

Response to Education and Skills Committee call for evidence 'The Children's Hearing System – Taking Stock of Reforms' – March 2017

CELCIS (Centre for excellence for looked after children in Scotland), based at the University of Strathclyde in Glasgow, is committed to making positive and lasting improvements in the wellbeing of Scotland's children living in and on the edges of care. CYCJ (The Centre for Youth and Criminal Justice) supports improvement in youth justice, contributing to better lives for individuals and communities by developing, supporting and understanding youth justice practice, policy and research in Scotland. Together, we welcome the opportunity to submit our views in relation to the reform of the Children's Hearing system, consider where progress has been made, and highlight opportunities for further improvement to strengthen Children's Hearings for children and families.

In March 2016, 10,379 children and young people in Scotland were subject to a Compulsory Supervision Order, and in the past year (2015/16) 34,896 Children's Hearings took place across the country.¹ The vulnerable children and young people participating in hearings and subject to compulsory supervision, and their families, should experience a sensitive and effective Hearing system which meets the complex and varied needs of individuals.

Have the reforms in the Children's Hearings (Scotland) Act 2011 produced the desired outcomes?

The reforms of the [Children's Hearings \(Scotland\) Act 2011](#) (the 2011 Act) aimed to place children's rights at the heart of the Hearings system, modernise the Hearings system, and secure better outcomes for looked after children.² The 2011 Act aimed to strengthen effective participation of children and young people and their parents/carers, improve consistency, and strengthen the implementation of the orders made by hearings. While the needs led, welfare based principles of the hearing system remain intact, changes were made to key areas including

- the **structure** of the system (with the creation of a national Children's Panel),
- **entry** to the system (including changes to grounds of referral),
- **who** is involved in the system (including changes to the definition of relevant persons, and availability of legal aid)
- **participation** (including duties on chairs to ensure children and relevant persons can participate, inclusion of children's views by report writers, and the establishment of pre-hearing panels)
- reporting on the **implementation** of orders

The multi-agency Children's Hearing Improvement Partnership (CHIP) was established to bring key interests together to properly align and understand the roles of all involved, in order to deliver improvements for children across the Children's Hearings System. The CHIP's work is ongoing, towards the desired outcomes. Although some progress has been made, CELCIS and CYCJ consider critical areas for further improvement to include:

- Ensuring the child is truly at the centre, by clarifying and embedding a common understanding of best interests and need between all partners;

- Ensuring respect and role clarity between practitioners (see page 6); and
- Improving the quality of evidence to aid decision making, and the knowledge, skills and confidence of panel members to make decisions based on evidence (see pages 3-4).

Are current strands of policy work across children's services sufficiently co-ordinated and complementary?

Yes, to some extent. The national approach to securing wellbeing for children, [Getting It Right For Every Child](#) (GIRFEC), requires a consistent, personalised and holistic approach to meeting needs early, by delivering the right help, at the right time, in the right way to children and families. Where needs cannot be met without compulsory measures of supervision, GIRFEC provides a shared understanding and common language for all professionals who can be clear about the rights and wellbeing needs of the child, and the roles and responsibilities of agencies to work in partnership to secure these. Legislative duties enshrined in the [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act) complement the policy aims of GIRFEC. Amongst others, Children's Hearings Scotland (CHS), The National Convener, Scottish Children's Reporters Administration (SCRA), Scottish Legal Aid Board (SLAB), Local Authorities, and Health Boards have duties and responsibilities in relation to Children's Rights under Part 1 of the 2014 Act, and Corporate Parenting under Part 9. Requirements under Part 9 include the duties to uphold the rights and safeguard the wellbeing of looked after children, and to collaborate with one another in order to do so.

Although this policy context generally provides a co-ordinated framework, tensions continue to exist in some areas. For example, tensions between attempts to prioritise the needs of children for safe and permanent care, and parents' rights to retain parental responsibility, including the right and responsibility to retain contact with their children. Panel members and all professionals attending Hearings would benefit from clear national guidance, and continuous professional development, to gain a deeper understanding of the purpose of contact with birth families, to inform legal decision making. The work of the Permanence and Care Excellence (PACE) programme evidences that contact decision making can be a major source of confusion and delay within the Hearing system, and a focus of acrimony, contention and distress for those attending Hearings. There needs to be better clarity around the purpose of, and legal basis for, contact decision making.

