

EQUALITIES AND HUMAN RIGHTS COMMITTEE**AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) BILL****SUBMISSION FROM CARE INSPECTORATE**

Dear Convener

The Care Inspectorate is pleased to respond to the Committee's call for evidence on the Age of Criminal Responsibility (Scotland) Bill.

About the Care Inspectorate

The Care Inspectorate is the official body responsible for inspecting standards of social care in Scotland. That means we regulate and inspect care services to make sure they meet the right standards and help them improve if needed. We also carry out joint inspections with other scrutiny bodies to check how well different organisations in local areas are working to support adult and children. We help ensure social work, including criminal justice social work, meets high standards. Across all our work, we provide independent assurance and protection for people who experience care, their families and carers, and the wider public. In addition, we play a significant role in supporting improvements in the quality of care in Scotland, and reducing health and social inequalities.

We regulate and inspect over 9,000 care services for children and young people, one or more of which almost everyone in Scotland attends before they start school, or during their school years. We also conduct joint inspections of services for children and young people with out scrutiny partners.

Appropriate Age of Criminal Responsibility

We fully agree with the recommendation that the age of criminal responsibility in Scotland be raised from 8 to 12 years. We greatly welcome this long awaited and important proposal which will bring Scotland in line with the aspirations of the United Nations Convention on the Rights of the Child. We believe that such a change would appropriately address concerns that, at 8 years, Scotland currently has the lowest age of criminal responsibility in Europe. In our view, children under 12 who commit offences should be understood as children who require effective intervention and support to help them moderate their behaviour rather than the punishment that is the primary aim of criminal prosecution. We expect that a move to raise the age of criminal responsibility would be significant in supporting a welcome shift in public attitudes towards children whose difficulties manifest themselves in harmful behaviour towards others.

The proposed model is consistent with the Kilbrandon Report which transformed how children were dealt with in the Scottish criminal justice system and led to the introduction of the Children's Hearings system on the basis of responding to deeds in the context of needs. This system is based on a preventative approach, involving early identification and diagnosis of problems, meeting the needs of the child or young person and ensuring a child's family circumstances are integral to the discussion. The proposed model also reflects Kilbrandon's emphasis on applying

compulsory measures of care only where the child or young person's welfare cannot be secured through voluntary arrangements.

The importance of a child-centred approach in the justice system, as reflected by Getting it Right for Every Child, is further explored in our comments on child protection guidance below.

Disclosure and Protection of Vulnerable Group

We agree with the presumption against the release of information about a child's harmful behaviour when an incident occurred before the age of 12. Children's rights are best respected when appropriate care is taken with sensitive information. We also agree that this strong presumption should apply to cases retrospectively. There must be a presumption that information would only be disclosed in exceptional circumstances where there was a compelling argument that to do so would protect other people. We suggest that clear guidance be drawn up which lays out the kind of circumstances in which it would be appropriate to release information. This guidance should also direct consideration of the impact of any such release on the child's wellbeing and support staff in developing and implementing a plan to manage any associated risks and provide necessary support to the child and his/her family. An independent ratification process would be very helpful in providing the necessary safeguards in this regard.

Joint investigative interviews

We agree that the information a child may provide in a joint investigative interview which is about their own actions rather than the actions of others can be different to other disclosures and could potentially have different implications for the child. This suggests careful consideration must be given to having the right safeguards in place at this and each stage of the process.

Embedding the new model firmly in child protection processes should ensure safeguards in those processes are equally available to this group of children. This would include quality assurance carried out by senior managers, child protection lead officers or the child protection committee. Findings from our joint inspections to date show that, overall, quality assurance of child protection practice tends to be better developed and more routinely applied than practice for other groups of children.

We believe a child protection-centred approach reflects the recommendations of the Evidence and Procedure Review Next Steps Report and the changes proposed to the joint investigate review model, including new national standards for quality assurance and statutory guidance based on key principles.

Victims

We do not foresee any adverse impact on the support available to victims and witnesses as long as their needs continue to be recognised as victims/witnesses of harmful behaviour, rather than of a crime. Their needs should continue to be properly considered in this context and appropriate help identified and provided to them. We

do not see any reason why provision of support to victims, including child victims, should be dependent on criminal proceedings being taken against a child.

Police powers

We are fully in agreement with the need to retain some police powers where removing them may have a detrimental effect on the child's rights. Any powers retained by the police should be available for use only in exceptional circumstances and be underpinned by established child protection procedures. This would include the use of the Scottish Government's guidance on joint investigative interviewing. Clear procedures, rooted in the context of protecting the child, must be in place to support police powers in these circumstances.

If the need to obtain forensic samples is only to establish a child's involvement in an incident of harmful behaviour, it would not be legitimate to retain the sample for future use. We therefore feel it would be inappropriate for police to retain samples taken from any child aged below 12 years. Retaining samples does not support the ethos that a child aged 8-11 years is not criminally responsible for the behaviour. We think that the model envisaged within the Advisory Group's report should be adequate to ensure emerging patterns of behaviour are recognised through the recording of welfare concerns.

Child Protection Guidance

We believe that the support needs of, and risks posed by, children aged 8-11 years demonstrating harmful behaviour can be met through the extension of the national child protection guidance.

Existing national child protection guidance already gives clear direction about the seriousness with which concerns about children who place themselves at risk or harm should be treated. (These should be treated no less seriously than concerns about children who are at risk as a result of their care). Reference is made to both criminal behaviour and other problematic or harmful sexual behaviour. Child protection committees are required to ensure that services in their area are guided by multi-agency policies, procedures and systems for identifying and responding to situations where children and young people place themselves at risk through their own behaviour.

Connections between offending behaviour in children and their own experiences of abuse have been long recognised and should be understood by practitioners. Experience of abuse may be contributing to the child's offending behaviour. Equally, children's experience of becoming involved in offending may impact on their future safety, in turn suggesting a need for child protection measures. Child protection national guidance is therefore an appropriate vehicle for providing direction to both individual services and multi-agency partnerships in responding to children involved in offending behaviour.

Consultation with Children and Young People

As wide a consultation as possible with children and young people across all age groups would help embed the principles behind this proposed increase in the age of

criminal responsibility. It would be important, however, to consult specifically with children and young people who have been involved in offending, and those who are identified as at risk of offending. These children and young people are likely to have a unique and valuable perspective. We also suggest that children from a range of different communities across the country should be included in any consultation. Children and young people in small or rural communities whom we meet in the course of our scrutiny and improvement activities often describe more stigma when they, or members of their family, are involved in offending than their peers in urban communities. For them, the impact of being labelled as 'criminal' within their own community can be devastating and permanent.

I trust this information is helpful to the Committee in its inquiry.

Kind regards

Karen Reid