

CELCIS's response to the Scottish Government's consultation on Children's Hearings Redesign

October 2024

CELCIS, the Centre for Excellence for Children's Care and Protection, based at the University of Strathclyde, is a leading improvement and innovation centre. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care.

CELCIS welcomes the opportunity to submit our views in response to the Scottish Government's consultation on how Scotland's Children's Hearings system can be redesigned to build on its strengths so that it can deliver the best possible experience to the children and families in need of its support.

Our response is underpinned by research evidence, practice experience, and extensive insight and intelligence from lived experience (particularly our Consultants with lived experience of care) and professional practice gathered through our long-standing, cross-organisational and interest-specific networks. These networks include people across the workforce, including leaders working across the spectrum of children's services and other public services working in support of children, young people and their families, and adults with care experience, amongst others.

In individual questions, we have distinguished, where relevant, between the views of our CELCIS Consultants and those of CELCIS, to clarify the range of views in relation to some questions. There were a few questions, where we chose not to respond, as we felt other professionals and lay members involved in the Children's Hearings System were better placed to respond.

The principles of a redesigned children's hearings system

Question 1

What principles should underpin a redesigned children's hearings system and why?

A redesigned Children's Hearings System should be, inter alia, rights respecting, child centred and led, trauma informed, flexible and integrated with other systems that affect children's lives. The system needs to be simplified and the wider legislative landscape aligned so that children and families understand both the purpose and processes of the Children's Hearings System, and its benefit to them.

Redesign of the Children's Hearings System should be seen in the wider context of what is required to bring about complex change. The Children's Services Reform Research concluding report (Ottaway et al., 2023) sets out clearly what is needed

from structures, systems and services, and what the workforce requires, so that children, young people and families receive the help they need, when they need it, and Scotland can deliver on The Promise of the Independent Care Review. This includes greater clarity and alignment of the cluttered legislative and policy landscape and:

- A continued focus on realising rights and improving participation
- Work to understand the relationship between integration and outcomes
- Support for and the strengthening of collaborative leadership
- National and local support to enable effective multi-agency working
- Access for families to local, non-stigmatising support
- Prioritising, enabling and supporting relationship-based practice
- Providing timely access and seamless transitions for children and families to services that meet their needs
- Improving the quality of Scotland's data landscape

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A. and MacKinnon, K. (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*. Glasgow: CELCIS.

Question 2

What would be the advantages and disadvantages of setting out overarching principles in legislation?

It is unclear what is intended by the phrase 'overarching principles' in the question as there are principles set out in different documents and legislation which may be relevant here.

a. Advantages

A redesigned Children's Hearings System should be, inter alia, rights respecting, child centred and led, trauma informed, flexible and integrated with other systems that affect children's lives. The system needs to be simplified and the wider legislative landscape aligned so that children and families understand both the purpose and processes of the Children's Hearings System, and its benefit to them.

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Legislation is not a panacea and the implementation of principles into practice is the route by which benefits will be experienced by children.

Outlining the principles in legislation could provide clarity across all aspects of the system. Setting aside individual interpretation within legislation, the principles are at least unarguable as being the foundation for the system. This may support national consistency and offer a clear framework for those who interact with the Hearings System.

Where the principles were not upheld, legislative underpinning may give greater weight to any challenge than if they were contained in, for example, non-statutory guidance.

b. Disadvantages

Disadvantages to setting out the principles in legislation are that it adds an additional level of complexity and may inadvertently (depending on the drafting) limit the scope or interpretation of the legislation.

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A. and MacKinnon, K. (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*. Glasgow: CELCIS.

Statutory referral criteria

Question 3

What elements of language in the existing referral criteria need to be updated, if any?

- control
- treatment

Please provide any other "elements of language" needing to be updated

CELCIS agrees that a change is required to the language of the existing referral criteria. Words such as 'treatment' and 'control' are not aligned to the practice of working alongside a child and their family where possible, or a focus on the welfare of the child, which is the paramount consideration in Children's Hearings proceedings.

If any changes are to be made it would be important to ensure that the protection currently provided for children is enhanced rather than diminished. There should be careful examination of case law on the interpretation of terms used in the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Act 2011, and development of clear definitions where there is any change to language for grounds of referral criteria.

Consideration should be given to rights-informed referral criteria, which would be congruent with Scotland's incorporation of the UNCRC, keeping The Promise, and the focus on the welfare of the child as the paramount consideration in Children's Hearings proceedings.

To ensure a focus on the needs of the child and their family, the language currently used for grounds of referral should be updated so they are understood by everyone involved in the Hearings System, and in particular children and families. CELCIS endorses the principles around the use of language in Hearings produced by the Language Leaders, backed by the Children's Hearings Improvement Partnership (CHIP).

Sources:

- Scottish Parliament (1995) *Children (Scotland) Act 1995*. Edinburgh: Scottish Parliament.
- Scottish Parliament (2013) *Children's Hearings (Scotland) Act 2011*. Edinburgh: Scottish Parliament.
- Language Leaders (2023) *Language Leaders: Because what we hear in Hearings matters*. Stirling: Our Hearings Our Voice.

Question 4

Do you support the proposed referral criteria from the Hearings for Children report?

Yes

CELCIS broadly supports the proposed referral criteria from the Hearings for Children report.

Question 5

What are the advantages or disadvantages of the proposed draft referral criteria?

a. Advantages

"How can we ensure only children that really need to be at a Hearing are there, and that children and families aren't there solely because they need help and there's no support out there"

CELCIS Consultant with lived experience

Anyone referring a child into the Hearings System will be required to provide a rationale as to why compulsory intervention is needed at that time in a child's life. This will enable referrers to consider the unique role and purpose of a Children's Hearing and the benefit it should bring for the child. It should also help a child and their family to understand why a referral is being made at that particular time, and how this referral differs from social work, education or health processes.

This proposed change might help reduce referrals which have been described as 'process driven', where those referring feel all other alternatives to engaging with children and families have been exhausted and the only available option is to refer to the Hearing, or the referral is thought to be the next step in the process.

b. Disadvantages

The proposed changes to the referral process will require extra time and capacity for social workers to enable them to alter their practice. Recent CELCIS research has highlighted the extraordinary challenges currently faced by the children's services workforce, as well as a cluttered policy landscape (Ottaway et al., 2023). It is possible, that in some circumstances, changes to the criteria that require more time and capacity to make a referral into the Hearings System could have an unintended consequence of delaying referrals. Whilst we are supportive of this change to the referral criteria in principle, it would need to be carried out alongside efforts to support the children's services workforce, and to support and retain social workers.

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A. and MacKinnon, K. (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*. Glasgow: CELCIS.

Question 6

Do you have any other comments about potential changes to the referral criteria?

Not answered

Question 7

Do you support the proposal to change the applicable referral test that compulsory supervision 'might be necessary' to it being 'likely to be needed'?

Options and open field: yes; no

No

CELCIS is concerned that if the applicable referral test was changed to compulsory supervision 'likely to be needed', this could be interpreted by potential referrers as meaning a higher threshold for intervention than the previous definition. Whilst the principle of minimum intervention is a key consideration, the welfare-based approach of the Hearings System should also be supportive in children and families' lives. In practice, an increase to the threshold of intervention may be detrimental to children

and families who require support, especially in the context of current strains to children's access to services (Ottaway et al., 2023).

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A. and MacKinnon, K. (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*. Glasgow: CELCIS.

Relevant persons

Question 8

What are the advantages and disadvantages of the current definition of "relevant person"?

a. Advantages

An advantage of the current definition of Relevant Person is that it is clearly defined under Section 200 of the Children's Hearings (Scotland) Act 2011. The definition for 'deemed' Relevant Person status does not provide the same clarity to any individual to determine if they are likely to be considered a 'deemed' Relevant Person or not.

b. Disadvantages

The language of 'Relevant Person' can be experienced as inflammatory, confusing and at times hurtful in the Hearings space. When, for example, a grandparent who is supportive of the family, is told they are not a Relevant Person at a Hearing, they may feel that they are not viewed as important to the child. This may set the wrong tone for their participation in the Hearing.

Children often have people they consider to be supportive in their lives who are not automatically classed as 'Relevant Persons', so the use of this language may not feel child-centred. If foster carers do not seek Relevant Person status, they are not entitled to bring a supportive person or a solicitor into a Hearing to support them.

Children can also face situations where someone they no longer feel is important to them retains the status of Relevant Person; for example, a father convicted of abusing their child may retain the right to receive papers, attend Hearings, lodge appeals, or call for a review. The child, however, may not want personal information shared with the individual, or to see them.

CELCIS would like to see the question of who should participate in a Hearing to be viewed through the lens of the child. Who is important to them at any given time.

Sources:

- Scottish Parliament (2013) *Children's Hearings (Scotland) Act 2011*. Edinburgh: Scottish Parliament.

Question 9

Should the legislation include a definition of “parent” and if so, what should it be?

Options: yes; no

No

There is a de facto definition of parent - i.e. a 'biological parent' or person with Parental Rights and Responsibilities (PRRs) - which is understood within the children's services and legal sectors. Creating a new definition within the legislation risks unnecessary confusion.

Question 10

Do you have any views on whether it would be appropriate for a hearing to have the power to remove relevant person status from any relevant person in certain circumstances and if so, please explain?

Open Field

Yes. CELCIS believes that the Hearing should have the power to remove Relevant Person status in certain circumstances to allow the Hearing to focus on the child's needs and wishes. The power to remove a Relevant Person may act as an important safeguard against, for example, sensitive information about the child being shared with a parent who has abused the child. It may also help to reduce drift and delay in cases where, for example, the continued absence of a Relevant Person has hampered the panel in decision-making. However, this should be subject to certain conditions and limitations.

