

SCRA Consultation Response FULL VERSION 2021

THE CONSUMER DUTY FOR PUBLIC BODIES CONSULTATION



The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.

The Children's Hearing is Scotland's distinct statutory approach, 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 approach 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:

1. Receiving referrals for children/young people who may be at risk.
2. Ensuring that other public agencies carry out enquiries and assessments into children/ young people's circumstances so we can make informed decisions about children/young people referred to us.
3. Making decisions on whether to refer a child/young person to a Children's Hearing if they need compulsory measures of supervision.
4. Drafting the grounds for the Hearing.
5. Arranging for Children's Hearings to take place when we decide that compulsory measures of supervision are warranted and where there is sufficient evidence to prove the grounds.
6. Ensuring fair process takes place within the Hearing, including the rights of those in attendance being met.
7. Having a key role in establishing grounds of referral in court, where these are contested, and in defending decisions of Children's Hearings which are subject to appeal.

Our Vision: Children and young people will be listened to, protected and supported to realise a positive future where they are safe, valued and respected.

Our Mission: We protect and support Scotland's children and young people, by making high quality decisions, upholding their rights and working collaboratively as compassionate, inclusive corporate parents to enable the most positive and personalised experience of the Children's Hearing.

Our Values: Our values are the shared motivations, beliefs and behaviours that underpin all that we do.

Supportive

We work with kindness to support children, young people and families, our Partners and each other.

Child Centred

Children and young people are at the heart of everything we do.

Respectful

Everyone is respected and treated fairly, inclusively and lawfully.

Accountable

We are responsible for our decisions, our ethics and our learning.

SCRA Consultation Response FULL VERSION 2021

Consultation Questions

Question 1 – Public Authorities Bound by the Duty (a) Do you agree that the Consumer Duty should be applied to the organisations proposed in the public authorities section of this consultation?



This is difficult. The Scottish Children's Reporter Administration is currently listed and we do not think we should be.

For the Scottish Children's Reporter Administration (for example) we are an Executive Non-Departmental Public Body with a clear and definite focus on the experience of children, families and professionals coming to Children's Hearings. Much of our frontline improvement work since the 2016 publication of the 'Better Hearings' report has been focused on understanding the real experience of children and families and on what we can do to improve that within the given parameters of our work.

We have a 'transactional' relationship with children and families and professionals, but it is not one where there is any financial arrangement and indeed the relationship we have is one of legislated statutory obligation (on both sides) not one of choice. If statutory criteria are met then the Children's Reporter will call a Children's Hearing and a child and family has a duty to attend that hearing (and can be liable to prosecution if they don't attend).

We have tried to clearly explain what we do using the language of customer care – since 2015 we have articulated a clear Customer Commitment. However, our Customer Commitment is not just about SCRA. It also includes our expectations of others, specifically children and families in the Children's Hearing. This is the reality of the work we are engaged in – the involvement of the Children's Reporter is a statutory involvement. Any subsequent Children's Hearing is a statutory intervention.

We absolutely need to focus on the children and families involved with the Reporter and the Hearing and to ensure their experience is as positive as it can be as these are amongst Scotland's most vulnerable children and families. The separate strands of the Consumer Duty are entirely relevant to our work but the fundamental concept of a 'consumer' and all its correlations are not really compatible and indeed could be misleading. We are therefore not convinced that the lengthy provided definition of consumer is accurate enough for the children and families we work with. That definition in full:

'For the purposes of Consumer Scotland's functions, a consumer is an individual, or a business no larger than a small business, that purchases, uses or receives goods or services in Scotland, where those goods or services are supplied in the course of a business. It should be noted that it is only where a small business is the purchaser in a transaction that they are a "consumer"; not when they are acting as the seller or provider of goods or services.

Whilst "traditional" consumer matters, such as a problem with a faulty device, are included in the definition, it also includes, for example, a disposal or recycling service. Consumer is also defined to include potential consumers. This means, for example, that Consumer Scotland could investigate practices which deter would-be consumers from pursuing a transaction.

