

Who Cares? Scotland

Education and Skills Committee

Children's Hearings System – Taking Stock of Reforms

13th March 2017



Who Cares? Scotland [WC?S] is an independent advocacy and campaigning organisation working with care experienced people. We provide direct advocacy to care experienced young people, as well as opportunities for national and local participation. WC?S aims to provide looked-after young people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures they are often subject to solely as a result of their care experience. At WC?S we utilise the voice of the care experienced population of Scotland to inform everything we do as an organisation.

What do care experienced young people think about the Children's Hearings System?

In January 2017, WC?S held a consultation with over 30 care experienced young people, seeking their views on the Children's Hearings System. This group of young people are part of the WC?S 'Care Council'. The 'Care Council' is a group of care experienced young people who are democratically elected from pre-existing groups in almost every local authority in Scotland.

During this consultation, we asked young people to express their views on what engagement in the Children's Hearings System can be like. This information directly informed both the Children's Hearings System and the Scottish Children's Reporter Administration.

Before

The young people we spoke to felt frustrated at the amount of reading they were expected to do, particularly as it often can be hard to read and can leave them feeling extremely upset due to the content. Not all young people reported feeling supported by others when reading the paperwork.

The group spoke about not feeling like there was much notice prior to attending a Hearing. They felt worried about who the panel members would be, the discussions that might take place and they were not sure how to ask for help with this. Other young people noted that they just blocked it out and tried not to think about it.

Young people spoke about the embarrassment of being asked to leave school to attend their Hearing. They felt like the professionals around them disliked attending Hearings with them and like it was a chore for them. They also spoke about how the building is always next to a court and how that can make them feel bad or like a "prisoner".

During

The overwhelming feeling from the young people we spoke to was that although the Hearing is about their life, they feel like their opinions and views are secondary to that of the professionals. They spoke about how this can make them feel: undermined, not important, untrusted, blamed.

The young people also spoke about panel members and the varying degrees of ability. Some suggested it would be good to have care experience represented on the panel, or at least make sure the panel members are able to speak confidently to young people. The group also noted that the Children's Reporters can be unapproachable and they were confused as to what their role was.

After

The group spoke about how difficult it can be to hear all the decisions being made at the end of a Hearing. They identified how stressed they can feel by the end and so trying to understand the decisions made and the appeals process can be overwhelming.

They identified the need to give young people space and time to process what has been said and that they often do not feel supported well following the Hearing. They also identified that at this point, it feels like they no longer have a say in what comes next.

The young people involved also identified what would make the 'perfect hearing'. This information has been shared with CHS and can be shared with the Committee if they require.

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

Independent Advocacy

One of the main reforms in the Children's Hearings (Scotland) Act 2011, was to improve the experience and participation of children and young people in their Hearings. Section 122 of the Act introduced a duty whereby panel chairs must ensure that young people have the right to choose advocacy support before, during and after their panel. Previously under the Children (Scotland) Act 1995 there was simply an obligation to ensure young people were able to have their opinions heard within such formal processes. **Section 122 has not yet commenced, currently holding 'prospective' status within the legislation.**

Section 122 ensures that all panel chairs have a duty to make children and young people aware that they can access the support of a specialist advocacy service. However, the chair does not need to undertake this duty if they are satisfied that the young person is mature enough - age and stage - to interpret panel discussions without professional advocacy support.

Section 122 also outlines a number of methods whereby Scottish Ministers can ensure that advocacy services are professional, independent, fully funded and available. While there is no obligation for them to carry out these actions, it does provide conditions to ensure that any provision of advocacy is fair and in the best interests of the child or young person.

It is our opinion that the current provision detailed under Section 122 is not strong enough to ensure young people understand and access independent advocacy. We believe that when commenced, Section 122 should be enhanced by strong Statutory Guidance.

Additionally, we must be sure that current provision of independent advocacy is high enough across Scotland to ensure demand can be met. Who Cares? Scotland recognises that advocacy provision is inconsistent across Scotland, with service delivery dependent on decisions made by each local authority. Not all looked after young people and care leavers are able to access professional, independent advocacy tailored to their specific need. In our estimation, less than 20% of Scotland's looked after population have access to independent advocacy support. Our experience has demonstrated that to safeguard vulnerable children and young people it is of utmost importance that independent advocacy is accessible to all, if required.

The Scottish Government has recently commissioned and concluded action research looking advocacy practice in three local authority areas.

We believe that looked after young people and care leavers across Scotland should have a right to independent, professional advocacy. The role of an advocate is to support and empower young people to be able to express their views and assist them in making rights informed decisions on matters which influence their lives. If an adult is involved in powerful processes or systems which could potentially change their circumstances or the course of their life, they would undoubtedly seek support or representation from someone independent of the decision makers. The independent element of advocacy is crucial. Those delivering independent advocacy should not also deliver other types

of service support to young people, particularly if any conflict of interest could arise, as is specific by Principle 3 of the Principles and Standards of Independent Advocacy¹.

