ABSTRACT

This report informs elected members of a consultation on the Scottish Government’s proposals to modernise and strengthen the Children’s Hearings system. These proposals include establishing a new national body, “The Scottish Children’s Hearing Agency”.

The consultation is for 12 weeks and closes on the 24 October 2008. A copy of the proposed response from the Directors of Social Work and Health and Education is appended to this report. A copy of the consultation paper is placed in the Members’ Lounge.

1 RECOMMENDATION

It is recommended that the Social Work and Health Committee and the Education Committee notes the content of the report and endorse the comments made by the Directors of Social Work and Health and Education to this consultation.

2 BACKGROUND

The Scottish Government is currently consulting on proposals to modernise and strengthen the Children’s Hearing system. The consultation seeks views on the areas of current practice and guidance within the Children’s Hearing System that require structural reform and legislative changes. The proposals also require changes in practice that can be taken forward without the need to legislate.

3 SCOTTISH GOVERNMENT PROPOSALS

A key proposal consulted on is the establishment of a new national body “The Scottish Children’s Hearing Agency”. Subject to the outcome of the consultation, the Scottish Government intends to introduce a Bill to establish the new body bringing together the functions currently carried out by the Scottish Children’s Reporter Administration, the 32 Children’s Panels and associated bodies, the Scottish Government and local authorities.

The consultation also considers the role of key staff in the new agency such as the Chief Executive Officer and President of the Children’s Panel, as well as considering how the new agency can keep its functions separate to maintain the independence of the people making decisions about individual children. It also proposes that Safeguarders are brought under the authority of this new central body. The role of Safeguarders offers a key element to the independence and neutrality of the Children’s Hearing system, and while the proposals do not change the role or function of the Safeguarder their independence needs to be protected.
The main difficulty with the new body may be maintaining effective links between those involved in providing national Children's Hearing services and local authorities coordinating services to children. The future of Authority Reporters and Children's Panel Chairs is unclear. Angus Council has a very positive working relationship with both our local Reporters and panel members. Our Authority Reporter and Panel Chair both play an integral role in the delivery and development of children and family services in Angus. These are links that are essential to maintain, as they help facilitate communication between agencies that plan and provide services and local panel members making decisions about individual children and their needs. These posts also currently make an essential contribution to local authority strategic planning strategies for children, helping to focus resources and services on children in need, and should be continued.

The new proposals for local authorities include having a more substantial focus on promoting the Children's Hearings system to local communities; raising public awareness and understanding and stimulating interest in the community to volunteering as Panel members. Supporting strong links between local communities and local panels is an essential element if recruiting volunteers is to be successful. It may also be more difficult to recruit volunteer panel members if they may be required to contribute to hearings in other geographic areas.

The consultation also proposes some policy and legislative changes. Amongst the more important is the government’s intention to address the child’s right to legal representation at Hearings. The current situation whereby children are entitled to legal representation only in some instances (e.g. where secure provision is being considered) and not in others is anomalous.

Changes are also proposed for the procedural approaches taken in hearings with the role and function of the Reporter also being considered. Whether the child should have access to reports, the nature of warrants and rights surrounding the age of the child and grounds of referral are also being considered.

The proposed response from the Directors of Social Work and Health and Education advises the Scottish Government that the introduction of new legislation is an opportunity to clarify the Scottish Governments role in ensuring adequate levels of ‘Secure Accommodation’ and ‘Intensive Support and Monitoring Services (ISMS)’ are available nationally to all local authorities. Such intensive provision should be funded and monitored centrally to ensure the needs of these vulnerable children are met and that communities are adequately protected.

The response also suggests the Scottish Government should consider how the reform programme should review the current rules governing Children’s Hearing’s decision-making in permanence cases, in particular the interface between Children Hearings and decision-making in the Sheriff Court, timescales and issues surrounding contact decisions. Each of these areas can create difficulty in progressing children through formal Hearing and Court based systems in good time, with decisions made in the best interest of the child.