Clear guidance would be required which sets out the possible circumstances in which Relevant Person status, or specific rights flowing from it, can or should be removed or suspended. This guidance might consider issues such as abuse, coercive control, or excessive disruption of a Hearing.

There is already a process to remove 'deemed' Relevant Person status where this is no longer required (for example, a previous foster carer), and removal of Relevant Person status from those who have them by virtue of Section 200 of the Children's Hearings (Scotland) Act 2011 (i.e. they hold parental rights and responsibilities) would be a significant infringement of parental rights. In recognition of the significance of this intervention, it may be worthwhile to consider the Panel having the option to pause Relevant Person status, or specific rights that flow from having that status, for a determined period.

In order to operate within the child-centred principles of the Hearing system, CELCIS recommends that any process to remove Relevant Person status should take place outwith the main Hearing, to avoid the child being exposed to potentially contentious arguments. However, there should be a clear and direct route for the child to express their views to the Panel Members who are making the decision. Decision-making should be attuned to the complex dynamics which may influence a child's views and the attachments and loyalties which can exist even in abusive situations. For example,

a Panel should still be able to remove or suspend Relevant Person status (or specific rights) from a Relevant Person who has abused a child, even if the child expresses the opposite view.

Sources:

- Scottish Parliament (2013) *Children's Hearings (Scotland) Act 2011*. Edinburgh: Scottish Parliament.

Question 11

What are the advantages and disadvantages of an earlier process for deeming other people to be relevant persons?

a. Advantages

We see no significant advantages to this.

b. Disadvantages

The Scottish Government consultation document 'Children's hearings redesign - policy proposals: consultation' refers to the potential to legislate for the participation and engagement of a broader range of people in preparation for a Hearing. CELCIS sees no need to create statutory processes to deem other people to be relevant at an earlier stage in order to gather information about the child or permit others to give their views during the preparation phase before a Hearing.

Question 12

What changes could be made to legislation to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate for other people in the child's life?

Open field

CELCIS does not think legislative change is necessary, but there should be an exploration of practice and process change.

The format of reports to Children's Hearings could be significantly improved through developing a national reporting template. Currently, the Reporter requests information from all agencies involved in a child's life which are then submitted on locally agreed templates. Reports can vary significantly across Scotland in terms of content and structure. In recognition of the multi-agency nature of children's assessments and planning, consideration should be given to one multi-agency report.

This could further support the range of agencies working with the child and their family in their joint assessment, proposed plan and recommendation in advance of a Children's Hearing. It would also bring the Hearing into line with the National Guidance for Child Protection in Scotland (Scottish Government, 2023), which asks professionals to provide a multi-agency report and recommendation to a Child Protection Planning Meeting.

One multi-agency format could reduce the volume of (potentially conflicting) reports received by the child and their family, and the associated bureaucratic burden for the professionals involved. Reporters would receive one document which contained the relevant information, and it would give the Children's Hearing more time to focus on the child's circumstances and needs, rather than time being given to reviewing several reports. The report would also be familiar in content and style should the child and family move between different local authority areas.

Any template should be structured around the child's needs, views and rights, and provide clear direction that those involved in the child's life should be consulted and included in the information gathering stage. CELCIS believes that such practice improvements are within the scope of current legislation.

Sources:

- Scottish Government (2023) *National Guidance for Child Protection in Scotland 2021 - updated 2023*. Edinburgh: Scottish Government.

Question 14

What are the advantages and disadvantages of the creation of an additional class of person whose views and participation are essential to the business of the hearing, but do not require the full rights and obligations of a relevant person?

a. Advantages

There may be some advantages to the creation of an additional class of persons, such as the ability to include those with whom the child has a close bond and who wish to contribute to the Hearing process. Overall, however, CELCIS considers that the disadvantages outweigh any potential benefits.

b. Disadvantages

There are several disadvantages to this proposal:

- It may lead to debate and disagreement between adults in attendance rather than the Hearing focusing on the child's needs and views.
- This proposal introduces a further level of complexity into the Hearings process without a clear rationale as to its benefit for the child. We support the inclusion of all people who are involved in the child's life and who the child views as important to them, and we believe this can be achieved on a practice level without the requirement for legislative change.
- It is unclear which rights, responsibilities or obligations would be held back from this additional class of persons or indeed how this might benefit the child.

Participation and attendance

Question 15

Do you agree with the recommendation to remove the child's obligation to attend their hearing, to be replaced with a presumption that the child will attend?

Options and open field: yes; no

Yes

If yes, what limitations would need to be applied to this presumption?

Our CELCIS Consultants with lived experience reflected on their experiences of attending hearings:

"I found the whole process really invasive and overwhelming and is just another thing where you have to talk to professionals. I found no benefit to attending them. Your voice and thoughts should be represented."

CELCIS Consultant with lived experience

"The focus on attending should be on the carers of younger children, not the child themselves. It is the carers and people around them responsibility, not the child."

CELCIS Consultant with lived experience

CELCIS believes that to take a child-centred and trauma-informed approach to a child's attendance at a Hearing, it is necessary to question the need for a 'presumption'. Statistics show that three quarters of children are now referred solely on care and protection grounds, with nearly 40% of children who were referred in 2023/2024 aged four or under (Scottish Children's Reporter Administration, 2024). As the Children's Hearings System should do no harm, the purpose of a child's attendance must be clear.

Attending a Children's Hearing can be a traumatic experience for many children, where their home circumstances and quality of their care are discussed in often challenging and emotionally charged environments. Scotland is the only UK nation that expects young children to sit through legal proceedings, whereas in England and Wales, no child under the age of 7 attends court proceedings and every child is represented by a Children's Guardian (whose sole purpose is to represent the best interests of the child), a solicitor and a social worker.

Scotland needs to consider developing a system that supports both children who wish to attend and participate in their Hearing, and also protecting those who wish to participate, but for whom attendance is unnecessary, re-traumatising, or they do not wish to attend. All children and young people should be supported within a system that adapts to their individual needs and provides them with all the information they require to make their wishes and feelings known.

Children should not need to be present at a Hearing to be heard. Sometimes children need the adults that support them to represent their needs and views, and keep the child at the centre of decision-making.

Sources:

- Scottish Children's Reporter Administration (2024) *Online Statistics 2023-2024*. Stirling: Scottish Children's Reporters Administration.
- Beckett, H. and Warrington, C. (2024) "Do no harm"? Rethinking risk and harm narratives in abuse-focused research with children'. *Child Protection and Practice*, 2(100037).
<https://www.sciencedirect.com/science/article/pii/S2950193824000378>

Question 16

Does the hearing need a power to overrule the child's preference not to attend their hearing in certain circumstances?

Options and open field: yes; no

No

UNCRC Article 12 provides every child with the right to express their views, feelings and wishes in all matters affecting them, and to have those views considered and taken seriously. This includes respecting a child's wish not to attend their Hearing, with adults making efforts to establish why the child does not want to be there, and to respond appropriately to any concerns they raise. Children should not need to miss school or other activities due to the timing of Hearings, and should be given a degree of choice around this to uphold their rights under the UNCRC.

Sources:

- United Nations General Assembly (1989) *Convention on the Right of the Child*. Geneva: United Nations Commission on Human Rights.

Question 17

What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their hearing?

Open field

UNCRC Article 12 provides every child with the right to express their views, feelings and wishes in all matters affecting them, and to have those views considered and taken seriously. Wherever possible, children should be made aware of their rights. Several steps could be taken to support a child's participation could be considered.

The focus of a Children's Hearing is the welfare of the child and regardless of their age or their level of understanding, their needs and wishes must be represented and heard. A child's needs, rights and wishes should be at the centre of decision-making within the Hearing System, regardless of whether they are present. Often Social Work is the key profession representing the child. Social workers document in reports how they engaged with a child or their representatives to gain an understanding of their views, experience and behaviour. A recent publication by Social Work Scotland

(2024), however, highlighted that some social workers feel that Hearings do not always demonstrate the same level of trust and respect for social workers and their practice, as they do other professionals in the Hearings System (Social Work Scotland, 2024). The concern is that the voice and views of the child are then further marginalised.

Other steps could be that children are offered the option of an independent adult in addition to their social worker, who can advocate on their behalf, including when they do not wish to attend their Hearing. This could be an advocacy worker or Safeguarder. Scotland could also explore the role of the independent Children's Guardian for all children in Scottish legal proceedings. This is an independent role available to children and young people in Northern Ireland, England and Wales, where Guardians are required to share a child's wishes, needs and feelings with the court (Cafcass, 2024).

For a child old enough to understand and participate, the outcome of the Hearing can, and should be shared in one or more ways; in writing, through discussion, through case recordings and in discussion with the Relevant Persons in the room.

Sources:

- Cafcass (2024) *The role of Cafcass – the role of the Children's Guardian*. Available at: <https://www.cafcass.gov.uk/parent-carer-or-family-member/my-family-involved-public-law-proceedings/applications-supervision-and-care-orders/role-cafcass-role-childrens-guardian> (Accessed: 21 October 2024).
- Social Work Scotland (2024) *Social work Scotland summary response hearings for children report and recommendations and ministerial response*. Edinburgh: Social Work Scotland

Question 18

Should a child still be obliged to attend hearings held in consequence of offence referrals, or in consequence of the 2011 Act section 67(m) 'conduct' ground?

Options and open field: yes; no

No

"By nature of a Hearing itself, it is based on the needs of a child, not the deeds. So it shouldn't be any different no matter what the grounds of referral are, offence grounds included"

CELCIS Consultant with lived experience

Children should be encouraged and enabled to attend their Hearing when it is in their best interests to do so. All children referred to a Children's Hearing must be offered the same protections and rights, regardless of the reason why they are there, in accordance with the Kilbrandon principle of responding to the 'needs not deeds' of children and young people.

