

Hearings System Working Group Emerging Themes Report: The Journey So Far



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Note on terminology

For the purposes of this Report, the term 'children' has been used to mean everyone under the age of 18 in accordance with the definition in Article 1 of the United Nations Convention on the Rights of the Child (UNCRC).

The term 'families' has been used in recognition of families of all shapes and sizes, including single parent families, families with same sex parents and foster and kinship families.

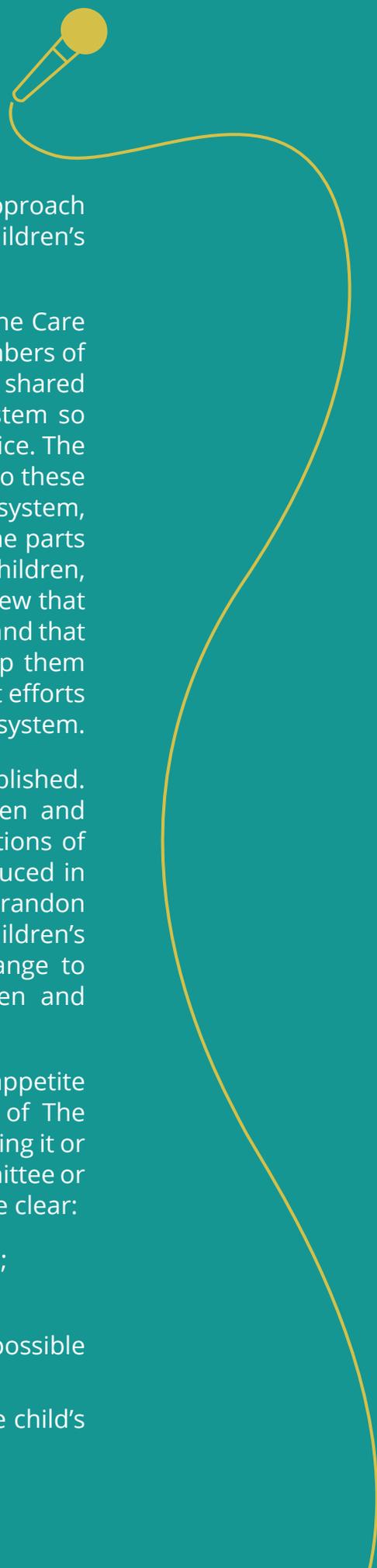
The Independent Care Review talked about the need for changes to language to normalise children and families' lives and shift away from professional speak. This Report uses the terminology *currently* used in The Children's Hearings System (such as 'compulsory measures' and 'discharging a referral') so as not to avoid confusion. However, the HSWG has heard the voices and views of children and families who talk about the importance of adjusting this language and has identified it as part of the overall work.

Acronyms

CHIP	Children's Hearings Improvement Partnership
CHS	Children's Hearings Scotland
ECHR	European Convention on Human Rights
FGDM	Family Group Decision Making
HSWG	Hearings System Working Group
SCRA	Scottish Children's Reporter Administration
SCTS	Scottish Courts and Tribunals Service
UNCRC	United Nations Convention on the Rights of the Child

Foreword

by Sheriff David Mackie



Scotland is rightly proud of the integrated and holistic approach to children's care and justice represented by The Children's Hearings System.

Throughout the process of the Independent Care Review (the Care Review) children, families, care experienced adults and members of the paid and unpaid workforce, including panel members, shared their views and experiences of The Children's Hearing System so that we might better understand how it is operating in practice. The resulting report, the promise, challenged Scotland to listen to these voices, to reflect on what is working well within this unique system, as well as to face uncomfortable truths. We heard that some parts of the system do not work as well as they should. Some children, families and care experienced adults had told the Care Review that they didn't feel listened to, that their rights were not upheld and that the systems and processes that should be in place to keep them safe, protected and loved did the opposite – despite the best efforts of the people and organisations forming part of the current system.

It is now over fifty years since the Kilbrandon Report was published. The unique institutional framework for supporting children and families, established on the basis of the key recommendations of the report, has been largely unchanged since it was introduced in 1971. It is therefore natural, given the length of time since Kilbrandon and indeed since the last legislative changes to The Children's Hearings System in 2011, to consider what needs to change to better meet the needs and uphold the rights of children and families in Scotland today.

It is important to be clear, however, that while there exists an appetite for transformational change in relation to the operation of The Children's Hearings System that does not extend to dismantling it or departing from the concept devised by the Kilbrandon Committee or the principles upon which it was based.¹ These principles are clear:

- Children in conflict with the law need protection and care;
- The criminalisation of children should be avoided;
- Families should be offered help and support as early as possible with dignity and respect;
- All decisions made by professionals should centre on the child's best interests.

This Emerging Themes Report is published just over a year since the inaugural meeting of the Hearings System Working Group (HSWG), which I am proud to Chair. It sets out the purpose of the HSWG, how it is engaging with professional agencies and those with experience of the existing system and the scope of the redesign process initiated by the publication of the promise, which called for 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.”*² It also shares some of the HSWG’s early thinking, which will form the basis of the recommendations sent to the Scottish Government next year.

As the work of the HSWG progresses, some immediate improvement areas have already been identified - these are shared within this Report. Other changes in policy and practice will begin after the recommendations have been published and others still will form the basis of considerations about legislative reform.

This work is nuanced and it is complex. I am grateful to the children, families, care experienced adults, professionals and CHS volunteers who have engaged openly and honestly in the work of the HSWG thus far.

The Children’s Hearings System must work for children and it must work for families. If we, as a nation, are serious about making the changes necessitated by the promise to redesign The Children’s Hearings System, we must work hard to introduce the accountability for children and families into the system envisioned by the promise so that we get it right for them as early as possible. And, crucially, we must put the voices and best interests of children, families and care experienced people front and centre of any redesign so that the recommendations and legislative changes move beyond being words on a page to delivering the transformational change that they are calling for.



Introduction

Background:

How have we got where we are?

Broader policy context:

what else is happening?



Introduction

Background: How have we got where we are?

