

#KeepThePromise



Children's Hearings System

Autumn 2020

Between 2017 and 2020, the Care Review heard the experiences over 5,500 care experienced infants, children, young people, adults and members of the paid and unpaid workforce had of Scotland's 'care system', and their vision for what needed to change. This vision was set out in ['The Promise'](#) which reflected what was heard and detailed the foundations that Scotland's care for its children and families must be built on:



Voice: Children must be listened to and meaningfully and appropriately involved in decision-making about their care, with all those involved properly listening and responding to what children want and need. There must be a compassionate, caring, decision-making culture focussed on children and those they trust.



Scaffolding: Children, families and the workforce must be supported by a system that is there when it is needed. The scaffolding of help, support and accountability must be ready and responsive when it is required.



Family: Where children are safe in their families and feel loved they must stay – and families must be given support together to nurture that love and overcome the difficulties which get in the way.



Care: Where living with their family is not possible, children must stay with their brothers and sisters where safe to do so and belong to a loving home, staying there for as long as needed.



People: The children that Scotland cares for must be actively supported to develop relationships with people in supported to listen and be compassionate in their decision-making and care.

This series of briefings is intended to help Scotland **#KeepThePromise**, highlighting key areas of alignment between what was heard during the Care Review and mapping those to different sectors, in order to guide and inform planning and implementation. They will also bring into focus the substantial amount of overlap between these areas across all parts of the country's workforce. It is hoped that in doing so, the briefings will support inter-sector, partnership discussions on how to take forward Scotland's Ambition, to make it the best place in the world to grow up.

Each briefing begins with a bullet point summary of the 'headline' themes for the sector. The remainder of the document highlights key sector-relevant themes and sections from The Promise giving the relevant page numbers to help signpost readers.

Briefing Summary

- Scotland must support a culture change in key institutions responsible for decision making.
- In the long term, The Children's Hearing System must plan to shrink and to specialise.
- The Kilbrandon principles that underpin Scotland's unique Children's Hearings System must be upheld, but there must be a more active consideration of underlying structures so that the Children's Hearings System is best placed to truly listen and uphold the legal rights of children and their families.
- Scotland must comprehensively assess and consider the role of volunteers, ensuring focus and energy is on how well decision making structures deliver for children and families and the quality of these decisions.
- Active listening and engagement must be fundamental to the way Scotland makes decisions.
- Children must be able to participate in all decisions about them, including how their personal data is captured and shared.
- Scotland must change the language of care. Language must be easily understood, be positive and must not create or compound stigma.
- To ensure that all children benefit from the Kilbrandon approach to youth justice, more must be done to ensure children stay within The Children's Hearing system.
- The importance of relationships cannot be overstated- Scotland must nurture and sustain positive relationships.

Scotland must support a culture change in key institutions responsible for decision making.

- p.44** The Children's Hearings System often operates at crisis point, with children and families being asked their views in a process and setting that can feel unfamiliar and punitive.
- p.44** There must be an approach to care and support that is based on early intervention and prevention. In the long term, The Children's Hearing System must plan to shrink and to specialise. Full and proper consideration of implications for the operating model, including the dependency on volunteers, must be integral to this planning.
- p.40** SCRA and CHS must work together to consider and address the underlying operating structures of Hearings to ensure the principles of Kilbrandon and the Care Review are fully realised.
- p. 42** Everyone involved in The Children's Hearing System must be properly trained in the impact of trauma, childhood development, neuro-diversity and children's rights.
- p. 42** That training must be comprehensive and regularly reviewed. Those training requirements must also be required for all the different and various professionals who appear at Hearings, including legal representatives.
- p. 61** Upholding Children's Rights – If Scotland removes children from their families, their rights must be upheld as a basic minimum standard for their care. That must mean a clear commitment to creating the right culture of care where the whole of the workforce respects, upholds, champions and defends the rights of children for whom they are responsible.