Sources:

- Kilbrandon (1964) *Report on the Committee on Children and Young Persons, Scotland (Cmnd 2306)*. Edinburgh: Scottish Home and Health Department. <https://discovery.nationalarchives.gov.uk/details/r/C3598800>
- Scottish Parliament (2024) *Children (Care and Justice) (Scotland) Act 2024*. Edinburgh: Scottish Parliament.

Voices of very young children

Question 19

Do you agree that particular arrangements should be made to capture and share the voices and experiences of very young children in a redesigned children's hearings system?

Options and open field: yes; no

Yes

"The focus on attending should be on the carers of younger children, not the child themselves. It is the carers and people around them responsibility, not the child"

CELCIS Consultant with lived experience

All children have a right to be heard, and for their needs, wishes and feelings to be represented. Scotland has developed a Children's Hearings System based on the premise that any child should be able to participate in it. To fulfil this ambition, an effective Hearings System must adapt to the needs of *all* the children it supports.

CELCIS acknowledges that representing young children is a challenge for the Children's Hearings System, as it was not designed with them in mind. Very young children share their thoughts and feelings through behaviour and often with trusted adults, who can see, hear, and interpret their needs. Young children require adults who can understand them as individuals and make decisions for them within a timeframe that protects their early development.

CELCIS believes the children's services sector has the knowledge, ability and tools to listen to and represent young children by understanding their behaviour and listening to those that care for them. The ongoing challenge is to develop a system that also meets the needs of the young children referred to it, creative approaches using technology or photographs is an opportunity to bring them into the room without causing distress. This could be applied to all children who do not want to be there, including those who struggle to communicate or are too young to share their views. Some children may wish to record a message, draw, or write to the Panel to share their views and this needs to be accepted and fully supported.

We suggest that for young children, whose care plan involves being permanently cared for away from home, alternative ways should be explored to streamline their journey to permanence and better align Hearings and court processes.

Sources:

- CELCIS (2020) *PACE: Final Thoughts and self sufficiency*. Glasgow: CELCIS.
- The Promise Scotland (2020) *Children's Hearing System, Autumn 2020*, Edinburgh: The Promise Scotland.
- Scottish Government (2023) *Hearings for Children Report: Response*. Edinburgh: Scottish Government.
- - The Promise Scotland (2020) *Children's Hearing System, Autumn 2020*, Edinburgh: The Promise Scotland.

The offer of advocacy to the child

Question 20

Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?

Options and open field: yes; no

Yes

Children, and particularly young children, require supportive adult relationships to allow them to develop to their full potential. For a child to have the best experience possible in the Hearings System, they should have the support of adults who can help them understand and interact with the Hearings System more effectively.

When exploring advocacy, children should be enabled to nominate a supportive adult in their lives to help them share their views. Some children will enter the Hearings System with supportive relationships with trusted adults already in place through connections with a family member, teacher, social worker or carer. Such relationships should be explored and supported by the Hearings System in addition to the offer of an advocacy worker.

Children should have the option of accessing advocacy services and be supported to do so. The offer of advocacy should be made at the earliest possible time, when the child's family circumstances are being assessed by the local authority. This is particularly important for those children who do not have any supportive adult connections (or where those connections are in dispute).

All children should also have access to representation throughout Hearings and court proceedings. Scotland is the only nation in the UK which does not automatically assign a representative for each child going through legal proceedings. For babies, infants, and younger children, who do not have the capacity to instruct a solicitor, representation through non-instructed advocacy and/or a Safeguarder should be put in place.

The Hearings for Children report (2023) highlights that children and their families need to be repeatedly offered information about advocacy and access to advocacy services. CELCIS strongly supports this suggestion, as stressful or traumatic circumstances can affect how the memory and processing systems within the brain

function. Creating spaces for repeated offers of advocacy support is both trauma-informed and good practice.

Sources:

- The Promise Scotland (2023) *Hearings for Children, Hearings System Working Group's Redesign Report*. Edinburgh: The Promise Scotland.
- Scottish Government (2023) *Hearings for Children Report: Response*. Edinburgh: Scottish Government.

Question 21

How should the rights and the views of children and young people of all ages, including very young children, be better represented in the children's hearings decision-making?

Open field

The key to ensuring the rights and views of children are represented in Children's Hearings decision-making is by providing comprehensive and regular training for everyone involved in the Children's Hearings System, including professionals presenting at Hearings, Panel Members and Chairs.

In order to support practice in relation to very young children, training should include the critical importance of early childhood development and the impact of trauma on children's development. This would provide decision-makers with up-to-date research and developments to support their understanding and interpretation of referrals and reports received, and provide some insight into children's behaviours observed before, during and after Hearings. Training would need to be ongoing to ensure knowledge is refreshed and updated regularly.

Another opportunity to represent a child's rights and views is a focus on the SHANARRI wellbeing indicators or children's rights in decision-making. This has the potential to more easily keep children at the centre of decision-making. Sometimes the needs and wellbeing of adults in a range of care and protection processes can appear to overshadow those of the child, so having referrals, grounds and reports focused on the child as an individual would be helpful to all involved. A key task of the Panel Chair could be to ensure that focus is maintained on the children and young people.

Additional consideration should also be given to using a variety of ways to allow the child to be represented in the room, particularly when they are not in attendance e.g. through photographs, short video or artwork. Accurately recording the views of children is key to ensuring they are valued and central to the process.

Sources:

- Scottish Government (2022) *Getting it right for every child Statutory Guidance – Assessment of Wellbeing 2022 – Part 18 (section 96) of the Children and Young People (Scotland) Act 2014*. Edinburgh: Scottish Government.

Question 22

Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?

Options and open field: yes; no

No

Advocacy and representation are essential to the children and families involved in the Children's Hearings System. If children or families opt into advocacy services then it should be obligatory for services to provide the appropriate information relevant to supporting the child.

It is of the utmost importance, however, that children's data is not shared prior to informed consent being given to the service and that a statutory obligation to share information does not result in information being shared inappropriately which may impact on children, young people and their family's confidentiality.

Amplifying children's voices throughout the process

Question 23

Do you support the creation of a statutory process, undertaken by the children's reporter, to record the capturing of children's views and participation preferences?

Options and open field: yes; no

No

As the choices and views of children may change over time, it should be a requirement for all practitioners who engage with children (not just the Reporter), to ensure that: discussions take place; views are recorded in single and multi-agency plans; and records are kept up to date and shared regularly with decision-makers within the Hearings System. In addition, children also have a right not to express a view.

Practitioners, who engage with children, should be offered training, support and adequate resources so they feel confident in protecting this right and that all voices, including infants, are heard. Children with quieter voices, such as disabled children, and those for whom English is not a first language, must also be able to participate.

In general, creating a statutory process for capturing children's views and preferences for participation is not necessarily aligned to the principle of good participation. It is important that children are supported to speak to whomever they chose about their participation choices and provide their own views. This information may not necessarily be held by one person or organisation.

It should be noted that the view of our Consultants with lived experience differs from the view of CELCIS on this point. As a group, they believe that children's participation will not happen unless set out in a statutory process.

Provision of papers

Question 24

Should the timeframes for the provision of papers in advance of a children's hearing to the child and relevant persons as set out in the 2013 Rules of Procedure be altered?

Options and open field: yes; no

Yes

The current timeframe for receipt of papers in advance of a Hearing could be considered short. It sets out that papers should be received at least three clear days before the Hearing takes place. It could be difficult for a child or family to arrange an appointment with a solicitor or advocacy worker within that time frame, or to challenge any factual inaccuracies in the reports contained within the Panel papers in sufficient time to avoid this happening at the Hearing itself.

Some reports prepared for Hearings can be long and contain upsetting information. Reports should be concise and contain detailed evidence-based recommendations. It is important that both Relevant Persons and children, who are of an appropriate age to receive papers, come to a Hearing with knowledge and understanding of the information presented to Panel Members. It is likely that children and their families would need to receive papers earlier.

Many adults and children who attend Hearings have additional support needs. Some may not have English as a first language and may need an interpreter. Additional time for receipt of papers may not in itself be sufficient, however. There should be a requirement that Relevant Persons and children can speak to a practitioner they know and trust, who can take the time to discuss the paperwork with them, so they fully understand the content and recommendations. One shorter, multi-agency, child friendly report would support practitioners working with children to ensure they fully understand the reports.

Question 25

Should the timeframes for the provision of papers to children's panel members as set out in the 2013 Rules of Procedure be altered?

Options and open field: yes; no

No option selected

CELCIS suggests that the Panel Member community will be better placed to answer this question.

Grounds of referral: concept and language

Question 26

Do you consider the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the children's hearings system?

Options and open field: yes; no

No

"I never understood what was going on"

CELCIS Consultant with care experience

The Statement of Grounds is the principle legal basis for decision-making by a Children's Hearing. There are currently 17 grounds for referral. Reporters select the most appropriate for each individual child and set out the supporting facts they believe apply. Reporters must use the wording contained in Section 67 of the Children's Hearings (Scotland) Act 2011 and must not make any amendment or deletion.

The first time a child and their family will be called to sit in front of a Children's Hearing is generally a Grounds Hearing. As they are likely to be anxious, it is important that children, young people and families are fully aware of why they are there and the purpose of the Hearing.

Recent initiatives to reframe language have supported practitioners, including those working in the Hearings System, to be cognisant of the impact of language, and how it can be empowering or stigmatising. These initiatives include Each and Every Child, and Language Leaders.

