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The Scottish Parliament
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Dear James

I attach the Scottish Government's response to the Education and Skills Committee's report on 'Taking stock of children's hearings reforms'.

As I indicated during my evidence, I very much welcome the Committee's interest in, and support for, our children's hearings system. The detail of our response should reassure Members that most of their findings are receiving attention from the responsible agencies.

Some of the improvements that we all desire are the statutory province of particular actors within the system other than the Scottish Ministers. So before finalising the response, I visited the Bell Street hearings centre in Glasgow to see the remodelled hearings rooms, to hear from a care-experienced former Modern Apprentice who was instrumental in their redesign, to speak to Reporters and panel volunteers about the Better Hearings action plan and to explore other issues raised by the Committee.

Further, I asked officials to discuss the broad terms of this response with the Children's Hearings Improvement Partnership held on 6 June. CHIP partners have confirmed that the Committee's findings align with much of their planned work. They are also clear the Government can count on their broad support to progress this important agenda to.

I am therefore encouraged that, having delivered the main reforms, we can press on with our plans to ensure that children experience the best possible service and outcomes. My intention is to return to the Committee findings towards the end of calendar year 2017 to offer a further report on progress.

Mark McDonald
Minister for Childcare and Early Years

EDUCATION AND SKILLS COMMITTEE REPORT ON THE CHILDREN'S HEARINGS SYSTEM – TAKING STOCK OF RECENT REFORMS

SUMMARY OF KEY RECOMMENDATIONS

1. CHILDREN'S PARTICIPATION

1.1 There needs to be greater consistency in the information provided to children and young people before, during and after their Panel meetings. All children and young people need to be made aware of their right to instruct a solicitor under the provisions of the 2011 Act and to address Panel members in whatever form is appropriate - not just in writing but in person and through any other digital means.

SG Position

- Following the publication of 'The Next Steps Towards Better Hearings' report in autumn 2016, an action plan directed at better experiences and results for children is now being undertaken by SCRA, CHS and Social Work Scotland, supported by the wider CHIP (Children's Hearings Improvement Partnership). We understand that this activity is starting to gain real traction in a number of areas in recent times, notably in Glasgow and South East Scotland:

<http://www.chip-partnership.co.uk/wp-content/uploads/2016/10/Better-Hearings-Research-Report-2016.pdf>

- That work will help to ensure that professionals provide higher quality, more consistent, and more appropriate, information and support to children before, during and after their Hearings. This in turn will encourage a participative environment based on the needs and wishes of each individual child. The criticality of that is acknowledged in the recently-adopted 'Aims, Vision and Values' for the hearings system, and in the attached tool aimed at supporting professionals in that work.

<http://www.chip-partnership.co.uk/wp-content/uploads/2016/01/Helping-Me-With-Choices-2015.pdf>

- Facilitating children's meaningful and effective participation is a fundamental responsibility of all hearings system professionals and partners. CHIP partners have confirmed they will continue to support and encourage effective behaviours to improve the experiences of children and young people, and to develop an environment more conducive to children playing as full a part as they want to in the discussion.
- We recognise the need for better understanding of roles across the system. children and young people coming into and journeying through the hearings system do need to be better supported at confident, purposeful enquiring hearings by all the key professionals and volunteers. In the next period, interdisciplinary learning work will be

led by a dedicated CHIP Learning and Development Adviser appointed earlier this year – we will look to develop multi-agency training alongside existing training programmes to aid that understanding and support.

Advocacy

1.2 Section 122 of the 2011 Act needs to be fully enacted following successful completion of the pilot schemes. All children and young people should have the right to have an advocacy worker appointed by them if they wish. The Scottish Government needs to give consideration to the necessary resourcing of such an advocacy programme across Scotland.

