HEALTH AND SPORT COMMITTEE

FORENSIC MEDICAL SERVICES (VICTIMS OF SEXUAL OFFENCES) BILL

LETTER FROM SCOTTISH CHILDREN'S REPORTER ADMINISTRATION – 3 JUNE 2020

Dear Mr Macdonald,

We thank you for your letter dated 21st May 2020 and we are pleased to provide a written response to the Committee to assist in your consideration of the Forensic Medical Services (Victims of Sexual Offences) Bill, currently at stage 1. We would thank Ms Riddell, Children 1st for her comprehensive and knowledgeable response to the Committee, and we hope that the following additional contributions are helpful.

SCRA responded to the Committee's call for written evidence earlier this year, and our response is available here. We also produced a full response to the pre-legislative consultation which is available here. From the outset SCRA has been clear about our preferred approach. In our response to the pre-legislative consultation we said:

"For SCRA the Barnahus model focuses on children and young people, not on all victims of crime who may require a forensic medical examination. The Barnahus also goes beyond sexual offending – in that it should be the place where ALL the evidence of children and young people is taken.

We are a little concerned that the focus on forensic medical examination more widely may limit the development of the Scottish Barnahus and prevent access to the Barnahus model for children who have been harmed by domestic abuse, a schedule 1 offence, the drug use of parents or for children who are witnesses to other adult offending but are not victims of that offending (for example).

We would be disappointed if this were the case."

And in our written response to the Committee earlier in the year we said:

"SCRA supports the Forensic Medical Services (Victims of Sexual Offences) Bill. We are pleased that our distinct and discreet Children's Hearings Proceedings are recognised alongside criminal justice proceedings throughout the Bill. We think that the Bill shifts the emphasis to healthcare in a clear and effective way and we are optimistic that this will enable and empower more people to seek support which will benefit them, at an earlier stage. We also think that this Bill fits well within the wider Scottish movement towards a Barnahus model of forensic and oral evidence recovery at the earliest opportunity – with the focus being on recovery for victims.

This Bill feels like we are a significant step closer to that becoming a reality, but as we stated in our initial response to the pre-Bill consultation "For SCRA the Barnahus model focuses on children and young people, not on all victims of crime who may require a forensic medical examination. The Barnahus also goes beyond sexual

offending – in that it should be the place where ALL the evidence of children and young people is taken."

This is still a future aspiration which we should not lose."

Our general position has not altered.

Integrated services for children following rape and sexual abuse

1. What are your views on the general principles of the Bill in relation to children and young people?

We are in agreement with the positioning of the forensic medical service for victims of sexual offences and the retention service in every Scottish health board.

We understand the focus of the Bill on the victims of sexual offences and we also understand the limitations on the provision of forensic medical examination as set out in part 3 of the Bill.

We agree with Ms Riddell that the Bill is a welcome improvement in the provision of services to adults and we have nothing to add in relation to how the provisions and approach will work for them.

In relation to children & young people and the specific, focussed and discreet service provision that the Bill seeks to legislate for in terms of a forensic medical examination for a victim of a sexual offence, the Bill principles are clear.

However, in taking this focussed and discreet approach the Bill does not offer any service improvement for the victims of other offences; or for those children who require to be interviewed as witnesses or for those children who require to be interviewed as perpetrators. It does not offer therapeutic supports beyond the forensic medical examination and evidential retention of information. It does not indicate how, or when, the improvements as outlined in the Bill would align with other improvements like the new Joint Investigative Interview or the Barnahus pilot in development and we think the legislation would be strengthened if there was a clear sense on the face of the Bill that this was one piece of a larger jigsaw. The main policy objective of the Bill is to improve the experience of forensic medical services by people who have been affected by sexual crime. We think the Bill in its current iteration will do that but this policy objective is just one part of a much larger, whole scale reform agenda which the Bill does not address.

2. Would you would like to see any additional provisions in the Bill and if so what they should cover?

We have thought carefully about this. We think the focus and clarity and simplicity of this Bill gives it it's strength and this could be lost with further additional provisions. We can see how this Bill could be used as a model for further legislative change on additional specific, discreet areas and we would hope that the Scottish Government are not approaching these reforms in isolation and that they are seen as part of a bigger picture. We are not sure how

assurances can be given that moving forward the approach of this Bill will be replicated for the children and young people who are the victims of other offences, witnesses to offences and perpetrators of offences.

Barnahus

3. Do you consider that the provisions in the Bill support the Barnahus approach? Is the Bill Barnahus ready?

Yes. The Bill supports the Barnahus approach and the provisions of the Bill as currently drafted could work within the wider context of the Barnahus.