There has been a significant shift in the understanding and use of language since the Children's Hearings (Scotland) Act 2011 was enacted. The Language Leaders' aim for the Children's Hearings System is that "everyone involved will recognise the power of language and use words, tone and body language in a way which supports children to feel safe, included and at the centre of their Children's Hearing" (Language Leaders, 2023). Their principles include that "all language used will be clear, easy to understand and will support children to be involved in decision-making" (Language Leaders, 2023).

The language currently used for grounds can be complicated, unclear and difficult to understand. Language can feel stigmatising to children, young people and families, and set an adversarial tone when all involved need to work alongside the child, young person and family to ensure their needs are met, and children and young people are kept safe.

The language in Section 67 of the Children's Hearings (Scotland) Act 2011 can be difficult for many to understand including children and families as well as those working in the Children's Hearings System. For example, some grounds refer to 'schedule 1 offences'; 'close connection' with certain categories of person; 'significant

contact' and 'special measures' while the most commonly used ground, Section 67(2)(a), states: "the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care." This is not language that clearly sets out to children and families why they are in the Hearings System.

Sources:

- Language Leaders (2023) *Language Leaders: Because what we hear in Hearings matters.* Stirling: Our Hearings Our Voice.
- Scottish Parliament (2013) *Children's Hearings (Scotland) Act 2011.* Edinburgh: Scottish Parliament.

Question 27

Do you agree that there should be changes to the current approach to grounds of referral?

Options and open field: yes; no

Yes

"Right based might be useful, but loads of people don't even know what their Rights are anyway. We can change the grounds all we want, but the real issue is how we work with families to make sure they understand them no matter what they are."

CELCIS Consultant with lived experience

The Hearings for Children report (The Promise Scotland, 2023) called for a rights-based approach to grounds. Grounds for referral should be framed in simple language that is easily understood by all involve including families. Grounds crafted around children's rights coupled with the SHANARRI elements that children need to thrive, may provide clearer reasons for children and families as to why compulsory measures of care or protection are necessary.

Reframing grounds centred around the SHANARRI wellbeing indicators (Scottish Government, 2022), could have some benefits. Focusing on the child's rights and needs may help families understand why change is required of them, particularly in relation to 'care and protection' grounds, and place emphasis on the child's needs, rather than a 'lack of parental care', which can be experienced as shaming by parents. It may also provide a continuity in terms of language for a child's journey through the Hearings and court systems; wording used regularly by practitioners will become familiar to children and families.

However, CELCIS does not support this suggested change as defining individual SHANARRI indicators with sufficient specificity to provide the legal basis for interfering in the right to family life is likely to be difficult. While language can be softened to an extent, there remains a need to state why compulsory measures might be required. Concerns that a child's rights or needs are not being met and the expectations and responsibilities of parents need to be set out clearly.

If grounds for referral are redrafted then it will be important that the protections in place for the safety of children within the current grounds are not lost. Any proposed changes to grounds of referral should be made with consideration for other parts of the system that children and young people may interact with, for example the National Guidance for Child Protection in Scotland and the indicators of risk it contains (Scottish Government, 2023). These indicators also inform statistical reporting to the Scottish Government.

A shared language across these different frameworks and guidance documents may be simpler for families to understand. Opportunities should be taken to streamline and align statutory processes that affect children.

Sources:

- Scottish Government (2022) Getting it right for every child Statutory Guidance – Assessment of Wellbeing 2022 – Part 18 (section 96) of the Children and Young People (Scotland) Act 2014. Edinburgh: Scottish Government.
- Scottish Government (2023) National Guidance for Child Protection in Scotland 2021 - updated 2023. Edinburgh: Scottish Government.
- The Promise Scotland (2023) Hearings for Children, Hearings System Working Group's Redesign Report. Edinburgh: The Promise Scotland.

Question 28

Do you agree with the proposal to set grounds positively as a range of wellbeing-orientated entitlements, before clarifying how the child's experience or conduct falls short of expectations - to the point that compulsory care is needed?

Options and open field: yes; no

No

CELCIS Consultants with lived experience held a range of views in relation to setting grounds of referral positively as a range of wellbeing-orientated entitlements:

"Nothing we currently have will be a perfect fit, let's take the best bits of a few things and make something really good. This feels like we are looking for a quick fix, rather than doing some work that will take longer, but will be robust and whatever we come up with will fit better"

CELCIS Consultant with lived experience

"SHANARRI wasn't designed for this reason so should be separate"

CELCIS Consultant with lived experience

"Use Rights as a starting point and go from there"

CELCIS Consultant with lived experience

CELCIS believes that creating exclusively 'positive' grounds is challenging. Parents are responsible for safeguarding and promoting their child's health, development and

welfare and for providing them (subject to their stage of development) with direction and guidance up to age 16 and with guidance to age 18 (Children (Scotland) Act 1995 Section 1).

It is important to be clear and honest with children and their families about what is expected from parents to uphold their child's rights. It is also important to use plain language to identify the child's needs which are not being met, the ways children are, or may be, at risk due to their parents' behaviour or the behaviour of others, the child's need to be protected; and the reasons compulsory measures are necessary.

One suggestion is that alternatives are sought to the wording of 'compulsory measures'. If children, young people and families are to feel supported by systems and processes, referring to a child or young person's needs for 'extra', 'special', 'additional', or 'enhanced' *support* to make sure their rights and needs will be met, could be an option.

Thought should also be given to the consistent use of language throughout Hearings and court processes, not just the reframing of grounds of referral, but for orders that may be made by a Hearing or court.

Sources:

- Scottish Parliament (1995) *Children (Scotland) Act 1995*. Edinburgh: Scottish Parliament.

Question 29

If a new scheme of grounds based on unmet expectations around wellbeing indicators were to be introduced, are any safeguards needed (statutory or operational)?

Options and open field: yes; no

Yes

Any new scheme of grounds must be sufficiently specific that all involved are clear about a child or young person's unmet needs and rights, and why statutory intervention may be needed.

Careful thought should also be given to the risk of losing the considerable body of case law built up over many years if the system moves to a new scheme of grounds. It is essential that any new scheme provides the same or greater protections for children than currently. Careful consideration will also be required around any transition from one scheme to another to ensure continuity of care and protection.

Children's views within Reporter investigation and decision-making – a post-referral discussion?

Question 30

Do you support the introduction of the offer of a post-referral discussion between the children's reporter and the child and family?

Options and open field: yes; no

Yes

Who else, if anyone, should attend a post-referral discussion?

CELCIS supports the introduction of the offer of a post-referral discussion, if there is strong emphasis on the right of children, young people and families to accept or decline this offer. Such a change may provide a positive opportunity for inclusivity and accessibility. Being involved in the Children's Hearings System can be traumatic for children and their families and there is a growing body of evidence that trauma impacts many elements of brain functioning (McCrorry, 2020). This can make it more difficult for people to process information, or may impact on their interpretation of it, so opportunities that allow further discussion or information are likely to be helpful.

There are a number of additional aspects which CELCIS suggests should be considered:

- The post-referral discussion must serve the interests of the child, young person and family and not the system. For example, if an initial offer is refused, the child and their family should still have the right to take up this offer at any point until, for example, the grounds of referral are heard in court.
- Careful consideration will be required to ensure that the post-referral discussion does not place the Children's Reporter in the role of an intermediary. For example, without clear boundaries as to the scope and purpose of this discussion, there could be the potential for boundaries to become blurred between the various professionals involved and for the process to become more confusing for the child and their family.
- The process needs to be designed to ensure it does not add further delays or additional burden to the Children's Reporter beyond what is necessary. For example, consideration must be given to how the offer is made, timescales for the offer to be accepted, whether this stage in the process has an impact on the framing of grounds, and how the discussions themselves will be conducted in a child friendly way.
- Whilst there must be certain boundaries to the process for it to operate effectively, an overly prescriptive and process driven approach would defeat the purpose of this proposal.

Sources:

- McCrorry, E. (2020) *Childhood Trauma, the Brain and the Social World*. London: UK Trauma Council.

Establishing grounds of referral

Question 31

What would be the advantages and disadvantages of passing the fact-finding function from sheriffs to a new cohort of legal members within the redesigned children's hearings system?

a. Advantages

Passing the fact-finding function of the Sheriff to a new cohort of Legal Members would constitute a significant change to the processes within the Hearings System.

The creation of a Legal Member has the potential to allow for tailored expertise to be developed through initial and ongoing training, as well as through experience gained in the role. The training and capabilities of the Legal Member will be critical to its possible success. Reducing the stress and anxiety experienced by children and families in their experiences of the Hearings System will depend on a solid understanding of and enacting trauma informed practice and child-centred decision-making and communication.

The potential to have the grounds of referral decision-making conducted in a less formal setting, and the opportunity to develop new rules of procedure that might create a less adversarial environment, may also support the participation and engagement of children and families. Legal Members based within the Hearings System may provide an opportunity to get the 'best of both worlds', through bringing the ethos and approach of the Hearings System to fact-finding and decision-making processes in relation to grounds of referral, while retaining the authority and respect of Sheriffs.

This ambition is welcome, however, the scope of the role of the proposed Legal Member, as outlined in questions 31 – 42 may miss additional benefits such a role could bring to the Hearings' process more widely.

b. Disadvantages

A new role may add further complexity for what appears minimal benefit. The creation of a 'Legal Member' risks creating confusion among families as to the role and status of this individual. The authority of this role is also unclear. As part of the Judiciary of Scotland, Sheriffs derive their authority from the judicial process. Some of the challenges to the authority that Children's Panels can experience, may be transferred onto the 'Legal Member' in the absence of other sources of authority.