SG Position

- A child or young person's full participation in their hearing is a fundamental right and professionals have a current duty to elicit, and to have regard to, the child's voice. Participation is most likely to be effective and meaningful when tailored as much as possible to the experiences, needs and wishes of each individual child or young person.
- While the exciting potential and value of advocacy for children at hearings is absolutely acknowledged, the appointment of an advocacy worker for a children's hearing or pre-hearing panel may not always be the only way, or even the most effective or appropriate way, to hear every child's voice. The child may wish to bring a trusted adult along to support them; or the other steps to be taken by other professionals will often answer the need – see 'better hearings' work referenced above.
- Action research on the design and delivery of advocacy at hearings continues across a number of locations to gain insight into how the practical and resourcing issues of enacting Section 122 (and any enabling regulations accompanying it) would fit alongside current roles. Advocacy, thoughtfully integrated, will add to existing practice and responsibilities.
- Learning to date has been significant, including overcoming logistical, cultural, and information sharing issues that have affected young people's ability to access advocacy. This testing work has also undoubtedly highlighted the potential benefits of advocacy services for children, but also for children's panel members.
- The next stage is the development of a national sustainable advocacy service model, one which builds on existing responsibilities within the context of GIRFEC, with a view to maximising the range of resources directed at supporting children to participate in their hearings and in the development and implementation of their own child's plans. We hope to make much more progress in the next 2 years.

Technology

1.3 The Committee welcomes the additional £2.5m of investment from the Scottish Government on technology to help Hearings run more smoothly and also on the set-up of rooms for a Hearing to create a better atmosphere. The Committee welcomes the investment that has now been made in some parts of Scotland. The Committee would wish to see, over time, this investment replicated across Scotland so that all children and young people can attend Hearings in appropriate settings.

SG Position

- There is a planned programme of work to upgrade the set-up of Hearings rooms and other centre facilities. This will be undertaken as quickly as possible for the dedicated hearings centres, using a phased approach. This particular programme relates to the centres owned or operated solely by SCRA but can't at this stage be extended to outreach centres which are leased properties. Members will wish to be aware that outreach centres are often used for other purposes and only hold a limited number of hearings. SCRA use a blended portfolio of properties to try to maintain a high quality experience, but there is a balance to be struck between resourcing first-class hearings centres in a limited number of key locations while trying to operate hearings in as many local communities as appropriate and as close to children and families' own homes as possible. SCRA will work with partners to review these outreach centres and all reasonable steps will be taken to make the environment as welcoming and as suitable as possible where they remain in use.
- The Scottish Government's investment in digital technology will enable and support greater, and higher quality, participation for children. Partners are working now to implement the shared Digital Strategy. For example, SCRA and partners will be exploring options such as the introduction of the opportunity to make video statements prior to Hearings; through greater use of text technology to seek the views of children and young people; and greater use of video conferencing to aid participation in cases where it is felt appropriate. At the right time, the Scottish Government will consider the case for making legislative change to current requirements around report notification and physical attendance, by reviewing whether the existing rules inhibit partners' taking a more child-centred, child-led approach.

Child-friendly communication

1.4 The Committee considers that all children and young people who are part of the Hearings system should be provided, in advance, with a short, child-friendly summary of the reports that are going to be used during Panel meetings so that these can be explained to them by an appropriate adult, e.g. advocacy worker, solicitor etc.

SG Position

- The Better Hearings action plan and ‘helping me make choices’ material referenced above will ensure children are better prepared and supported before, during and after their Hearing. An element of this work focuses on reports which should be kept to a minimum (as far as possible), be enhanced by virtue of multi-agency input and written in plain English where the child (and where appropriate their parent/carer) has had the opportunity to contribute. The social worker (or other professional in certain circumstances) also has a role in talking through the reports to ensure the child understands their contents and implications.
- CHIP partners will explore ways to improve the quality and content of reports, building on child’s plans, and aim to agree this as part of the finalised review of the national blueprint for children’s hearings, due to be implemented in Spring 2018. We will look to link this work to the wider efforts on Getting it Right for Every Child.

Membership Consistency

1.5 Finally, we welcome the Minister's commitment to look at the issue and seek to ensure that, where possible, there is consistency of membership of Panels when a child or young person faces multiple hearings. Furthermore, feedback on the implementation of decisions made by a Panel should also be provided to the members that took the original decisions so that they can improve the quality of their decision-making.

