

Scottish Children's Reporter Administration (SCRA) submission of 24 February 2023

PE1977/C: Require social services to inform biological fathers of concerns about their children

Introduction

Before providing views, and to provide a proper context to our response, we consider it appropriate to summarise relevant aspects of the statutory role that SCRA fulfils.

One of the main functions of SCRA is to support the Principal Reporter in the exercise of the powers and obligations given to him by the Children's Hearings (Scotland) Act 2011 and associated legislation. In practice these powers and obligations are delegated to children's reporters and other staff who operate in 9 Localities across Scotland. The key tasks are undertaken by reporters. They include:

1. Reporters (i) consider referrals of children from local authorities, Police Scotland, health agencies, courts and others, (ii) carry out an appropriate investigation relating to the referred child, and (iii) decide whether to arrange a Children's Hearing for the child. This decision focusses on 2 things. Firstly, whether there is sufficient evidence of one of the grounds¹ listed in the Children's Hearings (Scotland) Act 2011, and secondly whether a statutory order – a "compulsory supervision order" - is necessary for the child.
2. If the reporter considers that a ground applies and a compulsory supervision order is necessary, the reporter arranges a Children's Hearing which will decide whether to make a compulsory supervision order.

SCRA and its staff are required to carry out other functions, for example to do with (i) providing accommodation for children's hearings, or (ii) the

¹ Section 67 of the Act lists a number of grounds reflecting a range of concerns for the welfare of children and which can form the basis for the referral of a child to a children's hearing. They include (i) where there has been a lack of parental care for a child, (ii) where the child has been the victim of an offence, (iii) where the child has not attended school and where there is no reasonable excuse, (iv) where the child has committed offence, and others. For full details follow this link: [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://legislation.gov.uk/act/2011/10/section/67)

conduct of court proceedings which are related to children's hearings. However these are not relevant to the issues raised by this petition.

As the obligations on the Principal Reporter centre only on those children who have been referred to him, we consider that it would be inappropriate to comment on (i) the content of legislation or guidance (such as National Guidance for Child Protection in Scotland) which applies to children out-with the children's hearing system, or (ii) how other agencies apply this legislation or guidance. As a result the remainder of our response focusses on where SCRA staff may notify a child's father of any referral received or any action by the reporter.

SCRA's Obligations

Note that SCRA's obligations under the Children's Hearing's (Scotland) Act and related legislation uses the term "relevant person" to describe a person who has rights to be notified of certain things including decisions made and children's hearings arranged. The term covers a range of individuals, principally those who have parental responsibilities and rights in relation to children. This includes most parents who are registered on the child's birth certificate as well as other individuals who hold these rights. "Relevant person" also generally includes other parents who do not hold parental responsibilities or rights.²

In practice, fathers will almost always be relevant persons with the rights and obligations that flow from that.

The reporter has various statutory obligations to notify relevant persons where the person's contact address is known. The reporter depends on other agencies to provide this information and will seek to ensure any contact information held by the reporter is kept accurate and up-to-date. Where a relevant person's contact details are not known, then no notification can be made.

In dealing with referrals received and making decisions there are a number of points at which reporters may require to communicate with relevant persons.

1. On receipt of a referral for a child.

² Unless the reason the parent has no parental responsibilities and rights is because they have been removed by a court

There is no express statutory requirement to notify relevant persons that a referral has been received. However, reporters generally do so in order to be appropriately open and transparent and support the understanding of those involved in the Children's Hearings System. The reporter will in due course require to tell the relevant person whether a Children's Hearing is being arranged and, further, other agencies may have contact with the relevant person as part of the investigation and/or the relevant person may have information or questions they wish to address directly to the reporter. On occasion it will be appropriate for the reporter to proceed to a decision about a child without further investigation, in which case a separate notice about receipt of the referral will not be given.

There are however other circumstances in which the reporter will not inform a relevant person of a referral. In particular, where receipt of such a letter by the relevant person would be likely to create a risk of harm to someone. (An example of this would be where a relevant person is known to have carried out domestic abuse in the past and where notifying them might result in further abuse.) Other than this, for any particular referral there may be a number of factors, and their interaction, that influence whether to tell a particular relevant person that a referral has been received. These include:

- The extent of involvement of the relevant person in the life of the child,
- The extent of likely direct knowledge of the issues or concerns about the child,
- The age of the child, and
- The sensitivity of the information in the referral.

Consideration of these is always balanced with the general reasons that support giving notice of receipt of a referral. (An example of this flexible approach might be where a 15 year old girl has been subjected to a sexual assault and she has had no contact with her father since she was three. In such a case the reporter may decide NOT to notify the father.)

The lack of notice from the reporter about the referral does not prohibit contact with the relevant person as part of the investigation.

2. On making a decision that no children's hearing is required

When the reporter decides not to arrange a Children's Hearing for the child, they are obliged by statute to inform a number of individuals of that decision. These include each relevant person in relation to the child.

3. On deciding that the child's case will be referred to a children's hearing.

Where the reporter decides to arrange a Children's Hearing, the reporter is obliged to notify a range of individuals including each relevant person in relation to the child. In addition the reporter must provide each relevant person with information about their rights in relation to the hearing and a copy of all reports and other documents that will be considered at the Children's Hearing. There are statutory provisions that allow the withholding of some information in specified circumstances.

4. Other situations where a relevant person will be notified

Relevant persons will be notified by the reporter of a range of other matters including hearing decisions, hearings to review the compulsory supervision order in respect of the child, and court proceedings which arise from Children's Hearings.

General Comments

We have tried to summarise the obligations on the Principal Reporter which may involve informing a father of concerns for his child's welfare. Thinking more generally about the subject matter of the petition, we offer the following comments:

- (i) While the petitioner talks about informing fathers about concerns, it may be that the same question arises in some situations for mothers or others with parental responsibilities and rights.
- (ii) If some change is considered necessary to legislation or guidance, it is likely to be unhelpful if the obligations imposed on agencies were to lack a degree of flexibility and discretion. There are many situations where there may be good reasons not to share some or all of the available information with fathers, mothers or others with parental responsibilities and rights. Relevant considerations might be the child's welfare or the welfare of others and the Article 8 rights of children or others to respect for their private and family life. For these reasons we consider that whether or not any change to legislation or guidance is considered necessary, a degree of flexibility requires to be retained in deciding whether to inform fathers of welfare concerns.

If the Committee require further comment or information we would be happy to oblige.