It is not clear how this proposal sits with the recommendation within the Redesign Report that "there must be no more Grounds Hearings" (p138). While the Legal Member may not formally convene a 'Hearing', it is debatable how apparent this distinction will be to children and families involved in the process. The proposal is also unclear in the anticipated extent of the Legal Member's powers and whether their decisions would be appealable to a Sheriff, or go directly to the Sheriff Court of Appeal, and how this might impact on their perceived authority. If Grounds Hearings

are thought to be problematic, then consideration should perhaps be given to the Reporter sending the grounds of referral directly to the Sheriff Court.

Sources:

- The Promise Scotland (2023) *Hearings for Children, Hearings System Working Group's Redesign Report*. Edinburgh: The Promise Scotland.

Question 32

Do you consider that this proposal fulfils the intention of the recommendation from the Hearings for Children report that there should be a consistent specialist sheriff throughout the process?

Options and open field: yes; no

No

If it is presumed, that an individual Legal Member is assigned and 'follows' a child's care pathway through the Hearings System, then this proposal may fulfil, to some extent, the recommendation in the Hearings for Children report for a consistent specialist Sheriff in relation to all grounds of referral that may be put forward in relation to a child or young person (The Promise Scotland, 2023).

CELCIS understands, however, that the recommendation is intended to capture all interactions that a child and family might have with court processes, and it is stated in the consultation that the established appeal processes would be maintained. It appears, therefore, that the proposals put forward do not fulfil the intentions of the recommendation of the Hearings for Children report that there should be a consistent specialist Sheriff throughout the process.

Creating specialist Sheriffs, who received additional guidance and training appropriate to Hearings (e.g. in trauma, child development, etc), would fulfil the recommendation, while negating the need to create another role within the Hearings and legal systems which may add confusion.

Sheriff Mackie responded publicly to the proposal to establish a Legal Member highlighting the absence of rationale, and a lack of clarity around the role and its status within the Scottish legal system. CELCIS supports his conclusion that there appears to be no other place within the current system for the Legal Member aside from as "a fee paid First Tier Tribunal Member sitting within and supported by the Scottish Tribunals" (Mackie, 2024, p.3) requiring the establishment of a new Chamber. This may be at significant expense and with limited benefit.

Sources:

- The Promise Scotland (2023) *Hearings for Children, Hearings System Working Group's Redesign Report*. Edinburgh: The Promise Scotland.
- Mackie, David (2024) Blog: Children's Hearings Redesign: Public Consultation on Policy Proposals.
<https://thepromise.scot/assets/uploads/documents/2024/08/sheriff-david-n-mackie-blog.pdf>

Question 33

**Do you have any views on the proposed retention of the appeal arrangements within a redesigned children's hearings system?
Options and open field: yes; no**

Yes

The current appeal arrangements allow for a clear pathway to the resolution of legal disputes arising from Hearings. The appeals process, however, is one which could potentially introduce delay to care planning for children and young people while the appeal is being heard. If no changes are to be made to appeal arrangements, then efforts must focus on ensuring that the written decision of the Hearing has a clearly articulated evidence base to reduce the scope for successful appeals.

In this context, the importance of ensuring that a legal perspective on Hearing proceedings is represented is clear. While it is not necessary that this is provided by a Panel Member, it is important that this legal perspective is present in the Hearing to ensure that avenues of appeal based on procedural or substantive irregularities are minimised. The Reporter can offer a view about the legal options that are open to a Hearing, so this role is somewhat fulfilled by the Reporter in the current system. However, if significant investment is anticipated in the creation of the new 'Legal Member' role to hear evidence and decide upon matters of fact for the Hearings, there is clearly an opportunity for these skills to be applied within the context of substantive Hearings themselves.

Question 34

Other than a legal member or sheriff is there another person or body who could: present the statement of grounds to the child and family and receive responses? make interim orders?

Options and open field: present the statement of grounds to the child and family and receive responses?; make interim orders?

- present the statement of grounds to the child and family and receive responses?

Given the Reporter's prominent role in the creation of grounds of referral, and their knowledge and understanding of the circumstances of the child and family, there is a possibility that the Reporter might be able to present grounds of referral and receive responses. This might facilitate grounds to be presented in a more child and family-friendly manner by the Reporter, and may also speed up the procedure. This is not without risks, however, particularly in relation to the perception of fairness and free acceptance (or denial) by children and parents, due to the role that the Reporter has in establishing grounds at court if they are denied. It would be important to ensure that children and families have easy and fast access to legal representation.

Question 35

What would be the advantages and disadvantages to replacing Grounds Hearings with a fact finding hearing where the process would be undertaken by a single 'legal member'?

a. Advantages

The consultation is not clear on the procedure that will be followed in relation to grounds of referral that are disputed by the child or young person, or their family. Currently, if a sole ground or a ground, which is deemed to be essential to the (potential) imposition of a Compulsory Supervision Order, is not accepted, the ground(s) of referral is sent to a Sheriff for proof. In the model outlined, the grounds would be presented to the child and family by the 'Legal Member', who fulfils the Sheriff role in relation to grounds and proofs.

It is unclear if these are viewed as distinct roles, or whether each hearing undertaken by the Legal Member would be expected to hear evidence and determine facts (i.e. be a 'fact-finding Hearing'). CELCIS would not support the introduction of the latter, as many families do not dispute the grounds presented at a Grounds Hearing. Putting families through a process to determine that the grounds of referral are 'facts' in addition to the acceptance of grounds by the family is neither child centred nor necessary. It remains essential throughout this process to ensure that children and families have easy and fast access to legal representation.

Whichever model is envisaged, the introduction of a 'Legal Member' in this context does allow 'fact-finding' processes to occur within the Hearings Centre and may also allow for rules of procedure which make the process more child and family friendly. This benefit is also achievable through having Sheriffs operate from within Hearings Centres when conducting Hearings related to the Children's Hearings System.

b. Disadvantages

The consultation is not clear on the procedure that will be followed in relation to grounds of referral that are disputed by the child or young person, or their family. Currently, if a sole ground or a ground, which is deemed to be essential to the (potential) imposition of a Compulsory Supervision Order, is not accepted, the ground(s) of referral is sent to a Sheriff for proof. In the model outlined, the grounds would be presented to the child and family by the 'Legal Member', who fulfils the Sheriff role in relation to grounds and proofs.

It is unclear if these are viewed as distinct roles, or whether each Hearing undertaken by the Legal Member would be expected to hear evidence and determine facts (i.e. be a 'fact-finding Hearing'). CELCIS would not support the introduction of the latter, as many families do not dispute the grounds presented at a Grounds Hearing. Putting families through a process to determine that the grounds of referral are 'facts' in addition to the acceptance of grounds by the family is neither child centred nor necessary. It remains essential throughout this process to ensure that children and families have easy and fast access to legal representation.

As with the role of the 'Legal Member', there is also a risk that such Hearings will cause confusion among families as to the difference between the grounds/fact-finding Hearing, and the Children's Hearing. While the Legal Member may not be formally convening a 'Hearing', it is debatable how apparent this distinction will be to children and families involved in the processes.

Question 36

Is it proportionate and necessary for there to be a fact-finding hearing in every case?

Options: yes; no

No

Babies, infants, very young children and the grounds of referral

Question 37

In order to safeguard the interests of very young children, should the legal member or sheriff have discretion to convene a fact-finding hearing, even if all relevant persons accept the statement of grounds?

Options and open field: yes; no

No

CELCIS does not believe a fact-finding Hearing would improve decision-making and it may add unnecessary delay to Hearings.

Very young children require timely decisions to be made about their care, but significant drift and delay in children's services planning and legal systems is detrimental to their development and wellbeing. It is not clear what benefit an additional Hearing would bring for very young children and why it might be necessary. When grounds of referral are accepted, the Children's Hearings System must act swiftly to put in place arrangements that meet the needs of infants and young babies.

Question 38

Do you have any other views about how the youngest children should be supported in this part of the process to establish grounds of referral?

Open field

Establishing grounds of referral can be a complicated decision-making process that should not involve babies or infants necessarily. The youngest children do not need to participate, instead they need decision-makers to ensure they are safe, and their needs are being met. It is the responsibility of the Children's Hearings System to act on their behalf. Those supporting a child and family can effectively represent their views and also support their care givers and decision-makers. The appointment of a Safeguarder for every young child might be an option. However, it remains important that all adults within the system keep children at the centre of decision-making, have a sound understanding of child development, and are responsive to the impact of trauma on children.

While significant progress can be made in redesigning aspects of the current system for older children, CELCIS believes that consideration should be given to a different approach for young children, which works to earlier timeframes that are in keeping with their developmental needs and provides them with stability to ensure their needs are being met until a permanent decision can be made about their full-time care. CELCIS would welcome future discussion and engagement around this.

Statutory time limits in establishing grounds of referral

Question 39

A period of three months has been suggested as a time limit for triggering a review where an application to determine grounds of referral has not been dealt with.

Open field

If a Sheriff (or Legal Member) exercises their case management powers consistently and proactively then adding a review at the three-month mark for each case seems an unnecessary additional procedural step.

There needs to be flexibility in the system to accommodate the complexity of some cases and the current legislation provides this. There can be several causes of drift and delay when cases are at court, for example the availability of witnesses or the preparation of expert reports, and these matters can be managed using a Sheriff's existing decision-making powers.

If delay in determination is caused by a lack of court time allocated for Children's Hearings work then something more robust than a review of a case would be required to expedite matters, although this could provide useful data to help inform change.

Thought could be given to setting a time limit within which the court process to determine grounds is concluded. This would be of particular benefit for infants and young children, for whom a delay of even three months is significant given the importance of stability for their development.

Question 40

Do you support a defined time period for triggering a review of the progress of the case?