The Children's Hearings System takes an integrated and holistic approach to care and justice, based upon principles established by the Kilbrandon Report, published in 1964, which set out clearly that children and young people who require care and protection, including those accused of offending, should be considered 'children in need'. This approach is unique to Scotland.

The Social Work (Scotland) Act, 1968 formally legislated for The Children's Hearings System, which was subsequently modernised and strengthened by further legislation, including the Children (Scotland) Act 1995, Children's Hearings (Scotland) Act 2011 and most recently, the Children (Scotland) Act 2020.

In October 2016 the First Minister made a commitment that Scotland would "come together and love its most vulnerable children to give them the childhood they deserve." She announced an Independent Root and Branch Review of Care (the Care Review), driven by those with experience of care. The scope of this review included The Children's Hearings System and how it operates to serve the needs of some of the most vulnerable children and families in Scotland.

In 2020, the Care Review published a report, the promise, which was guided by the stories, views and experiences of children and families. It found that the current 'care system' is failing to provide the foundation of loving, caring relationships for far too many children, stating that "a fundamental shift is required in how decisions are made about children and families."³

The Care Review heard a variety of experiences of The Children's Hearings System from children, their families, care experienced adults and the paid and unpaid workforce - including panel members - about how the Hearings System currently operates. The Children's Hearings System and Looked After Child Reviews were mentioned frequently and referenced as pivotal moments in the care journey, where children should be involved, listened to and able to influence what will happen in their lives.

Children and young people told the Care Review that sometimes they felt in control, empowered and listened to at their Hearings and Reviews. However, the promise also highlighted a number of issues that the Care Review identified, including:

- The rotation of panel members can result in a lack of consistency, which means children and families sometimes have to retell difficult and painful stories and often receive a different perspective from previous Hearings.
- Some families spoke about 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 emphasise.
- Hearings struggling to operate in a manner that recognizes 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 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).⁴

The Care Review heard significant support for, and commitment to, the underlying principles of Kilbrandon. The promise was therefore clear that the principles that underpin Scotland's unique System must be upheld, but there was a need to consider how it might be redesigned to better uphold children and families' rights and place their best interests at the centre.

This includes testing structural changes and analysing their impacts, considering alternative decision-making models and the role of panel members, finding new and innovative ways to listen to children and families' voices, help them understand how decisions are being made, how they can be involved in decision-making processes and what those decisions mean for them now and in the future.

Fundamentally, the redesign process of The Children's Hearings System must take into consideration the core ask of the promise for Scotland to broaden its understanding of risk to include the risk to the child of removing them from their families and to ensure that where children are safe in their families and feel loved they must stay - and families are supported together (in line with Article 18 of the UNCRC). The promise is also clear that children's rights must be upheld if children are removed from their families, including their right to special care and protection (Article 20 of the UNCRC). It states that *"the Panel, the Reporter and those who represent and advocate for each individual must navigate the legal rights of children and families and ensure that the human rights of each person are upheld and respected."*⁵

In the long term, the promise said that The Children's Hearings System 'must plan to shrink and specialise.'. This was in the context of intended improvements to children and families' access to early help and support. The expectation is that many more families will be able to access the right support at the right time so that they do not reach the point of crisis which may lead to a referral to The Hearings System. The Children's Hearings System will not be able to do this alone. Families must not be left alone in the absence of appropriate help and support because of a desire to drive down referrals to the Hearings.

An appropriate reduction in the number of children and families referred to the Hearing will not be achieved without concerted and coordinated investment and provision of appropriate, high quality, accessible early help and support for families.

In relation to youth justice, Scotland's Whole System Approach provides a strong focus on early and effective intervention, diversion and appropriate support to address offending behaviour by young people. The Whole System Approach was rolled out in 2011, and has been reaffirmed in successive strategic documents in 2015, 2017 and 2021. It represents Scotland's programme for addressing the needs of under 18s involved in or at risk of being in conflict with the law. Based on the principles of GIRFEC it is a partnership approach to preventing children and young people entering the criminal justice system, unless necessary, by tackling the causes of offending and supporting a change in behaviour.

The Whole System Approach seeks to respond to offending behaviour as an indicator of need with the intention of preventing children from being unnecessarily pulled into formal systems, instead promoting the use of universal services where appropriate.

The discussions and considerations of the HSWG are taking this into account.

Broader policy context: What else is happening?

The promise is clear that the way that the current 'care system' operates (across 44 pieces of legislation - including The Children's Hearings legislation - 19 pieces of secondary legislation, 3 international conventions and 6 policy areas) makes *'cohesive operation impossible and creates disconnects into which children, young adults and their families can fall.'*⁶ It asks Scotland to create a clearer and more enabling legislative environment that supports families to stay together.

The Children's Hearings Improvement Partnership (CHIP), a multi-agency group chaired and co-ordinated by the Scottish Government brings together partners from across the Hearings System with a focus on delivering change and improvement. This is an important inter-agency forum and demonstrates the commitment across Scotland to change and improvement within the hearing system. Significant work has been undertaken by the group over a number of years, including the investment in the creation of Our Hearings Our Voice, an Independent Children and Young People's Board for the Children's Hearing System.

In addition to this, Children's Hearings Scotland (CHS) and Scottish Children's Reporters Administration (SCRA) are already embarking on redesign and other improvement work, linked to the work of the CHIP and in line with the work of the HSWG.

As the work of the HSWG got underway, research was commissioned (see below for more details) to make sense of this landscape and to understand how to provide a strong basis for the implementation of the core changes necessitated by the redesign.

At present there are a number of significant policy developments happening concurrently in Scotland that impact on the work of The Children's Hearings System redesign. This includes, the refresh of Getting It Right for Every Child (GIRFEC), the Children's Care and Justice Bill which, if passed, will raise the maximum age of referral to the Principal Reporter and will likely be laid before Parliament this year, the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Bill and measures to prepare for incorporation across the country; the implementation of recently refreshed National Child Protection Guidance; commitment to ensuring statutory child poverty targets by 2030; commitments to end the placement of 16 and 17 year olds in Young Offenders Institutions; updates on mental health, suicide and self-harm and trauma strategies; changes to secure care; the development of the Youth Justice Vision and Standards; and the development of a Whole Family Wellbeing Fund which has begun to issue funding to local authorities to prioritise early help and support for families.

