I am writing in response to the Committee’s request for Ministerial views on the issues raised in the petitioner’s evidence and on the questions raised during the Committee’s 25 October discussion. In particular around an update on child protection issues and on issues raised by the Child Protection Improvement Programme Report; and to your seeking reassurance about the processes of bringing a young person into the children’s hearings system and into the care system.

Mr Mackie suggests that the Children’s Hearings System is in need of a systemic review. In fact, while the basic principles set out by Lord Kilbrandon’s Committee in 1964 have been retained, a number of major legislative and structural changes have been made over the years, notably in 1985, 1995 and 2001 via primary legislation. Of course, aspects of the system have been refined and updated in response to a range of legal challenges in the past 20 years. The most recent, and most significant of the structural reforms since 1971 has been the Children’s Hearings (Scotland) Act 2011 (the 2011 Act), which was introduced in June 2013. The 2011 Act was, at the time, the largest post-devolution piece of legislation. Across more than 200 sections, 6 schedules and more than 20 detailed accompanying statutory instruments, the Act strengthened and modernised the hearings system, including a range of procedural improvements, new and more consistent expectations of each principal system actor and the creation of Children’s Hearings Scotland, a dedicated body for the support and supervision of children’s panel members.

Following the introduction of the 2011 Act, the Scottish Government’s own post implementation review concluded that 22 of 23 desired benefits had been realised.

Working alongside partners and stakeholders, the Scottish Government views further improvements to the system as being a continuing live process, characterised by lively and constructive professional debate, and a shared commitment to securing better experiences and results for the young people that the system exists to serve.

In 2014, the Children’s Hearings Improvement Partnership (CHIP) was established. Since then, CHIP has been the national platform for multi-agency collaboration, challenge and improvement for the children’s hearings system. Its membership includes SCRA, CHS, Scottish Government, Social Work Scotland, CoSLA, Police Scotland, Child Health Commissioners, Education Scotland, Children 1st, the Law Society of Scotland and others.

One of the most significant CHIP outputs is the ‘Better Hearings’ 32-point action programme. Local multi-agency partnerships are being established to identify issues and to take forward improvements to the children’s hearings system across Scotland. The original report, with its recommendations, can be found here –


We are also near the completion of establishing a hearings-experienced Board called ‘Our Hearings Our Voice’. This exciting initiative will see service users overseeing and reflecting back on current processes, suggesting improvements where they see they are needed, and holding leaders and organisations to account.
Child Protection issues and Child Protection Improvement Programme

The Child Protection Systems Review group reconvened in April 2018. The group recognised that recommendations are embedded in a programme of work directed by the National Child Protection Leadership Group. I chair the Leadership Group, which oversees the implementation of the recommendations of the Child Protection Improvement Programme and System Review.

The Committee will be aware that the Scottish Government provided an update to Parliament on the progress of the Child Protection Improvement Programme through Parliamentary Question S5W-17580 on 4 July 2018. The update outlined progress made with the Child Protection Improvement Programme reinforcing continued commitment to taking forward the recommendations.

In addition, the Expert Group on Preventing Sexual Offending Involving Children and Young People was established by the Scottish Government to improve the approach to preventing sexual offending involving Children and Young People. The Group brings together expertise from justice, education and health to consider evidence of sexual offending and behaviour by children and young people, which harms other children and young people. The Group will make recommendation to Scottish Ministers by March 2019.

Care Review

The Independent Care Review has commenced its Journey stage which comprises a series of deep dive analysis into a range of priority themes and issues which have emerged during the Review’s work to date. One of those themes is around ‘Edges of Care’ and will look into why and how children come into the care system. As you will be aware, the Review is operating independently of Government and its scope and approach is for its Chair, Fiona Duncan, to determine.

I know that Fiona has been keen to ensure cross-party engagement on the Review. Therefore, I suggest that the Committee may wish to contact Fiona directly to discuss the issues raised by Members.

The Hearings System and being taken in to the Care System

A Children’s Reporter can receive a referral from anyone, but in the main referrals come from police, education, social work or health professionals. The Children’s Reporter functions are administered by a dedicated public body – the Scottish Children’s Reporter Administration (‘SCRA’.)

Every referral made to SCRA is fully investigated – including seeking reports from the school, social work and any other agency who knows the child or young person. The Reporter has to be satisfied that the evidence is strong enough to support further proceedings, and that the child or young person requires compulsory measures of ‘protection, guidance, treatment and control’ under a Compulsory Supervision Order (CSO) made by a children’s hearing.

In making their decision, a Children’s Reporter will take into account many factors such as the child’s general conduct, individual needs and family background.
Where the Reporter does not refer a child onto a Children's Hearing, it may be because suitable actions have already been taken by the family or other agencies, or that support has been made available and taken up on a voluntary basis, or it may even be that the child is already under statutory supervision, and that no further measures are necessary.

If a children's hearing is convened, the three members of the tribunal will hear the evidence and recommendations from all parties involved, and consider that carefully before they make a decision. With the exception of rare cases where there are clear significant risks to public safety, this will always be done with the best interests and well-being of the child or young person being of paramount consideration.

If any relevant person disagrees with the decision they will have the right to appeal under section 154 of the Children's Hearings (Scotland) Act 2011. Section 154 specifies which decisions of a Children's Hearing are appealable. Such an appeal must be lodged within 21 days, beginning on the day the Hearing made its decision.

The test for an appeal is whether the decision of the Hearing was justified. If a Sheriff decides the Hearing's decision was justified, then they must confirm the decision. If they decide it was not justified they have a range of discretionary options available including discharging the case altogether, deciding that another Children’s Hearing should take place or making a decision which is different from the one which the hearing had made.

I hope the foregoing information is helpful to the Committee.