



SCRA Consultation Response – Shaping SLAB's corporate and equalities plans

Question Title 1.

About your organisation

Please tell us the name of your organisation:

The Scottish Children's Reporter Administration (SCRA)

We welcome the opportunity to respond to this consultation.

The Children's Hearings System is Scotland's distinct statutory system, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.

In the Children's Hearings System:

- the needs of children or young people are addressed through one holistic and integrated system which considers all the circumstances of the child and the child's welfare
- 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
- the rights of children and families are respected

The role and purpose of SCRA is to:

1. Make effective decisions about a need to refer a child/young person to a Children's Hearing
2. Prepare for and participate in court proceedings where statement of grounds or Hearings findings are appealed and ensure the wellbeing of children and young people – particularly vulnerable witnesses – are protected throughout the court process
3. Support Panel Members (though we are not involved in making Hearing decisions) and ensure fair process in Hearings
4. Support children, young people and families to participate in Hearings
5. Disseminate information and data to influence, inform and reassure
6. Provide premises for Hearings to take place
7. Work collaboratively with partners to support and facilitate the Getting it Right For Every Child (GIRFEC) agenda.

SCRA's vision of service is that: We operate within Scotland's Children's Hearings System to protect and support the country's most vulnerable and at risk children and young people identified as requiring the full protection of the law due to difficulties, challenges and risks they face.



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Question Title 2.

The focus of our current strategic objectives

We are currently considering our strategic objectives and the focus of our corporate plan. We would welcome your views on the focus of our objectives and plan.

Our current purpose is:

To manage and improve continuously publicly funded legal assistance and to advise Scottish Ministers on its strategic development for the benefit of society

Our current strategic objectives are:

1. To deliver improvements to legal aid processes that increase efficiency and improve the experience of system users and customers.
2. To advise Scottish Ministers on strategic development of legal assistance and its contribution to a Scotland in which rights are supported and disputes are resolved fairly and swiftly
3. To ensure that our organisation has the culture and capability to be responsive to our customers, the justice system and developments in legal and advice sectors.
4. To build and maintain effective and collaborative relationships with the legal and advice sector and our public sector partners as we seek to achieve our purpose and contribute to wider Scottish Government aims.

You can find out more about the Scottish Legal Aid Board and what we do on our [website](#).

We would welcome your views on the focus of our current purpose and strategic objectives.

Because the children and young people coming to the Children's Hearing require the full protection of the law in respect of statutory intervention in their lives they also require to be able to access the full protection of the law in respect of their rights, when that is relevant and proportionate to the situation they are in.

Legal Aid can be an adult, alien world for children and young people, and unless someone holds their hand through the process of contacting, meeting and instructing a solicitor this can seem daunting and difficult. Consequently we think that access to legal advice and/or representation needs to be simplified and widened, so that the children and families who require legal advice and/or representation a very difficult time in their family life can easily access the level of support they need. There is possibly a distinction to be made between more open access to legal advice and focussed / funded legal assistance. For these differing levels of support there may need to be different criteria for eligibility – and where there is an eligibility criteria then there should be a robust application of this. If the state has decided to intervene in the life of a family then any financial burden to the family as a direct result of that decision should be kept to a minimum as far as is possible. This has to be balanced alongside the need for the legal aid received by a family to be commensurate with the situation they are in - there needs to be an effective way to monitor where representation is required and where representation needs to be through instruction of an Advocate.

SCRA also thinks that legal aid work carried out by solicitors within the Children's Hearing System should be





recognised as a more specialized service. Solicitors registered to provide legal services in this area of practice are generally dealing with children and young people who have multiple vulnerabilities; who may have suffered trauma and who may also have a complex family background.

It is imperative that there is a robust system of registration in place to ensure that children and families are only represented by legal professionals who can demonstrate both knowledge and application of the ethos of the hearing system and who place the effective participation of the child at the centre of the process. They must have knowledge of child development as well as children's rights and be able to communicate effectively with children.

Consideration should be given to the report of the Independent Care Review which says on page 42 of **The Promise**:

'Everyone involved in The Children's Hearing System must be properly trained in the impact of trauma, childhood development, neuro-diversity and children's rights. That training must be comprehensive and regularly reviewed. Those training requirements must also be required for all the different and various professionals who appear at Hearings, including legal representatives.'

