

## **JUSTICE COMMITTEE**

### **CHILDREN (SCOTLAND) BILL**

#### **SUBMISSION FROM CHILDREN'S HEARINGS SCOTLAND**

A children's hearing is a legal tribunal comprising trained lay Children's Panel members who volunteer their time and skills, to decide whether compulsory measures of supervision should be put in place for children and young people in need of care and protection, or whose behaviour puts themselves, or others, at risk of harm.

The children's hearings system is founded on principles and objectives established by the Kilbrandon Committee in its review of youth justice, published in 1964. The Committee looked at the effectiveness of arrangements for tackling delinquency and made proposals for reform. Kilbrandon recognised that, in many cases, the children and young people appearing in the courts charged with offences were themselves vulnerable and in need of care and protection. The children's hearings system was set up to provide a forum in which families, professionals and Children's Panel Members work together to identify what help children and young people need to reduce risk and offending and to achieve their full potential. Panel Members decide whether compulsory measures of supervision are needed to address risks to children and young people's welfare and ensure that their needs are properly met.

The Children's Hearings (Scotland) Act 2011 introduced the role of National Convener of the children's hearings system to oversee appointment of the Children's Panel members who make decisions at children's hearings. Children's Hearings Scotland (CHS) was established in July 2011 as a public body to support the National Convener to deliver his statutory functions. These functions include the recruitment, selection, training and support of Children's Panel members. CHS is governed by a Board of non-executive members, accountable to Scottish Ministers and the Scottish Parliament. Our vision is of a children's hearings system where everyone works together, making sure that all children and young people are cared for and protected, and their views are heard, respected and valued. Our mission is to improve outcomes for vulnerable children and young people in Scotland by enabling Children's Panel members to make high quality decisions about their future.

#### **1. Voice of the child**

The voice and views of the child are at the heart of every children's hearing. An important difference between children's hearings and court proceedings is that the child who is the subject of a children's hearing has both a statutory right and a duty to attend their hearing, unless they are excused for good reason. CHS is working with partner agencies to increase the attendance and strengthen the effective participation of children and young people in their hearing. CHS welcomes the proposed amendment to the 2011 Act to clarify that the views of a child of any age can and should be sought and taken into account when legal decision-makers are making important decisions about them. This is consistent with our guidance and training for Panel Members all of which is designed to help them enable children to actively contribute to discussion in their hearing in accordance with the child's stage of development. The chairing member of a children's hearing is also required to ask the

child whether the views attributed to the child in professionals' reports accurately reflect the child's views.<sup>1</sup>

Children's hearings can obtain the views of the child in various ways. They can contribute views directly using Having Your Say forms specific to children's hearings. Some local authority areas use apps to facilitate communication between children and people working with them, such as Mind of My Own (MOMO). Some outputs can be used in hearings. Advocacy projects have used software to engage and help children present views to hearings with greater confidence using avatars which convey feelings and information. Hearings can receive children's views indirectly from professionals and advocates working with them and, as with the court, the hearing can appoint a safeguarder, whose brief may include ascertaining the child's views about an issue. From April 2020 chairs of children's hearings will inform children at hearings of the availability of independent advocacy to help them contribute. This duty to inform should be an additional safety net, rather than the main way of informing children about advocacy. CHS believes that people working with the child should actively promote and arrange advocacy well before a child comes to a children's hearing.

## **2. Child's best interests**

The Bill focuses mainly on children and their families involved in court proceedings about contact and residence and court proceedings arising from children's hearings. Many of these families are also involved in children's hearings. Consideration should be given to the interface between different legal forums deciding where a child should live, and with whom they have contact.

CHS strongly agrees that taking action to minimise unnecessary delays in decision-making is essential. Nevertheless introducing a new consideration alongside existing legal tests risks diluting the present focus in children's hearings on the child's welfare and the need to protect children's and family members' rights. CHS considers alternative means might be considered to minimise delay in the hearing system, in particular streamlining arrangements to establish grounds.

