

SCRA Committee Response

FULL VERSION

Disclosure (Scotland) Bill – Education & Skills Committee

SCRA Written Evidence

August 2019

CALL FOR WRITTEN EVIDENCE on the Disclosure (Scotland) Bill:

The Committee welcomes views on any aspect of this Bill. This can include comment on the changes to the law proposed by the Scottish Government, including how you consider the approach will work in practice.

SCRA welcomes the opportunity to provide written evidence to the Education & Skills Committee.

INTRODUCTION:

The Children's Hearings System is Scotland's distinct statutory system, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.

In the Children's Hearings System:

- the needs of children or young people are addressed through one holistic and integrated system 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 rights of children and families are respected

The role and purpose of SCRA is to:

1. Make effective decisions about a need to refer a child/young person to a Children's Hearing
2. Prepare for and participate in court proceedings where statement of grounds or Hearings findings are appealed and ensure the wellbeing of children and young people – particularly vulnerable witnesses – are protected throughout the court process
3. Support Panel Members (though we are not involved in making Hearing decisions) and ensure fair process in Hearings
4. Support children, young people and families to participate in Hearings
5. Disseminate information and data to influence, inform and reassure
6. Provide premises for Hearings to take place
7. Work collaboratively with partners to support and facilitate the Getting it Right For Every Child (GIRFEC) agenda

SCRA's vision of service is that:

We operate within Scotland's Children's Hearings System to protect and support the country's most vulnerable and at risk children and young people identified as requiring the full protection of the law due to difficulties, challenges and risks they face.

SCRA commented extensively on the ‘Protection of Vulnerable Groups and Disclosure of Criminal Information - A consultation on proposals for change’ when the detail of the approach was at consultation last year (<https://www.scra.gov.uk/wp-content/uploads/2018/12/PVG-Full-Consultation-Response.pdf>).

1. Scotland has focused on the needs and deeds of individual children in their specific set of circumstances through the statutory intervention of the Children’s Hearing System since 1971. However, we have not been able to take the same approach to the way in which the offending of children and young people is captured, recorded and then used when children reach adulthood. The Rehabilitation of Offenders Act 1974 has layered a response developed for the criminal justice system on top of the Children’s Hearing, which is a welfare system, not a punitive criminal justice system. This has always been incongruous and at odds with the ethos and approach of the Children’s Hearing. SCRA agree with the Policy Memorandum for the bill, at section 36, recognising: *‘adolescence as a unique phase of life by ending the automatic disclosure of convictions accrued while aged between 12 and 17 years and introducing an assessment by Disclosure Scotland acting on behalf of Ministers as to whether convictions ought to be disclosed, with a subsequent right of review by the independent reviewer (followed by an appeal to the sheriff on a point of law) prior to disclosure to a third party’.*

2. We continue to believe that the approach of the Children’s Hearing to the offending behaviour of young people is an approach that works. In the Children’s Hearing System all of the adversity faced by young people who behave in a way contrary to the criminal law is assessed and a plan to address the adversity is developed and ratified by the Children’s Hearing as a statutory decision maker. This holistic approach does not differentiate between offending behaviour or neglect / abuse (for example) as a presenting adversity – and we have always believed that the outcome of involvement in the Children’s Hearing should, for the vast majority of children, not ‘come back’ to a young person later in life. We also recognise that there are some children and young people whose behaviour during childhood and adolescence is such that, given certain circumstances, they may continue to pose a risk – and this ongoing risk requires to be assessed and determined in order to keep the public, other children and the individual safe.

We are pleased that our key concerns have been addressed in the Disclosure Bill.

We are hopeful that the future vision of the approach to the disclosure of offending for children and young people in Scotland as laid out in the Disclosure Bill will allow the very real chance for young people who experience adversity in their childhood to change and to have positive futures.

PART 1:

Level 1 Disclosure:

3. The Management of Offenders (Scotland) Act 2019 has altered the situation in relation to the relevant disclosure period for cases dealt with in the Children’s Hearing System, so that there is no longer any relevant disclosure period. Once implemented, the act will mean there is no longer any relevant disclosure period regardless of whether the accepted or established grounds are discharged by a children’s hearing or the children’s hearing makes a CSO.

Consequently, Children's Hearing information will no longer appear in Level 1 Disclosures.

4. However, SCRA think that the proposed level 1 and Level 2 tiers for disclosure is clear and transparent. We agree with the specification on age (applicants over 16, can be given between 12-16 if there is a need) and we agree with accredited body applications.

5. SCRA support the move towards the use of electronic communications and think that this approach is clearly described.

6. We would ask that the information "recorded in central records" (section 5(1)(a) by Police Scotland should be clearly and simply stated online – in respect of record keeping timescales and weeding and retention policies. This area of work has been complicated for a long time and it is important that the changes which have been made are clearly explained for people.

7. SCRA are pleased that there is no longer any automatic disclosure of childhood 'conviction' information. The approach outlined to the inclusion of childhood conviction data based on a case by case assessment is well developed and thorough. We are in full support of the review process as set out and we fully support the creation of the Independent Reviewer post.

