

The Promise Scotland's response to the Scottish Government's consultation on Children's Hearings Redesign

October 2024

*"Although this can be easily seen as just words in a report, there are **real people and real lives** behind [the pages of 'Hearings for Children']. To those responsible for making these changes happen, we ask that you **don't miss this opportunity to change lives**"*

Our Hearings Our Voice,¹ '[Hearings for Children](#)', 2023

A note on terminology

This response mirrors the terminology used by the Independent Care Review. Wherever possible, 'system language' has been avoided, but on occasion it has been used in line with current and existing legislation for the purpose of clarity.

This response reiterates the urgent need to reframe language used in relation to the Children's Hearings System. As set out in '[Hearings for Children](#),' children and families involved in the Children's Hearings System must not be referred to as 'customers' or 'clients' and words such as 'compulsion', 'disposal' and 'grounds' are not in keeping with the conclusion from [the promise](#) for Scotland to "change the language of care".²

The term 'children' is used to mean those under the age of 18, in line with the UNCRC and 'young people' aged up to 26, in line with corporate parenting.

Background

[The Promise Scotland](#) is the organisation set up to support Scotland in its delivery of the implementation of the findings of the [Independent Care Review](#).

The Independent Care Review resulted in a promise that by 2030 Scotland's care experienced children and young people grow up feeling loved, safe, and respected. This response to the Scottish Government consultation on the Children's Hearings Redesign outlines what needs to be in place for the conclusions of the Independent Care Review relating to Scotland's Children's Hearings System to be realised, **and the promise made to them kept.**

¹ Our Hearings Our Voice are an independent board for children and young people from across Scotland between the ages of 8-18 who have experience of the Children's Hearings System. They were an integral part of helping the Hearings System Working Group to develop the recommendations within their final report, 'Hearings for Children.'

² Hearings for Children, 2023, Pg 85-87

It should be read in the context of the seven reports produced by the Independent Care Review, specifically [the promise](#), and alongside [Plan 24-30](#).³ It is rooted in what was heard by the Independent Care Review and during the lifespan of the [Hearings System Working Group](#).

The Independent Care Review heard a variety of experiences of the Children's Hearings System from children, their families, care experienced adults and those working alongside them—including Panel Members—about how the Children's 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 needed to be involved, listened to and able to influence what will happen in their lives. Children and young people told the Independent 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 Independent Care Review identified, which have been attached to this response as an **Appendix**.

In response to the conclusions of the Independent Care Review, the [Hearings System Working Group](#) was developed as a partnership between The Promise Scotland, Children's Hearings Scotland and the Scottish Children's Reporter Administration. Sheriff David Mackie was appointed as the independent Chair of the Group and the Scottish Government attended as observers.

The Group undertook extensive collaboration and engagement, working alongside children, families, care experienced adults, kinship carers, foster carers, birth parents, members of the workforce and many others to develop a series of recommendations and to publish its final report: '[Hearings for Children](#)' in May 2023. The recommendations were informed by a Collaborative Redesign Project, supported by the Office of the Chief Designer, which produced expansive proposals, prototypes and 'bold ideas' for what the Children's Hearings System could be. More about the methodology of the Hearings System Working Group can be found on Pages 58-67 of '[Hearings for Children](#).'

The recommendations set out in '[Hearings for Children](#)' address the core conclusions of [the promise](#). The report highlights the structural and systemic changes required to the broader child protection, care and support systems surrounding children and their families that will be integral to upholding children and families' rights and to keeping [the promise](#) within the Children's Hearings System.

³ Plan 24-30 is Scotland's plan, setting out where Scotland must be by 2030 to keep the promise and provides initial routemaps outlining specific steps to get there and support young people moving on from care. These routemaps will be developed collaboratively with the care community and the people and organisations working alongside them and will continue to evolve.

The majority of the recommendations contained within '[Hearings for Children](#)' [were accepted by the Scottish Government](#). This Scottish Government consultation takes progress to transform the Children's Hearings System to the next stage, by identifying the necessary statutory changes that need to take place to implement the recommendations.

We recognise that this consultation does not consult on the recommendations in their entirety, but focuses on potential legislative requirements. Our response highlights where recommendations that may require legislative change are interlinked and interdependent to other recommendations that do not. Not all changes require legislation—many of the recommendations will require policy and practice changes and a statutory approach must only be taken where necessary.

The next stage of the Children's Hearings Redesign

As the next stage of the Hearings Redesign is discussed, consulted on and implemented, it is **crucial not to lose the overall vision for transformational change** highlighted by Independent Care Review and the Hearings System Working Group, both of which are based on significant and extensive collaboration and engagement including with children, young people, families and workers. The voices and experiences of the children, families and care experienced adults who contributed must not be lost, and the conclusions of [the promise](#) must be addressed.

In particular, [the promise](#) was clear that the Children's Hearings System must 'shrink and specialise', so that referrals to the Children's Hearings System are made for the right people at the right time. This means that the areas set out in 'Chapter 1' of 'Hearings for Children' that will lead to more children being supported safely with their families must be prioritised. It also means that the number of children and families engaging with the Children's Hearings System will reduce over time, which must be included in planning for the workforce and support for children and families.

It is important to continue returning to the conclusions that Our Hearings Our Voice and Sheriff Mackie set out at the beginning of the report that was underpinned by the core elements of [Kilbrandon's original vision](#):

*"Scotland needs a system that **works for its children and families**, rather than serving itself."*⁴

⁴ Hearings for Children, 2023, Pg 10-11

The overall vision described in '[Hearings for Children](#)' is that a redesigned Children's Hearings System:

- Listens—with the intention of hearing what is said.
- Inquires—asking what families' strengths as well as their challenges are.
- Makes strong and robust decisions by consistent and competent decision makers alongside children and their families.
- Makes sure everyone understands what those decisions are and what they mean.
- Values kindness, compassion and openness.
- Helps children and families to know and access their rights.
- Provides the people who know children and families best with the time and space to work relationally.
- Asks duty bearers work much more closely together when children and their families need care and support.
- Holds duty bearers to account if things are not working the way they should.”⁵

This must not be an improvement agenda, but significant transformational change that puts children and families' voices and rights at the centre of life-changing decisions about them.

Transformational change of this extent is hard in any climate, but in particular in the current financial climate. However, Scotland has made a commitment to its children that [the promise](#) must be kept by 2030, and that includes wholesale transformation of the Children's Hearings System. The Scottish Government must continue to be ambitious and creative—not to dampen or dilute the vision set out in '[Hearings for Children](#)' for an inquisitorial, rights-based approach. Changes must not be siloed or separated off but a core vision held by the Scottish Government and coordinated thoughtfully will enable prioritisation, sequencing and collaboration to happen in coordination with children families and the workforce and underpinned by resourcing. Incremental changes to small elements of the existing system will not help to keep the promise.

This consultation is, by necessity, expansive. It covers a multitude of different recommendations and a wide range of different systems, processes, legislation, regulations, policies, practice and guidance. The existing system is complex. In some cases it is necessarily complex because there is a need for adequate and appropriate checks and balances to be in place in a system that makes the most serious and life-changing decisions about children that can be made.

⁵ Hearings for Children, 2023, Pg 15-16

In other cases, however, it is overly complex and confusing and ties itself in knots. This consultation and the resulting changes must not add to the complexity. The changes must be fully understood and comprehensively sequenced. There must be a consideration of how best to make the changes in ways that make sense to children and families and to the workforce. This must be linked to ongoing work to consider how to 'declutter' the legislative landscape around the 'care system'.

It is not sufficient to simply add further amendments to the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Act 2011. A range of options must be considered, including bringing the legislation around the 'care system' together into one comprehensive Bill where the rights and entitlements of children and families are clearly identified.

Key messages

- The redesign of the Children's Hearings System must be relentlessly focused on the voices of children, families and adults with experience of the system and must meet the core conclusions of the promise.
- Not all changes require legislation—many of the recommendations will require policy and practice changes and a statutory approach must only be taken where necessary.
- The vision outlined in [the promise](#) is a Scotland where more families are able to stay together and thrive, wherever safe to do so. This will result in a significantly smaller, more specialised 'care system'. This opportunity to design a new future around that vision, rather than being constrained by what is possible in the current system, must be grasped for the reality to match the rhetoric.
- Of all of the recommendations made by the Hearings System Working Group, the consistency of decision-makers is the one that is most fundamental to delivering a transformed Children's Hearings System. Children and young people's voices must be heard and this must become a reality.
- Legislation must not further complicate and clutter the existing legislative landscape and children, families and the workforce must be able to understand what the changes mean. A range of options must be considered, including bringing the legislation around the 'care system' (including Children's Hearings) together into one comprehensive Bill where the rights and entitlements of children and families are clearly identified.
- An overarching principle in primary legislation or procedural rules and shared set of national standards for the workforce must be made that explicitly describes the Children's Hearings System as inquisitorial.

- An inquisitorial approach is not just the development of principles. It relies on the implementation of a significant number of other related recommendations being implemented.
- Children and families must be recognised as experts in their own lives and must feel included in the decision-making process and gain a sense of working alongside the Panel to make strong and competent choices and decisions in the best interests of the child.
- We agree with concerns shared about the proposal of a Legal Member and refer back to the original proposal in 'Hearings for Children' which sets out an alternative approach to establishing grounds after the removal of Grounds Hearings.
- Approaches to remuneration must be considered the context of children and families' experiences of the Children's Hearings System.

The Principles that underpin a redesigned Children's Hearings System (Pg 12-14)

What principles should underpin a redesigned Children's Hearings System and why?

After extensive discussion and collaboration with children, families, kinship carers, foster carers, birth parents and members of the workforce, the Hearings System Working Group concluded that an **overarching principle in primary legislation or procedural rules and shared set of national standards for the workforce should be made that explicitly describes the Children's Hearings System as inquisitorial**. '[Hearings for Children](#)' is clear that this will foster an inquisitorial approach and culture within the Children's Hearings System and ensure that there is a clear understanding across the entire system of what this means (**Recommendation 2.1**).⁶

The reasons for this recommendation are explained in detail in '[Hearings for Children](#)'—stating in particular that the Group frequently heard the Children's Hearings System being referred to as 'adversarial'. The report also describes in detail what the principles of an inquisitorial approach should be. An inquisitorial Children's Hearings System must:

- Work alongside children and families. As much as possible, it must do things, including making decisions, with children and families instead of for them.
- Seek the views of children and families and listen with the intention of hearing what is said.

⁶ Hearings for Children, 2023, Pg 84-84

- Offer significant and meaningful opportunities for children and families to participate in the decisions about them that have historically happened around them.
- Be grounded at all levels by compassion, kindness, respect and an understanding of the complexity of family circumstances, child development and attachment, the impact of trauma and inter-generational trauma and the way it can affect behaviour and the dynamics of domestic abuse.
- Focus on understanding children and their needs in the context of their entire family, including brothers and sisters, extended family and friends, people they love and trust, and their community.⁷

This approach is not limited to Children's Hearings only, but must be reflected throughout all parts of the Children's Hearings System including with respect to the conduct of Sheriffs and Sheriff Court proceedings, the Reporter, the ongoing review and oversight procedures, engagement with the implementing authority and the subsequent involvement of the Children's Hearings System in children and families' lives.

The work undertaken by the Children's Hearings Improvement Partnership in 2016 is also a helpful reference for beginning to draft an overarching principle or procedural rules and a shared set of national standards.

'[Hearings for Children](#)' describes in detail what the principles of an inquisitorial approach should be (**Recommendation 2.1**) but also what an inquisitorial approach looks like and how inquisitorial Children's Hearings should operate in practice (Pages 151-153). The report is clear that the only objective of Children's Hearings must be to find solutions that are in the best interests of the child. A Hearing must ask: *what does this family need to keep the child(ren) safe, loved and well?*

An inquisitorial approach is not just the development of principles. It relies on the implementation of a significant number of other related recommendations being implemented to 'reduce the temperature' of Children's Hearings, remove the elements that are undeniably 'adversarial' from the Children's Hearings System itself and to change the way families are engaged with and supported to participate and share their views.

The other required changes required include (but are not limited to):

- Changes to the way that the Reporter works (**Recommendation 3.5 & 4.3**).
- Removing Grounds Hearings and making changes to the process of establishing grounds (**Recommendation 5.1**)

⁷ Hearings for Children, 2023, Pg 84-85

- Ensuring that Children’s Hearings operate explicitly as an inquisitorial, non-adversarial tribunal where the sole objective is to arrange at decisions that are in the best interests of the child (**Recommendation 6.1**)
- Ensuring the existing Rules governing a Children’s Hearing are sufficiently robust to ensure that the Chair is able to manage the dynamics and conduct of an inquisitorial approach to a Children’s Hearing. This includes determining who is present at each stage of a Children’s Hearing, whilst effectively balancing rights of attendance and participation, and having the flexibility to change the speaking order and arrangements and the authority to ask contributors to the meeting to leave the room after they have spoken, if that is in the best interests of the child. (**Recommendation 6.1.1**)
- As far as possible ensuring the Chair is the same Chair each time a child and their family attend a Hearing (**Recommendation 6.1.3**)
- Changes to the way that the Chair engages with children and families (**Recommendation 7.1**)
- Changes to the way that children and families are able to participate and engage in Children’s Hearings and improvements to upholding their rights and increasing understanding about what is happening (**Recommendations in Chapter 8**)
- Changes to the conduct of lawyers and rights of audience (**Recommendation 10.1**)

It should also be noted that [‘Hearings for Children’](#) makes a specific **recommendation (2.2)** about the need for a coordinated approach to establish an appropriate, considered and non-judgmental language of care in Scotland. This is also a key part of a transformed, inquisitorial Children’s Hearings System.

The Scottish Government must make sure that the recently published consultation on the definition of care experience and the language of care aligns with the recommendations in [‘Hearings for Children’](#) relating to language, which were accepted. In particular, the report is clear that words such as ‘contact’, ‘compulsion’, ‘disposal’, ‘grounds’ and terminology such as ‘Compulsory Supervision Orders’ are not in keeping with the conclusions of the promise.⁸ Legislative changes made as a result of this consultation must not compound the current issues around language—a clear plan must be drawn up regarding how they will be addressed.

⁸ Hearings for Children, 2023, Pg 85-87

What would be the advantages and disadvantages of enshrining overarching principles in legislation?

As stated in our response to the previous question, '[Hearings for Children](#)' made a clear recommendation that there should be an overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce that explicitly describes the Children's Hearings System as inquisitorial. This was accompanied by an extensive commentary that described the advantages to such an approach and was accepted (with conditions) by the Scottish Government.

As acknowledged in the consultation paper, non-statutory principles were produced by the Children's Hearings Improvement Partnership in 2016. While it is helpful to have these principles, placing an inquisitorial approach on statute will leave no doubt as to the underpinning inquisitorial nature of the Children's Hearings System in Scotland.

