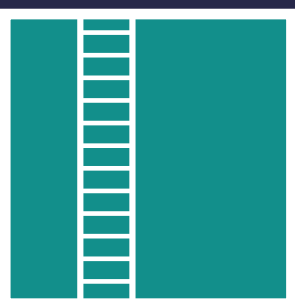


Hearings for Children

Hearings System Working Group's
Redesign Report

May 2023





The information in this report has been drawn from real experiences— and many of those experiences were difficult ones. It may bring up difficult feelings, thoughts and memories for some people.

It's important that you feel safe and ready before you read it.

If you feel that you need to talk to someone, you can contact the Samaritans:

24-hour helpline: 116 123

Website: www.samaritans.org.

If you are care experienced, then you can contact the Who Cares? Scotland helpline:

Phone: 0330 107 7540

Email: help@whocaresscotland.org.

If you are a parent or carer and want to talk about the challenges in your life, then you can contact Children 1st Parentline:

Phone: 0800 28 22 33

Webchat: <https://www.children1st.org.uk/>

Email: parentlinescotland@children1st.org.uk

If you are a child, you can call Childline or visit their website:

Phone: 0800 1111

Web: <https://www.childline.org.uk/>

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Foreword

by the young people from Our Hearings, Our Voice¹

While reading this report, we ask that you hear the voice of the child. As outlined in our 40 Calls to Action,² try to step into my shoes and understand what my life is like and what is important to me.

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

We want the positive changes that are currently happening to continue and the changes that can be made now to happen without delay. We hope that both the 'smaller' and 'bigger' changes are considered important as both will make a difference to children and young people. As you move into the next phase, children and young people with experience of the system need to continue to be included in the process.

The Children's Hearings System is an important part of Scotland's 'care system' and is central to providing help and support to children, young people and their families—but change is needed. The time is now for those working in and around the system to listen to those with experience of the Children's Hearings System to ensure it can evolve and adapt to meet the needs of children, young people and families. We believe change is needed so children of the next generation receive more support and have a better experience of the system than we had.

As we worked with Sheriff Mackie and The Promise Scotland over the last year and a half, we spoke about what we hoped the recommendations would achieve and what we would like to see from a redesigned system. Before anything else, the child must be at the centre, be given a voice, and be heard. This is so important and the main thing that needs to change. There needs to be a shift away from speaking **about** the child, to speaking **to** the child. Scotland needs a system that works for its children and families, rather than serving **itself**.

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 support the Children's Hearings Improvement Partnership in providing scrutiny and promoting improvement across the Children's Hearings System. Our Hearings, Our Voice have been an integral part of helping the Hearings System Working Group to develop the recommendations within this report. More information can be found here: [Our Hearings, Our Voice | A children and young people's board for the Children's Hearings System | ohov.co.uk](#)

² [Resources | Our Hearings, Our Voice | ohov.co.uk](#), page 6.

We imagine, and believe the recommendations will achieve a future Children's Hearings System that:

- Delivers stability, support, continuity and accountability.
- Values the personal qualities of the professionals involved just as much as the qualifications.
- Uses language that is child-friendly and easy to understand.
- Takes a positive, strengths-based approach to Hearings.
- Offers children and families consistency in experience across Scotland, taking account of differences such as age and stage and learning abilities.
- Supports children and their families to understand the process and the decisions that are made.
- Makes children feel comfortable and listened to in a Hearing.
- Takes the time to really get to know a child and their family so they can make more personalised decisions to meet the needs of the child.
- Gives families the tools and support they need to succeed.
- Delivers on the support that is agreed to by the Hearing.
- Looks beyond a child's time in the Children's Hearings System and considers the lifelong impacts of the decisions they are making.

The Hearings System Working Group, its Issues List and final recommendations have been mapped against our 40 Calls to Action. The adults, children and young people who were part of the redesign worked together to ensure these fit together well and fully took account of the voices of Hearings-experienced children. We hope these recommendations, as well as the process of their development, will demonstrate that working side by side with young people can help solve problems in a way that isn't yet being done consistently across Scotland. We believe that all of the recommendations can be instrumental in bettering the Children's Hearings System— **this redesign has the potential to change the lives of so many children and families.**

Being a part of redesigning the Children's Hearings System has been crucial, rewarding and has given us a feeling like we've been listened to. We have met with quite a lot of

Hearings for Children: The Redesign Report

significant people while working to improve the Children's Hearings System and many of them have helped and supported us in lots of different ways; but no one has quite taken on all our experiences and fed it back to us and is asking for the change in the way Sheriff Mackie and The Promise Scotland team has. We saw a cycle of bringing information to us, providing feedback and coming back and listening again—there is proof that they have listened to us.

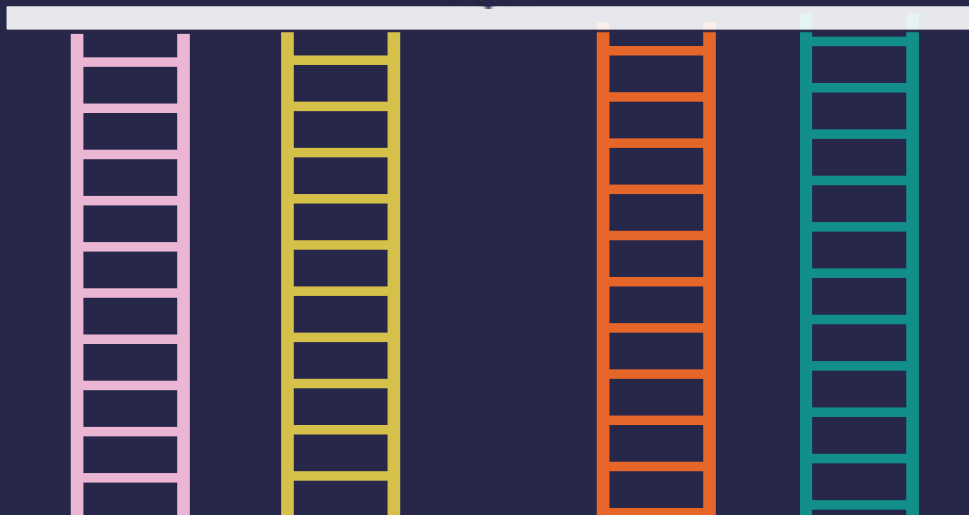
Finally, we ask that this does not need to be done again. Now is the time to look ahead and to the future of Scotland's children and families. At one of our sessions with Sheriff Mackie and The Promise Scotland we prototyped the idea of a magazine for children and young people to read in the waiting room before a Hearing. A few months later, it came to life and is now available online and in Hearing Centres across the country. As you begin to read the report, we want to leave you with a poem from our first issue of VOICE magazine.

*I am a young person, not a case nor a problem
I have a right to be heard, I deserve a seat at the table
I may not attend Hearings, but that does not define me
I'm not broken, I'm not unworthy of love
I have worth
I will not be quiet! I will be seen
I deserve respect
I'm not anyone's mistake
Speak to me, not about me
I have thoughts, a heart, and a voice³*

3 VOICE Magazine, (Issue 1) Autumn/Winter 2022 (Board member – Achilles)

To those responsible for making these changes happen, we ask that you don't miss **this opportunity to change lives.**

The young people of
Our Hearings, Our Voice



A note from the Chair, Sheriff David Mackie

The Children’s Hearings System is unique both within Scotland and to Scotland. It is the only system in the world that operates the way that it does, separating the adversarial, with the core principle of ‘needs not deeds’ and focusing on the best interests of children. Since its inception in 1968, many children, families, care experienced adults and those working alongside them have shared their views and experiences about what has been working and what has not within the Children’s Hearings System. Many highlighted to the Independent Care Review and, subsequently, the Hearings System Working Group, a system that often feels complex and confusing, which does not always make sense to children and families. Sometimes the system itself causes distress and harm, exacerbates trauma and results in children feeling as though they are left stuck, to drift or in limbo for extended or seemingly indefinite periods of time. It can also result in families feeling overwhelmed, without the appropriate support, care and protection that they need to make the necessary significant changes in their lives to keep children safe, happy and loved. Often, this is despite the best efforts of the members of the paid and unpaid workforce working alongside children and families as part of the system.

This report is a direct response to the conclusion of **the promise**, one of the seven reports produced by the Independent Care Review, that the underlying structures of the Children’s Hearings System must be more actively considered so that it is *“best placed to truly listen and uphold the legal rights of children and their families.”*⁴ And it considers how children and families’ needs are being met and rights upheld within the existing system, over fifty years on from the publication of the Kilbrandon Report.⁵

At the time the Kilbrandon Committee was writing, most children were referred to the Children’s Hearings System based on offence grounds than for care and protection. Now, of course, the reverse is true. Scotland’s understanding of the impact of trauma and inter-generational trauma, of attachment and of child development has significantly increased. A redesigned system must take account of this.

In order to do so, the Hearings Systems Working Group has returned to the principles of the original Kilbrandon Committee’s report. In particular, the need for support, care and protection for all children—including those in conflict with the law—the inclusion of children and families in decisions that affect them and the principle of ‘minimum intervention’ that subsequently evolved. It seems to the Hearings System Working Group, having listened to the experiences of children, families, care experienced adults and those

4 [The Promise](#), 2020, page 14

5 The Kilbrandon Committee, [The Kilbrandon Report](#), 1964

A Note from the Chair

Hearings for Children: The Redesign Report

working alongside them, that the current Children’s Hearings System has drifted away from some of these core principles.

The recommendations contained within these pages, therefore, should be viewed as the implementation of an aspect of the Independent Care Review alongside a modern update on the revolutionary work of the Kilbrandon Committee—a new and bold interpretation of what those core concepts mean in a Scotland that has cross-party commitment to keeping **the promise** and to incorporating legally binding children’s rights. While there exists an appetite for transformational change to the Children’s Hearings System, this does not extend to dismantling it or departing from the concept devised by the Kilbrandon Committee. The children and adults with experience of the Children’s Hearings System, and those working alongside them that I have had the privilege of speaking to, talked about the strengths of a welfare-based approach, and a core belief in the principles set out by the Kilbrandon Committee. In the reimagined system described in the pages of this report, therefore, the fundamental components of a Reporter, a Chair, a Hearing and other parts that may be familiar will remain the same.

That is not to say, however, that the recommendations within this report are not significant or profound—many contained within these pages are big, radical even. Others are smaller and may appear insignificant but are no less important. Together, I believe they represent the transformational change that children and families, care experienced adults and those working alongside them have called for. **Implemented and resourced in full**, they will herald a step change not only for the Children’s Hearings System but for how we work alongside children and families across Scotland. **The transformation will be in how children and families experience the Children’s Hearings System** and in the way that more robust, timely and consistent decision-making and more bespoke, high-quality support will help to keep **the promise** and improve outcomes for children and their families.

The recommendations will result in a redesigned Children’s Hearings System that **listens—with the intention of hearing what is said.**

One that **inquires, that asks what families’ strengths as well as their challenges are.**

One that **makes strong and robust decisions by consistent and competent decision makers right alongside children and their families and makes sure that everyone understands what those decisions are and what they mean.**

One that **values kindness, compassion, openness and helps children and families to know and access their rights.**

One where **the people who know children and families best have the time and space to work in a relational way or to build relationships with them, where appropriate.**

One that **asks duty bearers across Scotland to work much more closely together when children and their families need care and support—and where they are held to account if things are not working the way they should.**

For some children and their families this may mean it is more appropriate that the unique role the Children’s Hearings System can play in their lives is considered at a much earlier stage. A redesigned Children’s Hearings System will take into account the profound importance of **consistent and loving caregivers and homes** for children, given what we know and understand about the importance of strong relationships and the trauma of repeated separation and ruptured attachments. It will 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.

Making these recommendations will transform the interaction between children, their families and the systems around them making some of the gravest and most significant decisions that can be made. Ensuring that families understand what is happening and why and, where possible, feel empowered, listened to and respected may be the difference between, for example, a child remaining in long-term residential care or returning safely to their family and their community.

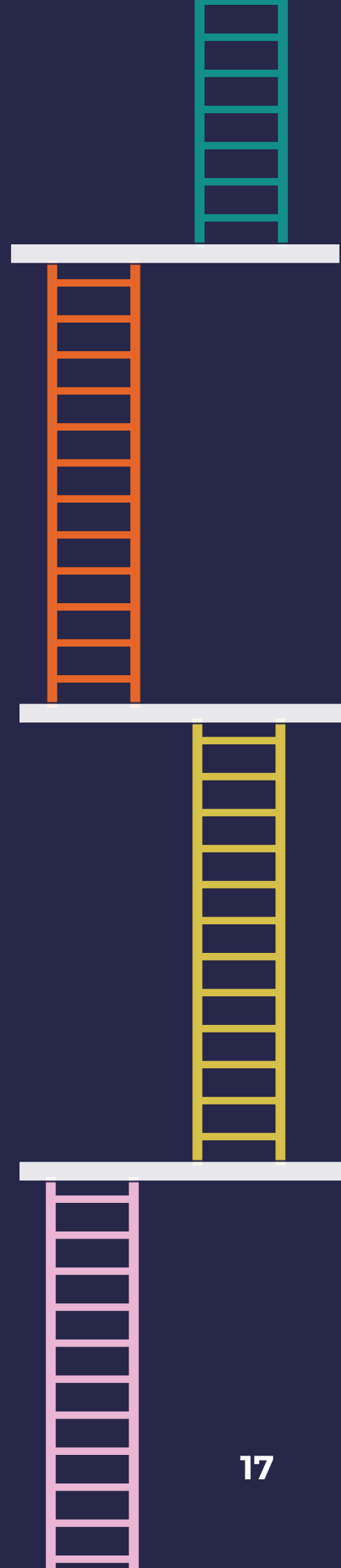
Of course, in some places transformational change across the Children’s Hearings System is already underway. Many of the things that children and families have spoken about needing to happen are being improved on, across the country. This improvement is welcome, and is referenced throughout this report, but there must be a much more coherent approach to testing the impact of these changes and, where appropriate, rolling them out so that more children and families can benefit from them, in line with the conclusions of **the promise**. This applies also to where the mechanisms for change exist currently already in statute or in policy but are not being implemented consistently—or sometimes even at all.

As the Hearings System Working Group shares these recommendations with children and families, those working alongside them, the care community and decision makers, I want to take the opportunity to thank all those who have helped to shape the redesign. I am grateful to those who helped us to face uncomfortable truths, to make sense of complex processes and practices and who entered into the discussions in a spirit of openness and willingness to make things better. In particular, to the children and young people that I listened to and to the families and care experienced adults who have experience of the Children’s Hearings System, I do not underestimate your bravery and courage in reflecting back on your experiences with the aim of making things better for those who walk in your paths. **Thank you.**

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 across Scotland.

David Mackie

Chair of the Hearings System Working Group



Key definitions and acronyms

Adoption	The legal process by which a child or children who cannot be brought up within their birth family become full, permanent and legal members of their new family..
Advocacy worker	An advocacy worker is someone who provides support to individuals or families in exercising their rights, and helps ensure their voices are taken into account in decision-making processes. An advocacy worker can help individuals access information and advice, and provide support to them as they navigate complex systems.
CARM	Care and Risk Management: Processes which are applied when a child between the ages of 12 and 17 has been involved in behaviours which could cause serious harm to others. This includes sexual or violent behaviour which may cause serious harm. CARM processes are also applicable when an escalation of behaviours suggests that an incident of a seriously harmful nature may be imminent.
CELCIS	Centre for Excellence for Children's Care and Protection.
Child Protection Plan	Where a child is believed to be at risk of significant harm, a Child Protection Plan should be incorporated into the Child's Plan for as long as the risk of significant harm is deemed to last. The Child Protection Plan focuses on actions to reduce risk.
Child Protection Register	All local authorities are responsible for maintaining a central Child Protection Register for all children who are the subject of an inter-agency Child Protection Plan, including unborn babies.
Child's Plan	A personalised Child's Plan is developed when those working alongside a child or young person and family identify that a child or young person needs a range of extra support planned, delivered and coordinated. Some people may also refer to the Child's Plan as the Care Plan.

Children	In line with Article 1 of the United Nations Convention on the Rights of the Child, this Report uses the word 'children' to mean anyone under the age of 18. Where appropriate the term 'babies and infants' is used with respect to very young children.
Children in conflict with the law	A term used to mean children who have been accused or suspected of committing an offence. In Scotland the age of criminal responsibility is currently twelve.
Children's Hearing	A lay tribunal made up of a Panel of three specially trained volunteers from the local community. The Hearing decides whether compulsory measures of supervision are required in relation to a child. It decides what measures should be put in place and reviews the implementation of the measures of supervision.
Children's Hearings System	The term 'Children's Hearings System' is used within this report to encompass the entirety of the system, from the point at which a person or organisation is considering making a referral to the Reporter.
CHIP	Children's Hearings Improvement Partnership: a multi-agency group Chaired and co-ordinated by the Scottish Government that brings together partners from across the Hearings System with a focus on delivering change and improvement.
CHS	Children's Hearings Scotland: the public body which is responsible for recruiting, training and supporting the volunteer children's Panel Members who make decisions in Children's Hearings.
COPFS	Crown Office and Procurator Fiscal Service: COPFS is responsible for the prosecution of crime, investigation of sudden or suspicious deaths, and investigating allegations of criminal conduct by police officers.
Corporate Parent	The name given to an organisation that has particular responsibility for care experienced children and young people. Part 9 of Children and Young People Scotland Act (2014) sets out the responsibilities of corporate parents.

Key definitions and acronyms

Hearings for Children: The Redesign Report

CPPM	Child Protection Planning Meeting: an inter-agency meeting convened when there are concerns that a child is or may be at risk of significant harm. It has the authority to decide if the risk to a child is such that they require to be placed on the Child Protection Register, and to subsequently review this. Sometimes this is also referred to as a Child Protection Case Conference.
CSO	Compulsory Supervision Order: An order made by a Children's Hearing that requires a child to comply with specified conditions and requires the local authority to perform duties in relation to the child's needs.
CSP	Support Plan: a plan put in place to support certain children and young people with additional support needs. Children who are 'looked after' are entitled to a coordinated support plan. The CSP should outline their support needs and what should be put in place to meet their needs.
CSPP	Children's Services Planning Partnerships are public and third sector organisations working together in each area of Scotland to plan, deliver, and report on their local statutory Children's Services Plan. This three year plan and annual reports show how adult and children's services and support is being provided in a way which will improve wellbeing outcomes for local children, young people and families.
ECHR	European Convention on Human Rights: the first instrument to give effect to the rights stated in the Universal Declaration of Human Rights and make them binding.
EEI	Early and Effective Intervention: A coordinated, planned support for children who come to the attention of the police for offending, concerning or harmful behaviour.
Families	The term families is used within this report in recognition of families of all shapes and sizes, including single parent families, families with same sex parents and foster and kinship families.
FGDM	Family Group Decision Making: a process by which families can come together, often with professionals, to discuss and agree a plan for how to improve things for their family. The Children and Young People (Scotland) Act 2014 sets out the requirements for Family Group Decision Making services across Scotland. Also known as Family Group Conferencing..

Foster Care	Foster care offers children and young people a home while their own family are unable to look after them. Foster carers are paid an allowance to support them to care for children and young people. Local Authorities and independent organisations provide foster care services across Scotland.
GIRFEC	Getting It Right for Every Child: a framework used across Scotland to promote and support the safeguarding and welfare of children and young people.
Help and support	The term 'help and support' is used within this report to mean services, support and assistance provided alongside a child and their family to help them overcome the challenges in their lives. For example, this may be mental health services, Early and Effective Intervention or holistic whole family support. 'Early help and support' means identifying and providing early support to children and families to prevent problems from escalating or getting worse.
ICSO	,Interim Compulsory Supervision Order: a temporary order that can be made to impose measures of supervision on a child.
Implementation authority	An authority which has the responsibility to give effect to any order made by a Children's Hearing or Sheriff.
IRD	Inter-Agency Referral Discussion: The start of the formal process of information sharing, assessment, analysis and decision-making following a reported concern about abuse or neglect of a child or young person under the age of 18 years, in relation to familial and non-familial concerns.
Kinship care	Kinship care is when a child is looked after by their extended family or close friends if they cannot remain with their birth parents.
Looked After Child	Under the Children (Scotland) Act 1995 looked after children are defined as children in the care of their local authority.
Looked After Child Review	A statutory multi-agency meeting to discuss children and their needs and whether there needs to be any changes in the future. It is the forum where a Child's Plan, or any change to that plan, is agreed.
National Convener	The National Convener of Children's Hearings Scotland is an independent position with legal responsibilities to recruit, train and support Panel Members across Scotland.

Permanence	Permanence means having a safe and secure home throughout your childhood. There are a number of different permanent options. There are four routes to permanence for a child: Adoption Order, return or remaining at home to family, Permanence Order, Kinship Care Order.
Principal Reporter	The Principal Reporter and SCRA operate the national Reporter service. The Principal Reporter has the statutory functions which are delegated to Reporters and carries overall responsibility for Reporters' decision-making.
Procurator Fiscal	Procurators Fiscal are based throughout Scotland. They are legally qualified civil servants who receive reports about crimes from the police and other reporting agencies, consider whether there is sufficient evidence to justify criminal proceedings, and then decide what action, if any, to take in the public interest.
Relevant Person	There are two distinct categories of relevant persons in a Children's Hearing: a person who is automatically a relevant person and a person who is a 'deemed' relevant person. Decisions in relation to who is automatically a relevant person will be made prior to a Hearing by the Reporter. Relevant persons are people who have certain rights and responsibilities in Children's Hearings.
Residential Care	A place where children are cared for in a home, often with other children and young people. The care is provided by paid members of staff. Residential children's care is provided by Local Authorities and independent providers in Scotland.
Restorative Justice	A process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed, arising from an offence or alleged offence.
Reviewing Officer	Local authorities have Reviewing Officers who Chair Looked After Reviews for looked after children to quality assure social work practice and multi-agency support.
SCRA	Scottish Children's Reporter Administration: the public body set up to administer the statutory functions of the Principal Reporter.
Secure Care	Secure Care accommodation is a form of residential care where children's liberty is restricted. There are four independent Secure Care Centres in Scotland.

Statement of Grounds	A statement setting out which of the grounds in s. 67 of Children's Hearings (Scotland) Act 2011 the Principal Reporter determines applies in relation to the child and the facts on which that assessment is based.
Team Around the Child	The name given to a group of people working around and alongside a child to support their wellbeing and take forward the child's plan. It often includes the child's family.
Tribunal	A Children's Hearing is a tribunal, within the meaning of the European Convention on Human Rights, which has the capacity to determine both civil rights and obligations, and criminal charges.
UNCRC	United Nations Convention on the Rights of the Child: an international human rights treaty that grants all children a set of rights. It was adopted by the UN General Assembly in 1989 and ratified by the United Kingdom in 1991.