The Children's Hearing system was not established to consider the needs of babies and infants, nor was it established to consider the likelihood of harm and the challenge of trying to demonstrate this before actual harm has occurred. The length of time it can take to establish 'grounds' (legal reasons which may lead to the requirement for a Children's Hearing, set down in section [67\(2\) of the 2011 Act](#)) for some children aged 0 to 5 is cause for concern. It can take many months to establish grounds for example, for a baby whose parents have failed to safely care for a previous child. Evidence from the PACE programme suggests it is not unusual for second and third children to be removed from the care of their parents, only to wait months for legal grounds to be established. Appeals and legal challenges to grounds can dismiss or minimise the parenting history of a sibling. This can cause local authorities to delay decision making for the child, and the need to re-assess the parent's capacity, often losing many months or years before a decision is finally reached. Research by SCRA highlights that 89% of Child Protection Order's are granted for a baby where a sibling has previously been removed from the parent's care.³ The test of 'significant harm' used to secure the removal of a child from their parent's care is not always deemed sufficient to establish grounds within our current legislation.

In terms of children and young people involved in offending, progress in advancing the [Whole System Approach](#) has been made, however there is still distance to travel. Article 40 of the [United Nations Convention on the Rights of the Child](#) (UNCRC) states young people should receive child-friendly justice. The UNCRC and the 2010 [Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice](#) both state those

under 18 years of age should be treated as children. It is unacceptable therefore that such young people are continuing to be prosecuted in adult courts in Scotland. Our unique welfare based Hearing system should be equipped to deal appropriately with these children. Data from SCRA highlights that during a six-month period in 2014, 55% of all jointly reported cases for 16/17 year olds, (who were all subject to a Compulsory Supervision Order (CSO)) were dealt with by the Procurator Fiscal. In other words, the majority of jointly reported young people aged 16 and 17, who legally are children, were prosecuted in adult courts.⁴

Thinking back over the last 10 years, to what extent has the ability of children to participate in their Hearings changed? What factors have had the greatest influence on any changes?

Although children and young people want to participate in their Hearings, and professionals are clear in their desire to support this, more could be done to ensure meaningful participation.⁵ SCRA's 2016 National Survey of Children and Families reported similar findings to previous years in relation to the need to develop more effective methods for young people to give their views to the Hearing.⁶ Research suggests that it is not necessary for all children and young people to attend Hearings in person to participate. Children should instead be provided with a variety of ways to give their views and participate, preferably of their own choosing. Positive experiences in participating in decision-making are more likely when there is a shared culture of respect, and shared understanding of the importance of children and young people's participation.⁷

When additional support is provided, children and young people can have more positive experience of participation. The chair of the Hearing has a duty to ensure a child is aware of their right to access support from an advocacy service, and the 2011 Act enables access to legal aid for children and young people with capacity to instruct a solicitor. One of the advantages of the availability of legal aid for Hearings is in the ability of solicitors to put forward their client's views and support clients to speak for themselves.⁸ Children's use of solicitors in Hearings is low compared to that of adults.⁹ The availability and access to high quality advocacy is critically important to ensure positive experiences of participation for all children, and particularly those not accessing solicitors.

The importance of high quality, well-managed, inter-professional training and ongoing coaching to ensure the full and shared understanding of the primacy of children's participation, the variety of ways this can be achieved, and to foster a culture and ethos where their needs and voice are truly central, cannot be understated. Such training should ensure that there is mutual understanding of roles and responsibilities in the children's hearings system, and that there is an emphasis on the collaborative, child-centred ethos of the hearing process. This training should foster a culture of mutual respect for all parties. Based on children and young people's views, the CHIP published [guidance](#) for adults working with and caring for children and young people who are involved in the Children's Hearings, which, if used, can support children to participate and understand proceedings.

Do we have appropriate standards in place for the operation of Children's Hearings and guidelines for the functioning of a Hearing, and are they consistently applied? If not, what improvements need to be made?

