

## **Consultation Response:**

### *Draft Children's Hearings (Scotland) Bill*

Autumn 2009

Since this Draft Bill was made public by the Scottish Government during the summer of 2009, Children in Scotland has been in discussion with its diverse membership and other relevant organisations about the strengths, weaknesses and next steps in relation to this major proposed legislation. These communications occurred in a variety of ways over recent months, including two small 'Chatham House rules' meetings convened during August and October.

Many of the specific points shared by, and agreed among, contributors to this process already have been communicated verbally or in writing to the Children's Hearings Reform Team of the Scottish Government by participating individuals and organisations. They have largely been reflected in the newsletters issued by this Team and in the Scottish Government's detailed 'Response to Initial Engagement with Stakeholders' issued in September 2009. Accordingly, there is no need to repeat the same points, questions and concerns here.

Children in Scotland welcomed the recent action of the Scottish Government to allocate additional time to the task of considering the children's sector's responses and recommendations as it continues to work toward introducing the best possible Children's Hearings Bill in the Scottish Parliament. Children in Scotland also appreciates the Scottish Government's clear willingness to positively engage with stakeholders and to communicate progress as it occurs.

As of the last week in October, 2009, there were two 'big picture' points that Children in Scotland has been encouraged to share with the Scottish Government. These are important matters that either have been overlooked or not responded to adequately thus far. The hope is that they will influence the final version of the Bill introduced by the Scottish Government because proper inclusion of these two points will greatly strengthen this legislation.

## CHILDREN IN SCOTLAND'S TWO KEY MESSAGES

**1. Focus more on what actually happens to/for children *after* the Panel's 'decision' has been made.** *The Bill should pay far greater attention to ensuring, monitoring and reporting the outcomes of Children's Hearings. The litmus test should be the extent to which these decisions demonstrably improve the current well-being and life chances of the children they are intended to benefit.*

The draft Bill primarily concerns itself with the structure and operations of the Children's Hearings system. These are complex matters and it is very important to 'get it right' at the structural and operational levels. For example, much better support of Children's Panel members is crucial for the success of the system.

Nonetheless, most of the changes being proposed pale in importance when compared with the fundamental question of whether these reforms will actually result in substantially better outcomes (better lives) for the young people whose already damaged childhoods brought them to this system in the first place. Unfortunately, it is not the case that making the Children's Hearings system more streamlined, consistent and EHRC-compliant *automatically* means that it will be able to change children's situations and trajectories significantly for the better. Specifically, the current draft Bill is too weak in terms of three vital elements:

First, and foremost, it does not solve the core problem of the Children's Hearings system too often making "decisions" that are never implemented -- or long delayed -- or watered down. This occurs most frequently because the local authority does not allocate the resources needed to implement a decision or because the necessary service/assistance/support envisaged by the Children's Panel cannot be accessed (for various reasons). It appears that Section 136 of the Antisocial Behaviour etc (Scotland) Act 2004 has not proven an effective enough tool for implementation of Children's Hearings system decisions. There is also a need to resolve (in law, policy and practice) the tensions between Panel decisions, the GIRFEC approach (to ensure that children get the help they need when they need it) and the Concordat (which enables local authorities largely to act upon their own policy and budgetary priorities).

Second, the current draft Bill does not include a sufficiently robust and consistent monitoring/assessment/accountability process that can determine the wisdom and effectiveness of the decisions that *are* implemented. While the specifics can be dealt with in secondary legislation and guidance, there should be a strong foundation for such follow-up work in the primary legislation.

Third, the Bill does not include an adequate 'feedback loop' for Panel members (and other key people) to be informed at regular intervals as to what has become of the child and of their decision about that child. This is a necessary precondition for a process of amending decisions that are not producing the intended benefits.

One simple step in this direction would be a requirement for reviews to include asking children and families whether (and how) their well-being has (or has not) changed in the interim as a result of the Panel's decisions and the services/support provided.

