



Law Society
of Scotland

Consultation Response

Childcare and Justice: Raising The Age of Referral to the Principal Reporter

12 October 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal law Committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: Raising the age of referral to the principal reporter (the consultation). The committee has the following comments to put forward for consideration.

General

We understand that the purpose of this consultation is to increase the age of referral of a child to the Reporter to the Children's Hearing. That requires primary legislation to redefine "child" under section 199 of the Children's Hearing (Scotland) Act 2011.

What has not been included is, on the assumption that this policy change is to take effect, any indication as to its proposed timing for implementation. Exactly how the structure, resourcing, service design and practice implications of these proposed changes need to be clarified. Consequently, we are unsure how much underlying work from all organisations involved is required for the appropriate arrangements to be put in place. There is a need as we highlight below for guidance and training in respect of each of the criminal justice organisations to be revised and put in place.

We mention too at the outset that any proposed change may require review of the current legal aid arrangements to ensure access to justice and provision for any advice or representation required at any hearing for the additional parties that may then be able to appear.

Question 1: Do you agree that the maximum age of referral to the Reporter should be increased to 18?

Yes- and we support the increase in the maximum age referral affecting all cases.

Both the Whole System Approach and Getting It Right For Every Child approach under 18s as children. It seems inconsistent for 16- and 17-year olds who are not already subject to Compulsory Supervision Orders (CSO) to be treated differently and to be deprived of the protections and supports that they would otherwise potentially have had access to if they were subject to CSOs.

Just because a child does not come to the attention of the Children's Hearing system until they are 16, does not mean that they are any less vulnerable or that they do not have the type of difficulties in their life that might have warranted the intervention of a compulsory supervision order. They may have slipped through the net, a referral may have been made but not been taken forward at that stage by the Scottish Children's Reporter Administration or they were already discharged from their CSOs. At that stage, the effects of any relevant issues in their earlier life may only be coming to attention.

The examples provided in Appendix A of the consultation were helpful in outlining what currently occurs in practice and highlights the limitations of the current system. What is important that any changes which are brought forward should in no way nor be intended that prosecutions would not be able to proceed where the offence justifies that. The discretion of the prosecution service remains unchanged. What is being provided is an alternative, being child-centric.

This policy change is consistent with the original purpose of setting up the Children's Hearing system which outlined a welfare-based approach as does the Council on Europe Guidelines on Child Friendly Justice¹ to children. It does not seek to categorise them by means of their offending alone.

This was the policy objective outlined in the Lord Kilbrandon's Report published in 1964 that culminated in the Social Work (Scotland) Act 1968. What that policy does is recognises the much better understanding of the development of a child that currently exists in 2020. This is consistent with other policy changes undertaken by the Scottish Government such as the increase in the age of criminal responsibility. It is also consistent with the heightened interest and understanding of the significance of Adverse Childhood Experience. It is increasingly recognised that negative early life experiences may leave some children more vulnerable to environmental pressures.

Question 2: If the age of referral is increased to 18, are the existing grounds of referral to a Children's Hearing sufficient?

Yes, and see our answer under Question 7.

Question 3: What are your views on the potential implications, including resource,

¹ <https://archive.crin.org/en/library/legal-database/council-europe-guidelines-child-friendly-justice.html#:~:text=%20Council%20of%20Europe%3A%20Guidelines%20on%20Child-Friendly%20Justice,inhuman%20or%20degrading%20treatment%20or%20punishment.%20More%20>

of increasing the age of referral to the Reporter for local authorities, Police and other service providers/organisations?

These organisations are best placed to respond directly to this Question.

This does not directly refer to the Crown Office and Procurator Fiscal Service, the prosecution service, where we wonder what the likely effect of this change on their workload would be. This also highlights the need for relevant training for those required to report the cases to ensure that they understand the system. This includes an understanding of the implications and background information relating to each child so that the appropriate decisions can be made.

Highlighting the role of obtaining advice from the Panel in cases calling in court could be more systemically dealt with across the country. From experience, at times, the approach may be rather piecemeal.

Question 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)?

These organisations are best placed to respond directly to this Question.

Question 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)?

These organisations are best placed to respond directly to this Question.

What seems clear to us if there is an increase in the workload of the Children's Hearing System that this will need to be appropriately and adequately resourced which will include the need to recruit and obtain more suitable volunteers to deal with the increase in workload. That would require more training and such training would need to take account of the changes being made.

Question 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?

We have no comment to make.

This question is best answered by the respective Victims Groups. Suffice to say as we have highlighted above, there is a need for training of those involved if this legislative change takes effect. That needs to review all relevant information that is available to ensure that those that require information are clear.

It is important too that there is an understanding for victims of crime why the case has been handled in the way that it has. By changing the age of referral, this could have the effect of being seen to be light or “soft” on crime. This policy change should fit in with the development of the Sentencing Young People Guidelines on which the Scottish Sentencing Council² consulted earlier in the year.

Question 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.

We would seek to highlight the overlapping interests with mental health and children which is not limited to adults. There is a need to ensure that there are no unintended consequences from effecting this policy change.

We have some concerns that if the policy change is effected that:

- most of the current grounds of referral will not all work.
- what the status of a spouse or partner will be if a young person comes to a hearing.
- Given that parental responsibilities end at 16 how neglect grounds would operate.

² <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/>

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