

## **DRAFT SCRA Consultation Response – Raising the Age of Referral to the Principal Reporter**

### **1. Do you agree that the maximum age of referral to the Reporter should be increased to 18?**

**a) Yes – All cases**

~~b) Yes – Care and protection cases only~~

~~c) Yes – Offence cases only~~

~~d) No change – The existing age criteria should remain~~

Please provide reason(s) for your answer (free text).

Children aged up to 18 already come to Children’s Hearings and can remain on a Compulsory Supervision Order until their 18<sup>th</sup> birthday when that is in their best interest. It is difficult to argue that the Children’s Hearing can continue to provide necessary support for 16 and 17 year olds in some situations, whilst at the same time denying other 16 and 17 year olds access to that support.

Section 199 of the Children’s Hearings (Scotland) Act 2011 details the meaning of ‘child’ within the Children’s Hearings System. The definition(s) are intended for professionals working within the system rather than for children and families. If the Reporter could consider referred children up until their 18<sup>th</sup> birthday it would make the jurisdiction for the Children’s Hearing clearer.

Extending the age of children who can be referred to the Reporter is in line with Getting It Right for Every Child and with the Whole Systems Approach. It is in line with Scotland’s shift towards a community justice response to offending behaviour and the ongoing national discussion about the age of criminal responsibility. It is in line with Scotland’s approach to the provision of early and effective supports for children who need them. It is in line with the Promise to care experienced children made by the Independent Care Review and it is in line with the United Nations Convention on the Rights of the Child (UNCRC) and the international definition of a child as under 18.

SCRA believes that it is the right thing to do for vulnerable children and their families if Scotland is to become the best place in the world for children to grow up.

### **2. If the age of referral is increased to 18, are the existing grounds of referral to a Children’s Hearing sufficient (see pages 11-12 for existing grounds)?**

**a) Yes**

~~b) No~~

Please provide reason(s) for your answer (free text).

SCRA believes that the grounds for referral to the Children’s Hearing as set out in section 67 of the Children’s Hearing (Scotland) Act 2011 are probably sufficient for the Reporter to receive and appropriately manage referrals for 16 and 17 year olds.

We say ‘probably sufficient’ as we are aware of specific circumstances like criminal or sexual exploitation where the existing grounds need to be carefully framed in order to specify the exact concerns that exist for the child, without attaching blame or responsibility to the child themselves. SCRA believes that the developing knowledge

base around the organised exploitation of children as well as in relation to the approach of contextual safeguarding may well lead to further consideration of the legal basis for statutory intervention in the life of a child and their family. The incorporation of the UNCRC and the implementation of the Promise recommendations may also lead to further scrutiny.

SCRA is committed to continuing to reform and improve the work of the Children's Hearing System; however, adding grounds for referral could confuse rather than improve the landscape. Any review of the section 67 grounds must enhance and improve the current landscape to ensure there are no gaps through which some children might fall. Such a review should also consider the lexicon, syntax and intent of the section 67 grounds in the context of other developments (such as children's rights).

### **3. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?**

It is very difficult to predict the extent of the resource implications of the proposed change. Such implications are however inevitable across children's services, across Police Scotland, the Scottish Courts and Tribunal Services and across the adult services which currently provide support to 16 and 17 year olds.

Scotland's direction of travel for a number of years has been consistent in recognising that 'childhood' and 'adulthood' cannot be determined by an arbitrary cut off age. It is likely that this work will require the redistribution of existing resources alongside additional provision. We know that current services are not sufficient and will need development and expansion. Services and resources designed for 16 and 17 year olds are not consistently available across each Scottish local authority. The services and resources which are available have been designed for 16 and 17 year olds to access voluntarily, not to form part of a statutory intervention.

The lives of children at this age can be complex, and services around them need to be specifically focused and targeted to meet their needs. This work will require focused, sustained and significant investment, perhaps over a prolonged period. This will require strong leadership and considerable investment from the Scottish Government, in both the principles behind the change and in the practical implementation of the change across all of the public (and other) services that touch children's lives.