The HSWG is committed to connecting to these other relevant ongoing workstreams, in recognition of the challenges identified in [the promise](#) and of the fact that children live in families and communities, not alone.

The Promise Scotland has made a specific request of Scottish Government to ensure that the HSWG is cited on all ongoing reviews in progress to avoid duplication. Sheriff Mackie has connected with the Mental Health Law Review identifying significant scope for alignment and joint work.

The Hearings System Working Group

Hearings System Working Group:

What is the Hearings System Working Group and what is it tasked with?

Values:

What are the values guiding the work of the HSWG

Voices:

How is the HSWG engaging with children, families and care experienced adults with experience of The Children's Hearings System?

Methodology:

How is the redesign process working in practice?

Governance:

Who is accountable for ensuring this work happens?



The Hearings System Working Group

Hearings System Working Group: What is the Hearings System Working Group and what is it tasked with?

The HSWG is a partnership between Children's Hearing Scotland (CHS), the Scottish Children's Reporter Administration (SCRA) and The Promise Scotland, and is Chaired independently by Sheriff David Mackie.

The HSWG has been created to oversee the redesign process for The Children's Hearings System following the publication of [the promise](#) and the subsequent [Plan 21-24](#) and Change Programme ONE, which sets out a framework for delivering on [the promise](#). It is facilitating a process that has the rights of children and families with lived experience of The Children's Hearings System at its heart, to ensure effective implementation of [the promise](#) and is compliant with the UN Convention on the Rights of the Child (UNCRC), which is especially important as Scotland moves towards incorporation of the Convention into Scots Law.

The remit of the group, set out in the Terms of Reference, 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. It includes the extent, consistency and approach of its decision-making powers, how organisations should operate within the system, what quality assurance standards should be in place, the role of panel members and the best decision-making model and the way in which children and families' voices and views can be better taken into account in the redesign. It is also considering governance and administrative arrangements and the accountability and oversight mechanisms that are, or should be, in place to help uphold children's rights in line with the UNCRC.

To date, the Group has met eight times and has begun a broad discussion, consideration and engagement programme, which will result in:

1. Production and agreement of a new and clear shared vision for The Children's Hearings System: that the hearing system will uphold and promote children's rights, provide child and family friendly care and justice, and put participation at its heart.
2. Analysis of the practice, legislative, budgetary and structural blocks to implementing this vision.
3. An understanding of what legislative changes are required to meet this vision and uphold the rights of children and families and production of clear, collective proposals that redesign The Children's Hearings System and define the policy and legislative changes required.
4. An understanding of what policy/ practice changes are required that do not require legislative changes. For example, the information prepared for a Hearing, advocacy, language and participation. When the HSWG identifies opportunities for change that do not require legislation and are aligned to keep [the promise](#), these are being progressed to ensure continuous improvement.

The Scottish Government has an observatory role, supporting CHS and SCRA to fully participate in HSWG and begin the necessary preparatory measures to plan for legislative and policy changes, in line with parliamentary cycles. It will ensure that The Children's Hearings System and the Courts can facilitate child-friendly justice in a way that upholds children's rights and enables their effective participation. The Scottish Government will consider the findings of the HSWG and introduce legislation, if necessary, as part of its broader commitment to keeping [the promise](#) by 2030.

Values: What are the values guiding the work of the HSWG?

The work of the HSWG is shaped by the following values:

- **Respect** (of differing contexts and work that has gone before)
- **Courage**
- **Compassion**
- **Boldness**
- **Openness**
- **Flexibility**
- **Rigour**

Voices: How is the HSWG engaging with children, families and care experienced adults with experience of The Children's Hearings System?

The HSWG is committed to ensuring that the views and voices of children and families and care experienced adults who have experience of The Children's Hearing System is at the centre of the redesign process. These voices and views are embedded into the values and ethos of the HSWG.

The HSWG recognises that care experienced people have repeatedly shared their views about The Children's Hearings System already and is endeavouring to access and take into account that information rather than asking people to retell their stories once again. At its core, HSWG Group is basing all of its work on the foundation of the Care Review, which listened to over 5,500 experiences and has used the Evidence Framework as the primary research base to map across the issues identified by [the promise](#).

In addition to this, the HSWG (see below) has included an engagement period with organisations and professionals with experience of The Children's Hearings System into its ongoing workplan as well as care experienced children and young people through Champions Boards. This involves organisations working alongside children and families and professionals involved in The Children's Hearings System such as social workers and advocacy workers.

There has also been significant engagement with [Our Hearings Our Voice](#) (OHOV). The focus of this work has been for OHOV to participate in the redesign process, contribute in the development of solutions and to ask whether the proposals will address the issues and barriers that children, families and care experienced adults identified and shared with the Care Review. Redesign sessions are also being held with the young people involved in the [Voice and Inclusion Project](#) (VIP) through CELSIS and with the Better Hearings Group in Moray.

In February and March 2023, the HSWG will share their thinking and test their recommendations with a range of groups, including those with direct personal experience of the system.

Methodology: How is the redesign process working in practice?

The HSWG has now met eight times - Minutes of these meetings are uploaded on [The Promise Scotland's](#) website. It began by sharing data and insights with one another, and seeking the views of others, to identify an [Issues List](#) which represents the scope of the redesign process and a set of questions that will be answered by the conclusion of the work.

The Issues List is aligned to Plan 21-24 and Change Programme ONE and outlines the questions the Group is exploring throughout the course of its work programme. It includes consideration of five broad areas of change: Scaffolding of the Hearings System; Avoiding the need for compulsory measures of supervision; Children and their Hearings (including their views and voices); Meeting the needs of children after a Hearing takes place; and the Relationship between The Children's Hearings System and the Criminal Justice System. Questions range from the structure of tribunal members and the relationship between them and the Courts to the protections around decision-making, the role of the Reporter and the ways in which Hearings can uphold families' right to support.

The HSWG's Work Programme is coordinated in three distinct phases to address the questions set out in the Issues List: (1) Discussion and Discovery; (2) Deliberation; and (3) Design and Decision.

