

General Comments

Barnardo's Scotland agrees with the general thrust of the proposals to streamline the administrative arrangements of various bodies contributing to the Children's Hearing system. We welcome the intention to improve the co-ordination among these and reduce the bureaucratic burden in the system.

Barnardo's Scotland believes that the establishment of a new non-departmental public body raises an issue of external scrutiny and inspection. Barnardo's Scotland suggests that this should be considered alongside other developments as a result of the Crerar Report. It would be useful if consideration was given to this now, rather than later.

Barnardo's Scotland suggests there is an opportunity to improve measures on how the views of young people are articulated within the Children's Hearing system. We are aware of procedural changes through the use of the form 'Have Your Say', and we suggest this could be improved through the provision of the option of advocacy support for all young people attending a Hearing to assist them in articulating their views to the Hearing.

Barnardo's Scotland is not aware of a feedback process for young people within the Children's Hearing system. This could reasonably deal with matters which do not constitute an appeal on the decision of the Hearing, but provide feedback to the Hearing from the perspective of the young person. This could be both positive and negative comments and linked to the proposal to increase the capacity for young people to articulate their views to the Hearing.

Specific Comments

Q1. What is your opinion on these proposals for Government's role in future?

Barnardo's Scotland is in broad agreement with the proposals. We believe that they will bring greater consistency of practice across Scotland and there is the potential for a more efficient use of resources. We are aware of varying opinions regarding the appropriate level of resources for Scottish Children's Reporters Administration. We would urge that careful consideration is given to the level of resources required by the new non-departmental public body and that this is not underestimated.

Q2. What is your opinion on the proposals for local government role?

Barnardo's agrees that local authorities should continue to be responsible for giving effect to the decisions of the Children's Hearings system.

As local authorities are already working in partnership with the Children's Hearing system to promote the work, it would be helpful to know what is meant by the 'more substantial focused of local authority activity' and an 'enhanced role in promoting the Children's Hearing system locally'. Awareness of the work of the Children's Hearing system is low and at times inappropriately characterised as a 'soft option'. It would be useful to include greater public awareness and understanding of the work of the system as part of the promotional activity. It may also be appropriate to include this as part of the school curriculum as part of a general understanding of the UNCRC.

Barnardo's Scotland is aware of the patchy coverage of effective Community Planning Partnership and would urge that sufficient time and resources are allocated for the development of this service delivery framework.

It is helpful that the national body is responsible for the training needs of Panel members, although it should be emphasised that this needs to dovetail into local training involving relevant networks of professionals working with children and young people.

Q3. We invite views on the nature, functions and title of the new body.

Barnardo's Scotland agrees with the proposals on the nature, functions and title of the new body.

Q4. Do you have any thoughts on how the necessary separation ("firewalls") can be achieved in the structure and the day to day business of the new body?

The separation of the functions under the overall control of the Board would seem to be a matter primarily for the Board to establish. Barnardo's Scotland does not have any major concerns with the Board being able to achieve this, other than those that arise from the proposal to establish two separate the roles for the Reporter. (see Q6)

Q5. What are your views on the proposed role and functions of the Chief Executive Officer?

Barnardo's Scotland agrees with this proposal as outlined. It would be interesting to know whether it is proposed that a research function would be envisaged as part of this role.

Q6. We invite comment on the options outlined above. Do you have any other suggestions about how the concerns about separation of functions might be addressed? Are there other functions which need to be re-considered or re-allocated?

Barnardo's Scotland believes there are arguments for and against the preferred option and we have an 'on balance' position. Barnardo's Scotland is not convinced that the preferred option will achieve the objective without introducing other difficulties and

prefers an option that, as much as possible, maintains the current role of the Reporter. This approach does not interfere with the integrity of the current arrangements and locates the challenge in terms of maintaining consistency rather than procedural changes. In coming to this view, Barnardo's Scotland is also mindful that the document states "The Scottish Government believes that the current arrangements conform with the requirements of ECHR." (p16)

Barnardo's Scotland acknowledges the dilemma of providing legal and procedural advice to the Panel, whilst ensuring that independent advice and support is provided to children and families and that currently both of these roles are provided through the Reporter. Our understanding of the preferred option is that there would be Reporters who would deal with referrals and make decisions on whether a Children's Hearing should be held and separate Reporters who would be solely concerned with matters within the Hearing.