The establishment of CHS as a national body altered the recruitment, training and appointment of panel members. [National Standards for the Children's Panel](#) (which apply to the National Convener, CHS, and panel members) were established in 2012, and include that panel member practice is consistent across Scotland; every Hearing is managed fairly and effectively; and every Hearing makes decisions based on sound reasons in the best interests of the child or young person. A competence framework linked to the National Standards provides a framework for the regular observation of

panel members and has introduced SQA accredited qualifications for panel members and enhanced training for panel chairs.

All of these welcome measures should help improve the standard and consistency of panel members, whose practice is an essential component of the hearing system. It is currently unclear if panel member training is effective, and if the national standards are applied consistently. There is insufficient information available pertaining to the quality of decisions made by panel members. The reasons for decisions produced at the end of each hearing are routinely only scrutinised if a child or relevant person lodges an appeal to the Sheriff Court, and, given that the majority of hearings are not observed by Panel Practice Advisers, it is impossible to confirm how many hearings are managed "fairly and effectively".

PACE programme evidence suggests panel members would benefit from a deeper understanding of the developmental needs of children and young people to inform decision making. Increased knowledge and understanding around attachment; children's need for early emotional, physical and legal permanence; and the essential parental responsibility to provide these for children would improve the quality of current decision making. Extending from this is the need to support panel members to develop a deeper understanding of the role and professional/legal responsibilities of those attending Hearings, including parents, social workers, teachers, advocacy workers, solicitors and foster carers. Parental responsibilities towards children must be emphasised as well as the rights of parents. This ensures that the child's needs and rights are kept at the centre of the Hearing. Strong confident chairing is essential; leadership from the Hearing chair must be focussed on the child's needs. This is not always the experience of those attending Hearings, where professional and parental confidence and constructive decision making can be seriously undermined by the adversarial nature of proceedings.

Agencies have taken steps to work together to try to ensure consistency and the smooth operation of children's hearings. For example, [Practice Guidance on the Management and Scheduling of Children's Hearings](#) provide guidelines for CHS and SCRA about the timing and duration of individual hearing cases and sessions, and effective time management by panel members. Again, it is unclear if these guidelines are applied consistently.

Following stakeholder consultation, there is clear recognition that there are areas that could be improved in the operation of Children's Hearings. [The Next Steps Towards Better Hearings](#) report, published in October 2016, aimed to identify what makes a Hearing work well from the perspective of those involved, and from this develop service standards for Children's Hearings. Consensus was strong between the views of children and young people, and practitioners, regarding what would improve Hearings, and the report provides a useful set of proposed standards that should be considered for discussion and implementation. These include better pre-hearing planning to provide a bespoke service for children and families; steps to ensure each child is enabled to give their views and to understand the decisions made at their hearing; and steps to ensure each child is aware of their rights at every step of the process.¹⁰

The CHIP is considering a new 'blueprint' whereby evidence based standards will be introduced in relation to Hearing proceedings. Currently information gathered is quantitative in nature, with few indicators of quality. The 'blueprint' will measure timescales from referral to final outcome, measure the quality of information contained in a referral, and establish minimum standards of information to be contained in reports from multi and single agency sources. In this manner, the quality of information provided at each stage of the process can be meaningfully measured, and improvements pursued.

Do social work departments provide the optimum support to children and young people who are part of the Children's Hearings system and have sufficient resources? If not, what improvements need to be made?

We remain concerned about the available support and planning for children and young people subject to CSOs and living at home with their birth parent(s). Their needs and circumstances are complex, and often as severe as children who are looked after and accommodated. A 2015 study evidences that 'home supervision' provides considerable opportunity to support vulnerable children and families, but the opportunity is often not realised.¹¹ There is a need for rigorous multi-agency assessment and outcome focussed planning for every child subject to compulsory supervision, not only those who are looked after and accommodated.

If a child becomes 'looked after at home', this may not lead to them getting the support they need. This extends beyond the availability of 'sufficient resources' within social work departments alone: there is a need for multi-level and sustained change to systems and service provision. Investment in effective family support services to bring about a more concentrated and consistent approach to assisting these young people and their families is called for. Early and effective intervention, and the availability of a range of support for families are critical in addressing needs before crisis point. Addressing systemic barriers inhibiting the full implementation of GIRFEC, such as weaknesses in multi-agency working and lack of resources, must be central to improvement efforts in this area.

