

## EAST AYRSHIRE COUNCIL

EDUCATION COMMITTEE: 13 SEPTEMBER 2005

### CONSULTATION ON THE CHILDREN'S HEARING SYSTEM RESPONSE TO THE CHILDREN'S HEARING REVIEW TEAM

#### Report by the Executive Director of Educational and Social Services

#### 1. PURPOSE OF THE REPORT

- 1.1 To advise Committee of Phase 2 of the Scottish Executive's Consultation on the Children's Hearing System "Getting It Right For Every Child – Proposals For Action".
- 1.2 To seek elected members approval to submit a response to the consultation to the Scottish Executive's Children's Hearing Review Team.

#### 2. BACKGROUND

2.1 Phase one of the Scottish Executive's Consultation on the Children's Hearing System raised fundamental questions, not only about that system, but also about the services and systems around the Hearing System. The present consultation seeks views on how to improve children's services and on the Scottish Executive's proposal for action to achieve the desired change.

2.2 The review sought views on 23 proposals and 3 related issues. These proposals were underpinned by the Scottish Executive's stated "Vision for Children" which has an ambition for the children of Scotland to be ambitious for themselves and:-

- confident individuals
- effective contributors
- successful learners
- responsible citizens

To achieve this vision children need to be:-

- safe
- nurtured
- healthy
- achieving
- active
- respected and responsible
- included

2.3 The review is being driven by the Children's Hearing Review Team. Ministers have indicated the need to make sure that the child is at the heart of children's services and have emphasised the need for all agencies to work towards a

unified approach in delivery of these services. Agencies should tackle problems as early as possible, only referring to the Children's Hearing system when clearly necessary. This has implications for the way services are structured and planned with a stronger focus on outcomes for children, and on what works. Processes will be streamlined and Ministers expect earlier and more co-ordinated action by agencies. This aim will be achieved by developing from the foundations laid by the Children (Scotland) Act 1995 and by placing new statutory duties on agencies.

### **3. CONSULTATION EXERCISE**

- 3.1 A full day Council wide consultation exercise was hosted by Social Services on 26 July 2005.
- 3.2 In response to the 30 invitations issued, 29 individuals attended representing many aspects of the Council's service delivery to children. These included Education Services, Pre-5 Services, Children's Residential Services, Children and Family Services, Child Protection Services and Leisure Services. The Authority Reporter also participated.
- 3.3 The purpose of the day was to encourage discussion and debate on the Executive's critical proposals for the future shape and nature of service delivery.

### **4. KEY ISSUES**

- 4.1 Feedback from the group reflected a high degree of consensus with many of the proposals. However there were concerns that the Children's Hearing may be moving towards a role of monitoring and driving services delivered by local agencies and also that there was a potential dilution of the focus on the needs of the child in youth justice cases.
- 4.2 Main themes identified by delegates were:-
  - (i) support for the move towards integrated assessment and service delivery
  - (ii) general support for the move towards streamlining the basis of referral to the Children's Hearing. However there were concerns that children with significant needs may not be referred.
  - (iii) the proposal that only a Hearing can amend a condition of supervision endorsed by a previous Hearing prompted concerns that this would prove too restrictive in practice and may have implications for young people's human rights. There needs to be the scope for "best interests" variation in service delivery in the period before a Hearing can be reconvened. This will have particular implications for arrangements for placing young people in Secure Accommodation.

- (iv) concerns were expressed that the proposal the Hearing should be able to adapt its procedures as appropriate by allowing community representatives or victims of a young persons offences to attend may lead to a moving away from focussing on the child or young persons needs.
- (v) there was support for the need to provide communities with clear information on Children's Hearing system and the effectiveness of service delivery.
- (vi) there was considerable emphasis on the need to support services which ensure the maintenance of children's rights.

4.3 The conclusions from the consultation exercise have been formulated into a draft response on behalf of East Ayrshire Council.

## **5. FINANCIAL IMPLICATION**

5.1 Nil

## **6. LEGAL AND POLICY IMPLICATIONS**

6.1 There are no immediate legal or policy implications. However Ministers' stated aim to place new statutory duties on agencies should be noted. Likewise the stated aim that processes will be streamlined will have future policy implications. Any such implications will be subject to separate reports to Committee at the relevant time.

