought when it is meaningful. For example where information sharing is required by law, seeking consent would give the wrong impression to a child or other individual that if they withhold consent, the information will not be shared. See also our comments in relation to Para 86 and the need for consent when there is legislative authority to share.

Para 86. We suggest the following text be added to the list of general principles: “It is not necessary to seek consent when there is legislative authority to share information, e.g. when making a referral to the Children’s Reporter.”

Para 107. The references to the Children (Scotland) Act 1995 will need to be replaced by references to the Children’s Hearings (Scotland) Act 2011 when that legislation goes live on 24 June 2013.

Para 110. Similarly, there will need to be reference to the Children’s Hearing (Scotland) Act 2011 here. We suggest the following wording:

“Sets out the legal framework for the care and protection of children by the imposition of Compulsory Measure of Supervision by the Children’s Hearing System and the Children’s Reporter. The Act sets out when referrals must be made to the Children’s Reporter, the mechanisms for the provision of Compulsory Measures of Supervision and the forms such measures may take.”

Para 160. We suggest that the following be added to the list of shared responsibilities:

- “understand when a child might be in need of Compulsory Measures of Supervision and when a referral should be made to the Children’s Reporter.”

Para 169. We suggest that the following text be added after “... established reporting mechanisms” “...and refer to the Children’s Reporter if there might be in need for Compulsory Measures of Supervision”.

Para 204. We would suggest that the section detailing the role of the Reporter needs to be expanded. We suggest the following wording:

“It is the role of the Children’s Reporter to decide if a child requires Compulsory Measures of Supervision. Anyone can refer a child to the Children’s Reporter and a referral must be made when it is considered that



a child is in need of protection, guidance, treatment or control and that Compulsory Measures of Supervision might be necessary.

“It is important to note that the ‘significant harm’ threshold used for child protection is not the threshold for referral to the Children’s Reporter, and that there is no need to seek consent before making a referral to the Children’s Reporter, or when responding to a request for information by a Reporter investigating a referral, as there is statutory authority to share this information.

“Factors to consider when deciding whether Compulsory Measures of Supervision might be required include:-

- the seriousness of the concern / risk to the child;
- whether the family understand and accept the areas of concern;
- their motivation and capacity to address these areas of concern;
- their willingness and ability to engage and cooperate with supports;
- whether supports provided on a voluntary basis have evidenced adequate improvements.

“On receipt of the referral, the Children’s Reporter will conduct an investigation, involving an assessment of the evidence supporting the ground for referral, the extent of concerns over the child’s welfare and behaviour and the level of cooperation with agencies, and make a decision as to whether Compulsory Measures of Supervision are required.”

Para 207. We suggest that this paragraph should start with: “It is important to note that only Compulsory Measures of Supervision can ensure enforcement and compliance, without Compulsory Measures of Supervision all supports are reliant upon the voluntary cooperation of families, even for children registered on the Child Protection Register.”

At the end of this paragraph there should be added: “Early intervention and Compulsory Measures of Supervision are not mutually exclusive. What is important is that the right intervention is provided at the right time. Compulsory Measures of Supervision at an early stage may help ensure compliance with interventions and thereby prevent problems from escalating. It is therefore important that all assessments include consideration of whether Compulsory Measures of Supervision might be necessary.”

Para 269. In addition consideration needs also to be given as to whether Compulsory Measures of Supervision might be necessary.

Para 284. Child Protection Plans should also identify whether Compulsory Measures of Supervision might be required.

Para 290. We suggest that the following text should be added to the end of this paragraph: “...and to whether Compulsory Measures of Supervision might be necessary and a referral should be made to the Children’s Reporter.”

Para 295. We suggest that in addition to the five questions on identification of risk, practitioners should also consider whether there might be a need for Compulsory Measures of Supervision.

Para 296. Similarly, when Compulsory Measures of Supervision might be required, a referral should be made to the Children’s Reporter.

Para 303. We suggest that the following text be added at the end of the sentence concluding “...to the family”: “...or a referral to the Children’s Reporter to consider Compulsory Measures of Supervision.”

Para 304. We suggest that the following text be added to the end of the paragraph: “...and to provide evidence in court proceedings, such as a criminal trial or a Children’s Hearing proof. In some cases early



discussion with the Procurator Fiscal and the Children's Reporter will be appropriate to ensure sufficient evidence is gathered at this stage to support later court proceedings."

Para 315. We suggest that a better heading would be "Emergency legal measures to protect children".

At the end of the first sentence in this paragraph, add: "... or until compulsory measures of supervision can be put in place by the Children's Hearing System."

Paragraph 351. The final bullet point should be amended to read:

- "considering whether there might be a need for Compulsory Measures of Supervision and whether a referral should be made to the Children's Reporter if this has not already been done."

Para 389. Child Protection Plans should also clearly identify whether there might be a need for Compulsory Measures of Supervision.

Para 404. We suggest that the flow chart should be amended to include

- a right pointing arrow below the initial "Concerns raised" box to "Might Compulsory Measures of Supervision be necessary?" With a further arrow to "Refer to the Children's Reporter"
- a right pointing arrow from the final "Child Protection Plan" to "If Compulsory Measures of Supervision might be necessary refer to the Children's Reporter"

Para 412. It is important to note that the Children's Hearing may also make decisions about contact.

Para 437. We suggest that the following be added at the end of the paragraph: "...and in all other cases consideration should be given as to whether Compulsory Measures of Supervision might be required to ensure compliance and access to the child and whether a referral should be made to the Children's Reporter."

Para 440. The following bullet point should be added to the key messages for practice:

- "Consideration should be given as to whether Compulsory Measures of Supervision might be required to ensure compliance and access to the child and whether a referral should be made to the Children's Reporter."

Para 468. The following bullet point should be added to the key messages for practice:

- "In most instances a referral should be made to the Children's Reporter to consider if Compulsory Measures of Supervision are required"

Para 557. At the end of the sentence concluding "...minimize future risk", the following text should be added "...and that consideration is given to whether Compulsory Measures of Supervision might be required."

Finally, we would also suggest that Compulsory Measures of Supervision be added to the glossary of terms at Appendix E, with an appropriate definition. And that details of the SCRA and Children's Hearings Scotland websites should be added to Appendix F.

Conclusion

Subject to the comments set out above, we are supportive of the Guidance. Given the extent of our comments and the need to ensure that the Hearings System and the Reporter are appropriately covered by the Guidance, we would suggest that it might be useful for us to nominate a representative to the Working Group.

SCRA
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