In relation to offending behaviour, concerns remain that CSOs are terminated prematurely. A research study found 79% of young people interviewed in Polmont Young Offenders Institute had previous involvement with the Hearing system. 59% stated that their CSO had been terminated just prior to or just following their 16th birthday, meaning their court cases were dealt with within the adult justice system.¹² More work needs to be done to explain to young people the processes they are involved in, as well as educating the workforce and panel members around the importance and purpose of children remaining on CSOs longer. Similar concerns are true of older young people ceasing to be looked after and becoming care leavers. There is no right to return to care, and outcomes are poor when young people leave care too early.¹³ Young people must be enabled to make informed choices and consider the full implications of ceasing to be looked after, and moving on from stable care placements. They should be encouraged, enabled and empowered to remain in positive care placements, continue to be looked after, and benefit from the full protection of positive use of legislation and policy.¹⁴ Children's Hearings have a key role in ensuring this is standard practice.

Do local authorities fully implement the recommendations that are made by Children's Hearings and does the system of the 'feedback loop' work as intended?

Our comment on this question is limited due to the lack of publically available information with which to answer. A feedback report containing information about the implementation of compulsory supervision orders at national, Area Support Team and local authority level will enable issues which may arise with implementation of CSOs to be considered and addressed. We fully support this intention, and are aware that work is underway to develop indicators and a reporting matrix to allow analysis of the impact of CSOs on the wellbeing of the child. We recognise the complexity involved with this, and in the absence of information to the contrary it appears the feedback loop system remains aspirational at present. We believe the implementation of an effective feedback loop is likely to require significant resources.

What is your view on the involvement of solicitors in the Children's Hearing system?

Concerns around Hearings being increasingly adversarial, and intimidating for professionals as well as children, relate in part to the role of solicitors. CELCIS' 2016 research study found the majority of solicitors act in a constructive and valuable way in the Hearing system, but a minority act in ways that are out of keeping with the ethos and approach of the Hearing system. Some do not have the requisite knowledge to take

part effectively, and do not consider the best interests of the child within the process. There is an accepted need for an agreed “ethos” for children’s hearings that applies to all professionals and participants in the system.¹⁵

The 2016 study made recommendations that should be taken forward, in order to increase the knowledge and understanding not just of solicitors who choose to undertake work in this specialised area, but of other stakeholders in an effort to improve the children’s hearing process. Recommendations include clarifying the role of solicitors in the hearing system for all stakeholders; the manner in which solicitors actions should protect the best interest of the child while representing their clients instructions; and the information on which they should base judgements of the best interests of the child. There should be compulsory training for solicitors covering issues relevant to children’s wellbeing, such as child development, communicating with children, family functioning, and attachment. Inter-professional training should also be established. There should be a feedback mechanism to monitor solicitors within the Children’s Hearing process, involving some or all of the following organisations: SLAB, CHS and the Law Society.

The 2016 study also notes that 90% of legal aid work in hearings during 2013/14 related to parents and other relevant persons (not children). The reasons for the seemingly low numbers of children obtaining legal assistance should be investigated. Unless an agreed shared ethos is held between all professionals involved, the best interests of the child are at risk of being secondary consideration to the rights of parents. With the Reporter unable to interact with the Hearing process, panel members (and particularly chairs) must be well equipped with the knowledge, skills and confidence to challenge any practice that is not in keeping with the best interests of the child.

With respect to the role of the Safeguarder, a 2015 study highlighted that while their work is regarded positively by both panel members and social workers, at times social workers believe that appointments of safeguarders are unnecessary, duplicate their own assessments and lead to avoidable delays. In contrast, panel members believed that the appointments were nearly always needed, and could save time in the long run. Both thought that in certain cases conflict at hearings could be better managed to reduce the need to appoint a safeguarder.¹⁶

The Children’s Hearings Improvement Partnership (CHIP) recognises the need to have all participants within the Hearing System working together respectfully with knowledge and understanding of each other’s roles and responsibilities in order to provide the best outcomes for children and young people. Launched in June 2016, the CHIP [Vision and Values for the Children’s Hearings System](#) promote a commitment to understanding each other’s roles and responsibilities in the Hearing system. A National Learning and Development Adviser has recently been appointed by CHIP to work with stakeholders to effect change and drive improvements in these areas. This position is based at CELCIS.

What is your view on the interaction between Children’s Hearings and the courts? Can improvements be made in how they work together?

