

The 16th Kilbrandon Lecture (University of Strathclyde, 22 November 2018): A Fifty Year Journey: What have we learned? Reflections on the 50th Anniversary of the Social Work (Scotland) Act 1968

The Right Honourable Dame Elish Angiolini DBE, QC, FRSE

Keywords

Kilbrandon Lecture, children's hearing system, youth justice, Social Work (Scotland) Act 1968, Scotland

Minister, honoured guests, ladies and gentlemen: it is an immense honour to be invited to deliver the Kilbrandon Lecture, particularly in this, the 50th anniversary year of the Social Work (Scotland) Act 1968. As many of you know, the statute was passed to promote social welfare, including the implementation of the crucial reforms on child justice and welfare recommended by Lord Kilbrandon's Committee. I speak with well-deserved trepidation, following many years of outstanding lectures from experts on the Children's Hearing System and child development and in an audience full to the brim with similar experts.

It is also a real pleasure to return to my alma mater. An infectious passion for the study of law and dedication to their students has left me with a profound debt of gratitude to the members of the Law Faculty of this great University.

Given this significant anniversary, may I also take this opportunity of thanking our social workers in Scotland who have worked in child care and with families over many decades, as well as those working with offenders and victims. Good news only rarely sells newspapers but bad news always does. Day in and out our social workers go where others fear to travel, doing brilliant work on our behalf. They are the front line in dealing with issues from which many of us had the luxury of distance to consider. I thank you all for your vocation, your dedication and incredible resilience. I will come to Reporters and panel members and their army of supporting volunteers in due course.

I am most certainly not an expert on the [Children's Hearing System](#) but as a Scottish prosecutor in various capacities over many years, I worked closely with Reporters, with child witnesses and with young offenders, some of the latter having sadly crossed over from that system to the criminal justice system. The guiding principles, ethos and operation of the Children's Hearing System have always been a source of inspiration and encouragement to me as I matured as a prosecutor, and indeed, as a human being (though the concepts are not, I hope, mutually exclusive).

The title of my lecture this evening poses a simple question, 'What have we learned?' This anniversary presents a further opportunity to consider how our

approach to children in trouble has evolved over those years, along with our understanding of what is in the best interests of the child. The further adjustments brought about by human rights considerations and a greater recognition of what works in tackling children in trouble have also obliged us to accommodate different perspectives within the setting of the Hearing.

Moreover, the passage of those 50 years challenges us to ask why the insightful thinking and radicalism of Kilbrandon was not imported into the adult justice system with any alacrity. Why did that radicalism halt at the age of 16 or 18? The problem solving approach characterising the Children Hearing's System has been very slow to develop in the adult courts where we continue to imprison excessive numbers of offenders, despite the knowledge of its inefficacy in securing desistance and its exorbitant costs to society. While we have learned much, I conclude, in response to my question, that we have not yet learned enough.

Maya Angelou, the brilliant poet and writer who survived a hellish childhood once wrote: 'Do the best you can until you know better. Then, when you know better, do better' (popular attribution, no source).

Few could argue that in 1964 Lord Kilbrandon and the members of his committee not only did their best but in doing so created a visionary and insightful alternative to the then juvenile justice system; an alternative which thrives today, despite the passage of time, the rapid development of human rights jurisprudence and a social environment so radically different from the 1960s. In 1964 the Committee described its fundamental business as being about children in trouble. 'Trouble' was a condition exhibited by delinquent behaviour, being in need of care and protection, beyond parental control or involved in persistent truancy – or any combination of these.

The essence of the [Kilbrandon Report](#) has been described as proposing a philosophy of 'needs not deeds'. The Report emphasised that the distinction between offending by children and children in need of care and protection was of little or no substance when the child's family environment, social conditions and

needs were considered. The Committee determined that both aspects should be dealt with under the one system, explaining:

'If public concern must always be for the effective treatment of delinquency, the appropriate treatment measures in any individual case can be decided only on an informed assessment of the individual child's actual needs' (Para 12).