4 **FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

The Scottish Government estimates that local authorities currently spend around £3m per year on supporting the work of the Children's Panel.
They are confident that continuing this level of funding would fully meet any pressure of increased activity in relation to promoting the work of the Children’s Hearings system since that increase would be offset by the proposed removal of the local authorities’ current responsibilities for in-service training of the volunteers and payment of their expenses.

5 HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising as a result of the recommendations contained in this report.

6 EQUALITIES IMPLICATIONS

The issues dealt with in this Report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

7 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.

8 CONCLUSION

The proposals within this consultation strongly centralise what is currently a disaggregated system. This should have the benefit of achieving a consistency of practice nationally across all 32 local authorities, but at the inevitable cost of losing some local flexibility and responsiveness. The proposals seem overly-centralised, in particular the powers which are to be granted to the President of the Children’s Panel, and the Angus response suggests that at least some of these responsibilities can continue to lie with Authority Reporter’s and the Chairs of local panels.

R Peat  J Anderson
Director of Social Work and Health  Director of Education

NOTE: The undernoted background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.


Dear Ms Swanson

Angus Council’s Response
Strengthening for the Future – a consultation on the reform of the Children’s Hearings System

Thank you for your email of the 1 August 2008 seeking our view on what the proposed legislative changes will mean for Angus Council and the operation of the Children’s Hearing system in Angus.

Angus Council has a very positive working relationship with both our local Reporters and panel members. Our Authority Reporter and Panel Chair both play an integral role in the delivery and development of children and family services in Angus. These are links that we feel are essential to maintain, as they help facilitate communication between agencies that plan and provide services and local panel members making decisions about individual children and their needs.

Please find below a response to your specific queries.

PART 1: STRUCTURAL CHANGE, A NATIONAL BODY

The role of the Scottish Government (page 11)

Question 1: What is your opinion on the proposals for Government’s role in the future?

The key proposal from the Scottish Government is for the creation of a new national body which will be a Non-Departmental Public Body (NDPB). Amongst its duties this body will take over the current role of the Scottish Government. If this transfer is to be successful it must ensure that the new body continues to be accountable for its actions and that its creation does not introduce an additional layer of bureaucracy.

Another objective is to ensure that the new ‘decision-makers’ are independent from Government. This challenge is significant given the Scottish Government are:

1. Setting the strategic direction
2. Providing resources
3. Sponsoring the body through a set of corporate governance arrangements including agreeing organisational objectives and outcomes.
If the ‘Scottish Children’s Hearing Agency’ is to be both successful and independent it should be subject to independent inspection and review to ensure it has a positive impact on both children and their families.

The role of Local Government (page 12)

Question 2: What is your opinion on the proposals for local government’s role in the future?

It is entirely appropriate that local authorities will continue to have the responsibility for giving effect to the decisions made by a children’s hearing. The introduction of new legislation is an opportunity to clarify the Scottish Governments role in ensuring adequate levels of ‘Secure Accommodation’ and ‘Intensive Support and Monitoring Services (ISMS)’ are available nationally to all local authorities. It is often not cost effective for local authorities to provide these high cost services themselves, relying on third party providers operating nation wide services to offer these type of services. Such intensive provision should be funded and monitored centrally to ensure the needs of these vulnerable children are met and that communities are adequately protected.

Local authorities currently have the lead responsibility to develop effective partnerships to meet the needs of all children including vulnerable children. *Getting it right for every child (GIRFEC)* establishes a clear expectation that both health and the voluntary sector are essential partners in this agenda. Angus Council has recently reviewed its joint planning process for children’s services to ensure that these elements come together to plan and deliver effective services.

The proposals for local authorities includes having a more substantial focus on promoting the Children’s Hearings system to local communities; raising public awareness and understanding and stimulating interest in volunteering. Supporting strong links between local communities and local panels is an essential element if recruiting volunteers is to be successful. It may also be more difficult to recruit volunteer panel members if they may be required to contribute to hearings in other geographic areas.

