

## Scottish Parliament's Education and Skills Committee's call for evidence on children's hearings' reforms

### Introduction

SLAB's primary role in the children's hearings system relates to its statutory responsibilities for the operation of legal aid for children's hearings which are contained in Part 19 of the 2011 Act which amended the Legal Aid (Scotland) Act 1986 and also the associated Children's Legal Assistance (Scotland) Regulations 2013.

SLAB plays an active role in the Children's Hearings Improvement Partnership, the multi-agency group tasked with delivering change and improvement to the children's hearings system, where we work in partnership with other public bodies to deliver improvements to the hearings system.

### Summary of the legal aid reforms

Prior to the 2011 Act, only restricted form of legal aid was available to individuals who needed advice about children's hearings. It covered the provision of advice only, it did not allow for representation at children's hearings. The 2011 Act and associated regulations:

- introduced legal aid funding for representation at children's hearings
- transferred assessment of children's legal aid applications for court proceedings from the courts to SLAB
- introduced Registration and a new Code of Practice for solicitors and firms
- introduced a new peer review Quality Assurance scheme for children's legal aid
- introduced a Solicitor Duty scheme to ensure legal advice and representation is available to children automatically for prescribed procedures.
- introduced automatic legal aid for children for specified hearings.

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

The establishment and work of the Children's Hearings Improvement Partnership, chaired by the Scottish Government, has been effective in extending and improving the range of agencies and organisations contributing to policy work. The forum enables greater inter-agency co-operation on agreed actions, for example with regard to the implementation of the recommendations produced as a result of the recently published research by SLAB into the role of solicitors in children's hearings. This has already led to greater availability for solicitors of training in areas such as child development, communication, attachment etc.

Additionally, SLAB, CHS and SCRA have established lines of regular communication which did not exist prior to the reforms and as a result, SLAB has been able to contribute to and participate in cross-agency training to facilitate and foster better understanding of the respective roles of those involved in children's hearings, particularly in respect of solicitors, panel members and social workers.

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

Reforms to the availability of legal assistance increased the availability of publicly funded legal assistance for children and relevant persons. Availability of solicitors to provide advice and representation is generally good across the country. 381 firms and 907 solicitors are registered to provide children’s legal assistance and 74 firms and 146 solicitors are members of the duty scheme.

The table below shows grants of legal assistance for the five-year shortly prior to and shortly after the implementation in June 2013 of the legal aid-related aspects of the 2011 Act:

Legal aid type	Purpose	2011/12	2012/13	2013/14	2014/15	2015/16
Children’s Advice & Assistance	For general advice, meetings, telephone calls, letters	4,548	4,782	4,911	5,207	4,948
Children’s Assistance By Way Of Representation (ABWOR)	For representation	N/a	N/a	1,662	3,546	4,127
Children’s Legal Aid	For representation at court	4,934	5,006	3,581	2,956	2,910

As can be seen from the ABWOR figures around 4,000 grants of legal assistance are now made per year for representation at children’s hearings. ABWOR grants for 2016/17 to date are broadly similar to 2015/16. The majority of these people would have been unlikely to have had representation prior to the reforms.

The table also shows that fewer people have obtained legal aid recently for court proceedings associated with children’s hearings. This is likely to be due in part to applications being considered by SLAB applying a standard approach to the tests, however, it may also be that there are other aspects of the wider 2011 Act reforms which have had an impact on this.

### Research on the role of solicitors in children’s hearings

SLAB commissioned research on behalf of the Children’s Hearings Improvement Partnership on the role of solicitors in children’s hearings and published the findings of our research on its website in December 2016.

The key findings were:

#### *Perceived advantages of solicitor involvement*

- their ability to put forward their clients’ views and desired outcomes

- solicitors calmed clients when they were feeling highly emotional
- solicitors managed their clients' expectations
- solicitors described and clarified the process and procedures for their clients
- solicitors supported clients to speak for themselves, and
- the presence of solicitors sometimes resulted in positive changes in the behaviour of others in the hearing (such as encouraging them to provide greater clarity).

#### *Perceived challenges of solicitor involvement*

- a minority of solicitors who acted in problematic ways, such as portraying an adversarial, formal, intimidating, or disrespectful style said to be out of keeping with the ethos and approach of the children's hearings system,
- some solicitors who lacked the requisite knowledge to take part effectively in hearings (said typically to be in relation to child development, attachment, and contact),
- some solicitors who provided what others saw as unrealistic advice to their clients regarding possible outcomes of hearings or appeals, or who gave what others saw as 'inappropriate' guidance on working with social workers,
- a sense that others present in hearings sometimes felt less confident and more on-edge when a solicitor was present, and
- a widespread perception (held within all groups) that solicitors are exempt from the requirement to be focused on the best interests of the child.

#### *Research Recommendations*

The CHIP agreed that the research had learning points for all partners and promoted a better collective understanding of what happens in the hearings system. It also offered clear points for action and chances to improve and these are currently being taken forward by the CHIP. For example, a cross-sector learning and development co-ordinator has recently been appointed and will shortly be meeting representatives from partner organisations.

The recommendations were:

1. Seek to establish an agreed 'ethos' for children's hearings that applies to all professions and participants in the system.

*Action: The CHIP published 'Our Visions and Values for the Children's Hearings System in Scotland' which are designed to be a live and relevant statement of how those in the system should engage with it.*

2. Clarify the role of solicitors in the hearings system for all stakeholders. In particular, clarifying the manner in which their actions should protect the best interests of the child while representing the wishes of their client, and clarifying the information on which they should base judgements of the best interests of the child.

3. Work to identify which solicitor training items would have most impact on improving children's hearings. Explore the impact of making some training items compulsory.

4. Promote a framework of continuing professional development (CPD) that is available for solicitors on an on-going basis and that links to wider frameworks of learning for others involved in the hearing system. Specifically, solicitors are likely to benefit from CPD focused on the children's hearings system, covering issues relevant to the child's wellbeing, Such as child development, communicating with children, family functioning, and attachment, as well as the current competencies set out in the SLAB code of practice.

5. Work to establish and promote high quality, well-managed, inter-professional training. 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. In due course, this training might usefully become part of any compulsory training that is developed, as well as being available on an on-going basis.

*Action: The CHIP Learning & Development Group and Learning & Development Co-ordinator are taking forward the work from recommendations 2, 3, 4 & 5 to look at multi-professional training and involving solicitors more in the improvement programme of work taking place across the sector. In the meantime, some training providers, such as the Law Society of Scotland, Legal Services Agency and ClanChildlaw have already offered training for solicitors on raising awareness of child-related issues. The role of the solicitor in the hearing has also been included in panel member training with speakers from SLAB and solicitors taking part in sharing information.*

6. Work to establish an on-going feedback mechanism to assist in the monitoring of solicitors in the children's hearing process.

*Action: This is being linked to the work being done on raising awareness of the role of solicitors. However, SLAB also promotes the improvement of local communication and informal feedback mechanisms to improve working relationships.*