Executive Summary



Executive Summary

This report is a direct response to the conclusion of the promise, the findings of Scotland's Independent Care Review, to more actively consider the underlying structures of the Children's Hearings System so that it is best placed to truly listen and uphold the legal rights of children and their families.

While there exists an appetite for transformational change to the Children's Hearings System, this does not extend to dismantling it or departing from the concept devised by the Kilbrandon Committee. The recommendations contained within these pages, therefore, should be viewed as the implementation of an aspect of the Independent Care Review alongside a modern update on the revolutionary work of the Kilbrandon Committee—a new and bold interpretation of what those core concepts mean in a Scotland that has cross-party commitment to keeping the promise and to incorporating the UNCRC and ensuring there are legally binding children's rights.

The Hearings System Working Group (HSWG) was a partnership between The Promise Scotland, Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA), with the Scottish Government performing an observatory role. The recommendations are based on what the Group heard from children, families, and adults with experience of the Children's Hearings System and those working alongside them. The development of the report was overseen by Sheriff Mackie and **the resulting recommendations were agreed by all members of the HSWG**. Together, they represent the transformational change that children and families, care experienced adults and those working alongside them have called for.

Implemented and resourced in full, the recommendations will herald a step change not only for the Children's Hearings System but for how children and families across Scotland are included, engaged and listened to beyond it. The transformation will be in how children and families experience the Children's Hearings System and in the way that more robust, timely and consistent decision-making and more bespoke, high-quality support will help to keep the promise and uphold the rights of children and their families.

1. The success of the redesign of the Children's Hearings System

There are a number of areas upon which the success of the redesign is **entirely dependent**. This report does not seek to replicate what the Independent Care Review previously concluded in detail. However it is important to be crystal clear that if the following areas are not prioritised and addressed at local and national level then it will not be possible to reduce the number of children requiring compulsory measures in Scotland

and to enable the Children's Hearings System to specialise in the way that the promise intends. These areas are:

- Ensuring equitable availability of, and access to, **early and ongoing help and support** for children and for their families. In particular, ensuring all children and families are able to access the help and support that they need, when they need it, in the way that they need it, for as long as they need it. This includes access to holistic, whole family support in line with the conclusions of the Independent Care Review and the Scottish Government's Blueprint.
 - Actioning the Scottish Government's commitment to spending at least 5% of all community based health and social care on **preventative whole family support measures by 2030**.
 - Urgently addressing the challenges relating to the **recruitment, retention and resourcing of child and family social work teams**.
 - Paying serious and sustained attention to maintaining **and supporting the children and families' workforce** so that they are best placed to undertake the complex work required of them in a way that is characterised by a rights-respecting, trauma-informed approach. This includes the third sector workforce.
 - Ensuring consistent, high-quality provision of **Family Group Decision Making and Restorative Justice services** across Scotland.
 - Addressing **the pervasive impact of child poverty**, the links between poverty and the Children's Hearings System and ensuring these recommendations are linked to the national work to reduce poverty and meet the child poverty targets.
-

What will these changes look like for children and families?

Help and support, including whole family support, mental health and other important wellbeing services, will be available for all children and families who need it, regardless of whether they are engaged with the Children's Hearings System or not.

Children and families will be able to access this help and support to address the challenges in their lives as early as possible, for as long as they need it, and in the way that best suits their needs.

The people working alongside children and families, including social workers, will be happy, healthy, skilled and supported with enough time to get to know them well.



2. The scaffolding around the Children's Hearings System

A redesigned Children's Hearings System must be **underpinned by an inquisitorial approach**.

This aims to address the concern that the HSWG has heard from children, families, adults, and members of the workforce with experience of the Children's Hearings System that the current system feels increasingly adversarial. Sometimes children and families and the workforce have spoken positively about their experiences, but

others have spoken about a system characterised by animosity and conflict. The way that grounds are established and the conduct within a Children's Hearing can often feel distressing and the surrounding processes confusing and hard to engage with.

A redesigned Children's Hearings System must work alongside children and their families. As much as possible, it must make decisions **with** children and their families instead of for them. It must seek their views often and listen with the intention of hearing, and it must offer significant and meaningful opportunities for children and their families to **participate in the decisions about them that have historically happened around them.**

The central framing of the decision-making process should remain, but a more inquisitorial approach to the discussions must be adopted. This includes being clear that all decision makers in the Children's Hearings System will inquire about what families strengths as well as their challenges are. It will be a system where kindness, compassion and openness are valued and where children and families know and are able to access their rights.

The Children's Hearings System must focus on understanding children and what they need in the **context of their entire family**, including their brothers and sisters, extended family, friends, people they love and trust, and in the context of their community. This approach must not be limited to a Children's Hearing but must be reflected **throughout all parts of the system**, including with respect to the conduct of Sheriffs and Sheriff Court proceedings, the decision-making processes for the Reporter, the ongoing review and oversight procedures and engagement with the implementing authority.

A change in primary legislation or procedural rules and a shared set of national standards for the workforce will help to foster an inquisitorial approach and culture within the Children's Hearings System.

As part of this approach, **the way that children and families are spoken with and about must change** and there must be a coordinated effort to establish an appropriate, considered, and non-judgmental language of care in Scotland.

Sheriffs must be recognised as having a fundamental and expansive role within the Children's Hearings System, which will develop further as these recommendations are embedded. The HSWG is therefore of the view that **specialist Sheriffs will be required.**

All members of the workforce working alongside children and families within the Children's Hearings System must be provided with **training in the impact of trauma, childhood development, neurodiversity and children's rights**, in line with conclusions of the promise. This includes Sheriffs, lawyers, Safeguarders, Panel Members, social workers, and Reporters.

There must be a clear understanding at all levels of a redesigned Children's Hearings System about **what children and families' rights are and how they should be accessed and upheld**—not least by children and families themselves. This includes ensuring that there are structures and frameworks in place to let children and families know about their entitlements to **legal aid, legal representation, and advocacy**.

To facilitate and embed these recommendations, the organisations forming an integral part of the Children's Hearings System must be supported to implement them and to flex and change as they are embedded. There must be a **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. The Scottish Government must oversee this.

What will these changes look like for children and families?

Everyone in the system, from the Reporter to the Chair, will work closely alongside children and their families, will listen to their voices and make decisions with them instead of for them.

The whole system will understand children and their needs in the context of their entire family and the complexity of family circumstances.

The language used in Hearings will be non-judgmental. The way that people speak about children and families will feel supportive, easy to understand, and consistent across Scotland.

Everyone in the Children's Hearings System working alongside children and their families will be specially trained, will understand what children and families' rights are and how the things that have happened to them in their lives have an impact on who they are and what they do.



3. The pathway to the Reporter

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.

Earlier referrals to the Children's Hearings System will be in the best interests of some children and their families, given what is known about child development, trauma, attachment, and the importance of the earliest years on later life. The particular needs of **babies and infants and their developmental milestones** must be taken into account by potential referrers.

To ensure the appropriate engagement of the Children's Hearings System at the most appropriate time, there must be a **clear understanding across potential referrers of the added value and purpose** of the Children's Hearings System and where it sits alongside the broader child protection, care, and support framework in Scotland. Updated national guidance must be issued to all those working alongside children and families to help to them make **clear, consistent, timely and rights-based decisions about whether the involvement of the Children's Hearings System and compulsory measures is proportionate and necessary.**

The workforce must be given permission and supported to **work relationally** alongside children and their families, to ask their views and to fully and explicitly consider the risk of removing children from their families, in line with **the promise**. This will require a shift in thinking, a shift in practice and a shift in policy.

There must be an improved and more consistent approach to **applying thresholds for referral** to the Reporter. Changes to the statutory referral criteria and to **updating and modernising the language used**, in particular with respect to the existing terminology of "treatment and control" must be considered.

All organisations within the Children's Hearings System must ensure that they have adequate audit arrangements in place to review and openly report on the quality, consistency and impact of their decision-making and outcomes for children.

Additionally, there must be an **enhanced role for the Reporter prior to a referral being made to the Children's Hearings System** which involves the engagement of the Reporter being routinely considered during other child protection, care and support processes, meetings and discussions. This must facilitate a more consistent approach to partnership working between other agencies and the Children's Hearings System and enable the Reporter to provide advice about the need for compulsion. Working in this way will help to **plan a child and families' 'entry' to the Children's Hearings System**

collaboratively so that it feels streamlined and makes sense to children and their families.

When it is considered that compulsory measures may be required immediately upon a child's birth, the Reporter must be engaged alongside multi-agency partners and expectant parents and must be **empowered to undertake an investigation and prepare draft grounds for referral before the baby is born**. Expectant parents must be offered the support of an advocacy worker and a lawyer at the same time or prior to the Reporter's involvement.

Children engaging with the Children's Hearings System as a result of being in conflict with the law should **not be treated differently from other children** in terms of process and procedure—there should not be a two-tier system. Specialist training must be provided to decision makers within the Children's Hearings System and to those working as part of the children's justice system or directly alongside children in conflict with the law. This will ensure that they know and can help children access and understand their rights and the way in which the Children's Hearings System interacts with the criminal justice system.

What will these changes look like for children and families?

The Children's Hearings System will be engaged in the lives of children and their families at the right time.

People referring children to the Reporter will keep in mind the importance of the developmental milestones of little children.

The Reporter and the workforce will work closely together alongside children and families and listen to their views about the help and support that would make the most difference in their lives.

The people who work alongside children and their families will work together and have a clear understanding of the referral process. The Reporter will be more involved to help with this.



4. The introduction of advocacy, legal advice and the Reporter

The process and experience of a referral and decision from a Reporter should look and feel different in a redesigned Children's Hearings System.

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

Children must be fully informed of their right to legal representation and there should be an exploration and understanding of whether the current mechanisms to access legal aid and their right to legal support are sufficient.

Once a referral has been received, **the Reporter should work more closely alongside children and families**, where possible. The Reporter must: (1) Ensure the **voices, views and experiences of children and their families are routinely** part of their investigation; (2) Make connections between other simultaneous child protection, care and support processes, and remove duplication, confusion and overwhelm where possible; (3) Review the Child's Plan, if there is one, as an integral part of understanding the help and support that has been put in place for children and for their families.

Where a Reporter refers a child back to the local authority for voluntary measures of support there should be **changes to reduce the number of repeat referrals and increase the coordination** between the Children's Hearings System and other parts of the 'care system'. This includes increased collaboration and proportionate and necessary information sharing between the Reporter and the local authority.

Re-referrals of children to the Reporter within a specific timeframe should be considered as part of a **continuation of the previous concern**, rather than new circumstances, and should be considered by the same Reporter.

There should be improved mechanisms to **better capture data** to understand the impact of voluntary measures and why children are re-referred to the Reporter.

What will these changes look like for children and families?

The way that the Reporter works will change. Reporters will work closely with children and their families and listen to their views.

Advocacy support will be immediately offered at the point of referral to the Reporter, and may eventually be extended to the family, in addition to the child. This offer will be repeated at different stages of the process.

Children will be fully informed of their right to legal representation and will be able to access support from lawyers if they need it.



5. The reasons the Children's Hearings System has become involved in a child and family's life

The way that grounds are currently established can feel transactional, adversarial, and traumatic, sometimes feeling like a criminal charge. To address this and ensure that the Children's Hearings System operates in an inquisitorial manner, the process must change. The drafting of grounds and the Statement of Facts must be reframed. There must be a **rights-based approach to establishing grounds** and children and families must be better supported to understand why grounds are being established.

Children and families must recognise themselves in the drafting. The Statement of Facts should therefore include, where appropriate, strengths and positive elements of a child's care in addition to the challenges in their lives.

Grounds must be established in a separate process before a child and their family attend

a Children's Hearing: **there will be no more Grounds Hearings.** A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds.

A child and families' experience at Court should align as much as possible with the experience at a Hearing in terms of the physical environment and the expected conduct of an inquisitorial approach. Wherever possible, there should be a **consistent Sheriff** throughout the process who is specially trained and skilled. The appointment of a Safeguarder should be routinely considered during the process to establish grounds.

The reasons for structural and systemic delays in establishing grounds must be identified and eliminated. This is important for all children, but in particular 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 there must be consideration of the benefit of **a statutory three month set time limit** for determining grounds; measures to prioritise the **developmental needs of infants and babies;** and understanding of whether a **flat rate fee structure or changes to legal aid** would support the timely establishment of grounds.

Interim orders must be in place for a length of time that is in **the best interests of the child and bespoke to their needs.** The Sheriff and Panel Members should be trusted to make appropriate orders without the need for mandatory reviews at short intervals of time.

When children are too young to establish the grounds for referral there should be **no requirement for a proof hearing,** if there is no dispute of the Statement of Facts or 'grounds for referral.'

What will these changes look like for children and families?

Children and families will understand the reasons they have been referred to the Children's Hearings System. These will be written in a rights-based way and the process will feel more supportive. The good and happy things in children and family's lives will be talked about as well as the things that are difficult.

Grounds will be agreed in a separate process before children and families attend a Hearing.

Where possible children and families will meet the same Sheriff if they are in Court and their experiences in Court will be similar to their experiences in their Hearings.

There will not be long waits while grounds are being established.

If grounds are not agreed, children too young to understand them will not have to attend Court.



6. The decision-making model

Children's Hearings must be conducted in an inquisitorial manner in response to the widespread desire heard by the HSWG to 'lower the temperature' and lessen the adversarial nature of them. The sole objective of Children's Hearings must be to arrive at decisions that are in the best interest of the child or young person. A Hearing must ask: what does this family need to keep the child safe, loved and well?

The proceedings of Children's Hearings must pivot towards understanding children and their needs in the context of their entire family and community. The existing Rules must be reviewed to ensure that they are sufficiently robust enough that the Chair is able to manage the dynamics and conduct of an inquisitorial approach to a Children's Hearing, including by determining who is present at each stage of a Hearing, whilst effectively balancing rights of attendance and participation.

In order to uphold children and families' rights, address the issues relating to the sustainability of the Children's Hearings System and help to keep the promise a redesigned Children's Hearings System will have at its core a new decision-making model.

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 HSWG is that **the burden of this responsibility should not be placed on the unpaid workforce, however skilled that workforce might be.**

Throughout all of the Group's engagement one message has come across consistently from almost all children, families and members of the workforce: the biggest difference that can be made is to ensure continuity of decision makers.

Taking all of this into account, a decision-making model of a redesigned Children's Hearings System must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate. As far as possible, **the Chair must be the same Chair each time a child and their family attend a Hearing.** This should also apply to Panel Members where possible and desirable.

The decision-making model must have three distinct phases:

Firstly, a robust preparatory phase, alongside children and families.

Secondly, the Children's Hearing itself, which will begin with an information gathering stage during which the Panel will hear from the child, the family and the other important people working alongside them and who are important in their lives. After the Hearing the **Panel will retire** for a short time, allowing time for reflection.

Thirdly, a final stage at which the Panel will deliver its decision verbally, with a more substantive **written decision.**

The Panel must always endeavour to reach a consensus on decisions. In the event of there being a difference of views there must be a majority decision. Any dissenting views must be reflected in the written decision.

A summary of the decision in plain language and in a format appropriate to the age and stage of the child must be prepared and issued alongside the full decision. The same must apply to the child's family, if appropriate.

What will these changes look like for children and families?

A Children's Hearing will not feel confrontational. The main objective will be to think about what is best for the child and the way this happens will feel calm, coordinated and safe.

There will be a consistent, highly qualified Chair of the Panel and two Panel Members.

The Panel's decision will be shared in ways that children and their families can understand.



7. The people making decisions

The way in which a Chair engages with children and families must change. The consistent Chair of a redesigned Children's Hearings System will be at the centre of the decision-making model, **maintaining the integrity of an inquisitorial Children's Hearing**. They will: work relationally alongside children and their families; assess the information provided to the Panel; uphold the rights of children and their families to be involved in decisions that affect them; preside over a robust and clear decision-making process; work collaboratively alongside others; and have clear oversight of the order and the Child's Plan.

Those who make decisions in a Children's Hearing must be supported, trained, and have a set of core competencies and values that can facilitate best practice. Rather than being from a certain professional group, **decision makers should be people who reflect a set of competencies and values that can ensure decisions are made in the best interests of children**. The competency-based recruitment framework currently used by CHS must be updated in line with the redesign. For the Chair this must include personal

qualities, tribunal skills and legal competence. For Panel Members this must be based on criteria that focuses more on their personal qualities.

Where possible, Panel Members should be **local to the community** that the child and their family are from, but there should be a focus on **matching Panel Members to children and families to whom they can relate** and who are empathetic to their experiences, challenges and circumstances.

The continued service and engagement of existing Panel Members should be welcomed, and their understanding and flexibility as change takes place must be acknowledged. CHS and SCRA must be fully supported and resourced to adapt and flex to the challenges required by the redesign.

There must also be a **national review of multiple ongoing child protection, care and support processes and meetings**, including review meetings, to identify where unnecessary duplication takes place, where drift and delay is introduced and where information could and should be better shared collaboratively with the Panel or Reporter to better inform decision making. The Children's Hearing must be clearly seen as **the principal legal decision-making forum** for children after grounds are established.

What will these changes look like for children and families?

All Panel Members will be able to work closely alongside children and families and they will be kind, empathetic and respectful.

The Chair will become a familiar face for the child as they follow them through their journey in the Hearings System. The Chair will know the child's background so they will not need to retell their story at every Hearing. Having a better understanding of the child's story will also support the Chair and the Panel to make the best decisions.

During a Hearing, everyone in the room will be supported to share their view and the discussion will not be overwhelmed by the strongest voice.

Children and families will feel safe, listened to and respected that and know their Hearing is being managed as the Chair will have the skills needed to 'hold the room'.

The other meetings and processes that children and families may be part of relating to their protection, care and support will feel part of the same system and children and families won't be confused about the purpose of them.



8. The participation and preparation before a Children's Hearing

A robust planning and preparation phase must be in place prior to a Hearing. By including children and their families more consistently in the planning prior to a Hearing taking place it may help them to feel included and to seek more ownership of their Hearing. Offering children and their families choices and **tailoring a more bespoke Hearing** to meet their needs and **adhering to those choices** and preferences helps children and families to feel **heard and respected**.

Children and families must be well supported to understand the processes and the people who are going to be there. They must be offered the **opportunity to meet the Chair** outwith the formal setting of a Hearing and to design aspects of the Hearing themselves. This must be voluntary.

The system should endeavour to become **more flexible and able to meet the needs of children and families** who attend Children's Hearings, including when and where Hearings take place. Arbitrary time limits for the length of Children's Hearings must be

discontinued.

There must be a separation between procedural decisions relating to the Hearing itself and the decisions made at a Children's Hearing. Sometimes the Chair may be able to make procedural decisions without the need to convene a full Panel in advance of a Hearing taking place—this should be fully explored.

This preparation phase must give particular consideration to the information held by the people who know a child the 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 and the rights of brothers and sisters to participate must be upheld.**

Children should **be supported to participate in the Hearing in a way that meets their needs, upholds their rights and enables them to fully express their views.** However, this should not mean that there is a requirement to attend. This must be replaced with a presumption for attendance with clear mechanisms in place to support a child to share their views. This presumption should not be in place for babies and infants.

Information must be shared with Panel Members in an accessible and clear way, through the development of **national standards for reporting and the development of a standardised pro forma report template.** It is critical that the Child's Plan is considered the core information for the Panel to review. Social workers and others writing and contributing to the information that the Panel receives must be fully resourced and supported to enable the provision of high quality, relevant and proportionate information that **reflects the voices, views and experiences of children and their families.**

Everyone, including children and their families, must be supported to read and understand the papers before a Hearing takes place, and must be given adequate time to process the information and to seek clarity if required.

What will these changes look like for children and families?

The preparation phase before a Hearing will feel more detailed and inclusive, ensuring children and families are involved and children feel ownership over their Hearing.

Before a Hearing, children and their families will be given an opportunity to meet the Chair so they are a familiar face at the Hearing, and to learn more about the process.

The Chair will be able to make decisions about how the Hearings will look and feel without needing to get the whole Panel together.

All communication from the Children's Hearings System will be easy to understand and children and families will be supported when they receive papers about the Hearing.

When possible, Hearings will take place at a time and place which causes the least disruption in their life. Children will be able to share their preferences about this and feel the system is being flexible to meet their needs.

Children will be encouraged to come to their Hearing, but they will not have to. Very little children will not be asked to come. If children do not come to their Hearing there will be ways to include them in the processes anyway and to listen to their views, even if they are very little. They will be supported to understand what was discussed and what decisions were made.

Information about children and families that is shared with the Panel will reflect their voices and make sense to them. The important people in a child's life will be involved in the discussions where appropriate.



9. The voices of children and their families in their Hearing

Children and families' views matter. One of the fundamental requirements of the UNCRC is to allow the voices of children to be heard in any proceedings affecting them (Article 12). **The promise** concluded that *"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."*⁶ **The most crucial aspect of the information and discussion stage of a Hearing in a redesigned Children's Hearings System is the participation of children and their families.**

Effective participation of children and families is key to ensuring the right decisions are made. Children and families should 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.

Children and their families must be supported to understand their choices and rights relating to their participation in their Hearing. This must include ensuring that they have an independent advocacy worker, if they want one. There should be a number of options to facilitate children and family's participation—including the possibility of Hearings being recorded and the exploration of the use of other forms of technology.

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.

6 [The Promise, 2020](#), page 12

What will these changes look like for children and families?

Children and families will feel empowered to be involved in their Hearings and recognised by those working alongside them, including Panel Members, as the expert of their lives and their stories.

The decision-making process will be inclusive and give children and families the feeling of working alongside the Panel to make the best decisions possible. Their rights and choices about how they want to share their views and participate will be clear.

Children and families will be actively encouraged to participate and share their views in Hearings.

Although the decisions of the Hearing will continue to be focused on the child, the Hearing will consider the importance of support for the whole family.

There will be special ways to listen to little children.



10. The people working alongside children and their families

There must be clarity about the role of each member of the paid and unpaid workforce who appear at a Children's Hearing alongside children and families. All members of the workforce must understand the particular nature and approach of a Children's Hearing and value the importance of an inquisitorial, rather than an adversarial approach. In particular:

There must be a **review of the pre-existing Code of Practice that lawyers are required to adhere to** and of the processes with respect to the register of solicitors eligible to provide legal assistance to children. There must be mechanisms to review practice and ensure that lawyers are held to the standard expected of them at Children's

Hearings. There should be consideration of the development of rights of audience for lawyers.