The significant advantages of this approach can be found on Pages 84-85 of '[Hearings for Children](#)' as well as being woven through the majority of the report as a whole. The primary advantage, of course, is that ensuring the Children's Hearings System explicitly operates in an inquisitorial manner means children and families' experiences of the system will improve and Scotland will meet the conclusions of the Care Review in this area. The assessment of the Hearings System Working Group was that this would also lead to improved experiences of members of the workforce, in particular social workers who have expressed concern and distress about the adversarial nature of proceedings. It will assist in giving decision-makers the confidence to use the tools available to them.

The enactment of principles that explicitly set out an inquisitorial approach must, of course, be linked to the full implementation of the other recommendations to enable an inquisitorial approach can operate in practice (see our response to the previous question) and in alignment with the ECHR. In particular, the recommendations relating to changes being made to understanding facts, describing grounds and, crucially, ensuring that there are no more Grounds Hearings.

This question does not ask about the shared standards that is referred to in **Recommendation 2.1** of '[Hearings for Children](#)', but this is an integral part of the recommendation and these should be drafted alongside a statutory principle or procedural rules. As stated in both COSLA and Social Work Scotland's response to '[Hearings for Children](#)' there is a need for clarity over the use of the term 'inquisitorial' and a shared set of standards for all members of the workforce would achieve this.

Before a Children's Hearing—Statutory Referral Criteria (Pg 14-16)

What elements of language in the existing referral criteria need to be updated, if any?

- **Control?**
- **Treatment?**
- **Other?**

'[Hearings for Children](#)' is clear that changes to the statutory referral criteria and to updating and modernising the language of 'protection, guidance, treatment and control' in section 60(2) of the 2011 Act must be considered (**Recommendation 3.3**).

See our comments in response to previous questions about the broader need for changes to language in order to meet the conclusions of [the promise](#) around the 'language of care'.

Do you support the proposed referral criteria from the Hearings for Children report?

Yes.

The rationale for this is set out in set out in Pages 104-107 of '[Hearings for Children](#)'.

What are the advantages or disadvantages of the proposed draft referral criteria?

As set out in Pages 104-107 of '[Hearings for Children](#)' there is a need to ensure that children are referred to the Children's Hearings System at the right time for them. The report is clear that at present there is inconsistent application of the referral criteria to the Children's Hearings System across different agencies and geographical areas. It is also clear that there needs to be an improved and more consistent approach to applying thresholds for referral. The proposal set out in '[Hearings for Children](#)' emerged from the Collaborative Redesign Project and is designed to make clearer when the Children's Hearings System should be engaged, which in turn would ensure consistent, appropriate referrals are made at the right time and in the best interests of children and their families.

These changes will lead to greater consistency in the application of referral criteria, whilst at the same time bringing clarity to their rights- based foundation.⁹

Do you have any other comments about potential changes to the referral criteria?

The Scottish Government response to '[Hearings for Children](#)' committed to consulting on whether future primary legislation should reframe referral and compulsion tests. It states that it will seek views on the basis of these proposed criteria, along with other potential approaches, as recommended in the report. These approaches do not appear to be included within this consultation paper— it would be helpful for the Scottish Government to outline what other approaches are being considered and when they will be consulted on.

'[Hearings for Children](#)' also recommended that updated national referral guidance should be issued to those working alongside children and families, which encompasses the core aims of the redesign (**Recommendation 3.1**). The Scottish Government response is clear that this will be developed following this public consultation on the aspects of the redesign that require legislation. It would be helpful to understand the timeframe for this and what governance arrangements are in place to ensure that this is progressed at pace.

Do you support the proposal to change the applicable referral test that compulsory supervision 'might be necessary' to it being 'likely to be needed'?

Yes.

Before the Hearing—Relevant Persons (Pg 16-18)

What are the advantages or disadvantages of the current definition of "relevant person"?

The Hearings System Working Group did not hear or discuss any specific issues or concerns about the current definition of 'relevant person' beyond the need to ensure other people important to the child are included and able to appropriately participate in Children's Hearings when it is in the child's best interests (Pg 193-195).

Recommendation 8.9 of '[Hearings for Children](#)' is clear that the preparation phase prior to a Hearing taking place must give particular consideration to the

⁹ Hearings for Children, 2023, Pg 104-105

information held by the people who know the child best, including those working closely alongside them, and foster, kinship and adoptive parents. These people must be able to participate appropriately and share their views. The recommendation states that legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes.

Should the legislation include a definition of “parent” and if so, what should it be?

No.

The Hearings System Working Group did not hear or discuss the need to include a definition of “parent” in the legislation relating to Children’s Hearings or relevant persons.

As per our response to the other questions in this section, it is important to ensure that other people important to the child are included and able to appropriately participate in Children’s Hearings when it is in the child’s best interests.

Do you have any views on whether it would be appropriate for a Hearing to have the power to remove relevant person status from any relevant person in certain circumstances and if so, please explain?

This was not an issue raised in detail during deliberations and discussions of the Hearings System Working Group. There may be particular issues or concerns linked to domestic abuse and/ or other types of physical and sexual abuse. There may also be concerns around automatic relevant person status for parents who have been absent from children’s lives for long periods of time or where it is not in their best interests for certain people to be automatically deemed a relevant person.

A rights-based approach must be taken to ensure that any powers to remove automatic relevant person status are compliant with the UNCRC and ECHR.

What are the advantages or disadvantages of an earlier process for deeming other people to be relevant persons?

As stated in '[Hearings for Children](#)' there should be a robust preparation phase in a redesigned Children’s Hearings System. The intention of this is to ensure greater participation, stronger decisions, and an increased likelihood that children and

their families will understand and engage with the legal order and support offered by the Children’s Hearings System.¹⁰

As part of this, it is essential that the important people in a child’s life—and in particular those who are primary caregivers or who know them best—are able to access and share important information to help inform decision-making and ensure that they themselves feel part of the process at an early stage. For these reasons, we would support engagement with the important people in a child’s life at the earliest possible opportunity.

One of the ways that this may be possible would be to implement **Recommendation 8.8**, which would create a separation of procedural decisions relating to the Hearing itself and the decisions made by the Hearing (see below). A Chair may be able to deem someone a relevant person without the need to convene a full Panel.

What changes could be made to legislation to enable more effective gathering of information prior to a Hearing and to support proper opportunities to participate for other people in the child’s life?

The Hearings System Working Group consistently heard from kinship and foster carers and other people caring for children that they did not always feel involved or included in discussions, despite often being the ones who might know the children in their care best, ‘[Hearings for Children](#)’ was clear that in some cases foster carers and kinship carers will hold day-to-day knowledge and understanding of the child and family, the strengths and challenges they face, and their broader circumstances. Other times, family support workers, health visitors, early years workers or teachers might hold information and have views about what is working well for families, and what needs to change to better uphold children’s right to be safe, loved and protected.¹¹

For babies and infants, in particular, this insight into their lives from those who know them best can provide essential information to help inform decisions. Where infants are being looked after away from home, primary caregivers may not always be ‘relevant persons’ but may be acutely aware of changes in behaviour, including any impact of contact arrangements or time spent with their family.

In support of this, it is important that the workforce has the capacity and support to work in the more relational way described in the report, including urgently addressing the recruitment and retention of social workers as described on Pages

¹⁰ Hearings for Children, 2023, Pg 183

¹¹ Hearings for Children, 2023, Pg 193

77-78. Legislative changes are unlikely to make a significant difference if the workforce is not adequately supported or resourced to work alongside families to build and maintain relationships and to help them understand what is happening.

The information shared with the Panel in advance of a Children's Hearing is discussed on Pages 197-200 of '[Hearings for Children](#)', including the need for national standards for providing reports and the development of a standardised pro forma report template (recommendation 8.15). This is an issue that pre-dates the Hearings System Working Group and has yet to be resolved—it must be urgently addressed, but legislation is required to fix it.

Finally, the principles outlined in Chapter 8 of '[Hearings for Children](#)' should translate into policy and practice documents, but there is a need for further consideration of what changes should be made to the Children's Hearings (Scotland) Act 2011 to ensure greater participation and consideration of the views of the important people in a child's life. We have discussed our views on this further in answer to the specific questions about participation below.

What are the advantages and disadvantages of the creation of an additional class of person whose views and participation are essential to the business of the Hearing, but do not require the full rights and obligations of a relevant person?

No.

We understand and appreciate the intention behind this proposition, but are concerned about the framing of an 'additional class of person' and the additional complexity this is likely to introduce.

As stated above, the Hearings System Working Group heard from kinship carers, foster carers and others about the need to ensure other people important to the child are included and able to appropriately participate in Children's Hearings when it is in the child's best interests (Pg 193-195). This was a point made particularly in relation to younger children, for whom it will be important that the person who spends lots of time with them and knows them best is able to participate effectively in Hearings. **Recommendation 8.9** therefore is clear that the preparation phase prior to a Hearing taking place must give particular consideration to the information held by the people who know the child best, including those working closely alongside them, and foster, kinship and adoptive parents. These people must be able to participate appropriately and share their views.

[Hearings for Children](#), does not recommend that there should be a new 'class' of person created but suggests that legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes.

The creation of a new 'class' of people is likely to add an additional layer of complexity to the system. The definition of 'relevant person' should be broad enough to encompass all those people important to the child while the implementation of **Recommendation 8.9** should ensure that all information held by people who know the child best is considered and these people are able to participate appropriately.

Recommendation 8.10 is also clear that the rights of brothers and sisters to participate and be part of their siblings' Hearings must be upheld.

A skilled Chair, as described in [Hearings for Children](#), should be able to understand the complexities around the 'relevant person' status and determine when there are other important people in a child's life that should be heard from and be able to engage and appropriately participate in decision-making.

Participation and Attendance (Pg 18-19)

Do you agree with the recommendation to remove the child's obligation to attend their Hearing, to be replaced with a presumption that the child will attend?

If yes, what limitations would need to be applied to this presumption?

Yes. **Recommendation 8.12** of [Hearings for Children](#) is clear that the existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend a Hearing. This change will be supported by ensuring that the whole hearings process is more rights based, centred on the needs of the child and by having empowerment and choice at the heart of the proceedings. There must be ways for the child's view to be heard if they do not attend a Hearing—we have responded to the specific question below about this. There must also be ways for a child to understand the different options for their attendance, including virtual attendance, which might make them feel more comfortable.

In terms of limitations, the second part of the recommendation is clear that there must be no presumption that babies and infants will attend their Hearing. Instead, particular attention must be paid to ensure effort has been made to capture their views and experiences, and we set out our response to that below. It is also critical that the reports and information provided to the Hearing set out the importance

of making decisions in accordance with their developmental milestones and timescales.¹²

Does the Hearing need a power to overrule the child's preference not to attend their Hearing in certain circumstances?

No. But there must be a duty to ensure that the child is fully aware of their rights and options for participation and to ensure that the child's views are reflected in the Hearing regardless of whether they are physically present or not.

See our response to the specific question below about offence grounds.

What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their Hearing?

As stated in **Recommendation 8.13**, the existing range of options available to help facilitate children's attendance within the Children's Hearings System should remain in place and expand in accordance with emerging research, evidence and shared learning from other tribunals and ongoing improvement work. This should include innovative options for a child sharing their view (including making videos, writing songs, poems or letters, sharing drawings or engaging in other ways that they might feel more comfortable).

The assessment of the Hearings System Working Group was that if the other recommendations about improving understanding, accessibility and participation of the Children's Hearings System are implemented then it may be more likely for children to feel that they would like to attend their Hearings. Improvement work is already ongoing led by the Scottish Children's Reporter's Administration and Children's Hearings Scotland around child- friendly scheduling (**Recommendation 8.5**) and making improvements to the rooms where Hearings are held and the way information about Hearings is shared.

In line with **Recommendation 8.14**, if a child does not wish to attend their Hearing then there must be clear mechanisms in place to help the child understand what was discussed at the Hearing and what decisions were made. This must include ensuring that a child- friendly summary of the decision is shared with the child (**Recommendation 6.2.5**) and that the child and their family is provided with ongoing support to understand what happened at the Hearing and what will happen next. This includes an understanding of what is expected of them and

¹² Hearings for Children, 2023, Pg 195

what needs to happen to 'exit' the Children's Hearings System, with clear timescales (**Recommendation 11.21**).

The Collaborative Redesign Project made a number of suggestions to ensure children fully understand what happened at their Hearing, whether or not they attend their Hearing in person. These include: a note taker to write down everything said at the Hearing; an audio and video recording (see our response to the question below); and a short summary. These options should be tested as part of ongoing improvement activity, alongside the introduction of a child-friendly statement on the decisions (see our response to the question below).

Should a child still be obliged to attend Hearings held in consequence of offence referrals, or in consequence of the 2011 Act section 67(m) 'conduct' ground?

No. There should not be a distinction between expectations for children depending on the nature of their engagement with the Children's Hearings System. Doing so would create a two-tiered system that is against the ethos and principles of the Kilbrandon approach. There are other ways to ensure that the child understand their rights and the consequences of accepting an offence ground. This includes ways to help children to understand why their attendance would be beneficial in terms of increasing their understanding of the outcome and, where appropriate, accepting accountability.

Given the increase in age limit to the Children's Hearings System through the Children (Care and Justice) (Scotland) Act 2024 there is a need to work collaboratively with victims organisations to ensure that victims rights are fully considered as this change is implemented. This must link to ongoing work to maintain and increase confidence in the Children's Hearings System as the most appropriate way of engaging with children in conflict with the law.

Voices of very young children (Pg 19)

Do you agree that particular arrangements should be made to capture and share the voices and experiences of very young children in a redesigned Children's Hearings System?

If so, what should those arrangements be?

Yes.

'[Hearings for Children](#)' states that a redesigned Children's Hearings System must ensure the particular developmental needs and milestones of babies and infants

are prioritised, taking into account the importance of timely decisions about long-term care in the context of the vital role of the early days, months and years for their future outcomes.¹³ As a result, the report makes a number of very specific recommendations relating to the rights of babies and infants and how decisions must be made with an understanding of the importance of the earliest years of a child's life. These include:

1. Ensuring that the Children's Hearings System is engaged at the most appropriate time for those children and families who need the additional support of a legal order. The particular needs of babies and infants and their developmental milestones must be taken into account by potential referrers (Page 102). The corresponding **recommendation (3.1)** is that updated national referral guidance must include the particular needs of babies and infants and their developmental milestones.
2. Changes to the role of the Reporter before a child is born (**recommendation 3.6**)
3. 'Hearings for Children' is clear that particular thought should be given to how the voices and experiences of babies and infants should be heard and taken into account by the Reporter. Children under five are not routinely offered advocacy under the present legislation. However, this should not preclude them from being included in considerations about their views and from the Reporter engaging in discussions with the important people in their lives who know them best to gain an understanding of their voice. For example, nursery workers, social workers, other members of the family, health visitors, family support workers and others working alongside the family who are skilled in child development and interpreting child behaviour and communication may be able to provide support and assistance to the Reporter in their deliberations. In line with the concept of evolving capacity, some younger children may also be able to speak with the Reporter, draw pictures, or share their views in other ways.¹⁴ This must be considered as part of the potential statutory duty placed on the Reporter to capture the child's views.
4. Identifying and eliminating structural and systemic delays in establishing grounds, which the report notes is particularly important for younger children for whom the long delays in decision-making can impact on their relationships and ability to develop strong and lasting attachments in the formative years of their lives. To address this, the report recommends considering a statutory three month set time limit for determining grounds; introducing measures to prioritise the developmental needs of infants and babies; and understanding

¹³ Hearings for Children, 2023, Pg 16

¹⁴ Hearings for Children, 2023, Page 124

whether a flat rate fee structure or changes to legal aid would support the timely establishment of grounds (**recommendation 5.4**).