The Committee's report continues:

'in terms of the child's actual needs, the legal distinction between juvenile offenders and children in need of care and protection was, looking to the underlying realities, very often of little practical significance' (Para 13).

In what Lord Hope¹ was to describe at the occasion of the [Kilbrandon lecture](#) in 2014 as: 'the genius of the Kilbrandon reform', the Committee followed a model already in place in some Scandinavian countries and described by Professor Bill Whyte as, one separating out the adjudication of the legal facts — requiring a professional judge — from the disposal of the case, in which criminal judges had no particular claim on expertise.

What came about was a juvenile justice system, founded on the principle of the welfare of the child and presided over by a lay tribunal. The decision to refer the matter to a Hearing and the presentation of the evidence supporting the referral was given to the Reporter, an independent official with the power to determine who should be referred to the Hearing for consideration of compulsory measures of care, or to be dealt with by more informal means.

First Encounters

My first encounter with the notion of what became known as The Children's Panel occurred in 1973 when I was 12. My friend and I were in the habit of

¹ Lord David Hope gave the Kilbrandon Lecture in 2014.

climbing up and into a tall hedge in Brighton Place, where I lived in Glasgow. The hedge formed, ironically, the perimeter of the Govan Child Guidance Clinic and was divided by a gate. Both of us would sit, camouflaged and high up in the hedge on either side of the gate, as if keeping sentry, while we chatted and observed the world passing by below, making the occasional noise to disconcert passers-by. One evening a policeman walked by beneath us and caught us, perched up there in the hollows of the hedge. He took out his notebook to 'book' us as it was called and asked for our names because he said he might have to refer us to the 'Panel'. He was of course just scaring us but his use of the phrase, 'The Panel', seemed deeply sinister to me and I associated it with being sent to a List D school.² I accordingly provided him with a false name and address — and he duly pretended to write it down. This pastime was not my first encounter with the police, however, who used to chase us off when we pursued our other shady hobby of 'watching' football supporters' cars outside Ibrox Park for a small ransom.

My much closer encounter with the Panel came in 1984. I had just started my traineeship as a procurator fiscal with the Crown Office ([COPFS](#), Scotland's prosecution service) and in January 1984 was sent to spend three weeks with the late, great Alan Finlayson, a child law expert and senior lawyer, who became the very first Reporter to the Children's Panel and who was at that time the Reporter for Edinburgh. On my first day, it snowed very heavily and the pavements were sheets of ice. I had come from Glasgow dressed for the weather in a purple padded coat, purple woolly hat and red moon boots. Moon boots as most fashionistas know have no grip. As I approached the Reporter's Office I slipped and fell over three times within a distance of about 20 feet. I looked up and saw who I now know were Alan Finlayson and his wonderful colleague Malcolm Schaffer standing at the window holding their coffee mugs and looking very concerned, more so when they realized that this strange looking, walking duvet was inching her way towards their doorway.

² A now redundant category of residential school.

Despite the inauspicious start, my time listening to these men and their colleagues and observing their work over the following three weeks had a profound influence on my entire career. Watching the hearings and absorbing in those weeks the sheer awfulness of the lives of the children referred to the hearings made it clear why poverty, violence, and the absence of reliable nurturing were such potent predictors of troubled behaviour in childhood and beyond. The compassion, expertise and pragmatism with which these two men, their staff, and the Panel members responded was remarkable. The notion of such a problem solving approach to justice in the adult courts was, however, still a long way off at this juncture.

But what I also observed during that visit was, that the children had no legal representation, that the proceedings were more formal than I had anticipated, with a large table separating the members of the Panel from the child, and that the Reporters were very clearly highly influential in the decisions made by the Panel. The whole atmosphere was very benign but the children were nonetheless tense. It did occur to me somewhere deep in my psyche then that, despite the benevolence, the children could do with an independent check on the assertion of what was in his or her best interests. The introduction of the role of independent Safeguarders in 1985 for circumstances where there existed a conflict between parents and the child came soon after my visit, with the role further extended to all children in the system in 1995.