- p.112** Legislative Environment – Scotland must create a clear legislative, enabling environment that supports families to stay together and protects and allows relationships to flourish.
- p.115** Advocacy - Care experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond.
- p.116** Legal Representation – Scotland must consider the creation of an accredited legal specialism to set standards for legal professionals representing children.

Scotland must ensure the Children's Hearings System is best placed to listen to and uphold the rights of children and their families.

- p.14** The principles that underpin Scotland's unique Children's Hearings System must be upheld but there must be a more active consideration of underlying structures so that The Children's Hearings System is best placed to truly listen and uphold the legal rights of children and their families.
- p.38** The Care Review has heard a variety of experiences of The Children's Hearings System from children, their families, and the paid and unpaid workforce, including panel members – some positive and others less so.
- p.38** Those issues have included but have not been limited to:
 - The rotation of panel members can result in a lack of consistency which means children and families have to retell difficult and painful stories and often receive a different perspective from previous Hearings.

- A lack of holistic understanding of families, siblings and their respective legal rights.
- Hearings struggling to manage the complexity of the families appearing before them with panel members not typically reflecting the sociographic of the families and sometimes struggling to understand and empathise.
- Hearings struggling to operate in a manner that recognises the trauma of the children and families who appear before them.
- The challenge of effectively listening and engaging with the children in Hearings and decision making alongside the complexity of listening to the voices of babies, infants and children with additional support needs or disabilities.
- Overly formal reports and language with inconsistent variation in quality of information received from social work teams and how reports are structured across the country.
- The times of the Hearings and how children are removed from school has meant they have missed lessons and felt stigmatised in comparison to other pupils.
- Panel members not feeling listened to and their concerns and worries about the children and families who appear before them not being followed up. The rights and responsibilities of Panel members as volunteers and their relationship with Children's Hearings Scotland (CHS) is complex and provides little structure for accountability.
- The contradiction between the main reason to excuse a child from a Hearing (young age) and the demographic of children entering care (young age).

p.40 Despite the difficulties of the system the Care Review has heard significant support for, and commitment to, the underlying principles of Kilbrandon that, when introduced in the 1960s, shifted Scottish children's policy.

p.40 Those principles recognise that, at their core, children who are involved in offending need protection and care and the criminalisation of children should be avoided, intervention should be early, minimal and as destigmatising as possible, and all decisions made by professionals should be centred on the child's best interest.

p.40 Those principles align with what children have told the Care Review and what is known to be in the best interests of children and families.

- In order to effect change, the focus of the whole of The Children's Hearing System must be the children and families who appear before it.
- In the management of Hearings, CHS and the Scottish Children's Reporter Administration (SCRA) must protect and uphold the legal rights of children.
- There must be particular attention paid to the rights of brothers and sisters to ensure that they have all the necessary legal rights to have their voice heard in relation to their brothers and sisters. That must include the notification of forthcoming hearings about their brothers and sisters and speedy rights of appeal if required.
- Scotland must use the period of implementing The Promise to test new approaches to the underlying structures of Hearings.

- This reconsideration must be done in an evidenced manner, piloting options for change in collaboration with Local Authorities.

Scotland must comprehensively assess and consider the role of volunteers

- p.44** Whilst retaining the commitment to the Kilbrandon principles, Scotland must comprehensively assess and consider the role of volunteers in the decision making structure of Hearings.
- p.44** Volunteers have been at the heart of The Children’s Hearing System since its inception. The commitment of volunteers demonstrates the people of Scotland’s willingness to engage in their communities.
- p.44** Despite that commitment, the Care Review has heard about the difficulties inherent in a system reliant on volunteers.
- p.44** Children and their families have told the Care Review about the difficulties of inconsistency of Panel members and decisions, the pain of retelling difficult stories and Panel members have said they feel unsupported and inexperienced to manage the cases that appear before them.
- p.44** The nature of a system reliant on volunteers can be that the focus and energy is on their recruitment, training, development and retention, rather than on how well decision making structures deliver for children and families and the quality of these decisions.
- p.44** There is not a clear alternative to the volunteer structure however that should not prevent active consideration of

other decision making options. There must be a thoughtful, evidenced based exploration of alternative models of decision making including small scale tests and pilots to explore change.