Children and young people tell us that the attending children's hearings can be very stressful. They would like the option not to have to attend hearings where their presence is not essential rather than having to be excused by Panel Members. There is a common misapprehension that children are entitled to talk to Panel Members without other adults present. That can happen only if the child's parents agree. The circumstances in which parents as relevant persons can be excluded from hearings are, rightly, very limited. Children and young people, Panel Members and other stakeholders tell us they feel that hearings now prioritise the rights of relevant persons and do not take sufficient account of risk to others. We are not convinced current arrangements strike the right balance between facilitating effective participation by the child in their hearing and the rights of relevant persons. We say more about this in the section on special measures for vulnerable witnesses.

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<sup>1</sup> Children's Hearings (Scotland) Act 2011, s121

### **3. Child welfare reporters and curators ad litem**

CHS welcomes the proposed arrangements for greater regulation of Child Welfare Reporters in children's cases. The provisions focus only on those people providing reports in court proceedings. Any person appointed or instructed by a children's hearing or court to assist decision-making should be subject to appropriate regulation including those who will provide independent reports to review children's hearings when the Age of Criminal Responsibility (Scotland) Act 2019 is fully implemented.<sup>2</sup>

There is a robust system of regulation already in place for Safeguarders appointed in children's hearings and associated court proceedings. Safeguarders must be appointed to the national Panel of Safeguarders run by Children 1<sup>st</sup> on behalf of Scottish Ministers. The scheme includes clear criteria for appointment, pre-service training and continuing professional development and oversight of the quality of reports. This provides a practical working model for people providing reports in other types of court proceedings.

### **4. Factors to be considered when making contact and residence orders**

We encourage Panel Members to consider a child's relationships in the round when making decisions about contact. We broadly welcome the proposal to introduce a welfare checklist and think this should reflect the national SHANARRI indicators of well-being which underpins assessment, planning and decision-making under GIRFEC.

### **5. Other requirements placed on the court**

The Bill includes provision for the court to ensure that their decision is explained to the child in a way that the child can understand. This reflects existing practice within the children's hearings system. We would encourage any guidance that may be produced in relation to suitable methods of explanation to be designed with children and young people

CHS agrees that avoidable delay is a significant risk in planning for children and strongly believes that a focus on reducing drift and delay is imperative. However adding a further factor for Panel Members to consider could inadvertently compromise the hearings focus on rights in decision-making. Consideration of the impact of delay cannot weaken respect for parties rights, even if that means a hearing decision must be deferred. Panel Members must apply well-established tests based on (i) the paramountcy of the child's welfare, (ii) the need to have regard to the child's views and (iii) whether an order is likely to be better for the child than not making an order. Many decisions to defer decisions to another hearing are because a parent has not attended a hearing. A decision to defer a decision to another hearing to ensure the parent contributes may be the fairest option. CHS, SCRA and other agency partners have agreed a Blueprint of standard timescales for dealing with referrals, submission of reports and decision-making by Children's Reporters before a children's hearing and these should assist tackling avoidable delay in the early stages of referral to a hearing.

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<sup>2</sup> Age of Criminal Responsibility (Scotland) Act 2019, s77

## **6. Vulnerable witnesses**

The Bill introduces special measures already available in other types of proceedings to court proceedings arising out of children's hearings and to court proceedings in respect of s11 orders. Proposals include giving evidence by video link, use of screens and personal supporters.

The proposals miss an opportunity to extend additional protection to vulnerable relevant persons, and children affected by domestic abuse in the children's hearings system. The inclusive ethos of the hearings is important. Nevertheless consideration should be given to putting in place a framework of special measures which give greater protection to vulnerable participants required to attend children's hearings. Relevant persons entitled to attend a children's hearing may include child and adult victims of domestic abuse and alleged, or convicted, perpetrators. All are entitled, and required, to be physically present in the hearing room. A relevant person can be excluded only if their presence causes significant distress to a child, or their presence is preventing the child from expressing their views. There is no power to separate victims and perpetrators in hearing. The only protection available is during a grounds hearing, in which the chair of the hearing may exclude a relevant person if satisfied their presence is preventing the acceptance or denial of a ground by another person.

Relevant persons are entitled to bring a representative for personal support and/or legal representation but Panel Members cannot authorise participation by video link or take measures to involve vulnerable parties separately in discussion to support their effective participation. Hearings should also have options such as enabling participants to contribute by video link, to involve them in hearings separately where the proposed conditions for special measures apply, or to require that participants be legally represented. Pre-hearing Panels could provide a vehicle for deciding the most appropriate way to facilitate and manage a hearing when vulnerable participants are involved.