The support available to a referred young person will be key to meaningful improvement in the system as a whole – either for them to engage with on a voluntary basis (so avoiding the need for statutory intervention), or for them to engage with on a statutory basis through a Compulsory Supervision Order.

For 16 and 17 year olds, these supports will need to be bespoke and tailored to the specific presenting and unmet needs of these children, which may be complex, deep-seated and resource intensive.

All the existing protocols in relation to referral to the Reporter will require review, as the proposed change would alter the way in which all services approach referrals.

The Lord Advocate's guidelines determining how Police Scotland reports offending behaviour to the Reporter and the Procurator Fiscal may need reconsideration, in light of the different offending profile of this age group of children.

The new Sentencing Council guidelines for the sentencing of young people (when they go live) will clarify for the Courts what sentencing options are to be considered. However, it will be important that the public messaging of this is clear and definite. Additional work may be required to develop and ensure public confidence in the approach to sentencing young people. This could usefully include research.

In cases of significant and serious offending (both the child involved in offending behaviour and any child who may be the victim of offending behaviour), the rules relating to anonymity and reporting may need to be amended. The at times complex interplay between the Children's Hearing System and the Criminal Justice System may require additional focus and development. The ways in which a child can move between the Children's Hearing System and the Criminal Justice System may require further adjustments or refinement, and some of the expertise currently resting with the Procurator Fiscal service may need to be passed to Children's Reporters.

Additional thought needs to be given to how and when the Children's Hearing system communicates with individuals not involved in the system who have the right to receive information about what has happened. This will be particularly relevant for the parents / carers / relevant people in relation to 16 and 17 year olds.

In Scotland, 16 and 17 year olds can marry and can enlist in the armed services. These 'rights' may not sit easily with continued involvement in the Children's Hearing system. Domestic abuse-related issues also have the potential to introduce added complexity, given that young people could be victims or possibly perpetrators (both as partners and parents). The implementation of new legislation will require these complex issues to be considered carefully.

The way the Children's Hearing communicates with 16 and 17 year olds will also need to be considered to ensure it is relevant to this age group. It is also likely that additional speech and language resources or measures will be needed in the system, in order to focus on the specific communication needs of all children (not just 16 and 17 year olds).

The participation rights in Children's Hearings may require to be considered – as it may not continue to be appropriate to have certain 'relevant people' involved in Children's Hearing discussions for 16 and 17 year olds – particularly in cases where there has been an irretrievable breakdown in family relationships. This will also involve consideration of privacy and confidentiality rights, as well as rights to representation.

Closer and more purposeful links between the local authority services supporting children and those providing housing will be required. Children aged 16 and 17 involved in the Children's Hearing system may require support with housing and

related issues that go beyond those of other 16 and 17 year olds. Such support may be required for a lengthy period, particularly for those children who do not have positive extended familial supports on which to draw.

16 and 17 year olds in the Children's Hearing may well have younger brothers or sisters who are also involved in the system – and they may want to be involved in or kept informed of decision making about their brothers and sisters. The Children's Hearing system needs to develop a consistent, supportive and meaningful way of making this happen whilst making sure that the Children's Hearing continues to keep its focus on the referred child so that the voice of the child does not get lost amidst the many (and at times adversarial) adult voices.

The panel members in Children's Hearings may require additional training and support in order to appropriately and effectively manage the presenting needs and deeds of 16 and 17 year olds. Further discussion is required on whether a Compulsory Supervision Order, in certain circumstances, may require to remain in force beyond a child's 18<sup>th</sup> birthday. Further detailed consideration will need to be given to the plausibility of this for the protection of the child or the public, and additional consideration given to how long it can meaningfully remain in force.

Under the 2011 Act section 83 (7) (a), a Compulsory Supervision Order requires to last for at least a year after the day it is made – in part this is for the order to have the time to make a positive impact on the child's life. It may not be appropriate for the direct involvement of the Children's Hearing to go beyond a child's 18<sup>th</sup> birthday – but there would need to be some transitional arrangement or support for this group of young people.

These considerations may mean that different approaches for young adults aged 18 and over are required in a number of areas – including the Criminal Justice and Further or Higher Education systems.