Children in trouble

The characteristics of the life of a child likely to enter the Hearing System over the years were described compellingly by Sir Harry Burns in his [Kilbrandon Lecture](#) in 2011 as those who had experienced multiple adversities in early life, he said,

'The way in which we nurture children, the way in which we bring children into the world, and the way we in which we look after them in the first years of life is absolutely critical to the creation of physical, mental and social health' (p. 3);

He continued,

'Adverse events lead to subsequent poor behaviour in that child. The child is learning that he has no control and doesn't develop a sense of coherence. The stress response is such, that the brain growth pattern changes as a result...Unless we look after children properly, nurture them consistently, support them and their parents, who often don't know how to be parents, we will continue to reap the consequences in terms of criminality and poor health' (p. 25).

He was, of course, right and we have.

Darren McGarvey's brilliant but polemic work, *Poverty Safari*, about his early life in Glasgow provides a brutal glance into the disastrous environment that has been the childhood experience of thousands of citizens in this country. He wrote about the autonomic response of disassociation and the constant hyper-vigilance his body developed as default mechanisms because of the violence, and the sustained threat of violence, in his family home (McGarvey, 2017).

His description of his mother's reaction to his interruption of a drinks party she was hosting when he was five years old are all too familiar to me from my 27 years as a prosecutor. His book presents an eloquent portrayal of the hell experienced by children living in an unpredictable tinderbox when he wrote:

'she gave me a final warning to go back upstairs. I defied her. She held my gaze for a moment, before leaping out of her seat and charging into the kitchen. She pulled the cutlery drawer open, reached in and pulled out a long, serrated breadknife. Then she turned round and began pursuing me... I scrambled up the stairs as fast as I could but she was closing the distance between us. With nowhere to hide I ran into my bedroom slamming the door behind me, but it just seemed to bounce off her as she came charging through, clutching the knife... now I was trapped in my room, pinned against a wall with a knife to my

throat. I don't remember what she said but I do remember the hate in her eyes' (pp. 12-13).

Some years later he reflected on his alcoholic mother's own difficulties and explained how she had also suffered a violent childhood.

Although the consequences of violence for children may vary according to its nature and severity, its impact can be profound. The 2006 [United Nations Study on Violence against Children](#) found that:

'Violence may result in greater susceptibility to lifelong social, emotional, and cognitive impairments and to health-risk behaviours, such as substance abuse and early initiation of sexual behaviour. Related mental health and social problems include anxiety and depressive disorders, hallucinations, impaired work performance, memory disturbances, as well as aggressive behaviour. Early exposure to violence is associated with later lung, heart and liver disease, sexually transmitted diseases and foetal death during pregnancy, as well as later intimate partner violence and suicide attempts'.

The late Professor Fred Stone, who delivered the 1995 [Kilbrandon Lecture](#), a member of the Kilbrandon Committee, confirmed that the complexity of the challenge of the behaviours exhibited by severely disturbed children was not underestimated by the Committee in its deliberations in 1964 and there subsequently developed a realism that where such problems exist, 'children do not simply "grow out of them"' (p. 8). Part of the reason for the persistence of such behaviours was explained by Professor Stone as:

'because [such] children act in ways that create environmental stress which puts them at further risk.'

What was recognised in 1964 therefore was the critical need for early recognition of the severity of the problems faced by so many troubled children and of early intervention directed at the wellbeing of the child. What was less

obvious and less understood or recognised for many more years was the horrendous extent of the less patent but deeply damaging sexual abuse of children, both in their family environment and, tragically, in some of the very institutions to which they were sent to address their recognized vulnerability to chronic abusive behaviours. As Lord Hope (2015) observed about the Report, in a previous [Kilbrandon Lecture](#): 'The phenomenon of child abuse was not mentioned. There must have been a lot of it going on, but it still lay under the surface — unobserved, not talked about' (p. 2). Sadly, we have learned a great deal since. (In the early 1980s the word 'grooming' had not yet entered our prosecutorial vocabulary).