The New Body – The Children’s Hearings Agency (page 13)

Question 3: We invite views on:

a) The nature of the new body:

The main difficulty with the new body will be maintaining effective links between those involved in providing national Children’s Hearing services and local authorities coordinating services to children. Knowledge of local services takes time to build up but is essential if decisions are to be made in the best interest of children. The role of the Authority Reporter is vital in this regard. Authority Reporters and Children’s Panel Chairs also make an essential contribution to local authority strategic planning strategies for children, helping to focus resources and services on children in need. While this new agency is being initiated in response to the varying quality of services available nationally, it is important that we maintain best practice where it currently exists and do not dilute these services to the lowest common denominator.

b) The functions of the new body:

When considering the function of the new body one must be careful not to introduce natural conflicts in its function. The following examples are issues to be considered:

*Decision Making versus Advocacy:* Having Reporters and legal representatives of children under the same agency appears to be a potential conflict of interest that may be open to appeal. Maintaining a clear differential between the two responsibilities within the single agency would be necessary.
Training and Quality Assurance: While the President of the Children’s Panel leads on the training of panel members they should also be responsible for some self assessment regarding the quality of decisions made and their impact on children and their families. However the agency should also be subject to independent inspection and review if both local authorities and the public are to have faith in its value.

c) The title of the new body:
The title of the new body i.e. “The Scottish Children’s Hearing Agency” is acceptable.

Independence of Functions and ECHR Compliance (pages 13 and 14)

Question 4: Do you have any thoughts on how the necessary separation (“firewalls”) can be achieved in the structure and day-to-day business of the new body?

It is essential that the structure of the new agency supports the independent functions as described under Question 3 (b). These functions should have independent reporting structures with heads of service reporting to the Chief Executive Officer (CEO) as a senior management team.

Question 5: What are your views on the proposed role and functions of the Chief Executive Officer?

The role of CEO does not include the responsibility for the impact of services on children and young people. This is the responsibility of the President of the Children's Panel. The responsibility of improving outcomes for children lies across the entire agency and should be the responsibility of the CEO.

The Chief Executive Officer (CEO) (pages 14 and 15)
Principal Reporter and Reporters (page 15)

Question 6:
a) We invite comment on the options outlined:
Following consultation with partners there was some surprise that the practice of Reporters offering legal and/or procedural advice to a Hearing was not a recognised function under the Children (Scotland) Act 1995.

This role appears to have been fulfilled by Reporters for long before 1995 without notable conflict to date. This function should therefore be included in any legislative review of the function of the Reporter.

b) Do you have any other suggestions about how the concerns about separation of functions might be addressed?

The conclusion that there is insufficient separation in the functions of the Reporter pre-hearing and during/post Hearing is inescapable and may well provide the basis for appeal against Children’s Hearing’s decisions unless addressed. Creating specialist posts seems onerous in terms of workforce planning. A possible solution would be for different Reporters in one local area to carry out separate functions for each case as the following:

- One Reporter considers the grounds of referral, whether the child may be in need of compulsory measures of care and takes proof hearings establishing grounds to the Sheriff.

- A second Reporter offers legal and procedural advice to Panel and leads on any appeal to the Sheriff regarding the decision of the Panel.
Leaving it to Panels to make arrangements for their own legal and procedural advice is likely to lead to great variety in the nature of these arrangements and appears unnecessary given this function has been met successfully by Reporters to date.

The Scottish Government should also be cautious of making the role of the Reporter too specialist as this may have a detrimental impact on the agencies ability to recruit strong, able, experienced candidates to the role of Reporter.

c) Are there other functions which need to be re-considered or re-allocated?

The function of independent legal advice to the child is one that would be best met by legal representatives trained to recognise the role and function of the Children's Hearing as opposed to the court. This function could be overviewed by an independent arm of the new agency that would establish links with local representatives, coordinate training, establish standards for practice and operate a register of qualified staff.

President of the Children’s Panel (page 17)

Question 7: What are your views on these proposals?

The proposed post of President of the Children’s Panel appears essential if the new body is to coordinate the quality assurance of Panels. It makes sense that this role links with the recruitment, appointment and training of Panel members.

The proposals strongly centralise what is currently a disaggregated system; this should have the benefit of achieving consistency of practice but at the inevitable cost of losing some local flexibility and responsiveness. The proposals seem overly-centralised, in particular the powers which are to be granted to the President. Perhaps some of these responsibilities could continue to lie with the Chairs of local panels.

