

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 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 comment on the Domestic Abuse (Scotland) Bill.

The Children's Hearings System plays a critical role in protecting children who experience and are affected by domestic abuse. SCRA has worked with Scottish Women's Aid to deliver specialist

training for Reporters on the issue, in order to ensure that practice and decision making is informed by the most up to date understanding of the issues.

The Children's Hearings (Scotland) Act 2011 introduced for the first time a specific ground related to domestic abuse. This has allowed SCRA to report on the numbers of children referred to the Reporter on this ground. In 2015/16, 2,742 children were referred to the Reporter because of concerns that they had been exposed to domestic abuse. Children were more likely to be referred on this ground in their first year of life than at any other age and 22.3% of those referred were aged between birth and two years. This data highlights the vulnerability of children to experiencing this kind of abuse, and the particular vulnerability experienced by very young children.

We are therefore supportive of the Scottish Government's intent to create a specific domestic abuse offence. However, we would like to see more recognition given to children as victims of domestic abuse in their own right, rather than simply as adjuncts to abuse experienced by an adult. We do not consider that a review of section 12 of the 1937 Act will be an effective way of addressing these concerns. We have therefore suggested that the Bill should include a specific offence of abusive behaviour towards a child in the context of domestic abuse.

Detailed response to questions

Q1, 2 and 3

We agree with the relatively wide scope of offence and that physical and psychological abuse can all be part of the dynamic. However, we seek reassurance that financial abuse is intended to be covered by the provisions of section 2.

Q4

As recognised in the Scottish Government's Equally Safe strategy, child survivors of domestic abuse experience domestic abuse as 'coercive control' of the whole family environment, not just the mother. Domestic abuse constitutes a form of abuse by the perpetrator against the child and children can often be targets within the context of domestic abuse. Notions of 'witnessing' do not fully describe the variety of ways in which children experience domestic abuse – for example, children can be directly physically involved, trying to protect the victim, or they can be used as part of the domestic abuse itself.

We understand that the Bill includes an aggravator to reflect the seriousness of involving a child in the abuse of a partner. While this is welcome, SCRA and others have argued that it would be preferable for the law to recognise clearly that involving a child in the abuse of a parent is itself abusive of the child. The child should be recognised as a victim of domestic abuse in their own right in a way that cannot be achieved by an aggravator.

It is notable that the offence against the adult victim can be established with evidence of abusive behaviour directed towards a child of the adult (section 2(2)(b)). It seems anomalous for this to be the case, without recognising the child's experience of abusive behaviour as a separate offence.

We note that part of the rationale behind the introduction of a specific domestic abuse ground in the hearings system was a clear view that children's experiences of domestic abuse should be recognised as such. The change resulted from the understanding that using either Section 12 of the Children and Young Person's Act (1937) or lack of parental care as grounds could render the impact of domestic abuse on both mother and child invisible. Instead of holding the perpetrator to



account for his actions, the mother might be wrongly perceived as failing to protect her child. We are therefore concerned that using, even a reformed, s12 offence will not offer sufficient protections to child and mother and are unsure about how it would operate in practice. Indeed, it could be seen as a retrograde step, leading to less joined up policy and practice between the criminal and civil justice systems.

In contrast, incorporating the harm done to children by domestic abuse in the Domestic Abuse Offence puts the focus on the perpetrator's behaviour. It also provides an opportunity to more effectively recognise children's experiences of domestic abuse and makes it more likely that children will receive the services and support they need to recover from their experiences.

While we recognise concerns about the experiences of children as witnesses in the criminal justice system, we note that there is every possibility that children will continue to be witnesses to the abusive behaviour directed towards them or an adult and there is therefore an imperative to effect recommendations in the Evidence and Procedure Review for the increased use of pre-recorded evidence. We also believe that there is a value to being acknowledged as the victim of an offence, particularly in circumstances where the child may bear a significant burden of guilt for their involvement (however unwilling or unknowing) in the abuse of a parent. The comments from young people involved in the Voice Against Violence project have made this point far more eloquently than we can.

Q5

It will be particularly important for all those involved in reporting, investigation and prosecution of the offence to be fully trained and for information to be made accessible to victims and those working with them.

Q6

We agree that the accused should be prohibited from personally conducting their own defence and particularly from examining and cross-examining child and other vulnerable witnesses. However, we note that criminal proceedings are not the only circumstances where victims and vulnerable witnesses can be subject to personal examination by an individual alleged to have abused them. We are currently working with the Scottish Government and the Scottish Civil Justice Council to give practical effect to s.185 of the Children's Hearings (Scotland) Act 2011, which allows for rules of court to be made enacting similar prohibitions and protections in children's hearings proof proceedings.

Q7

We agree with the proposal to require a court in a domestic abuse case to consider the making of a non-harrasment order. However, we would note that one of the consequences of not recognising the child as a victim in their own right is that they could not themselves be directly protected by a NHO.

In addition, section 48 of the Criminal Procedure (Scotland) Act 1995 provides that where a person is convicted of certain offences (mainly offences listed in Schedule 1 to that Act) a court may refer to the reporter a child who was the victim of such an offence or a child who is or is likely to become a member of the same household as the perpetrator or victim of the offence. In such circumstances, the offence is certified and is a ground established for the purposes of the Children's Hearings (Scotland) Act 2011. We recommend that the list of offences in section 48(2) is extended to include an offence of domestic abuse, perhaps where there is an aggravation in relation to a child. Clearly if there were a separate offence of domestic abuse against a child, that



could be included in Schedule 1 to the 1995 Act. Such a change would bring about better co-operation between the criminal and child protection systems. Further, it would be helpful if an application for a non-harassment order could be a situation in which a court could refer a child to the Reporter. Currently section 62 of the Children's Hearings (Scotland) Act 2011 relates only to civil proceedings.

SCRA
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