Active listening and engagement must be fundamental to the way Scotland makes decisions

- p.13** Active listening and engagement must be fundamental to the way Scotland makes decisions and supports children and families. There is no simple formula or standardised approach that will suit all.
- p.13** Scotland must improve how it uses data in decision-making but to do so it must take a different approach to how it collects data and information. Scotland must listen to what children and those close to them who know them best tell decision makers to understand the full picture of what is happening in a child’s life.
- p.14** Scotland must ensure decision making is based, first and foremost, on what the child needs and wants.
- p.14** This is particularly important in decisions about where a child will find a stable, loving home. This is not naïve; listening to children, particularly those who have experienced trauma can be difficult, and requires a thoughtful and supported workforce to act in their best interests with a comprehensive understanding of what those interests are.
- p.14** There will be times where children may be so hurt and traumatised that they may say they want to stay in family

settings that are severely inappropriate for them. Decision making must also take account of what those closest to children report, rather than relying on a professional hierarchy.

- p.14** Many in the workforce who are close to children have expressed concerns to the Care Review that they have been ignored in decision making processes. People who children trust, and who have all the information available to them, must be able to make decisions that provide children with the best possible start in life.
- p.14** The Care Review has heard stories where a powerful voice from a range of professional backgrounds has dominated, crowding out of the voices of children and alternative perspectives, leading to decisions that have not been in the best interests of the child.
- p.14** Scotland must challenge power dynamics within all decision making processes to achieve a balance which ensures all decisions taken are in the best interests of the child.
- p. 37** Scotland must listen to care experienced children and young adults in the delivery, inspection and continuous improvement of services and of care. Scotland must never again have to commission a review or a judicial inquiry on this scale because participation and listening must form part of everything within Scotland's system of care.

Children must be able to participate in all decisions about them, including how their personal data is captured and shared

- p.30** Scotland must ensure that the right information is shared at the right time and that those close to children are heard. The starting point for any decision must be how to best protect relationships that are important to children.
- p.31** Care experienced children and young adults must have ownership over their own stories and personal data so that they can understand and influence how their stories are shared.
- p.35** Scotland must be committed to the development of digital tools that incorporate the principle of information ownership. These digital tools must operate at a scale that allows care experienced children and young adults to have control over their information and how it is shared.
- p. 36** Scotland must acknowledge that it is the culture surrounding information sharing that has the biggest impact on protecting children.
- p.42** All reports and submissions to the Hearing must be accurate, of high quality with all information that decision makers require. Historical information that is not the focus of the reasons for the Hearing discussion should only be included where there is a need to provide context.
- p.42** Children and families have told the Care Review that historical information that is no longer relevant can still be presented within discussions; for example, the behaviour of a child when they were younger should not be assumed to be relevant to the discussion.

- p.42** Many of the children who appear at Hearings have a known speech, language and communication issue and there is an over representation of children with additional support needs.
- p.42** Children must be provided with all the support they need to fully participate and be heard in Hearings.
- p.42** At a very minimum, plain, accessible language must be the norm for all professionals appearing at Hearings.

Scotland must change the language of care

- p.97** Scotland must change the language of care. Language must be easily understood, be positive and must not create or compound stigma.
- p.69** Life Stories – Scotland must understand that ‘language creates realities’. Those with care experience must hold and own the narrative of their stories and lives; simple, caring language must be used in the writing of care files.

Scotland must ensure more children benefit from the Kilbrandon approach to youth justice

- p.41** For a variety of reasons care experienced children are disproportionately criminalised. Scotland must do more to avoid that criminalisation but, when children are before the courts on offence grounds, they must be dealt with in a way that is appropriate, proportionate, recognises their age and is trauma informed and responsive.

