

The 15th Kilbrandon Lecture (University of Strathclyde, 23 November 2017)

The Right Honourable Nicola Sturgeon, First Minister of Scotland

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The Kilbrandon Lecture

It is a pleasure to be here and an honour to give this lecture. I know that in doing so I'm following in some distinguished footsteps – including Sir Harry Burns, Sir Neil MacCormick and of course Donald Dewar, the first First Minister, when he was Secretary of State for Scotland. It is also a pleasure to pay tribute to Lord Kilbrandon. Lord Kilbrandon of course produced a hugely important and influential report on constitutional change in 1974, which led indirectly to the first devolution referendum in 1979. He was also one of the outstanding Scottish judges of his generation. Even if he had never produced his report on children and young people, therefore, there is no doubt he would be remembered fondly today as someone who had a significant, enduring and beneficial impact on modern Scotland. I am delighted that Heather Shaw, his granddaughter, is in the audience this evening. And of course his finest and most lasting achievement – the one we are marking this evening – is the report of 1964 which led to the establishment of the children's hearings system in 1971.

When we read now the remit that Lord Kilbrandon was given back in the early 1960s— with its focus on ‘the treatment of juvenile delinquents’ — we can see immediately that its tone and language belongs to a different era. It is a tribute to the brilliance of Lord Kilbrandon, and those who worked with him, not just that they had a vision for doing things differently, but also that they could set out practical steps to achieve their vision. It is a vision that endures half a century later — something that should still inspire us today.

When Lord Hope gave this lecture three years ago he returned to an idea that he had used in one of his judgements — that the ‘special genius’ of the Kilbrandon report lay in the distinction it draws between establishing the facts of an offence, and deciding on what is best for the child. That distinction remains central to children’s hearings. In fact, that belief that we should be driven by the best interests of children is enshrined in law, but is a principle we should abide by across all our efforts in government. That notion – that the welfare of children is paramount, not just in the children’s hearing system, but in society as a whole — is central to my vision for a fairer and more prosperous Scotland for this generation and the next. In fact, if you were to ask me to sum up what I consider to be my mission as First Minister, it would be this — the mission of making real progress towards genuine equality of opportunity. If we fail in that mission, not only will we be letting down our young people, but we will all be diminished. For every young person who cannot fulfil their potential, all of us lose out on the talent, ideas and initiative of someone who could be contributing so much to our society.

Getting young people to see how much they can achieve, then kindling that awareness into a spark or fire of ambition, and then enabling them to realise

that ambition – that is one of the key responsibilities today for government and for wider society. Giving children the best possible start in life is essential if we are going to rise collectively to that challenge. Now, that of course involves a vast range of different policies which I can't focus on this evening– for example combatting poverty, investing in housing, promoting healthy, active lives. It also requires strong support for high quality universal services. In particular, many of the improvements we are making to universal services will benefit all children, but will particularly benefit children from deprived or disadvantaged backgrounds. That is particularly important because of the removal of stigma.

If you take education, I have made it clear that I am prepared to be judged on whether this government succeeds in closing the poverty-related attainment gap between children from affluent areas and children from deprived areas. Our expansion of high quality childcare, to be overseen by Maree Todd, over the next three years will help to give every child the best possible start in life, while also making it easier for parents, especially mothers, to return to work, if that is what they want to do and that is what they see as best for their families. And since August, parents of new born babies have received baby boxes. Baby boxes bring significant practical benefits. They include household items – such as a thermometer, a travel changing mat, a selection of clothes – which are useful to parents, and which in some cases the parents wouldn't be able to buy for themselves. However alongside those practical benefits, the baby box also has a symbolic value. It is provided to all babies, regardless of their background. It sends out a signal that in Scotland, we value all children equally – and we will do everything we can to support and encourage their potential. That should be the hallmark of this country's approach.