Phase (1) Discussion and discovery has begun already and is being informed by the following work, which is ensuring a detailed and thorough analysis of the current system, identifying issues and barriers and listening to recurring themes and barriers to form the basis of transformational redesign:

Research. The HSWG has commissioned research consisting of a review of caselaw and the legislative framework around The Children's Hearings System. This work will be mapped to The Issues List so that final conclusions can be clear about what specific legislative change is required. Research is also taking place into all academic and grey literature that exists around the Issues List, to make sure that there is not duplication or proposals for change that have already been considered. All this work will add to the pre-existing evidence base ensuring that the final outputs of the HSWG rest on a solid legal and academic footing.

Engagement. The HSWG has begun to engage widely with a variety of organisations involved in supporting children, families and care-experienced adults and in providing or delivering services as part of The Children's Hearings System. This process has not yet concluded and will be ongoing as the HSWG moves into its testing phase in March 2023. This includes (but is not limited to) discussions with COSLA, Police Scotland, Social Work Scotland, advocacy providers (including the ten advocacy providers in The Children's Hearings System), legal service providers, third sector organisations, Safeguarders and Children 1st (who operates the national Safeguarders Panel) and Our Hearings Our Voice. The Group has also held an [Informational Webinar](#) which explored the five headings of the Issues List and is convening a number of 'deep dive' informational sessions to allow the Group to consider key issues. These include the role of the Reporter; best decision-making models; the forthcoming Care and Justice Bill; the role of social work; early years, Family Group Decision Making; UNCRC, and children's rights.

In addition to the deep dive session on the role of social work and social workers involvement in the Collaborative Redesign Project (detailed below), the HSWG is developing specific engagement events with social workers and Chief Social Work Officers.

Seven redesign sessions have been held with groups with professional or personal experience in and around The Children's Hearings System, including advocacy providers, police, Safeguarders, foster parents, kinship carers, adoptive parents and birth parents. The information from these sessions has been collated by the Office of the Chief Designer at the Scottish Government to create a map of what currently happens in The Children's Hearings System identifying all issues, themes and solutions to the Issues List.

Collaborative Redesign Project. The HSWG has been working alongside the Office of the Chief Designer to facilitate a redesign approach to the work. This allows individuals with experience of the Hearings System to reflect on its current state and work together to create solutions for change and transformation. Three project teams have been brought together to work intensively to create solutions on the areas identified by the Issues List. Each project team consists of professionals who work in and around The Children's Hearings System and has been meeting fortnightly, supported by the Office of the Chief Designer and The Promise Scotland. These teams will develop proposals to inform the redesign being led by the HSWG. These groups are aligned to chapters two, three and four of the Issues List and have developed redesign questions to focus their work.

- **Before: Avoiding the need for compulsory measures of supervision:** How might we change the gatekeeping role and decisions that can be made at pre-referral and referral stages to ensure the right child or young person is referred to the Children's Hearing System at the right time?
- **During: Children and their Hearings (including their views and voices):** How might we meet the needs of children and their families throughout the lifespan of their experience of the hearing system (including the establishment of grounds) to ensure hearings are tailored to a person's needs?
- **After: Meeting the needs of children after a hearing takes place:** How might we ensure a rights-based approach to children, young people and families, so they have the ability to challenge decisions and the implementation of an order to ensure their rights are met? And, How might we embed effective scrutiny and accountability of decisions and implementation of orders (including the use of review hearings and duties on implementing authorities) to ensure the right outcomes for the child and young person?

Once all the work detailed above concludes at the end of 2022, the HSWG will begin Phase (2) Deliberation to sequence, prioritise and consider the findings.

In January 2023 the HSWG will begin Phase (3) Design and Decision and in February and March will test the developing recommendations with children, families and adults with experience of The Children's Hearings System and other key stakeholders. The final recommendations will be refined based on feedback in March 2023, with the intention that the final report will be presented to the Scottish Government by 30 April 2023. It will be accompanied by financial and cost modelling so that there is clarity over the resources needed to implement the recommendations. Any necessary legislative changes will also be identified, with the potential for these to be incorporated in the promise Bill which will be laid before the Scottish Parliament in 2025.

In addition to this, CHS and SCRA are already embarking on redesign and other improvement work, linked to the work of the [Children's Hearings Improvement Partnership \(CHIP\)](#), which has been mapped against the Issues List to avoid duplication and to ensure full collaboration and relevant input to any ongoing work.

It is important to note that improvements to The Children's Hearings System have not paused throughout the life of the HSWG, but continue to progress.

For example, improving decision-making around brothers and sisters; a multi-agency project on child-friendly language; and improvements to hearing children and families' voices and their participation in Hearings, and The Children's Hearings System being trauma-responsive in the decisions it makes. The HSWG has been working to identify this improvement activity already taking place as well as improvements by other organisations working alongside children and families as part of The Children's Hearings System. The HSWG is keen to capture this progress, as well as to highlight areas throughout its work that can change immediately without waiting for the publication of the recommendations.

Governance: Who is accountable for ensuring this work happens?

In addition to the observatory role being performed by the Scottish Government, quarterly meetings are taking place between the Chairs of the HSWG, CHS, SCRA and The Promise Scotland. CHS and SCRA Boards are also holding bi-annual 'exceptional meetings' to discuss the work of the HSWG and The Promise Scotland's Oversight Board is receiving regular updates on progress of the HSWG.

The HSWG is also committed to consulting and engaging with the Principal Reporter at SCRA and National Convener at CHS, given their statutory roles.

Shaping the recommendations

Shaping the recommendations: What are the emerging themes?

A rights-based approach

Administration

Early help and support for families

The role of the Reporter when a referral is made

Involving children and families through a strengths-based approach

Role of Professionals

The best decision-making model

How the panel makes and shares its decision

Sixteen and Seventeen year olds

Babies and infants

All Children's voices

Meeting the needs of children after a Hearing takes place

National Care Service

Children and families' right to redress, complain and appeal



Shaping the recommendations: What are the emerging themes?