- p.41** Despite the principles of Kilbrandon that aimed to ensure a welfare based approach to offending, a significant number of children involved in offending behaviour are dealt with in Criminal Courts rather than through The Children’s Hearing System.
- p.41** To ensure that all children benefit from the Kilbrandon approach to youth justice, there must more efforts to ensure children stay within The Children’s Hearing system.
- p.41** Despite there being the power to remit cases back to The Children’s Hearing System from the criminal courts for sentencing, only a small proportion are sent back.
- p.41** Scotland must consider how to ensure that children have the totality of their cases dealt with in an environment that upholds their rights and allows them to effectively participate in proceedings.
- p.41** Traditional criminal courts are not settings in which children’s rights can be upheld and where they can be heard.
- p.41** Whilst working to prevent the criminalisation of children, Scotland must develop a more progressive, rights based youth justice approach that builds on the Kilbrandon principles and makes them a reality for all.
- p.42** If cases are tried at the formal Criminal Courts, disposal of the case must (for the vast majority of offences) take place within The Children’s Hearing System so that children are treated in a manner that is line with the Kilbrandon approach.
- p.80** Secure care – There must be absolute clarity that the underlying principle of Secure Care is the provision of therapeutic, trauma informed support.

p. 81 There must be far more alternatives for community based support and monitoring.

The importance of relationships cannot be overstated- Scotland must nurture and sustain positive relationships

p.16 Scotland must broaden its understanding of risk. This is not about tolerating more risk, or becoming more risk enabling. It means ensuring Scotland has a more holistic understanding of risk that includes the risk to the child of removing them from the family. There must be a shift in focus from the risk of possible harm to the risk of not having stable, long term loving relationships.

p.17 When children talk about wanting to be safe, they talk about having relationships that are real, loving and consistent. That must be the starting point. Scotland must prioritise that message from children over rules that have too often failed to keep them safe.

p. 26 Scotland must respect, uphold, champion and defend the rights of children and recognise that their rights are most often realised through relationships with loving, attentive caregivers. Scotland must fully incorporate and uphold the UNCRC.

p.26 Scotland must implement the rights of the child in a way that does not reinforce a focus on policy, process and procedure but supports the ability of children and those around them to connect and develop relationships and cultures that uphold their rights as a matter of course.

p.52 Scotland must recognise that there are some families experiencing particular issues who are much more likely to come into contact with the 'care system'.

p.55 Whatever issues families face, Scotland must ensure that intensive family support is available, proactive and characterised by the **10 family support principles**.

p. 63 All children must be supported to continue relationships that are important to them, where it is safe to do so.

p.63 If children are removed from the care of their parents, Scotland must not abandon those families. Families must continue to be provided with therapeutic support, advocacy and engagement in line with principles of intensive family support.

p. 67 Stability – Scotland must limit the number of moves that children experience and support carers to continue to care.

p.72 Attachment and Co-regulation – Secure attachments, based on loving, consistent relationships, must be the bedrock of every decision made about children.

#KeepThePromise

'The Promise' outlines an approach to family and to care that will mean that Scotland can truly be 'the best place in the world to grow up.' To achieve that, there is considerable work to be done.

This series of briefings is intended to support your organisation in thinking about what it means to #KeepThePromise. It should be used to help you to align organisational policies, strategies and practices with what the Care Review heard, and to identify what changes can be made to those, both now and in the future. The Care Review made clear that it is simply not possible to isolate any one aspect of the system. Therefore, these sector briefings should also help organisations understand who else they need to work with in order to make change happen.

To realise the ambitious scale and extent of change, The Promise Team will need the ongoing input and views of all those with responsibility. Please look at the #KeepThePromise **engagement document** to help you think about the work of change.

The Promise website will be regularly updated with information and resources.

For more information about what the Care Review heard about the Children's Hearings System see the **Evidence Framework**.



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