SG Position

- The option of continuity of one panel member is already available within the current Rules of Procedure. A children’s hearing can request that the National Convener select, where practicable, one of the three panel members to serve on the next children’s hearing for the child. In 2016/17, 421 requests were received by the National Convener of CHS , and 384 of which were approved - subject to volunteers’ availability within the timescale for the next child’s hearing.
- There are issues as well as real potential benefits with having the same panel members continue with the child. One significant challenge relates to rota management – children’s panel members are unpaid volunteers and ensuring individuals’ availability for continuity does run the risk of delaying the child’s journey through the system. Therefore the benefit to the child of having a ‘familiar face’, and a panel member with clear recollection of the previous discussion and decision, has to be balanced against that need to guard against drift and delay.
- Consistency and quality of decision making, however, should not be reliant on the presence of the same individual panel members. All panel members now receive consistent national training and support. Continuity of panel members also needs to be considered within the context of the wider system where

continuity of social work and/or children's reporter presence may be just as significant for some children. There are system precedents for this approach. For example - safeguarders, once appointed to an individual child, follow that child's case from court to hearings and back. We understand that the CHS, SCRA and Social Work Scotland tripartite group have discussed the desirability of a wider continuity principle in the past month. All hearings system partners will be actively encouraged to consider wider continuity and consistency issues.

- There are a number of existing ways that panel members can reflect on their decision-making by understanding whether and how decisions were implemented. The 'Feedback loop' is intended to provide information at general level to children's panel members and others. Locally, learning points from appeals should be shared with the relevant Area Support Team by SCRA. Detailed consideration will be given to how individual feedback on the implementation of individual decisions about a child could be provided to individual serving panel members, while noting this may require legislative change and would certainly require improved reporting mechanisms.

2. ROLE OF PANEL MEMBERS AND THE CHAIR

2.1 We pay tribute to all of the volunteers who give their time to participate in the Children's Hearings system, as well as all the other services involved. Nevertheless, the Committee thinks that it is time to consider the role of, status of, and training provided to, the chair of a Panel. This person is key to the atmosphere and functioning of a Hearing. The Committee suggests that the National Convener and the Children's Hearings Improvement Partnership review the type of support and training that is available to panel chairs to help them fulfil their role.

SG Position

- Whilst the Chairing member has certain obligations in law, all panel members have a responsibility to be involved in the management of the hearing and to contribute to the atmosphere and function of the hearing. This extends to the Reporter in terms of supporting the management of the hearing and procedural regularity, and to the local authority and other participants in terms of the tenor, currency and quality of their contributions. All panel members undertake Management of Hearings training during their initial term of appointment the CHS National Convener will explore options for additional training and an enhanced process for observation, feedback and mentoring. SCRA is also committed to further Reporter training on the hearings management aspect of their role.
- The multi-agency training now being scoped by the CHIP Learning and Development Adviser will enhance the understanding of, and regard for, each role - be that legal representatives, reporters, safeguarders, social workers, panel members or advocates. We expect that all of these disciplines will play an active role in the development of local multi-agency practice fora and improved local professional relationships.

2.2 The Committee considers that Rule 6 governing the number of people who should be present at any one time in a Hearing be more strictly enforced. At all times, the principle should be that only those that have a right or a need to be present, including the child or young person themselves, should be in the room.

SG Position

- CHS and SCRA have advised that they will review best practice in ensuring that the number of people invited to the hearing centre overall, and then invited into the hearing room itself at the one time, is kept to a minimum. They will take steps to ensure that any practice change is effectively communicated and respects the rights of those attending or participating in the hearings.

2.3 The Committee welcomes the Minister's commitment to multi-agency training. We consider this is a vital means by which we can ensure that all the professionals involved in the Hearings system better understand everyone's role. The Committee suggests that the National Convener and Children's Hearings Improvement Partnership review this provision as a matter of urgency and, furthermore, does this in conjunction with the Law Society of Scotland and the Scottish Legal Aid Board.