8. We are hopeful that Scotland's approach to any inclusion of childhood conviction information will become more systematic, rigorous and consistent. The transparent review process makes sense and the appeal process also makes sense. We would want to see a presumption that childhood conviction information will not be included unless Scottish Ministers are able to demonstrate why information is relevant and ought to be included and we would want to see this clearly stated in either the bill or in the guidance to be developed as part of the Bill implementation. We do not believe that childhood conviction information should be included in disclosure certificates unless there is a justified need to do so – the process as delineated means that such justification has to be given.

Level 2 Disclosure:

9. SCRA are pleased that there is an alteration to the timescales in relation to conviction and that these timescales (5 years 6 months from the date of a child hood conviction; 11 years from the date of any other conviction) recognize that desistance for children and young people cannot be understood in the same way as adult desistance from offending.

Common Provisions:

10. The approach outlined in section 30 – of a single review being carried out by the Independent Reviewer if an individual applies for review under more than one relevant section of the Bill makes sense, and we think that this 'single review' approach needs to be maintained in all applicable circumstances in the Bill – for example where there is a need to look at conviction information for pre / post 12 behaviour in a single case. SCRA also think that the 'single review' approach should be taken if there is a need for conviction and other relevant information (ORI) to be included in a Disclosure. We are not sure whether this process is clear enough.

11. We support the concepts of lawful and unlawful disclosure of level 1 and level 2 disclosure information – it is absolutely right that the information is used for the stated and intended purpose and not for other things and that there are clear consequences if the level 1 or 2 disclosure information is used in any other way.

Accredited bodies:

12. We support the register of accredited bodies and the management of persons with access to the disclosure information. We also support the electronic approach – which gives an individual access to and rights over their own information held by Disclosure Scotland. We fully support the code of practice. We accept that identity checks will require to be done but have some reservations about the use of biometric data in relation to these checks – and would want to have clear and stated restrictions on the retention of, for example, fingerprint data used to establish identity. We accept that checks carried out by Disclosure Scotland carry a fee – but question whether the same fee should apply to public bodies as to individuals, and wonder whether the movement of public money around public agencies can be entirely justified. This argument we would extend to the fee to be charged for the work of public agencies to mine information from data systems to assist Disclosure Scotland in their work.

PART 2:

PVG Scheme:

13. SCRA agree that the PVG scheme should not apply for young people under the age of 16 and that the level 1 or 2 disclosures will provide assurance for this group should it be required. We think that the ending of ‘lifetime’ membership makes sense, even though we have some reservation about the increased workload for organisations (particularly organisations in the public sector) and the increased cost burden.

Regulated roles:

14. SCRA agrees that people carrying out work in regulated roles require to be members of the PVG scheme and that this provides the strongest protection for Scotland’s vulnerable groups. This does have an impact on recruitment timescales and employment procedures and we think this should be recognised nationally.

Consideration for listing:

15. We think this approach makes sense and is in the best interest of vulnerable people and the individual being considered for listing.

Barred status:

16. This process is well explained and is required.

PART 3:

General:

17. SCRA have no comments to make.

FINAL COMMENTS:

18. We welcome the review process and the post of Independent Reviewer. It can be quite difficult to ‘see’ how the post will work, without being able to see all of the guidance / information in relation to the role / work of the Independent Reviewer.

19. We would, however, say that we think the processes put in place by the Independent Reviewer will require to be quick. Recruitment practices will need to recognise this additional step and may need to factor in extra time for all recruitment – so that if the Independent reviewer does become involved that does not become obvious and therefore prejudicial for a candidate in any recruitment exercise.

20. In respect of List A and List B we remain of the view that these offence ‘lists’ are quite difficult to explain to young people and their families. We are pleased that the offences on the lists have been restated and amended in Schedule 1 & 2 of the Bill, but we would still prefer an approach which considers each offence on its own merits, rather than relying on a binary list.

21. Section 38 offences of threatening and abusive behaviour (Criminal Justice and Licensing (Scotland) Act 2010) have moved from the current 8A list to the new schedule 2 list. SCRA welcomes this move in relation to section 38 offences committed by children – and would ask that if there are any proposals to move it to schedule 1, then there should be an exception for section 38 offences that are childhood convictions. We still feel that the inclusion on the schedule 2 list of many offences ‘commonly’ committed by young people may increase the likelihood of childhood conviction information being disclosed (any assault, any theft, breach of the peace). We would therefore ask that the test applied before the offence is included is a high test – and, as previously indicated, that the presumption should be that childhood conviction information is not included unless the Scottish Ministers can demonstrate that it should be.

22. We support the end of the ‘lifetime’ PVG membership and think that a renewal every 5 years gives more of a chance for people to move on from their past offending behaviour.

CONCLUSION:

23. SCRA welcomes the progressive approach of the Disclosure Bill towards the disclosure of offending behaviour which has occurred during childhood and adolescence and we think that the Bill will genuinely allow young people to move on from their past to fulfilled and meaningful adult lives, whilst also providing robust and consistent protection from risk for Scotland’s most vulnerable people. We would ask the committee to support the Disclosure Bill.

SCRA Practice & Policy Team, 2019.