The solicitors available to work with vulnerable children and young people should have the appropriate skill set, should be appropriately trained and subject to continuous professional development and should work within the ethos of the Children's Hearing. This work should be accredited as a result of its specific requirements in respect of training, knowledge and understanding and that accreditation should be independent and external. We think this goes beyond the current [Code of Practice](#).

Within the Children's Legal Assistance Scheme for the Children's Hearing System the approach of solicitors can still be quite binary – this can in part be explained as the system deals with young people as a result of offending behaviour under the criminal standard or proof as well as other behaviours by or towards child under the civil standard of proof. We also ask solicitors within the Children's Hearing System to carry out one task in court and a different task within the Children's Hearing. Across Scotland solicitors can and do move between these different tasks seamlessly – representing their clients effectively within the ethos of the system.

Going forwards it maybe that there needs to be further scope for mediation and problem solving built into the support available to families involved in the Children's Hearing System. All professionals needs to be encouraged to avoid their involvement becoming proceduralised very quickly. We would ask SLAB to consider how they could promote and encourage a problem solving approach aimed far more on communication and understanding. This is particularly relevant for a child in the Children's Hearing System when their case has to be dealt with in Court – where the adversarial approach of lawyers can at times cause unnecessary and at times significant delay.

There should be a streamlined, clear and robust system for children and young people to complain about the service they receive and this should also be independent of the individual firms providing the legal aid service. The current complaint system is cumbersome and complex. Any new complaint process should be quick and should have clear and definite sanctions which can be explained to children, young people and parents and relevant persons – and





which will be imposed by SLAB, if they are required. In addition to a specific robust complaints process there should be a system to gather continuous feedback from children, young people and their parents with an aim to improve service delivery by focussing on ethos, role and the information / skills solicitors need in order to work within the Children's Hearing system, as well as the information children and families need in order to decide whether a solicitor would help them at their Children's Hearing.

There should also be a streamlined, clear and robust system for professionals to complain about the approach, behaviour or professional conduct of a solicitor, or of counsel, within the Children's Hearing System. Complaints should not be deterred, or not completed because the complaints system is too cumbersome and takes too long to act. This complaints system may need to be jointly operated by SLAB, the Law Society and perhaps the Faculty of Advocates so that any investigation is not limited, gathers and hears all the available evidence within a complaint and should have clear and definite outcomes which are both taken and communicated. There has always been tension between the welfare of the child being paramount and the role of the solicitor in protecting the interest of their client, but the Code of Practice is clear at 3.3:

'When conducting proceedings before a children's hearing, a solicitor, whilst fulfilling his professional duties to his client, shall respect the ethos of the children's hearing system and acknowledge that decisions should be based on sound reasons, with the best interests of the child being paramount, and that the effective participation of all the parties involved should be promoted.'

Not every young person at a Children's Hearing will require a solicitor. Many will have questions about the law, their circumstances and their options – or will want to get additional information about the situation they are in. There are currently third sector and charitable organisations who offer this service - [CLAN Child Law](#) and the [Scottish Child Law Centre](#), but the legal aid board should be able to signpost and direct people to the level of advice and support they require. For example, it might be that an advocacy worker rather than a solicitor would be the best support for a child – this may require SLAB and the Scottish Government to give some thought to how reciprocal signposting of services can best happen.

In order to do this, we think there needs to be an investment in SLAB's online provisions and service, as well as investment in advice available over the phone. Investment in online service provision can make the services more accessible to users with specific equalities considerations – including where there are language barriers or physical barriers. It could also mean that online service provision is tailored specifically to users – so that there could be information written for children and young people.

SLAB's online presence is currently targeted at solicitors – but if advice and information features more prominently in SLAB's strategy then consideration of some different targeting would be appropriate.





Question Title 3.

The focus of our current outcomes

We are currently collating sources of evidence that will inform the review of our outcomes. This includes your views on the focus of our current outcomes.