The emerging themes shared below give an initial insight into the core areas emerging from the engagement work of the HSWG and the Collaborative Redesign Project. It shows the themes that will shape the recommendations the HSWG is moving towards based on initial discussions, consultation and research and the significant body of research and evidence undertaken throughout the course of the lifetime of The Children's Hearings System and the development of the Care Review.

It is important to note, however, that at the time of writing, the Collaborative Design Project has not yet concluded and there remains an extensive engagement period left until the drafting of recommendations begins. The themes below explain the thinking of the HSWG thus far, but it is likely that more themes will be added as this work continues.

No conclusions have been reached or decisions yet made in respect of recommendations by the Group.

Many of the issues raised below will not be a surprise to children and families and organisations who deliver and/or have experience of The Children's Hearings System. Indeed, many of them have been discussed for a long time, and in some cases work has already started to begin to change different areas of the system to ensure they better uphold the rights of children and families.

The work of the HSWG is not to tinker round the edges of the existing System, but to deliver transformational change, in line with the ongoing overarching policy developments in Scotland, with the expectations of children and families who need and deserve a better and more cohesive system and with the recommendations identified in [the promise](#). In order to deliver this transformation, the areas identified below require urgent, joined-up action through policy and legislative change that goes further than just being words on a page and is fully costed and implemented so that children and families in Scotland can feel the change in their lives.

A rights - based approach

The HSWG has made a commitment that its work will centre around upholding children and families' rights and to grounding its recommendations in a rights-based approach. This includes being cognisant of the rights set out by the European Convention on Human Rights (ECHR), which was incorporated into Scots Law through the Human Rights Act 1998 and the Scotland Act 1998 (including Art. 6 (the right to a fair hearing, advocacy and reasoned decisions within a reasonable time; and Art. 8 (the right to a private and family life) as well as the UNCRC. Recognising that rights are indivisible and connected, there is particular consideration of Art. 3 (best interests); Art. 12 (children's voices); Art. 18 (support for families); Art. 19 (safe from harm); Art. 20 (support for children looked after away from home); Art. 21 (adoption); Art. 25 (regular reviews for children looked after away from home); Art. 37 (cruel and degrading treatment); Art. 39 (recovery); and Art. 40 (dignity and respect for children accused involved with the justice system).

The HSWG is committed to ensuring that the redesign of The Children's Hearings System fully takes into account a rights-based approach and is fully compatible with the United Nations Convention on the Rights of the Child in parallel with the Scottish Government's commitment to incorporate the Convention. The Scottish Government will develop a Child Rights Impact Assessment for the outputs of the Collaborative Redesign Project and the HSWG will publish a Child Rights Impact Assessment alongside the final report and recommendations.

Administration

The independence of The Children's Hearings System is written into statute by the Children's Hearings (Scotland) Act 2011 (Parts 1 and 2). Its operation is led by the independent Principal Reporter, who is supported in carrying out their functions by SCRA, and the independent National Convener, who is supported in carrying out their functions by Children's Hearings Scotland.

The Children's Hearing is a Tribunal within the meaning of the European Convention on Human Rights (ECHR), and one which has the capacity to determine both civil rights and obligations, and criminal charges. It was appropriate, therefore, that the HSWG's discussions relating to how the Children's Hearings System should be administered would include consideration of whether it should be administered by the Scottish Courts and Tribunal Service (SCTS).

The Chair has met with the President of Scottish Tribunals, Lord Woolman, to discuss this, and is taking into account his views and the implications that such a change would have on the operation of The Children's Hearings System and the lives of children and families. It became clear that even if it were appropriate for The Children's Hearings System to be administered through SCTS, the timeframe for absorption would be so prolonged having regard to the current and pending incorporation of other tribunals by SCTS as to render it an impracticable consideration. This will, not, therefore, become a core recommendation of the HSWG's redesign, and the work of the HSWG will proceed upon the basis that the administration of The Children's Hearings System will remain firmly with the National Convener and CHS and the Principal Reporter of SCRA.

Early help and support for families

The long-term plan for The Children's Hearings System is for the numbers of children referred to reduce, based on the redirection of Scotland's resource to provide early help and support for children and families who need it as early as possible. This means not only avoiding the need for compulsory measures, but ensuring that only families who most need the legal supports and protections will be involved with The Children's Hearings System.

The HSWG recognises that for those children, young people, and families on the edge of care a more sustained effort of support, advice and guidance will be required in order to keep them out of the formal Children's Hearings System and the application of compulsory measures of care. This points to the need for better, more coordinated and more sustained provision of family support and mental health and wellbeing services through a Whole Systems Approach.

For children who come into conflict with the law, it is important that Early and Effective Intervention, the core elements of which were recently agreed and updated, is applied effectively and consistently across Scotland to ensure that they receive the appropriate response, and have access to the appropriate care and support to meet their needs and divert and offset the need for future measures.

This is beyond the remit of this Group, but members are clear that the work of the HSWG must link closely to, and are in many ways dependent upon, the ongoing work in local authorities to invest in prevention and early help and support through the administration of the Whole Family Wellbeing Fund and to ensure that there is a clear resource commitment to the provision of initiatives such as Family Group Decision Making (FGDM- described in more detail below) at an early stage for those families who need it. This is in line with the implementation of Part 12 of the Children and Young People (Scotland) Act 2014, which states that local authorities must make arrangements to secure "relevant services" for children at risk of becoming looked after, including for Family Group Decision Making services and support services in relation to parenting.⁷

A review of the implementation of Part 12 conducted by CELCIS in May 2019 found a lack of strategic planning, awareness and communication about the provisions. Similarly, research has demonstrated that access to holistic, whole family support in line with the ten principles of intensive family support set out in the promise is inconsistent across Scotland.⁸ We must not simply shrink The Children's Hearings System and leave families without support or leave professionals with no option other than to refer to the Hearing when other supports to uphold children and families' rights to stay together safely are more appropriate.