5. Ensuring that there is no requirement for young children to agree with the grounds for referral (**recommendation 5.6**).
6. Training and support for Panel Members around the developmental needs of infants and babies (referred to throughout the report). Legal representatives should also have an awareness and understanding of the particular needs of babies and infants with respect to attachment and their developmental milestones and timescales.
7. Ensuring that members of the workforce in universal and specialist services involved in the care of infants and babies can meaningfully contribute to the Hearing, to represent the infant's lived experience and needs, and inform legal decision-making about their care. Where infants are being looked after away from home, foster carers and kinship carers are the primary caregivers and likely know the infant better than anyone. They may be acutely aware of changes in the infant's behaviour, including any impact of contact arrangements or time spent with their family.¹⁵ Their viewpoint is important and ensuring that they are included in discussions and able to appropriately participate and share their views must be considered as part of the potential changes to 'relevant person' status as described above and as part of the robust preparation process and changes to the participation and engagement of children and families and the important people in their lives in Hearings.
8. There must be no presumption to attend for babies and infants to attend Hearings (**recommendation 8.12**). For some children who, by virtue of their age and maturity are unable to understand what happens at a Hearing, particularly very young babies, it is appropriate for this exclusion to be applied. The still developing capacities of children at this age mean that their ability to form and communicate their views and 'articulate' their experience is substantively different from that of older children and young people. Instead, particular attention should be paid to ensure effort has been made to capture their views and experiences, and that the reports and information provided to the Hearing set out the importance of making decisions in accordance with their developmental timescales and milestones.
9. The voices and experiences of babies and infants must be captured and shared with the Panel by people who know and understand child development and communication and the importance of developmental milestones (**recommendation 9.3**). Research has shown that infants who have experienced adversity in their early relationship with primary caregivers may commonly 'miscue' their feelings or needs, learning to adapt their behaviour to

¹⁵ Hearings for Children, 2023, Page 194

keep themselves safe. The behaviour of an infant who is miscuing their feelings and needs will at times be counterintuitive to what we expect: smiling may not mean happy; passive may not mean calm inside. The views and experiences of younger children, therefore, should be captured in ways that take into account the complexities of child development and communication and by someone who is alert to the context of the infant's key relationships. This may include an independent advocacy worker.

Finally, the report is also clear that in a redesigned Children's Hearings System, there is a need to focus on longer term planning for children—with an understanding of the importance of timely and clear decision-making for children, particularly babies and infants, in line with their developmental milestones and timescales. This should be balanced with what is known about the risk to children of them being separated from their family and the need to uphold the rights of parents, especially when significant progress is being made to improve the challenges and complexities in their lives. Recommendations 11.9 and 11.10 and Pages 235-237 of 'Hearings for Children' discuss this in more detail.

The offer of advocacy to the child (Page 19-20)

Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?

Yes. **Recommendation 4.1** is clear that there must be changes to the way that advocacy is offered:

- If a child does not already have an independent advocacy worker, there should be an immediate offer of advocacy at the point of referral to the Reporter for all children. This must be fully explained to children in ways that they understand so that they are aware of what an advocacy worker is and the role that they can play.
- The offer of advocacy should be repeated to children and to their families at different stages of the process.

'[Hearings for Children](#)' also stated that The Promise Scotland's work to develop a lifelong advocacy service for care experienced children and adults should include the extension of advocacy support beyond the entry point to the children's hearings system to children working voluntarily alongside local authorities and to parents and carers too. This resulted in a recommendation in [our advocacy scoping paper](#) around the need to establish advocacy as a statutory right and identify specific points where care experienced children, adults and families must be informed of their right to independent advocacy and how this can be accessed.

Phase Three of the scoping paper recommends an expansion of the current [National Practice Model \(NPM\) for children in the Children's Hearings System](#) for children and adults up to the age of 26 (In line with corporate parenting responsibilities). This is currently being scoped by the Scottish Government and the discussions about extending access to advocacy in the Children's Hearings System and expansion of the National Practice Model must be aligned.¹⁶

We agree with Social Work Scotland's comments in response to the publication of '[Hearings for Children](#)' about the need for clear advocacy standards and oversight and scrutiny for adults. This is a core element of Phases One and Four of the advocacy scoping paper. However, it should be noted that there are currently Principles and Standards for advocacy as part of the Children's Hearings System National Practice Model.

Our paper also describes the vast number of cross-cutting and inter-related workstreams around advocacy in Scotland at the moment, including with respect to the proposed National Care Service, the incorporation of the UNCRC, human rights, mental health and housing. There is a need for the Scottish Government to create a National Advocacy Oversight Group to support clarity and connection and to develop a national strategic plan for advocacy, underpinned by an operational blueprint. This is described in the paper as Phase Two and must be progressed at pace.

This question does not include reference to offers of advocacy for the family in addition to the child, but '[Hearings for Children](#)' is clear that the offer of advocacy should be repeated to **families** as well as to children at different stages of the process (**recommendation 4.1.3**). This recommendation was accepted by the Scottish Government in its response to '[Hearings for Children](#)' and must be progressed through both statutory and policy and practice change, including through fully resourcing existing advocacy providers and progressing the phases of our advocacy scoping paper.

How should the rights and the views of children and young people, including very young children, be better represented in the Children's Hearings decision-making?

The voices and involvement of children (including very young children) and their families in the Hearing is covered in detail in Chapter 9 of '[Hearings for Children](#)', although the entire report is framed around better upholding children's rights and its recommendations are centred around ensuring children and families' voices and participation is front and centre of a redesigned Children's Hearings System. **Recommendation 9.1** is very clear: children and families should be recognised as

¹⁶ [Advocacy in the Children's Hearings System - Guidance document \(www.gov.scot\)](#) Pg 22

experts in their own lives and must feel included in the decision-making process and gain a sense of working alongside the Panel to make strong and competent choices and decisions in the best interests of the child.

The report is clear that children and families' voices must not be drowned out by the noise of the system. It acknowledges the inherent power imbalance when a Hearing takes place and asks that in a redesigned Children's Hearings System the Chair names this and ensures proceedings operate in an open, honest and transparent way. The report sets out a number of measures to facilitate this, including:

- The Reporter must seek the views of the child during the investigatory process, where appropriate (see our response to the particular question about this)
- Particular attention must be paid to the voices of babies and infants (see our response to the particular question about this).
- Children and their families must be helped to understand their choices and rights relating to participation.
- Changes must be made to the provision of advocacy (see our response to the particular questions about advocacy).
- The important people in a child's life must be heard.
- Changes should be made to the way reports are written and shared.
- Family Group Decision Making and restorative justice must be more commonly engaged.
- If the Chair deems it appropriate, the child or young person must be offered the opportunity of being the first and last voice in the Hearing. Where children are not physically present, the Chair should begin proceedings with a summary of the child's views.
- The child and/ or family must have the opportunity of speaking alone with the Panel.
- The Chair must regularly check in with the child and family during proceedings to ensure that they understand what has been said and to offer a chance for them to reflect on what they have heard and what they think it means.
- The Chair must have authority to determine how information and views should be heard, in what order and who should remain in the room.

It should be noted that none of this (with the exception of changes to the role of the Reporter and advocacy) requires legislation and can be addressed in practice.

There must be no delay in ensuring CHS and SCRA are supported to make these changes at pace.

The report is also clear that the provisions in s.3 of the Children (Scotland) Act 2020 with respect to a child being given an opportunity to express their views in a manner they prefer must be commenced with appropriate resourcing (**recommendation 9.4.**)

In terms of legal representation, **recommendation 4.2** is clear that children should be fully informed of their right to legal representation and there should be an exploration and understanding of whether the current mechanisms for them to access legal aid and their right to legal support is sufficient. This should align with the recommendations about the conduct of lawyers (**recommendation 10.1**).

Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?

This was not a recommendation included in '[Hearings for Children](#)' However, we are aware that some advocacy providers have highlighted a particular issue with advocacy workers being provided with relevant information and updates to help them support children and families. Advocacy providers have told us that they can often be excluded from papers and updates and only receive information second-hand via the young person or at very short notice.

. We see no harm in there being a statutory provision for relevant information to be shared with advocacy workers where this is appropriate, in line with ECHR rights, however we would welcome further discussion about what the current barriers are and any unintended consequences.

Amplifying children's voices throughout the process (Pg 20-21)

Do you support the creation of a statutory process, undertaken by the Children's Reporter, to record the capturing of children's views and participation preferences?

This question merges a number of different, related recommendations and muddles the respective roles of the Reporter and the Chair in a redesigned Children's Hearings System.

In terms of capturing children's views prior to a referral to a Hearing by the Reporter, we support the creation of legislative changes to ensure children and

families' participation and voices are at the heart of a redesigned Children's Hearings System.

'[Hearings for Children](#)' made a clear recommendation that once a referral has been received, the Reporter must work more closely alongside children and families, where possible (**recommendation 4.3**). This includes ensuring that the voices, views and experiences of children and their families are routinely part of the Reporter's investigation. This was accepted by the Scottish Government. As part of this, **recommendation 4.3.1** states that there must be consideration of a statutory duty on the Reporter to seek the views of the child and family if they wish to share them (not just to record the views).

The rationale for this is set out in Pages 122-124 of '[Hearings for Children](#)'. There is currently no legislative barrier to this happening in practice and the moment, and indeed the report makes clear that this does sometimes happen. A statutory duty on the Reporter to seek the views of the child and family (not just to record or capture them) would help to ensure clarity and expectations around processes and ensure that this happens routinely—not just 'sometimes'.

However, the report also notes that while this approach may lead to more productive relationships with the Reporter which might minimise the need for compulsion, the Reporter must not become another 'professional' involved in the lives of children and families and there must be safeguards against children and families retelling their stories. The report is very clear that when children and families views have already been told and noted down (for example at CPPMs, any Family Plan developed during an FGDM, Looked After Child Reviews and other meetings) and when the social work report provides a full sense of the families' circumstances or when the family has explicitly confirmed they do not wish to meet the Reporter, the Reporter should use their professional judgement on how to proceed.¹⁷

. There must be measures to ensure that any statutory duties enhance the role of the Reporter and their understanding of children and families circumstances so that they can make decisions based on their views and experiences rather than this being a 'tick box' exercise. The duty must not be to create another report to record how views were sought, but rather to ensure children and families' right to participate in decisions that affect them are upheld.

As per our response to the question on advocacy, we support an earlier offer of advocacy in the Children's Hearings System and would support a duty on the Reporter to ensure that an offer has been made to the child.

The other part of **recommendation 4.3**, which was accepted by the Scottish Government, must be implemented. **Recommendation 4.3.2**, is about ensuring

¹⁷ Hearings for Children, 2023, Pg 123

the Reporter makes connections between other simultaneous child care and protection processes, and removing duplication, confusion and overwhelm where possible. This links to **recommendation 7.5** about a national review of multiple ongoing child protection, care and support processes and meetings to identify where unnecessary duplication takes place, where drift and delay is introduced and where information should be better shared collaboratively. The Scottish Government has stated that preparatory work to support the process of a review has begun and this should feed into ongoing discussions about potential legislative reform to better capture children and families' views, reduce trauma and duplication and enhance participation.

We have responded to other questions about the enhanced role of the Reporter throughout this consultation response, however it is important to be clear that **recommendation 4.3** aligns with **recommendation 3.5**, which was accepted by the Scottish Government, about an enhanced role for the Reporter prior to the Children's Hearings System. Going forward these recommendations must be implemented together, rather than separately.

In terms of capturing children's voices and participation processes in Children's Hearings themselves, the changes described in "[Hearings for Children](#)" were about a new way of working which puts children and families' participation front and centre of the Children's Hearings System and supports members of the workforce—from social work to advocacy workers to lawyers, Chairs and Reporters—to work in a relational way alongside children and families. Some members of the workforce told the Hearings System Working Group that this happens already, and others shared a view that resources and capacity meant that it was difficult to work in the way described in the recommendations.

The proposal in the consultation paper about a 'best interests' test was not a recommendation, and it is unclear to us how this would work in practice. In particular, the recommendation in '[Hearings for Children](#)' is about ensuring the Chair is satisfied that views have been sought as part of the robust participation process. We have responded in detail to the other questions in this consultation paper about participation and attendance and our response to this question should be read alongside these.

It is also unclear, in the absence of a final review of the functions of CHS and SCRA, (**recommendation 2.7**) how the respective roles of the Reporter and a different role for the Chair in a redesigned Children's Hearings System would implement the specific recommendations around participation and engagement of children and families. For example, **recommendation 8.2** states that after grounds are established, any communication sent to the child and their family relating to the processes and decisions of the Hearing should come in the name of the Chair. **Recommendation 8.6** states that there must be exploration of the feasibility relating to CHS being the organisation responsible for deciding on a date and

location of a Children’s Hearing. This was accepted with conditions by the Scottish Government.

In the absence of a final decision on these recommendations it is difficult to comment on a statutory duty around preparation that may, in a redesigned Children’s Hearings System, sit better with CHS rather than SCRA. There must also be alignment between any statutory preparatory functions and the other related recommendations in Chapter 8 about making procedural decisions, an option to meet the Chair in advance of a Hearing, child and family- friendly scheduling and pre-Hearing panels and pre-Hearing meetings. These are discussed elsewhere in our response to this consultation.

The rationale behind a more robust preparation stage prior to a Children’s Hearing taking place is set out in Chapter 8 of ‘[Hearings for Children](#)’ (The Participation and Preparation before a Children’s Hearing) which make a number of key recommendations about children and families’ involvement. A robust preparation phase is not merely intended to make necessary arrangements about participation, but to draw out more explicitly any potential tensions and triggers likely to impact on the conduct of a Hearing, allowing for rigorous and thoughtful planning about how proceedings should take place, and sequencing of discussions or information being shared. This preparation ensures the potential for high levels of conflict is significantly reduced and will enhance the inquisitorial nature of a Children’s Hearing, so that when a Hearing takes place a Chair is alert to the different dynamics, including the need for safety planning and potential re-traumatisation and distress.¹⁸

Any statutory changes should be aligned with this rationale and should seek to improve children and families’ participation and engagement in an inquisitorial Children’s Hearings System.

Before the Hearing—Provision of Papers (Pg 21-22)

Should the timeframes for the provision of papers in advance of a Children’s Hearing to the child and relevant persons as set out in the 2013 Rules of Procedure be altered?

Yes.

As stated in the consultation paper, the Hearings System Working Group heard from both children and families and from members of the workforce that they do not always have enough time to understand and process the information that

¹⁸ Hearings for Children, 2023, Pg 183

they are provided. Sometimes this includes vast amounts of information and lengthy and complex reports.