There must be **active management of the role of Safeguarders** as the changes are implemented, with consideration of regionalised approaches if required. There must be clarity about what is being asked of Safeguarders, the focus of their enquiry and the contents of their report. 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.**

Social workers' training must cover the purpose, structure and processes of the Children's Hearings System and social workers who attend Hearings must have an **in-depth understanding of the lives of children and families to whom the Hearing relates.**

What will these changes look like for children and families?

Everyone in the room at a Children's Hearing will have clear roles and responsibilities which will be explained to children and families. They will use clear language and will be respectful to each other.



11. The decisions available to the Panel and the support for children and their families

In a redesigned Children's Hearings System there must be a much closer relationship between what is in an order and the help and support that a family needs to address the challenges in their lives. **Drift and delay within the Hearing process must be reduced** where possible and the Chair must have a strong 'case grip' across decision-making to

ensure the right decisions are made at the right time, with the right support in place:

- There must be a **closer relationship between what is in an order and the help and support that a family needs** to address the challenges that are in their life.
- The Hearing should engage in **robust scrutiny of a Child's Plan**.
- All orders must be **more specific** about the help and support that the child and family require.
- Panels must be **empowered to create space** for restorative justice and FGDM processes to take place.

Particular consideration must be given to **upholding the rights of children in Secure Care**. Attention must also be paid to ensuring there are better and more streamlined processes for **brothers and sisters** where multiple children are engaged with the Children's Hearings System and to ensuring that, wherever possible, children remain with **consistent caregivers** when it is not possible for them to remain at home.

There must also be **closer links between local authority decision-making relating to adoption, permanence and residence orders** and the legal tribunal of the Children's Hearing. There should be consideration of a **set timescale for the length of time a child can be accommodated** in what is intended to be a long-term placement before a local authority decides to progress an application for an order which provides a permanent home for a child.

When the Hearing is making decisions about contact between a child and the important people in their life, orders must have a high degree of specificity to ensure safe, loving, **mutually supportive relationships are upheld and protected**. National best practice guidance around contact must be developed.

There must be an **improved approach to support for children and families after a Hearing has taken place**, including when it is no longer possible for children to remain at home. This also includes ensuring that there are sufficient resources and multi-agency planning and collaboration to ensure the needs of 16 and 17 year olds are met and there is **no 'cliff edge' in terms of support when they near their 18th birthday**.

There must be a **mechanism to identify when a child has been subject to compulsory measures of supervision for longer than two years**, after which there should be an in depth review. All children and families and implementation authorities must also understand what is expected of them and **what needs to happen to 'exit' the Children's Hearings System**—children must not remain subject to legal orders for long periods of time.

What will these changes look like for children and families?

Children and families will receive the help and support outlined in the child's order. Orders will be specific enough to ensure safe, loving and supportive relationships are protected.

Children will not be in the Children's Hearings System for longer than needed.

Wherever possible and appropriate, a child's Chair also be the Chair for their brothers and sisters.

Children and their families will be well supported after a Hearing takes place.



12. The oversight, enforcement, accountability and review of a child's order

There is a need for real clarity that if families are being asked to comply with measures set out in an order, and will be held to account, with serious, significant and potentially life-changing consequences, **others who have been asked to do things set out in an order must be held to account too.**

A redesigned Children's Hearings System will have a much closer connection between the tribunal and the other ongoing child protection, care and support processes in a child's life. Once a Hearing has concluded, the tribunal must be **empowered to maintain oversight of orders and exit plans made by Hearings**, to consider concerns reported to them regarding implementation and to take appropriate action in response to these concerns. This will be enacted by putting in place a **more immediate and flexible response to concerns that a CSO is changing or might not be being fully or appropriately implemented.**

There must be ways for the child and their family, and the important people in their lives, including those working alongside them, to **keep in touch with the Hearing** about how things are going. There must be a provision that enables the Hearing to make a requirement for the implementing authority to **regularly report back** to the Hearing on progress.

The aim is to ensure that the approach to accountability and scrutiny does not lead to defensiveness or blame, but rather creates an environment of ensuring **children are supported and that legal orders are enacted**.

Where a Review Hearing is necessary, the expectation should be that the parallel or simultaneous child protection, care and support processes align with the Hearing and proportionate and relevant information is shared to inform and make recommendations to the Panel—not to duplicate. A **collaborative approach** to addressing concerns relating to the implementation of orders will offer continuity in decision-making and draw on the expertise of those working alongside the child who know them best.

What will these changes look like for children and families?

The Chair will know how to follow up on the big decisions made in a Hearing and have a responsibility to hold others accountable for actions they agreed to.

The people responsible for making sure an order is implemented will make sure children and families are receiving the support that was promised to them.

Children, families, the important people in their lives, and those working alongside them will be able to keep in touch with the Hearing about how things are going.



13. The accountability of the Children's Hearings System

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

There must be **ongoing accountability for all organisations responsible for the delivery of the Children's Hearings System.** Children and families and members of the workforce must feel confident that the system is **continually learning** and **seeking to improve** the way in which they respond and adapt to the circumstances of children and families engaging with it. The programme for delivery and implementation put in place to oversee the implementation of these recommendations should ensure whether there is need for a new accountability body to ensure ongoing quality assurance, continuous improvement and oversight of a redesigned Children's hearings System. The Care Inspectorate should also consider how CSOs are supported and prioritised with implementing authority planning processes.

There must also be an **improved way to effectively and more consistently collect, share and learn from data across the Children's Hearings System.** Local authorities must be supported to hold and provide the data to inform and support national and local understanding of the implementation, impact and outcome of decisions made by the Children's Hearings System.

In overcoming the current challenges with respect to data sharing there must be a full exploration of means of effectively sharing or jointly controlling data between CHS and SCRA in order that the outcomes and impact on the wellbeing of children can be better understood. The National Convener of CHS should seek to share relevant and proportionate information annually with relevant governance structures (for example, Children's Services Planning Partnerships) to provide local decision makers with relevant, timely reflections on the experiences within the Children's Hearings System.

There must be a **single point of access** for children and families and others who wish to make a complaint about an aspect of the Children's Hearings System so that this process is less confusing and more streamlined.

What will these changes look like for children and families?

Organisations working alongside children and families will keep improving and will share the right information at the right time to make sure they understand if the lives of children have improved.

If something hasn't gone well there will be one place to go to make a complaint about the Children's Hearings System.



14. The implementation of the recommendations

The expectation of the HSWG is that the redesign will be **progressed at pace** and will be underpinned by clear governance and accountability mechanisms. It must be crystal clear who is responsible for which action, how the recommendations will be resourced, sequenced and implemented and how they will link to—and not duplicate—other ongoing important policy areas including UNCRC incorporation and other workstreams to keep the promise.

There are three types of changes that the HSWG has identified: **practice improvement**, which must be coordinated, well resourced, evidenced and given strategic oversight; **policy changes**, where the legislative mechanisms currently exist but the practice needs to change; and **legislative changes**. The Promise Bill, which will be laid by the end of this Parliamentary session, has been identified by the Scottish Government as the appropriate legislative vehicle for any necessary changes to the law. The transformation sought by children and families, and by **the promise** will be in accepting the entirety of these recommendations and considering their impact as a whole.

The report should not just be welcomed and set aside—the vision for change must translate into reality.

A high-level, collaborative programme for delivery and implementation must be put in place, led by the Scottish Government. A programme board, Chaired independently, should oversee the development and execution of the national implementation of the recommendations by securing and developing:

- Strategic multi-agency and multi-organisational leadership and understanding at national and local levels;
- A coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of the recommendations;
- Significant commitment to and clarity around how the changes will be resourced; and
- A clear and comprehensive accountability framework so that duty bearers are aware of what they must do and when by and how they will be held to account for delivery.

No single agency or organisation is responsible for delivery on all aspects of the redesign. This work must take place with a clear understanding and comprehension of the need for the existing Children’s Hearings System to be **constantly and consistently operational**, and to uphold the rights of the children and families currently involved in the system. Public and professional confidence in the Children’s Hearings System must be maintained as these changes are considered and implemented.

There is significant potential for this process to cause increased confusion, distress and overwhelm for the workforce, and for children and families if it is not managed well. **Careful, considered, and thoughtful planning is required so that the workforce feel part of the changes and supported, not burdened with another siloed approach to improvement that they do not feel fully equipped to enact.**

The starting point for changes, improvement, and transformation should be the benefit to children and families and the way that their experiences will change should be kept in mind throughout.

A national delivery plan must include:

- Oversight of ongoing **improvement** work so that it feels less piecemeal.
- Identification of areas for **legislative change**.
- Identification of areas for **testing and further consultation**.

- Collaborative work **to sequence the implementation of the recommendations** so that they can be prioritised, tested, and developed in a coherent way that leads to real change.
- Detailed work to ensure the changes are **fully and sustainably resourced**. The recommendations **cannot be implemented within the resources currently available**.
- **Accountability mechanisms** so that it is clear how the implementation of the recommendations is going—what is working well, what needs to move forward faster and what needs to happen to overcome challenges to progress.
- A robust **approach to communications** to the workforce and to children, families and care experienced adults.
- The **voices and experiences of children, families and adults with experience** of the Children's Hearings System.

The Scottish Government must now take this report and the financial modelling work and begin the necessary preparations to implement the recommendations as part of the Government's broader commitment to keeping the promise by 2030.

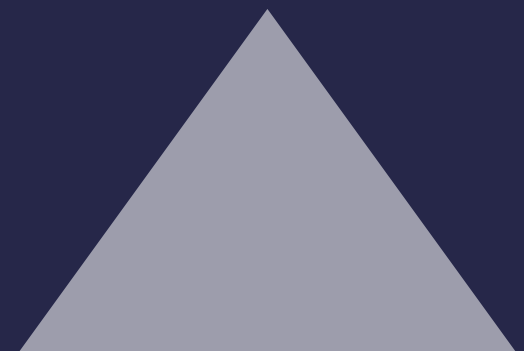
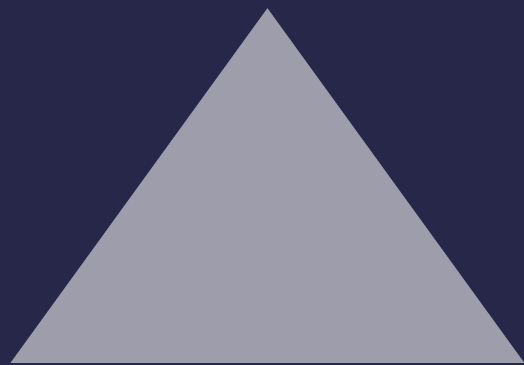
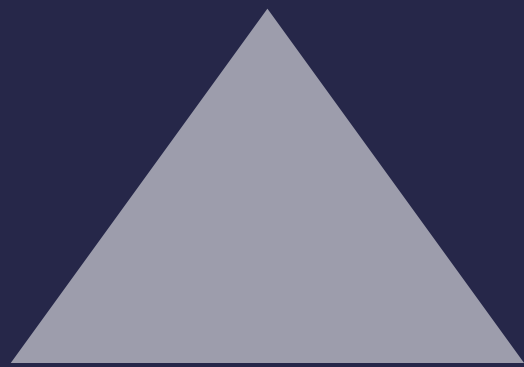
The Appendix to this report contains a summary of the recommendations and some indicative duty bearers as an initial starting point.

What will these changes look like for children and families?

Change will happen. And everyone will work together to make sure it does, alongside children, families and adults with experience of the Children's Hearing System.



Background



Introduction

How have we got to where we are?

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

The Social Work (Scotland) Act, 1968, brought into law the Children's Hearings System, which has been subsequently updated and strengthened by further legislation, including the Children (Scotland) Act 1995 ('the 1995 Act'), the Children's Hearings (Scotland) Act 2011 ('the 2011 Act') and most recently, the Children (Scotland) Act 2020.

In October 2016, the then First Minister, Nicola Sturgeon, made a commitment that Scotland would *"come together and love its most vulnerable children to give them the childhood they deserve."*⁷ She announced an Independent Root and Branch Review of Care (the Independent Care Review), driven by those with experience of care. The scope of this review included the Children's Hearings System and how it operates to serve the needs of some of the most vulnerable children and families in Scotland.

In 2020, the Independent Care Review published seven reports, including the promise, which was guided by thousands of stories, views and experiences of children and families. It found that the current 'care system' is failing to provide the foundation of loving, caring relationships for far too many children, stating that *"a fundamental shift is required in how decisions are made about children and families."*⁸ 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, including:

- The rotation of Panel Members can result in a lack of consistency, which means

7 [First Minister Speech, Scottish Parliament, 5th February 2020](#)

8 [The Promise, 2020](#), page 7

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).⁹

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.

9 [The Promise, 2020](#), page 40

- 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.

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

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

Fundamentally, the redesign of the Children's Hearings System set out within this report takes into consideration the core conclusion of the promise: for Scotland to broaden its understanding of risk to include the risk to a child of removing them from their family and to ensure that where children are safe in their families and feel loved they must stay—and families are supported together (in line with Article 18 of the UNCRC). The report is clear that children's rights must be upheld if children are removed from their families, including their right to special protection and assistance (Article 20 of the UNCRC). The promise states that, *"the Panel, the Reporter and those who represent and advocate for each individual must navigate the legal rights of children and families and ensure that the human rights of each person are upheld and respected."*¹⁰

The recommendations set out later in this report address the core conclusions of the promise, in particular highlighting the structural and systemic changes required to the broader childcare, protection and support system 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. Families must not be left alone in the absence of appropriate help and support because of a desire to drive down referrals to the Hearings.

10 [The Promise, 2020](#), page 42

Broader policy and improvement context

What else is happening?

In 2020 the Independent Care Review concluded that Scotland’s ‘care system’ operates across at least 44 pieces of legislation—including the Children’s Hearings legislation—19 pieces of secondary legislation, 3 international conventions and 6 policy areas. The promise states that this makes *“cohesive operation impossible and creates disconnects into which children, young adults and their families can fall.”*¹¹ It concludes that Scotland must create a clearer and more enabling legislative environment that supports families to stay together.

The Children’s Hearings Improvement Partnership (CHIP), a multi-agency group chaired and co-ordinated by the Scottish Government brings together partners from across the Children’s Hearings System with a focus on delivering change and improvement. This is an inter-agency forum and demonstrates the commitment across Scotland to change and improvement within the system. Significant work has been undertaken by this group over a number of years, including the creation of Our Hearings Our Voice, an independent Children and Young People’s Board for the Children’s Hearing System. This is in addition to considerable and significant efforts of multiple other national and local groups and organisations working hard to keep the promise and improve children and families’ experiences of the Children’s Hearings System.

In addition, considerable efforts are currently underway to improve how children and families experience the current system, including extensive work by CHS and SCRA who have been embarking on ongoing redesign and improvement work, linked to the work of the CHIP. For example, improvement work is, or has been, underway with respect to decision-making around brothers and sisters; child-friendly language; hearing children and families’ voices and their participation in Hearings; and trauma-responsive decision-making. The Better Meetings work in provides a glimpse of how culture can begin to shift even within the current systems and processes.¹²

Many of these improvements have already begun to change the Children’s Hearings System for the better—but there has also been expression of frustration due to the barriers that children, families, and those working alongside them face that make it difficult

11 [The Promise, 2020](#), page 112

12 [Better Meetings](#) is a group of care experienced young people, supported by Who Cares? Scotland. They work to improve the experience of care experienced children and young people in meetings and Hearings.

to uphold children's rights within the current framework. The Report's recommendations aim to address these barriers and support the continuation of successful improvement work rather than replacing or replicating this work.

At present however, there is not a clear overall picture and oversight of the improvement activity within the Children's Hearings System, where it is happening and the impact that it is having. As detailed in this report, implementation of the recommendations need to be undertaken alongside consideration of the existing work that is already in progress. The redesign must enable and give impetus and focus to work that is already being driven at local level and making inroads in addressing the challenges that children and families spoke about to the Independent Care Review. Some of the changes set out in this report, especially those that will require legislative change, will necessarily take time to implement, however, many of the smaller changes that are being tested now will not.

There are also several significant policy developments currently happening in Scotland that impact on the work of the Children's Hearings System redesign. This includes (but is by no means exhaustive): the refresh of Getting It Right for Every Child (GIRFEC); the Children (Care and Justice) (Scotland) Bill which, if passed, will raise the maximum age of referral to the Principal Reporter to 18 and was laid before Parliament at the end of 2022; the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Bill and measures to prepare for incorporation across the country; the implementation of the National Child Protection Guidance (2021); commitment to ensuring statutory child poverty targets by 2030; commitment to a nationwide approach to Bairns Hoose; ending the placement of 16 and 17 year olds in Young Offenders Institutions and the reform of secure care; updated mental health, suicide and self-harm and trauma strategies; commitments relating to foster care and kinship care allowances and support; work on an advanced practice framework for social workers, support for newly qualified social workers and a trauma training programme for frontline social workers; the Youth Justice Vision and Priorities; and the development of a £500m Whole Family Wellbeing Fund which has begun to fund local activity to prioritise early help and support for families.

Throughout the development of this report, The Promise Scotland made a specific request of Scottish Government to ensure that the Hearings System Working Group was sighted on all ongoing reviews in progress to avoid duplication. Sheriff Mackie connected with the Mental Health Law Review, identifying significant scope for alignment and joint work.

What was the Hearings System Working Group tasked with, and what is the scope of the redesign?

The Hearings System Working Group (HSWG) has its roots in the promise that made clear 'there was a need for SCRA and CHS to work together to consider and address the underlying operating structures of Hearings.¹³' Following the publication of Plan 21-24, HSWG was developed as a partnership between The Promise Scotland, CHS and SCRA. Sheriff David Mackie was appointed by Fiona Duncan, Chair of The Promise Scotland, as an independent Chair of the Group. The Scottish Government performed an observatory role in discussions, attending every meeting of the Group, receiving minutes, advance papers, and copies of the draft reports. Scottish Government also included the work of the HSWG as a key output of the Keeping the Promise Implementation Plan that was published in March 2022.

Recognising the need for collaboration, The Promise Scotland took responsibility for convening and driving the work.

The HSWG was, therefore, created to oversee the redesign of the Children's Hearings System following the publication of the Independent Care Review's recommendations and the subsequent Plan 21-24 and Change Programme ONE, which sets out a framework for keeping the promise. The Group facilitated a collaborative process that had the rights and voices of children, families, and adults with experience of the Children's Hearings System at the centre. It reviewed the principles and requirements of the Independent Care Review's conclusions on the Children's Hearings System, turning them into clear proposals for change. The Group was mindful of the need for the system to ensure full compliance with the UN Convention on the Rights of the Child (UNCRC), which is especially important as Scotland moves towards incorporation of the Convention into Scots Law, and the European Convention on Human Rights (ECHR).

The remit of the Group, set out in the Terms of Reference,¹⁴ covered the principles on which the Children's Hearings System is founded, including the ongoing relevance of the Kilbrandon report, duties regarding children's rights and general principles governing the approach of the Children's Hearings System. It included the extent, consistency, and

13 [The Promise, 2020](#), page 4

14 [Terms of Reference](#)

approach of the Children's Hearings System's decision-making powers: how organisations should operate within the system; what quality assurance standards should be in place; the role of Panel Members and the best decision-making model; and the way in which children and families' voices and views can be better taken into account in the redesign. It also considered governance and administrative arrangements, and the accountability and oversight mechanisms that are, or should be, in place to help uphold children's rights in line with the UNCRC.

Minutes of the meetings of the HSWG are uploaded on The Promise Scotland's website.¹⁵ The Group developed a broad discussion, consideration, and engagement programme, which resulted in:

1. Production and agreement of **a new and clear shared vision** for the redesigned Children's Hearings System: that the system will uphold and promote children's rights, provide child and family friendly care and justice, and put participation at its heart.
2. Analysis of the practice, legislative, budgetary, and structural **blocks and enablers** to implementing this vision.
3. An understanding of what **legislative changes** are required to meet this vision and uphold the rights of children and families and production of clear, collective proposals that redesign the Children's Hearings System and define the policy and legislative changes required.
4. An understanding of what **policy and practice changes** are required that do not require legislative changes.

In addition to the meetings of the HSWG, quarterly meetings took place between the Chairs of the HSWG, CHS, SCRA and The Promise Scotland to provide a clear governance and accountability framework for the Group. CHS and SCRA Boards also held bi-annual 'exceptional meetings' to discuss the work of the HSWG and The Promise Oversight Board received updates on progress of the HSWG. The HSWG also engaged fully with the Principal Reporter at SCRA and National Convener at CHS, given their statutory roles. In October 2022, the HSWG published an Emerging Themes Report,¹⁶ which set out the initial thinking of the Group, and gave the first indications of the themes and issues that were emerging following the information and evidence that they had heard. These themes formed the basis of this report.

¹⁵ [HSWG Minutes](#)

¹⁶ [Emerging Themes Report](#)

Values

The work of the HSWG has been shaped by the following values: respect (of differing contexts and improvement work that has gone before); courage; compassion; boldness; openness; flexibility; and rigour.

Methodology

How has the redesign process worked in practice?

The Group began by sharing data and insights to identify an Issues List, which represents the scope of the redesign process and a set of questions that is answered within this report. This was mapped against the ongoing improvement work linked to the Children's Hearings System to avoid duplication and ensure relevant outputs and learning were part of the considerations of the HSWG.

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

The HSWG's Work Programme then followed three distinct phases to address the questions set out in the Issues List: (1) Discussion and Discovery; (2) Deliberation and Design; and (3) Decision. The Discussion and Discovery phase involved the following workstreams, in addition to the ongoing improvement activity referred to above:

Engagement and deep dive sessions

The HSWG engaged widely with children and families and organisations working alongside children, families and care experienced adults and in providing or delivering services as part of the Children's Hearings System throughout the lifespan of the project. This engagement included discussions with the Convention of Scottish Local Authorities (COSLA), Police Scotland, Social Work Scotland, advocacy providers (including the ten

primary advocacy providers of the Children's Hearings System)¹⁷, legal service providers, Safeguarders and Children 1st, which operates the national Safeguarders Panel, third sector organisations and children and families with experience of the Children's Hearings System.

Prior to the publication of the Emerging Themes Report, the Group also held an informational webinar which explored the headings of the Issues List and convened a number of 'deep dive' informational sessions to allow the Group to consider key issues. These included the role of the Reporter; best decision-making models; the forthcoming Children (Care and Justice) (Scotland) Bill; the role of social work; early years, Family Group Decision Making; UNCRC, and children's rights.

The HSWG held seven redesign sessions held with those with experience of the Children's Hearings System, including foster carers, kinship carers, birth parents, adoptive parents, advocacy providers, police and Safeguarders. The information from these sessions helped to create a map of what currently happens in the Children's Hearings System, identifying issues, themes and solutions to help inform the further work of the HSWG.

