

STRENGTHENING FOR THE FUTURE

Response to the Scottish Government's consultation on the reform of the Children's Hearings System October 2008

Children in Scotland welcomes the Scottish Government's intention to reform and improve the Children's Hearing System. We have been, and remain, strong supporters of Children's Hearings, as a way of dealing positively with children and young people throughout our nation who are troubled or in trouble. One of its historic characteristics can be found in its aspiration and ability to recognise and treat children as *children* despite instances of negative or worrying behaviour on their part. This is very much in keeping with the spirit and articles of the UN Convention on the Rights of the Child.

The fact that the Children's Hearings System is based upon a welfare model – rather than a criminal justice model – is a prominent reason why it (and Scotland) have been seen as ahead of their time and accorded international accolades. Children in Scotland recommend that the fundamental purposes, aspirations and ethos that led to the creation of Children's Hearings more than forty years ago always will remain at its core.

Nonetheless, it is generally acknowledged – and Children in Scotland agrees -- that the Hearings System needs to change if it is to remain an effective, objective and efficient mechanism of Government policy and, critically, to keep contributing to positive outcomes for the children and young people with whom it deals. It is reassuring, therefore, that the Scottish Government has developed proposals intended to promote these objectives.

It is, however, disappointing that the Scottish Government's proposals do not explicitly address some of the problems that most compromise the optimal functioning of the Hearings System. These include:

- The increasing numbers of children being referred to the Children's Hearings System; the capacity of the system to offer a sufficiently effective response to them; and, the nature and consistency of these referrals.

- The capacity of the System to respond quickly to the pressing needs of many children and young people with appropriate information timeously provided
- The quality, comprehensiveness (and meaningful analysis) of relevant hard data and other crucial information available to Hearings about the child and family.
- The extent to which meaningful consultation with, and meaningful participation of, the children and young people actually occurs before, during and after Hearings (even given the good intentions of everyone involved).
- The ways in which the absence of sufficient universal health, family support, learning and well-being services to children and their families – and the overall lack of sufficient investment in the Children’s Hearing System itself – compromises the availability and range of choice of ‘disposals’ realistically accessible to Hearings (and the impact of these shortcomings on timeous, effective responses by the System to child need).

Unless these issues are addressed, the Hearings System is unlikely to be able to contribute fully to the Government’s strategic objectives or to the national outcomes to the intended extent. Children in Scotland recommends that each of the problems noted above should be taken fully into account and made the basis for a revised version of the Scottish Government’s proposal for *Strengthening the Future*.

Our greatest concern is that the Scottish Government has chosen the wrong starting point for its approach to the improvement of the Children’s Hearings System. The consultation document appears to be predicated upon the assumption that the key problems are administrative/structural ones. While we agree that these are legitimate concerns, we do not think that they get to the heart of the changes needed to ensure that Scotland’s leadership in this arena can be maintained and expanded through a brilliantly operating Children’s Hearings System.

We think it is possible that the Government’s proposed changes all could be agreed and implemented without having many significant, discernable, positive impacts on the experiences of, and the outcomes for, the tens of thousands of children and young people across our nation who become involved with Children’s Hearings. **Changes to this System must be designed and delivered to meaningfully benefit the children and young people affected, first and foremost.**

With regard to the proposals as they currently stand, the Government must recognise that, while Children’s Hearings are frequently instrumental in accessing resources, **it is misleading to describe them as ‘providing’ support and assistance** (page 5). The availability of support and assistance is dependent on the volume of, and demand for, provision by local authorities and other public service providers. Greater national coherence and consistency will highlight inequities more effectively, but will not of themselves generate additional or more diverse services.

It will also be difficult to substantiate the ‘major contribution to achieving equity’ (page 5) given the indirect nature of the System’s involvement in service delivery or the provision of support – as well as the absence of a clearly attributable performance measurement process with the System.