A person may be a vulnerable consumer when circumstances cause that person to have fewer options, or to be more at risk of harm, than a typical consumer – for example by virtue of age, mental or physical health,

SCRA Consultation Response FULL VERSION 2021



economic circumstances, geography, caring responsibilities, or because of a bereavement. The characteristics or circumstances which may result in a person being a vulnerable consumer may be short-term, long-term or permanent.'

Many, if not all of the children and families coming to the attention of the Children's Reporter and Children's Hearing are probably vulnerable – not least because the statutory nature of involvement from the Reporter and the Hearing has already meant that some decision making / choices have been taken away from an individual child or parent.

Whilst the statutory intervention of the Reporter and the Children's Hearing could be seen as a 'service' it is in fact more complicated than that and by describing our work as a service we are actually doing ourselves a disservice.

Absolutely children and families should expect a consistent approach from the Children's Reporter and a Children's Hearing and they should be able to challenge situations where their experience is poor or not as good as it could be. But the involvement of the Reporter and the Children's Hearing is going to continue regardless.

This is likely to be the case for a number of the NDPB's listed in the consultation document and makes our engagement with or responsibilities under the Consumer Duty much more nuanced and organisationally specific.

(b) If not, which public authorities should be excluded, and why?

We are not going to speak on behalf of other public authorities – but we would ask that the Scottish Government considers carefully the nature of the work of each listed public authority and whether that work in all its aspects really fits in a relevant way into the Consumer Duty. It may be that specific definitions of the work of an NDPB and the consequent expectations in relation to the Consumer Duty require to be carefully and fully articulated.

(c) Are there any public authorities you feel should be bound by the duty which have not been listed, please give reasons why?

We are not going to speak on behalf of other public authorities. We completely understand the link between a consumer focus and improved policy direction but we are exercised by the focus on public authorities when there are private sector businesses with significant operations that have a much clearer consumer focus than many of the public authorities and where such a duty may be much more relevant. There is an intersectionality between the work of the public and private sector which doesn't seem to have been fully mapped and would seem to be really integral to the success of this approach, particularly in relation to the provision of secure care, secure transport, residential care or Foster Care provision from out with a local authority.



SCRA Consultation Response FULL VERSION 2021

Question 2 – Functions in Scope (a) Should public bodies be subject to the duty when carrying out all of their functions or only specified functions?

The four functions of the duty are all relevant to our work – if we think about children and families and professionals who we work with during the involvement of a Reporter and a Children's Hearing. The following statements would be relevant to us:

- To embed *the perspective of children and families and professional partners* into strategic decision making processes, in order to deliver better policy outcomes
- To challenge SCRA to be more robust and methodical in their evaluation of the impact of strategic decisions on *children and families and professional partners*;
- To steer SCRA towards a solution orientated approach to managing the risk of detriment to *children and families and professional partners* where identified;

We have more difficulty in understanding the relevance of the 4th element of the duty, or how this would be applicable in the work that we do.

- *To encourage relevant public authorities to be proactive in their engagement and consideration of consumer behaviour as a driver to achieve policy objectives.*

We consider the experiences of those who are in contact with the Reporter or the Children's Hearing in a continuous way and view that as a constant in terms of our approach to our work. This is quite different to consumer behaviour though.

(b) If all functions, why? (c) If just specified functions, how should these be determined?

See above. If it is determined we are a relevant public authority then we would expect the Government guidance to put that in context and frame the expectations on SCRA in a reasonable and deliverable way.

Question 3 – Reporting and Governance (a) Do you have any comments on the reporting requirements of the duty, which will help to ensure public authorities meet the conditions?

Regardless of whether in the end SCRA should be subject to this duty we would:

1. Add consideration of the duty into our Integrated Impact Assessment approach.
2. Report on the duty in our Annual Report.

Our Impact Assessment approach already considers a wide range of impacts across those we work with and our clear focus for a number of years has been the child and family in our proceedings and we think consideration of the consumer duty within the specific parameters of our work as outlined above would be helpful across our organisation.

SCRA Consultation Response FULL VERSION 2021



(b) What further key considerations or consultation do you think is required to ensure that the governance and reporting structures suit public bodies?

For SCRA a clear definition of 'consumer' within the specific context of our work would be essential; alongside a clearly narrated expectation about the parameters around our meeting the duty.

SCRA Policy 2021