The HSWG also received a number of written submissions to inform discussions and decision-making. This included significant submissions from SCRA's workforce consultation and CHS's extensive engagement with Panel Members.

Collaborative Redesign Project

The HSWG worked alongside Scottish Government's Office of the Chief Designer to facilitate a redesign approach to the work. Three project teams were created to work intensively to create solutions on the areas identified by the Issues List, meeting fortnightly, supported by the Office of the Chief Designer and The Promise Scotland. Each project team consisted of members of the paid and unpaid workforce in and around the Children's Hearings System. These teams developed proposals to inform the redesign being led by the HSWG, focusing on the following 'how might we' questions:

- **Avoiding the need for compulsory measures of supervision:** 'How might we' change the gatekeeping role and decisions that can be made at pre-referral and referral stages to ensure the right child or young person is referred to the Children's Hearing System at the right time?
- **Children and their Hearings (including their views and voices):** 'How might we' meet the needs of children and their families throughout the lifespan of their experience of the hearing system (including the establishment of grounds) to ensure Hearings are tailored to a person's needs?

¹⁷ [Children's Hearings Scotland Act 2011](#) s.122

- **Meeting the needs of children after a Hearing takes place:** 'How might we' ensure a rights-based approach to children, young people, and families, so they have the ability to challenge decisions and the implementation of an order to ensure their rights are met? And, 'How might we' embed effective scrutiny and accountability of decisions and implementation of orders (including the use of review hearings and duties on implementing authorities) to ensure the right outcomes for the child and young person?

This work concluded in November 2022. It produced an expansive set of proposals, prototypes and 'bold ideas' for what the Children's Hearings System could be. This work was considered by the HSWG and used to support decision-making. Reference to the proposals can be found within this report and in the Appendix.

Research

A literature review of decision-making models was produced. The HSWG commissioned research consisting of a review of caselaw and the legislative framework specific to the Children's Hearings System. This work was aligned with the Issues List to ensure the report's final recommendations were clear about what specific legislative change is and is not required, and to add to the pre-existing evidence base ensuring that the final output of the HSWG rests on a solid legal and academic footing.

Voice

How did the HSWG engage with children, families, and care experienced adults with experience of the Children's Hearings System?

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

The HSWG recognised that care experienced children and adults have already repeatedly shared their views about the Children's Hearings System and endeavoured to access and take that information into account rather than asking people to retell their stories once again. At its core, the HSWG based all of its work on the foundation of the Independent Care Review, which listened to over 5,500 experiences and used the Evidence Framework of the Independent Care Review as the primary research base to map across the issues identified by the promise.

In addition to this, both prior to and following the publication of the Emerging Themes Report and the drafting of recommendations, the HSWG developed engagement periods and discussion time with care experienced children and young people through organisations such as Our Hearings Our Voice, the Better Meetings group in Moray, and the Centre for Excellence for Children's Care and Protection (CELCIS)'s Voice and Inclusion Project. The focus of this work has been for children and young people to participate in the redesign process, contribute to the development of solutions and to ask whether the proposals will address the issues and barriers that children, families, and care experienced adults identified and shared with the Independent Care Review.

To ensure the views and voice of families were central throughout the process, the HSWG also met with birth parents, adoptive parents, kinship carers, and foster carers to help inform their thinking and test and discuss emerging recommendations.

Decision-making process

How were the recommendations within this report made?

The first phase of substantive engagement concluded at the end of 2022. In January 2023, the HSWG convened seven times as a full Group to review the output from the information and evidence sessions and the commissioned research. During these days, the proposals and prototypes of the Collaborative Redesign Project were discussed and considered with wide ranging and fruitful discussion. Following the discussions, Sheriff David Mackie and The Promise Scotland prepared a draft report for the HSWG to consider.

As far as possible, the HSWG has worked to ensure that recommendations produced were based on evidence and that proposed changes would have a positive impact on children and families and would be legally compliant, recognising further work to be done on implementation. From February to April 2023, the project moved into a period of refining the developing recommendations. Sheriff David Mackie and The Promise Scotland held design sessions with children and young people, and birth parents with experience of the Children's Hearings System to examine developing recommendations. Informal discussions here also held with foster and kinship carers. There were further meetings to discuss the developing recommendations with Social Work Scotland and Chief Social Work Officers. In addition, meetings were held with the Chief Social Work Adviser, the Information Commissioner's Office, the Crown Office and Procurator Fiscal Service, and the Coalition of Care and Support Providers. Sheriff David Mackie attended COSLA's Children and Young People Board to set out the direction of travel. Sense check and discussion of the recommendations was also undertaken with organisations and individuals with experience of trauma, domestic abuse, learning disabilities, and with members of the legal profession.

The HSWG then reconvened to reflect on the feedback that Sheriff Mackie and The Promise Scotland had received and to discuss changes required to refine the draft report. The Group also discussed the legal advice that was received from senior counsel, commissioned by The Promise Scotland, to ensure a robust legal foundation for the draft recommendations.

The Group also shared a copy of the draft report with some organisations with particular expertise and understanding of the Children's Hearings System for their review. The report includes a summary at the end each chapter of the impact that the recommendations will have on children and families' rights ('what will these changes look like to children and families' section).

The development of the report was overseen by Sheriff Mackie and the resulting recommendations were agreed by all members of the HSWG.

Financial modelling

The anticipated and necessary changes to legal structures, roles and responsibilities, and organisational functions detailed within this report as part of a redesigned Children's Hearings System have budgetary implications. Public sector budgets are under significant pressure at present. It was therefore critical to the HSWG that alongside the proposals there was clarity around the investment required to implement the recommendations. Following an open tender, The Promise Scotland instructed Azets to provide an outline financial model of what the likely changes would mean for the budgetary position of CHS and SCRA.

Throughout this report, the HSWG has been clear that the successful implementation of these recommendations is dependent on significant and ongoing investment in other areas to keep the promise, including with respect to early help and support for families. This preventative spend approach is vital to ensure that Scotland pivots to investing in upholding rights and meeting children and family's needs that in turn saves public finances in the future.

The financial modelling has to date focused on the decision-making model and changes that will require new resourcing. However, it is crucial that ongoing work relating to whole family support, including the funding committed to the £500m Whole Family Wellbeing Fund and the commitment to reach 5% of preventative health and social care spending by the end of this Parliament connects and aligns to the implementation of these recommendations.

Further work is required to ensure that the rights of children and families in and around the 'care system' to access help and support are upheld. This includes ensuring that the changes to the Children (Care and Justice) (Scotland) Bill are adequately and appropriately resourced and clearly aligned with the implementation of these recommendations.

What happens next to this report and the recommendations?

The conclusions of the Independent Care Review were accepted in full by Scotland's decision makers, including the conclusion that the Children's Hearings System must be better placed to truly listen and uphold the legal rights of children and their families. The implementation of these recommendations will realise that conclusion.

The Scottish Government's observatory role on the HSWG has enabled the Government to begin the necessary preparatory measures to plan for legislative and policy changes, in line with parliamentary cycles.

The Scottish Government must now take this report and the financial modelling work and begin the necessary preparations to implement the recommendations, as part of the Government's broader commitment to keeping the promise by 2030.¹⁸

The Promise Bill, which will be laid by the end of this Parliamentary session, has been identified by the Scottish Government as the appropriate legislative vehicle for any necessary changes,¹⁹ and will be subject to full external consultation and the usual scrutiny afforded to primary legislation in Scotland. The expectation of the HSWG is that work on the Promise Bill will include consideration and analysis of what changes are required in statute to implement these recommendations in full as part of streamlining the broader child protection, care and support landscape surrounding the Children's Hearings System so that children and families do not experience unnecessary complexities and duplication is removed.

A number of the recommendations in the report, however, do not require legislative change and can be actioned quickly with clear leadership and accountability frameworks. The legislative, procedural or policy levers already exist—and in some cases, the recommendations are simply flagging things that should already be happening in practice but are not. Other recommendations require a longer-term and more thoughtful approach to how they will work and clarity about how the changes will be communicated to children, families, care experienced adults, and to the workforce.

¹⁸ Scottish Government, Keeping the promise to our children, young people and families, March 2022

¹⁹ *Ibid.*

The recommendations set out in Appendix One of this report identifies which recommendations the HSWG considers are practice improvement and policy changes where the legislative and policy leavers already exist, and which will require legislative change. It also identifies respective duty bearers.

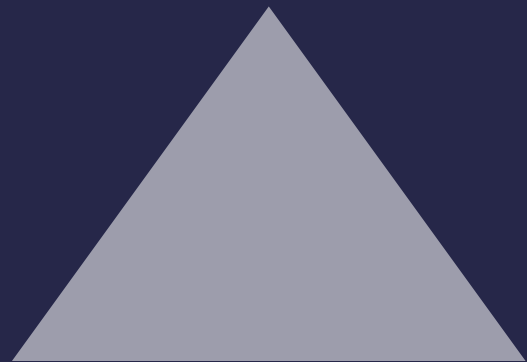
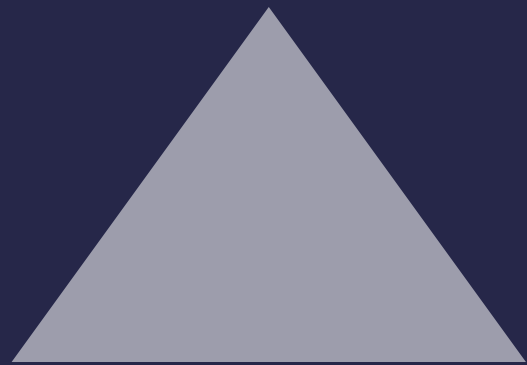
The transformation sought by children and families, and by the promise is in accepting the entirety of these recommendations and considering their impact as a whole. There must be no cherry-picking of one or two recommendations that are easier to implement while others are overlooked.

Some of the recommendations will be difficult to implement, will require additional resources, and logistical and structural changes on a significant level—these must be resolved and overcome. The recommendations are rooted in practical and pragmatic actions that can be taken to make this redesign a reality. Scotland's ambition for children and families is significant, and decision-makers, policymakers, organisations and individuals working alongside children and families must innovate and flex to accommodate the changes that are required to keep the promise and transform the Children's Hearings System for the better.

The HSWG fully expects that the next stage of the redesign will commence immediately, whilst being fully cognisant of the other ongoing policy developments and the external pressures on the workforce. To ensure the available resources are in place to make lasting change, a carefully planned and staged approach to implementation is necessary. The final chapter of this report sets out how the recommendations must be implemented.

Ultimately, it is children and families, and care experienced adults themselves, to whom duty bearers must be accountable for the redesign of the Children's Hearings System. This responsibility includes making sure that there is no reason for children and families to be concerned about the pace of change, the nature of the changes or the way in which changes are taking place.

What does
a redesigned
Children's Hearings
System
look like
in Scotland?



Recommendations

The remainder of this report contains the recommendations setting out a redesigned Children's Hearings System and is accompanied by two Appendices: a list of the recommendations and a summary of the proposals from the Collaborative Redesign Project. An easy-read version of the executive summary and a child friendly version of the recommendations has been published alongside this report.

Wherever possible, the report is structured with children and their families' experiences at the forefront, reflecting what matters to them as they travel through the Children's Hearings System. By considering the system from the perspective of children and their families, the reader is encouraged to **step into their shoes** and consider how the redesigned system might feel from the point at which the people working alongside children and families are beginning to consider whether the Children's Hearings System might become involved in their lives and the potential routes that might take.

The report considers the questions posed by the Issues List and includes many of the proposals suggested through the Collaborative Redesign Project. There are fourteen chapters, each of which contains a series of recommendations and a summary of what these changes will look like for children and their families and the people working alongside them, including decision makers within the Children's Hearings System. This highlights how the recommendations will transform children and family's experiences of the redesigned Children's Hearings System, uphold their rights and help Scotland to keep the promise. A Child Rights Impact Assessment has been published alongside this report, which contains further detail and information about how the HSWG considered the impact of the recommendations on children's rights.

The report also considers what changes are needed within the broader 'care system' so that children and families experience the support of simultaneous child protection, care and support processes as streamlined, with their rights upheld.

The Independent Care Review concluded that the 'language of care' must change. Despite some progress and meaningful work in this area, there has not been universal agreement on wholesale change—especially where legislative change is required. The ongoing work to consider viable alternatives to 'system language' should be listened to, but for now this report necessarily but reluctantly uses existing terms to avoid confusion.

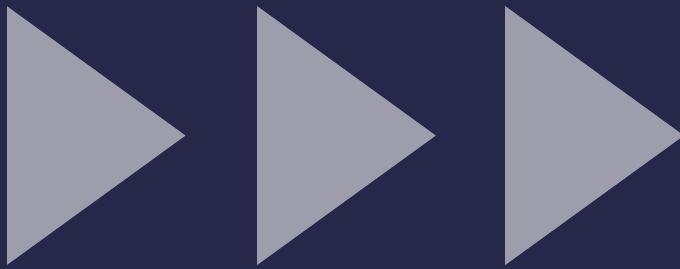
In some places, the report outlines what is happening at present within the Children's Hearings System and the challenges experienced by children and families and the members of the paid and unpaid workforce. As with the Independent Care Review, this is not an attempt to apportion blame or to assign responsibility for the things within the current system that need to change. The report looks forward to a redesigned Children's

Hearings System that will keep the promise and better uphold the rights of children and their families.

Finally, some of the recommendations, and certainly some of the views and experiences shared by children and families, care experienced adults, and those working alongside them, have been heard before in various reviews, consultations, working groups, roundtables, and discussions.

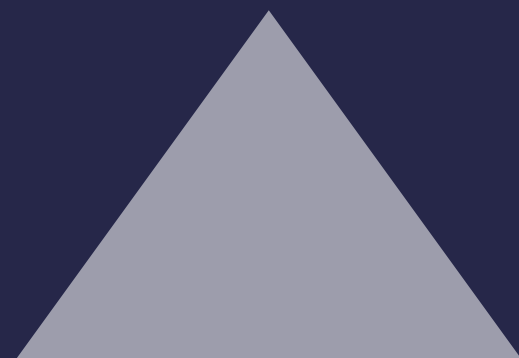
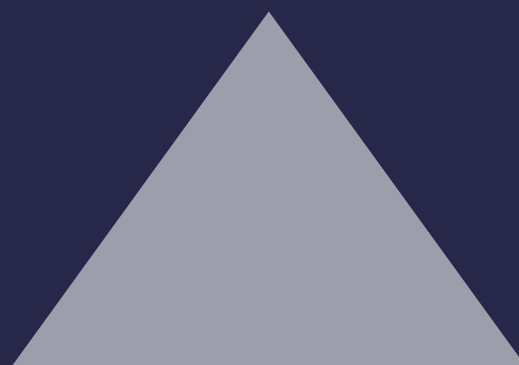
It is time to stop asking—and start acting.

It is time to
stop asking—
and start
acting.



One

The success of
the redesign of the
Children's Hearings
System



The promise is clear that the Children’s Hearings System must specialise and the number of children needing compulsory measures of supervision must reduce.²⁰ Without doubt, 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. This report does not seek to replicate what the promise, previously concluded in detail. **However, the HSWG is crystal clear that if the following areas are not addressed the redesign will not be successful.**

The availability of, and access to, early and ongoing help and support for children and their families

A developing body of evidence is clear that the early experiences of babies and infants have a profound and lasting impact of their lives. Evidence is also clear that when problems and challenges are identified at an earlier stage, those working alongside children and families are more likely to prevent or resolve significant issues than when serious abuse or neglect has occurred.²¹ The provision of high-quality, easily accessible, non-judgmental help and support for children and families as early as possible will, in many cases, prevent families from reaching a point of crisis and children from entering the ‘care system’.

For some parents, such as those with different learning abilities, long-term support may be required throughout the course of their children’s lives, but that support would enable their children to remain safely at home. This may also be true for parents living with a disability, with a mental health problem, or who use drugs or alcohol.

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

Considerable work has been undertaken in Scotland before and after the publication of the findings of the Independent Care Review to focus resources and services towards earlier help and support for children and families. This is evidenced by, for example, the rollout of Getting It Right for Every Child (GIRFEC), the development of some innovative

²⁰ [The Promise, 2020](#), page 44

²¹ [Macmillan, H. et al. \(2009\), ‘Interventions to prevent child maltreatment and associated impairment’](#), The Lancet, Volume 373, pp250–266.

Availability and access: Early and ongoing help and support

Hearings for Children: The Redesign Report

family support services and practice across Scotland led by local authorities and the third sector and, more recently, the Scottish Government's Blueprint for Change²² and distribution of the £500m Whole Family Wellbeing Fund.

Despite this progress, concerns about the availability of, and access to, help and support for children and their families, whether they are part of the 'care system' or not, has been repeatedly highlighted to the HSWG. This includes availability of, and access to, holistic whole family support, financial advice and support, emotional and therapeutic trauma recovery support and services such as mental health, speech and language and Child and Adolescent Mental Health Services tailored to meet their needs.

The statutory mechanisms for implementing early help and support and embedding appropriate and responsive services already exist though, for example Part 12 of the Children and Young People (Scotland) Act 2014. However, a review conducted by CELCIS in May 2019 found there was a lack of strategic planning, awareness, and communication about achieving this. Similarly, research has demonstrated that access to holistic, whole family support in line with the ten principles of intensive family support set out in the promise is inconsistent across Scotland.²³ Much of this is impeded by unprecedented challenges to the workforce, the cost-of-living crisis and multiple competing priorities for resources that make pivoting further towards preventative spend increasingly challenging. It is often the voluntary sector that provide family support in Scotland and they regularly report insecurity of funding and short-term contracts that make their role and provision of stable services difficult; they often form relationships with families that are integral to the support envisaged by the promise.

The views shared with the Independent Care Review and the HSWG by children, families, care experienced adults and those working alongside them have been unequivocal: at present, this support is not consistently available in the bespoke and universally accessible way that families need across Scotland. In many cases, access to help and support has been undermined or underfunded due to resource constraints linked to the current economic crisis and, in some areas, simply does not exist at all.

It is a systemic failure for children to be removed or remain living apart from their families—with all the accompanying trauma and distress this causes—due to a lack of available help and support for families to overcome the challenges in their lives.

An appropriate reduction in the number of children and families referred to the Children's Hearings System will not be achieved in the absence of concerted and coordinated leadership, oversight, investment, and prioritisation of the provision of

²² [The Scottish Government, Equality, Opportunity, Community: New Leadership; Fresh Start](#)

²³ [CELCIS, Supporting Families, A Review of Implementation of Part 12](#), 2019

appropriate, high quality, accessible early help and support for children and their families.

Significant improvements to the accessibility of help and support for children and their families must be made in parallel to the redesign.

There should, therefore, be a redoubling of efforts to realise the conclusions of the promise with respect to whole family support and the provision of appropriate services. Multi- agency partnerships must be supported to be clear and ambitious about whole family support, and accessible routes to help and support as a core statutory criteria for the development and delivery of each area's Children's Services Plans. There must be a better understanding of how children and families requiring support should be able to access what they need, when they need it.

At a national level, there should be scrutiny and oversight of how local plans to embed holistic, whole family support services are progressing and a national route map that sets out how the Scottish Government's ambition of at least 5% of all community- based health and social care spend being invested in preventative whole family support measures by 2030 will be achieved. This should include consideration of overcoming barriers relating to short- term funding, commissioning and procurement, and co-designing services and supports so they meet the needs of children and families in their local areas.

This work must recognise the important role of the third sector workforce, including family support workers, peer support workers, independent advocacy workers and others working closely alongside children and families to address the challenges in their lives. Often the engagement of support in this way prevents families from requiring state intervention and from reaching acute crisis. The third sector workforce must be recognised, supported, resourced, nurtured and included in discussions about designing help and support alongside children and families.

Family Group Decision Making

Family Group Decision Making (FGDM) is a voluntary, strengths-based approach that can bring together family members where there are concerns about a child or children. The promise was clear that *“FGDM should become a more common part of decision-making.”*²⁴

FGDM is already included in legislation²⁵ as a relevant service *“designed to facilitate decision-making by a child’s family in relation to the services and support required for the child”* alongside other parenting support services. Despite this, the provision of FGDM across Scotland is inconsistent at present. Given the statutory underpinning for FGDM some local authorities have been able to secure funding to develop an FGDM service within their area. However, the picture is currently varied across the country. Some local authorities are developing their services at present, others do not have any provision or find it challenging when skilled and trained FGDM practitioners move on to new roles.

FGDM should be routinely and consistently offered to children and families, in line with the National Standards produced by the National FGDM Steering Group, as an option to help find innovative and creative ways to solve their problems well in advance of any statutory involvement of the Children’s Hearings System and in line with the recommendations below.

Restorative Justice

A Restorative Justice²⁶ process offers the opportunity of a dialogue, direct or indirect, between the person harmed and the person causing harm. The Scottish Government published guidelines on restorative justice practice in 2017.²⁷ In 2019, the Scottish Government published the Restorative Justice Action Plan, which contains a commitment to have Restorative Justice available across Scotland to all those who wish to access it by 2023 although that deadline is likely not to be met.

This report references the importance of Restorative Justice as a process for both victims and for children in conflict with the law, and the HSWG considers it important that there is consistent provision of Restorative Justice services across Scotland.

24 [The Promise, 2020](#), page 33

25 [Children and Young People \(Scotland\) Act 2014 \(Relevant Services in Relation to Children at Risk of Becoming Looked After etc. Order 2016/44\)](#)

26 [CYCJ Restorative Justice Project](#)

27 [The Scottish Government, Delivery of Restorative Justice](#), 2017

The recruitment and retention of social workers

Social workers play a vital role working alongside children and families in and around the Children's Hearings System. They will, in the majority of instances, be the person who knows a child and their family best, understands the complexities and challenges in their lives and the help and support that they have received, and will continue to need. They will support children and their families prior to, and after a Children's Hearing takes place, help the decision makers in the Children's Hearings System to understand the strengths and challenges in a child and family's life, provide a core link between multi-agency decision processes, and play a part in developing a Child's Plan alongside children and their families. They have a core role in helping children and their families to understand and navigate the complex legal and statutory processes linked to the Children's Hearings System, and the broader childcare, support and protection landscape or 'care system'.

Social workers are also an essential part of the early help and support provided to children and families on the 'edges of care', working closely alongside them to address and overcome the challenges they are facing, and fulfilling their statutory duty to uphold children's right to be safe.