Profile of cases

Despite the explicit recognition of some of the underlying realities of troubled behaviour in the Kilbrandon Report, the dominant profile of cases referred to the Hearings for a substantial number of years arose from offending by older children and young people. This emphasis was unsurprising in the early years given the considerable concern about youth delinquency in the early 1960s and the criminal behaviours that had been the main catalyst for the Report. There therefore followed a dramatic and massive surge of such offenders from the criminal justice system into the hearings. List D schools were a regular destination for some children. Nina Vaswani and colleagues describe the approaches in these schools as harsh regimes — the norm in the 1970s (Vaswani, Lightowler and Dyer, 2018). Malcolm Schaffer has explained however that over the years the type of referral changed to reflect growing concerns about younger children at risk and that,

'...more regulation and control has been placed on residential child care placements, especially concerning the use of secure accommodation, and far greater use has been made of foster and kinship care' (Schaffer in Vaswani, Lightowler and Dyer, 2018, p. 11).

As a young Procurator Fiscal in Airdrie in the 1980s I used to meet Reporters to discuss older children and young offenders under 18 who had been the subject of joint reports from the police to the Procurator Fiscal and the Reporter. The meetings formed the basis of often vexed discussions as to whether such children should be retained in the Children's Hearings system or considered for prosecution. It was clear then that many of these teenagers had several previous referrals to the Reporter on offence and care and protection grounds and that the Reporters felt that the range of disposals available to the Hearings could not adequately address this older group of hardened, gallus³ but vulnerable children. They felt that the Panel was not well placed to deal with this older group and that there was a pressing need for more creative and effective disposals that could deal with their complex needs and behaviours.

The reality at that time was that entry into the adult system was even less likely to produce outcomes that could tackle offending behaviour; behaviour which was often by this stage already ingrained in their lifestyle and in respect of which there existed a paucity of well researched, nationwide and effective alternatives to prosecution. This absence of alternatives meant that there was little available to inhibit their almost inevitable and futile progress towards imprisonment.

The need for diversion from prosecution is still uppermost in the mind of the prosecutor and over the years much more use of diversion has become possible but there is still a need to make significantly more effective programmes and resources available to the Crown and the Hearing System to prevent these young people entering jail. As the Solicitor General, Alison Di Rollo QC, observed at a recent conference: 'prosecutors are fully aware of the devastating consequences of prosecuting a child and are fully alive to their responsibilities' (2018).

While Vaswani et al. (2018) note the absence of reliable data over many years, they confirm that youth crime remained fairly steady in the decade between 1977 and 1988. There was then a sharp rise in youth crime and in non-offence

³ Scots: self-confident, daring, cheeky

referrals with numbers peaking in 2006, (the numbers swollen by the many children referred by police because of domestic violence in the household). In 1972 the number of children and young people referred to a Children's Hearing was 17,950. In 2017/18 that figure has fallen to 13,240 or by 38.6%, (figures produced by the [Scottish Children's Reporter Administration](#)).

Most significantly, of those 13,240, 11,268 were non-offence referrals. In fact, 84% of the children and young people subject to a Compulsory Supervision Order as at March of this year (2018) have only ever been referred on care and protection grounds. This of course is almost a complete reversal of the profile of cases dealt with in the early years.

This sea change has been attributed to the growing expertise of all those in the system about the impact of family and home environment on the lives of children. That knowledge of the damage created for children who are the subject of, or living with, domestic violence or sexual abuse, alcohol and/or drug abuse or psychological harm has become much wider in our communities as has the impact of a childhood starved of reliable love and affection. The effect of the extent of that growth in understanding was noted by Malcolm Schaffer as resulting in 8527 children aged under four being referred to the Reporter in 2013 compared to 478 in 1976.