Some thought should be given to how the impact of the Hearings process on children and their families can be meaningfully assessed. A similar comment can be made in respect to GIRFEC (page 6). GIRFEC, like the Children’s Hearings System, has no capacity to deliver improved outcomes for children, as it is not a delivery system with resources and powers independent of the local authority and other public bodies. It will be important to ensure that baseline outcome data for children subject to Children’s Hearings proceedings is gathered at this stage so that any impact of change in the future can be evidenced.

We also welcome actions to improve ‘a wide range of services focussed on children in need’ (page 6). Again, it will be important to distinguish between the impact of the Hearings themselves and the services provided outwith the System itself. However, enhancement of the repertoire and volume of support that Hearings can access should add value to their involvement.

There is an inherent tension between the ‘gateway’ role of the Hearing (page 7) and the stated overarching ‘no order’ principle. In reality, compulsory measures are far more likely to generate a service. The key criterion, therefore, becomes the likelihood of services being provided, rather than the child and family’s willingness to engage with non-compulsory support.

Reduction in bureaucracy is always welcome, so long as this results in more efficient and effective Hearings. Some quantification of the intended impact in this respect would be helpful. The retention of the Reporter and of volunteer panel members is welcomed. The ‘representative’ nature of panel members of local communities (page 8) is also welcomed (although it is not clear what the current position is or what monitoring mechanisms will be in place). More general monitoring mechanisms will also need to be in place to deliver ‘consistency and a strong focus on quality assurance’.

Work with communities that leads to more supportive experiences for young people is welcomed (page 9), particularly if this avoids the need for some young people being considered for compulsory measures of care.

Children in Scotland underlines the point that more and better universal services for children and families that prevent problems in the first place – or that intervene early and well enough to nip problems in the bud – would have as salutary an effect on the Children’s Hearing System as any of the internal administrative reforms currently proposed. This could dramatically reduce the mounting pressures upon the Children’s Hearing System and the public agencies that end up delivering services to children, young people and families in situations that have already become out of hand.

PART ONE: STRUCTURAL CHANGE, A NATIONAL BODY

Q1. What is your opinion on these proposals for Government's role in the future?

At this stage, the practical implications of these proposals are not clear. It will be important to ensure that policy decisions of the new body are consistent and coherent with the overall policy context. Working towards reducing anomalies and inconsistencies in availability and accessibility of services at the local level may be affected by this move. This could be a positive move if it allows greater flexibility to participate in service planning with partners at local level. Yet, the separation from Government could also have a negative impact, if the new body is consequentially seen as less influential.

Q2. What is your opinion of proposals for local government's role?

As at present, local authorities will be responsible for enacting hearing decisions, *if and when existing resources and priorities permit them to do so*. Increasing the likelihood that this takes place efficiently and effectively should be a priority for the proposed new body. A revised version of *Strengthening for the Future* should provide greater clarity as to the recourse available to the Hearings where their decisions are not implemented.

In relation to the promotion of the Hearings System, it is not clear why this would be seen as an appropriate locus for the local authority (rather than the new body itself). It is also not clear exactly what would be expected of local authorities in this respect and how such activities would be resourced. The commitment to work in partnership is welcome. However, it may be advisable to look at the functionality of local community planning arrangements in relation to children and how planning the activities of the new body could be meaningfully integrated. In other words, the proposals here assume a greater level of effectiveness and 'joined up' work within community planning than may be true.

Q3. We invite views on the nature, functions and title of the new body.

The proposed title reflects the business of the organisation fairly unambiguously. It is important that families already under stress are not further confused by obscure or misleading organisational systems. It would seem logical that the organisation is responsible for discharging the functions proposed. The possible exception to this is quality assuring Panel decisions. Ensuring national consistency and adherence to policy would appropriately be part of the role of the new organisation. Broader issues of quality may be more appropriately located outside the organisation in order to ensure greater objectivity. Consideration could be given as to whether a new national inspection agency as proposed by the Crerar Commission would be suitably placed to undertake this task.

Q4. Do you have any thought on how the necessary separation ('firewalls') can be achieved in the structure and day-to-day business of the new body?