Scotland must recognise that life changing decisions are being made about children and families. The quality of decision-making focuses on high quality information that is processed and understood. This is also likely to increase the participation and engagement of families who have had time to process and discuss the information shared about their lives. This includes engagement and discussion with legal representatives, where appropriate.

We note that **recommendation 8.18 and 8.19**, which refers to adequate time to process and receive papers also emphasises the importance of support for children and families receiving their papers. The recommendation is also clear that information shared with children and their families must be proportionate and necessary and steps should be taken to minimise trauma, distress and misunderstanding. This does not require legislative change, but in practice is not always easy to facilitate given the extraordinary pressures facing social work. This must be addressed as a matter of urgency, and there should be alignment with other recommendations relating to the alignment of other ongoing child protection, care and support processes (**recommendation 7.5**), the drafting and writing of reports (**recommendation 8.15**) and the importance of using the 'language of care' (**recommendation 2.2**).

Should the timeframes for the provision of papers to the children's Panel Members as set out in the 2013 Rules of Procedure be altered?

Yes. See our response above and recommendation 8.17, which states that all reports must be shared with plenty of time for Panel Members to review them. There should be room for judgement as to how much time Panel Members require, but given the gravity and complexity of decisions being made at the Hearings there must be enough time to properly read and understand the papers provided to help inform strong and robust decision-making.

It should be noted that a remunerated Panel and a Chair with the role described in the report may have more time to digest and process the papers given they may no longer be volunteers juggling other commitments.

Grounds for Referral—concept and language (Pg 23-25)

Do you consider the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the Children's Hearings System?

No.

The Hearings System Working Group heard that there are significant issues with how grounds are framed and understood and the processes for establishing them. Instead of there being a rights-based approach which places the best interests of a child front and centre, establishing grounds can feel transactional, adversarial and traumatic for children and their families. Grounds for referral can sometimes have the feel of a criminal charge confronting parents with their alleged failings, making it difficult for them to readily accept that a referral is in the best interests of their child.

Grounds framed from the perspective of a child's rights, rather than sounding like a criminal charge, might facilitate their understanding of the process.¹⁹ This does not, however, mean that grounds should not reflect the serious nature of what has happened or should seek to not use technical or legal language where this is appropriate. Rather, that there should be ways to ensure that children and families understand the grounds and they are framed around children's rights, in line with the UNCRC.

Do you agree that there should be changes to the current approach to grounds of referral?

Yes.

'Hearings for Children' describes in detail the reasons for and a new approach to establishing grounds in Chapter 5 (The reasons the Children's Hearings System has become involved in a child and family's life). This includes:

- Framing grounds from the perspective of a child's rights (**recommendation 5.1**)
- Establishing grounds in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings (**recommendation 5.1.3**)
- A more relational way of working to agree grounds (**recommendation 5.1.4**)

The removal of Grounds Hearings led the Hearings System Working Group to propose different steps to be put in place—it should be noted that this proposal did not include a Legal Member or a Fact Finding Hearing. More information is set out in detail on Pages 138-142 of 'Hearings for Children'. The primary focus of the Group was on children and families' experiences of the Children's Hearings System so that the first Children's Hearing takes place in the context of the matter of the grounds for referral already resolved, so it can focus on addressing the

¹⁹ Hearings for Children, 2023, Page 135-137

issues of concern and making decisions alongside children and their families in the best interests of the child.

Do you agree with the proposal to set grounds positively as a range of wellbeing-orientated entitlements, before clarifying how the child's experience or conduct falls short of expectations- to the point that compulsory care is needed?

No.

The **recommendation (5.1)** from the Hearings System Working Group, based on the work that has already begun to be undertaken by SCRA was that the drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.

The report was clear that this does not mean that negative allegations can, or should, be avoided or that there should be avoidance of welfare considerations in favour of discussions about wellbeing. A rights based approach would be clear about what a child's right is and what the concerns are about how that right is not being upheld. It would address whether a referral to the Children's Hearing and the use of compulsory measures are a proportionate response to the needs of the child and consistent with upholding their rights. It should be drafted in a way that encourages and facilitates open and honest conversations—and, crucially, in a way that everyone can understand.²⁰

If a new scheme of grounds based on unmet expectations around wellbeing indicators were to be introduced, are any safeguards needed (statutory or operational)?

Yes.

Engagement between the Children's Reporter and children and families (Pg 26-27)

Do you support the introduction of the offer of a post- referral discussion between the children's Reporter and the child and family?

We support any measures to reduce the adversarial nature of establishing grounds and would strongly encourage this proposal to be considered alongside

²⁰ Hearings for Children, 2023, Page 136

the other recommendations in '[Hearings for Children](#)' around changes to the way grounds are established in a redesigned Children's Hearings System.

If a post-referral discussion is intended to mean a meeting between the Reporter and child and family after a referral to the Reporter before the Reporter has made a decision we have discussed our views on the Reporter's engagement with children and families (and **recommendation 4.3**) in our response to that question.

If a post-referral discussion is intended to mean after a referral has been made to the Hearing and links to the establishment of grounds where a Reporter may arrange a meeting to see if grounds can be agreed we think that there would be some benefit to this for the reasons set out in '[Hearings for Children](#)' in terms of a more relational way of working to agree grounds (**recommendation 5.1.4**) However, it would be important to ensure that this is an option to have a meeting rather than a statutory obligation to have a formal meeting. The recommendation is clear that the Reporter should exercise professional judgement to determine when children and families might be able to discuss grounds.

Who else, if anyone, should attend a post-referral discussion?

See response to question above.

Establishing grounds of referral—the Legal Member (Pg 28-30)

What would be the advantages and disadvantages of passing the fact-finding function from Sheriffs to a new cohort of legal members within the redesigned Children's Hearings System?

The proposal and recommendations set out in '[Hearings for Children](#)' in terms of removing Grounds Hearings has not been given equal weight and attention to the proposal around a Legal Member in this consultation document.

Throughout almost two years of in-depth collaborative redesign work, , analysis and engagement with , children, families, care experienced adults with experience of the Children's Hearings System, as well as kinship carers, birth parents, foster carers and members of the workforce , the concept of a Legal Member or Fact Finding Hearings did not arise. At no point throughout the lifespan of the Hearings System Working Group did we hear a suggestion that a new tier tribunal should be created within the Children's Hearings System.

We have not heard any suggestion that there is a problem with the decision-making undertaken by Sheriffs or that such a radical change is needed to address

the core issue at the heart of this proposal—of which there does not appear to be any dispute—that there is a need to separate out the adversarial from the inquisitorial parts of the Hearings.

Sheriff David Mackie, the Chair of the Hearings System Working Group has shared his concerns about the concept of a Legal Member in a blog post²¹ and we share those concerns.

The proposals set out in '[Hearings for Children](#)' relating to changes to Grounds Hearings (**recommendation 5.1**) are intended to ensure that there are no more Grounds Hearings—and instead the Sheriff Court would be the appropriate route for establishing grounds. There are also a number of recommendations aimed to eliminate drift and delay in establishing grounds (**recommendation 5.4**) which we have set out in response to the specific questions in this consultation relating to timescales and drift and delay.

These recommendations, if implemented, will address the concerns about the capacity of the Sheriff Court—particularly given that it is anticipated that the number of children entering the Children's Hearings System will significantly reduce as [the promise](#) is kept. It is also important to note that the number of contested grounds is likely to reduce if the Reporter works in the way set out in 'Hearings for Children' and in the way discussed in response to other questions in this document.

We are clear that the solution to the issue of Court capacity and consistent Sheriffs) is already set out in other recommendations in the report including the recommendations about addressing drift and delay when grounds are established (**recommendation 5.4**) and **recommendation 2.3**, which states that consideration must be given to the specialisation of Sheriffs for involvement in Children's Hearings Court hearings and other proceedings relating to children and families. The focus must not be on making complex changes to reduce Court capacity but on children and families' experiences and ensuring their voices are listened to and their rights are upheld.

Do you consider that this proposal fulfils the intention of the recommendation from the Hearings for Children report that there should be a consistent specialist Sheriff throughout the process?

No.

Our understanding is that in the new proposal the person making decisions would not be a Sheriff.

²¹ <https://thepromise.scot/news/sheriff-david-mackie-public-consultation-on-children%E2%80%99s-hearings-redesign>

The proposal of a Legal Member and Fact Finding Hearings was not a suggestion or idea that emerged from the Collaborative Redesign Process undertaken throughout the lifespan of the Hearings System Working Group. At no point did the Group hear of any concerns about the decision-making of the Sheriff or about the quality of decisions the Sheriff was making. Instead, the point was consistently made by children, families and members of the workforce that the people making life changing decisions about children should be consistent wherever possible. The recommendation in '[Hearings for Children](#)' was that the Sheriff should be consistent (**recommendation 5.2.2**)—not that there should be a new decision maker.

Do you have any views on the proposed retention of the appeal arrangements- appeals going from legal member to Sheriff- within a redesigned Children's Hearings System?

See our comments above relating to the Legal Member. Introducing another decision maker into an already complex system and—even more importantly—into children and families' lives is not advantageous. The added bureaucracy of children and families' lives being moved in discussion from the Reporter to a Legal Member to the Sheriff and then to a Chair is overwhelmingly complex and confusing. It would also not be appropriate for a Sheriff to make final decisions on appeals when they have not been involved in the process thus far.

Other than a legal member or Sheriff is there another person or body who could:

Present the statement of grounds to the child and family and receive responses?

Make interim orders?

No.

The core issues that children have raised time and again with the Independent Care Review and with the Hearings System Working Group are to do with reducing the adversarial nature of Children's Hearings, consistency of decision-making and reducing 'drift and delay'. There were no issues raised with the Sheriff and no particular need raised to find another person or body who could present the grounds or make interim orders. Instead, the issues raised were about reducing the adversarial nature of Children's Hearings, consistency of decision-making and reducing 'drift and demand'. The proposals contained within '[Hearings for Children](#)' and the recommendations that were broadly accepted by the Scottish

Government address those specific areas, with the intention of improving the experiences—and therefore the outcomes—for children and families.

Fact Finding Hearings (Pg 30-31)

What would be the advantages and disadvantages to replacing grounds hearings with a fact finding Hearing where the process would be undertaken by a single 'legal member'?

See response to question above.

Is it proportionate and necessary for there to be a fact finding Hearing in every case?

See response to question above.

Babies, infants, very young children and the grounds of referral (Pg 31-32)

In order to safeguard the interests of very young children, should the legal member or Sheriff have discretion to convene a fact finding Hearing, even if all relevant persons accept the statement of grounds?

See response to question above.

Do you have any other views about how the youngest children should be supported in this part of the process to establish grounds of referral?

See our response to the question above about the rights, voices and experiences of young children. In particular, there should be no requirement for young children to agree with the grounds for referral (**recommendation 5.6**).

The structural and systemic delays in establishing grounds must be identified and eliminated, which the report notes is particularly important for younger children for whom the long delays in decision-making can impact on their relationships and ability to develop strong and lasting attachments in the formative years of their lives. To address this, the report recommends considering a statutory three month set time limit for determining grounds; introducing measures to prioritise the developmental needs of infants and babies; and understanding whether a flat rate fee structure or changes to legal aid would support the timely establishment of grounds (**recommendation 5.4**).

Training and support for Panel Members around the developmental needs of infants and babies (referred to throughout the report) should be prioritised. Legal representatives should also have an awareness and understanding of the particular needs of babies and infants with respect to attachment and their developmental milestones and timescales.

Statutory time limits in establishing grounds of referral (Pg 32)

A period of three months has been suggested as a time limit for triggering a review where an application to determine the grounds of referral has not been dealt with. Do you support a defined time period for triggering a review of the progress of the case?

No—the recommendation was not about a review being “triggered” but about considering the introduction of a statutory three month set time limit for the determination of grounds.

The Hearings System Working Group heard significant concerns about the length of time it takes to establish grounds. The average length of time between the Reporter receiving a referral about a child, grounds being established and a Hearing making a decision about a child and their family is approximately 8.5 months. Establishing grounds of referral, when facts are disputed, can take on average approximately 3.5 months, although the Group heard examples of children and families waiting up to six months—or even a year.²²

In order to address this, ‘[Hearings for Children](#)’ made a number of recommendations that must be considered together—implementing statutory time limits will not achieve the desired aim of reducing drift and delay and increasing good-quality decisions made within appropriate timeframes for children in the absence of additional measures to reduce and eliminate drift and delay. These include:

- Addressing current delays to the Court system and undertaking a review to identify and eliminate the structural and systemic delays in establishing grounds.
- Prioritising the developmental needs of babies and infants in light of the significance of the first three years of a child’s life.
- Considering how the legal profession may help to reduce systemic drift and delay, including whether a flat rate fee structure would make a difference.
- Pro-active ‘case management’ by the Sheriff, using the tools at their disposal for the expeditious determination of disputed grounds for referral.

²² Hearings for Children, 2023, Pg 142

In terms of the time limit, **Recommendation 5.4.1** states that the benefit of a statutory three month set time limit for the determination of grounds should be considered. Importantly, the recommendation is also clear that there should be scope for this to be extended in extreme circumstances, at the discretion of the Sheriff. This could be similar to the introduction of mandated timescales for decision-making in England and Wales. We agree with the rationale set out in '[Hearings for Children](#)' that this would introduce a discipline among practitioners, relevant persons, and other participants in the proof that would have the overall effect of limiting unnecessary drift and delay.

If you support defining a time period, but not the suggested three months, should another time period be considered? Please explain why?

As set out above, we agree with the proposal in '[Hearings for Children](#)' that the implications and consequences of a three month time limit for determining grounds should be explored. However, any legislative change must include provision for this to be extended in extreme circumstances, when this is in the best interest of the child.

Potential involvement of Safeguarder in grounds establishment proceedings (Pg 32-33)

Do you agree that there should be earlier consideration of the appointment of a Safeguarder in a redesigned system?

Yes.

It should be noted that it is currently possible to appoint a Safeguarder during the process to establish grounds. **Recommendation 5.3** specifically states that this should be **routinely** considered. For some families, a Safeguarder can be the catalyst for resolution by explaining processes and procedures relating to grounds to parents in an objective and non adversarial manner. In appropriate cases, the Sheriff might appoint a Safeguarder to consider any disputed issues, to speak to the relevant persons and professionals and to prepare a report containing recommendations as a means of accelerating the establishment of grounds, or not, as the case may be. The Safeguarder can bring clarity on the facts and a moderation of the levels of antagonism and opposition.²³

This recommendation should be considered in the broader context of changes to the process of establishing grounds, set out in Chapter 5 of '[Hearings for Children](#)'

²³ Hearings for Children, 2023, Pg 141

and there should be a specific focus on reducing drift and delay through the proposals described on Pages 142-144.

