

Hearings System Working Group

Issues List



Contents

- 2** Chair’s message
- 3** Introduction
- 4** Scaffolding of the Hearings System
- 5** Avoiding the need for compulsory measures of supervision
- 6** Children and their hearings
- 7** Meeting the needs of children after a hearing takes place
- 8** Relationship between the Children’s Hearings System and the Criminal Justice System

Note from Sheriff David Mackie, Hearings System Working Group Chair

The Hearings System Working Group is a partnership between Children’s Hearings Scotland (CHS), the Scottish Children’s Reporter Administration (SCRA) and The Promise Scotland with the Scottish Government playing a critical role. As part of Plan 21–24 for the implementation of the promise, this Group has been charged with producing clear, collective proposals that redesign the Children’s Hearings System and define the legislative changes required.

Building upon the improvement work already undertaken by the partners, the Working Group has taken its first steps on the journey towards fulfilling its aims. I am pleased to present the Working Group’s Issues List that represents the scope of its work and that will guide the Group towards achieving its aims of delivering transformative change for the benefit of the children and young people whose voice has informed the work of the Independent Care Review and will continue to inform this Group’s work.

Sheriff David N Mackie
Chair

Introduction

This document outlines the scope of issues that the Hearings System Working Group (“HSWG”) will seek to engage with over the course of its work. These are the questions that will guide us.

This framework is created with human rights at its heart. The rights of children and their families will permeate everything this Group does and the conclusions that it reaches will be grounded in human rights standards.



The HSWG is mindful of the pre-existing rights of children and families that exist in the Human Rights Act **Article 8** about the need for governments to protect the right to a private and family life. The Children’s Hearings System is a tribunal and as such **Article 6** rights to a fair hearing, advocacy and reasoned decisions within a reasonable time are engaged.

More specifically, whilst the situation with incorporation of the UNCRC remains unclear following the Supreme Court decision, the HSWG will seek to ensure that any legislative change that arises following this redesign upholds children’s rights under the convention.

Whilst all children’s rights are indivisible and connected, the HSWG is especially mindful of:

- **Article 3** The best interests of the child must be a top priority in all decisions and actions that affect children.
- **Article 12** Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously. This right applies at all times, for example during immigration proceedings, housing decisions or in the child’s day-to-day home life.
- **Article 18** That both parents share responsibility for bringing up their child and should always consider what is best for the child and that Governments must support parents by creating support services for children and giving parents the help they need to raise their children.
- **Article 19** Children must be protected from all forms of violence, neglect, abuse and bad treatment.
- **Article 20** If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes making sure the child is provided with alternative care that is continuous and respects the child’s culture, language and religion.

- **Article 21** Governments must oversee the process of adoption to make sure it is safe, lawful and that it prioritises children’s best interests. Children should only be adopted outside of their country if they cannot be placed with a family in their own country.
- **Article 25** If a child has been placed away from home for the purpose of care or protection they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.
- **Article 37** Children must not suffer cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.
- **Article 39** Children who have experienced neglect, abuse, exploitation, torture or who are victims of war must receive special support to help them recover their health, dignity, self-respect and social life.
- **Article 40** A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age.

It is important to note that whilst this document will provide a framework for the work of 2022 it represents the deliberations of the Hearings System Working Group so far which, in accordance with its values of openness, accessibility and transparency, it is happy to share. It may undergo change as the work and engagement with stakeholders progresses if subjects not considered here arise or if the Group feels that different priorities prevail to those already included.

Scaffolding of the Hearings System



This category covers the principles on which the Children’s Hearings System is founded including the ongoing relevance of The Kilbrandon Report, duties regarding children’s rights and general principles governing the approach of the Children’s Hearings System. This will include the extent, consistency and approach of its decision-making powers in relation to children and families, structural matters such as governance, links with courts and tribunals, how organisations should operate within the system, professional standards and wider legislative considerations.

Who is the hearing about?

- Who should be subject to the decision of the Panel?
- Should an order attach to a child and/or family and/or carer?

Structure of the Children’s Hearings System

- What does Scotland understand by the principles of the Kilbrandon approach today?
- What is the best structure and governance for the Children’s Hearings System?
- How should the lives of children and families be considered holistically with other tribunals (Additional Support for Learning, Criminal Courts etc)?
- What should the legislative and operational relationship with the Sheriff Court be?
- How should consistency and appropriateness of language across the Children’s Hearings System be ensured?

Enforcement

- To whom should compulsion be applied?
- How should public authorities with responsibility to support children and young people’s rights be held accountable for implementation of orders?

Accountability

- How should it be ensured that professional standards are upheld in the hearings across professions?