## **7. COMMUNITY PLANNING IMPLICATIONS**

7.1 It is consistent with the improvement opportunities theme of the community plan.

## **8. RECOMMENDATIONS**

8.1 Committee is requested to:-

- (i) note the content of the Scottish Executives consultation on the Children's Hearing System "Getting It Right For Every Child – Proposals For Action". Copies are available in the Members' Lounge; and
- (ii) approve the response to the consultation on the future developments of the Children's Hearing System, as attached at Appendix 1 to this report;
- (iii) note that the report has been considered by the Social Work Committee on 8 September 2005;
- (iv) authorise the Executive Director of Educational and Social Services to submit the response to the Scottish Executive; and

(v) otherwise, note the content of the report.

**John Mulgrew**  
**Executive Director of Educational & Social Services**  
**19 August 2005**  
**Enc (1)**

### **LIST OF BACKGROUND PAPERS**

“Getting It Right For Every Child – Proposals For Action” Scottish Executive 2005

For further information on this report please contact: Sally Ann Kelly, Senior Manager  
Children & Families and Criminal Justice, telephone (01563) 556993.

**IMPLEMENTATION OFFICER:- JACKIE DONNELLY**

**Department of Educational and Social Services  
Council Offices, John Dickie Street, Kilmarnock KA1 1BY  
Tel (01563) 576935 Fax (01563) 578174**

**Executive Director: John Mulgrew  
Executive Head of Social Work: Jackie Donnelly  
If Calling Please Ask For: Martin Donachy**

Your Ref: JD/MD/GMcC  
Our Ref:  
Date: 17 August 2005

Children's Hearing Review Team  
2C-South  
Victoria Quay  
EDINBURGH  
EH6 6QQ

Dear Sir

**Re: Consultation on "Getting It Right, For Every Child – Proposals For Action"**

Thank you for the opportunity to comment on the above.

The comments have been informed by the officers of the Council and partner agencies who attended a workshop on the proposed changes to the Children's Hearing system. They have been subsequently endorsed by members at both Social Work Committee and Educational Committees of East Ayrshire Council. Many of the proposals were generally welcomed. However there was a concern at the move towards the Children's Hearing assuming a role of monitor and driver of services delivered by local agencies. There is also a concern that the Hearing's current flexibility in meeting children's needs may be reduced.

Please find below the Officers' comments in response to the specific issues raised in Section 4 of the Consultation document:-

**1. *We propose that agencies should publish information for children and families about the services and support available and how it can be accessed.***

As already required by Statute and Regulation a great deal of information is already published. It is this Council's view that the real challenge lies, not in simply publishing information but in ensuring its effective dissemination. This will require significant investment in new technology and in training staff to utilise such resources to access information relevant to the particular situation faced by each child and family. This will also require an emphasis on advocacy on behalf of children and their families. In particular the role of Children's Rights Officers should be further examined and consideration given to whether it should be a

requirement that all Councils provide this service. Again this would have significant resource implications.

- 2. *We propose that agencies under duties and responsibilities need to be alert to the needs of children, to listen to them and record children's views, to identify children in need and to act to improve a child's situation***

Again these duties and responsibilities are already embodied in statute such as the Children (Scotland) Act 1995. For example "to act to improve" is embodied in Educational legislation but greater clarity will be required in developing expectations of how this will be extended to impact on a child's overall "situation". There needs to be an emphasis on clear assessment, recommendations and decision making subject to clear timescales. Again the role of Children's Rights Officers could make a positive contribution.

- 3. *We propose a new duty on agencies to co-operate with each other in meeting the needs of children and to establish local co-ordination and monitoring***

Within East Ayrshire Council area there is already a high level of inter-agency cooperation in progressing the Children's Services Plan and through the work of forums such as the Child Protection Committee. However the view of those consulted would endorse the move towards establishing a new duty on agencies. This would help to ensure robust forward planning and increased collective responsibility. Consistency and quality in service delivery would then be subject to ongoing review. It has been suggested that each agency should be required to identify a Senior Officer who would have responsibility to ensure compliance with this duty and ensure that children and their families are engaged in developing the integration of services.