It should also be considered in conjunction with the implementation of **Recommendation 10.2** about the role of Safeguarders. This states:

- There must be active management of the role of Safeguarders as the changes around the children's hearings system are implemented.
- The governance processes must enable highly skilled and qualified Safeguarders and should continue to facilitate excellent oversight and review to ensure the conduct and contribution of Safeguarders matches the ethos of the redesigned children's hearings system .
- At every point of instruction of a Safeguarder, there must be clarity about what is being asked of them and what the focus of their enquiry and contents of the report should be.
- Children and their families should be clear what the role of Safeguarders is and how this role aligns with the other people that are attending and contributing to the discussions about their lives.
- There must be an understanding that Safeguarders appointed at the stage grounds are established may not require to remain involved at the stage of the Children's Hearing, but that their continued involvement may add value and be in the best interests of the child. There should be consideration of the legislative provisions around appointment of Safeguarders to support this approach of active consideration of the need for the Safeguarder as proceedings move from Court to the Children's Hearing.

Should the proposed legal member have discretion to appoint a Safeguarder to assist them with establishing the grounds of referral?

No.

See our comments on the question about the proposed Legal Member, which outline our concerns and comments about this proposal. During the lifespan of 'Hearings for Children' we did not hear any concerns about the current process where a Sheriff would be the person to appoint a Safeguarder at this point in the Children's Hearings System.

Do you support the suggestion that a Safeguarder's early appointment to a child (before grounds have been established) should be presumed to end once grounds have been established?

No.

The way that this question is framed does not accurately reflect the recommendation in 'Hearings for Children'. **Recommendation 10.2** in 'Hearings for Children' is clear that there must be an understanding that Safeguarders appointed at the stage grounds are established may not require to remain involved at the stage of the Children's Hearing, but that their continued involvement may add value and be in the best interests of the child.

This means that there must be an understanding that once grounds are established a Safeguarder may longer be required—but there should not be a presumption that they will no longer be required until it has been established that a Safeguarder will no longer add value or be in the best interests of the child.

The recommendation is clear that there should be consideration of the legislative provisions around appointment of Safeguarders to support this approach of active consideration of the need for the Safeguarder as proceedings move from Court to the Children's Hearing.

Pre-birth activity by the Children's Reporter (Pg 33-35)

How could a redesigned Children's Hearings System better protect babies shortly after their birth?

Pages 109-112 of 'Hearings for Children' specifically describe the role of the Reporter before a child is born. Changes to current processes prior to a child being born and to support for parents was a core element of discussions during the Hearings System Working Group.

At present, no referral, investigation or Children's Hearing can take place before a child is born. Where those working alongside parents are significantly concerned and believe that there is a need for compulsory measures to keep a child safe, this means that the Reporter can currently only become involved in the discussions relating to the child and in the lives of the child and family once a baby has been born. This results in an incredibly distressing and traumatising scenario where a Child Protection Order is required, and parents are expected to attend a Children's Hearing two days after the birth of the baby.

'[Hearings for Children](#)' states that in a redesigned Children's Hearings System, when it is considered that compulsory measures may be required immediately upon a child's birth, the Reporter could be engaged, and preparation of draft grounds of referral must begin before a baby is born.²⁴

²⁴ Hearings for Children, 2023, Pg 110

The specific elements of **recommendation 3.6** state that when it is considered that compulsory measures may be required immediately upon a child's birth, the Reporter must be engaged in multi-agency processes and decision making and must be empowered to undertake an investigation and prepare draft grounds for referral before a baby is born.

They also state that, wherever possible, the Reporter's investigation prior to a baby being born must involve seeking the voice of expectant parents.

The Hearings System Working Group took legal advice in relation to this position, which it has shared with the Scottish Government. The advice clearly confirmed that there is no legal impediment to such a rights-based approach, The Hearings System Working Group set out some suggestions about how the process would work, in line with proposals from the Collaborative Redesign Project. These are set out on Page 111 of 'Hearings for Children' and include:

- Exploring and exhausting voluntary options prior to a referral to the Reporter.
- Provision of intensive family support services.
- Routinely involving the Reporter in pre-birth planning meetings.
- Seeking the voice of expectant parents during the investigatory stage undertaken by the Reporter (see our response to the other specific questions about this in another part of this consultation response)
- Offering expectant parents legal support and the support of an advocacy worker.

What can be done to improve interagency pre-birth preparatory work?

See our response to the question above.

Pre-referral involvement of the Children's Reporter (Pg 35-36)

Do you agree that non-statutory action (practice improvements and guidance updates) is sufficient to deliver an enhanced pre-referral role for the Children's Reporter in a redesigned Children's Hearings System?

No. There is likely to be a need for statutory changes to the way the Reporter can engage with families before a child is born. See our responses to the specific questions on this issue above.

Our understanding is that statutory changes are not required in order to make the changes described in 'Hearings for Children' to the role of the Reporter set out in **recommendation 4.3**, however it may be desirable to enshrine them in statute

for the avoidance of doubt and for clarity. This provision would need to be flexible rather than being overly prescriptive—but could serve an important purpose in ensuring that all members of the workforce and children and families are explicitly aware of how this part of the system operates and what their rights are.

See our response to the other questions about the way the Reporter works alongside children and families.

In terms of **recommendation 3.5**, which states that the role of the Reporter prior to a referral being made to the Children’s Hearings System must be enhanced, there may be some advantage in introducing a statutory duty or providing additional guidance that is clear that the engagement of the Reporter must routinely be considered during other child protection and care and support meetings and discussions, and there must be a consistent approach to partnership working between agencies and the Children’s Hearings System.

This does happen in practice at the moment, but was much more common prior to the implementation of the 2011 Act. The Hearings System Working Group heard that many members of the workforce thought it would be helpful to return to this way of working.

The Scottish Government’s response to this recommendation notes that it is closely tied to the recommendation in Chapter 7 of the report that calls for a review of processes and meetings that involve children and families (**recommendation of 7.5**) and that the outcomes of any review are likely to inform the approach taken to **recommendation 3.5**. It would be helpful to understand how this work is progressing and how it aligns with potential changes to the role of the Reporter.

Children’s Reporter’s ability to call a Review Hearing (Pg 36-37)

Do you think it would be appropriate for the Children’s Reporter to be able to initiate a Review Hearing before the expiry of the relevant period?

Yes.

Recommendation 12.8 states that the Reporter should be given the discretion to call for a Review Hearing without the need for new grounds to be investigated and established, where appropriate.

Do you think the statutory three-month period should be revised so that individuals who are entitled to request a review of a child’s CSO can do so within a shorter time period?

Yes. We understand the rationale behind this proposed change, however it will be important to ensure that safeguards are put in place to ensure that this is not inappropriately or excessively used. This includes use by perpetrators of domestic abuse who may seek to use it as a measure of coercive control.

Re-referrals to the children’s Reporter within a given timeframe—a trigger for other action? (Pg 37-38)

Do you consider that a child being re-referred to the children’s Reporter within a certain timeframe should result in that ‘re-referral’ being treated as a continuation of the pre-existing referral?

Yes.

‘Hearings for Children’ **recommendation 12.9** states that mechanisms should be created to enable the Reporter to draw the attention of the Chair to new information that is thought to be relevant to the decision making of the Hearing, whether or not it reaches the threshold for a new statement of grounds. However, this provision must be compliant with the UNCRC and ECHR and there must be a consideration of where this is inappropriate due to the significant change in circumstances that leads to the need for the establishment of new grounds.

If yes, what would be an appropriate timeframe from the original referral for re-referrals to be treated in this way?

See our response above.

A redesigned Children’s Panel (Pg 40-42)

Do you believe the children’s panel element of the Children’s Hearings System should retain the unpaid lay volunteer model in whole or in part?

The starting- point must unequivocally be what children and young people have repeatedly shared with the Independent Care Review and with the Hearings System Working Group: that they would like to see consistent decision makers when important decisions are made about their lives.

This is not only shared by children and young people but by members of the workforce. It is also important to heed the existing concerns about the fragility of the volunteer model due to problems with recruitment and retention.

The Hearings System Working Group did not arrive at a decision about remuneration because of a desire to pay Panel Members, but rather felt it was the only option given the increasing complexity of children and families' circumstances, the need for diversity and community representation on the Panel and the changes to the role, skills and qualities of the Chair as set out in the report.

This conclusion is not about the many dedicated, skilled and compassionate volunteers who have been committed to the existing Children's Hearings System for a long period of time. Rather, there is a need to consider how best the system can modernise and adapt to meet the needs and uphold the rights of children and families as the 'care system' changes over time as [the promise](#) is kept and as different demands are placed on those working within it. This includes a significant increase in the complexity of challenges facing the children and families who engage with the Children's Hearings System.

As set out in '[Hearings for Children](#)' over Pages 169-174, the Hearings System Working Group felt that in the current Children's Hearings System there has been a departure from the original Kilbrandon principles which the Group felt should be restored. Panel Members should be recruited based on personal not professional qualities. Panel Members must be relieved of the expectation of additional or specialist skills and knowledge, allowing them to focus on where the best interests of the child lie in each Children's Hearing. Panel Members must be from communities that are local to the child and family the Hearing is about.

The assessment of the Hearings System Working Group was that achieving the level of continuity that is desired by children, families and members of the workforce (see our response to the following question about continuity and consistency), alongside the quality of decision-making and comprehensive writing is likely to only be achieved by the appointment of salaried Chairs and remunerated Panel Members. .

The Kilbrandon Committee wrote that it *"might 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."*²⁵ Changes to the volunteer model in this regard does not and will not mean that Scotland is moving away from the Kilbrandon principles, but rather renewing its commitment to them and ensuring they are fit for generations to come.

We can see multiple advantages, outlined in the report, to ensuring a new approach to remuneration of Panel Members—including with respect to increasing the potential diversity of Panel Members, ensuring that there is an appropriate mix of tribunal, legal and specialist skills in place and ensuring

²⁵ The Kilbrandon Report, Children and Young Persons Scotland, para 225

availability of Panel Members to achieve the continuity children and young people have so passionately described.

Would you support some measure of payment for Panel Members, over and above the current system of expenses, in return for the introduction of new and updated expectations?

Yes.

The starting point must be what children and families' experiences must be in a redesigned Children's Hearings System.

The Children's Hearings System is currently served by 2,483 volunteers who give their time, skills, energy and dedication to uphold the welfare-based approach to children that is embedded within the Children's Hearings System. The evidence is clear that the needs of the families referred to the system are increasingly complex, with multi-faceted issues and oftentimes historic involvement with the 'care system' and inter-generational trauma. The assessment of the Hearings System Working Group was that the burden of this responsibility should not be placed on the unpaid workforce, however skilled and committed that workforce might be.²⁶

It is important to differentiate between the role of the Chair and the role of other Panel Members in a redesigned Children's Hearings System. This is described in detail in Chapter Seven of "[Hearings for Children](#)" ('The people making decisions at a Hearing') and in our response to the question above and the question below.

Do you have any views on the introduction of new roles into the children's panel –

- o Paid Chair.**
- o Paid specialist Panel Member – possibly including care-experience.**
- o Paid Panel Member.**
- o Volunteer Panel Member.**

It is important to be very clear that the roles described above are not new roles, rather the option for payment or remuneration is new.

The option to offer remuneration to Panel Members must be contingent on the proposed changes to recruitment and training and the way a Chair and Panel operates, as described in detail in Chapter Seven of '[Hearings for Children](#)' ('The

²⁶ Hearings for Children, 2023, Pg 36

people making decisions at a Hearing). 'Hearings for Children' clearly sets out the views of the Hearings System Working Group around the role of:

- A Paid Chair on Pages 165-167, **recommendation 7.1**. This was accepted by the Scottish Government, with conditions.
- Paid specialist Panel Members on Pages 171-172, **recommendation 7.2.4**. This was accepted by the Scottish Government and our views on this are set out on the specific response to the question about specialist Panels.
- Paid Panel Members on Pages 169-172, **recommendations 7.2.1 and 7.2.2** (which were accepted with conditions).

The report does not make a distinction between volunteer Panel Members and Paid Panel Members due to the recommendation about remunerating Panel Members in order to increase diversity and continuity—see our other comments in response to other questions for our detailed response on payment of Panel Members. The recommendations and page numbers above are specifically about the role of Panel Members and a paid Chair in a redesigned Children's Hearings System.

Recommendation 7.2.3, which was accepted by the Scottish Government, is clear that the training of Panel Members must meet the needs of an inquisitorial Children's Hearings System and must include an understanding of the broader 'care system'. All Panel Members must receive opportunities to continuously develop their skills and reflect on the way that they engage with children and families, and their role.

Recognising that payment of Panel Members/ Chairing Members would represent a significant new national investment in decision-making, do you have views on priority resourcing for other parts of the system?

'[Hearings for Children](#)' sets out a renewed vision for Scotland's Children's Hearings System that should be viewed as a whole. It describes transformational change, not an improvement agenda. As Sheriff Mackie states in the foreword to the report "*implemented and resourced in full, [the recommendations] will herald a step change not only for the Children's Hearings System but for how we work alongside children and families in Scotland.*"²⁷ The report is a direct response to the conclusions of [the promise](#), in particular where it is clear that the Children's Hearings System must shrink and specialise and the number of children needing compulsory measures must reduce.²⁸

²⁷ Hearings for Children, Pg 15

²⁸ The promise, 202, Pg 44

When considering which elements of a transformed Children's Hearings System will require additional investment it is crucial to hold that overall vision outlined in both [the promise](#) and 'Hearings for Children'.

The vision outlined in [the promise](#) is a Scotland where more families are able to stay together and thrive, wherever safe to do so. This will result in a significantly smaller, more specialised 'care system'. This opportunity to design a new future around that vision, rather than being constrained by what is possible in the current system, must be grasped for the reality to match the rhetoric.

In short, when significant changes are made in one part of the 'care system', impacts will be felt elsewhere. This means that although significant investment will be required in a new decision-making model where the focus is on a Chair that works differently alongside children and families and where specialised training and skills are invested in, that Scotland must work to ensure that the number of children and families engaged with the Children's Hearings System reduces over time. As stated in 'Hearings for Children', the Children's Hearings System must be engaged at the most appropriate time for those children and families who need the additional support of a legal order.²⁹

'[Hearings for Children](#)' is unequivocal about how a reduction in the number of children referred to the Reporter must be achieved: key to achieving this is significant and persistent improvements to the broader child protection, care and support landscape, including a substantial upscale in universal family support services and access to more intensive support when children and families need it.

The Hearings System Working Group is crystal clear in Chapter 1 of "[Hearings for Children](#)" that if the following areas are not addressed the redesign will not be successful and these areas must therefore be prioritised:

- The availability of, and access to, early help and support for children and their families . This includes concerted and coordinated leadership, oversight, investment, and prioritisation of the provision of appropriate, high quality, accessible, early help and support for children and their families, and realising the commitment to 5% preventative spend. Recommendation 1,2 is clear that a national plan must set out how this will happen in Scotland by 2030. This was accepted by the Scottish Government in its response to the report. (**Recommendations 1.1, 1.2, 1.3 & 1.4**)
- Access to Family Group Decision Making and Restorative Justice (**Recommendation 1.7**)
- The recruitment and retention of social workers (**Recommendation 1.5**)

²⁹ Hearings for Children, Pg 101

- Maintaining and sustaining the children and families' workforce, including the third sector workforce (**Recommendation 1.6**)
- The pervasive impact of poverty (**Recommendation 1.8**)

The priority for investment must be on the areas identified in Chapter 1 of the report, without which it will not be possible for the system to 'shrink and specialise' in the way described by [the promise](#).