Options and open field: yes; no

Yes

If you support defining a time period, but not the suggested three months, should another time period be considered?

Potential involvement of safeguarder in grounds establishment proceedings

Question 41

Do you agree that there should be earlier consideration of the appointment of a safeguarder in a redesigned system?

Options and open field: yes; no

No

The current process requires that every Hearing considers the appointment of a Safeguarder. Additionally, Sheriffs are required to consider the appointment of a Safeguarder whenever they are involved in decision-making for a child (Section 31 Children's Hearings (Scotland) Act 2011).

Sources:

- Scottish Parliament (2013) *Children's Hearings (Scotland) Act 2011*. Edinburgh: Scottish Parliament.

Question 42

Should the proposed legal member have discretion to appoint a safeguarder to assist them with establishing the grounds of referral?

Options and open field: yes; no

Yes

If the 'Legal Member' fulfils the same role as the Sheriff in relation to grounds and proofs, they will have the option to issue Interim Compulsory Supervision Orders (ICSOs) and other orders in relation to a child. The significance of these decisions requires that a Safeguarder is considered to ensure that the views and best interests of the child are promoted and fed into decision-making. The Sheriff in Children's Hearings proceedings is required to consider the appointment of a Safeguarder (except where a Safeguarder has already been appointed), and this requirement should be extended to a 'Legal Member' who is fulfilling the same role.

Sources:

- Rule 3.7(2) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 as amended by the Act of Sederunt (Child Care and Maintenance Rules) (Amendment) (Children Hearings (Scotland) Act 2011) 2013.

Question 43

Do you support the suggestion that a safeguarder's early appointment to a child (before grounds have been established) should be presumed to end once grounds have been established?

Options and open field: yes; no

No

The Safeguarder should be presumed to be involved until a substantive decision is made for the child or young person.

Pre-birth activity by the children's reporter

Question 44

How could a redesigned children's hearings system better protect babies shortly after their birth?

Open field

"Infancy is a distinctive stage and requires specialist support, assessment and intervention. We must develop an infant focused approach and find a way to bring them to life in the eyes of others."

Graham Shulman, NHS Lanarkshire, Consultant Child and Adolescent Psychotherapist.

Babies have rights of their own and are individuals who are completely dependent on their care givers to provide for them. Parents have parental responsibilities and rights, a child has rights. Research highlights the critical importance of the first three years of life in setting the trajectory of a child's future wellbeing (Galloway and Love, 2023). All involved in the Hearings System should undertake regular training on early child development, trauma and the importance of timely decision-making to keep updated on research and practice developments.

While significant progress can be made in redesigning aspects of the current system for older children, CELCIS believes that consideration should be given to a different approach for young children. This approach would need to work to earlier timeframes in keeping with a baby's developmental needs and provide them with stability until a permanent decision can be made about their full-time care. Scotland could also consider enshrining 'early permanence' in law as in England, Wales and Northern Ireland. CELCIS would welcome future discussion and engagement around this.

Sources:

- Galloway, S. And Love, R. (2023) *Keeping The Promise to infants in Scotland, Glasgow*; Glasgow: NSPCC Scotland.

Question 45

What can be done to improve interagency pre-birth preparatory work? Open field

Given that Scottish Government's ambition is to ensure all children have the 'best start in life', consistent pre-birth support should be in place for families across Scotland. It should be a priority that multi-agency pre-birth services are accessible to all and targeted to those that require additional support. There are some excellent pockets of practice in Scotland, such as PrePare Edinburgh (a multi-disciplinary service offering treatment and support to enable parents the opportunity to give their children the best start in life), but greater consistency is needed.

The Reporter cannot currently register a referral until a child is born, so the importance of effective consistent pre-birth services needs to be recognised. It is also important to recognise the recommendations that come from pre-birth planning to avoid delay in the provision of support for infants and their families.

Sources:

- Children's Hearing Improvement Partnership (2016) *Guidance on Referral to the Reporter - Information for Partners*, Stirling: Children's Hearing Improvement Partnership.
- PrePare Edinburgh Service. For further information: <https://www.edinburgh.gov.uk/protect-someone-harm/children-families-alcohol-drug-problems>

Question 46

Do you agree that non-statutory action (practice improvements and guidance updates) is sufficient to deliver an enhanced pre-referral role for the children's reporter in a redesigned hearings system?

Options and open field: yes; no

Yes

In the context of current pressures on the children's services workforce (Ottaway et al., 2023) and the Children's Hearing System, there is a risk that if practice improvements are not statutory, then improvements may not be implemented consistently. This could be mitigated, however, through appropriate resourcing and co-ordination. A consistent pre-referral role that involves additional meetings for every case will impact on the Reporter's time. Adequate resourcing of the Children's Reporter workforce needs consideration to prevent high caseloads and to allow time for taking forward improvements.

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A., MacKinnon, K., (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*, Glasgow: CELCIS.

Children's reporter's ability to call a review hearing

Question 47

Do you think it would be appropriate for the children's reporter to be able to initiate a review hearing before the expiry of the relevant period?

Options and open field: yes; no

Yes

This may be appropriate in limited situations. For example, if the Reporter is made aware that a measure in a Compulsory Supervision Order is not being adhered to and

the appropriate local authority has not requested a review, it would be sensible for a Reporter to initiate a review if, after discussion, the local authority does not.

Question 48

Do you think the statutory three month period should be revised so that individuals who are entitled to request a review of a child's compulsory supervision order (CSO) can do so within a shorter time period?

Options and open field: yes; no

No

Careful consideration needs to be given to this issue and CELCIS does not support the shortening of the three-month period for individuals to request a review of a child's Compulsory Supervision Order (CSO). Professionals involved with a child need reasonable time to determine whether the supports and targeted interventions outlined in a child's care plan are making a difference for the child. If not, the local authority can call for an earlier review.

Children benefit from settled routines, and they need 'felt' security (Selman and Dilworth-Bart, 2023). The impact on the routines of infants cared from away from home can be significant in terms of maintaining contact with birth families, time involved in travel and routine health appointments. Reviews every three months could be detrimental to the development for infants and younger children, in particular. Additional appointments, assessments visits and the requirements of report updates needed for extra reviews will compound this.

Regular reviews have the potential to disrupt contact arrangements every few weeks if appeals are also lodged following the decision of the Review Hearing. This is particularly where levels of contact are contested by the family and permanence planning is ongoing. In some cases, there is no 'settled' feeling for the child or their carers until a Permanence Order or Adoption is granted by a court and they exit the Children's Hearings System.

In these situations, children can experience a continuous cycle of reviews and appeals over several years. Any change proposed could exacerbate this situation and the focus must remain on what is in the best interest of the child throughout the process. Assuming young children are not required to attend their Hearings, their need for consistency and settled routines must be considered a priority by decision-makers.

Consideration should be given to a different approach for young children to that taken with older children; working to earlier timeframes in keeping with a child's developmental needs and providing them with stability until a permanent decision can be made about their full-time care.

Sources:

- Selman, S.B. and Dilworth-Bart, J.E. (2023) 'Routines and Child Development: A Systematic Review' *Journal of Family Theory & Review*, 16(2) pp. 272-328.

Question 49

Do you consider that a child being re-referred to the children's reporter within a certain timeframe should result in that 're-referral' being treated as forming part of the pre-existing referral? [yes/no]

No option selected

If yes, what is an appropriate timeframe from the original referral for re-referrals to be treated in this way?

CELCIS believes that the Reporter needs to be able to exercise discretion in this area, and therefore have not selected 'yes' or 'no'.

It would not be appropriate to consider new referral information as being 'accepted' by a child or family if tied to a prior Hearing/grounds. Any assessment of new information about a child should be based on whether the needs presented by the referral are being appropriately addressed by the current Compulsory Supervision Order, or whether an amendment/adjustment is needed (in which case, new grounds would have to be accepted/established).

Treating a re-referral as forming part of the existing referral may be appropriate, but only in certain circumstances. For example, if a child has been placed on a Compulsory Supervision Order because of recently established grounds of referral and the re-referral is for similar grounds.

For a child who is already subject to a Compulsory Supervision order (CSO), however, a local authority, the police or any other person should have applied the statutory test before making a referral to the Scottish Children's Reporter Administration (SCRA) i.e. that the referrer considers that the child is in need of protection, guidance, treatment or control and that it might be necessary for a CSO to be made. It may be that some multi-agency training around the law and referral practice could reduce unnecessary re-referrals.

A redesigned children's panel

Question 50

Do you believe the children's panel element of the children's hearings system should retain the unpaid lay volunteer model in whole or in part?

Options: yes; no

No

Question 51

Would you support some measure of payment for panel members, over and above the current system of expenses, in return for the introduction of new and updated expectations?

Options: yes; no

Yes

Question 52

Do you have any views on the introduction of new roles into the children's panel?

Options and open field: Paid Chair; Paid specialist Panel Member – possibly including care-experience; Paid Panel Member; Volunteer Panel Member

- Paid Chair
- Paid Specialist Panel Member – possibly including care-experience Paid Panel Member
- Paid Panel Member
- Volunteer Panel Member

Paid Chair

The rationale within the consultation document is not clear on the benefit to children and young people of introducing only a paid Chair. The current model – where Panel Members can take on the Chairing role subject to experience and training – ensures this role is covered within each Hearing but avoids the introduction of a hierarchy of Panel Members.

Paid Specialist Panel Member

The introduction of a Paid Specialist Panel Member might make sure that specialist knowledge is considered as part of decision-making, however, this could be problematic.