Our current outcomes are:

1. Our diverse workforce is aware and understands equality and diversity and the impact of this in helping us manage and deliver our business.
2. Minority ethnic people and disabled people experience equal access to quality accessible services and information about legal aid.
3. System users and legal aid applicants are aware of why we collect equalities information and can conveniently disclose this information.

The evidence underpinning these outcomes is set out in our Equality outcomes and mainstreaming report, April 2017.

We would welcome your views on the focus of our current outcomes:

There has been much progress around the behaviours and effective participation of solicitors in Children's Hearings since the Children's Hearings (Scotland) Act 2011 came into force in 2013. There are good examples of expanding partnership working with the Glasgow bar association (for example) that have really made a difference and we would want to continue and develop this partnership work.

SCRA absolutely welcomes the aims of equal access to quality and accessible services and information and would be pleased to signpost children and families towards these provisions. We have focussed on children and young people as a specific group in this response – but there are other groups of people who would also benefit from information targeted for them – asylum and immigration, mental health, disability, criminal and family law for example. Information should be immediately available in a range of languages and should link people in to additional helpline telephone numbers and also to local solicitors who specialize in these areas of work.

For work in the Children's Hearing System we would like to stress that the mental health issues and learning difficulties of parents and relevant persons does mean that there is a need for solicitors to engage in a meaningful way that takes account of these issues. Perhaps related to this is the difficulty parents and relevant persons can face when having to provide the relevant financial information as part of their application for legal aid and we would ask that consideration is given to simplifying this system. It may help if a check could be made on-line at the solicitors office to confirm all benefits that were being received by a client that would make them eligible for legal assistance; instead of relying on a client finding and producing paperwork which we know can be problematic for some. Vulnerable children and families are often living in chaotic circumstances and for many making appointments with a solicitor can be difficult; we would ask that consideration is given to different ways of working with these families – alongside the more traditional appointment approach.





Question Title 4.

Sources of evidence

Alongside your views on our current outcomes, our strategic objectives and the research we commissioned, we are collating other sources of evidence that will inform the review of our outcomes.

What sources would you recommend we look at, as we review our outcomes?

SCRA think that the 2016 Research commissioned by the SLAB and carried out by CELCIS - [The Role of the Solicitor in Children's Hearings](#) should be used as the basis for the approach taken towards this work. We think that the ethos of the Hearing, the role of the solicitor within the hearing and the importance of training are all clearly explained in this piece of work and as we have outlined above the expectation around ethos, role and training should all be spelled out within an approach to accreditation. The key findings of this study stated:

'All respondent groups felt that most solicitors attending children's hearings acted in ways that can be constructive and valuable.'

Solicitors put forward the views of their clients, calmed them and managed their expectations; they also explained what will happen and encouraged others to explain things clearly as well and also supported clients to speak for themselves in the process. There were also challenges – including *'a minority of solicitors who acted in problematic ways, such as portraying an adversarial, formal, intimidating or disrespectful style said to be out if keeping with the ethos and approach of the children's hearing system'*; some solicitors without specific knowledge, providing unrealistic advice, the effect on others within the hearing and *'a widespread perceptionthat solicitors are exempt from the requirement to be focused on the best interests of the child.'*

There were six recommendations from the study which could form the framework or basis for work in Children's Hearings and within this it might be useful to re-focus effort on defining ethos, role and training within an interagency / multi-professional approach. There continues to be a key role for SLAB with the national strategic approach to 'Better Hearings' (the vehicle for improving Children's Hearings under the Children's Hearings Improvement Partnership / CHIP). In relation to Children's Hearings this could be done by using the recommendations from the 2016 research.

In the light of the findings of the Independent Care Review SLAB should be involved centrally in discussion and driving change around the rights of children and young people within the Hearing and how these are upheld by the scaffolding of the systems that are around them. It may also be that further work needs to be done around the acceptance of grounds for referral / the repercussions of accepting grounds for referral. There might need to be work to produce a binding memorandum of understanding to make this position clear and unequivocal. Without a clear position there is a risk that more families are reluctant to accept the reason(s) that they are coming to a Children's Hearing and proceedings will become more litigious than they need to be, against the ethos of the Hearing discussion and the development of shared ownership of the child's plan moving into the future.

SCRA Practice & Policy Team, 2020.



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