Avoiding the need for compulsory measures of supervision



This category covers all considerations on the experience of children and young people and approach of professionals from early intervention that would avoid unnecessary referrals to the reporter, through to making a referral to the reporter and right up to the point the reporter makes a decision to refer a child to a hearing. Specifically included in this category is decisions of the reporter to make a voluntary disposal. Not included in this category is anything connected to a hearing itself including notifications, participation options, preparation for attendance etc.

Referral

What needs to happen for the Children's Hearings System to specialise and reduce the number of children requiring measures of compulsory supervision.

What should the role of the Reporter be at referral and pre-referral stage?

Should family group decision making be offered and, if so, when?

What are the appropriate referral routes to a hearing and what threshold should be applied?

How should 16/17-year-olds be referred to the Reporter?

Should there be a role for a restorative justice process in relation to 16/17-year-olds and if so, how should it be engaged?

What, if any, authority should the Children's Hearings System have to ensure children are placed with people who will look after them for a lifetime if they are unable to return home?

How should the Children's Hearings System ensure that these arrangements are in place at the point of referral for children who have been unable to remain at home, or for whom there is a planned move from home?

Decision

Should the discretion of the Reporter to take measures to avoid a referral to a children's hearing by making other arrangements for voluntary engagement, currently s. 68(5) of the 2011 Act, be enhanced and expanded?

What should be the status as to implementation of such decisions?

Children and their hearings



This category includes all considerations relevant to hearings from the point the reporter decides that a hearing is necessary to the point that a hearing makes an order or discharges a referral.

Who is the hearing about?

How should grounds of referral be framed?

What should the process be for establishing grounds for referral?

Hearing

How should children's views be heard?

How should they be supported to participate and tell their story once or as few times as they wish to if that is what they want?

How should families' views be heard? How should they be supported to take part in the hearing?

How should the Chapter 6 conclusions of the Independent Care Review, as detailed in the promise, regarding the provision of advocacy and legal representation, be implemented?

Should children have an obligation to attend their hearing? Could there be different ways to participate?

How should children be prepared for the hearing? What are the roles and responsibilities to support this and where do they lie?

How should families be prepared for the hearing? What are the roles and responsibilities to support this and where do they lie?

What should be the role of Social Workers and other professionals, such as legal representatives or advocacy workers, at the hearing?

What should be the role of Safeguarders at the hearing?

What should the format of a hearing be? How should it be organised to ensure children and young people have a choice?

To what extent should the participation of parties be enhanced through enabling digital tools and technology?

How should meetings be minimised? Could one meeting attend to a number of issues?

Or, could and should a hearing be extended over more than one calling in order to accommodate the needs of the child?

What should be the role of the Reporter throughout and after the process?

Decision

How should the Children's Hearings System ensure consistency of decision making with appropriate review? What is the best decision-making model?

Meeting the needs of children after a hearing takes place



This category includes everything that happens after a hearing makes an order including duties, implementation, enforcement, rights, feedback, reviews, appeals, and continuous improvement.

Enforcement

How should the Children's Hearings System ensure decisions are enforced and support is achieved across multiple organisations - Local Authority, Health etc?

What legislative changes are needed to support the whole family whether the child returns home or not?

What should be the duties on implementation authorities to ensure consistent delivery of support and protection for each child?

How should the improvements that are required to 'home supervision' be established and defined?

What rights do children, young people and families have to services whilst subject to the supervision of the Children's Hearings System?

What aftercare arrangements should the hearing expect to see to support the recovery from trauma and impact of child removal?

Accountability

What role should feedback loops play in the continuous improvement of hearings?

Why is the current legislation in relation to the measurement of implementation not operating effectively?

How should the effect of intervention by the Reporter and the Children's Hearings System be measured, recorded and reported?

In addition to CHS and SCRA what other governmental, statutory or professional bodies should be considered in the recording and measurement of outcomes?

Review

How should the Panel ensure their decisions are reviewed appropriately and checked?

What should the frequency of review be?

What should the Children's Hearings System do to prevent drift and delay?

Relationship between the Children's Hearings System and the Criminal Justice System



This addresses the treatment of offenders in the adult criminal justice system of an age at which they might be referred to the Children's Hearings System after conviction and how best to address their needs.

Referral by the Sheriff

Should all young people who have been convicted at court be referred to the Children's Hearings System for advice and/or remit?

Should the seeking of the advice of the Children's Hearings System be mandatory?

What should be the expectations on the Children's Hearings System in relation to the victims of crimes committed by children and young people who are referred to the hearing following conviction?

In the event of a recommendation by the Children's Hearings System to refer a child or young person to it being followed by the Court, to what extent if at all should the Sheriff keep sight of the case and how?

What should be the role for a Restorative Justice process in relation to children and young people referred by the Sheriff?