Young people living in care and care leavers are expected to contend with life changing decisions and formal meetings on a frequent basis throughout their young lives, without the statutory right to independent advocacy. Article 12 of the UN Convention on the Rights of the Child, makes very clear that every child has the right to say what they think in all matters affecting them and to have their views taken seriously. Advocacy helps to make that right a reality for those children and young people who, for whatever reason, would not otherwise be able or allowed to share their views.

Training and Recruitment of Panel Members

The Children's Hearings (Scotland) Act 2011 introduced significant changes to the delivery of Hearings for children and young people. One change saw the creation of Children's Hearings Scotland [CHS], with one of their responsibilities being the training, recruitment and retention of panel members.

The training and recruitment of panel members, has rightly been adapted to ensure care experienced young people are involved in the delivery of this. CHS have named this intention within their corporate parenting plan and have made a clear commitment to involve and consult with care experienced young people on an ongoing basis. While this development has been an excellent feature of the Act, young people are currently only involved in half a day of the 7 day pre-service training – the training provided to newly recruited panel members. While they are involved in the training of new panel members, they are not involved in the training of existing panel members, nor are they involved within the refresher training for Area Support Teams. Additionally, involving young people in the recruitment of panel members has only occurred within two local authority areas.

The involvement of young people in training and recruiting panel members is crucial in ensuring that individuals understand early on how they should engage with young people and that young people should be at the centre of everything they do. Our advocacy practice tells us that some panel members will unhelpfully berate or scold young people while in Hearings, forgetting that this is not their role or responsibility. This is important as it can add to the young person's feeling of being disrespected within the Hearing. Importantly, it seems to be that this practice can happen with panel members who have been in post for a long time. It is crucial to think about the involvement of young people in the refresher training of preexisting panel members.

Relevant Person

Young people tell us that they can get frustrated when a carer is denied 'relevant person' status, despite being the individual that the young person wants to attend the Hearing and support them as their main caregiver. In our experience this has happened in situations where a young person has lived with a foster carer for 2 years, but still is not given 'relevant person' status.

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

Many young people report the problems created by scheduling Children's Hearings during school hours:

"I had seven or eight hearings...I was taken out of school during my prelims. This made me angry because I wanted a job as soon as I came out of school, but instead I had to go to college and do a course I didn't want to do. If I hadn't been pulled out of school, I wouldn't have been sitting exams at foundation level."

Not only does this impact on their engagement in education, but it can often result in young people being made to feel different from their peers. Care experienced young people statistically have poorer educational outcomes than their non-looked after peers. Less than 1 in 12 care experienced young people leave school with higher level qualifications,

¹ SIAA. 2008. The Principles and Standards for Independent Advocacy. Page 28. Edinburgh.

compared with almost two-thirds of their peers, and only 4% of care experienced school leavers go straight on to higher education, compared with 39% of peers².

WC?S is currently working with one local authority, Renfrewshire council, to ensure that the education of care experienced young people, is a priority. We believe the best way to achieve this is to reassess the scheduling of Hearings and hold them outside of school hours whenever possible. We also propose that all relevant corporate parents create and implement a 'shared education policy' at local authority level. Relevant corporate parents would include the Local Authority, Scottish Children's Reporter Administration, Scottish Qualifications Authority and Children's Hearings Scotland.

These initiatives are, and would be, strong under the duty of collaboration for corporate parents under the Children and Young People (Scotland) Act 2014. It is a good example of corporate parents working together and accepting that they have the power to make necessary changes.

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?

Instead of fully understanding what is needed to help children participate, there has been an over reliance on educating professionals and panel members on the importance of children and young people's participation. While important and well-intended, this has led to an unhelpful focus on 'presence' over genuine and effective participation. While we commend the focus on ensuring the voices of children and young people are heard, the lack of understanding in the methods that will help promote this, unfortunately leave many worse off.

Case study:

"I am currently working with a 6 year old, in foster care. The social worker involved made the referral for independent advocacy due to the young person becoming very distressed during Hearings. The child's teachers have also expressed concerns at how distressed the child is before and after attending the Hearing.

I was asked to work closely with the child to gather their views, which would then allow the social worker to ask if the child can be dispensed from attending Hearings, with a view to continuing independent advocacy to ensure the child's views are presented and heard at every Hearing. The social worker advised that discussions around this have been very difficult and the panel members are very reluctant to follow this route. They agreed to one Hearing without the child's presence.

At the subsequent Hearing, the panel members made it very clear they will be expecting the child to attend future Hearings. This was despite social work explaining again how distressing this is for the child. Due to the legislation he is under, this means he would be expected to attend Hearings every 3 weeks."

This case study displays the, sometimes, unhelpful focus on presence over effective participation. This is despite the Children's Hearings Scotland Practice and Procedure Manual which clearly states:

3.8 It is important for panel members to be aware that some children will not want to offer their views personally within a children's hearing and they should not be forced to do so. There are various other ways a child can share their views. For example:

the child has the right to be accompanied by a representative to help them be involved in the discussion, in particular to share the child's views, or support the child to share their own views, at the hearing³.