SG Position

- Work is already under way with CHS, SCRA, Scottish Legal Aid Board and the Law Society to establish multi-agency fora in a number of locations to take forward CHIP work around Better Hearings and the action plan to give effect to the findings of the 2015 CELCIS research into solicitors at hearings. A range of collaborative activities will be supported at the local level across Scotland. This is all aimed at improving the experiences for children and young people by providing the opportunity for professionals to learn from each other and develop a deeper shared understanding of each other's roles, challenges and good practice.

2.4 The Committee also welcomes the Minister's commitment to reviewing how to involve more young people with direct experience of the Hearings system in the design of training for, and the recruitment of, volunteer Panel members. The Committee would welcome an update on how he plans to proceed with this.

SG Position

- Care experienced children and young people have played a key role in the recruitment of the National Convener, Principal Reporter, and Board members for both CHS and SCRA as well as other appointments within SCRA and CHS.
- Care experienced young people also deliver part of Day 6 of national pre-service training for prospective panel members. Young people, including

those who are care-experienced, are already involved in many AST areas in Scotland in the recruitment of new Panel Members. There is an aspiration for this to be systematic across Scotland, and options for this, taking into account practical challenges and the necessary support for the young people involved, are being explored by CHS.

- SCRA has a programme in place that allows young people aged 16-19 to join the organisation as Modern Apprentices (MAs). The scheme is focused on providing opportunities for children and young people who have been looked after and who had experience of the Children's Hearings System. Among other projects, the MAs have undertaken research into the standard of SCRA's facilities and ways in which it delivers services to children.
- CHIP is also in the process of establishing a Young People's Board ('Our Hearings, Our Voice') for the Hearings System. Its aim is to provide children and young people, who have/had experience of Hearings and/or the care system, the opportunity to have a decision making role in the continuous improvement and development of the system, using their direct experience, knowledge and perspective.

3. IMPROVEMENTS TO THE HEARINGS SYSTEM

3.1 The Committee has made a number of recommendations for improvements above. In addition, the Committee calls on the Scottish Government to review the evidence we heard on the issues of the grounds for referral and whether these should include allegations of trafficking and female genital mutilation. The Committee would welcome an update on this point.

SG Position

- Grounds for referral provide the legal basis for bringing a child into the hearings system and are deliberately drafted to be able to take account of a range of situations that may involve concern about a child.
- A more limited set of broader grounds is considered to be more effective than a longer list of very specific grounds as it limits the risk of particular situations falling outwith the scope of the statutory provisions.
- The insertion of a new ground for referral into legislation must have a particular purpose, for instance filling a gap in legislation, or remedying a potential unfairness caused by applying an existing ground to a specific situation.
- It is important to be clear that there is no gap in the law currently and no pressing justification for the suggested new grounds other than awareness-raising. Children who are victims, or at risk of, trafficking or FGM can currently be referred to the Reporter and brought to a children's hearing using existing grounds for referral.

- To assist Government in tracking these issues, CHS and SCRA are developing a set of criteria that could be applied to considering proposals for new grounds. This will ensure that any suggestions are subject to a rigorous and consistent test. These can be shared with the Committee when complete.

3.2 The Committee also recommends that the Minister reviews the evidence we took on the support and advocacy provision available to babies and very young children to help them engage with the Hearings system, as well as the complexity for 16-18 year olds. The Committee would welcome an update on these points.