The role of the Reporter when a referral is made

The Children's Reporter is an independent officer who is often described as the gatekeeper to the children's hearing. The Reporter has a range of duties and responsibilities, including investigating the circumstances of children referred to them and determining if they need the support of the children's hearing. The work of the Reporter has developed over the years to ensure a clear set of tests and thresholds are applied to all referrals in order to safeguard children and their families from unnecessary or disproportionate interference in their lives. In addition, the established independence of the Reporter contributes to the separation of duties between those referring a child, those making final legal decisions, and those tasked with carrying those decisions out.

When a referral of a child to The Children's Hearings System is considered necessary, the HSWG is considering the role of the Reporter and the mechanisms the Reporter can use - or could use - to help support families at an earlier stage, without the need for compulsory measures. There are particular considerations in this regard in terms of the specific needs and rights of 16 and 17 year olds. One consideration is whether Reporters should have the ability to commission reports and assessments that may support the decision to refer or not.

Some children and families and professionals have told us that the role of the Reporter could be enhanced during the pre-referral phase, combined with the empowerment of families in their own outcomes through their engagement in Family Group Decision Making, avoiding the need for a Hearing completely (see below). While a Hearing would not be engaged at this stage, The Children's Hearings System would be, in recognition of the role of the System being as much to help keep children, young people and families away from compulsory measures of care as to determine appropriate measures once grounds for referral have been made out. This is an area the HSWG will consider.

Involving children and families through a strengths-based approach

Children and families with experience of The Children's Hearings System shared their views with both the Care Review and the HSWG about how the current system makes them feel. They said that they often felt confused and overwhelmed by the processes, they wanted more choice about what was happening, how it was happening and where it was happening and they wanted to be involved in the most important decisions affecting their lives in a meaningful way. Children and families spoke, too, about the importance of speaking about their strengths and the good things happening in their lives. This goes beyond upholding children and families' right to be heard, but to participating in a way that they understand and makes sense to them and to the important people in their lives. Children told the HSWG that children and families need to leave a Hearing fully understanding what has happened and what the decision means.

The HSWG has listened carefully to these views, and has taken into account the ongoing improvement work which is incorporating much of these concerns into the way The Hearings System works. It is thoughtful about what a non-adversarial approach to The Hearings System looks like and the value of models and approaches such as restorative justice, [Signs of Safety](#) and [Family Group Decision Making](#). It is clear that there is no 'one size fits all' approach as all children and families are different - what works for one may not work for another.

Family Group Decision Making (FGDM) is a voluntary, strengths-based approach that can bring together family members where there are concerns about a child or children. The model is centred around the principle that families know themselves best and outcomes are better if they develop their own solutions to the problems that they face. Family members are encouraged to support each other and are enabled to take back responsibility for themselves - helping to address some families' feelings that statutory agencies make decisions for children and families rather than alongside or together with them.⁹ There are two primary considerations for the HSWG in this regard:

- 1 The evidence and impact on the effectiveness of the FGDM model in supporting families earlier to prevent the need for statutory involvement from services or for compulsory measures imposed through the Hearings. This could be through the involvement of the Reporter, as described above, to completely avoid the need for a Hearing at all or for an FGDM to be undertaken prior to a Hearing taken place, with the resulting Family Plan forming part of the broader considerations of the Panel.

There are currently some ongoing pilot approaches to test out the effectiveness of how FGDM may work alongside a hearing or as part of the overall Children's Hearings System. However, the HSWG recognises the structural barriers to implementing this as a core part of the redesign given that FGDM is currently not consistently available to families across Scotland.

- 2 How some of the principles of the FGDM model might inform the redesign process for The Children's Hearings System so that families understand more about the processes they are involved in and the voices and views of children and families are heard and taken into account in a way that feels empowering. For example, FGDM means that a family would understand exactly what discussions will be taking place before they happen and families would be asked when they want the discussions to take place and what the physical environment would look like as well as what things would help them to feel more comfortable.

Some of these principles are already present in some ways in The Children's Hearings System, but the HSWG is considering to what extent they currently happen and whether it may be helpful to take some of the lessons learned from the provision of FGDM in Scotland and incorporate them into the redesign.

Alongside FDGM, there is consideration of the role of restorative justice processes more broadly and their potential applicability in supporting rights-based and therapeutic decision making.

The HSWG is mindful of the complexities of introducing some of these voluntary concepts and models into a system based on the need for compulsion.

Role of Professionals

The Children's Hearings System practices, procedures and decisions must be compliant with Article 6 of ECHR (the right to a fair trial). Article 6 is the handrail and guide to navigate how proceedings should be conducted and provides a framework for the role of the variety of professionals that can appear at hearings at any one time. The Collaborative Redesign Project have, and will continue to, engaged extensively with the range of professionals who appear at the hearing, including Safeguarders, Reporters, Advocacy workers, Lawyers, Social workers.

It is clear that the increase in the presence of legal professionals has changed the nature and operation of Hearings. While legal representation may have rendered some proceedings more litigious than was ever contemplated when The Children's Hearings System were first established, the benefits of advocacy support for children and families can be recognised in not only supporting them through the process but also articulating their thoughts and feelings for better understanding of the Hearing. Access to advocacy is a right guaranteed in statute, for children and young people in the hearings system – should they choose to access it.

The HSWG is clear that the output of this work must make clear the varied and different roles of professionals within Hearings to ensure clarity, accountability and trauma-informed practice. The HSWG is also reflecting on what children have told them about the importance of The Hearings System being child-centred and the number of adults involved in decision-making processes.

To that end, the HSWG is aware of and retaining links with work being undertaken by [Clan Childlaw](#) around a specialist accreditation for lawyers representing children and young people and of the recently published research into understanding the legal needs of children and young people in conflict with the law.

There are many existing opportunities to enhance this work and a strong culture of learning and development, training and qualifications across and within delivery partners in the hearing system, which the HSWG would wish to encourage, support and build upon. It is critical that professionals understand their role, are clear about the evidential standards that are required for decisions and that there are routes for reflection, complaint and training.

The best decision - making model

The fundamental model of the Hearing itself remains unaltered as it was 50 years ago. A Children's Hearing is a tribunal made up of lay panel members composed of three trained members living in the local authority area, who decide whether compulsory measures of supervision are required, with the child's welfare the paramount consideration.