First, this would require the matching of specialist skills with cases for the specialisation to be meaningfully incorporated. Alongside the need to monitor and update the skills base of Panel Members, this is likely to add a layer of bureaucracy in an already complex system. Second, there is no explanation of the role of the Paid Specialist Panel Members in discussions or decision-making: given their specialism, would other (volunteer) Panel Members be required to defer to them?

Third, the definition within the consultation document conflates having lived experience, or a particular qualification, with being a specialist. All involved in the Hearing bring with them a range of experiences, skills, knowledge and values, which is a valuable part of the hearings system. CELCIS supports the incorporation of such knowledge, skills and experience, but a possible unintended consequence of having Paid Specialist Panel Members is segmentation of this knowledge and skill with one area of expertise or experience being viewed as a specialism and others not. Where specialist knowledge is thought helpful to support decision-making, this can be called upon from those in the team around the child, or a practitioner specialist in a given field.

Paid Panel Member

“If you pay panel members, you run the risk of people doing it for the money and not because they care or are passionate. Especially in this economic climate where everyone is struggling”

CELCIS Consultant with lived experience

While this could be a concern, CELCIS believes that a system of appropriately remunerated Panel Members should be considered. Panel Members should receive appropriate financial recompense given the level of time and emotional commitment they bring and dedicate to the role and particularly if this role is expanded significantly. Keeping the role as unpaid may act as a barrier to some individuals coming forward to volunteer. There will be people who may have an interest in becoming a Panel Member and would bring invaluable skills but cannot afford to take unpaid time from work and put themselves forward for selection.

We are concerned that the other options would build in a hierarchy to the structure and operation of Children's Hearings, with some Panel Members remunerated and others not. This may have consequences for decision-making and discussion amongst the panel. There is nothing in the consultation document which explains or demonstrates how a hierarchy of paid and unpaid Members would benefit children.

If the Children's Panel is considered central to Scotland's system of care and protection for children and young people, it needs to continue with efforts to recruit, retain, train and develop a highly skilled cohort of Panel Members to take on this responsibility. As decisions made within the Hearings System are significant, decision-making models need to reflect the increased complexity in children's lives and reflect the changes that have developed over decades in our understanding of child development, mental health, impact of trauma and children's rights.

Any proposed change would need to be taken forward with caution and careful consideration to minimise unintended consequences. While introducing payment may mean new prospective Members step forward, this measure could preclude some Panel Members, who are in employment, continuing in their role. Some employers may be unable to support individuals if their current voluntary role is viewed as paid work as some contracts of employment prohibit employees from taking on other remunerated roles. Payments would also have to be declared by Members as income, possibly affecting any welfare payments including pension credit, or grant eligibility. The current situation of paying travel expenses only does not carry this risk for volunteers.

Volunteer Panel Member

As noted in the consultation document, the role of volunteers has been central to the Children's Hearings System since its inception. Lay member representation is an aspect of other medical, employment or legal tribunals or hearings where one lay member sits on panels with other professionals. The Children's Hearings System is unusual as it is only lay members who form the panel which makes decisions which are significant and can have far-reaching consequences. This also presents an ever-

present challenge in ensuring a consistent level of quality assurance and accountability across a volunteer workforce.

The volunteer model may also prevent many people from contributing to the Children's Hearings System, contrary to a fundamental principle of the system that decisions about children should be made by members of their own community. Volunteering may limit the pool of local Panel Members to those who are able to undertake unpaid work alongside any other responsibilities, or to work voluntarily: this may include carers, parents, full-time employees and disabled people. As such, the membership of a Children's Panel might not fully reflect the social or economic make-up of families referred to Hearings or the communities within which it sits.

Question 53

Recognising that payment of panel members/chairing members would represent a significant new national investment in decision-making, do you have views on priority resourcing for other parts of the system?

Options and open field: yes; no

Yes

All parts of the Hearings System require investment and resourcing if we aim to improve outcomes for children who need extra care and support.

The CELCIS Children's Services Reform Research (2023) sets out a range of elements that need attention including:

- Local, high quality and long-term funded service provision that is non-stigmatising and responsive to the wide range of needs of children and young people, families and communities
- Urgent investment in children's services to address the workforce crisis
- Action to address poverty and deprivation
- Greater investment in the data landscape and collaborative leadership

Where resources are limited, we question whether substantially increasing funding for Panel Members at this time constitutes a priority, or leverage point, that will bring substantial improvements to a significant number of children and families.

Sources:

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C.A. and MacKinnon, K. (2023) *Children's Services Reform Research: Learning and Implications for Scotland Concluding Report*. Glasgow: CELCIS.

Question 54

Each children's hearing currently consists of 3 panel members, with one chairing:

- a. **Should the number of panel members required for each hearing be reduced**

Options: yes; no

No

- b. **Should all panel members, on completion of appropriate training, still be required to chair hearings?**

Options: yes; no

No

- c. **Should some children's panel members be paid for 'specialist' knowledge, while others' involvement remains voluntary? E.g. a specialist panel member may have a particular qualification or expertise in childhood development, ACEs, or be a professional with prior experience of working with children in some other capacity?**

Options: yes; no

No

- d. **Should care-experienced members be considered 'specialist' given their experiences of the system?**

Options: yes; no

No

Engagement with the Chairing member before the Children's Hearing

Question 55

Should the chairing member of the hearing meet the referred child, their family or representatives to welcome them to the centre and offer any appropriate explanations and reassurances before the actual children's hearing?

Options and open field: yes; no

Yes

A fundamental driver behind the Children's Hearings redesign is the acknowledgement that formal meetings and Hearings in their current format can often be experienced as challenging and oppositional spaces, which are not always child centred and trauma informed. As such, an informal welcome (from the Panel Chair or indeed the Reporter) is a step towards improvement, however, this should not become a procedural step or an extension of the Hearing itself. It is within the scope of current practice for the Chairing Member to meet with the child, young person and family before the Hearing; any extension, promotion or national consistency of such an approach should be progressed by Children's Hearings Scotland, as opposed to mandated in legislation.

Question 56

If a meeting is held in the hearings centre with the chairing member, would you support this being an informal meeting?

Options and open field: yes; no

Yes

The meeting should be informal, voluntary, and a reasonable adjustment to current process which supports the child and their family to participate fully in the Hearing. In recognition of the significant burden upon many families to attend multiple meetings, it is strongly argued that this should not be classed as an additional meeting or require, for example, the family to arrive before everyone else; practically, this could be achieved by a few minutes being added to the scheduling by SCRA to allow this to take place immediately before the start of a Hearing.

Children's hearings decision-making in a redesigned children's hearings system

Question 57

Do you support the proposal that the children's hearing should have a brief period of recess/adjournment before reaching their decision and sharing it with those present?

Options: yes; no

Yes

Question 58

Do you agree that the majority decision-making approach should be maintained?

Options: yes; no

Yes

Question 59

Should the children's hearing be asked to reach a unanimous decision during adjournment, in order to minimise repetition and potential retraumatisation?

Options: yes; no

No

Question 60

If a majority decision approach remains, would you agree that any dissenting decision should be noted and explained?

Options: yes; no

Yes

Decision-making and specificity of measures in a Compulsory Supervision Order (CSO)

Question 61

Do you agree that it is desirable or necessary to introduce clearer authorisation for particular interventions with children, or particular interferences with their liberty, on the face of measures included in an Interim Compulsory Supervision Order or Compulsory Supervision?

Options and open field: yes; no

No

CELCIS does not consider it desirable or necessary to introduce clearer authorisation for particular interventions with children, or particular interferences with their liberty, on the face of measures included in an Interim Compulsory Supervision Order or Compulsory Supervision Order. A child may need several interventions throughout their time in care. Care givers need to be able to respond to a child or young person's needs in the moment and with a level of professional discretion. There must be recognition of the fluid nature of an individual child's needs. If measures in an order are too specific, carers may find that they do not have sufficient authorisation to put actions in place immediately to keep the child safe.

Focus should be placed on ensuring robust training, supervision and support of care givers, allied to consistent recording of the nature of any interventions used, to keep the child safe and manage their behaviour, and why such action was taken.

Question 62

If so, do you agree that a 'maximum authorised intervention' is an appropriate means of delivering that clarity to children and to professionals?

Options and open field: yes; no

No

A child may need several interventions throughout their time in care. Their care givers need to be able to respond to the child's needs in the moment and with a level of professional discretion. There must be recognition of the fluid nature of an individual child's needs. There is a danger in making measures in an order too specific. Listing a specific maximum authorised intervention may make it more likely to be used in practice. Focus should be placed on ensuring robust training, supervision and support of care givers, allied to consistent recording of the nature of any interventions used, to keep the child safe and manage their behaviour, and why such action was taken.

Timely notification of children's hearings decisions

Question 63

Is the current time frames for written confirmation of the decision by the children's hearing (5 working days) still appropriate?

Options and open field: yes; no

No

Given that Panel Members compose their written reasons for decision on laptops either at the end of a Hearing session or immediately after the Hearing, it should be possible to have decisions, together with any signed order, available for the child and family shortly after their Hearing ends or the next working day.

Investment in appropriate IT systems should be considered so that families can access all their papers for Hearings online. As there is a short time limit for lodging an appeal against a Hearing decision, it is important that the 'outcome' paperwork is available to a child, young person and family as soon as practicably possible and ideally received in a manner of their choosing.

Question 64

Should certain children's decisions (e.g. for an ICSO) have accelerated notification timeframes, relative to the urgency of the decision?

Options and open field: yes; no

No

Notification timelines for different decisions in Hearings would add further complexity to the System, and the consultation document does not demonstrate the evidence for doing so. Instead, there needs to be further emphasis on improvements to practice and attention to resourcing the workforce, so that notifications can happen in shorter timeframes.