However my main focus today is on how we support children and families who most need it – and in particular, how we respect their rights and listen to their voices, views and needs, as an essential part of providing help. The guiding principle behind *Getting it Right for Every Child* is that children get the right support from the right people at the right time. It is a principle which Lord Kilbrandon would have recognised. He sought to reduce what he called ‘the arbitrary effects of what is still too often a haphazard detection process’ for identifying children who experienced what we now know as adverse childhood experiences – whether they involve abuse, neglect, violence or poverty. So we are working to prevent those experiences, to help children to heal from trauma, and to improve the wellbeing and resilience of children who encounter them.

It’s worth noting that this emphasis on prevention and joint working lies behind our proposals for named persons. This is not about meddling in family life. Better information sharing between different services is an important part of ensuring that children get the right support from the right people at the right time.

Children will therefore be less likely to fall through any gaps between services. As we do that, we need to ensure that this support is consistent with, and serves to enhance, children’s rights. One of the biggest changes since Kilbrandon has been our growing understanding of children’s right to be heard and to be listened to.

When this lecture series was established in 1991, the first speaker was Professor Sanford Fox of Boston College Law School. He had advised on the drafting of the 1989 Convention on the Rights of the Child. He reflected on the fact that in many ways the Kilbrandon Report was ahead of its time, and said that the ‘idea that children should be active participants in decisions affecting them...has only recently been enshrined in the new ...Convention...although these values have

been the foundation stones of Scottish juvenile justice for 20 years now.'

Scotland has, through the UK, been a signatory to the Convention from the very beginning. But we now want to go further, and look at how the Convention can be better embedded into Scottish legislation and policy. This includes the option of full incorporation of UNCRC into our law.

However there are areas where we can start now. For example we will raise the age of criminal responsibility from eight to 12 – a step which puts us in line with international standards. And we will support legislation to offer equal protection for children on physical punishment – enabling Scotland to join some 50 other countries around the world which have already successfully made that change. In addition, we are starting a three year programme to raise awareness of the rights of children and young people. We recognise that laws in themselves – although important – aren't enough. They need to be accompanied by a change in culture – that's what will lead to a significant, positive and sustained change in children's experiences. One crucial part of that is ensuring that our children and young people not only get a chance to be heard, but that they are listened to – they should feel they have a full place in society, and that they have some ability to shape their own futures.

Next year is Scotland's Year of Children and Young People. I had the privilege of launching the programme for the year a couple of weeks ago, at the Oasis Youth Centre in Dumfries. A key thing about the year is that it is being shaped by children and young people themselves. They have decided that it should concentrate on people between the age of 11 and 25; they have determined the programme of events; they have influenced the aims of the year. As a result – and this is really important – I'm sure we will have a better outcome. The year

will be a celebration of young people's achievements and potential which is enjoyed by, and has meaning for, young people.

There is of course a much bigger principle at stake here – that children need to have a genuine say in the decisions that affect them. That is maybe more important now than ever before. We saw in 2014 during the referendum, when 16 year olds were allowed to vote for the first time, that our young people are the conscientious, compassionate, thoughtful citizens we always knew they would be. The decision to give them a vote and a voice was regarded as a success by virtually everyone. But we have also seen in recent years – perhaps most prominently during the EU referendum – decisions taken by the population of the UK as a whole which young people almost certainly wouldn't have taken for themselves. That will, of course, inevitably sometimes happen in any democratic society. But it perhaps increases the need for us to ensure that young people have a genuine say in shaping their own future.

We have been trying to lead by example. That is why the Scottish Cabinet held a joint meeting in February with representatives of the children's parliament and the youth parliament. We discussed issues ranging from mental health to Scotland's relationship with Europe. We all agreed to make the Cabinet an annual event. Away from the Cabinet table, we also need to ensure that children have an influence on the key decisions affecting their day to day life. That principle has to apply in particular to children who need particular care or consideration from the state. After all, a key test of any society is how we support and care for children who require special protective measures – as the Convention on the Rights of the Child would put it. We need to take extra steps to give them true equality of opportunity. That includes giving them a voice

when decisions are being taken that could change the course of their lives.

That's what we have tried to do in recent years in relation to children's hearings.

As a result of our overall approach to children's services, and the move we are seeking to make to prevention, rather than dealing with problems once they have arisen – the number of children referred to children's hearings has declined by almost three quarters in the last decade. In 2006 it was 56,000; in 2015 it was 15,000.