Scotland is unique in utilising unpaid laypersons (Panel Members) to make decisions on involuntary care for children. There are also many volunteers who support Panel Members in their work. The use of lay decision-makers in the Nordic countries, which helped inspire Kilbrandon's vision, has waned significantly in recent decades with most partly or completely ceasing to use volunteering as a principle of their panel membership.

It is clear that the set up of the volunteer model of The Children's Hearings System is not only unique to Scotland, but unique within Scotland.

It is the largest tribunal in Scotland (operating approximately 30000 Hearings a year and supporting around 10000 children before the pandemic years. Whilst during 2020 to 2022 there has been a reduction in based on previous years, it is yet to be seen what the numbers of hearings per year will be post pandemic. What is clear is that The Children's Hearings System is one of a very few tribunals that utilise volunteer decision-makers. All tribunal members in the Scottish Courts and Tribunal Service are paid for their time. This is also true of other bodies such as the Mental Health Tribunal, the Parole Board and Redress Scotland. Adoption and Fostering Panels also use paid independent chairs, although they make recommendations rather than legally binding decisions.

To ensure that organisations can sustainably lead, manage and support high-quality Hearings consistently and to a high standard, upholding children and families' rights effectively, the right scaffolding and structures need to be in place. Organisations must be able to confidently evidence what they do well, where they need to improve and how to consistently and sustainably deliver that improvement across regions to ensure equity in quality of experience for all Scotland's children and families.

They must ensure that the tribunal members and those working in the wider Children's Hearings System who are making significant decisions that support children and young people are themselves well supported to undertake their role through high-quality training, being clear on what constitutes excellence and, of course, providing effective support for their own wellbeing. That

includes reflecting not only on the volunteer panel model, but also the volunteer management model that currently underpins the operation of the decision making structure.

The promise stated: *"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, evidence-based exploration of alternative models of decision making including smaller scale tests and pilots of change."*¹⁰

As part of their work within HSWG, research has been undertaken into the effectiveness of various decision-making structures. The HSWG has made no firm conclusions at the time of the publication of this Report. Research, discussion and consideration is ongoing, however there are emerging findings which can be outlined here.

The HSWG has returned to the original Kilbrandon Report, and notes that the Kilbrandon Committee appeared not to be especially wedded to the concept of volunteerism. Rather it was guided by the desirability of constituting a panel of suitably qualified individuals having the requisite personal qualities to meet the demands of panel membership, but who also possessed the necessary qualification to work alongside children and consider their needs. The Report clearly recognises the potential challenge of The Children's Hearings System meeting the needs of children and families through the services of volunteer:

*"In most areas we contemplate that appointments would be on a voluntary and part-time basis. In the largest urban areas, it might, we think, well be found necessary for the efficient working of individual panels and in view of the likely volume of business and frequency of sittings, to make provision for appointment of one or more full-time salaried chairmen of the panels. Such appointments would as in other cases be made by the Sheriff; provision should be made for salaries and conditions of appointment in these cases to be regulated under rules to be made by the Secretary of State."*¹¹

Despite looking externally at other models, focus must be on what is right for Scotland and for Scotland's children. Measures which appear to work in one jurisdiction cannot always be successfully transplanted into others. Consideration must be given to differences in the cultural and social contexts within which such measures are implemented.

The HSWG is considering with an open mind the question of what constitutes the best model of decision-making body to fulfil the requirements of The Children's Hearings System and to uphold the rights of the children and young people who come before it, including making decisions in their best interests. The HSWG is also mindful of differing ideas of community that have developed since the Kilbrandon Report and the importance of representation of identity groups that can feel more reflective of community than those who live in one particular area.

The evidence is also clear that the needs of the families who are referred to the Children's Hearings System are often complex, with multi-faceted issues and oftentimes historic involvement with the 'care system' and inter generational trauma.¹² This complexity is likely to increase with the introduction of 16 and 17 year olds following the passage of the Children's Care and Justice Bill and the eventual redesign to focus on those families with the most considerable need.

There have already been considerable steps taken to streamline and improve accountability of those groups of professionals holding key roles in the civil, criminal and Children's Hearings Systems - including the introduction of a national Safeguarders panel in 2011 and a register for Child Welfare Reporters and curators ad litem through the Children (Scotland) Act 2020. The intention of these changes is to ensure that there is not a postcode lottery for children who need help and support and that the people in their lives making decisions alongside them will have a clear understanding of trauma, rights and relationship-based practice to help them fulfil their roles.

It is apparent to the HSWG that successful delivery of the transformational change required will be reliant on tribunal members and those working in the wider Children's Hearings System having the appropriate skills, knowledge and competencies that support family-friendly justice. However to fully deliver on the aims of the promise it will take more than changing what happens inside a Hearing. Organisations must have the right scaffolding in place to deliver and sustain transformational change - this means ensuring they are supported to adapt to the changes required by the redesign.

How the panel makes and shares its decision

Aside from the structure of the decision-making panel, the HSWG is reflecting on the decision-making process. Article 6 of the ECHR (the right to a fair trial) is an important guide, with particular thought being given to the requirement for reasons.

At present, the current practice of the decision and reasons being verbally stated at the end of the Hearing diminish the opportunity for reflection and discussion among the Panel members. Similarly, the process of providing a written decision immediately in the presence of children and families (parties to a Hearing) may be a factor undermining the quality of decisions and their written reasons.

What is critical is that panels produce decisions that are clear, accessible and in formats that children and young people can understand. The HSWG is therefore considering how to ensure that children and young people fully understand the basis for decisions made and that panels are supported to make well-reasoned and clearly articulated decisions.

The process of decision-making at this stage is, accordingly, an aspect the HSWG will consider.

Sixteen and Seventeen year olds

The HSWG is continuing to connect with the ongoing work relating to the forthcoming Children's Care and Justice Bill, which will extend the remit of The Children's Hearings System to include 16 and 17 year olds. The HSWG welcomes this important legislation, which is in line with the recommendations set out in [the promise](#) and the broad intentions of the Kilbrandon Report.