Question 65

Should consistency or continuity of chairing members be the default position for each child's hearing?

Options: yes; no

Yes

Question 66

Would you support one single children's panel member's consistent involvement as an alternative approach?

Options: yes; no

Yes

Substantive vs procedural decisions

Question 67

Should children's panel members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member children's hearing?

Options and open field: yes; no

No

The views of CELCIS consultants with care experience were clear on this question:

"Decisions should be made by the entire panel, not just one person. Otherwise, what's the point of having a panel at all?"

CELCIS Consultant with lived experience

"I think it's essential to have three to remove bias and prejudices and try to balance it out."

CELCIS Consultant with lived experience

Attempts to implement lone Panel Member decision-making in any form or on any point, procedural or otherwise, could undermine the basis of the Hearings system and the rationale for this is unclear.

It is recognised that a simpler system which minimises drift and delay is desirable, however, decision-making requires the full complement of Panel Members. There are few scenarios which are purely 'procedural' in nature. All decisions made by the Panel have implications which significantly impact the lives of children and their families.

Question 68

Are there other areas you would consider appropriate for a single-member decision-making approach?

Options and open field: yes; no

No

The views of CELCIS consultants with care experience were clear on this question:

"Decisions should be made by the entire panel, not just one person. Otherwise, what's the point of having a panel at all?"

CELCIS Consultant with lived experience.

"I think it's essential to have three to remove bias and prejudices and try to balance it out."

CELCIS Consultant with lived experience.

Attempts to implement lone Panel Member decision-making in any form or on any point, procedural or otherwise, could undermine the basis of the Hearings system and the rationale for this is unclear.

Whilst it is recognised that a simpler system which minimises drift and delay is desirable, decision-making requires the full complement of Panel Members. There are few scenarios which are purely 'procedural' in nature. All decisions made by the Panel have implications which significantly impact the lives of children and their families.

Question 69

Would you propose additional safeguards to accompany these proceedings and decisions?

Options and open field: yes; no

No

CELCIS does not support the proposal and as such does not propose additional safeguards.

The Powers of the Chair during a children's hearing

Question 70

Would it be beneficial for the chairing member to have a robust and clearly stated set of powers to manage how and when people attend and participate in the different phases of a children's hearing?

Options: yes; no

Yes

Question 71

Are the existing powers of the chairing member and of the hearing sufficient to protect the rights of all involved?

Options and open field: yes; no

Yes

The existing powers of the Hearings System are sufficient to protect the rights of all involved if Panel Members feel sufficiently confident and empowered to use them appropriately.

Question 72

What enhancements could be made to the existing powers of the chairing member and the hearing to promote inquisitorial approaches?

Open field

No answer

Recording of children's hearings

Question 73

In your view, should children's hearings be routinely recorded?

Options: yes; no

No

If yes - which method of recording should be routinely used?

Options: Written; Audio; Video; Other

None checked

Question 74

What are the main benefits and risks of this method of recording hearings?

a. Benefits

CELCIS's Consultants with lived experience felt that the audio or video recording of decisions in Hearings may be helpful, as it would support accountability and understanding, and align the verbal rationales given at the end of a Hearing with the written reasons produced shortly afterwards.

CELCIS could not identify many advantages to audio or video recording the entire Children's Hearings, other than the potential benefits for research and data collection.

b. Risks

CELCIS has significant concerns about how data on this scale would be managed, safeguarded and shared appropriately, and that it is likely to incur significant additional costs. There are questions about the proportionality of holding this level of sensitive personal information about families. Currently, written records of decisions only contain the reasons and information on which a decision is made. An audio or video recording of the Hearing in its entirety is likely to contain a significant level of information not relevant to the decision-making process.

Recording Hearings may also inhibit attendees from participating fully in discussions. Some attendees may feel less concerned about being recorded, but others may feel inhibited or uncomfortable in an already stressful situation. It may also cause those in attendance to limit their contribution as a form of gatekeeping, or from being held accountable for things discussed in the Hearing.

On occasion those in a Hearing may feel more able to share without the presence of another party, or by speaking to the Panel Members alone, and it is unclear how can this be managed in a recorded session.

Question 75

If only the decision element of a children's hearing were to be recorded, would this change your view?

Options: yes; no

Yes

Child friendly summaries of decisions

Question 76

Should there be a statutory requirement for the production of age and stage appropriate summaries of Children’s Hearing decisions?

Options: yes; no

Yes

Question 77

Should the specific needs of other family members, especially other children, be taken into account when decisions and reasons are being prepared and issued?

Options and open field: yes; no

No

A Children’s Hearing should be primarily focused on the needs of the child. It is a legal forum making serious and impactful decisions about a child’s life. Family members’ views should be considered carefully, and thoughtfully included in decisions, but the focus of a Hearing needs to keep the child at the centre. Decisions in the child’s best interest will need to be made, even if against the wishes or needs of others.

Decisions and reasons need to make it clear to the child and their family what needs to change and what actions are needed to address this. Decisions should be shared in a way that families, care givers and children are able to engage with depending on their age and abilities. If wider family members, such as brothers and sisters, attend Hearings and information is to be shared with them about decisions taken, then more generalised information (presented in an age and ability appropriate manner) should be shared, with a point of contact offered for further discussion.

Family Group Decision Making (FGDM) and restorative justice

Question 78

Is it appropriate for children’s hearings to defer their decision in order for Family Group Decision Making or restorative justice processes to be offered, or to take place?

Options and open field: yes; no

No

CELCIS supports the expanded use of Family Group Decision Making (FGDM) and restorative justice approaches. Unlike other forms of planning, support and intervention, the purpose of a Children’s Hearing is to decide what is best for a child including the use of compulsory measures. A Hearing should generally be convened

when other voluntary routes have been explored and exhausted. CELCIS appreciates that this may require improvements at the referral and information gathering stage to ensure that such processes can be explored prior to a Children’s Hearing, if appropriate.

One possible concern identified is that if a Hearing deferred decision-making to offer FGDM or restorative justice approaches, then it may unwittingly add drift and delay into decision-making for a child and family if there is delay or waiting lists in operation in accessing FGDM or other restorative justice services.

Question 79

What other ways could consideration of these processes feature in the redesigned hearings system?

Open field

[Deliberately left blank]

The length of interim orders

Question 80

What are the advantages and disadvantages of increasing the statutory 22 day time limit for the duration of interim compulsory supervision orders (ICSOs)?

a. Advantages

Lengthening the time has the potential to subject the child and family to fewer Hearings in situations where it is recognised that it is likely to take longer than 22 days to, for example, gather information needed to make a substantive decision or to determine grounds of referral.

b. Disadvantages

Infringements on rights and freedoms rights and freedoms would be in place for a longer period without these being established as necessary or proportionate.

Question 81

Do you feel that there should be more flexibility in the duration of these interim orders?

Options: yes; no

Yes

If so, in what circumstances and what maximum duration do you consider appropriate?

Flexibility is essential to the appropriate use of Interim Orders, however, it is important that suitable checks and balances are in place to prevent ‘heuristics’ or

standardised approaches being implemented without sufficient tailoring to the child's circumstances and rights.

Question 82

Could ICSO reviews be undertaken by lone children's panel members? (See section 8.8 of the consultation document)

Options and open field: yes; no

No

"Decisions should be made by the entire panel, not just one person. Otherwise what's the point of having a panel at all"

CELCIS Consultant with lived experience

"I think it's essential to have three to remove bias and prejudices and try to balance it out"

CELCIS Consultant with lived experience

CELCIS believes this introduces a double standard without clear benefit to the child. Although ICSOs are short term, they often include restrictions on liberty and measures relating to contact and the potential impact of such measures cannot be overstated. It would appear there is an assumption that if ICSOs are simply continued then the full complement of Panel Members is not required for what appears an administrative task. This proposal, however, could undermine the promotion of a system based on children's rights.

In addition, this would place a significant burden on the lone Panel Member required to make such decisions. The only sole decision-maker currently within the Hearing System is the Sheriff, and carrying out reviews of any orders based on a lone Panel Member effectively confers the responsibilities of the Sheriff upon this person. In addition to the increased burden on individuals, this changes the original premise of the Hearings System, which should reach decisions on a majority basis.

Question 83

Do you support the proposal to create a child's exit plan from the children's hearings system?

Options: yes; no

Yes

Question 84

What elements should be included in a child's exit plan?

Open field

The complexities surrounding this proposal are well documented within the consultation document. As such, any suggestions regarding which elements should be included are best considered at the point of testing. Furthermore, given each child's circumstances will be different, and exit from the system will be for various reasons,

to prescribe the elements which should be included would seem premature at this stage.

System redesign overall

Question 85

Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned children's hearings system?

Open field

CELCIS notes that other parts of the UK have introduced a six-month timescale for the making of permanence decisions. Exploration of how this might work within a Scottish context should take place, including considering the advantages and disadvantages it might bring. The BeST Services Trial undertaken by the University of Glasgow has compared the experiences of children receiving specific interventions in Scotland and England. It is publishing its findings soon and it is anticipated that this should generate useful data about the differences in drift and delay within the different legal systems. CELCIS suggests that evidence from the BeST Services Trial is considered once published.

Sources:

- <https://www.gla.ac.uk/schools/healthwellbeing/research/mentalhealth/research/projects/best/aboutbest/>
Secure accommodation timescales for review

Question 86

Do you agree that the timescales for review of a child's placement in secure accommodation in Scotland, as laid out in legislation, are still appropriate?

Options and open field: yes; no

[yes/no] [open field]

Assessing Impact

Question 87

What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

Open field

Question 88

What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

Open field

Question 89

What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

Open field]

Question 90

Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned children's hearings system?

Open field