

Thursday, 31 August 2023

SCRA written evidence to the Criminal Justice Committee of the Scottish Parliament

for consideration in relation to the Victims, Witnesses, and Justice Reform (Scotland) Bill 2023

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to provide the Committee with the following information. We have provided answers to the questions asked by Committee which are directly relevant to our work. We have not answered questions that are not directly relevant.


Introduction

The Scottish Children's Reporter Administration (SCRA) is a national body focused on children and young people most at risk.

The Children's Reporter works in the children's hearings 'system' - Scotland's statutory approach to child protection and children in conflict with the law. Concerns about child protection or children in conflict with the law are assessed by professionals. If a compulsory supervision order may be required then the circumstances for a child will be considered by Children's Reporters, who will decide if the circumstances need to be considered by panel members in a Children's Hearing. A Children's Hearing is the tribunal which can respond to concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) and can address concerns using a compulsory supervision order, or CSO.

In the Children's Hearing:

- the rights of children and families are respected.
- the needs of children or young people are addressed in an 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 children's hearings system is the operational setting in which SCRA and our partner agencies work. The aim is to protect vulnerable children aged 0-18 by delivering tailored solutions which meet the needs and rights of the individuals involved. In turn this helps build stronger families and safer communities.

The role and purpose of SCRA is:

- To receive referrals for children/young people who may be at risk.
- To make sure that other public agencies carry out enquiries and assessments into children's circumstances so we can make informed decisions about children referred to us.
- To make the decision on whether to refer a child to a Children's Hearing, if they need compulsory measures of supervision.
- To draft the grounds for any referral to the Hearing.
- To arrange for Hearings to take place.
- To provide accommodation for Children's Hearings.
- To provide information, support and help to people coming to Children's Hearings within the context of our statutory role.
- To maintain the independence of the Hearing and to support fair process.
- To conduct Children's Hearings court proceedings by leading evidence in proof proceedings and appearing in appeals against the decisions of Children's Hearings.
- To support children, young people and families to participate in Hearings.
- To disseminate information and data to influence and inform the wider Children's Services community.
- To work collaboratively with partners to support and facilitate research and policy developments for the benefit of children.

1. What are your views on Part 1 of the Bill which establishes a Victims and Witnesses Commissioner for Scotland?


SCRA agree with the role. We also agree with the role covering victims and witnesses. We agree that the Commissioner should not have an initial remit across the children's hearing system and also agree that consideration should be given to the Commissioner expanding their remit to include the children's hearings system in the future. As part of these future considerations we think it is essential that the unique approach of the children's hearings system is fully understood.

SCRA don't only have contact with victims who are the victims of offences or harmful behaviour committed by children. Instead, SCRA deal with victims in a range of situations, for example:

- child victims of schedule 1 offences and sexual offences where the child is referred to us (or a member of the same household is referred),
- adult victims of both where the referred child has a close connection with the perpetrator, and
- victims of domestic abuse where the child has a close connection with the perpetrator.

In addition, many children referred for committing offences will also be victims of offences, often committed by other children.

As a result of this we think that further discussion, dialogue and development is required for the Commissioner role to embrace the children's hearings system. The children's hearings system is not a criminal justice system. It is a very different system, based on different principles that works in a different way. A children's hearing is not about an accused and a




complainer. Contact with people who have been harmed cuts across all of the work in the children's hearings system and the decision making of each children's hearing, and many of the families who come to a hearing include adults and children who have both been harmed and may have caused harm.

We would respectfully direct the Committee to the [Policy Memorandum](#) in relation to legislation currently at stage 2 before the Education, Children and Young People Committee – the Children (Care and Justice) (Scotland) Bill. At paragraph 18 of the memorandum it states:

Scotland's unique and internationally renowned children's hearings system dates back to the landmark Kilbrandon Report of 1964, 15 furthering Scotland's welfare-based approach to children's care and youth justice. It is founded on the premise that the care, protection and support needs of children – and any risks these children may face or parts of their behaviour may present – must be addressed in the context of the child's whole life circumstances, whether those children are themselves in conflict with the law or are harmed.