In implementing these recommendations, it is important also to be mindful of the fragility of the existing volunteer model and ongoing challenges relating to recruitment and retention—particularly in terms of meeting the requirements demanded by the implementation of the Children (Care and Justice) (Scotland) Act 2024.³⁰

'[Hearings for Children](#)' is also clear about the need for clear sequencing and identified priorities. Chapter 14 makes specific recommendations about how the recommendations should be overseen and implemented. The Hearings Redesign Board is currently convening to discuss many of the recommendations, but there remains a need for a coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of all the recommendations that have been accepted and are being consulted on reviewed and discussed by the Scottish Government and other duty bearers.

Does every decision taken by a Children's Hearing need to be taken by three children's Panel Members in a redesigned system?

No. As noted in our response to the questions about a separation of procedural decision-making, '[Hearings for Children](#)' recommends that there are some decisions that can be made by the Chair described in the report.

The Hearings System Working Group did not hear any concerns or objections about the current three Panel Member model for Children's Hearings themselves, with the exception of the recommendations about procedural decisions referred to above. The conclusion of the Hearings System Working Group (**recommendation 6.1.2**) was that the decision-making model must consist of a highly qualified professional Chair accompanied by two Panel Members.

We recognise the existing concerns about the fragility of the current model and the ongoing issues across Scotland relating to recruitment and retention of the workforce that extend beyond the Children's Hearings System. It is our view, and was the view of the Hearings System Working Group, that the recommendations in '[Hearings for Children](#)' would help to improve not only children and families'

³⁰ See, for example, the discussion during the evidence sessions at Stage 2 of the Children (Care and Justice) (Scotland) Bill: [Official Report \(parliament.scot\)](#)

experiences of the Children's Hearings System but also members of the workforces' experiences. An inquisitorial model would help to remove the adversarial nature of proceedings and removing the expectation that all Panel Members should become Chair and making changes to the role in the way that '[Hearings for Children](#)' describes is likely to improve their experiences. This is likely to improve the rates of retention of Panel Members and become a more attractive role, particularly if there is an option for remuneration which will increase the ability and opportunity of people to become Panel Members.³¹

If, as a result of this consultation, Scottish Government decides to explore this area further, it is critical that it tests options is thoroughly. Any tests of change must adhere to the following conditions:

- A test of change must be thoroughly planned and thought through, with a co-design approach being taken alongside children and families.
- There must be appropriate mechanisms to monitor outcomes and appropriate ways of evaluating how it is going, including by asking the views of children and families.
- Children and families must be able to give informed consent and understand what the test of change is about and why it is happening.
- The Chair of the Hearing must be the Chair that is described in 'Hearings for Children' in Pages 165-168, with the appropriate skills and attributes to operate in an inquisitorial manner.
- The Chair and the Panel Member must receive appropriate training as set out in 'Hearings for Children' and [the promise](#).
- A test of change must always be ECHR and human-rights compliant.
- A test of change must not lead to concerns about unfairness for those participation, or confusion or a concern that the current Children's Hearings System is being 'watered down' or losing gravitas which may lead to undermining its integrity at a time when 'Hearings for Children' is clear that its status should be respected.

There must be no wholesale change without a test of change or series of tests of change and robust evidence as to its effectiveness.

Should all Panel Members, on completion of appropriate training, still be required to chair hearings in a redesigned system?

No.

³¹ The promise, 2020, Pg 44

In a redesigned Children's Hearings System the Chair has a very specific role and very specific skills and attributes and should be recruited on this basis. The recruitment of Panel Members in a redesigned Children's Hearings System is different and based on different skills and attributes.

Please refer to our other responses to questions about the role of the Chair for further details, and to Pages 165-168 of 'Hearings for Children', which reflects our positioning. Removing this requirement will also improve the recruitment and retention of Panel Members who often do not want the burden of becoming a Chair.

Would you support some children's Panel Members being paid for 'specialist' knowledge, while others' involvement remains voluntary? E.g. a specialist panel member may have a particular qualification or expertise in childhood development, ACEs, or be a professional with prior experience of working with children in some other capacity.

'Hearings for Children' is clear that the Chair should be a paid role due to the specialist knowledge and skills that they are required to have in a redesigned Children's Hearings System (see our specific responses to questions about the role of the Chair).

'Hearings for Children' also heard that as these recommendations are implemented there might be scope for the development or natural evolution of 'specialist Panels', which may be more bespoke to specific circumstances and respond confidently to the challenges in children and families' lives. For example, Panel Members with additional training and expertise in the developmental needs of infants and babies or with a special focus on children in conflict with the law.³²

Recommendation 7.2.4 states that the potential value of specialist Panels or Panel Members with specialist training should be considered. Learning from Drug and Alcohol and Domestic Abuse Courts could be applied here.

One of the specific things heard by the Hearings System Working Group was that Hearings are becoming more complex—as family circumstances become more complex and the Children's Hearings System shrinks and specialises in the way [the promise](#) demands. Our expectation is that there is likely to be a need for specialist knowledge amongst the decision makers as the number of children referred to the Children's Hearings System decreases but the complexity and level of challenge may increase. There is no expectation that volunteer Panel Members would be required to have the level of specialist knowledge that is described in the report.

³² Hearings for Children, 2023, Pg 172

Would you support the remuneration of a cohort of care-experienced Panel Members?

No.

The promise is clear that having people with lived experience of the care system involved in decision making is fundamentally a good thing. The Children's Hearings System is no exception. It is therefore critical that the redesigned Children's Hearings System attracts and retains Panel Members from a diverse range of background and communities, including those with experience of the care system.

Recruiting and remunerating specifically a cohort of care experienced Panel Members risks stigmatising and 'othering' that group of people, and risks setting an expectation that they play a different, or quasi-representative role in panels.

Ultimately, if there were opportunities for remuneration this is likely to increase the diversity of the Panel Members and some care experienced people may feel able to apply. However, there should be no burden or pressure placed on the care community to be engaged in the Children's Hearings System as adults—even if this is well intended.

Engagement with the Chairing member before the Children's Hearing (Pg 42-43)

Should the chairing member of the Hearing meet the referred child, their family or representatives to welcome them to the centre and offer any appropriate explanations and reassurances before the actual Children's Hearing?

Yes.

Recommendation 8.4 from '[Hearings for Children](#)' is clear that in advance of a Hearing taking place, the child or young person and their family should be offered an opportunity to meet the Chair outwith the formal setting of a Hearing. The recommendation also states that consideration should be given to the production of a note of the meeting shared, with the permission of the child and their family with everyone who has a right to receive information relating to the Children's Hearing by the Chair.

This recommendation was not just about welcoming the child and family to a "centre" but part of a more in depth and inclusive process prior to a Hearing taking place, designed to increase participation, understanding and engagement. The

specific rationale for this is set out in Pages 186-188 in '[Hearings for Children](#)' and the broader recommendations around a child and family's participation and engagement in Children's Hearings and the robust preparation required in a redesigned Children's Hearings System is set out in Chapter 8 of the report.

If an additional orientation / reassurance meeting is held in the Hearings centre with the chairing member, would you support this being an informal meeting?

Yes.

As stated very clearly in '[Hearings for Children](#)', any meeting between the Chair and a child and their family cannot involve making procedural decisions.³³ **Recommendation 8.4** responds specifically to the concerns raised in discussions with the care experienced young people of Our Hearings Our Voice, Better Meetings Moray and the VIP group supported by CELCIS. These young people shared with Sheriff Mackie the importance of knowing, and knowing about, the adults who are making decisions in the lives of children and young people.

The resulting proposal from the Hearings System Working Group was that the Chair should work relationally with the family, but should not intend to form a relationship with the child and their family. The independence of the Chair is a crucial part of the current Children's Hearings System and must remain the bedrock of a redesigned Children's Hearings System.³⁴ There is a need to ensure that this meeting complied with ECHR and all human rights legislation and, as stated above, to consider whether a note of the meeting should be produced and shared with relevant people.

The meeting should be entirely voluntary and there should be alternative ways for the child and family to express their views and preferences about proceedings.

Children's Hearings decision making in a redesigned Children's Hearings System (Pg 43-44)

Do you support the proposal that the Children's Hearing should have a brief period of recess/adjournment before reaching their decision and sharing it with those present?

Yes.

³³ Hearings for Children, 2023, Pg 191

³⁴ Hearings for Childre, 2023, Pg 187

The rationale for a short break in proceedings is set out on Page 159 of '[Hearings for Children](#)' and **recommendation 6.2**, which describes the decision making model. As we state below, we are unclear why elements of the proposed decision making model are being separated out throughout this consultation as it would be more helpful to consider it all together as this is how children will experience it. **Recommendation 6.2** states: decision making model must consist of three distinct phases: (1) a robust preparatory phase; (2) the Children's Hearing followed by a pause in proceedings; (3) sharing the decision with a child and their family verbally and in writing.

The short break will enable the Panel to retire and reflect on the information they have received and to confer on their decision. This will enable Panels to conduct a discussion in private regarding their decision, except in those cases in which the decision is so obvious and self-evident that there is no need for reflection.

This break will also allow the child, their family and other important people in their lives to reflect on what has been discussed, and to decompress and have some time away from the intensity of the Hearing. '[Hearings for Children](#)' describes further actions that must be taken to ensure children and families are safe and protected during this break and to ensure that the break is expected, planned for and children and families are comfortable and understand what is happening.³⁵

Do you agree that the majority decision-making approach should be maintained, in respect of the relevant redesigned three member Hearings?

Yes.

This was an area discussed by the Hearings System Working Group, but the Group did not hear or find any evidence that this needs to change. **Recommendation 6.2** is clear: the final decision will be a majority decision. If there is a dissenting view from a Panel Member, the Chair must reflect that in the written decision.

The short break mentioned in the previous question will allow for Panel Members to discuss their views and reflect on what they have heard. As stated in the consultation paper, this will also avoid the need for three successive decisions and reasons to be narrated as it current practice.

Should the Children's Hearing be asked to reach a unanimous decision during adjournment, in order to minimise repetition and potential retraumatisation?

³⁵ Hearings for Children, 2023, Pg 159

No.

'[Hearings for Children](#)' states on Page 159 that it is expected that the Panel would always endeavour to reach a consensus on decisions. In the event of there being a difference of views there should be a majority decision. It goes on to be clear that a unified and fully expressed decision is likely to elicit confidence in the decision of the Hearing. In some cases, one of the Panel Members might take a different view from the others and such a minority view might be expressed and discussed in the decision; this would not be unusual. It must be incumbent on the Chair to reflect that there was a dissenting view.³⁶

Our response to these questions should be read in conjunction to the responses to the questions below about the other aspects of **Recommendation 6.2**, which sets out the Hearings System Working Group's view of a what the decision making model should look like in a redesigned Children's Hearings System. There should be no repetition and no retraumatisation due to the other changes outlined in Recommendation 6.2, and the other changes in **Recommendations 6.1, 7.1 and 7.2** about an inquisitorial approach and changes to the skills and competencies of the Chair. The way the decision is conveyed to children and families both verbally and in writing will require significant time, resource and competencies and this relies on changes to current practice.

If a majority decision approach remains, would you agree that any dissenting decision should be noted and explained?

Yes.

See answer to our question above.

Decision-making and specificity of measures in a Compulsory Supervision Order (CSO) (Pg 44-45)

Do you agree that it is desirable or necessary to introduce clearer authorisation for particular interventions with children, or particular interferences with their liberty, on the face of measures included in an Interim Compulsory Supervision Order or Compulsory Supervision?

No.

With regard to restraint in particular, [the promise](#) states that Scotland must strive to become a nation that does not restrain its children. Scotland must support its workforce to achieving this in a trauma informed way, building relationships in

³⁶ Hearings for Children, 2023, Page 161

advance so that a child or young person's history, current circumstances and behavioural triggers are known and can be responded to individually.

Restraint must only be used to keep people safe and must always follow a model which focuses on co-regulation, so that the workforce reflects on their responses.³⁷ There is also a need to consolidate and clarify the legislative framework around restraint and improve and put in place robust monitoring and reporting mechanisms. The Promise Scotland wrote [a joint letter with the Children and Young People's Commissioner for Scotland](#) setting out our positioning on this issue.

This proposal risks restraint being legitimised and the unintended consequences could be that its use could increase rather than decrease. The focus must be instead on strengthening the legislative framework and guidance so that there is clarity around use and monitoring of restraint. This includes supporting the workforce to use alternative ways of engaging with children. Rather than making specific excuses for ensuring a child's rights are not being upheld or their liberty is being interfered with, there should be an expectation and understanding that restraint must only be used to keep people safe. There are no caveats or exceptions to that.

If so, do you agree that a 'maximum authorised intervention' is an appropriate means of delivering that clarity to children and to professionals?

No.

See our response above.

Timely notification of Children's Hearings decisions (Pg 45-46)

Is the current time frames for written confirmation of the decision by the Children's Hearing (5 working days) still appropriate?

No.

Recommendation 6.2 is clear that the decision must be shared verbally and in writing. In some cases, in a redesigned Children's Hearings System, the Hearings System Working Group felt that it may take longer for decisions to be written and shared with children and with families due to the change in the way the decision will be structured and written. For this reason, it is necessary to provide additional flexibility to ensure the required quality of the written decision and to ensure that

³⁷ The promise, 2020, Pg 85-86

a child and family friendly version is produced. This does not mean that there should be a lengthy time period between the Hearing and the decision, but that additional time may be required for the Chair to finalise a written decision.

'[Hearings for Children](#)' is clear that it is the Chair who must have responsibility for writing a fully reasoned decision, to be shared with the child and family. It states that a framework should be developed for how this should be approached, which must include a statement of the issues and circumstances, the views of the child and their family and other important people in their lives, a discussion of the key issues and a clear statement of the decision.

It is clear that a fully reasoned decision will assist in improving openness and transparency and to inform appeals. It is also clear that a summary of the decision in plain language should be provided (see our response to the question below about a child- friendly summary).

It should be noted that flexibility in the time period does not mean the child and family will be left 'waiting' because a verbal decision will still be shared on the day of the Children's Hearing. This change does not mean that the written decision should not be shared within five days, but rather that there is flexibility for this to be longer (but we suggest no longer than two weeks) for the written decision to be shared with the child and family.