It's maybe worth noting that that mirrors the reductions we have seen in the youth justice system. In 2006, the number of 18 year olds in custody was 223; last year it was 81. With children's hearings, the commonest reason for a referral is now a concern about the child's welfare, rather than a concern about offending behaviour. 80% of children who are now on compulsory supervision have only ever been referred because of the possible need for compulsory care or protection. Back in 1971, 85% of cases were on the basis of possible offences. Progress flows from putting children at the centre. That progress has allowed us to look at how the system works. The consultation we initiated on reforms to the system, back in 2010, demonstrated that the children's hearing system is still very highly valued. The views we heard came from professionals, volunteers, academics, and from young people themselves. That is in itself, of course, a testament to the far sightedness and wisdom of the Kilbrandon Report. But it is also a tribute to the expertise, dedication and compassion of the people involved with children's hearings.

Observers from across the world have at times spoken admiringly of the principles or the system set out by Kilbrandon. But of course it is people who make that system work. That includes the Area Support Team volunteers who

help to monitor and support children's panel members. It also includes the panel members themselves who give up so much of their time — for very little public recognition, and no financial reward. There are many children's panel members who end up considering the cases of more than 1,000 children. The positive difference they make through their contribution — to those children, to their families and to local communities — is extraordinary. That also applies, of course, to the Children's Reporter staff and all the other professionals who support children's hearings. I want to put on record, on behalf of the Scottish government, indeed on behalf of the whole country, my gratitude to each and every one of you. But it is our duty to ensure that our repossess to children's needs are modern, updated and fit for purpose.

The reforms we legislated for in 2011 have strengthened children's rights and clarified roles and responsibilities. For example we established a role of National Convener, supported by Children's Hearings Scotland, who has statutory duties associated with the recruitment, selection and training of children's panel members. We also improved the training and recruitment of safeguarders — the independent representatives who assess children's best interests and provide advice when, for example, there is a dispute between different agencies. And we have made it easier for children to gain access to legal representation. Now, I believe that these changes have delivered improvements and will continue to deliver improvements. I think the children's hearings system is wonderful. But we must not rest on our laurels and we should not pretend the hearings system is perfect. We need to push for even higher standards precisely because the role it performs is so valuable.

The Education and Skills Committee of the Scottish Parliament earlier this year highlighted concerns from young people which are similar to the ones which I have heard: for example about how difficult it can be to understand the information they get before the hearings — including their own ‘child’s plan’ — and the fact that they are not always as aware as they could be of their rights to participate in their hearing.

One measure which will help to address some of those problems was included in the 2011 Act (Children’s Hearing (Scotland) Act 2011; <https://www.legislation.gov.uk/asp/2011/1/contents>). It provided for a nationwide advocacy service — one where an independent representative can speak up for the child’s interests and concerns. That person will be available for children who have been expressed an interest in advocacy support, and for those who might not otherwise be able to participate fully in their own hearing. I am delighted to confirm today that, having run several pilots across the country, we are allocating additional resources to ensure that a truly nationwide service will be up and running from 2019. Independent advocates can help us to ensure that children’s hearings become even better at hearing from children. By doing so, they can give an effective voice to some children whose views might not otherwise be properly heard.

A fundamental principle of the children’s hearing system is that parents are usually the best people to bring up their own children. They should be encouraged and enabled to do so whenever possible. When that isn’t possible, children should be settled into a loving permanent home as soon as possible. In those cases — depending on what is in the best interests of the child — options such as foster care, kinship care, residential care or adoption should be

explored. Maree Todd, the Minister for Childcare and Early Years, who is here this evening, is at an event tomorrow to mark National Adoption week. I am sure she will stress the point I want to make this evening — how grateful we are to adopting parents, foster parents and carers who choose to provide a loving home for children.

Many children with experience of care will go on to do brilliantly, through their own efforts, and also because of the people who love them and care for them. In fact, outcomes for the 15,000 looked after children in Scotland are improving. In 2010, only four out of 10 looked after children were in employment, training, or further or higher education after leaving school. Now the figure is seven children out of 10. But even so, some of the statistics surrounding children in care are deeply concerning. Indeed they are unacceptable if we are to get it right for every child. For example only one in 16 goes to university. And it is estimated that a third of the prison population is made up of people who lived in care when they were growing up. Some sources suggest the proportion could be higher.