However, the Bill does not in and of itself take us any closer to the realisation of Barnahus and perhaps that is the main difficulty. The Bill can stand on its own regardless of Barnahus development – and there is no clear or obvious way to tie the two together. This piece of legislation does not need a Barnahus – but would undoubtedly be a more powerful reform if it was positioned within a Barnahus - particularly if the Barnahus could provide:

- facilities for the forensic medical
- therapeutic support in relation to physical and emotional harm
- information and support in relation to data retention, privacy and confidentiality
- facilities for the gathering of oral as well as physical evidence
- facilities for the contemporaneous testing of oral evidence
- facilities for the ongoing holistic support of a child and family
- links to additional required services – both statutory and non-statutory

This thinking of Scotland's service provision as a single holistic point of contact – from the point of view of the child who needs access to many different things at the same time – is long overdue.

However, it is also still the subject of much debate and as such Scotland may not be Barnahus ready – particularly in terms of the taking and testing of the evidence from children.

4. What changes could be made to ensure that there aren't any unintended consequences in relation to the development of a Barnahus approach?

This is very difficult. It may be that changes to focus this Bill more closely on a Barnahus approach could undermine that very approach whilst it is being carefully developed. It might be helpful to state on the face of the Bill how it is intended to 'fit' within a Barnahus approach, once that is developed.

5. Would you prefer children to be included in this Bill or addressed in separate legislation?

We have thought carefully about this. We are content for children to be included alongside adult provisions within this Bill. We trust that any future legislation in relation to Barnahus

will clearly reference the improvements of this Bill and move the provisions of this legislation to a statutory footing within the Barnahus approach.

Self-referral

6. Do you consider that the provisions in the Bill to restrict self-referral of forensic medical examinations to young people over the age of 16 are appropriate?

Yes. We covered this at some length previously. We agree with the Policy Memorandum position at paragraph 28 that current child protection processes will apply if a child tells a professional they have experienced sexual abuse.

SCRA are also glad that this does not preclude a child from seeking healthcare before they have made a report to Police Scotland, but we are assured that if a child does present to health then health, police and social work will:

- discuss the case in an interagency referral discussion, or IRD
- implement a plan to keep the child safe
- follow child protection processes
- and consider whether a referral for statutory intervention through the Children's Hearing System is required.

7. Should the age at which self-referral services are available be lowered or raised and why?

No. we think under 16 statutory and non-statutory child protection processes should be used in order to identify and deliver any required support.

8. Is there a possibility that the promotion of self-referral for those aged over 16 may unintentionally act as a barrier to younger victims?

No. We would hope not. Conversely we think that the concept of self-referral is a positive one and which may encourage more people across all ages to seek support when they need it. Much will depend on the ways in which the messaging about the service and about self-referral is done; and much will also depend on the guidance given to practitioners.

9. Would there be any situations when self-referral for people under the age of 16 would be appropriate? There may be the situation where a young person would not want to involve the police but may wish to self-refer so that any evidence could be used in the future.

Yes – although to be clear we would envisage a way for young people to self-present for supports, which would not have all the same consequences as adult self-referral.

We would hope that if a young person under the age of 16 presented for support through self-presentation at services rather than through professional referral they would not be denied any required assessment or therapeutic support that was required and we certainly hope that they would not be turned away. It would be incumbent on the service to explain

the duties of professionals in relation to child protection and for the young person to decide what to do on the basis of that information. Young people may need access to legal advice or to an advocacy worker to assist them.

We don't think it would be appropriate for any child protection response to be side-lined and as such, communication with the self-referring young person would require to be clear, definite and transparent.

We accept that this communication may result in a young person deciding not to go through with the self-presentation and that information about them may then be shared through interagency referral discussion (IRD) and child protection processes, where appropriate and proportionate.

Child protection and age of the child

10. Are the provisions in the Bill, or should they be, in line with child protection guidance?

SCRA think that the provisions of the Bill are in line with the current child protection guidance in force (2014) and that the Bill aligns with the principles and approach being taken in the re-draft of that guidance due for publication this year.

SCRA supports Scotland's commitment to incorporate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law and accepts that when this occurs our definitions of a child may change. SCRA also supports the consideration of extending the jurisdiction of the Children's Hearing System to include 16 and 17 year olds and thinks that the clarity of this Bill will allow for these changes to be made, with only minimum adjustment to the statutory provisions being required.

11. If the expectation is that a self-referral by a 16 or 17-year-old may initiate child protection processes, why should the self-referral provision not extend to people under 16 years old?

For SCRA the main issues here are in relation to the 'ownership' or rights to the information gathered as a result of the forensic medical examination. For children and young people under 16 where child protection procedures are initiated the forensic medical examination may provide the evidence that is required to underpin any statutory intervention to keep the child who has been examined, or another child, safe.