There is significant pressure around recruitment and retention within children and families social work at present. In some areas the acute shortage of social workers is significant. Recent research conducted in Scotland stresses a range of changes that must be put in place. This included substantially better support and focus for children and families social work, whatever the implementing authority structure is.²⁸

Social workers have spoken to the HSWG about their current practice and the restrictions they face due to the high numbers of children and families they work alongside as a consequence of excessive caseloads. This creates an inability to develop strong relationships in the way they might want to, and which children and families might need.

A redesigned Children's Hearings System is dependent on building and maintaining trusting relationships between children and their families and their social workers. However, the Group heard about the impact the current crisis has had on social workers' capacity not only to develop and maintain strong relationships with the child and family but also on their capacity to produce detailed reports, provide information and work collaboratively with other multi-agency professionals and the Panel themselves. A lack of social work reports or staff to attend Hearings can lead to deferrals which contribute to

28 UNISON (2021) [Keeping the Promise: What's needed to deliver change in social work practice. The views of social work staff.](#) Miller, E et al (2022) [Setting the bar for social work in Scotland, 2022, E. Miller & K. Barrie. Social Work Scotland](#)

systemic drift and delay and ultimately mean the system itself is causing harm for children.

The HSWG is aware that the Scottish Government is undertaking work alongside representative bodies and local authorities to help address the challenges in social work recruitment and alleviate the ongoing pressures on the profession at present. This work is key to keeping the promise and upholding the ambition of a redesigned Children's Hearings System. This requires sustained investment, developing practice, and implementing the specific conclusion of the Independent Care Review around supporting the workforce so that they alone do not feel the burden and responsibility of statutory involvement in children and families' lives. **There must be serious, sustained attention on maintaining and sustaining the children and families' workforce to ensure that they are able to undertake the complex work that is required of them in a way that is characterised by a rights-respecting, trauma-informed approach.**

Children and families working alongside the local authority where there is no Compulsory Supervision Order in place

Some children and their families work voluntarily alongside local authorities and are considered to be 'looked after' through voluntary processes that do not always involve the Children's Hearings System (including through section 25 of the Children (Scotland) Act 1995).

The HSWG has heard concerns about the availability of help and support for these children and about how 'voluntary' the families' engagement with the local authority actually is in practice. The Group considers that work should be undertaken to ensure that there is not a sense of a two-tier system of help and support for children who are on legal orders and children who are not, and that children and families working alongside the local authority on a voluntary basis should have a full understanding of what this means and what their rights are. This includes access to legal advice and support, to legal aid and to independent advocacy.

There should not be a distinction between the availability of help and support services for children and families based on their legal status. Whether a child is on a legal order or not should not be the factor determining their access to help and support and the quality of that help and support. Ensuring that children and families working in this way alongside the local authority can access the help that they need, in the way that they need it, will help to reduce the number of children referred to the Children's Hearings System.

The impact of poverty

Entry to the 'care system' has a social gradient: the more deprived a family is, the more likely that the children are placed on the child protection register or enter the 'care system'.²⁹ Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development, as set out by Article 27 of the UNCRC. At the moment this right is not being upheld for each child in Scotland.

Given the high number of children and families likely to be living in poverty who enter the Children's Hearings System, the implementation of these recommendations must be linked more broadly to the national work to reduce poverty and to meet the child poverty.

Given the high number of children and families likely to be living in poverty who enter the Children's Hearings System, the implementation of these recommendations must be linked more broadly to the national work to reduce poverty and to meet the child poverty targets. This should include understanding more about the relationship between poverty and those families who are engaged with the Children's Hearings System, the ongoing work on parental employment, and how the Panel's scrutiny into the Child's Plan and to the available help and support for children and families should take into account their broader financial and housing circumstances.

Recommendations

The following actions have a fundamental impact on the Children's Hearings System's ability to deliver the recommendations in this report and must be prioritised:

- All children and families must be able to access the help and support that they need, in the way that they need it, in line with the conclusions of the Independent Care Review.



²⁹ [The Promise, 2020](#), page 18

- There must be 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. A national plan must set out how this will happen in Scotland by 2030.
- Multi-agency partnerships must be supported to be clear and ambitious about developing accessible routes to holistic whole family support and how these are central to the development and delivery of each area's Children's Services Plans. This includes universal access to holistic, whole family support and more intensive support for families that need it.
- Work should be done to review the impact and effectiveness of help and support for families working voluntarily alongside local authorities, to ensure that there is not a sense of a two-tier system of help and support for children who are on legal orders and children who are not, and to improve outcomes for children and families and uphold their right to help and support.
- The challenges relating to the recruitment, retention, and resourcing of child and family social work teams must be urgently resolved. This requires sustained investment, developing practice, and implementing the specific conclusion of the Independent Care Review around supporting the workforce so that they alone do not feel the burden and responsibility of statutory involvement in children and families' lives.
- There must be serious, sustained attention on maintaining and sustaining the children and families' workforce to ensure that they are able to undertake the complex work that is required of them in a way that is characterised by a rights-respecting, trauma-informed approach. This includes the third sector workforce.



- There must be consistent provision of Family Group Decision Making and Restorative Justice services across Scotland.
- The implementation of these recommendations must be linked to the national work to reduce poverty and to meet the child poverty targets.



One

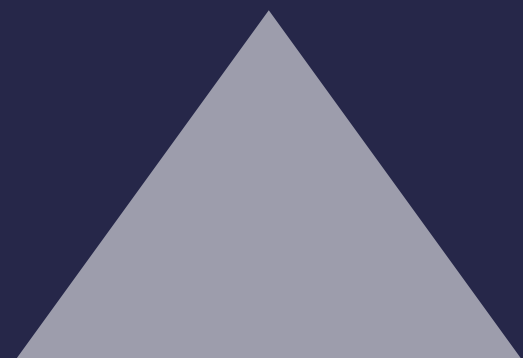
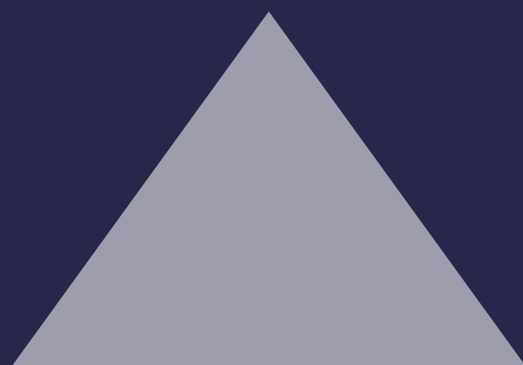
The success of the redesign of the Children's Hearings System

What will these changes look like for children and families?

- Where children are safe and loved, the right support will be in place to enable them to stay at home with their families and communities.
 - When children and families need help and support at any point in their life, it will be available when they need it, for as long as they need it, regardless of whether they are engaged with the Children's Hearings System or not. It will feel coordinated and consistent, with clear, sustainable ways to access holistic whole family support, mental health, and other important wellbeing services.
 - Restorative Justice and Family Group Decision Making will be consistently available across Scotland and routinely offered, where appropriate.
 - The people working alongside children and families, including social workers, will be happy, healthy, skilled and supported with enough time to get to know them well.
 - There will be enough happy, healthy, and skilled social workers to work closely alongside children and families so that they know them well, and are able to share relevant and important information with the Children's Hearing.
 - Scotland's decision makers will work closely together to understand more about the relationship between poverty and families who have experience with the Children's Hearings System.
-

Two

The scaffolding around the Children's Hearings System



Children and families' experiences of the Children's Hearings System: an inquisitorial approach

Throughout the lifetime of the HSWG, the Group has frequently heard the current Children's Hearings System being called 'adversarial'. The Independent Care Review heard that the Children's Hearings System often *"operates at crisis point, with children and families being asked their views in a process and setting that can feel unfamiliar and punitive."*³⁰

Sometimes, this is because the way that the reasons the Children's Hearings System has become involved in a child's life (the grounds) are established, can feel difficult and confrontational. At other times, this is because Children's Hearings themselves can be characterised by conflict and animosity. In a redesigned Children's Hearings System this must change.

A redesigned Children's Hearings System must work alongside children and their families. As much as possible, it must do things, including making decisions, with children and families, instead of for them. **It must seek their views often and listen with the intention of Hearing**, and it must **offer significant and meaningful opportunities for children and families to participate in the decisions about them that have historically happened around them**. The central framing of the decision-making process needs to remain the safeguarding and promoting the welfare of the child, or children, being discussed—but a more inquisitorial approach to the discussions should be adopted.

This should be a system 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. The Children's Hearings System must focus on understanding children and their needs in the context of their entire family, including their brothers and sisters, extended family, friends, people they love and trust, and their community. This is not about extending the legal status of relevant persons, but about creating a system that seeks to understand and receive information about the totality and complexity of people's lives.

This inquisitorial approach is not limited to a Children's Hearing 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 decision-making processes for the Reporter, the ongoing review and oversight procedures, engagement with the

³⁰ [The Promise, 2020](#), page 44

implementing authority, and the subsequent ongoing involvement of the Children's Hearings System in children and families' lives.

An overarching principle and a shared set of national standards for the workforce must therefore be created to explicitly describe the process as inquisitorial. This will ensure that everyone understands how the redesigned Children's Hearings System is intended to operate and will assist in giving decision makers the confidence to use the tools available to them. The starting point for this could be the Vision and Values for the Children's Hearings System in Scotland developed by the CHIP.³¹

Recommendation

An overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce should be made that explicitly describes the Children's Hearings System as inquisitorial. This will foster an inquisitorial approach and culture within the Children's Hearings System and ensure there is a clear understanding across the entire system of what this means.



Language used by the Children's Hearings System

Children and young people that the HSWG met as part of their engagement work, and those who shared their views with the Independent Care Review, want the system to use words that they can understand. They said that some of the language used within the Children's Hearings System feels confusing, overly complex, and hard to understand.

³¹ [Children's Hearings Improvement Partnership](http://www.chip-partnership.co.uk/) (www.chip-partnership.co.uk/)

This redesign provides the opportunity to update and, in some cases, amend the language and terminology used. Words such as ‘contact’, ‘compulsion’, ‘disposal’, ‘grounds’ and terminology such as ‘Compulsory Supervision Orders’ are not in keeping with the conclusion from the promise for Scotland to *“change the language of care”* and to *“stop using professionalised language to describe meetings and experiences.”*³²

The HSWG has stopped short of setting out the detail of which words and terminology should be changed. This will require a thorough assessment of the impact of changes on caselaw and practice and the views of children and families and with the workforce. The HSWG agrees that there must be a shared language of care and approach between services and professionals so that children and families are not navigating between competing standards and expectations. It is inappropriate, therefore, for there to be specific changes to words and terminology that are not only used within the Children’s Hearings System but also the broader ‘care system’—that would just cause additional confusion.

However, there are some words and phrases that the workforce must immediately stop using. Children and families involved in the Children’s Hearings System must not be referred to as ‘customers’, ‘clients’, ‘service users’ or ‘difficult to engage with’. As set out in the promise, almost three and a half years ago, the term ‘respite care’ must not be used. Language used within a Child’s Plan must be clear, accessible, and non-judgmental. This should be quickly and clearly communicated to all members of the paid and unpaid workforce.

The Group welcomes the ongoing work of Our Hearings, Our Voice’s Language Leaders group, backed by the CHIP, in respect to improvements to language and notes that this will be shared with the Scottish Government. The project aims to make sure that all children who attend Hearings are supported to understand and be included by transforming the use of written and spoken language. The HSWG understands that the Language Leaders approach is focusing on helping the workforce working alongside children and families in the Children’s Hearings System to use language which is experienced by children and families as safe, personalised, inclusive, balancing strengths and risks, and non-judgmental. There have been several attempts to improve the use of language relating to children and families over the years and it has proven difficult to drive forward consistent change across the country thus far. In addition to the work of OHOV there are lots of other projects and initiatives looking at the language of care.

There needs to be clear and comprehensive leadership at national and local level to consolidate this, and a clear plan must be developed to deliver systemic change. This must drive consistent policy and practice changes, and identify which changes will require legislative change to improve the way children and families are spoken about and to. This

32 [The Promise, 2020](#), page 87

should take into account the way that language constantly evolves and adapts and must be developed alongside children, families and care experienced adults with experience of the Children's Hearings System.

The Promise Bill must be used as the appropriate legislative vehicle to make statutory changes to the language of care, where necessary.

Recommendation

There must be a coordinated approach to establishing an appropriate, considered, and non-judgmental language of care in Scotland. A clear plan must be developed for identifying and implementing systemic policy, practice and legislative changes required to ensure consistent use of this language across all 32 local authorities.



The relationship between the Children's Hearings System and the Courts

The Sheriff has a fundamental and expansive role within the Children's Hearings System, which will develop further following the implementation of the recommendations within this report.

The Sheriff currently has a role in making decisions when grounds of referral are not agreed either because they are not accepted or where the family are unable to accept them. The Sheriff also has a role in hearing appeals, determining whether someone is a

Relationship between the Children's Hearings System and the Courts

Hearings for Children: The Redesign Report

'relevant person,' deciding Child Protection and Assessment Orders and making referrals to the Reporter. Children who are unable to return home may also be referred to the Sheriff Court for Permanence, Adoption, Residence or Kinship Orders.

Given the importance of this role, Sheriffs must be considered part of the Children's Hearings System. For Sheriffs to make considered and informed decisions alongside children and their families, it is vital that they have a clear understanding of trauma, childhood development, neurodiversity and children's rights, as set out in the promise, including the dynamics of domestic abuse. The same Sheriffs are likely to become engaged in processes relating to children moving towards permanence, including applications for Permanence Orders and petitions for adoption. This highlights the need for appropriate judicial training and leads to consideration of specialist recruitment of Sheriffs. It is therefore the view of the HSWG that specialist Sheriffs will be required.

This is particularly important given the increasing complexity of challenges facing children and families today and the importance of everyone working alongside children and families having a clear sense of the way the Children's Hearings System operates and what children and families' rights are. This would also enable specialist Sheriffs to work in a more relational way alongside families, with core skills in communicating directly with children and families in a compassionate and non-stigmatising way.

In some of the larger Sheriff Courts a degree of de facto specialisation already exists. It would be useful to learn from this ongoing work and to consider the opportunity to reappraise the role of Sheriffs and to align the practice and procedure of the Sheriff Court with the aspirations for a redesigned, inquisitorial Children's Hearings System, and the aims and objectives of the promise. In no other judicial setting in Scotland do language, tone and volume alongside specialist legal knowledge have such importance. The experience of children and their families in Court must align with their experiences within the Children's Hearings System. This includes further consideration of the conduct, scheduling and location of Children's Hearings related proceedings that take place in Court (see below, for example, with respect to establishing grounds).

This is one of the concepts that emerged from the Collaborative Redesign Project and was also reflected in CHS's consultation with Panel Members.³³

33 [CHS, HSWG Issues List: CHS Community's Contribution to #KeepThePromise](#), 2022

Recommendation

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. Sheriffs must have a clear understanding of trauma, childhood development, neurodiversity and children's rights and the dynamics of domestic abuse.



Specialist skills and training for everyone involved in the Children's Hearings System

As outlined in the promise, everyone involved in the Children's Hearing System (for example, Sheriffs, Reporters, Panel Members, Advocacy Workers, Safeguarders, etc.) must be *"properly trained in the impact of trauma, childhood development, neurodiversity and children's rights."*³⁴ This includes domestic abuse, attachment and child communication, the particular developmental needs of younger children, the impact of poverty, the rights of children in conflict with the law, child sexual and criminal exploitation, trafficking, and grooming. This training must be comprehensive and regularly reviewed, and training is also required for all the different members of the workforce who appear at Hearings, including legal representatives.

This report does not seek to repeat this every time a different member of the workforce is referred to. However, the HSWG expects there to be national oversight of the resourcing, provision, and prioritisation of this training. Training must be provided by

³⁴ [The Promise, 2020](#), page 42

those organisations with particular knowledge and expertise in these areas and developed alongside children, families and adults with experience of the Children’s Hearings System.

Recommendation

There must be national oversight by the Scottish Government of the resourcing and provision of training in the impact of trauma, childhood development, neurodiversity and children’s rights for everyone involved in the Children’s Hearings System.



A rights-based approach

The redesigned Children’s Hearings System will have children and families’ rights at its core.

The overarching principles of the Kilbrandon Report which have run through the legislation that developed the Children’s Hearings System remain as relevant today as in 1964 when it was first published. These principles have been found to be in accordance with European and international law relating to the rights of children and their families, when considering the provisions of the ECHR as enacted in the Human Rights Act 1998 and UNCRC, ratified by the UK in 1991.

Over the years the separation of the Panel, the Reporter and the local authority has increased, in accordance with the requirements to comply with Article 6 of the ECHR (the right to a fair Hearing). The recommendations set out within this report will inevitably include changes to the way Panel Members are recruited, trained, and selected, to the way that Hearings themselves are administered and operationalised, and to the nature

of the roles of those working directly alongside children and families, including the Chair and the Reporter. The HSWG has sought legal advice on some of these issues during its deliberations, but it is clear that further work must be done to ensure that the proposed redesign is ECHR and UNCRC compliant.

It is of fundamental importance that there is confidence in the legality of the decisions made and that the changes do not unintentionally undermine confidence in the system or lead to new testing of previously established caselaw. A Children's Hearings System that is significantly open to fundamental legal challenge would not be in the best interests of children and young people. It is therefore a key requirement to maintain the Hearing as a tribunal that is independent and impartial, meeting ECHR Article 6 and natural justice requirements.

There must be a clear understanding at all levels of a redesigned Children's Hearings System about what children and families' rights are and how they should be accessed and upheld—not least by children and families themselves. This includes ensuring that there are structures and frameworks in place to let children and families know about their entitlements to legal aid, legal representation, and advocacy, to uphold standards (including training standards and the quality of help and support), to allow room for complaints and feedback on decisions and to make sure that decisions made are enacted.

Recommendation

There must be a clear understanding at all levels of a redesigned Children's Hearings System about what children and families' rights are and how they should be accessed and upheld.



The vital role of the Child's Plan

Every child involved in the Children's Hearings System should have a Child's Plan.³⁵ Such a plan will assess their immediate and long-term needs, describe how those needs can be met and detail any services to be provided to meet the care, education, and health needs of the child. It needs to consider the views of the child and parents in creating the Child's Plan.

At present, the HSWG has heard that the Child's Plan is often received by the Children's Hearings System as an 'additional extra' at the end of the report. The view of the HSWG is that this needs to change. The Child's Plan should be at the heart of the information shared with the entire Children's Hearings System, as the golden thread running through the child's journey through the 'care system' and not just an add-on to the papers. The Child's Plan should be central and available to all decision makers within the system, including to Reporters from the investigation stage onwards, to the Sheriff when grounds are being established and to the Panel when making decisions. Decision makers should be able to understand what support has been put in place for children and families, what their response to that has been, and how it is being provided for.

Whilst, at present, not every child who attends a Children's Hearings has a Child's Plan, it is the strong recommendation of the HSWG that, wherever possible, this changes. This will enable the Panel to scrutinise and test the supports that are put in place around the plan to ensure children are supported in ways that are right for them. This also ensures that the Children's Hearings System can make the best decisions in the interests of children and families.

The HSWG is aware that the non-statutory guidance around the Child's Plan is currently being updated by the Scottish Government, as part of a broader project relating to the refresh of GIRFEC guidance. This update should operate in collaboration with the implementation of the recommendations to redesign the Children's Hearings System. Changes to the planning, development and oversight of a Child's Plan should include:

- The development of a national template for a Child's Plan, which is particularly important when children move between local authority areas.
- Enactment of the Independent Care Review's conclusion that Scotland must ensure holistic family support and individualised planning with the principles of 'one family

³⁵ Where a child is defined in law as a "looked-after child" in terms of section 17 of the 1995 Act, then the local authority has a statutory duty to prepare a care plan for the child in terms of Looked After Child (Scotland) Regulations 2009 (SSI 2009/210). This plan can include the child returning home if they are subject to a CSO and also if the child is not returning home (unless the plan was for a child to return home on a voluntary basis).

one plan' wraparound support for all families in, and on the 'edges' of care. The Child's Plan must meet the needs of the entire family, not just the child—including, where appropriate, the support needs of foster and kinship carers and prospective adoptive parents when a child is living away from home or there is likely to be a permanent move from home in their life.

- Consideration of the impact of poverty and poor housing within a Child's Plan and of what additional practical help and support the family might need to better meet the needs of the child or children in their care.
- Clear processes to link a particular Child's Plan to the plans for siblings (including half and step siblings or other children in the same household) and how this in turn links to the support set out in the plan for their family.
- Ensuring that children and their families are involved and included in the development of their Child's Plan, that they are aware of what is in it, and have been involved in the discussions about what help and support they need to address the challenges in their lives. Children and their families should be aware of who will see their Plan, how it will be used, and what they can do if they think something in it should be included, taken away or is not happening that should be.
- Recognising the importance of strong links between any legal orders, including Compulsory Supervision Orders and the Child's Plan.
- Ensuring that Children's Services Plans clearly set out what supports are available for children and families 'on the edges of care'. There should be ways for the Community Service Planning Partnerships to monitor whether the support needs set out in the Child's Plans are being met and to raise concerns/ commission further services if they are noticing that needs are not being met. These plans should be rights-based where children and families receive the most appropriate support that they need rather than based on what is available in each local area.
- Ensuring that the development of a Child's Plan engages and includes support across health, education, social work, and the third sector.
- Ensuring that the GIRFEC principle of each child having a single plan are enacted in practice so that children do not end up with a multitude of different, complex plans which may duplicate each other or be hard to understand. This includes Coordinated Support Plans and Child Protection Plans.
- Putting stronger review mechanisms in place to ensure that the help and support identified as part of the Child's Plan is (a) what the child and family themselves have stated would be the things that would most help them face the challenges they face;

(b) being provided in the manner set out in the Plan. This should link to the broader accountability mechanisms at the disposal of the Chair and the Hearing set out later on in this report.

Recommendation

Every child who comes to a Children's Hearing must have a Child's Plan, or a clear timeframe for when their Child's Plan will be in place.

There must be national template for a Child's Plan.

The Scottish Government update of the GIRFEC guidance on the Child's Plan must align with the conclusions of the Independent Care Review and the conclusions of this report on pages 92 and 93. In particular, the Child's Plan must include further consideration of the support needs of the family.



The administration of the Children's Hearings System

At present, the operation of the Children's Hearings System is led by the independent Principal Reporter, who is supported in carrying out their functions by SCRA, and the independent National Convener, who is supported in carrying out their functions by CHS. CHS supports the National Convener in the recruitment, selection, training, retention, monitoring and support of Panel Members and SCRA facilitates the work of Reporters to deploy and manage the workforce to carry out that work, and to provide suitable accommodation for Children's Hearings.

