

SCRA response to the Justice Committee's call for evidence

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

This response is restricted to the provisions in Part 3 of the Bill, which would grant Scottish Ministers the power, by secondary legislation, to incorporate other tribunals, including the Children's Hearings System, into the unified Scottish Tribunals System at some future date. We are deeply concerned that the Hearings System has not been excluded from the scope of this proposal. We believe this evidences a lack of understanding of the complexity and sophistication of the Children's Hearings System and what would be required in legislative terms to bring it within the new structure in a way that would not risk undermining its key strengths and principles.

We would like to make clear that making such an exception to the section 26 powers would not preclude the Hearings System being incorporated into the unified structure at some future point, if such a move

could be shown to be of benefit to children and families. It would simply recognise that secondary legislation is an inadequate vehicle to achieve such a significant change for Scotland's largest tribunal.

It is important to recall that the Children's Hearings (Scotland) Act 2011 has only recently come into force (on 24 June 2013). This legislation brings into being a number of structural reforms to the Hearings System, including the creation of a National Convenor (supported by an NDPB – Children's Hearings Scotland) to take responsibility for recruitment, appointment, training, support and monitoring of Panel Members. We believe strongly that the 2011 Act and the structure it creates is the right vehicle for bringing forward the necessary reforms to the Hearings System and driving improvements in support, training, decision making and outcomes.

It is notable that the Children's Hearings (Scotland) Act 2011 was the result of a wide-ranging and broad-based consultation before the legislation even reached the Parliament. It was then vastly improved by the extensive consideration it was given by Parliamentarians and stakeholders throughout its passage, and by the additional time for consultation, debate, discussion and detailed scrutiny which the primary legislative route guarantees. The whole process required almost three years to conclude and it is arguable that bringing the Hearings System within the scope of a unified tribunals structure would be an even more significant change, requiring just as much complex legislative provision and detailed consultation and discussion with stakeholders. Based on the experience of the 2011 Act, it is hard to see how it would be possible or desirable to use the far more limited and truncated processes and procedures involved with secondary legislation to achieve this. There would be huge impacts for children, families, panel members, reporters and other Hearings System partners. As such, we believe strongly that any proposal should be subject to the full scrutiny of the Scottish Parliament via the primary legislative process.

While we take some reassurance from the Scottish Government's assertion that there is no intention at the current time to make use of this power in respect of the Hearings System, we are concerned that the simple existence of such a power will lead to further uncertainty and concern for panel members and other Hearings System partners at a time when everyone should be focusing on delivering improvements and bedding in the new structures provided by the Children's Hearings (Scotland) Act 2011. Furthermore, the existence of such a power would risk substantially undermining the credibility of Children's Hearings Scotland at a time when that body has only recently taken up its responsibilities.

SCRA continues to believe strongly that the unique strengths of individual tribunal systems should be fully considered on an individual basis before any decisions are made about integration into a broader tribunals structure. This would require extensive consultation with Hearings System partners and with service users. In particular, it would be necessary to show evidence that incorporation within a unified structure would deliver clear benefits for the children and families within the System. One of the main drivers for the 2011 Act, and for many changes to policy and practice within the system, has been to improve the ability of children and young people to participate in the process. This goes beyond the "in-hearing" issues and ensures that communications, letters, leaflets and face to face contact with children takes place with their interests and needs at its heart. We are concerned that this focus would be lost in a centralised administrative structure that deals with a range of different tribunals.

As the Administrative Justice and Tribunals Council (AJTC) said in its report¹, which originally proposed the creation of a unified Scottish Tribunals Service "...the size and sophistication of the system, together with the substantial reforms to their governance currently progressing through the legislative process, are such that it is difficult to see what the Children's Hearing system, or its users, would gain through being fully incorporated into our recommended governance structure".

We agree with that assessment and note that some of the most important ways in which the Hearings System differs from the rest of the Scottish tribunals include:

¹ *Tribunal Reform in Scotland: A Vision for the Future*



- The Children's Hearings System provides a forum for making decisions about the need for state intervention in the life of a child, it is not a system of administrative justice or of dispute resolution
- Unlike some other tribunals, Children's Hearings are the key locus for decision making in the system. They do not exist to review decisions already made by other bodies
- Children and young people do not approach the Hearings System themselves, they are referred first to the Reporter by frontline services (mainly the police and social work), then by the Reporter to the Hearing itself based on a determination of the need for compulsory measures of supervision
- The Children's Hearings System is a holistic and end-to-end system involving a number of organisations and individuals working closely in partnership, with a clear focus on producing better outcomes for vulnerable children
- This enables an on-going consideration and review of a child's needs and circumstances over a period of time rather than simply providing for a one-off decision
- Unlike other tribunal members, the 2,600 Children's Panel Members are unpaid, leading to significant and necessary differences in the way they are recruited, trained and supported
- The sheer volume of the case load dealt with by the Hearings System sets it apart from many other tribunals – in 2011/12 there were 40,708 Children's Hearings in Scotland, involving 18,836 children
- Due to their specialist nature, both SCRA and CHS are able to take a very clear focus on the best interests of children and on children's rights. There is a risk that this focus could be diluted if the Hearings System were to be subsumed within a larger structure.

As previously noted, Panel Members are unpaid, setting them apart from other tribunal members. It is important to note that they have strongly resisted any suggestions in the past that they should be remunerated. It is hard to see how a unified Tribunals Service would be able to incorporate Children's Panel Members into a centralised support structure without having to make special arrangements for recruitment, training and support, which would obviate to a large degree any efficiencies which might otherwise be gained.

The structures put in place by the Children's Hearings (Scotland) Act 2011 are specifically designed with the particular status of panel members in mind and therefore are likely to represent a much better option for providing the necessary supports and for driving a process of continuous improvement in the System. Those structures also reflect the particular need for panel members to be supported at a local level, by local authorities, a factor to which Ministers and parliamentarians gave great weight during the passage of the 2011 Act. There is no provision within the proposed unified system for this local and more specialised support structure to exist, or for local authorities to have a role. It is hard to see how a central administrative structure could provide anything other than a lesser standard of service to the volunteers upon whom the Hearings system depends.

In addition to the unique status and particular needs of panel members, there are also specialist roles within the Hearings System that simply do not exist in other tribunals. During the extensive debates over the draft Children's Hearings Bill, there was considerable discussion around this issue. At the conclusion of that process, Ministers recognised the value of the holistic role of the Reporter and of SCRA's highly experienced and specialist support staff. It was agreed that these roles were especially important given the dynamic and non-linear nature of the Hearings System, which makes it unlike any other tribunal. Again, it is hard to see how such necessary specialist roles could be duplicated within a homogenous administrative structure, certainly without incurring significant additional costs and thereby removing any justification for making such an attempt.

Furthermore, we understand that policy responsibility for the unified tribunals system would rest with the Scottish Government's Justice Directorate. However, we believe that there are sound reasons why sponsorship of the Children's Hearings System sits with the Health and Social Care Directorate and within the specific portfolio of the Minister for Children and Young People. It is of particular note that the vast majority of cases dealt with in the Hearings System relate not to juvenile justice but to welfare concerns. As such, the Hearings System is an integral part of Scotland's child protection system.



Responsibility for GIRFEC, early years, child protection and youth justice also rests within the Health and Social Care Directorate and it would be entirely inappropriate for specific policy responsibility for the Hearings System to be vested elsewhere or to be removed from the portfolio of the Children's Minister. This would risk a potentially damaging policy disconnect from other aspects of children's services.

We recognise that there are efficiencies to be gained by reforming the tribunals sector, and are broadly supportive of the reform agenda and of the need for all public bodies to identify opportunities for savings and efficiencies. In fact, we note that significant efficiencies have already been realised within the Children's Hearings System by SCRA and Children's Hearings Scotland driving forward a shared services agenda and a shared focus on improving structures, decision making and outcomes for children. We consider that there is no bar to similar arrangements being made with the Scottish Tribunals Service where opportunities to make efficiencies can be identified. This provides an opportunity to make savings without requiring the disruptive structural reorganisation which would be required to incorporate the Hearings System into the new Tribunal Service.

Conclusion

We believe strongly that the Bill should be amended to specifically exclude the Children's Hearings System from the scope of the section 26 powers. We make clear that this does not preclude the Hearings System being incorporated into the unified structure at some future point, it simply recognises that if such a move were to be proposed, it would require the time for consultation, debate, discussion and detailed parliamentary scrutiny which the primary legislative route guarantees. We urge the Scottish Government to take the opportunity to recognise this, and to provide clear and unambiguous reassurance that the lengthy process of review to which the Hearings system has been subject over the last eight years has now been concluded and that the reforms contained within the Children's Hearings (Scotland) Act 2011 will be given time to take effect. Such reassurances would allow all partners to move forward together and remain appropriately focused on improving outcomes for children and young people.

SCRA
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