

7 February 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:

- That children who offend and children who are in need of care and protection are dealt with in the same system
- That the welfare of the child remains at the centre of all 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 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 respond to the Scottish Government's consultation on a subject that prompted a great deal of discussion and debate during the Parliamentary progress of the Children's Hearings (Scotland) Act 2011.

We are very aware of the concerns about a list of offences being a blunt instrument and not allowing for a more individualised assessment of each child's circumstances. Indeed, we made much the same points during the Parliamentary stages of the Hearings Act while arguing for the inclusion of a review and risk assessment process in the amendments being made to the Hearings Bill. There is little evidence to suggest that future risk can be predicted directly and exclusively from the commission of a particular offence - in fact there is much evidence to the contrary.

However, we acknowledge that the list of offences in these regulations must be set in context. It is important to consider not just the range of offences, but the length of time for which the disposal information is retained. In response to some of the concerns raised during the Stage 3 debate on the Hearings Act, the Minister for Children and Young People said: *"The Association of Chief Police Officers in Scotland is reviewing the weeding and retention rules that dictate for how long an offence is disclosed... That work holds the answer to the legitimate concern about how long information should be available for."*

The list of offences cannot be divorced from the rules about retention as the two elements sit in balance with each other and must be considered together in determining the proportionality and fairness of the system.

We are pleased to have recently been involved in extremely productive meetings with ACPOS on this issue and are, as a consequence, more relaxed than we might otherwise have been about the specific offences included in the list. A revised set of rules for weeding and retention which allows for an individualised assessment of the child's circumstances and future risk, as well as more limited periods for retention generally, will go a long way to resolving the concerns that we and others have had about the impact of the Rehabilitation of Offenders Act on children's lives and future prospects.

However, we note that the weeding and retention policy only applies to information on the Criminal History System and not information held on other police systems. Therefore, although the weeding of the offence from the Criminal History System will mean that it is not *required* to be included in a standard or enhanced disclosure certificate, if it is retained on other police systems it *may* be included as other relevant information at the chief constable's discretion. Therefore, in order to ensure a properly fair and proportional system, there needs to be a separate piece of work on the inclusion of such offences on a discretionary basis.

In relation to the offences listed for retention, we are sympathetic to concerns about some of the offences being very "broad spectrum" and covering behaviour that might range from relatively minor to quite serious. While retention of offences at the more serious end of the spectrum might be desirable, it might be considered disproportionate to also retain those at the less serious end. We are open to discussions with partners about how those concerns might be resolved.

We consider that fireraising should be excluded from the list. The reasoning given in the consultation document is that it can be a pre-cursor to more serious offending. However, there is some doubt about the evidential basis for that assertion and we suggest therefore that it be removed from the list.

On reflection we believe that the offences 1(d) to (m) and (q) should be included in the list. We are concerned that otherwise there might be an unintended consequence that an incentive would be created for such offences to be prosecuted instead of being dealt with in the Hearings System. We are confident that of those cases dealt with by the Reporter, only those offences that cause significant concerns would end up at a Hearing and potentially trigger retention by grounds being accepted or established.

Conclusion

We are broadly supportive of the list of offences in the draft SSI (subject to the comments above) so long as the crucial changes to the weeding and retention rules take place along the lines that we have discussed with ACPOS. Should that work not go forward for whatever reason, we would have serious concerns about the breadth of the list of offences in the draft regulations and would need to revisit our position. We encourage the Government so far as is possible, to agree the changes to the weeding and retention rules before laying these regulations in Parliament so that partners and legislators can consider the retention and disclosure system as a coherent whole.

SCRA
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