However, it is clear that the current administrative arrangements between SCRA and CHS are too complex. This can cause operational tensions between the two organisations and leaves children and families navigating systems and processes that leave them feeling

overwhelmed and confused.

Although there are some necessary complexities in the Children's Hearings System due to the legal need to maintain their independence as tribunal decision-makers and to separate the role of the Reporter making the referral, children and families should not be drawn into this complexity. At times within the current system there is a lack of clarity at the 'cross over' points where both organisations have significant roles to play in the delivery of Children's Hearings. The changes set out within this redesign must not increase that lack of clarity.

The relationship between CHS and SCRA should be strong, with a clear delineation of responsibilities, clear protocols for information flow within the confines of ECHR and GDPR, and a clear understanding of the respective roles that each organisation plays from the perspective of children and families. This should not be experienced as confusing or complex—even though there are some complexities to navigating through the necessary steps that must align to ensure fair process when life-changing decisions are being contemplated and made.

The recommendations set out within this report, implemented in full, will represent significant transformational change for children and their families alongside the implementation of the Children (Care and Justice) (Scotland) Bill. This will generate substantial changes to the current operating framework of the Children's Hearings System. This report has indicated some of the areas where functions may need to shift or further joint working must be developed to improve experiences of the Children's Hearings System. For example, with respect to the way data and information is handled and shared, the way Children's Hearings are scheduled, and the way children and families receive information about attending a Hearing.

There will, therefore, need to be a review of the current, respective functions of CHS and SCRA to ensure that the redesigned system operates effectively and efficiently for children and families. This includes being open handed and creative about when work should be shared, changed, and improved, through the framework of improving decisions and accountability for orders relating to the lives of children and families. Change must not be made for the sake of change, but rather should be based on a sound rationale for streamlining and improving children and families' experiences of the Children's Hearings System.

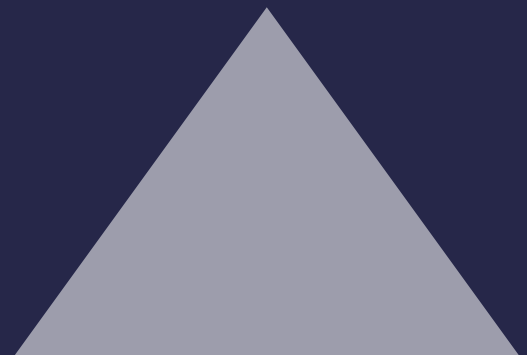
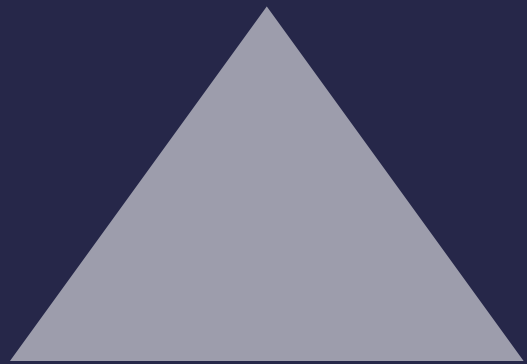
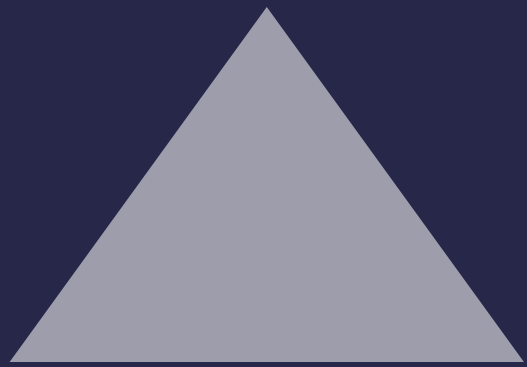
CHS and SCRA demonstrated a strong collaborative effort throughout this redesign process and must continue to develop a shared agenda to assess what changes are required to the administrative functions of the respective organisations in light of the recommendations within this report. Discussion with respect to these changes must be overseen by the Scottish Government as part of the broader work to implement the

recommendations in this report and to keep the promise by 2030.

Recommendation

There must be a 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. This must be overseen by the Scottish Government as part of the broader work to implement the recommendations in this report and to keep the promise by 2030.





Two

The scaffolding of the Children's Hearings System

What will these changes look like for children and families?

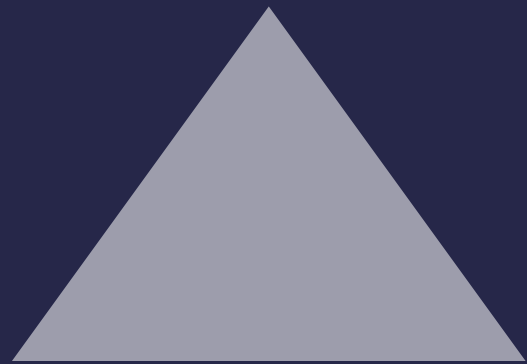
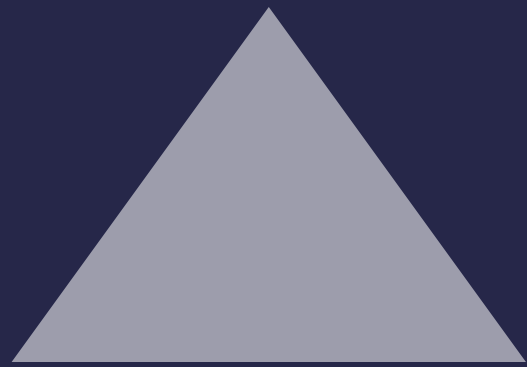
- Everyone in the Children's Hearings System, from the Reporter to the Chair, will work closely alongside children and their families, will listen to their voices and will make decisions alongside them wherever possible.
- The entire Children's Hearings System will understand children and their needs in the context of their entire family and the complexity of family circumstances.
- The language used in Hearings will be non-judgmental. The way that people speak about children and families will feel supportive, easy to understand, and consistent across Scotland.
- Sheriffs will be specially trained to work alongside children and families. Experiences in the Sheriff Court will feel similar to a Hearing.
- Everyone in the Children's Hearings System will be trained in working alongside children and their families, understanding what their rights are and how the things that have happened to them in their lives have an impact on who they are and what they do.
- Children and families will understand their rights and how to access them.

-
- When possible, every child attending a Hearing will have a Child's Plan which will be at the heart of the Children's Hearings System. Every Child's Plan will be created the same way and children and families help with this.
 - The Child's Plan will set out the support needed for children and also for their families.
 - Change will feel coordinated across the Children's Hearings System and the people and organisations working together to operate the system will meet with the Scottish Government to decide how they should work together.
-



Three

The pathway to
the Reporter



Proportionate referrals: the right support at the right time

At present, any person or agency can refer a child to the Principal Reporter, but local authorities and the police must refer a child when they consider that a child is in need of 'protection, guidance, treatment, or control' and that a CSO might be necessary.

The HSWG has heard concerns that some children are referred to the Reporter too early and do not require the engagement of the Children's Hearings and compulsory measures of supervision. Other children are referred at a much later stage when it would have been more beneficial for compulsory measures to have been introduced earlier in their lives.

The Children's Hearings System should be seen as neither a way for resources, including appropriate help and support, to be secured for children and families, or as a last resort when all other attempts to support children and families have failed or been exhausted.

A referral to a Children's Hearing should not be understood as a failure of the implementing authority or of the child and their family—but rather the most appropriate and necessary step for children and families at the right time.

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.

The principle of 'minimum intervention' that is central to the Children's Hearings System³⁶ and the rights embedded with the UNCRC and ECHR should be central to the considerations of those people who may make a referral to the Reporter. Children's Hearings are tribunals where, to protect children, keep them safe and uphold their rights, the option of compulsory measures are considered. The state should not become involved in such a significant way in children and families' lives unless it is absolutely necessary.

Whilst the Independent Care Review heard about the need for earlier help and support for children and their families, it also heard the experiences of children who felt they should have been taken into care far earlier. These children spoke about a lack of family support services around them and feeling as though those in contact with their family failed to act. The Evidence Framework states *"The Care Review heard that the 'care system' needed to improve on the identification of warning signs, and that responses to those signs needed to be faster. For example, when a change in behaviour was noted during a transition, or if there had been multiple hospital admissions and suicide attempts."*³⁷

36 K Norrie Children's Hearings in Scotland 4th Ed para 1-10; [Kilbrandon](#) paras 76, 79-80

37 [Independent Care Review, Evidence Framework](#), page 43

Working earlier alongside children and their families must help identify which families might need the engagement of the Children's Hearings System at an earlier point. There should be consideration, given what is known about child development, trauma, attachment, and the importance of the earliest years on later life, of the impact on children of staying in homes where their emotional and physical needs are not being met and they do not feel safe, in particular on very young children. The particular needs of babies and infants, their developmental milestones, and need for connection and attachment during the first three years of their lives should be taken into account by potential referrers.

Considerations relating to referral to the Reporter should also include an understanding of the cumulative effect of neglect. Although a point of 'crisis' or significant incident necessitates referral to the Reporter, referrers should not wait until an acute event takes place. Referrers should consider the child and families' broader circumstances, strengths, and challenges as a whole. This requires significant professional judgement.

The promise was clear that *"where nurturing relationships within the family are impossible, those who care for children must know that the most important thing they do is provide a loving, stable, safe relationship—above everything else."*³⁸ This does not mean that children should be removed and never returned home, but that in some cases the engagement of the Children's Hearings System at an earlier point may help to ensure that the focus is on maintaining and securing stable relationships for children.

For some children and families, this may mean that concurrency or permanence planning begins at an early stage, so that there are plans in place to preserve the important relationships in a child's life and meet the development needs that are so important in the first three years of their lives if they do not return home. For other children, the early engagement of the Children's Hearings System can offer parents and carers the time, space, and opportunity to work together with a new impetus alongside support services and social work to address their challenges.

To ensure the appropriate engagement of the Children's Hearings System at the most appropriate time for children and families there must be a clear understanding across potential referrers of the added value and purpose of the Children's Hearings System and where it sits alongside the broader child protection, and care and support framework in Scotland.

Updated national guidance must be issued to all those working alongside children and their families who may consider making a referral to the Reporter. Prior to considering referral, potential referrers should ask:

38 [The promise, 2020](#), page 19

- Is the engagement of the Children’s Hearings System required to meet the needs of the child and their family at this point in time? In other words, is engaging the Reporter—and subsequently the Hearing—necessary to protect the child, to introduce compulsion into their care plans and to consider the risk of the child remaining at home compared to the risks associated with introducing compulsory measures including potentially living away from home?
- Are there other things that could happen to address the challenges and concerns that the people around the family are seeing, or is there a need for compulsion to be considered? Are there other things that could be put in place to help the child and family understand why people around them are worried about them, especially if there is a concern about families ‘not engaging’ with services?
- Are there ways that the help and support currently being proposed could be phased and framed so that it better meets the needs of children and their families to enable them to engage more effectively?
- Are there practical things that might help to improve the families’ lives, including access to better housing, additional support for learning, domestic abuse and substance use services that have not yet been considered?
- What do the child and their family think? Have they been adequately engaged in the conversations about what is happening and what help and support they think they might need to address the challenges in their lives?

If the referrer is concerned that the child and their family are not engaging with the support that has been offered, they must first consider why that is. Some parents and carers may not physically be in a position to engage in conversations or support services due to unresolved trauma, substance use, domestic abuse and multiple different challenges going on in their lives which makes attending meetings or understanding what is happening difficult. The Scottish Government’s Supporting Roots report³⁹ highlights that some parents and carers may have been through the ‘care system’ themselves as children and may find it difficult to establish and maintain relationships with social workers and others due to their past experiences. Some families feel that they cannot engage in these discussions because of the overwhelming, overriding and very understandable fear of the impact of state intervention in their lives. Some families may not accept the basis of the concerns. This must be taken into account.

In some cases, these challenges can be overcome by developing strong, trusting relationships that foster an understanding of support and help to overcome challenges

39 [The Scottish Government, Supporting Roots](#), February 2023

rather than scrutiny and threats.

The HSWG recognises that asking the workforce to work alongside families in this way can represent a challenge. The redesign, in line with the promise, is asking the workforce to consider the risk of removing children from their families, fully and explicitly, and to consider the lifelong impact that this has. Where the risk of the potential trauma of removing children from their families is deemed too high, the child and family should be provided with adequate care and support that meets their needs and upholds their rights so that the Children's Hearings System only becomes engaged if it is appropriate.

This will require a shift in thinking, a shift in practice and a shift in policy.

Fundamentally, it requires a workforce that is given permission—and is resourced and supported—to work relationally alongside children and their families, to ask their views, and to use their judgement about what would make the most difference to overcome the challenges in children and family's lives and at what point.

Referral thresholds and criteria

At present, there is inconsistent application of the referral criteria to the Children's Hearings System across different agencies and geographical areas. This can lead to risk-averse referrals or, in some cases, the opposite. Differences in application of the referral criteria results in geographical variation, with high levels of single agency referrals in some areas, and multi-agency referrals elsewhere. This variation in approach to making referrals to the Reporter means that some local authorities have higher referrals and a lower conversion rate to a Hearing, and some local authority areas have fewer referrals and a higher conversion rate to a Hearing.

The HSWG understands that a certain level of variation is unavoidable, given the individualised nature of children's lives. However, it is clear that there needs to be an improved and more consistent approach to **applying** thresholds for referral. The updated national guidance referred to above must be clear that referral processes should be rights-based and unpinned by the key principles of proportionality, consistency' and timeliness.

SCRA's engagement work with the workforce revealed support for considering changes to the referral criteria: *"A review of referral criteria is supported along with action/ structures to seek greater consistency around referral practices."*⁴⁰ To address this, a new three-point referral criteria test emerged from the proposals of the Collaborative Redesign Project. The proposal 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

40 SCRA Keeping The Promise Reform Project--Report on SCRA Staff Engagement (2022)

the right time and in the best interests of children and their families. It includes some subtle changes to the existing wording, designed to update language and to change the emphasis so that referrals would be more appropriate.

The proposed criteria are: (a) The child or young person is in need of safety, protection, care, guidance or support (Clearly specify which is needed); and (b) Compulsory intervention is likely to be needed (With clear rationale why necessary); and (c) Only refer if proportionate and timely to do so (With clear rationale why now).

The suggested wording of this proposal with respect to referral criteria should be considered and the legal consequences fully scrutinised. Referral processes should be underpinned by the key principles of rights-based proportionality, consistency, and timeliness.

The existing statutory language found in section 60(2) of the 2011 Act relating to the referral of children to the Reporter should also be re-examined, in particular to understand the legal implications for removing reference to “treatment and control” of children in favour of updating it with more modern and relevant terminology. The HSWG considers that such changes will lead to greater consistency in the application of referral criteria, whilst at the same time bringing greater clarity to their rights-based foundation.

Consistent referral decision-making by the Children’s Hearings System

All organisations within the Children’s Hearings System must ensure that they have adequate audit arrangements in place to review and openly report on the quality, consistency, and impact of their decision-making and outcomes for children. This must include all stages of the Hearings process and issues of referral, rereferral and the reasons for this, including when Reporter referrals are being made to the Children’s Hearing due to a lack of confidence from the Reporter in the support set out in the Child’s Plan being implemented.

Information shared as a result of this work must be used to promote greater local and national consistency of the application of referral criteria and a greater focus on improving help and support for children and families.

The HSWG also notes that a Collaborative Redesign Project proposal suggested a number of different research projects, including understanding the reason for different referral practices around the country, the reasons referrals have not converted to Hearings, and understanding the reason for voluntary measures being put in place. The value of this

deeper understanding is in aiming to achieve greater consistency of referral practice and a better focus on those children who really require to be considered for compulsory measures. The Group understands that SCRA has begun to initiate work in this area and the findings must be considered broadly to inform wider partnership work in relation to referral practices.

Recommendation

Updated national referral guidance must be issued to those working alongside children and families, which encompasses the core aims of the redesign. This must include the particular needs of babies and infants and their developmental milestones and should be clear that referral processes should be rights-based and underpinned by the key principles of proportionality, consistency, and timeliness.

The workforce must be supported to work relationally alongside children and families, to ask their views and listen and act on the responses they receive about the help and support that would make the most difference in their lives and to use their judgement about whether a referral to the Children's Hearings System is appropriate route for a particular child and their family.

Changes to the statutory referral criteria and to updating and modernising the language of 'protection, guidance, treatment of control' in section 60(2) of the 2011 Act must be considered.

All organisations within the Children's Hearings System must ensure that they have adequate audit arrangements in place to review and openly report on the quality, consistency and impact of their decision-making and outcomes for children.



The role of the Reporter before a child is referred to the Reporter

The Reporter plays a significant role in the Children's Hearings System—prior to referral, during the referral process, during the Hearing itself and afterwards, in particular with regard to defending appeals.

A redesigned Children's Hearings System should feel to children and families and to the workforce that it is part of the broader child protection, and care and support framework available for children and their families and does not sit separately from it. Decisions about whether a child and their family should be referred to the Reporter should happen in the context of the other ongoing processes for the child and family. To facilitate this, an enhanced role for the Reporter at a pre-referral stage before a decision is taken about whether a referral to the Reporter is necessary and appropriate, should be developed.

The engagement of the Reporter must routinely be considered during other child protection, care and support meetings and discussions. For example during initial Child Protection Planning Meetings, particularly if there is consideration of emergency measures; Case Conferences or Looked After Child Reviews where there is likely to be consideration of referral to the Reporter or where there is evidential complexity or uncertainty; and Police consideration of offence referrals – involvement could include clarification of the current legal position of child, whether there are open referrals to support decision-making about when to refer and when to opt for other Early and Effective Intervention or preventative approaches.

In particular, an enhanced role for the Reporter pre-referral would involve:

- Supporting members of the workforce and multi-agency partners with consideration of thresholds, criteria for referring children and the requirements of evidence.
- Providing evidence and information about what the added value of the Children's Hearings System is, and is not, and the added value it can provide.
- Providing advice about the need for compulsion and interrogating the previous help and support offered. This is not about the Reporter determining or providing the support, but inquiring about what support has been offered and whether this might make a difference prior to a child being referred for a legal order. The Reporter could, for example, inquire about the prior engagement of mental health services or use of strengths-based approaches such as Signs of Safety, Restorative Justice or FGDM. This is a legitimate and important step in assessing the proportionality of engaging compulsory measures.

Role of the Reporter before a child is referred

Hearings for Children: The Redesign Report

- Helping to plan a child and family's 'entry' to the Children's Hearings System collaboratively so that it feels streamlined and makes sense to children and families.

The Reporter can neither prevent nor require a referral to be made—the proposal of the HSWG is that this would not change. However, an enhanced role for the Reporter as described above will increase partnership working between agencies and the Children's Hearings System, linking the Children's Hearings System and any ongoing broader child protection, and care and support processes, so that they do not appear as two separate systems. This will help to prevent unnecessary referrals, ensure children and families are referred in a timely manner and prevent drift and delay. The increased involvement of the Reporter may also help increase the likelihood of 'grounds' being established and agreed collaboratively rather than being contested.

Although much of this enhanced partnership working takes place locally at present, and is already possible within the legislation, it does not happen consistently. There must therefore be standard practice about the involvement and engagement of the Reporter provided from a national level. This enhanced role may not be necessary for every child who may be referred to the Reporter—indeed for some children it may not be possible due to the need for an immediate referral or a Child Protection Order. There should be guidelines in place so that it is very clear how the role supports the other ongoing child protection, and care and support processes that sit outside the Children's Hearings System and full consideration of implications in terms of the UNCRC, GDPR and ECHR.

Historically, the Reporter was often more routinely involved in the initial interagency conversations about referring children to the Children's Hearings System in this way. As part of the implementation of these recommendations it should be understood why this changed and what additional resources would be needed to support an enhanced and more consistent role for the Reporter in pre-referral discussions.

Recommendation

The role of the Reporter prior to a referral being made to the Children's Hearings System must be enhanced.

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.



Role of the Reporter before a child is born

Child Protection Orders (CPOs) are most commonly applied for by the local authority and are decided upon by a Sheriff. The test for making an order is being satisfied that there are 'reasonable grounds to believe' that a child has been or is at risk of significant harm or neglect and the order is necessary to protect a child from that harm.

The HSWG recognises the need for provisions for the making of these emergency orders when it is appropriate. The Group has, however, heard concerns about the mechanisms and processes in relation to CPOs being sought at the point a baby is born to uphold their right to be safe from harm.

Prior to a baby being born, people working alongside a parent or parents may become concerned about a family's ability to keep a baby (or babies) safe and uphold their rights to care and protection. Most often, parents in this situation will have worked alongside support services, including universal prenatal supports during pregnancy, and have received help and support, or the opportunity of help and support, to address the challenges in their lives. The application for a CPO may have been anticipated and expected and legal representation may have been arranged ahead of time. The process, nonetheless, is extremely challenging for everyone involved and heightens the possibility

Role of the Reporter before a child is born

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of trauma, anxiety, and distress and of ruptured attachments for both the parents and the newly born baby. It often occurs 'out of hours' and involves vulnerable, isolated, and unrepresented parents, still reeling from the emotional and physical effects of childbirth and the emotional cacophony of a natural desire to love and bond with a baby against the agony of its potential removal.

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 CPO is required, and parents are expected to attend a Children's Hearing two days after the birth of the baby.

The Preamble to UNCRC makes it clear that all that children need safeguarding and care, including appropriate legal protection, before, as well as after birth. A parent's ECHR Article 8 (the right to family life) rights are also a core consideration. A redesigned Children's Hearings System must take account of this. More must be done to enable the Children's Hearings System to work alongside parents and carers and the workforce to minimise trauma, pain, and distress to facilitate a better understanding of what might happen to a child when they are born and to focus attention on prioritising the best interests and welfare of a child about to be born.

The HSWG has explored the extent to which preparatory work can be undertaken by the Reporter before a baby is born to support a more trauma informed, planned, and controlled approach supporting good, early decision-making for babies.

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 should be engaged, and preparation of draft grounds for referral must begin before a baby is born.** A Reporter must be able to receive referrals, reports, and assessments, and investigate family circumstances. This will allow the Reporter to independently determine whether there is a likely need for compulsion once a baby is born, provide advice and information on this to the agencies involved, and to draft grounds to avoid the unnecessary trauma of a CPO application wherever possible. It may also allow the Reporter to establish grounds of referral more quickly after a baby is born.

The HSWG has confirmed that there is no legal impediment to such a rights-based approach, but this may require legislative change and will necessitate further work to develop.