## **7. Contact centres**

Contact arrangements in children's hearings cases are overseen by the local authority. In some cases the local authority facilities made available for supervision and assessment of contact are not suitable, or family-friendly. Contact can be severely limited by the availability of social work staff or social work premises. Children placed outwith their local authority may need to travel distances to contact venues in their home local authority. Parental work commitments or travelling distances may make weekend contact preferable but local authority staff are often not available at weekends. A wider network of contact centres, open in the evenings and at weekends would enable more natural contact to take place. More consistent expectations of contact reports/observations would aid decision-making in children's hearings.

When separated family members need help and support to maintain relationships, the facilities available should not depend on what type of court proceedings the family are involved in, or whether social workers are involved or not. An integrated network of regulated contact centres providing appropriate facilities for families to spend time together, which can offer assessment and risk management either by contact centre staff or social work staff where appropriate would assist all types of proceedings

including children's hearings. Referral to a regulated contact centre should be an option for a children's hearing as an alternative to in-house local authority provision where that is insufficient to meet a child's needs.

## **8. Enforcement of orders**

Enforcement provisions apply only to court orders. If a local authority is unable to implement measures of supervision made by a children's hearing, they must request the Children's Reporter arrange a review hearing. Panel Members may seek assistance from the National Convener where they consider that a local authority has failed to implement an order or direction made by a children's hearing. However this depends on a children's hearing being requested by the local authority. Children and families can request review hearings not less than three months after a Compulsory Supervision Order is made. If a local authority does not implement an order or a direction in a Compulsory Supervision Order, provision enabling the child or the family to ask for an earlier hearing to be arranged to address that failure sooner would strengthen enforcement.

## **9. Contact with siblings**

CHS welcomes the provisions in the Bill designed to ensure that local authorities give as much priority to planning and maintaining contact between separated siblings when they look after children, as they presently do for contact between parents and children. Training for Panel Members encourages them to seek information on sibling contact in every hearing where this is relevant and consider measures to protect their relationship with important family members. The National Convener's guidance to Panel Members encourages them to think carefully about contact between brothers and sisters when they decide to put in place compulsory measures of supervision.

## **10. Births registered outwith the UK**

CHS does not have a view on these provisions.

## **11. Children's Hearings**

We welcome, as sensible and proportionate, specific provisions relating to children's hearings:

- Clarifying that appeal against decision in respect of deeming a person to be a relevant person or not applies to 'continuing' cases
- Principal Reporter's rights of appeal to extend to decisions made overturning a Children's Hearings decision or a Sheriff's refusal to uphold a Children's Hearing decision but not Children's Hearings decisions or those supporting the hearing's original decision.
- Legal aid to be made available for the parties to such cases, and
- the Sheriff Appeal Court to have jurisdiction in these appeals.

## **12. Practical, financial or other impacts of the Bill**

The assessment in the Financial Memorandum of costs for recruitment, training and quality assurance of persons providing reports for courts is primarily based on a new central service being delivered directly by central government. All persons presently providing such reports are regulated professionals. There may be merit in considering alternative forms of delivery using the expertise and experience of existing regulatory bodies, or other providers.

## **13. Family Justice Modernisation Strategy / issues not covered by the Bill**

CHS welcomes commitments by the Scottish Government's commitment in the FJMS

- to bring forward secondary legislation which will require local authorities to place siblings together wherever possible, to allow them to develop and maintain stable positive relationships. Panel Members rely on local authorities to identify options for placement of children which can then be explored fully within a hearing. Panel Members themselves are not in a position to identify or recommend placements. Where the local authority has not been able to offer placement options for siblings and Panel Members consider that placement with siblings is in a child's interest the Panel can direct the Local Authority to continue to explore possibilities and request an early review to allow for the Local Authority to scope options and return to a hearing.
- to enable greater digital participation in hearings
- to introduce electronic signatures for orders made by children's hearings at the earliest opportunity, and
- to enable access for local authorities to all written reports provided to a children's hearing by Safeguarders and other independent persons appointed by children's hearings.

We hope that these positive changes can be put in place as soon as possible irrespective of the Bill's progress.

Children's Hearings Scotland  
15 November 2019