The dramatic reduction in the number of offence related referrals by children is also mirrored in a similarly steep reduction in recorded crime in Scotland in 2017-18 to 244,544 crimes, the second lowest level since 1974 according to [National Statistics](#) (Scottish Government, 25th September 2018).

The introduction of a brilliant new child strategy in 2007 known as [GIRFEC](#) or Getting it right for every Child, has encouraged much greater inter-agency identification of cases requiring referral and early intervention and of those that can be diverted from formal measures. Schaffer attributes the dramatic changes in referral rates to the success of this whole system approach, an approach he considers could have been achieved many decades earlier if the Kilbrandon recommendations on integration in social education departments of the functions of child and family social work with those of education departments had been

implemented. The resources to maintain the success of this initiative will also be crucial if we are not to burn out those taking it forward.

So while those in the system have been able to put in place practices allowing long standing knowledge about early intervention, prevention and inclusion to prevail, what we have also learned is the need for much better integration of those with relevant functions if existing expertise is to be put to better effect for every child. What seems eminently sensible, indeed, obvious, should not have taken so long to come about. Hard questions need to be asked about why it took us so long to learn, given Lord Kilbrandon's exhortation for the need for integration in his Report in 1964.

Changing legal framework

Over the years we have also had to develop a far greater understanding of why the child's right to participate in the Hearing involves more than the appointment of a Safeguarder. While a challenge to the grounds of referral brings with it the full rights to legal representation before the Sheriff⁴), the decisions made by the Hearing can also clearly have a profound impact on Convention and other rights of the child.

Although the Kilbrandon Report envisaged the child as an active participant in the hearing, the paternalistic approach as to how the child could exercise that right effectively meant that those rights were given less emphasis than we now know to be necessary. The decision of the European Court of Human Rights in *McMichael v UK* [1995] 20 EHRR 266 dealt with the right of access to all papers considered by the Hearing for those of relevant person status, followed in 2001 by children having the same right depending on age and maturity. For many years only those children who could pay for a lawyer had legal representation. The development of knowledge of the rights flowing from the European

⁴ That is, the judge presiding over the Sheriff Court in Scotland, the principal local civil and criminal court dealing with all cases except the most serious which are heard in the High Court of Justiciary.

Convention on Human Rights has also brought with it a wider range of grounds of appeal to the Sheriff for both the child and relevant persons in the child's life.

The fundamental issue of who is deserving of the special legal status of relevant person has also altered the prism through which the nature of the hearing must be perceived. The case of *Principal Reporter v K* [2011] SC (UKSC) 91 determined that the Panel must deem a person to be a relevant person if the individual has or recently had, a significant involvement in the upbringing of the child. The very recent unreported case of *ABC v Principal Reporter and Others* [2018] CSOH deals with the collateral rights of siblings as a relevant person, while the recent unreported decision of Sheriff Reid at Glasgow in *G and L* upheld an appeal against the Hearing's decision to exclude a relevant person's legal representative while the child spoke to Panel members on their own, the reasoning stated by the Panel being inadequate to justify the exclusion.

The march of lawyers into the Hearings system has been feared by many as heralding an end to the welfare based inquisitorial approach of the Children's Hearings with the substitution of the aggressive and regimented approach sometimes used to characterise adversarial proceedings. Certainly, the significant increase in the numbers of appeals against findings by the Panel might be interpreted in that way with increases in appeals from 19 in 1976 to over 900 in 2014 but as Schaffer notes, the number of appeals in relation to the total number of decisions is still insignificant out of a total of 32,000 hearings in the year. These cases nonetheless illustrate the existence of significant challenge for the system in how it seeks to balance the child-centred welfare approach in which the hearings are grounded, and a rights-based model which protects all participants rights and interests, but edges hearings towards a more legalistic focus.