There are some effective and important methods of enhancing participation within Children's Hearings, however the adoption of these techniques is inconsistent across Scotland. Some of our independent advocates work with very young

² SG stats

³ Children's Hearings Scotland. 2013. Practice and Procedure Manual. Pp 17. Edinburgh.

children. This requires creative, child centred approaches, as well as time to build trusting relationships. Additionally, we are aware of effective but newly adapted approaches, such as the use of 'Digital Storytelling'⁴.

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?

It is imperative that we ensure the operation and function of Hearings are effective for professionals, but this should not override the need to ensure children and young people understand the purpose of why they take place.

It is clear from our work with young people that they rarely hold a clear understanding of what the main purpose of a Children's Hearing is, nor how it fits alongside other formal processes such as LAAC reviews. Thorough preparatory work should be led out by the Lead Professional to ensure that children and young people understand the purpose of Children's Hearings and how they can think about making use of their rights, such as access to an independent advocate or being able to speak to the panel members on their own.

Unfortunately, from a child or young person's perspective, Children's Hearings can be seen as a place where decisions are made about them and where their lives will be discussed, rather than having the potential to improve their care experience, such as increasing sibling contact or highlighting an unsuitable placement.

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?

One of the main resource issues is the social work department's ability to deliver on decisions made within the Children's Hearings, especially on sibling contact. Issues concerning 'contact with others' continue to be one of our top 'advocacy tasks'. Children and young people regularly require independent advocacy to seek contact with people important to them, such as siblings. This continues to be a problem as there is no duty on local authorities to promote sibling contact and unfortunately it can sometimes be viewed as secondary within Children's Hearing discussions. This is despite human rights law highlighting every persons' right to family life.

Case study:

"A young person I provide Independent Advocacy to recently contacted me regarding contact with her siblings. She has two siblings who are in care in a different local authority area. It has been agreed at Hearings that the siblings are to have a minimum of once a month contact with each other, although she would very much like to see them more.

I contacted the social worker on her behalf who advised they would love for the sisters to have contact more, however the Social Work team in the sisters' local authority are not willing to help facilitate the contact. Therefore, it is my young person's social work who always facilitate the contact and more than once a month is unmanageable for them. The social worker advised me that the other local authority believes because two of the sisters live in the same area, it is easier for my young person to always go there."

This case study shows that even when there is a will to promote contact, facilitation of this can often be dependent on the ability of social work to deliver amongst an already demanding caseload. There are however other methods of facilitating contact, such as by utilizing support worker roles. This is particularly useful as it can often mean contact at weekends or in evenings are more likely.

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

Who Cares? Scotland is committed to the promotion and delivery of professional independent advocacy services for care experienced young people. However, we also recognise that there is a 'spectrum of support' involving vital relationships which are integral to safeguarding the rights of children and young people in care. This spectrum takes account of the varying degrees of support that can help ensure a young person understands and realises their rights; from their family members to independent advocates to legal representation.

⁴ Heron, G & Steckley, L. 2015.

The role of such people, who strive to do their very best for the child or young person, is important. However, we also know that often without intention, non-independent approaches can weaken the voice of the young person. A family member may hold a belief which is at odds with the young person's view. A professional providing a service will have a statutory obligation to look after the young person and their opinion might not reflect exactly that of the young person. A solicitor may find it pertinent to give the child or young person advice which encourages them to adopt a different opinion, based on the solicitor's understanding of legislation and potential outcomes.

We must also be aware of the unintended consequences of this role, particularly when the solicitors are acting on behalf of others, such as a parent. Our practice tells us that the presence of a solicitor in the Hearing, who is representing the views of the parent, can often swamp the child's voice or render those in the room, unable to hear it. The presence of legal representation within a Hearing should never impact on the ability for the child or young person to be heard.

Other comments

Scotland now has an opportunity to meaningfully listen to care experienced young people through both WC?S's '1000 Voices' programme of work and through the independent review of care, which was committed to by the Scottish Government in October 2016.

WC?S believes that it is essential that the outcome of the review is not limited by the current structures within our care and protection systems. It should listen, explore and review the journeys and processes depicted by young people and professionals in order to make clear recommendations based on findings.

WC?S believes that the power of 1000 Voices running alongside the review will be paramount in ensuring that the First Minister, Ministers and MSPs, are well aware of the views of young people with experience of care in Scotland. 1000 Voices and the Review will both be driven by care experienced people and together will seek to ensure that when children are taken into care, they are given the stability, love and relationships necessary to thrive.

The Children's Hearings System can have an overwhelming presence in a child's life. The Education and Skills Committee should ensure that any analysis of responses submitted to this call for evidence, should be shared with the review group.

If you would like to discuss the content of this response, please get in touch on the following details:

Carly Edgar
Policy Manager
Who Cares? Scotland

0141 226 4441
cedgar@whocaresscotland.org