However, it is also clear that the operating mechanisms of the current Children's Hearings System will require additional capacity to support the inclusion of 16 and 17 year olds. It will also increase the need for a specialised understanding of the rights of older children who may also be in conflict with the law. This includes particular consideration of advocacy and legal representation.

The HSWG therefore considers it critical that the structural underpinning of The Children's Hearings System is tested through this work to ensure that the redesign appropriately considers how the additional needs of older children can be met. Crucially, this also includes consideration of external support mechanisms and what additional resources the System will require in order to provide high-quality support for these children and families.

Babies and infants

The HSWG has listened to the experiences of organisations and professionals working alongside babies and infants, and to the views of foster carers, kinship carers, birth parents and adoptive parents. They have heard clearly the concerns that the unique needs of very young children are currently not considered within The Children's Hearings System as well as they should be.

The HSWG will not shy away from bold and courageous conversations about how the redesign process can address these unique needs, including recognition of the trauma of removing newborn babies from their families and the impact that that has, and the significance of strong, consistent attachments as early as possible in children's lives.

There is extensive research which highlights the importance of a child's early years and of strong relationships and attachment from the very earliest stage of pregnancy and development.¹³ Scotland's understanding of the impact of adversity in childhood, of attachment and of trauma has developed significantly over the last few years. Simultaneously the HSWG has heard of gaps in the provision of perinatal and infant mental health services and adequate trauma recovery support.¹⁴

The HSWG seeks to design a system that is attuned to the needs of babies and infants. This includes ensuring that the voices of babies and infants and their families are heard (see below), that there are opportunities for them to participate in the decisions affecting their lives in creative ways and that their rights are upheld, including the right to safety, to care and to protection. It also includes considering what supports are available for babies, infants and their families, for foster, kinship and adoptive parents and the importance of early attachments and what that may look like for babies and younger children.

The possibility of supports during pregnancy for parents known to professionals prior to the birth of a baby, even through the agency of the Reporter, is also a matter that will be explored.

All children's voices

[The promise](#) found that there were challenges within the current operation of The Children's Hearings System 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."*¹⁵

Due to structural and income inequalities, including poverty, the children and families who appear at Hearings experience physical and emotional health problems to a far greater degree when compared to the general demographic in Scottish society. The Children's Hearings System most often consider children who are under 5 - yet these are the voices that are sometimes hardest to hear.

This has consequences for the expertise and training required of panel members. It also affects the extent to which Hearings should tailor their procedures to children's age and stage in order to ensure their voice is fully and appropriately heard, including by ensuring speech and language therapists, child support workers and other professionals are involved to support children and families.

The HSWG is engaging specifically with groups who work with those children under the age of five to understand what is needed to make sure their voices are heard and their rights upheld. The HSWG is also interested in how children and young people participate in their Hearings and ensuring there are mechanisms in place for their views to be captured in meaningful and imaginative ways that work for them.

Meeting the needs of children after a Hearing takes place

The application of an Order from a Hearing is a critical moment in the life of a child and their family. In line with Article 20 of the UNCRC, (*which states that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state"*) children are entitled to specific protection, assistance and support, which should be recognised by the state, which has a level of accountability for ensuring that support is provided.

In recent years, the HSWG is mindful of judicial decision-making around the role of professionals in relation to the best interests of the child principle, and discussions about whether Orders of both the Hearing and Sheriff Courts are being complied with. The HSWG is interested in the specificity of Orders and ensuring that a Child's Plan reflects and complies with relevant Orders.

The lack of compulsion in complying with Orders and ensuring that what is intended does, in fact, happen is a persistent issue for children and young people.

At present it would be helpful to understand more about whether children who experience The Children's Hearings System do in fact benefit from the improvement to their life outcomes that the system intends to facilitate. Moreover, the increasingly multi-faceted issues faced by the families involved, and increasing involvement of legal representatives means the modern Hearing is much more complex than they were in previous decades.

The question of how The Children's Hearings System can be assured that Orders are being implemented and support is being provided is critical. The Collaborative Redesign Project is looking at this specifically within a project design team and the HSWG continues to engage with key stakeholders to explore this question.

The power that the National Convenor of CHS has in relation to feedback loop is also within consideration.

National Care Service

The HSWG is aware of the work ongoing around a proposed National Care Service and whether it will include children and families social work services. That will have an impact on which organisation is considered the implementing authority.

Children and families' right to redress, complain and appeal

As Scotland moves towards incorporation of the UNCRC it is prudent for the HSWG to consider the mechanisms children and families have to appeal, respond to and complain about the processes and decisions made at the Hearings.

Getting in touch

The Hearings System Working Group are keen to hear thoughts and views about the emerging themes that have been identified, including from children and care experienced people.

The HSWG has been working with organisations to design meaningful opportunities for children, families, care experienced adults and members of the paid and unpaid workforce that work alongside children and families and as part of The Children's Hearings System to share their views. If you work alongside children or families and would like to know more you are encouraged to contact your organisation for information about any engagement work that has already been undertaken with the HSWG and details of how to participate in any upcoming opportunities.

If you have any questions or would like to get in touch with the HSWG, please email hearingsystemworkinggroup@thepromise.scot

References

- 1 [The Kilbrandon Report](#), paragraph 73
- 2 [the promise](#), page 14
- 3 [the promise](#), page 7
- 4 [the promise](#), page 39-40
- 5 [the promise](#), page 42
- 6 [the promise](#), page 112
- 7 [CELCIS: A Review of the implementation of Part 12: Children at risk of becoming looked after as set out in the Children and Young People \(Scotland\) Act 2014, 2019](#)
- 8 [the promise](#), page 57-58
- 9 [Building evidence for family group decision-making in child welfare: operationalizing the intervention](#), Journal of Public Child Welfare, March 2021
- 10 [the promise](#), page 44
- 11 [The Kilbrandon Report](#), paragraph 225
- 12 [SCRA Report, Complexity in the lives of looked after children and their families 2003-16, 2018](#)
- 13 Extensive research, recent [summary here](#)
- 14 Scottish Parliament Information Centre: [An Update on Perinatal Mental Health in Scotland, November 2021](#)
- 15 [the promise](#), page 39