SG Position

- For very young children, advocacy and their ‘voice’ comes primarily through the family and thereafter via local authority professionals and health visitors who are able to observe and then articulate the child’s circumstances and development, and interpret the child’s reactions to - and impact of - the care they are experiencing. Safeguarders can also be appointed to ensure the best interests of the child are represented at proceedings and to provide an independent analysis should the hearing feel that is required . The impact of introducing more adults to very young children also needs to be balanced with hearings having a good sense of the child’s circumstances.
- The complexity around 16-18 year olds, who are still children in UNCRC terms and need to be responded to accordingly, is absolutely recognised. Specific work to better support them is being advanced under the Child Protection Improvement Programme. These young people, where they are in trouble, are being supported by good practice around multi-agency early and effective intervention and diversion from prosecution in order to keep young people out of formal systems as far as possible – in line with our successful Whole System Approach to youth justice. Data on joint SCRA/COPFS referrals is being reviewed to look at areas for improvement - in order to minimise delays in proceedings involving children and young people and to seek remittal back to the hearings system for as many young people as appropriate.
- The termination of Compulsory Supervision Orders before a young person’s 16th birthday is another area that is currently being addressed. Panel members have their own practice note on transition from the children’s hearings system that was published last year. In addition, training materials for practitioners and panel members has also been provided by the Centre for Youth and Criminal Justice and a best practice note is being developed by CYCJ and CELCIS.

3.3 Finally, the Committee recommends that the Scottish Government and the National Convener gives consideration on how Panels can be better informed about the prospect of a greater recourse to kinship care as part of the options available to them when taking decisions.

SG Position

- Kinship care is a topic covered in panel member training, which equips panel members to ask questions of the local authority in relation to this as a care option for the child where that is considered appropriate.
- The Scottish Government will work with local authorities to ensure that recommendations made to children's hearings about alternative carers for a child consider the possibility of kinship care where appropriate. This should link with the work on report writing and building on the child's plan.

4. ADVOCACY AND SAFEGUARDERS

4.1 The Committee has commented above in relation to our recommendation that section 122 (provision of an advocacy service) be fully enacted.

SG Position

- As per Section 1.2, the development of a sustainable national advocacy service, within the context of GIRFEC and existing responsibilities, building on the work of the action research projects, is in progress. This is in the context of the national picture of advocacy provision crossing over all aspects of a child or young person's life.

4.2 On safeguarders, the Committee welcomes the progress that has been made. The Committee is aware of some of the problems in the past relating to the quality of person appointed. The Committee welcomes the work being carried out by Children 1st to improve the recruitment and training of safeguarders. The Committee does, however, recognise the call by some, such as the social work profession, for greater clarity on the role of safeguarders and better sharing of information produced by safeguarders with the other professions.

SG Position

- The introduction of practice standards and an associated Performance Support and Monitoring Framework for safeguarders has helped to clarify the role, and to build confidence in safeguarders' important work. There are plans to underpin this, working with safeguarders and with the managing contractor Children 1st, through the production of practice notes to provide further guidance and clarification. The first of the practice notes to be produced was on 'the role of the safeguarder' and we will ensure that this is shared more widely through CHIP partners. A further practice note covering the issue of sharing of safeguarder recommendations with social work and others before the hearing is also in development. In addition, an independent evaluation on

the role of the safeguarder is nearing completion, and we would expect to share that study's findings, along with our proposed actions, with the Committee in due course.

5. ROLE OF SOLICITORS

5.1 The Committee has recommended above that there is further emphasis placed on, and provision of, multi-agency training. The Committee suggests that it would be helpful to involve the legal profession in the design of training and for them to ensure that practising solicitors attend such training on an on-going basis. This should be a compulsory part of the registration process operated by the Scottish Legal Aid Board.

SG Position

- Solicitors play a vital role in upholding rights in the children's hearings system. The recent CELCIS research into the role of solicitors made a number of recommendations which will be taken forward by CHIP.
- As per section 2.3, there is a broader need to build interdisciplinary clarity and confidence in a range of roles. Work is in hand to develop multi-agency training for all professionals who are involved in the system. In addition consideration will be given to the scope and content of potential CPD modules about children's hearings that could be used by solicitors as well as the proposed requirement for solicitors to undertake certain compulsory CPD modules before they are eligible to apply for registration to carry out children's legal aid work.
- As previously indicated, CHIP has also appointed a Learning & Development Co-ordinator, whose focus will be to take forward multi-disciplinary training with the organisations involved in the hearings system, to promote joint learning and target training plans towards the priorities identified by CHIP. The Law Society of Scotland and local bar associations will be involved in this work.