The Children's Hearings Reform Team repeatedly emphasises its adherence to the 'Getting it right for every child' (GIRFEC) principles and approach. Children in Scotland has been, and continues to be, a strong supporter of GIRFEC. And yet, it remains clear that GIRFEC is a voluntary, aspirational, long-term framework that is still in the early stages of implementation across Scotland. Therefore, simply invoking the name of GIRFEC cannot – and will not in the foreseeable future – dramatically reduce the system's caseload or magically solve the implementation problems with which the Children's Hearings system is burdened.

**2. Children's rights must be more meaningfully identified, incorporated and ensured through this Bill.** The Children's Hearings Reform Team's September 2009 'Response' document states that: "The reforms will deliver: children's rights at the heart of the system by giving them the right to see relevant papers and information and ensuring they have a voice at hearings." [Emphasis added]

Children in Scotland shares the Scottish Government's desire to give prominence to children's rights within the Children's Hearings system. However, this intention is not adequately reflected in what the draft Bill actually says and does. There are two fundamental problems. The first is that the Bill essentially reduces the UN Convention on the Rights of the Child to a focus on Article 12 – the right to have the child's views on decisions affecting her/his life heard and taken into account, And yet, there are at least nine other Articles of the UNCRC (3, 4, 16, 19, 20, 25, 26, 39 and 40) that have relevance for the Children's Hearings system. These include the rights to the best possible care arrangements and to the rehabilitation of child victims, as well as more familiar rights safeguarding privacy and best interests. Many of the children's rights enshrined within the UNCRC (and affirmed by the Scottish Government) speak to *outcomes*, not processes.

Even the Article 12 right to participation and 'having a voice' in the Children's Hearings system is too narrowly conceived and too weakly included within the draft Bill. It is not news that tokenistic, superficial, 'tick box' versions of participation and consultation are worse in some ways than doing nothing at all (because tokenism breeds distrust and cynicism among children and adults). Ensuring *meaningful* participation in decision-making in the context of Children's Hearings is neither simple nor does it come naturally to children or adults. This is especially true of young people whose views and voice have rarely been solicited, supported or heeded during their short and often unhappy lives.

There is a growing literature on effective participation models and practices, including advocacy and safeguarding. Of particular relevance are two research reports written for the then Scottish Executive within the last five years.

The first is: *Big Words and Big Tables*, written by staff members from Save the Children, Who Cares? Scotland and SCRA --

[http://www.whocaresscotland.org/pdf/Big words & Big tables.pdf](http://www.whocaresscotland.org/pdf/Big%20words%20&%20Big%20tables.pdf)

The second is: *My Turn to Talk?*, written by Children in Scotland --

<http://www.childreninscotland.org.uk/docs/pubs/MyTurntoTalk.pdf>

Some of the concerns raised here are best addressed through secondary legislation, guidance and/or a code of practice. However, the primary legislation should make explicit the need for, duty to provide and essential elements of making children's rights real and meaningful within the Children's Hearings system. Again, the Scottish Government's unambiguous support for a children's right-based approach should be robustly reflected in the next version of this Bill.

### *FINAL THOUGHTS*

The Children's Hearings Reform Team's September 2009 'Response' document listed numerous key topics as still *under consideration*. Prior to the formal introduction of a Children's Hearings Bill in the Scottish Parliament, there should be adequate opportunity for stakeholders to review and respond to the Government's forthcoming clarifications, new wording and amendments, as well to its as yet unknown proposals on substantive matters. This productive dialogue with stakeholders should continue until agreement is reached on all essential matters, as that will significantly enhance the prospects of enactment.

Children in Scotland supports the Scottish Government's commitment to preserve and improve our nation's distinctive and still-praiseworthy Children's Hearings model in ways that remain fully grounded in its original child welfare principles. Ensuring that the Children's Hearings system can and will meet the challenges vulnerable children face in the 21<sup>st</sup> century would be a brilliant public investment. Making a positive, lasting difference as early as possible in the lives of Scotland's children will save huge amounts of public expenditure later; reduce the human misery that accompanies leaving children trapped in bad childhoods; and usher in a brighter future for our nation's economy and society. Benefits this profound make it worth the time and effort to properly reform the Children's Hearings system. Children in Scotland remains ready, willing and able to help this happen.

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