- 4. *We propose to develop, with agencies, a single integrated assessment, planning and recording tool for use within a framework of co-coordinated meetings, reviews and planning. These arrangements will in time replace meetings about child protection, looked after children, joint assessment, youth offending and other inter-agency arrangements.***

There is clear support within East Ayrshire for the development of a single integrated assessment tool. However it must be simple to use and ensure the timely delivery of effective interventions and services. It must assist the involvement of children and families in developing assessments and act as a robust quality assurance measure in illustrating the extent of interagency service coordination. The move towards co-coordinated multi-purpose meetings and reviews is to be welcomed but will require further clarity about the role and expectations of those officers who are commissioned to convene and conduct such meetings.

- 5. *We propose that where a child's needs are complex, serious, require***

***multi-agency input or are likely to require compulsory measures an action plan must be agreed by all agencies involved and kept under review. The action plan will be the principal source of information for the Reporter if the child is subsequently referred.***

There was support for the concept of an action plan agreed by all agencies. Again it was identified that clear guidelines and timescales need to be established in terms of agencies reaching agreement on action plans for individual children. This will also require clear monitoring of the progress of action plans.

The need to avoid potentially conflicting processes and professional disagreement was identified. Likewise agreed action plans should follow children when they move from one geographical area to another reducing the need for children to be subjected to further fresh assessment.

The proposal that the action plan would be the principle source of information for the Reporter was welcomed, particularly if this will reduce the number of reports which have to be prepared for Hearings and ensure that agencies are presenting an agreed plan to the Hearing.

**6. *We propose that where there is a need for co-coordinated action, a lead professional from amongst the agencies must be appointed.***

The merits of the concept of a lead professional from amongst the agencies being appointed in each case where there is a need for coordinated action are acknowledged. This person could fulfill the roles of coordinator, arbitrator, assessor and implementer, ensuring that timescales are complied with and resources made available. However significant barriers will have to be overcome including those relating to information sharing, confidentiality and access to specialist resources. There would also have to be clarity about expectations and the personal liability of the appointed lead professional. It is not clear how the lead professional would be appointed particularly in complex situations where professionals may disagree about who should have lead responsibility.

***Specific Question 1.***

***Is there sufficient emphasis and guidance about the child's involvement and are there sections which need strengthening to make sure that the child or young person is at the heart of the process?***

There is sufficient emphasis within the Integrated Assessment Framework (IAF) on ensuring the child's involvement. However clearer guidance on how to secure the child's involvement is required. A "tool box" of age appropriate work material which can be used to engage with the child and ascertain her views would be of considerable assistance to practitioners, although this should not be seen as a substitute for best professional practice when seeking to engage with children and young people. There is

also a concern that the merits of applying the IAF for children in need could be diluted if it is to be applied to all children and further clarification is required in relation to this expectation.

***Specific Question 2.***

***How well does it do so and are there any gaps?***

The assessment triangle as devised in the IAF highlights the need for additional, age appropriate work tools to compliment its use with individual children. Workers who have already sought to utilise the assessment triangle have expressed a preference for the model originally devised within the Department of Health Framework.

**7. *We propose that a referral to the Children's Hearing system should meet two tests – significant needs and a need for compulsion.***

The proposal that referral to the Children's Hearing should meet two tests; that of significant need and that of a need for compulsion is welcomed in that it underpins the principle of minimum necessary intervention. However there are potential pitfalls. There is the danger that the emphasis on parents fulfilling their parental responsibilities towards their children as embodied in the Children (Scotland) Act 1995 could be become diluted. Also the compulsion test may give rise to the danger that workers may collude with families rather than seek to confront situations where children are in significant need. Furthermore applying such tests may deter referrals from individuals and members of the public who may struggle with such concepts.

**8. *We propose that the indicators of significant need will include a pattern of behaviour which gives rise to concern.***

This is a welcome proposal, particularly in the context of child welfare and permanence cases where a body of evidence relating to parents not being able to fulfill their parental responsibilities may be required. It is also welcome in that it may assist agencies in providing a pattern of service delivery which would be a proportionate response to the needs of the child and her family.

**9. *We propose that all agencies involved in an action plan agreed at a Hearing are required to implement it. Any plan endorsed by a Hearing as a condition of supervision can only be amended by a Hearing (including the use of secure care).***

This proposal has prompted several concerns. It may prove too restrictive in practice and inhibit rather than ensure the implementation of action plans. Even where there is a request to expedite a Hearing there needs to be the scope for the identified Lead Officer for a case to be able to endorse interim "best interests" variation of the agreed action plan. Having to rigidly comply with an agreed action plan could create fertile ground for

contention and even litigation between the parties involved and does not allow for appropriate responses to further evidence what would be in the child's best interests arising out of attempts to implement the action plan. For example where parental contact is not progressing well in an agreed action plan which is assessing the viability of rehabilitation it would not be in the child's best interests for such contact to continue in the period preceding a Hearing being reconvened.