This change should not take place if the other recommendations set out in **6.2** in '[Hearings for Children](#)' and linked **recommendation 7.1 and 7.2** about the skills, competencies and qualities of the Chair are not implemented. The new way of writing and sharing decisions relies on changes to the way a Chair engages with children and families and on the skills and competencies set out in the report. It would not be appropriate to ask a volunteer to produce a fully reasoned decision and a 'plain English' summary in the way the report sets out.³⁸

It is unclear why this part of the decision-making model has been separated out from the other questions about making and sharing decisions and children and families' participation, support and understanding in the consultation document. It is important that all the aspects of these recommendations are implemented together, in particular all the aspects of **recommendation 6.2**, which states:

The decision-making model must consist of three distinct phases: (1) a robust preparatory phase; (2) the Children's Hearing followed by a pause in proceedings; (3) sharing the decision with a child and their family verbally and in writing.

The final decision will be a majority decision. If there is a dissenting view from a Panel Member, the Chair must reflect that in the written decision.

The Chair must provide the decision within a reasonable time limit.

³⁸ Hearings for Children, 2023, Pg 161

A framework must be developed for how written decisions should be approached by the Chair.

A summary of the decision made by the Hearing in plain language and in a format appropriate to the age and stage of the child must be shared alongside the full decision. There must be consideration given to whether this would also be appropriate for family members.

It is seeing these recommendations in their entirety that encourages an understanding of what is trying to be achieved in line with the overall context of an inquisitorial, rights- respecting, transformed Children's Hearings System.

Should certain children's decisions (e.g. for an ICSO) have accelerated notification timeframes, relative to the urgency of the decision?

As stated in our response to the question about establishing grounds, we agree with the proposal in '[Hearings for Children](#)' that the benefit of a statutory timeframe, with exceptions, should be explored along with the other measures to reduce drift and delay when grounds are established **recommendation 5.4.1**).

In terms of other decisions, '[Hearings for Children](#)' is clear that interim orders must be in place for a length of time that is in the best interests of the child (**recommendation 5.5**). This recommendation is a proposal that emerged from the Collaborative Redesign Project, which stated that there should be a full exploration of the making of interim orders for a specified time that is bespoke to a child's needs. '[Hearings for Children](#)' suggests that it may be helpful to retail in 21-day limit as a default, with a discretion to extend the time period to suit the circumstances of the child and to meet the child's best interests. See our response to the question below about this.

There are other specific recommendations in '[Hearings for Children](#)' that link to ensuring decisions are made within appropriate timeframes. Page 247 describes a need to avoid drift and delay in the Children's Hearings System itself (after grounds have been established). The recommendation is clear that there must be a mechanism for the Children's Hearing to identify when a child has been subject to compulsory measures for longer than two years, after which there should be an in-depth review to determine whether this is in the best interest if the child or whether alternative, longer-term arrangements should be made (**recommendation 11.2**).

The report also makes recommendations about 'exit plans', to help children and families understand what is expected of them and what needs to happen to 'exit' the Children's Hearings System. The aim of this is to ensure children do not remain

subject to legal orders for longer periods of time than is necessary. See recommendations 11.21 and 11.5.4 and our response to the specific questions on 'exit planning'. As per our response to the question on Secure Care it is also important to ensure that there is appropriate community alternatives to Secure Care and that children and families are provided with appropriate help and support upon 'exiting' the system.

Finally, throughout '[Hearings for Children](#)' the importance of ensuring decisions are made within a child or young person's developmental timescales is held in mind. In particular, the report highlights the evidence showing the critical importance of the first three years of a child's life. In order to reflect this, the report made a number of recommendations that link to this question about accelerated timescales, including:

- Ensuring that there is no requirement for young children to agree with the grounds for referral (**recommendation 5.6**)
- Ensuring closer links between local authority decision-making relating to adoption, permanence and residence orders and the legal tribunal of the Children's Hearing (**recommendation 11.8**)
- There should be consideration of a set timescale for the length of time a child can be accommodated in what is intended to be long-term placement before a local authority decides to progress an application for an order which provides legal, permanent, and physical security for the child (**recommendation 11.9**)
- For children for whom there are clear indications that the circumstances that their families face are too challenging for them to remain at home, there should be earlier review by the hearing, in collaboration with the implementing authority, of what a longer-term plan for their care might look like (**recommendation 11.10**)

Continuity of Panel Members in children's cases (Pg 45-46)

Should consistency or continuity of chairing members be the default position for each Child's Hearing?

Yes.

As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing (**Recommendation 6.1.3**). This should also apply to Panel Members where possible and desirable. Pages 156-157 of 'Hearings for Children' set out very clear reasons for this.

As stated in the report, throughout all of the Hearings System Working Group's engagement, one message came across consistently from almost all the large numbers of children, families, care experienced adults and people working alongside them. This was shared repeatedly, loudly and clearly: **the biggest difference to transforming the Children's Hearings System that can be made is to ensure continuity of decision makers.**

One of the calls to action from Our Hearings Our Voice is: "*I should have the choice to have some of the same Panel Members at my Hearings who get to know me over time.*"

As far as possible, the people making big decisions must not be different at every Children's Hearing. They must have specialist background knowledge and understanding that enables them to have some insight into the challenges and circumstances that have led a child and their family to appear at a Hearing.

'[Hearings for Children](#)' states that this aspiration must be met as far as possible, but outlines some foreseen challenges in rural areas, where a Chair is unwell or leaves or where there is a personality clash that impacts on the child and families' ability to fully engage in the process. The report also outlines a number of suggested areas for how this could be overcome, including the need for contingency plans and the possibility of a 'back up Chair'.

We are concerned by the lack of enthusiasm and positioning of this recommendation in the consultation paper, which states "it is broadly agreed that a degree of continuity (that is, one or more of the same Panel Members sitting on the same child's Hearings) can be desirable." It is the Chair that must be the same, as far as possible. The evidence base is also extremely clear, in particular the evidence base that states this is a change that children and young people want.

Of all of the recommendations made by the Hearings System Working Group this is the one that is most fundamental to delivering a transformed Children's Hearings System. Children and young people's voices must be heard and this must become a reality.

Would you support one single children's Panel Member's consistent involvement as an alternative approach?

No.

As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing (**Recommendation 6.1.3**). This should also apply to Panel Members where possible and desirable. It is the Chair who must be consistent as far as possible.

Substantive vs Procedural decisions (Pg 46-47)

Should children's Panel Members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member Children's Hearing?

Yes.

Recommendation 8.8 is clear that in a redesigned Children's Hearings System there must be a separation between procedural decisions relating to the Hearing itself and the decisions made by the Hearing. There should be an assessment to understand which procedural decisions a Chair can take without the need to convene a full Panel in advance of a Hearing. This should include scrutiny of whether anything needs to change in legislation or procedural rules to better facilitate decision-making and eliminate structural drift and delay in the system.

The view of the Hearings System Working Group was that there are a number of procedural decisions about a Hearing that can and should be made by the Chair alone without the need for a Panel to convene, in the same way that a Sheriff can decide on an Interim Compulsory Supervision Order. For example, relevant person status or decisions about Safeguarder appointments. This will serve to reduce the delays caused by Hearings being deferred for procedural decisions and allow for a Hearing to focus solely on the best interests of the child rather than the administrative and procedural functions that support robust decision-making.³⁹

The following recommendation (**Recommendation 8.7**) identifies that it may be also be appropriate for the Chair to undertake pre-Hearing planning meetings without the need for a Children's Hearing. The recommendation states that the feasibility of, and positive and potential negative consequences of pre-Hearing planning meetings must be explored.

At present there are provisions for Pre-Hearing Panels to take place prior to a substantive Hearing. The proposal in '[Hearings for Children](#)' is that a pre-Hearing planning meeting of greater substance, in accordance with ordinary principles of natural justice, would allow the child and family and other parties to discuss procedural options in a legal setting. Where there is a consistent Chair in place it would also allow the Chair to express a view about what has worked in previous Hearings. It would be an opportunity for clarity around who is attending, the way the people attending share the information and views that they hold, and more detailed planning around safety. It would also be an opportunity to discuss

³⁹ Hearings for Children, 2023, Pg 192

'ground rules' for behaviour and to share the preferences the child and family set out during their meeting with the Chair (if they have had one).⁴⁰

Are there other areas you would consider appropriate for a single-member decision making approach?

It is important to be clear that '[Hearings for Children](#)' does not recommend a "single-member decision making approach". Instead, the **recommendation (8.8)** is that there are a number of decisions that in the view of the Hearings System Working Group could be made by the Chair, who could also hold pre-Hearing planning meetings. The Chair referred to is the Chair who has been recruited based on personal qualities, tribunal skills and legal competence as outlined in Pages 165-171 of '[Hearings for Children](#)'. There is no suggestion in '[Hearings for Children](#)' that Panel Members who are not the Chair should be undertaking any decisions alone or that the Chair should make these decisions in the absence of the implementation of the other recommendations relating to their skills and competencies. We would not support an approach to significant changes and procedural decisions being made unless it was clear that **recommendations 7.1 and 7.2** were being implemented.

This will serve to reduce the delays caused by Hearings being deferred for procedural decisions and allow for a Hearing to focus solely on the best interests of the child rather than the administrative and procedural functions that support robust decision-making.⁴¹

Would you propose additional safeguards to accompany these proceedings and decisions?

See response above.

During a Children's Hearing—the powers of the Chair during a Children's Hearing (Pg 47-48)

Would it be beneficial for the chairing member to have a robust and clearly stated set of powers to manage how and when people attend and participate in the different phases of a Children's Hearing?

⁴⁰ Hearings for Children, 2023, Pg 191-192

⁴¹ Hearings for Children, 2023, Pg 192

Yes.

Recommendation 6.1.1 is clear that the existing Rules governing a Children's Hearing must be sufficiently robust to ensure that the Chair is able to manage the dynamics and conduct of an inquisitorial approach to a Children's Hearing. This includes determining who is present at each stage of a Children's Hearing, whilst effectively balancing rights of attendance and participation and having the flexibility to change the speaking order and arrangements and the authority to ask contributors to the meeting to leave the room after they have spoken, if that is in the best interests of the child.

More information about this is set out in Chapters 6 and 7 of 'Hearings for Children'.

Are the existing powers of the chairing member and of the hearing sufficient to protect the rights of all involved?

As per recommendation 6.1.1, the existing Rules must be examined in order to ensure they are sufficiently robust.

What enhancements could be made to the existing powers of the chairing member and the Hearing to promote inquisitorial approaches?

See our response to the question above and the information set out in Chapters 6 and 7 of '[Hearings for Children](#)'. The successful implementation of this recommendation relies on changes to the recruitment and skills of Chairs so that they are able to 'hold the room' and possess the legal, tribunal and personal qualities described in the report.

Recording of Children's Hearings (Pg 48-49)

In your view, should Children's Hearings be routinely recorded?

If yes - which method of recording should be routinely used?

▪ **Written** ▪ **Audio** ▪ **Video** ▪ **Other - write in.**

The Hearings System Working Group heard that other tribunals in Scotland and internationally are increasingly recorded proceedings. The Group also heard very strongly from young people that they should be asked whether they want their Hearing recorded, and if they agree to have it recorded, whether they could ask for it to be deleted later. A mechanism by which young people can make an

informed decision about a record is made of their Hearing should be a central part of considerations, in line with the concept of evolving capacity.

Given the mixed views shared with Sheriff Mackie and the Hearings System Working Group about recording Hearings, the resulting **recommendation (9.5)** did not recommend that Hearings should be recorded, but that there should be a full examination of the potential benefits and consequences of doing so. **Recommendation 8.11** also states that for people who might find it difficult to physically attend a Hearing due to emotional or practical concerns there must be ways for information and views to be shared in advance, either through a written report or a recording.

This proposal should be further explored with children and families with experience of the Children's Hearings System, . The Scottish Government should seek to engage with other tribunals to understand the positive and negative impacts of recording Hearings. A small scale pilot seems like a sensible approach to take, if this can be done in a way that is compliant with human rights and data protection legislation and in a safe and sensitive, trauma- informed way with clear parameters and evaluation.

Additionally, Hearings for Children is clear that given the number of virtual and hybrid Hearings that are ongoing, learning about the broader use of technology, including alternative ways that children and families and important people in their lives can participate and share their views in a Hearing, should be shared and the implications considered at national level as part of ongoing improvement work.⁴²

What are the main benefits and risks of this method of recording Hearings?

If no, what are your most significant concerns about recording Hearings?

Some of the reasons for recording Hearings might include: to ensure that there is a clear record of what happened; to allow for greater oversight, accountability, and scrutiny of decision-making processes and the behaviour of the paid workforce; to assist in training and professional development; to allow children and families to potentially reflect on the proceedings when they feel better regulated and emotionally ready to engage; to allow older children to watch what happened and how decisions were made when they were younger; to provide a clear record for an appeals process; and to allow Panel Members to remind themselves of previous proceedings or, where there is a necessary change of Chair, to help the new Chair understand what has happened previously.⁴³

⁴² Hearings for Children, 2023, Pg 210

⁴³ Hearings for Children, 2023, Pg 209

The Hearings System Working Group discussed that for some children and families it may be beneficial to have a recording that they could watch at a later date to help them make sense of what happened. For some children later in life it might help them to piece together their life story and if some important people were not able to attend a Hearing they might be able to watch or listen to it. The Group acknowledged that some people, understandably, find it difficult to process lots of information at one time, particular when there is a heightened sense of threat or danger.

However, contrary to what is stated in the consultation paper, this proposal received a mixed reception from the children and young people that engaged with Sheriff Mackie and the Group. The main concerns from children and young people were regarding their right to privacy and how permission would be sought. They asked how the recordings would be kept safe, how long they would be kept for, who would have access to them, and whether they would be admissible in Court. Young people also asked questions around whether they would be able to share the recording with people they trust that might not be considered a relevant person by the Hearing.

The Group also discussed the importance of complying with ECHR and data protection legislation and they were concerned that recording Hearings might impact on this. They also were worried that some people may not want their Hearings recorded and that it may not always be beneficial for people to be able to access this later on.

If only the decision element of a Children’s Hearing were to be recorded, would this change your view?

See response to the question above—there should be an opportunity for young people to make informed decisions about how a record is made of their Hearing.

Child friendly summaries of decisions (Pg 49-50)

Should there be a statutory requirement for the production of age and stage appropriate summaries of Children’s Hearing decisions?

Yes.

Recommendation 6.2.5 of ‘[Hearings for Children](#)’ states that a summary of the decision made by the Hearing in plain language and in a format appropriate to the age and stage of the child must be shared alongside the full decision. There must be consideration given to whether this would also be appropriate for family

members. This will help to ensure that the child and their family understand the decisions that were made and the discussion that took place.

'[Hearings for Children](#)' explains in detail why this change should take place and also shares a proposal from the Collaborative Redesign Project, which suggested that an audio, video or written statement made for the child by the decision makers explaining to the child what the decision was and the reasons for the decision should be produced. We consider that there should be different options available to help children and families understand the decisions that are made about them and their lives.