In the context of this we ask that the approach taken by the Children (Care and Justice) (Scotland) Bill could be considered – in that the children's hearings system and children in the criminal justice system are clearly delineated and dealt with accordingly.

In both the children's hearings and criminal justice systems it can be difficult for people to be heard, or to feel like they are considered, and people can feel like the system is not helping or supporting them. The difficulties people experience may not be the same, although some people may experience difficulty in both systems. Professionals can also find the landscape hard to navigate. If the children's hearings and criminal justice systems were more clearly delineated, then the ways in which the landscape can be effectively de-cluttered may become clearer.



We would also ask that the Committee recognise the ongoing improvement and reform work across the work of the children’s hearings system as set out in The Promise reports from the Independent Care Review and the [Hearings for Children: The Redesign Report](#) from the Hearing System Working Group. Any further or future development of the role of the Commissioner will need to sit alongside this work.

SCRA firmly believes that all people who have experienced harm should be able to access the supports, including specialist supports, that they may require, regardless of whether the criminal justice or children’s hearings system is best placed to work with the person (child or adult) who has caused harm. When the person who has been harmed is a child, ensuring the child gets the support they require is relevant across overlapping policy areas including GIRFEC, The Promise, children’s rights and children’s hearings reform. This can complicate the provision of appropriate support. How the remit of the Commissioner sits with the ongoing work across these interconnected policy areas may need further discussion.

2. What are your views on Part 2 of the Bill which deals with trauma-informed practice in criminal and civil courts?

SCRA agree with the re-stated definition of trauma-informed practice as set out in section 69 of the Victims, Witnesses and other Justice Reform (Scotland) Bill. More widely, we think that approaches which recognise trauma and its effects and which seek to minimise trauma can be of benefit to those involved in court work related to the children’s hearing.

We agree with the enabling power in section 26 and the requirements in sections 27 and 28 as they re-position trauma-informed practice as a fundamental building block for conducting court proceedings.

The Hearings for Children: the Redesign Report refers to practice that is trauma aware in a number of its recommendations. SCRA think that the provisions in this Bill go some way

towards meeting the requirements of these recommendations. For the purposes of this proposed legislation we think that the following recommendations are relevant:

Consideration must be given to the specialisation of Sheriffs for involvement in Children's Hearings Court hearings and other proceedings relating to children and families. Sheriffs must have a clear understanding of trauma, childhood development, neurodiversity and children's rights and the dynamics of domestic abuse. Page 89.

And

There must be national oversight by the Scottish Government of the resourcing and provision of training in the impact of trauma, childhood development, neurodiversity and children's rights for everyone involved in the Children's Hearings System. Page 90.

And


There will not be long waits while grounds are being established. Page 148.

3. What are your views on Part 3 of the Bill which deals with special measures in civil cases?

These measures are welcomed. SCRA support the prohibition of personal conduct of a case when that is required. This prohibition in the work of SCRA has already been enacted (but not implemented) in the Children (Scotland) Act 2020, and we would want it to be implemented as quickly as possible.

SCRA think the register of Solicitors will simplify the process of prohibiting personal conduct and we agree that special measure protections should be available for vulnerable parties and believe that these can enable fuller participation in proceedings.

We think that the provisions in section 22F (5) that the protections can be made at any time, and can be made whether an application has been made or not, is in the interests of



justice and allows the court to take account of the way in which parties present and engage with proceedings, in a trauma informed way.

SCRA would note that in order for these measures to be effective they need to be available at short notice and in every court, in some form, so that delay in the presentation of proceedings at court is minimised.

6. What are your views on Part 5 of the Bill which establishes a Sexual Offences Court?

SCRA appreciate the potential expertise of the proposed court and victim-centred justice that could be offered. SCRA hope that any expertise developed in the setting up and operations of the specialised Sexual Offences Court is cascaded through other courts dealing with the similar presenting concerns. In children's hearing court proceedings, proof proceedings in relation to sexual offending (whether by a child or against a child), are regularly heard, for example, and innovative court practice should be transferrable and adaptable.

SCRA Practice and Policy Team, 2023.