Role of the Reporter before a child is born

Hearings for Children: The Redesign Report

The process where there are concerns about an unborn baby, in line with the proposals set out by the Collaborative Redesign Project must include:

- Voluntary options, including through section 25 of the Children (Scotland) Act 1995 and offering of FGDM in line with Part 12 of the Children and Young People (Scotland) Act 2014, should be explored and exhausted prior to a referral to the Reporter.
 - Intensive family support services, including, where appropriate, access to domestic abuse, and drug and alcohol support services (including residential support), should be discussed alongside prospective parents and put in place when they are needed, for as long as they are needed.
 - Where there are considerations that compulsory measures may be required, the Reporter should be routinely involved in pre-birth planning meetings. The Reporter should be provided with information and reports so that they can be fully engaged in the discussions. The Reporter must retain independence but should be able to review the sufficiency of evidence and be invited to ask questions relating to the sufficiency of evidence and need for compulsion. The Reporter will be able to provide a view on whether referral for consideration of compulsory measures is proportionate and necessary and if it is must begin an investigation.
 - Wherever possible, the investigatory stage that the Reporter undertakes must involve seeking the voice of expectant parents. By working closely alongside the family, if appropriate, there may be an opportunity to help the family understand the decisions available through the Children's Hearings System and mitigate against any trauma—particularly if the parent(s) have experience of the system as children themselves.
 - Expectant parents must be offered the support of an advocacy worker and a lawyer at the same time or prior to the Reporter's involvement. Changes may be required to the legal aid rules to facilitate this.
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Recommendation

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.

Wherever possible, the Reporter's investigation prior to a baby being born must involve seeking the voice of expectant parents.

Expectant parents must be offered the support of an advocacy worker and a lawyer at the same time or prior to the Reporter's involvement. Changes may be required to the legal aid rules to facilitate this.



Offence-based referrals

There is an expectation that the changes brought in through the Children (Care and Justice) (Scotland) Bill will result in approximately 3,900 to 5,300 referrals of between 2,600-3,400 children as a result of extending the age of referral as proposed in the Bill. In terms of Hearings, the forecast is an additional 80 to 150 Hearings on offence grounds.⁴¹ It is also possible that there will be an increase in the number of referrals of children in conflict with the law due to more serious offences.

Children under the age of criminal responsibility (in Scotland this is currently aged 12) who are in conflict with the law may be referred to the Reporter on care and protection grounds. Children aged 12 or over in conflict with the law are either referred to the Children's Reporter or are jointly referred to the Procurator Fiscal and the Children's Reporter, as set out in the Lord Advocate's Guidelines, which are currently being reviewed due to the proposed changes set out by the Children (Care and Justice) (Scotland) Bill. The Procurator Fiscal and the Reporter will discuss the child and their circumstances. The Procurator Fiscal makes the final decision about whether the child should be referred to the Reporter, or whether prosecution will be pursued through the Courts.

⁴¹ [Children \(Care and Justice\) \(Scotland\) Bill Financial Memorandum](#)

If a child is remitted to the Children's Hearings System, the Reporter will decide on the grounds for referral. Some children may enter into the system due to a perceived conflict with the law, but during the course of the Reporter's investigation it may become apparent that there are other circumstances impacting on a child's behaviour and the more appropriate grounds, therefore, are linked to care and protection. This is particularly relevant when the child may be a victim of trafficking or grooming or have been targeted for the purposes of Child Criminal Exploitation.

The HSWG is clear that the Kilbrandon Committee's guiding principle of 'needs not deeds' should stand firm—especially given the significant increase in numbers of older children likely to enter into the system following the changes brought in by the Children (Care and Justice) (Scotland) Bill. **16 and 17 year olds engaging with the Children's Hearings System as a result of being in conflict with the law should not be treated differently from other children in terms of process and procedure—there should not be a two-tier system.** The referral criteria, processes, and options for 16 and 17 year olds should be the same as for all children.

The specific details of the changes to the Children's Hearings System are being scrutinised as part of the necessary Parliamentary processes. As the Bill progresses:

- It is vital that there is public and professional confidence in the Children's Hearings System as the most appropriate route for children remitted to a Hearing. This includes confidence in the competence and processes of the Children's Hearings System and in the qualities and skills of decision makers within the system. It should not be seen as a 'soft touch' approach, but rather the most appropriate way to safeguard children, uphold all children's rights, and the rights of any victims involved, and to consider any unmet welfare and wellbeing needs that may result in offending behaviour. This is a crucial part of early help and support—working in this way is likely to prevent further conflict with the law and enable children already in conflict with the law to work alongside people who are able to talk to them about their experiences and understand the challenges in their lives leading to this conflict.
- The criminal justice system and the Children's Hearings System must communicate and interact with each other so that they appear integrated. For some children, it is appropriate that the criminal justice system is engaged—this should not preclude the potential for the Children's Hearings System to become engaged in their lives as well.
- Decision makers and those working alongside children in conflict with the law need to know and help children access and understand their rights and the way in which the Children's Hearings System interacts with the criminal justice system. Specialist training will be required for Sheriffs, Reporters, Chairs, Panel Members, police officers, social workers, including community justice social workers and lawyers as a minimum.

- In line with current legislation and policy, the rights of victims and the duties with respect to support for victims should be upheld from the point of referral onwards. In particular, the right for information to be shared and the need to explain what 'no action' means to victims. The inquisitorial approach of the Children's Hearings System could mean that victims could play a more constructive and active role, potentially with respect to Restorative Justice processes.
 - It is appropriate that the Crown should have the final say on whether to prosecute as it is the Lord Advocate who has the responsibility to decide on prosecution. However, where the decision is to refer, given that it is the Reporter who decides the grounds upon which the referral should be made, the existing discretion, if the circumstances of the case permit, to refer on care and protection grounds rather than offence grounds must be retained. In doing so the Reporter should have regard to the longer-term implications of the establishment of grounds for referral on offence grounds and the reportability or disclosure of this later in life.
 - The findings of the ongoing pilot scheme in Lanarkshire (in collaboration with the University of the West of Scotland, CYCJ, SCRA and Social Work) should be taken into consideration as part of the overview and potential national rollout of ongoing improvement work. This pilot, for children referred to the Reporter on offence-based grounds aims to improve children's engagement with the system by improving their awareness and understanding of the system and their rights, improving relationships with the important people in their lives and ensuring the needs set out in their Child's Plan are met, by utilising measures attached to orders as the scaffolding of core care plan components. The pilot includes requests for continuity of decision makers and confirmed continuity of professional people working alongside children, intensive support, and quick succession of reporting, more joined up approaches between the Procurator Fiscal, Reporters, CHS, SCRA and social work, timely reviews of orders and improved report writing.
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Recommendation

Specialist training must be provided to decision makers within the Children’s Hearings System and those working as part of the children’s justice system or directly alongside children in conflict with the law so that they know and help children access and understand their rights and the way in which the Children’s Hearings System interacts with the criminal justice system. This includes for Reporters, Chairs, Panel Members, police officers, social workers (including community justice social workers) and lawyers as a minimum—some of this has already started and must continue.

When the Reporter is making a decision about whether to refer a child to a Children’s Hearing on care and protection grounds rather than offence grounds, they must have regard to the longer-term implications of the establishment of grounds for referral on offence grounds and the, albeit limited, reportability or disclosure of this later in life.



Court referral and advice after conviction at Court (Advice Hearings)

The changes introduced through the Children (Care and Justice) (Scotland) Bill will ensure that almost all children who are prosecuted at Court on the decision of the Procurator Fiscal still have the opportunity to benefit from the welfare-based measures available within the Children’s Hearings System. This is an opportunity to align the experience of those who are prosecuted at Court with that of the Children’s Hearings System.⁴² All children and young people up to age 18 who are convicted at Court will have the opportunity, and many will require to be the subject, of either a remit to the Children’s

42 [Children \(Care and Justice\) \(Scotland\) Bill](#)

Court referral and advice after conviction at Court

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Hearing or a request for the advice of the Children's Hearing by the Court (an Advice Hearing), in accordance with the terms of the Children (Care and Justice) (Scotland) Bill. The HSWG is supportive of the Courts retaining measures of public protection, such as the notification requirements under the Sexual Offences Act 2003 (sex offenders' register) or disqualification from driving under the Road Traffic Offenders Act 1988, while allowing a child's needs to be addressed in a welfare-based system.

Recommendation

All children and young people up to age 18 who are convicted at Court should have the opportunity of either a remit to the Children's Hearing or a request for the advice of the Children's Hearing by the Court (an Advice Hearing), in accordance with the terms of the Children (Care and Justice) (Scotland) Bill.



Three

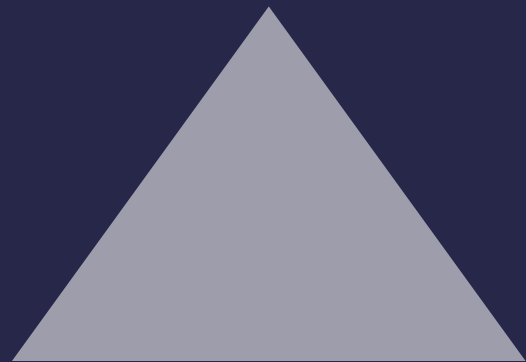
The pathway to the Reporter

What will these changes look like for children and families?

- The Children's Hearings System will be engaged in the lives of children and their families at the right time.
 - People referring children to the Reporter will keep in mind the importance of the developmental milestones of little children.
 - The Reporter and the workforce will work closely together alongside children and families and listen to their views about the help and support that would make the most difference in their lives.
 - The people who work alongside children and their families will work together and have a clear understanding of the referral process. The Reporter will be more involved to help with this.
 - Intensive family support services will be available before the birth of a child. The Reporter will be able to work with expectant parents earlier to avoid rushed and emergency decisions.
 - The criminal justice system and the Children's Hearings System will feel coordinated and will work to jointly uphold the rights of children.
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Four

The introduction of
advocacy, legal advice
and the Reporter



Independent advocacy and legal advice at the point of referral

The promise concluded that care experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond.⁴³ This should include children on the ‘edges of care’. Advocacy workers must be skilled and knowledgeable about the rights and entitlements of children and there must be specialist advocacy workers available to support children with a disability, including with different learning abilities, and unaccompanied asylum-seeking children who are also likely to require suitably qualified interpreters.⁴⁴

In the current Children’s Hearings System, independent advocacy workers play a crucial role in helping children to tell the Children’s Hearing what they want—how they feel, what they think, and what they would like to happen. The aim of this is to give children the offer of support of an independent advocacy worker as and when they need one, in order for them to give their views clearly and definitely, and to have their voice magnified within the Children’s Hearing.⁴⁵ The Chair must inform a child of the availability of children’s advocacy services unless they consider that it would not be appropriate to do so, taking into account their age and maturity.

The HSWG has heard that this provision is positive and recognises its significance for children. The Group has also heard some independent advocacy providers share a view about smaller uptake in numbers for their advocacy services than they were expecting, and a worry that some children might not fully understand what an advocacy worker does and the role that they can play in their engagement with the Children’s Hearings System. However, in order for independent advocacy workers to be able to build a relationship with those they are representing, and to do an effective job, they need to be involved earlier in the process. Children need to fully understand what is being offered to them in terms of independent advocacy support and how it can help them navigate the Children’s Hearing System from the point of referral.

In a redesigned Children’s Hearings System, if a child does not already have an independent advocacy worker there should consistently be an immediate offer of advocacy at the point of referral to the Reporter. This should not be imposed on children, so should not be ‘opt- out’, but there should be a clear offer that is explained in full to ensure children and their families understand the potential role of an advocacy worker, how to access this and what this could mean in terms of support. Advocacy providers will have detailed insight into how the offer should be made so that children and families fully

43 [The Promise, 2020](#), page 114

44 [The Promise, 2020](#), page 114

45 hearings-advocacy.com

understand it, and the difference that it would make to their lives.

The HSWG is also of the view that families may benefit from the skill and support of independent advocacy workers too. It is important that independent advocacy workers for the family are independent and free from conflict of interest—for example, the worker for the family should be from a different independent advocacy provider from the child's worker, otherwise a direct conflict arises.

This should be fully explored as part of The Promise Scotland's scoping work on a national lifelong advocacy service for care experienced people, and advocacy for families coming into contact with the 'care system'.⁴⁶ This should also include consideration of the extension of advocacy support beyond the entry point to the Children's Hearings System to children working voluntarily alongside local authorities. This work should also seek to clarify the role of independent advocacy providers and discuss ways to develop further mechanisms for ensuring the workforce are clear about the added value of independent advocacy workers within the Children's Hearings System and for children and families beyond it in line with the conclusions of the Independent Care Review.

The offer of advocacy should be repeated to children and to their families at different stages of the process, in recognition they may change their mind as things move forward. A decision to decline the offer of advocacy at one stage should not be considered as a decision not to have advocacy support at all and it should be clear that there will be further opportunities to consider and review this decision.

The promise was also clear that Scotland must create and enable a culture where children's rights are respected and upheld as a matter of course: Scotland must aim to ensure that care experienced children, young adults and families can navigate the system of care without the additional support of advocacy workers because those working alongside children and families are the primary trusted adults who can be turned to for support, advice and care.⁴⁷ While the Children's Hearings System and the surrounding 'care system' remains so complex advocacy workers will remain an essential part of helping children and families to make sense and have a say in what is happening to them. However, as these recommendations are embedded, and the promise is kept the expectation of the HSWG is that the demand for advocacy workers may diminish as the number of children referred to the Children's Hearings System reduces. This should be a live part of the planning and oversight of the redesign of the Children's Hearings System. Nevertheless, the vital role of advocacy in ensuring children and young people have their voices must and will always remain part of the Children's Hearings System.

Children and families should also have their rights clearly explained to them in terms of

⁴⁶ [Scottish Government, Keeping the Promise implementation plan](#), page 74

⁴⁷ [The Promise, 2020](#), page 114

accessing legal aid and support from a lawyer. As set out in the promise, the provision of advocacy does not replace rights to legal representation, but the two roles have a separate, distinct purpose. Lawyers play a crucial role in helping children and families to access their rights.

Although the intention of the redesign is to refocus the Children's Hearings System on an inquisitorial system, the HSWG is clear that this may encompass legal support for children and for their families given the significant and serious nature of the decisions being made by the Hearing. More on the role of lawyers and the expectations from the HSWG is set out later in this report.

The 2011 Act increased the availability of legal aid and legal representation in Children's Hearings. These changes mean that, in certain prescribed circumstances, legal aid can be provided for legal representation. However, the HSWG understands that although the uptake of legal aid and the representation of adults is high, often children do not have their own legal representation when this may be beneficial. This should be fully explored and understood.

Recommendation

If a child does not already have an 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 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.

The offer of advocacy should be repeated to children and to their families at different stages of the process.

Children should be fully informed of their right to legal representation and there should be an exploration and understanding of whether the current mechanism for them to access legal aid and their right to legal support is sufficient.



Role of the Reporter once a referral is received

Decisions about whether to arrange a Children's Hearing with respect to a child are underpinned by the requirement for Reporters to act in a manner consistent with ECHR, in particular considering whether the arrangement of a Hearing is a proportionate response to the needs of the child. The Reporter's role is to decide (a) whether one of the grounds of referral in section 67 of the Children's Hearings (Scotland) Act 2011 apply in relation to the child and (b) if so, whether it is necessary for a Compulsory Supervision Order (CSO) to be made in respect of the child. If the Reporter decides that a CSO is necessary, then they must arrange for a Children's Hearing to take place in relation to that child.

On receipt of a referral, the Reporter will conduct an investigation, which includes requesting reports from members of the workforce who may or may not already be involved with a child and their family. Once this investigation has concluded, the Reporter will consider whether there is evidence to establish one of the grounds for referral to a Children's Hearing. An enhanced role for the Reporter during multi-agency pre-referral discussions would help support the Reporter's decision-making once a referral has been received.

The HSWG is proposing three significant changes to the way that this 'investigation stage' takes place:

1. Ensuring the voices, views and experiences of children and their families are routinely part of the investigation

When conducting an investigation and considering the sufficiency of evidence relating to the grounds on which the child has been referred, at present the Reporter takes into account child development, the circumstances of the family and the way in which the child feels loved, safe and cared for, and considers the views of children in their decision-making through information provided by others, usually social workers.

Throughout this process it must be absolutely clear that the child and family are involved in decision-making at all stages, not just once a referral is made to a Children's Hearing. This should not be a system that happens "to" children and families but one that works alongside them to inquire and understand what is happening in their lives, what support a family needs, and how children can be protected, safeguarded, and loved and the promise kept.

The HSWG is therefore of the view that the voices, views and experiences of children and their families should be more routinely captured so that the Reporter gains a clearer and more rounded understanding of what has been happening to lead to the referral, and their views on what needs to happen to uphold a child's rights.

The child and family must be offered the option of providing their views directly to the Reporter. There are no restrictions to this happening within the current legislation. Indeed, the HSWG understands that sometimes this does happen at present but there is no consistent practice across the Children's Hearings System. To address this there should be consideration of a statutory duty on the Reporter to seek the views of the child and family, if they wish to share them.

More productive relationships with the Reporter might minimise the need for compulsion, if a family is engaged in understanding what the referral means and what support the Children's Hearings System can provide. This will foster a sense of the Reporter working alongside the family to better understand what has led to the point of referral, and consideration of whether the family understands the alternative options to a Hearing clearly.

Establishing this tone and maintaining this approach from the very beginning, while also being honest about what decisions might be available to the Panel and what the establishment of grounds means in practice, will help children and families to understand that the focus of the Children's Hearings System is on the best interests of the child. This does not, however, mean that the Reporter should seek to become another professional involved in the lives of children and their families—this approach is about working alongside them in a relational way, rather than building a lasting relationship with them.

However, the HSWG is also mindful that children, families, and care experienced adults have consistently spoken about the trauma and distress that constantly re-telling their story can bring. Many children and families will be working alongside a multitude of different members of the workforce and will be asked to tell their story again and again. The Reporter should be mindful where this has happened before and should take the opportunity to find creative ways to seek the child and families' views in ways that do not cause distress and further harm. 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.

In developing this proposal, there should be full consideration about how information could be shared with the Reporter proportionately and in line with ECHR and GDPR so that the Reporter has a full understanding of the child and families' views so that

they do not need to be asked again if that is not necessary. There should also be full consideration of mechanisms to capture children and their families' views quickly when urgent action is required to keep children safe and to ensure that this change would not add additional drift and delay especially when the safety and needs of the child outweigh any duty to capture their views.

This earlier recommendation with respect to asking a child whether they would like an advocacy worker at a much earlier stage will be crucial, until there are significant changes to remove and reduce the complexity within the current 'care system'. If a child and family is working alongside an advocacy worker at this point, then the Reporter should work closely with the advocacy worker to understand the child's views.

As this proposal develops, 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.

After the Reporter concludes their investigation, the findings and next steps should be communicated and shared with children and their families in ways that they understand and make sense to them.

2. Making connections between other parts of the 'care system' and removing duplication, confusion and overwhelm where possible

The HSWG is mindful of the other meetings and processes that the child and family may be part of with respect to the broader child protection, and care and support framework around them. This may include Team Around the Child meetings, child protection processes and meetings around school attendance, additional support needs, education, and health. The Reporter has an important role in working closely alongside the social worker and Reviewing Officer involved in a child and family's life to understand what else is happening simultaneously.

There should be absolute clarity for the child and family about the role of the Reporter and the interaction between the Reporter and the local authority to ensure there is limited confusion about the respective roles and reduced duplication.

The independence and objectivity of the Reporter, in terms of understanding and scrutinising the support that the child and family have received thus far, is vital to assessing the impact of that support and determining whether there is a need for compulsion.

If FGDM is ongoing at the point a child is referred to the Reporter, it is important for the child and family to be clear about any statutory decision-making process that may be happening alongside FGDM. The Reporter needs to (as usual) clearly explain the statutory intervention, and this then needs to be put into context alongside the work of FGDM by the social worker and FGDM Coordinator, so that the child and family are very clear about what is happening and why, and what is compulsory and what is voluntary.

3. Reviewing the Child's Plan

The Reporter must consider the Child's Plan, if there is one, as part of the investigation process in order to identify what support is currently in place and where any gaps might be. The Child's Plan should be viewed as integral to aiding the decisions of decision makers in the Children's Hearings System. If there is not a Child's Plan, the Reporter should seek an understanding as to why there is not one and when this will be put in place.

The HSWG understands that sometimes the legal order and engagement of the Children's Hearings System is the impetus for a family working more closely alongside their social worker to develop a Child's Plan. In this case, there should be close working with the decision makers in the Children's Hearings System as the Child's Plan is initiated and evolves.

The lack of provision of services should not be a barrier to children being referred by the Reporter to the Children's Hearings if the engagement of the Hearings is required.

There should be standardised questions that the Reporter should consider, in order to understand further the support that the family has asked for and been offered or provided, and the relationship between the family and those around them trying to offer help and support, including education and social work. The Reporter should take into account whether the family has been offered (if appropriate): holistic, whole family support (practical, emotional, and financial support to overcome barriers and challenges); FGDM; Restorative Justice; Signs of Safety; and the support of specialist substance use, mental health and/ or domestic abuse services.

Recommendation

Once a referral has been received, the Reporter must work more closely alongside children and families, where possible. This should include:

- (1) Ensuring the voices, views and experiences of children and their families are routinely part of the Reporter's investigation. 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.
- (2) Making connections between other simultaneous child care and protection processes, and removing duplication, confusion and overwhelm where possible.
- (3) Reviewing the Child's Plan (if there is one) as an integral part of understanding the help and support that has been put in place for children and for their families.



Voluntary measures of support

When a referral is made to the Reporter there are three options for decision-making at present: (1) to refer a child and family onwards for the engagement of the Children's Hearings System (and a Hearing will be convened); (2) no further action; (3) refer back to the local authority for voluntary measures. In 2021/22, 18% of referrals to the Reporter were referred onward to a Children's Hearing, 27% were referred back to the local authority for voluntary measures and for a further 28% no further action was taken. For 27% the Reporter's decision was that the current measures in place were sufficient so a Children's Hearing was not required. Babies and younger children were more likely to be referred to a Children's Hearing.⁴⁸

Reporter's decisions with respect to each referred child are completely independent and are made in the best interests of the child. Even where the Reporter has concluded that there is sufficient evidence to establish grounds, there may not be a requirement for compulsory intervention because, for example, the incident is entirely out of character

⁴⁸ SCRA, Official Statistics

for the child, or because there are no other significant concerns about the child and the parental response has been both appropriate and proportionate to the incident. In other circumstances, compulsion may not be needed because the child and family agree that there is a problem and are already working voluntarily with agencies such as social services or Restorative Justice.