It is arguable that it may be justifiable to separate the function of providing independent legal or procedural advice at Hearings in the interests of transparency and accountability and that the child's best interests may be more effectively served by a separate Reporter who would effectively run and manage the Hearing. This could be seen as promoting impartiality and would also provide appropriate checks and safeguards to the decision making process. However, it is also arguable that in the interests of consistency and the enhanced levels of understanding of the issues from referral to decision, the maintenance of the current role for the Reporter is preferable. The separation of the role of the Reporter could introduce an unnecessary discontinuity into the proceedings with Reporters fulfilling quite different roles and responsible to different parts of the system. It would appear to change the role of the Reporters within the Hearing to that more similar to a clerk within a court setting. In addition, this proposal introduces another separation of function and careful consideration would need to be given to the consistency of approach of the separate groups of Reporters who would be responsible to different lines of accountability within the Children's Hearing system. If followed, this would need to be addressed as part of the internal governance matters to be established by the Board.

Barnardo's Scotland main concern is that it is important to have appropriate procedural advice to the Panel to ensure that children have a fair hearing, without making the proceedings unnecessarily legalistic, which may diminish the informality of the Hearing.

Q7. What are your views on these proposals?

Barnardo's Scotland agrees with these proposals.

Q8. What are your views on these proposals?

Barnardo's Scotland agrees with these proposals, although there is an opportunity to consider different elements of the safeguarding role. Barnardo's Scotland suggests these could include selection and training for safeguarders.

Q9. We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people (in the circumstances described above) who are involved in the Children's Hearing system.

This is one of the trickiest issues for the Children's Panels. On the one hand, it is necessary to protect the rights of the child to have a fair hearing at all times and have access to legal representation, particularly when their liberty may be at risk. On the other hand, routine legal representation could impact on the conduct and nature of the Hearing, shifting the focus of attention from matters concerning the needs of the child to more legalistic procedural matters.

The suggestion of a 'bespoke code of practice for legal representatives' has merit, however, it is difficult to comment on this without some further detail as to what is proposed. Part of this could reasonably include a requirement that legal representatives are suitably acquainted with child care issues and that delegation to more junior staff in legal practices should be avoided.

One of the most frequently commented weaknesses on Hearing proceedings is how to ensure that the views of children are facilitated and articulated within the proceedings.¹ Barnardo's Scotland is aware of the facility for a young person to use the 'Have your say form' and to have a supporter accompany them to the Hearing. However, we are also aware of inconsistent practice with regard to these.

Barnardo's Scotland suggests that as it would be worth giving further consideration to the role for advocate supporters for children appearing before a Panel. This should be available for all children, provided on the basis of individual support for the young person, with a specific role to elicit the views of the young person appearing before a Panel. It is acknowledged that in some instances this will be someone familiar to the young person, in others it will be someone independent. However, at present there is no consistency and in many instances there is no capacity to ensure that young people have appropriate options for support in expressing their views. This would not replace the need for legal representation, where required, but would be complimentary where the young person has opted for an advocacy support.

Barnardo's Scotland acknowledges it would require additional resources where independent advocate supporters were the preferred choice of the young person.

Q10. What are your views on this proposal?

Barnardo's Scotland agrees with these proposals.

Q11. What are your views on this proposal?

Barnardo's Scotland agrees with these proposals.

¹ Scottish Executive, (2006) *Big Words and Big Tables, Children and young people's experiences of advocacy support and participation in the Children's Hearing System*, Edinburgh: Scottish Executive

Q12. Do you agree these are areas which should be addressed?

Both of these proposals appear sensible measures to ensure more effective decision making for children subject to warrant or place of safety proceedings.

Q13. Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

Barnardo's Scotland understands the proposal is for 'fettered' right of access to reports. Barnardo's Scotland has previously expressed concern if it was unfettered in all cases and suggests that this should continue to be the intention. This raises an issue as to who makes the decision on what should or should not be disclosed, and standards of ensuring that the action is justifiable and proportionate.

Q14. Are there other issues you think might be addressed in the reform programme or proposed legislation?

Barnardo's Scotland is aware of the need for the decisions of the Children's Hearing system to be serviced at local level. The proposals do not address the difficulties in ensuring Hearing decisions are carried out and where this arises, and this remains a matter of concern.