While we have no specific proposals, we absolutely endorse the importance of compliance with ECHR and with legislative reinforcement of the independence of the Reporter from the governance structures of the organisation. We have concerns, however, about the potential loss of independence of safeguarders under the proposed arrangements. Respondents with more specific expertise in this area such as the Scottish Child Law Centre have raised questions about the legal and practical implications of such a move. A serious and meaningful response from Government is needed.

Q5. What are your views on the proposed role and functions of the Chief Executive Officer?

We support the proposed arrangements for its role and functions. If, however, neither the Principal Reporter nor the President of the Children's Panel is accountable to it, it may be appropriate to reconsider its title. There is an issue of overall accountability for the new body and how effectively the Board will be able to discharge this on a day-to-day basis.

Q6. We invite comment on the options outlined above. Do you have any other suggestions about how the concerns about separation of functions might be addressed? Are there other functions which need to be re-considered or re-allocated?

As above, Children in Scotland believes that compliance with human rights legislation is essential. While we have no particularly strong concerns about the way in which Reporters have carried out this function to date, we would support any move which makes future compliance with ECHR less open to challenge. The impact of having differentiated roles within the Reporter service in terms of resources and qualifications would need to be established. This may also impact on continuity and consistency of decision-making. The option of local arrangements is not supported as this may well result in inconsistency of decision-making.

Q7. What are your views on these proposals?

We support the proposal for the new post of President of the Children's Panel. The range of responsibilities proposed seems appropriate. The introduction of new powers as suggested would appear necessary to the effective operation of the post.

Q8. What are your views on these proposals?

We agree with the proposals which should result in greater national consistency. We endorse the proposal for discrete management as otherwise the integrity of safeguarders is potentially compromised.

PART TWO: POLICY AND LEGISLATIVE CHANGES

Q9. We invite views on the best way to provide an appropriate statutory scheme for legal representation of children and young people (in the circumstances specified above) who are involved in the Children's Hearings System.

While we would not wish to pre-empt the findings of the research we would wish to underline the importance of ensuring that the rights of children are both well reflected in its design and in any proposals arising therefrom. We would also wish to emphasise the value of specific expertise in this area of activity. The introduction of a Code of Conduct may be a way forward but it would need to refer to the role of advocacy as opposed to representation and promote consistency of approach.

Q10. What are your views on this proposal?

We support this proposal.

Q11. What are your views on this proposal?

We support this proposal on the basis that this will both expedite proceedings and contract the duration of a stressful period for the children concerned.

Q12. Do you agree these are areas which should be addressed?

We agree that these areas should be addressed.

Q13. Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

We agree that it is appropriate to make such a provision. It is, however, essential that this is meaningful inasmuch as children may need assistance to understand fully the content and implications of reports.

It appears to be (incorrectly) assumed that meaningful consultation with and participation by, children and young people “comes naturally” to most people. Both research and experience demonstrate that is not the case. Non-tokenistic involvement, genuine discussion and the skills needed to make children’s rights under Article 12 of the UN Convention on the Rights of the Child real all are learned behaviours. And yet, there are very few opportunities or support for either the children or adults involved in Hearings to acquire these skills. Overcoming this long-standing barrier to meaningful participation in Children’s Hearings and related decision-making processes should be given priority in the overall effort to *Strengthening for the Future*. A revised version of this document should clarify how, when and with what support this learning will be ensured.

Q14. Are there any other issues which you think might be addressed in the reform programme or proposed legislation?

Our comments in relation to the introductory sections of the document set out a number of issues that could usefully have been considered in the reform programme.

For further information, please contact: Marion MacLeod, Senior Policy and Parliamentary Officer at mmacleod@childreninscotland.org.uk or 0131 222 2435.

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 470 members, including 90% of Scottish Local Authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland) and the National Voluntary Children's Forum. Children in Scotland also hosts Enquire - the national advice service for additional support for learning, and Resolve:ASL, Scotland's largest independent education mediation service.