I believe the system has nothing to fear provided our Panels are adequately trained and supported and that solicitors practicing in this sensitive and critical area of law are competent to do so. This means a very much more nuanced and expert approach to their role than applies in general court practice. The 'cross' in cross examination has never referred to being angry but the aggression and

sarcasm of some forms of grandstanding advocacy has no place in this context. The need to develop a specialism in representation and advocacy for both children and relevant persons is crucial and I am delighted the Scottish Legal Aid Board has moved on this through the excellent [CELCIS study](#) on the Role of the Solicitor at Hearings (2016) and in the Board's subsequent publication of the Code of Practice in relation to Children's Legal Assistance Cases. The Code requires evidence of competence in understanding child development and the principles of communicating with children. While this is a welcome development, I believe the Code needs to go further to require an understanding of abusive behaviours affecting children from outwith and within families. A fundamental understanding of the impact and the range of behavioural responses to the different forms of abuse on children, their siblings, and the non-abusive parent is also critical.

The establishment of the CHIP (Children's Hearings Improvement Partnership) to seek continuous improvement in the conduct and practice of participants in the Hearings is a very positive development and it has in turn set up a short term working group (known, I believe, as CHIPLET!) to identify the essential areas of knowledge that solicitors require in order to engage constructively in the Children's Hearings System.

Membership includes a mix of representatives drawn from the Scottish Child Law Centre, Scottish Legal Aid Board, CELCIS, private practice, Children's Hearings Scotland, the Law Society, the Adoption and Fostering Alliance, Clan Childlaw, Scottish Children's Reporter Administration and social work. The CHIP is also undertaking some development work focusing on the role and conduct of solicitors at hearings with a view to making best use of their contribution but also to modify the adversarial approach with which they have become accustomed over many years.

Concerns have also been expressed about the perception of the increasing complexity of the Children Hearing's system. Ruth Woods and colleagues Henderson, Kurlus, Proudfoot, Hobbs and Lamb (2018) describing claims of complexity as 'almost a mantra' explained that:

'This increased complexity in child protection has implications for all those working within the Hearings System, especially for the training of Children's Panel Members and professionals, and in their decision making to protect vulnerable children. Importantly, it has implications for those families who find themselves involved in an increasingly complex legal system...Moreover, there are suggestions that complexity in child protection and families' lives is growing over time, as a result of changes in levels of social inequality, drug and alcohol use, family fragmentation, professional practice, thresholds for entering care, and legislation' (pp. 6-7).

Whether that complexity suggests the need for an assessor to support the Panels must be a live issue but it would be a tragedy if we were to lose the community's major contribution to the care and protection of our children because of the need to compose increasingly complex articulations of the basis of their decisions.

It is clear therefore that much has been learned in the context of the Children's Hearing system over the last 50 years but there are many challenges for our learning and creativity still ahead. It is a system that is continuing to mature and develop as its collective knowledge, refined practices and enhanced appreciation of the rights, as well as the interests, of its participants prevail. The development of more effective informal approaches with children who, otherwise, appear destined to arrive at the Hearings system also signals a more creative and proactive recognition of not just early intervention but intervention that works.

A Kilbrandon for the adult justice system?

The adult system of criminal justice has, in contrast, proved more resilient to the need for a very fundamental review of our responsiveness to what truly has the propensity to change the complex sets of behaviours we see in courts throughout the country for the better. The huge prison population in Scotland

serving very expensive short term sentences still persists despite the evidence of the inefficacy of imprisonment in tackling their criminal behaviours and the underlying mental health problems, addictions and lifestyles of so many. The [Report](#) of the Commission on Women Offenders which I chaired in 2011 along with Sheriff Danny Scullion and Dr Linda de Caestecker found that many women in Cornton Vale prison came from generations of abusive and offending families and continued to exhibit the same behavioural problems and mental health problems as their parents. Many of these women were also mothers themselves.

We emphasised among much else the need for a comprehensive programme of problem solving community courts across the country. That need still persists along with a corresponding need for a robust programme of community based sentences to give our judges the resources and confidence to desert the well worn but ineffective patterns of short term sentences of imprisonment. While the Aberdeen Community Court pilot, and the presence of other problem solving courts across Scotland is encouraging, the progress towards a large scale transformation of the nature of the sentencing work of Sheriffs has moved very slowly.

