

## SCRA response to the Scottish Court Service'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 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 contribute to this important debate on the future structure of Scottish courts. SCRA has recently gone through its own process of reorganisation, moving to a Locality model in order to better manage workload and available resources. We therefore recognise the financial pressures that the whole of the public sector is having to deal with at present and the need for the Scottish Courts Service to look carefully at its facilities and model of service delivery in order to make the best use of available public money.

As a national organisation with a presence in every local authority area, we are well placed to comment on the potential impacts of the proposed reforms and have sought the views of our local staff on the specific proposals to close individual courts. We consider that the principle of local delivery of services is important and that this should take place wherever possible. While we have raised a number of concerns about the

potential impacts on children and families, we have also sought to identify constructive ways forward in a number of areas.

### **Context - Children's Hearings court business**

If the child and/or their relevant persons do not accept some or all of the grounds for referral which form the basis of the Children's Hearing, or the child does not understand the grounds, the Children's Hearing may direct the Reporter to apply to the Sheriff to establish the grounds for referral (under section 68 of the Children (Scotland) Act 1995). This was the case for 66.5% of initial ground Hearings and 5.9% of continued ground Hearings in 2011/12. Overall, 3,795 applications were concluded for 3,691 children in 2011/12 and 91.4% were held to be established by the Sheriff. We have seen over recent years a pattern of proofs, where evidence is led, becoming increasingly complex and lengthy. We expect this pattern to continue.

Children and/or their relevant persons can appeal to the Sheriff against decisions made by Children's Hearings. In 2011/12, 990 appeals were made about 714 children. At appeal, 61% of the Hearings' decisions were upheld by the Sheriff. We expect the numbers of appeals to increase over the next few years for the reasons outlined in our response below.

### **Challenges**

The Children's Hearings (Scotland) Act 2011 comes into force on 24 June 2013. We expect one of the impacts of the new legislation to be an increase in children's hearings court business, as the Act introduces new appeal rights, as well as new grounds for referral and legal processes which will be tested in court. We have estimated that there may be an increase in children's hearings court business of between 5-10% in 2013/14 as a result of the new legislation. This anticipated increase in workload across the country will need to be factored in to any decisions about new court structures and capacities of particular court locations to absorb additional business. The Act will also result in an increase of court business with very tight timescales attached. For example, appeals from decisions of Pre-Hearing Panels to deem or not to deem someone a Relevant Person need to be heard and disposed within seven days, while other appeal rights have three day timescales attached. This is likely to add to the pressure of business on the courts and will present challenges around the management of cases.

We are aware that in some court areas there are currently considerable concerns about delays to children's hearings court cases and problems with scheduling proofs. We would be concerned that concentrating court business in a smaller number of locations could exacerbate that situation and result in additional delays. Such delays can have a significant impact on children and families, resulting in increased pressure and distress. It can also mean that sometimes children have to remain subject to what ought to be short-term emergency measures for a considerable length of time, with all the uncertainty that entails. Even relatively short delays can be significant in the life of a child and it will be important to ensure that these issues have been considered and allowed for when making specific decisions about local courts.

In making decisions about court structures, facilities and locations, we are pleased that the consultation paper recognises that children and families attending court (for example for children's hearings business) have particular needs and requirements that ought to be considered. In addition to speed of process and timeliness of decision making as discussed above, we would identify the following key considerations:

- Child and family friendliness of facilities
- Privacy
- Safety
- Accessibility

We agree that there is a need to balance the standard and quality of facility with the distance a child or family may be required to travel, but note that some of the smaller local courts currently offer better



facilities and a more child/family friendly environment than the larger, busier locations. However, we acknowledge that this is not always the case and we are aware that larger facilities may offer greater flexibility and be more adaptable in the longer term.

We consider that greater centralisation of children's hearings court business will also have impacts in terms of requiring additional travel for children, families, witnesses and Reporters. It may be that the perceived savings to the public purse of travel time in relation to Sheriffs, Clerks etc are counteracted by additional costs for other agencies. These costs are likely to be particularly significant where court business is moving from an island location to the mainland. It is also possible that the further people are required to travel, and the more complex those travel arrangements need to be (multiple buses or trains for example, or in the case of island communities – the ferry), the greater the likelihood of delays and non-attendance.

In addition, attendance at court can be a stressful experience, particularly for children. Reporters often strive to minimise this by offering children the opportunity to visit the court in advance, but the further away the court is from where the child resides, the harder this is likely to be to arrange.

## **Opportunities**

Notwithstanding some of the challenges that we have outlined above, we recognise that this consultation presents an opportunity not simply to look at number and location of Scottish Court Service facilities, but to take a broader and more holistic look at how court services are delivered in Scotland in a way that facilitates access to justice and efficient management of resources.

In this context, we would particularly like to draw attention to the Dundee model, which involves Children's Hearings court proceedings taking place, not in the court itself, but in SCRA's purpose-built Hearings Centre. This has the advantage of proceedings taking place in an environment which is more obviously child friendly and with which the child and family are already familiar. We would suggest that, where SCS proposes to withdraw from local courts, serious consideration should be given to holding children's hearings court business on SCRA premises where available and where this would offer a better experience for children and families. We welcome the engagement that has already taken place with SCS on this issue and look forward to further discussions.

We also consider that there may be opportunities in the longer term for SCRA, SCS and others to look at the possibility of sharing multiple-use facilities in some local areas. These could be utilised to hold children's hearings, court business and possibly other proceedings and would enable services to continue to be delivered locally in situations where it might not be possible for any individual organisation on its own.

Finally, we note that it is not possible to divorce this process from the need to look carefully at how business is managed in Scotland's courts and to ensure that the systems that are in place are working effectively and efficiently. We recognise that there are reforms in the pipeline and consider that, going forward, prioritisation and management of cases will be absolutely critical if the potential impacts of fewer local court facilities are to be mitigated. We would strongly argue that there is a need, against this background of increasing workload pressure, for children's hearings cases to be accorded an appropriate status and priority which ensures that they can be dealt with expeditiously and that impacts on children can be minimised. The Practice Note currently being developed in Glasgow by Sheriff Alan Miller may be a useful example here and we look forward to seeing what impact it has. We also note that opportunities to reduce delays by electronic transmission of documents between SCRA and SCS are currently being explored, though this will need an amendment to the Court Rules that are being developed by the Sheriff Court Rules Council at present.

## **Conclusion**

We recognise the need for SCS to undertake this piece of work, and hope that the needs of children and families can be appropriately factored in to any decisions about location and provision of court services



across Scotland. We encourage SCS to continue to work with partners on potential alternative ways of meeting these needs, so far as is possible in the current financial climate, and would welcome further, more detailed discussions about specific proposals relating to individual court locations.

**SCRA**

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