It would be difficult to give a young person under 16 the option to self-refer, with control over that element of the process, and then not give them ownership of any evidential samples which were taken, as a result of decisions made in relation to child protection procedures. The resulting mixed messaging to children and young people would, we think, be confusing.

There are already protections in place for young people under 16 in relation to medical procedures. Between the ages of 12 and 16 any invasive medical procedure require

consent to be given and, as we have already stated above, we would hope that in the event of any self-presentation occurring under 16 we would not envisage supports being denied.

There continues to be some difficulty in relation to any evidence obtained following the self-referral of a young person over the age of 16, where that evidence would need to be relied upon in order to protect children within the same household as the 16 year old, but who have not presented to any services for supports. The Bill does not clarify what should occur in these circumstances and the guidance will need to be very clear about what happens to evidential samples in particular, as well as to any oral evidence from the young person, in this circumstance.

12. Are there specific issues that relate to looked after children, over the age of 16, in accessing self-referral services?

There should be no distinction for looked after children in relation to accessing self- referral services.

However, in practice there may be a complication in that looked after children who continue to be subject to compulsory measures of supervision through the Children's Hearing System may continue to be regarded as a 'child'; child protection procedures may apply in order to keep the young person safe and the evidence obtained as a result of any medical examination or assessment may be needed in order to keep the young person, or other children, safe. The Bill does not explain how this will happen – indeed on the face of the Bill there does not seem to be any remedy if a self-referring 16 year old subject to compulsory measures of supervision did not agree to any Police involvement in their case. This continues to exercise SCRA – and we are not sure how this can be resolved.

The guidance in relation to the legislation, which SCRA hope will be statutory guidance, will require to set out very clearly the procedures which should be followed for looked after children and the communication with looked after children should be clear and unequivocal. SCRA are of the view that the rights of looked after children to access self-referral services post-16 should be the same as the rights of everyone else.

Children with additional needs

13. Are there specific issues that relate to children with children and young people with disabilities or additional needs, that should be considered as part of the Bill?

SCRA think that guidance, which should be statutory guidance, will need to be very clear on this issue. The guidance will require to be informed by organisations with an expertise in this field of work and an expertise in children's rights.

Children and young people alleged to have perpetrated sexual assault and abuse

14. Do you consider that the provisions in the Bill should be extended to cover alleged child perpetrators of sexual assault and rape?

SCRA think that the provisions for Barnahus should be developed for all children, in line with the Kilbrandon ethos underpinning the Children's Hearings System. We understand that the Barnahus Standards for Scotland currently under development are victim focussed and that is entirely in line with the focus of this Bill and that there are additional factors to consider when dealing with a criminal investigation in relation to an alleged child perpetrator. Notwithstanding, SCRA's view is that all children should be treated as children. However, as described already, we are not convinced that this legislation is the vehicle for doing that, as a result of the focussed and discreet approach of this Bill to one specific area of practice.

The intervention and support for alleged child perpetrators will require something different to a forensic medical examination; it will require the taking of evidential samples, perhaps a Police interview and these children will also require legal advice and assistance.

SCRA do think that a Barnahus should be the place for this to happen, recognising that this work will need to be carefully planned and delivered so that victims are fully protected at all times.

We share the view of Ms Riddell that it will be imperative to provide support to both victims and perpetrators in a safe manner, which will not result in any further trauma.

Data protection

15. Are there specific data protection issues that need to be addressed in relation to children and young people?

Yes. The data protection considerations for children and young people should be considered separately to those for adults as a result of the different consequences of the child protection response for those under 16. In October 2019 SCRA responded to a national consultation on the information sharing agreement between NHS Boards and Police Scotland, which also asked questions about that specific Data Protection Impact Assessment. As part of our response we included the following diagram, which sets out the different considerations required of different processes. We think that it is also helpful to include the diagram here, as it demonstrates the requirements for a child in relation to the different procedures which may require to be followed.

The diagram outlines the different processes currently in place in Scotland when a child makes a disclosure; the IRD discussion can result in a joint investigative interview and the involvement of Police Scotland and social work services, and can result in further investigation from both agencies as well as further criminal justice and / or child protection responses. As a result of either Police or Social Work involvement (or as a result of both) there can be further involvement of health services in a number of different ways. Currently there are points of contact between these processes – but they operate within discreet areas of work (health / police / social work). The Barnahus should centralise these discreet areas of work in one place – focussed around the child and this approach should make the model as outlined below look quite different.

16. Should information from forensic medical examinations be linked/ be part of an individual's healthcare record?

SCRA have no comment to make on this – although we think it would be difficult to link any information to a health care record for self-referral cases where an individual has decided not to take the case to the Police. Were medical records to be required for any other purpose any information in relation to self-referral may need to be redacted.

We hope that this provides you with enough information. We would, of course, be pleased to provide additional information or explanation if that is required.