If problem solving justice is to replace short terms of imprisonment with community-based alternatives this also needs an infrastructure and resources as comprehensive and nationwide as our police, prosecution and prison services with sentencing options that research shows can reduce recidivism. While our Children's hearing system is a remarkable demonstration of a bold pioneering propensity, have we proved 'too feart' (*Scots*: too frightened) to move forward from the comfortable practices of imprisonment to disposals that ask much more from all of us, including the accused? The forthcoming introduction in Scotland of a statutory presumption against prison sentences of less than one year can only work well if the sentencing options are more effective and the outcomes thoroughly researched.

It also requires lawyers and judges to acquire ever more understanding of what has the propensity to change human behaviour and an expert understanding of human behaviour itself; this can no longer remain in the sole domain of experts

and a group of enlightened judges. The Law Society of Scotland, the Scottish Prosecution College, the Judicial Training Institute and our universities must scrutinise the training provided to prospective lawyers and judges to address this need. They are the future judges who must understand intimately autonomic responses, characteristics of post-traumatic stress disorder, symptoms of mental and psychological health, the manifestation of distress and the impact of prolonged abuse and addiction. What features of sentencing have the potential to change or reduce the criminality that develops as a result of any or all of these issues? We cannot afford to rely on lawyers eventually absorbing this knowledge over years by exposure to experts, complainers and accused. This is a competence that we need to acquire long before any of us are let loose in the courts.

The time has come for us to take up the challenge set by the ingenuity of Kilbrandon's boldness and to show the Scottish system as one which is still moving forward both for our children and for the many who are yesterday's failed and troubled children. We can do this while all the while providing more effective remedies for our communities and the victims of crime.

We have been left a legacy from Kilbrandon that carries with it the expectation of a country that is confident enough in itself to challenge what we do, to be open to learning and developing what we do in the public interest from the cradle to the grave. As Maya Angelou's exhortation reminds us, we now know better so we need to up our game. So I hope we will abandon the appalling age of criminal responsibility of eight years and amend the unsatisfactory and odd political compromise of no prosecutions until after 12 years. I hope we will abolish corporal punishment of children and adopt the international standard of 18 in how we define children. And I hope we will incorporate the United Nations Convention on the Rights of the Child in the same way that the European Convention on Human Rights now permeates our domestic law.

I also hope that we will continue to be blessed with the thousands of volunteers who form the children's panels and by their actions demonstrate that this is a nation that loves its children. Love is a sort of schmaltzy word for a former state

prosecutor to use (at least in public) but I was delighted to listen to the First Minister, Nicola Sturgeon, remind us in her own [Kilbrandon Lecture](#) in 2017 that,

‘[Love] is... the birth right of the vast majority of children in Scotland — and those who grow up without it are disinherited in ways which we can scarcely begin to imagine. So we must, and we will, make sure that the way in which we provide care for them puts love at its heart. Every young person has a right to be loved’ (p. 11).

The outstanding child expert Professor Kathleen Marshall also spoke with great eloquence and persuasion in her Kilbrandon Lecture of the ‘love that binds’ (2009).

I have only met a few handful of Reporters over the years but their dedication and deep concern for the welfare of children has been one of the most significant manifestations of that love and a huge influence on my own professional life, so much so, that as I trailed back along the North Bridge in Edinburgh in 1984 (still in my Moon boots) towards the train back to Glasgow, I contemplated defecting from the prosecution to become a Reporter. Thankfully, Alan Finlayson and his brilliant team were spared that ordeal!