The report states that this new process will not only help to ease the distress and anxiety for children and their families but must also result in an increase in the quality of decisions and written reasoning.⁴⁴

As stated above, is unclear why this recommendation has been separated from the rest of the recommendations relating to the decision making-model and how decisions must be made in an inquisitorial Children's Hearings System in this consultation document. The rationale for the changes and a description of the proposed decision-making model can be found on Pages 158-162. The recommendation about a summary of the decision links to the three distinct phases described: (1) a robust preparatory phase; (2) the Children's Hearing followed by a pause in proceedings; (3) sharing the decision with a child and their family verbally and in writing. Crucially, the recommendation is clear that "a framework must be developed for how written decisions should be approached by the Chair."⁴⁵

See our response to the questions on timely notification of Children's Hearings Systems for more information—our responses should be considered together.

Should the specific needs of other family members - especially other children - be taken into account when decisions and reasons are being prepared and issued?

Yes.

Family Group Decision Making (FGDM) and Restorative Justice (Pg 50-51)

⁴⁴ Hearings for Children, 2023, Pg 161

⁴⁵ Hearings for Children, 2023, Pg 162

Is it appropriate for Children’s Hearings to defer their decision in order for Family Group Decision Making or restorative justice processes to be offered, or to take place?

Yes.

Recommendation 11.4 of ‘[Hearings for Children](#)’ is clear that Panels must be empowered to create space for restorative justice and FGDM processes to take place, by deferring Hearings for a sufficient time.

There is extensive evidence available linked to the effectiveness of both Family Group Decision Making⁴⁶ and restorative justice.⁴⁷ [The promise](#) is clear that Family Group Decision Making and mediation must become a much more common part of listening and decision-making.⁴⁸

There are already some successful examples of the way Family Group Decision Making is interacting with the Children’s Hearings System—SCRA will have more information about this, including with respect to ongoing pilots and pilots during the pandemic which supported ‘emergency’ Family Plans to be created.

We note the concerns about further introducing drift and delay into the system, and consider the potential benefits to both approaches to outweigh any potential negative impacts. However, in order to ensure that Family Group Decision Making and restorative justice is readily accessible and available and does not contribute to unsafe or lengthy delays there must be a consistent national approach to ensure high-quality Family Group Decision Making and restorative justice is available in all local areas and is offered to children and families when it would be most beneficial.

What other ways could consideration of these processes feature in the redesigned Children’s Hearings System?

As stated in **Recommendation 17** of [Hearings for Children](#), there must be consistent high quality provision of Family Group Decision Making and restorative justice services across Scotland.

[The promise](#) is clear that Family Group Decision Making and mediation must become a much more common part of listening and decision-making.⁴⁹ There is already strong evidence that it has been effective in local areas across Scotland

⁴⁶ See, for example: [Family group conferencing: Following the evidence can keep children with their families - Foundations](#)

⁴⁷ See, for example: <https://www.cycj.org.uk/wp-content/uploads/2020/09/RJ-practitioner-case-studies-collection-1.pdf>

⁴⁸ The promise, 2020, Pg 33

⁴⁹ The promise, 2020, Pg 33

and internationally at keeping children safely within their families. A strengths-based, rights-based approach that challenges the traditional power dynamics of statutory processes and enables children and families to engage in decision-making and to ensure their voices are heard is an often powerful way of averting crisis. Evidence is clear that plans made alongside families are more likely to be adhered to and as a result children are more likely to be kept safe. This is a core component to efforts to ‘shrink and specialise’ the Children’s Hearings System in the way that [the promise](#) intends, so that referrals to the Children’s Hearings System are made for the right people at the right time.

It should also be noted that there is currently a statutory provision for family group conferencing for children ‘at risk of becoming looked after’ under the 2016 Order as part of the implementation of Part 12 of the Children and Young People (Scotland) Act 2014, which could be built upon.⁵⁰

The Reporter also has a core role in deciding whether it is appropriate to refer a child for a Children’s Hearing or whether other measures of help and support should be accessed. In some cases, it may be appropriate for a family to try Family Group Decision Making or restorative justice. Changes to the role of the Reporter and the potential of a ‘closure report’ (recommendation 4.4) and the way the Reporter works alongside other child protection, care and support processes are discussed elsewhere in this consultation.

After the Hearing—the length of interim orders (Pg 51-52)

What are the advantages and disadvantages of increasing the statutory 22-day time limit for the duration of interim compulsory supervision orders (ICSOs)?

The Collaborative Redesign Project of the Children’s Hearings System set out a proposal that interim orders should be put in place for a length of time that is in the best interests of the child so that children and families only attend physical Hearings (and Court prior to grounds being established) when necessary⁵¹ (**Recommendation 5.5**).

There must be a full understanding of the implications of this change with respect to children and families’ ECHR rights and the right to appeal. We also agree with Social Work Scotland’s response to ‘[Hearings for Children](#)’, which makes clear that

⁵⁰ Under article 2 of the 2016 Order, relevant services for the purpose of section 68 (1) of the Act are specified as: c) Family group decision-making services which means a service which is designed to facilitate decision-making by a child’s family in relation to the services and support required for the child; and d) Support services in relation to parenting which means a service which is designed to increase parenting skills.

⁵¹ Hearings for Children, 2023, Pg 145

this change must not introduce any further drift and delay into decision-making processes for children. This is particularly important when considering the need for consistent, loving, lasting attachments and relationships for children. For this reason, the implementation of any changes to ICSSOs must align with the implementation of the recommendations in 'Hearings for Children' around eliminating drift and delay, wherever possible. See, for example, Pages 142-145 and **Recommendation 5.4**.

Do you feel that there should be more flexibility in the duration of these interim orders?

Yes. See response above and the rationale set out in Pages 145-146 of Hearings for Children.

If so, in what circumstances and what maximum duration do you consider appropriate?

Hearings for Children states that it may be helpful to consider retaining the 21-day limit as a default, with a discretion to extend the time period to suit the circumstances of the child and to meet the child's best interests.⁵²

Could ICSSO reviews be undertaken by lone children's Panel Members? (See Chapter 8)

Yes.

'[Hearings for Children](#)' describes on Page 191-193 and states in **Recommendation 8.8** that there must be a separation between procedural decisions relating to the Hearing itself and the decisions made by a Hearing. This recommendation states that there should be an assessment to understand which procedural decisions a Chair can take without the need to convene a full Panel in advance of a Hearing.

The separation of procedural decisions is part of a series of recommendations that link to the transformation of the Children's Hearings System into an inquisitorial system. In particular it does not sit separately from the recommendations around the enhanced role and skills of the Chair and the recommendations around eliminating drift and delay.

⁵² Hearings for Children, 2023, Pg 146

It is also important that any separation of procedural decisions must be compliant with ECHR.

We have responded to the specific questions about this recommendation above.

After the Hearing—the concept of a child’s exit plan (Pg 52-53)

Do you support the proposal to create a child’s exit plan from the Children’s Hearings System?

What elements should be included in any child’s exit plan?

Yes.

The Hearings System Working Group heard from children, families and care experienced adults with experience of the Children’s Hearings System that, at present, there is not a clear understanding about what needs to happen to ‘exit’ the system. As a result, children can remain subject to legal orders for long periods of time, sometimes longer than is necessary.⁵³

Recommendation 11.21 states that the concept of an exit plan out of the Children’s Hearings System should be tested in local areas rather than being adopted or legislated for straight away, in line with the conclusion that Scotland must use the period of implementing [the promise](#) to test new approaches to the underlying structures of Hearings.⁵⁴ **Recommendation 11.5.4** specifically refers to putting an exit plan in place which helps children to understand that a Secure Care arrangement is temporary and when they can expect to move home or to another place of safety, what needs to happen in advance of that, and how they can be involved in that decision-making.

Exit plans should set out clear targets and timescales, should align with the help and support available in a Child’s Plan and should be easily accessible and understood by children and families. Time and again children and families have said that they do not always understand what they need to do and what the ‘system’ is asking of them. This is an opportunity to change that and set out in a very clear way what is expected of children, families and the people working alongside them.

Exit plans should be produced in a rights-respecting way and should be written in language that is easy to understand. We agree with the Scottish Government that there is merit in considering whether an exit plan should be incorporated in the Child’s Plan so that there is one rather than a number of documents, noting the complexities outlined in the consultation document relating to the non-statutory

⁵³ Hearings for Children, 2023, Pg 247

⁵⁴ The promise, 2020, Pg 40

nature of some (but not all) Child's Plans. However, this does mean that the Child's Plan should be accessible and clear and written in language that the child and family understand.

There should also be alignment with the way a decision is shared with the child and family after a Hearing takes place so that there is not an overwhelming amount of different information shared about the same thing. The principle that should be adhered to (and the problem that this recommendation is trying to solve) is that children and families feel that they do not always understand what needs to happen in order to 'exit' the Children's Hearings System and this needs to be coherently addressed.

System Redesign Overall (Pg 53)

Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned Children's Hearings System?

Yes.

As stated in our response to questions above, the review of the current, respective functions of CHS and SCRA to ensure that the redesigned system operates effectively and efficiently for children and families and adequately supports and resources the discrete legal functions of the National Convener and Principal Reporter (**recommendation 2.7**) is ongoing. We recognise that this is complex and that aspects of this can be pursued through the Practice and Procedures workstream of the Redesign Board. However, some of the anticipated changes as a result of the review are likely to require legislative change and indeed the Scottish Government's response states that "The outcomes of that review would also be reflected in a primary legislation consultation." As stated above, this may include **recommendation 8.2** (the first information that a child receives about the Hearing) and **recommendation 8.6** (CHS being the organisation responsible for deciding a date and location).

We also note that the specific recommendations about legal representation have not been included and would encourage consideration of whether there should be changes to how children and families are informed of their right to legal representation and whether the current mechanisms for them to access legal aid and their right to legal support is sufficient (**recommendation 4.2**). The specific changes around the conduct of lawyers is unlikely to require legislation, but there should be consideration of the development of 'rights of audience' (**recommendation 10.1.3**).

It is also important to consider what legislative changes are likely to be required around data and information sharing—especially following the aforementioned review of CHS and SCRA functions (**recommendation 4.4.5 and 13.3**).

As discussed above, **recommendation 8.7** around pre-Hearing planning meetings may require legislative change.

Recommendations 11.8 and 11.9 in terms of streamlining aspects of decision-making when a Permanence Order or Adoption Order has been applied for and set timescales for decision-making in long term accommodation may lead to discussions around legislative changes linked to permanence and adoption—although we appreciate that this is not specifically in the ‘remit’ of the Redesign consultation. We would appreciate clarity about when and how these areas will be consulted on in the context of the Promise Bill.

Finally, although we are aware that many of the **recommendations in Chapter 13** (The oversight, enforcement, accountability and review of a child’s order) will not require legislative change we think that there is merit in further examining and consulting on some of the issues raised with the Hearings System Working Group in terms of accountability and enforcement.

Secure accommodation timescales for review (Pg 53-55)

Do you agree that the timescales for review of a child’s placement in secure accommodation in Scotland, as laid out in legislation, are still appropriate?

Yes.

‘[Hearings for Children](#)’ refers to a number of different aspects of Secure Care and Secure Care authorisations that is intended to support and align with the implementation of the Children (Care and Justice) (Scotland) Act 2024 and the ongoing Reimagining Secure Care work and implementation of the Secure Care Standards. **Recommendation 11.5.3** does not refer to concerns about the existing provisions for reviewing a child’s ‘placement’ but rather specifies that there should be a review of the timescales for the *overall length of time* that a child can be ‘placed’ in Secure Care.

The concern heard by the Hearings System Working Group was that sometimes children who live in Secure Care are there for long periods of time in the absence of other appropriate places for them to live and be supported and there is not always a clear understanding of other options or of how long they will remain in Secure Care for, often despite the best attempts by members of the workforce. The resulting recommendation was therefore to ensure that the timescales (in particular the maximum amount of time) are appropriate and safe and that there

is a clear expectation that Secure Care would be a temporary measure (**Recommendation 11.5.3**) and that exit plans are put in place which help children to understand that a Secure Care arrangement is temporary and when they can expect to move to a new home or place of safety and what needs to happen in advance of that (**Recommendation 11.5.4**).

There are a number of reasons why children may live in Secure Care for longer periods of time, including because of the lack of appropriate help and support and trauma recovery support for children and for families and because of the lack of appropriate and safe places in the community for children. The Accommodation (Scotland) Regulations 2013 provide opportunities for review and the guidance may be already clear, but the Chief Social Work Officer and Panel Members may find that there are no other options for children to keep them safe other than Secure Care. This is not acceptable—and must not be happening in a Scotland that is working to keep the promise. There must be clarity over children’s rights in this area and an expedited focus on implementing the changes outlined in the Reimagining Secure Care work to ensure that there are appropriate, high quality alternatives to Secure Care in Scotland.

Our views on ‘exit plans’ are discussed in response to other questions above.

There are two other parts of Recommendation 11.5 that have not been referred to in this consultation:

1. **Recommendation 11.5.1** states that where alternative options to Secure Care are not available in local areas, this should form part of the Hearing’s contribution to the data collection and information shared with the National Convener so that a national picture for improvement can be gathered as part of the ongoing work around Reimagining Secure Care and the ask of the Independent Care Review to ensure community-based alternatives are available. The Scottish Government’s response indicates that information on alternatives to Secure Care and best practice is being gathered. However, it must be considered whether information is being held by the Children’s Hearings System that could further advance and inform this work and support the work to Reimagine Secure Care. Changes to the way the system currently collects and shares data is set out in **Recommendation 13.3** and these two recommendations must be progressed at pace together.
2. **Recommendation 11.5.2** states that the Panel must place expectations on the implementing authority with regard to helping children who are living in Secure Care to maintain relationships that are important to them and connections to their family and community, where it is safe to do so. This recommendation was accepted by the Scottish Government, however the Care Inspectorate’s recent review of the Secure Care Standards and Pathway and Thematic Review

of Cross Border Placements highlights that there is still some way to go to realising this recommendation.

Impact assessments

What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?

What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?

We published a [Child Rights and Wellbeing Impact Assessment](#) alongside the publication of '[Hearings for Children](#)', which identifies a number of children's rights that will be impacted by the implementation of the recommendations. In particular, the recommendations around children's involvement in and increased participation and understanding of what is happening in their lives when important decisions are made alongside them will help to uphold their right to have their voices taken into account (Article 12).

What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?

Our response highlights a number of areas where improvements can be made to ensuring children and families understand the Children's Hearings System better and feel better able to participate in important decisions. There is a need to consider the inherent power imbalance of a system involving compulsion and to ensure that there is better support and protection for vulnerable adults.

Appendix: What did the promise say?

This Appendix sets out what the Independent Care Review concluded must happen to transform Scotland's Children's Hearings System. The page numbers refer to pages in [the promise](#).

The Care Review heard a variety of experiences of the Children's Hearings System from children, families and members of the workforce (including Panel Members). Issues raised included):

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 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 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 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).

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To effect change, the promise identified the following areas:

The focus of the whole of the Children's Hearings System must be the children and families who appear before it.

In the management of the Hearings, CHS and SCRA must protect and uphold the legal rights of children.

There must be particular attention paid to the rights of brothers and sisters

New approaches should be tested relating to the underlying structures of Hearings.

There must be a new approach to caring for children within their families with far more support than is currently available.

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 they want and need. There must be a compassionate and caring decision-making culture focussed on children and those they trust

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