The specific proposal relating to secure care profoundly changes the role of the Hearing from one of "authorizing" secure care to one of "requiring" that it must happen. This will have significant implications for young peoples' liberty and human rights, particularly if the current double-check of the Chief Social Work Officer and Head of Establishment agreeing that the Hearing's authorization of secure care is appropriate is to be removed. Likewise if secure care is to be implemented as a "requirement" of a decision of a Hearing then how this is resourced and financed should no longer be the responsibility of local councils. If the Hearing is to have such power in the future responsibility for the accessing and financing of secure placements then further consideration needs to be given to how secure places should be funded.

- 10. *We propose that if the referral to the Reporter does not meet the test criteria, the Reporter will refer the case to agencies to act on the Action Plan and will be empowered to seek reports on progress and reviews as necessary.***

There is general support for this proposal. However it was identified that further clarification will be required of the current disposal available to the Reporter of "voluntary supervision".

- 11. *Where action is considered necessary in advance of a Hearing reaching a final decision, we propose that a Hearing should make an interim supervision requirement.***

There is significant support for this proposal. Unlike current Place of Safety Warrants interim supervision requirements offer the scope for greater flexibility in agreeing an interim action plan which will assist the assessment process, particularly in assessments of the viability of rehabilitation to parental care or the need for permanent care. Clear timescales relating to the duration of interim supervision requirements must be established. Likewise there must also be clear guidance on the parents' or relevant person's right to appeal any decisions.

- 12. *The frequency of Review Hearings can be determined according to***

***the child's needs and the "persistence" of the child's behaviour or needs.***

There is support for this proposal. However "persistence" in the child's behaviour and needs should not be the only determining factor. As it is proposed that a pattern of behaviour (ref response No 8), including that of a parent, will be viewed as an indicator of significant need then parental persistence in particular behaviour and actions should also be viewed as a factor which can influence the frequency of Review Hearings.

- 13. *Children whose behaviour or attendance at school is a cause for concern, should not be taken out of school to attend Children's Hearing. There should be greater flexibility in the timing of Hearings to meet the needs of children and families.***

There is support for this proposal. However it should not only apply "to children whose behaviour or attendance at school is a cause for concern". Rather there should be a statement in principle that no child or young person of school age should be required to attend a Hearing during school hours. This would have implications for current workforce arrangements and the need for greater flexibility at work, for example by convening twilight Hearings.

One suggestion put forward is that Hearings could take place in schools or other child friendly venues. However this could give rise to issues of privacy and confidentiality.

- 14. *Where a Children's Hearing or other meeting is concerned that help and intervention is not leading to a positive change in a child's behaviour, a Hearing should be able to adapt its procedures as appropriate. In particular it should make sure that the child is fully aware of the concern of the Hearing and the potential consequences of further such behaviour. This might include formally requiring the young person to explain why help or intervention has not resulted in improvements. If appropriate, community representatives or victims might be invited to sit in on the Hearing to reinforce that the behaviour has an impact on others, and to understand better what efforts are being made to address the child's behaviour.***

Significant concern has been raised at the proposal that the Hearing should be able to adapt its procedures as appropriate. The tone of this proposal is not child centered and does not fit with the aim of "getting it right for every child". Rather it reflects a punitive approach which may be at odds with the Hearing's responsibility to focus on the child's needs.

It is right that children should be held to account but there needs to be clear safeguards including access to advocacy support or legal representation if a young person is to be expected to explain a lack of improvement in her situation. In particular there is concern that the involvement of community representatives or victims in sitting on Hearings

could result in a focusing on the deeds as opposed to the needs of a child. There is support for the concept of restorative justice. However this should be pursued within a specific action plan for a child following a Hearing which may include subsequent involvement of agencies such as SACRO or Victim Support and involve well planned contact with victims of the young person's actions.