While we have statistics like that, we simply cannot be satisfied. That is why we launched the root and branch care review (<https://www.carereview.scot/>) earlier in the year. Fiona Duncan is chairing the review, and will, I know, do a fantastic job. A fundamental principle of the review is that it will be driven by the involvement and views of children who have experience of care. Their views and their stories will be at the very heart of shaping what the best care in Scotland should look like.

On a personal level, I have promised, over the duration of the review, to listen to at least 1,000 children and young people who are in care or have experience

of care— so far I have spoken to and met with more than 150. In fact, one of them was with me the last time I was in this hall. Calum Lynch is an ambassador of WhoCares? Scotland, who graduated in Management and Marketing from Strathclyde Business School two weeks ago. I had the pleasure of going to his graduation service as his corporate parent. I think he might have invited me half as a joke — I don't actually know if he expected me to agree! It was an absolute privilege to attend. Calum is living proof of the fact that, with the right support, young people who grow up in care can achieve their dreams just like any other young person. The state owes it to all young people to ensure that that they all have that opportunity.

In fact, I'm not sure that the state has a more important, a more sacred duty, than the one that we owe to children in care. And for all the superb work that is being done by people across the country, we know we still need to do better. In particular, children and young people in care need to know that they are cared for and loved. I've stressed the importance of young people's rights throughout this speech. Arguably the most important right of all is the right to be loved unconditionally as a precious, unique, special human being. I grew up in that sort of environment, and I'm sure that the majority of you did too. It is, almost literally, the birth right of the vast majority of children in Scotland — and those who grow up without it are disinherited in ways which we can scarcely begin to imagine.

So we must, and we will, make sure that the way in which we provide care for them puts love at its heart. Every young person has a right to be loved. At the start of my speech I quoted the opening words of Lord Kilbrandon's remit. I want to end with an excerpt from the end of his final report. Speaking of the young

people in the juvenile courts at that time, he said that it was necessary 'to extend to this minority of children... the measures which their needs dictate, and of which they have ...been too often deprived.' The language may now sound very slightly dated, but the meaning is as relevant now as it was in 1964. We must ensure that we provide additional help, support, care or protection to the young people who need it most. It is an essential part of providing every child with the best possible start in life. That needs strong support for universal public services. It requires a continuing focus on improving children's services specifically. It involves respecting, protecting and enhancing children's rights. And in my view, it means involving and listening to young people whenever we make decisions about their lives.

By doing that, we can deliver on the aspiration that the welfare of our children is paramount. We can build, together, a more prosperous, fairer, happier Scotland. And we can live up to the inspiring and challenging legacy of Lord Kilbrandon.

About the author

Nicola Sturgeon became SNP Leader on November 14, 2014 and was appointed First Minister on November 20, 2014. She is the first female First Minister of Scotland and the first female leader of any of the devolved UK administrations.

Born in Irvine, Scotland in 1970, and educated at Greenwood Academy, Nicola Sturgeon studied law at the University of Glasgow where she graduated with LLB (Hons) and Diploma in Legal Practice.

Ms Sturgeon completed a legal traineeship at McClure Naismith, a firm of solicitors in Glasgow. She subsequently worked as a solicitor in private practice

with Bell & Craig, a firm of solicitors in Stirling, and as a senior solicitor in the Drumchapel Law and Money Advice Centre in Glasgow.

First elected to the Scottish Parliament as a regional MSP for Glasgow in 1999, she is currently MSP for Glasgow Southside having been, before boundary changes, MSP for Govan between 2007 and 2011.

In government, Ms Sturgeon served as Cabinet Secretary for Health and Wellbeing between May 2007 and September 2012 and then Cabinet Secretary for Infrastructure, Investment and Cities with responsibility for government strategy and the constitution until November 2014. Throughout this period, she also served as Deputy First Minister of Scotland.