The delegation of duties to local coordinators or team leaders rather than a local Chair of the Children’s Panel may be problematic if it involves the abolition of local Chairs. This role is currently very much valued by both panel members and local authorities alike. The Chair of the Children's Panel often represents the views of panel members on strategic planning groups, as well as representing and advocating for local panel members at a national level.

Safeguarders (pages 17 and 18)

Question 8: What are your views on these proposals?

The role of the Safeguarder is a key element to the independence and neutrality of the Children's Hearing system and should be recognised as such. We welcome the fact that the proposals do not change the role or function of the Safeguarder, and support the principle that Safeguarder should be able to nominate the local areas where they are prepared to accept appointments.

The proposed arrangements for Safeguarder provision pose the risk of Safeguarders becoming another administrative arm of the Children's Hearing/Reporters system with resulting loss of independence. It is our preferred option that the appointment of Safeguarders is retained by the individual Children’s Hearing at local level.

If the national body is established we support the proposal to create an independent element within the new body to meet this function.
POLICY AND LEGISLATIVE CHANGES

New statutory system on the legal representation of children (page 19)

Question 9: We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people (in the circumstances specified) who are involved in the Children’s Hearings system.

Addressing the child’s right to legal representation at Hearings is overdue. The current situation whereby children are entitled to legal representation in some instances (e.g. where secure provision is being considered) and not in others is anomalous. However, there need to be strict procedural rules about the conduct of legal representatives in Children’s Hearings if, firstly, the Hearing’s informal nature is to be retained and, secondly, if balance of probabilities evidential criteria, rather than beyond reasonable doubt evidential criteria which solicitors are used to working with, are to be emphasised.

The relative informality of a Children’s Hearing currently allows too much scope for solicitors to challenge parents, children and professionals in a manner which would not be tolerated in the more formal setting of the sheriff court and this should be guarded against.

Withholding information provided by the child (page 20)

Question 10: What are your views on this proposal?

Legislation should be brought forward to enable Children’s Hearings and Reporter’s to withhold information provided by a child when they consider its release would place a child at risk.

Streamlining the establishment of the grounds for referral (Page 20)

Question 11: What are your views on this proposal?

Legislation should be brought forward to streamline the establishment of the grounds of referral in the case where a child is too young to understand the grounds but the parent(s) accept them.

Procedural Changes to the Children’s Hearings system (page 21)

Question 12: Do you agree these are areas which should be addressed?

Any changes to ‘warrant provision’ that simplify the structure are welcome. Further comment is difficult to make without the detail of the new warrant structure.

In the event that a child has been detained by the police in a place of safety, and the decision has been made not to proceed through the court, then the child should be released with the Reporter allowed to investigate their circumstances within timescales appropriate to any ground of referral. However this proposal should be accompanied by detail about the professionals whom the Reporter is required to consult with before releasing a child from detention.

Papers for children (page 22)

Question 13: Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

Children over 12 years of age should have a right of access to reports which are about them. There needs to be some exercise of professional judgement as to the potentially adverse impact
on the child of, for example, receiving information about their parents’ past lives, or indeed previous children, of which they may be unaware. However such information may be essential to a Children’s Panel if members are to make informed decisions that are in the best interest of the child. Unfortunately such access may well have an additional burden for local authorities if social workers have to complete an additional report suitable for the child.

Other legislative implications (page 22)

**Question 14: Are there any other issues which you think might be addressed in the reform programme or proposed legislation?**

The reform programme should consider the current rules governing Children’s Hearings decision-making in permanence cases; in particular the interface between Children Hearings and decision-making in the Sheriff Court, timescales and issues surrounding contact decisions.

I hope you find our response both relevant and informative. If you require any further information regarding our response please do not hesitate to contact Steve Urquhart, Planning Officer (Children’s Services) on Tel 01307 474871 or Email: UrquhartS@angus.gov.uk

Yours sincerely

R Peat  
Director of Social Work and Health

J Anderson  
Director of Education