- 15. *Children's Hearings must be satisfied that the action plans presented to them are realistic and likely to be effective and that all the available measures to control behaviour (for example, electronic monitoring, Parenting Orders and Anti-Social Behaviour Orders) have been considered where appropriate.***

There is support for this proposal in principle. However there are significant resource implications not least in recruitment and training of Children's Hearing members who, as volunteers, will need to be confident in their ability to challenge various professionals. It is suggested that the Scottish Executive's current Volunteer Initiative could offer a viable source of suitable, younger people who could be recruited to serve on Children's Hearings.

The Lead Officer in each case will have a pivotal role in appropriate resourcing of agreed action plans and reviewing progress.

There is concern that requiring Hearing members to be satisfied that all available measures have been actively considered, including such measures as electronic monitoring and Anti-social Behaviour Orders, may lead to "upping the tariff" in the Hearing's disposals in respect of young people and may conflict with the principle of minimum necessary intervention.

- 16. *Children's Hearing should provide information to communities about the nature of decisions made and their outcomes.***

There is general support for this proposal in that it may help to allay anxieties about the public's perceived level of anti-social behaviour and its level in reality. Also it may help to allay a public perception that the Children's Hearing is a soft option. However there needs to be clarity about what information can be provided and a clear definition of what is meant by "community". For example information on a localised geographical area may inadvertently focus attention on a small number of individual children and young people who may become at risk of criminal action from other members of that community.

- 17. *Procedures are to be introduced to streamline the establishment of grounds for referral where the child is too young, not sufficiently mature or not able to understand the grounds but the parents accept them.***

There is strong support for this proposal. This will mean a reduction in delays in addressing the care needs of vulnerable children.

**18. *Greater continuity of Panel Members from one Children's Hearing to another is to be achieved.***

In general there is support for this proposal but there needs to be an adequate level of flexibility to respond to particular circumstances. There also needs to be safeguards which ensure that the objectivity of the current system is maintained. There is a view that the views of the child and her family members should be sought by Hearing members at the end of each Hearing.

**19. *We propose to place a new duty on the SCRA to ensure provision of legal presentation for children, where this is necessary, under current criteria to protect their rights.***

There is strong support for this proposal. Young people should have access to appropriate legal representation at the earliest possible stage. This will have a significant cost implication.

A further concern which has been highlighted is the lack of speedy access to legal representation at police interview following a child's arrest. This can result in a lack of protection of children's' rights.

**20. *We propose to legislate to enable Children's Hearings and Reporters to withhold information provided by the child when its release may place the child's welfare at risk.***

There is support for this proposal because it will enable children and young people to be listened to in a safe way. However clear difficulties can be identified and there will need to be clear guidelines relating to how such legislation should be implemented. This will have significant implications for the formulation and proof of grounds of referral.

There will be a need for children and their families to be well prepared in advance of any Hearing. It also highlights the need for training of Hearing members, particularly the Chairperson, in using such powers effectively.

***Specific Question 3***

***We invite views on whether the role of the Safeguarder should be maintained and/or available to any service which requires an independent assessment of the child's best interests.***

The role of the Safeguarder should be maintained to enable access to independent assessment. However there is a need for Safeguarders to be suitably qualified, trained and accredited. Consideration needs to be given to how best to achieve effective monitoring and supervision of Safeguarders' practice.

**21. We propose amending the Children (Scotland) Act 1995 to remove the requirements that Children's Panels and Children's Panel Advisory Committees be linked to local authority boundaries.**

There is general agreement with this proposal if it is to be founded on good training for panel members and Chairpersons. Overall the membership of a hearing should continue to reflect local communities.

**22. We propose improvements in and modernisation of the arrangements for the recruitment, training, support and monitoring of panel members through the establishment of either a single national body or a local authority regional structure. We invite views on whether a regional or national approach is preferable.**

There is clear support for local authorities retaining their administrative responsibilities within a regional structure. However this must be underpinned by clear and robust national standards.

**23. We propose agencies keep the public and communities informed about what is being done with their concerns and help them understand that focus is on effective action and not processing children through the Children's Hearings.**

There is clear agreement that agencies should have a responsibility to keep the public and communities informed. The emphasis on effective action is appropriate but there is a need to engage with the public and the media on a national level to get this message across. There needs to be a highlighting of positive outcomes resulting from the involvement of the Children's Hearing system.

I hope you find the above helpful. Please do not hesitate to contact me if you require any clarification.

Yours sincerely

**Jackie Donnelly**  
**Executive Head of Social Work**