5.2 The Committee further recommends that there is greater awareness amongst those who attend Panel meetings of the complaints process operated by the Scottish Legal Aid Board for solicitors who participate in Hearings. Any solicitor who is properly participating in an appropriate manner should have nothing to fear from this raised awareness.

SG Position

- Where anyone has concerns about a solicitor's practice in Hearings they should have the relevant information outlining what they can do to raise these concerns. SLAB is currently working with SCRA and CHS to develop

information about the options available which will include support for tackling difficult behaviours; clear information about SLAB's role in monitoring compliance with the Code of Practice and SLAB's powers to de-register solicitors and firms. It will also include information about the role of the Scottish Legal Complaints Commission and the legal complaints process.

5.3 Furthermore, the Scottish Legal Aid Board should continue to constantly review the competences and skills of the solicitors who are part of its Register of those entitled to practise.

SG Position

- The Committee will be aware that SLAB does not have a contractual relationship with individual solicitors. However, the Legal Aid (Scotland) Act 1986 requires solicitors to register with SLAB if they wish to provide legal services funded by legal aid. The 1986 Act also makes provision for a Code of Practice for Children's Legal Assistance which solicitors must comply with.
- SLAB will monitor compliance with the Code through a system of on-going scrutiny of applications; compliance audits and quality assurance. The new system of quality assurance which has been established by SLAB will also include peer reviews of solicitors' files.
- In January 2017, the Scottish Government established an independent Review of Legal Aid and this will report to Scottish Ministers in 2018. The scope of the Review is wide and encompasses all aspects of the operation of legal aid, including the arrangements for children's legal assistance.

6. FEEDBACK LOOP

6.1 The Committee is concerned at the length of time taken to establish the feedback loop agreed to by the Parliament under the 2011 Act. The Committee does, however, recognise the complexities and resource implications involved. Feedback reports should contain information relating to the following: the implementation of hearing decisions by local authorities and any issues of resource availability; statistics and information on the implementation of Compulsory Supervision Orders; and evidence of the impact that the decisions taken have had on the life and well-being of the child or young person in question.

SG Position

- The National Convener has adopted a phased approach to data collection, focusing initially on a sample of children subject to CSOs (those children with secure authorisations) to date. This reflects the complexity of the task and the current data limitations. The National Convener is working actively with a range of stakeholders to develop the areas identified by the Committee. I met

with the National Convener earlier this month to discuss in more depth, and to offer support in accelerating the delivery of this provision.

- The next two reports relating to years 2015/16 and 2016/17 will retain the same sampling approach as the first report.

6.2 The Committee would welcome a further update from the Scottish Government and the National Convener after the next feedback report. Any discussions on how to proceed must involve local authorities.

SG Position

- The National Convener will provide the Committee with a report on the next Feedback Loop Report and later in 2017 with an update on the options to meet the Committee's expectations following discussions with Local Authorities, having explored collective solutions which share the responsibilities. This process will also allow exploration of ways to give and receive qualitative feedback about experiences of children, families and professionals in the Hearing's system which can contribute to the on-going improvement agenda.

7. INTERACTION BETWEEN THE HEARINGS SYSTEM AND THE COURTS

7.1 The Committee welcomes the work underway to look at how the two systems interact. The Committee wants to see the end to unnecessary delays and also a smooth functioning and exchange of information between the two systems to fully integrate casework planning. The Committee would welcome a further update from the Scottish Government, the National Convener and the Scottish Courts and Tribunals Service on what more can be done.

SG Position

- As a consequence of the review of the Blueprint for processing children's hearings cases, SCRA and Scottish Courts and Tribunals Service have been engaging in dialogue around what data their respective information systems hold about length of court proceedings and how to improve them. The primary aim is to jointly examine data relating to hearings and adjournments with a view to identifying where efficiencies in the overall timeline may be achieved. This will be advanced at a local level in 2018.