In order for children and young people with offending behaviour to be dealt with effectively in Hearing system, panel members require the skills and confidence in making decisions in relation to these behaviours, and courts need confidence that these cases will be dealt with effectively. Panel members must have a robust understanding of the needs of young people involved in offending behaviour, the disposal options available, and the interface between the CHS and adult criminal justice system.

Section 49 of the [Criminal Procedure \(Scotland\) Act 1995](#) sets out responsibilities and the options for the courts in remitting cases back to the Hearing system for children and young people under 17 and a half years old. Evidence indicates this is not being used as often as it could. Between 2009 and 2014, approximately 10% of the total number of young people appearing at court were remitted to the Hearing system for advice, around half of whom were ultimately remitted for disposal to the Hearing system.¹⁷ This has raised questions of the relationship between the Courts and the CHS, and the level of

confidence the Court has in how the Hearing system manages these young people. Recommendations made by CYCJ stemming from this study include that there is a presumption that all cases relating to those under 18 should be dealt with by the Hearing system, or diverted from prosecution.

To avoid delays in securing legal permanence for children, it is critical for panel members to record decisions clearly and carefully in a manner which will meet legal tests and withstand appeals in court where these are made by solicitors on the basis of wording. Consideration should also be given to the removal of the Advice Hearings for permanence cases. They add in unnecessary delay to an already lengthy process, sheriffs rarely refer to them in their considerations of Permanence Orders, and they are usually out of date by the time a sheriff considers a Permanence Order.

Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.

CELCIS Contact:

Lizzie Morton
Policy Associate
lizzie.morton@strath.ac.uk
0141 444 8504

CYCJ Contact:

Pamela Morrison
Practice Development Associate
pamela.morrison@strath.ac.uk
0141 444 8622

¹ SCRA (2016) [Online Statistics 2015/16](#). SCRA online

² Scottish Parliament (2010) [Children's Hearings \(Scotland\) Bill: Policy Memorandum](#). Edinburgh: RR Donnelley

³ Henderson, G, & Hanson, L. (2015) [SCRA Research Report: Child Protection Orders](#). Stirling: SCRA

⁴ SCRA (2015) [Statistical Dashboard](#). SCRA online

⁵ Kurlus, I., Henderson, G. & Brechin, G. (2016) [The Next Steps Towards Better Hearings](#). SCRA on behalf of CHIP.

⁶ SCRA Information and Research Team (2016) [National Survey of Children and Families 2016](#). Stirling: SCRA

⁷ Elsley, S.; Tisdall, E, K, M. and Davidson, E. (2013) [Children and young people's experiences of, and views on, issues relating to the implementation of the United Nations Convention on the Rights of the Child](#). Scottish Government: Edinburgh

⁸ CELCIS (2016) [The Role of the Solicitor in the Children's Hearing System](#). Glasgow: CELCIS

⁹ CELCIS (2016) [The Role of the Solicitor in the Children's Hearing System](#). Glasgow: CELCIS

¹⁰ Kurlus, I., Henderson, G. & Brechin, G. (2016) [The Next Steps Towards Better Hearings](#). SCRA on behalf of CHIP.

¹¹ Welch, V., Lerpiniere, J., Young, E., Sadler, S. & Fitzpatrick, J. (2015). [Overseen but often overlooked](#). Glasgow: CELCIS.

¹² Dyer, F. & Nolan, D. (forthcoming), "Just a wee boy not cut out for prison": *Young people's views and experiences of the youth and criminal justice system in Scotland*.

¹³ Scottish Care Leavers Covenant (2015) <http://www.scottishcareleaverscovenant.org/covenant/>

¹⁴ Scottish Government (2013) [Staying Put Scotland: Providing care leavers with connectedness and belonging](#). Edinburgh: Scottish Government

¹⁵ CELCIS (2016) [The Role of the Solicitor in the Children's Hearing System](#). Glasgow: CELCIS

¹⁶ Gadda, A., Hill, M., Young, E. and Welch, V. (2015) *The Appointment of Safeguarders in the Children's Hearings System: Research Report and Action Plan*. Glasgow: CELCIS

¹⁷ Dyer, F. (2016) [Young People In Court In Scotland](#), Glasgow: CYCJ