

PAPER 2 Recommendations – Do Not Accept

Theme	Colour
Overarching principles / practice / process	Black
Permanence	Light blue
Child protection/ planning for children	Red
Pre birth	yellow
Roles and responsibilities	Green
Advocacy/ children's Rights	Purple
Audit/ review	Dark Blue
Wellbeing / workforce	Orange
Secure care	Dark orange

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	Recommendation	Response	COSLA Response	SWS Response
3.8	<p>When the Reporter is making a decision about whether to refer a child to a Children's Hearing on care and protection grounds rather than offence grounds, they must have regard to the longer-term implications of the establishment of grounds for referral on offence grounds and the, albeit limited, reportability or disclosure of this later in life.</p>	<p>Given the statutory independence of the Principal Reporter, it is for the Principal Reporter to give direction about what Reporters are to take into account in their decision making. SCRA Practice Direction 6 – Decision Making Framework and Practice Direction 7 – Statement of Grounds provide Reporters with the framework for their decision-making and drafting the Statement of Grounds.</p> <p>Reporters are aware of the longer-term implications of offence grounds and do consider them. However, they should not make a decision about which ground to select based solely on these considerations. The approach they take on which ground to select is set out within the decision-making framework – the ground that most accurately represents the main welfare concern for the child. Reporters also have to be mindful of the Court of Session case of <i>Constanda v M</i> (1997 SLT 1396), which provided that the Reporter must not use care and protection grounds where the whole basis of the supporting facts is that the child has</p>	<p>Don't see any issues with the SG response. Which is fairly technical and appears to be related to the Reporter role, and not the local authority/SW role.</p>	<p>SWS consider that what is best for the child is the primary factor rather than future access to records.</p> <p>SWS agree that the Reporter role should not be changed, and that existing parameters allow for children's best interests to be the primary consideration</p>

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		<p>performed certain acts that constitute criminal offences. To use anything other than offence grounds would be to circumvent the additional evidential burden of criminal proof.</p> <p>Reporter Practice Direction 7 is very clear about the factors that the Reporter is to consider. The purpose of any statement of grounds is the principal legal basis for decision-making by a children's hearing and therefore it is important that the selection of ground(s) by the Reporter matches the principal welfare concerns. The system is, after all, designed to deal with both the needs and deeds of a child. The Reporter's choice of an offence ground will be appropriate because of a number of factors, such as the professionals working with the child having identified that the key welfare concern is the child's offending. A Child's Plan focussed on offence-work is therefore required to support the child effectively with strategies designed to prevent reoffending and to foster concepts of victim-empathy and citizen-responsibility. Any consequences of disclosure are also a factor to be weighed in the balance.</p>		
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		<p>Practice Direction 7 says the consequences of disclosure are unlikely to outweigh the other factors but may do so in some cases.</p> <p>Any negative consequences for the child of disclosure should be dealt with directly. To that end, the Scottish Government are planning disclosure reform through the Disclosure (Scotland) Act 2020. The relevant reforms are expected to be implemented in 2025. They strike a balance between protecting people’s right to move on with their lives and allowing disclosure of relevant convictions for the protection of the public.</p>		
<p>11.1</p>	<p>The Hearing should engage in robust scrutiny of a Child’s Plan.</p>	<p>In connection with the Scottish Government’s response to recommendation 4.3.3, where a voluntarily agreed GIRFEC Child’s Plan or an existing compulsory Child’s Plan for a Looked After Child has been brought to a hearing, it is reasonable to expect that the hearing would review that plan and make recommendations based on the plan as part of its decision-making. However, a GIRFEC Child’s Plan devised to meet a wellbeing need is</p>	<p>The Plan is the responsibility of the LA, not the Hearing; the recommendation suggests too much involvement in the running of SW by Hearings rather than the LA.</p>	<p>SWS agree with the Scottish Government and would not support this recommendation – it is not the hearings’ role to scrutinise the child’s plan. It is their role to determine, based on the information in the plan if compulsory measures of care are indicated. Implementation and oversight of implementation of the child’s plan sits with the local authority.</p>

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		<p>entirely voluntary, with the child or young person and their parents free to reject such interventions at any time.</p> <p>An assessment of need and construction of the Child’s Plan rests with the social work and other services in the local authority responsible for the implementation for the Child’s Plan, rather than with the Reporter and Chair of the hearing. A hearing may currently engage in robust scrutiny of any information provided by the reporter around current or planned measures in place to support a child or young person. However, the tone of the report suggests a greater role for the hearing in supervising the implementation of the Child’s Plan, the responsibility of which currently rests with local authorities.</p> <p>Accepting a greater role for the hearing as the sole forum with the ‘full picture’ of support planning for the child or young person and their family would therefore risk interference from the hearing in social work and other specialist service sectors, which could harm relationships between the workforce and the reporter and would</p>		<p>Most children’s plans also exist out with the hearing system and are dynamic and constantly being amended to reflect changes in circumstances.</p> <p>SWS are strongly of the view that any plan is a ‘GIRFEC’ plan. We have some concerns about the new language of GIRFEC plans and statutory plans – see other comments. A child protection plan may not be voluntary, but it may also not be subject to a CSO.</p> <p>The simple term child’s plan is preferred, to avoid any confusion. This is in alignment with GIRFEC and works regardless of whether there is a specific legal order involved in that plan.</p>
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		have significant legislative implications		
12.9	Mechanisms should be created to enable the Reporter to draw the attention of the Chair to new information that is thought to be relevant to the decision-making of the Hearing, whether or not it reaches the threshold for a new statement of grounds.	Recommendation 12.9 can potentially be addressed through the Scottish Government’s response to the proposal outlined in recommendation 12.8. Creating any further mechanisms for the sharing of information with the Chair raises concerns about fairness and transparency, bearing in mind potential rights under ECHR may be engaged (such as, for example, Article 8 (right to private and family life).		SWS would not be supportive of this out with the hearing itself – see earlier comments. There are implications for children’s rights