SCRA believes the Scottish Government must ensure the systemised scoping of the services and resources needed by 16 and 17 year olds, and that funding for effective, robust support is available across the country.

#### **4. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for SCRA (the public body which operates the Reporter service)?**

SCRA cannot at this stage provide a detailed analysis of the additional resource requirement. However, it is clear that there will be a need for increased funding, training and specialisation for Reporters and for other professionals and non-professionals integral to the children's hearings system. This additional need will arise from an increase both in numbers and in complexity of cases.

SCRA already deals with some 16 and 17 year olds, and our experience is that some referrals are particularly complex. Reporters have been increasingly involved in proving offence grounds that, through the criminal justice system, would be prosecuted at High Court level. These cases are very resource intensive.

**5. What are your views on the potential implications, including resource, of increasing the age of referral to the Reporter for Children’s Hearings Scotland (the body which operates the national children’s panel)?**

SCRA cannot provide detailed information on resource implications for Children’s Hearings Scotland. However, the potential increase in the numbers of children who will be referred to and investigated by Reporters could result in an increase in the number of Children’s Hearings held. This would require additional recruitment to the volunteer panel member community and perhaps development of the initial and ongoing in-service training.

**6. If the age of referral to the Reporter was increased, are amendments required to ensure sufficient access to information and support for victims harmed by children?**

- a) ~~Yes~~
- b) No

Please provide further details for your answer, including any extensions or amendments you would wish to see (free text).

SCRA believes that the reasons for the current statutory limitations on the provision of information to victims are sound. They allow the Children’s Hearing system to focus its work on the best interests of the referred child.

However, this should not preclude efforts to improve the ways in which victims are supported or communicated with. We could also improve how the rationale and the principles that underpin the statute are explained.

SCRA is committed to engaging more effectively with victim support groups to ensure that victims understand the decision making process. SCRA and partners could also do more to promote the enduring Kilbrandon philosophy of the Children’s Hearing and to set this in the context of a victim-centred approach to justice. Kilbrandon was clear that those children who offend and those children who are victims are often one and the same. In line with this the Children’s Hearing system continues to have a single order – the Compulsory Supervision Order – available as the statutory intervention for a child who has been involved in offending behaviour, or for a child who has been neglected. The Kilbrandon principles endure, but may benefit from being re-stated, and from being underpinned by empirical research.

The Kilbrandon approach has never been punitive and if it is to be successfully extended to 16 and 17 year olds, there will need to be concerted Scottish Government support to build a cultural change in Scottish society away from a response which is often based on punishment and retribution.

**7. If there are any further comments you would like to make, which have not been addressed in the questions above, please use the space below to provide more detail.**

SCRA believes that the enduring principles of the Children’s Hearing system mean that it would be able to expand and offer support to 16 and 17 year olds without requiring significant or fundamental changes to the statute or to the current

approach. However, the practical implications of this proposed change may take longer to get right, given the wide-ranging impact across a variety of services and supports, all of which will need to be committed to making a success of the change.

This will not be successful if supports for these children are not developed, resourced and consistently available across Scotland – so that they can be accessed on a voluntary as well as a statutory basis.

The ultimate success of this change will also be dependent on the change being accompanied by clear, evidence based, public endorsement of the principles and the approach of the Children's Hearing system.

#### **DPIA view**

There are data protection considerations related to information sharing in every children's hearing. For older children with more autonomy and agency, who will be more aware of their own data and have views about what other people should know, this will become more complicated. We have already covered this in our full response.

#### **CRWIA view**

We have covered this more fully across the body of our response.

#### **Equalities Impact view**

We have covered this in our response - there will be issues in relation particularly to communication which will require review in relation to specific protected characteristics.

#### **Do you work with children and young people?**

**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.**

### **Victim Information**

SCRA has a Victim Information Service. Information about the service can be found online, at <https://www.scra.gov.uk/about-scra/victim-information/scras-service-victims-youth-crime-2/>.

## **1. Your response has been submitted**

Your response ID is ANON-AQ93-9GVR-6. Please have this ID available if you need to contact us about your response.

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Thank you for completing the consultation