References

Burns, H. (2011). *Kilbrandon’s vision: healthier lives: better futures*. (The tenth Kilbrandon Lecture). Retrieved from

<https://www2.gov.scot/Resource/0040/00403544.pdf>

Commission on Women Offenders (2012). *Commission on Women Offenders: Final Report 2012*. Edinburgh: Scottish Government. Retrieved from

<https://www2.gov.scot/Resource/0039/00391828.pdf>

Di Rollo, A. (2018, October). Speech at conference, The Children’s Hearing System 50 years on: Would Lord Kilbrandon be proud?; conference held at the University of Edinburgh.

Hope, D. (2015). Remembering Lord Kilbrandon. *Scottish Journal of Residential Child Care*, 14(1), 1-13. Retrieved from <https://www.celcis.org/knowledge-bank/search-bank/journal/scottish-journal-residential-child-care-vol-14-no-1/>

McGarvey, D. (2017). *Poverty safari*. Edinburgh: Luath Press.

Marshall, K. (2009). Children's Hearings and the love that binds: Reflections on community, discipline and exile. Retrieved from <https://www.strath.ac.uk/humanities/schoolofsocialworksocialpolicy/thekilbrandonlectures/>

Porter, R., Welch, V., & Mitchell, F. (2016). *Role of solicitors in the Children's Hearings System. A study commissioned by the Scottish Legal Aid Board*. Glasgow: CELCIS. Retrieved from [https://www.celcis.org/files/8514/7576/7298/CELCIS-The role of the solicitor in the Childrens Hearing System - 2016.pdf](https://www.celcis.org/files/8514/7576/7298/CELCIS-The%20role%20of%20the%20solicitor%20in%20the%20Childrens%20Hearing%20System%20-%202016.pdf)

Scottish Government (25th September 2018). Recorded crime in Scotland, 2017-18. Retrieved from <https://news.gov.scot/news/recorded-crime-in-scotland-2017-18>

Stone, F.H. (1995). *Children's hearings*. (The 1995 Kilbrandon Child Care Lecture). Retrieved from <https://www2.gov.scot/Resource/0040/00403536.pdf>

Sturgeon, N. (2018). The 15th Kilbrandon Lecture (University of Strathclyde, 23 November 2017), *Scottish Journal of Residential Child Care* 17:1. Glasgow: CELCIS. Retrieved from: https://www.celcis.org/files/9115/2396/7778/2018_Vol_17_1_Kilbrandon_Lecture_Transcript.pdf

Vaswani, N., Lightowler, C., & Dyer, F. (2018). *What is youth justice? Reflections on the 1968 Act*. Edinburgh: Social Work Scotland.

Woods, R., Henderson, G., Kurlus, I., Proudfoot, P., Hobbs, N. & Lamb, D. (2018). *Complexity in the lives of looked after children and their families in Scotland from 2003 to 2016*. Stirling: SCRA. Retrieved from

<https://www.scra.gov.uk/wp-content/uploads/2018/03/Complexity-in-the-lives-of-looked-after-children-and-their-families.pdf>

Acknowledgement

The author wishes to acknowledge Boyd McAdam for his invaluable assistance.

About the 2018 Kilbrandon Lecturer

Dame Elish Frances Angiolini QC (b. 1960) is the Principal of St Hugh's College, Oxford, Pro-Vice Chancellor of the University of Oxford and Chancellor of the University of the West of Scotland. Born in Glasgow, she studied law at the University of Strathclyde, after which she pursued legal training with the Crown Office and Procurator Fiscal Service in Scotland and became a procurator fiscal. Following a distinguished career as a public prosecutor, she was appointed Solicitor General for Scotland in 2001, and from 2006-2011 she held the position of Lord Advocate, the Scottish Government's most senior law officer. Dame Elish then entered academic life, first as a visiting professor in the University of Strathclyde Law School. She has also led several high profile public inquiries, including the investigation into the disposal of baby ashes at Mortonhall Crematorium in Edinburgh (2013), and the practices of crematoria across Scotland (2014) and for the Home Office on Deaths in Custody in England and Wales (2017).

A video of the lecture is available on YouTube here:

https://www.youtube.com/watch?v=PndA_9AIuc0