In the current system, if a Reporter makes a decision not to refer a child to a Hearing, it does not mean that nothing is being, or will be, done to assist the child. It usually means that the child and family will receive help and support on a voluntary basis, rather than on a compulsory basis. Where the Principal Reporter considers that the statutory test to meet the grounds has not been met in relation to the child, or it is not necessary for a Compulsory Supervision Order to be made, the Principal Reporter may refer the child to the relevant local authority with a view to the authority providing or arranging “advice, guidance and assistance to the child and the child’s family”.

However, in reality the HSWG has heard frustrations about significant numbers of children being re-referred to the Children’s Hearings System following a voluntary measures decision. In some cases, this is because the support set out in their Child’s Plan has not been provided, or because the support that they have been offered does not adequately meet their needs. Sometimes this leads to a view that the family is not ‘engaging,’ when in reality there is a concern about the appropriateness, or the practicality of the support being offered. Social workers, family support workers and others have shared with the HSWG an increasing sense, within the context of the current financial climate and cost of living crisis, that the type of intensive support envisioned by the promise that some families need is only available for children who are subject to a legal order.

In the absence of appropriate help and support, families may drift until an acute crisis or incident occurs, leading to a referral to the Reporter.

Neither voluntary or compulsory measures are provided by the Reporter or SCRA but are the responsibility of the relevant local authority and therefore, if the Reporter decides to refer a child to the local authority for voluntary measures, they are no longer involved, unless the child is referred back to them. The legal position reverts to the general duty on the local authority to provide support and once the Reporter makes the decision, they have no ongoing statutory powers and their relationship with the child and family end. They currently have no powers to proactively follow up or require update reports.

This situation can lead to ‘re-referrals’ back to the Reporter of families in acute crisis, whose circumstances have significantly deteriorated, and compulsion is required that could have been avoided if the right support had been offered at an earlier stage. The Collaborative Redesign Project made several proposals to address this, including the Reporter being given the option to make interim decisions, structured voluntary measures

agreements and to keep more closely in touch with the child and family to ascertain what support has been put in place following a voluntary measures decision. It also suggested that the Reporter might be able to make a 'directed care plan order' and then take on the role of 'case manager' over the voluntary arrangements.

The HSWG has considered these proposals in detail but is concerned that this option may lead to a 'Hearings System Lite' approach, and a divergence from the legal role and responsibilities of the Reporter. **It is not the role of the Reporter to oversee that voluntary measures are working effectively, nor to hold the local authority to account or become involved in detailed planning processes relating to support services for children.** This would significantly complicate and duplicate the role of the social worker and Reviewing Officer.

The HSWG notes that SCRA's engagement work with their workforce found that they would like to see *"measures that make voluntary supports more robust and responsive to the needs of children."*⁴⁹ The Group agrees that it would be helpful to have a more nuanced and collaborative relationship between the Reporter and the local authority so that children and families receive the support they need, when they need it, including with respect to legal orders. This includes both at the investigation phase (as described above) and afterwards and should not be dependent on complex referral mechanisms and multiple decision makers.

What happens to a child and family when the Reporter has made a decision not to make a referral to a Children's Hearings is mainly outwith the scope of the HSWG. However, the Group makes the following recommendations, which it considers to be within the scope of this work, with a view to reducing the number of 'repeat referrals' and increasing coordination between the Children's Hearings System and the other parts of the 'care system.'

- The potential impact, benefits, and drawbacks and how it would operate in practice, of a '**closure**' report being provided to the Reporter, for children that they have particular concerns about should be explored. This should not be substantive or resource intensive, but should capture next steps to inform the Reporter decision-making about what is and is not effective. This may avoid instances of Reporters making voluntary disposals of referrals on the understanding that a certain care plan will happen, and it later being discovered, usually only if there is further referral, that the support and intervention was not put into place or has not been effective.
- At present, the Reporter's decision is conveyed as 'refer back to local authority for advice, guidance and assistance'. There must be an option for this to be **a more specific and detailed written report**, with more of an analysis of the investigation

49 SCRA Keeping The Promise Reform Project--Report on SCRA Staff Engagement (2022)

process, particularly if children and families are more involved in discussions alongside the Reporter. This should also be clear about what the expectations are on the child and family and any observations that the Reporter has about how the child and family have expressed how they may wish to engage with help and support that must be in place to overcome the challenges they face.

The Reporter should be clear when the decision not to arrange a Hearing and to refer back to the local authority for voluntary advice, guidance and assistance is based (in part) on the child and family receiving access to the supports identified.

The expectation should be that the recommendations from the Reporter should be fully considered as part of the discussions around a Child's Plan and implemented where appropriate.

- There is an expectation that appropriate, available mechanisms and supports should already have been offered to children and their families to address the challenges in their lives. However, where this has not taken place there should be **further collaboration between the Reporter and the local authority** to discuss this further. Voluntary support should be offered based on the understanding that it is not a 'threat' that children and families must participate in these services or compulsion must apply, but rather that following a conversation with the Reporter as part of their engagement alongside children and families there should be a joint decision about any possible referral into these support services.
- The potential use of the measure contained within s.68(5) which allows the Principal Reporter to refer the child to such other persons or body as the Scottish Government may prescribe, and the potential benefits to this approach, should be discussed. Any direct referral into a service should align with, and not be additional, or separate to the Child's Plan and should be discussed as part of the CPPMs and other child protection, and care and support processes so that it does not duplicate or cause confusion.
- For some children when they are initially referred to the Reporter the determination might be that compulsory measures are not required at present. However, unless there is a significant improvement in both the short and longer term to address the challenges those working alongside the children and family are seeing it might be possible that they will be needed in the future. **That should not involve complex re-referral and new investigatory proceedings.** Re-referrals of children to the Reporter within a specific timeframe should be considered as part of a continuation of the previous concern, rather than new circumstances, and wherever possible should be considered by the same Reporter.

This means that local authorities should not 'restart the clock' when children come

in and out of care (for example for children who are on voluntary measures via s.25 of the 1995 Act) but should undertake a review and assessment in terms of the cumulative impact of moving children multiple times, the developmental timescales and milestones of younger children and a broader understanding of families' circumstances and challenges.

This is particularly important for parents whose capacity to provide loving and safe care for their child(ren) may change over time. Inconsistent and unpredictable care can have a significant impact on children, particularly, babies and infants, in terms of their development and attachment relationships. This change would continue to help the Reporter make swift and appropriate decisions about whether onwards referral to the Children's Hearings is necessary within children's developmental timescales, based on a cumulative understanding of a family's challenges, strengths and circumstances.

- There must be improved **mechanisms to better capture data** to understand the impact of voluntary measures and why children are re-referred to the Reporter. This will help policy makers understand better what is happening in local areas and which areas may need more focused resources. For example, are some areas re-referring children more often than others? Are re-referrals coming from areas with higher levels of deprivation? This should be connected to the ongoing work led by CELCIS⁵⁰ which is looking into the effectiveness of voluntary support and should also be connected to the broader work linked to poverty reduction and creating delivery plans to meet the child poverty targets and the development of Children's Services Plans. It should also help SCRA to understand what is working well for children and families and to develop practice based on what they know is effective.

50 CELCIS research on voluntary care arrangements

Recommendation

The following measures should be considered with a view to reducing the number of 'repeat referrals' and increasing coordination between the Children's Hearings System and the other parts of the 'care system':

The potential value of a 'closure report' sent from the implementing authority to the Reporter should be explored.

There must be an option for the Reporter to produce a more specific and detailed written report to the local authority with more of an analysis of the investigation process, particularly if children and families are more involved in discussions alongside the Reporter, where appropriate.

Where appropriate help and support for children and families has not been provided, there should be further collaboration between the Reporter and the local authority, and the potential use of the measure contained within s.68(5) should be explored.

Re-referrals of children to the Reporter within a specific timeframe should be considered as part of a continuation of the previous concern, rather than new circumstances, and wherever possible should be considered by the same Reporter.

There must be improved mechanisms to better capture data to understand the impact of voluntary measures and why children are re-referred to the Reporter.



Qualities and competencies of the Reporter

Reporters must be skilled and competent communicators and collaborators, working effectively alongside children and their families, and the workforce to help them navigate the complexities of the system.

Qualities and competencies of the Reporter

Hearings for Children: The Redesign Report

Many of the responsibilities and actions set out in this chapter of the report in respect of the Reporter are already within the Reporter's purview and do not require legislative change. Others will lead to changes in the system or process or to the way that other members of the workforce will interact with the Reporter and with SCRA or will signify new ways of working for the Reporter and for SCRA.

Thought must be given to how the changes should be communicated to Reporters and the broader SCRA workforce, and how they should be implemented at pace, wherever possible. It will be appropriate to review the resources available to SCRA, so they are able to focus on working in this more relational and sometimes more intense way directly alongside children, families, and local authorities. There is an expectation that the Reporter and SCRA staff working alongside children and families will be properly trained in the impact of trauma, childhood development, neurodiversity and children's rights, as set out in the promise and in the recommendation above. To facilitate this, SCRA have rolled out a trauma training programme for all staff, which should continue along with the delivery of appropriate learning and development identified to support Reporters and SCRA staff with implementing the recommendations.

Four

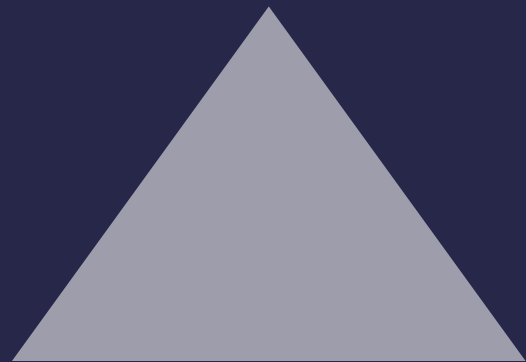
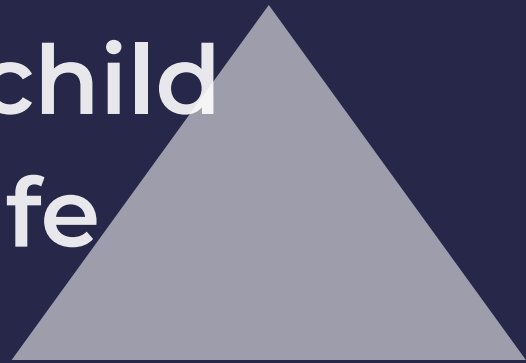
The introduction of advocacy, legal advice and the Reporter

What will these changes look like for children and families?

- The way that the Reporter works will change. Reporters will work closely with children and their families and listen to their views.
- Advocacy support will be immediately offered at the point of referral to the Reporter, and will eventually be extended to the family, in addition to the child. This offer will be repeated at different stages of the process.
- Children will be fully informed of their right to legal representation. There will be a review to ensure the current ways to access legal aid and their right to legal support is upheld.

Five

The reasons the
Children's Hearings
System has become
involved in a child
and family's life



Understanding the grounds for referral

At present, following a referral from the Reporter, Children's Hearings can proceed on the basis of an agreement by the child and family about, or acceptance of, the grounds for referral. If the grounds are not accepted by a child and their family, or if a child or their family are considered not to have understood the grounds then the Reporter must make an application to the Sheriff for proof, if directed to do so by a Hearing. It is the Reporter's responsibility to lead the evidence in Court and seek to have the grounds established. In many cases, after the application to Court is made, agreement can be reached. This is usually achieved by discussing and adjusting the Statement of Facts that supports an application for the establishment of grounds for referral, so long as what is left supports the grounds for referral.

The HSWG has 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.

For example, if there is a ground about 'lack of parental care', which can feel stigmatising, shaming, and judgmental. This description might be what the system understands to have happened, but behind such a complex statement there is likely to be a myriad of complex circumstances, challenges, and behaviours. There may have been extremely serious episodes of harm, of neglect, and of trauma, and these can also be families where children have felt loved, cared for, and deeply connected to. These two things are not mutually exclusive—sometimes children have spoken about feeling loved and cherished within families while simultaneously feeling distressed and unsafe. This does not mean that the Children's Hearings System should accept poor standards of care, but rather that further work is required to ensure that families understand why a referral might have been made and the reasons for that referral beyond a short statement which they might not recognise as applying to themselves.

It is important to note that children also receive the grounds themselves if the Reporter considers that they are able to understand them.

Grounds framed from the perspective of a child's rights, rather than sounding like a criminal charge, might facilitate their understanding of the process. This is also likely to reduce some of the stigma attached to admitting parental failings presented in a

Understanding the grounds for referral

Hearings for Children: The Redesign Report

confrontational manner and ease the way to a consensus on what happened, set out in the Statement of Facts, and grounds for referral.

The HSWG understands that SCRA is in the early stages of considering how grounds might best be revised in this way, in collaboration with CELCIS. The Group strongly supports this approach and recommends further work is undertaken to consider how grounds might be drafted from a rights-based perspective as opposed to a legal test founded upon negative allegations.

This does not mean that negative allegations can, or should, be avoided. The establishment of grounds should be based on factual circumstances and the need to provide a very clear definition of the reasons for state intervention and the potential establishment of legal orders in the lives of children and their families. A rights-based approach recognises the importance of the child's best interests and in the right to be safe from harm. A rights-based approach to the framing of grounds 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 the rights of the child. It would consider the circumstances as a whole and be drafted in a way that would encourage and facilitate open, honest, and transparent conversations.

Where relevant and appropriate, the Statement of Facts should therefore include consideration not just of what challenges children and their families are facing, but what is working well—how needs have been met and what progress has been made. This strengths-based approach is much more likely to facilitate trust between the child and family and open conversations about what is not working so well and what help and support is required to protect the child(ren) within the family and keep them safe.

Some of the parents that Sheriff Mackie heard from talked about how grounds sometimes do not apply to both parents. They shared a view that it was hard to accept grounds around, for example, lack of parental care when they believed the acute incident that had led to a referral to the Reporter was necessitated by the action of one parent and not the other. The Reporter and SCRA have engaged in significant training and awareness-raising of the impact of domestic abuse and coercive control and are familiar with this scenario. However, to further reduce the potential for conflict or confusion around establishing grounds, this issue should be considered when the recommended changes to the framing of grounds are being implemented.

Recommendation

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.

Where relevant and appropriate, the Statement of Facts should include strengths and positive elements of a child's care in addition to the challenges in their lives.



Establishing grounds away from the Hearing

The current process of grounds being read out by the Chair of a Children's Hearing sometimes has the effect of introducing an adversarial association for children and their families with the Children's Hearings System. Children and families have spoken about the process of grounds being read out at Grounds Hearings feeling demeaning, especially when they do not have a clear understanding of what is being spoken about. This is particularly the case when families are facing allegations about the inadequate care and protection of children, or they are being accused of criminal behaviour. Where grounds are disputed, the requirement to refer to the Sheriff and the subsequent Sheriff Court proceedings can also result in significant drift and delay. This undermines the non-adversarial vision of the Children's Hearings System set out by the Kilbrandon Committee and the intended consequences of the recommendations set out by the redesign.

If the child and/ or the relevant person deny the grounds of referral, the Children's Hearing can either discharge the referral or send the grounds to the Sheriff Court to be established. In a revised Children's Hearings System, the recommendation of the HSWG is that there should be no Grounds Hearings within the Children's Hearings System. The establishment of grounds should be addressed in advance of a Hearing taking place, thereby removing potentially the most adversarial component of Children's Hearings and keeping a Hearing specifically for an inquisitorial approach of discussing and making decisions.

Establishing grounds away from the Hearing

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The HSWG proposes the following steps should be in place to address this:

1. A more **relational way of working to agree grounds and confirm the Statement of Facts must be encouraged**, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds.

At present, the child and their family can accept some of the Statement of Facts, which might be sufficient for the section 67 ground to be found to be established by a Children's Hearing. As a result of this, SCRA describes a process that can feel 'transactional' between the Reporter and children and families (and sometimes their legal representatives). Sometimes this might appear challenging and confrontational. For other children and families this process can feel positive and help to foster understanding and agreement between parents and carers and those working alongside them about the challenges they are facing. A more relational way of working where the Reporter exercises professional judgement to determine where children and families might be able to discuss grounds in this way.

2. If the child and their family are able to understand the grounds for referral and accept them, **then the grounds for referral should be established without the need for a hearing at Court**. There must be a process by which it can be ascertained that the Statement of Facts supports the grounds for referral and therefore the grounds are established and the Reporter can proceed to arrange a Hearing, which can then go on to consider the relevant options for decision-making (making a CSO, deferring the Hearing for further information or discharging the referral). **There must be no more Grounds Hearings**.

For example, where the grounds for referral are accepted and agreed in advance, the process of finding the grounds established and directing the Reporter to arrange a Hearing could be done administratively by the Sheriff without the need for the attendance of parties at Court.

3. The first Children's Hearing will therefore take place in the context of the matter of the **grounds for referral already resolved** so it can focus on addressing the issues of concern and making decisions alongside children and their families in the best interests of the child.

This approach should be fully consulted on alongside children, families, care experienced adults and members of the workforce. No legislative changes should be made until all unintended consequences have been examined and the new approach to establishing grounds has been co-designed alongside children and families and through engagement with the Judiciary and SCTS. In particular, the details as to the exact process to be followed when grounds are capable of being agreed without evidence being led needs to be planned with all potential consequences considered.

Recommendation

Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.

A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds.



Contesting grounds & the role of the Sheriff

In a redesigned Children's Hearings System, it is hoped that working alongside children and families and helping them to understand the reasons that the Children's Hearings System has become a part of their lives will reduce conflict when grounds are established. However, there will always be occasions when children and families do not agree with the grounds that have been set out—and the way that the challenges they face, and their family life has been characterised in the Statement of Facts.

The process of understanding and establishing grounds must become less traumatic and should separate out a more adversarial aspect of the Children's Hearings System from the inquisitorial approach the HSWG is seeking to establish when a Hearing takes place. It would not be beneficial for children and families to be removed from one distressing and traumatising process for it to be replaced with another, equally distressing and traumatising process through the Courts. The process of presenting, admitting (or denying) and proving grounds when they have been disputed should, therefore, be in line with the aims and ethos of the redesigned Children's Hearings System.

A child and families' experience at Court should align as much as possible with the experience at a Hearing in terms of the physical environment and the expected conduct of an inquisitorial approach. In particular:

Contesting grounds & the role of the Sheriff

Hearings for Children: The Redesign Report

- Wherever possible, children and families should **encounter the same Sheriff throughout the process of addressing the establishment of grounds**. Where grounds are disputed there may be a number of procedural hearings, including case management and planning by the Sheriff. It is important that the same Sheriff is engaged in this, not only in the best interests of children and their families but also for consistency in decision-making and the prevention of unnecessary drift, delay, and waste of Court time. The HSWG understands that there have been pilots of this approach in Aberdeen, which it would be helpful to learn from.
- Earlier in this report, the HSWG commented on the qualities and competencies of the Sheriff and the **recommended consideration of specialist child and family Sheriffs**. These qualities and competencies are particularly important at proofs, where a compassionate and skilled Sheriff can help families to feel heard, respected, and part of the discussions. The way in which the Sheriff interacts with children (if they are present) and families is especially important. In particular, in the fact-finding part of the process it is possible for the Sheriff to avoid hostilities and defuse potential aggressive proceedings and to establish the way in which discussions should carry on. It should be clear to the Sheriff the crucial role that they have in setting the tone and nature of the child and family's interaction and future engagement with the Children's Hearings System.
- Learning from the ongoing work in Dundee where proofs are currently taking place in Hearings Centres should be considered and developed. The HSWG recognises that children (if they are present) and families **may feel more comfortable in the more family-friendly environment of a Hearing Centre rather than the more formal setting of a Court**. However, the Group has also discussed how this may result in a negative association with the Hearing Centre if the proof is quite adversarial (despite best efforts to prevent this) and may therefore impact on the child and families' view of their impending Hearing. In addition, the HSWG has heard that for some the clarity and certainty of proceedings at court are reassuring. Learning should be taken into account from other tribunals, such as Additional Support Needs Tribunals, which often take place in locations that are suitable and can accommodate the support needs of children and their families. Children and families should be involved in decisions about where their proof will take place, this may include alternative venues such as schools or community centres.
- The potential for a sense of **collaboration and co-operation** that can emerge from a positive discussion around the Statement of Facts and its adjustment that can occur at a Grounds Hearing under the existing practice must not be lost. Wherever possible, a proof hearing should remain an opportunity to discuss and resolve the disputed issues surrounding the grounds so that appropriate amendments to the Statement of Facts can be agreed. This would enable the Sheriff to dispense with the hearing of evidence, find grounds established on the amended Statement

Contesting grounds & the role of the Sheriff

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of Facts and direct the Reporter to arrange a Children's Hearing. The Sheriff is already empowered to take close management of a grounds proof by directing only one expert, requiring parties to specify issues in dispute to enter Joint Minutes of Agreement of matters not in dispute, the use of Affidavit or statement evidence as evidence in chief and the use of technology. These powers provide the Sheriff with an opportunity to direct proceedings in the spirit of inquiry that underpins the ethos of the redesigned system.

- The HSWG understands that for some children and families, a Safeguarder⁵¹ 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. This would be similar to the role played by Child Welfare Reporters in Civil Court proceedings, where the Sheriff seeks to resolve differences on the factual circumstances by commissioning a report. In this instance, the Reporter becomes the 'eyes and ears' of the Court and the Safeguarder can bring clarity on the facts and a moderation of the levels of antagonism and opposition.
- As set out above, **independent advocacy must be offered earlier** to a child engaged with the Children's Hearings, this must include during the establishment of grounds.

⁵¹ Appointed under s.30(1) of the Children's Hearings (Scotland) Act 2011 to safeguard children's interests

Recommendation

A child and families' experience at Court should align as much as possible with the experience at a Hearing in terms of the physical environment and the expected conduct of an inquisitorial approach.

The appointment of a Safeguarder must be routinely considered during the process to establish grounds.

Wherever possible, there should be a consistent Sheriff throughout the process who is specially trained and skilled.



Avoiding drift and delay in establishing 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 for referral, when the facts are disputed, can take on average approximately 3.5 months, although the HSWG has heard examples of children and families waiting up to six months or even more than a year.

These are extraordinary lengths of time for children and families to be in limbo, waiting for significant decisions that will impact on the rest of their lives. Such an increase in anxiety and distress can have detrimental impacts on children and families' mental health and their relationship with their social worker. Members of the workforce have spoken about the help and support for children and their families to address the challenges in their lives being 'paused' or not put in place while they were waiting for a decision from a Hearing. This is despite the evidence which shows that the first six months are most effective in terms of working alongside children and their families after an acute incident has taken place.⁵² This should be urgently addressed. Children and families must feel supported while they are waiting for their Hearing to take place and efforts should be made to address systemic delays.

⁵² [Selwyn, Farmer, Turney and Platt, Improving child and family assessments - turning research into practice, 2011](#)

Avoiding drift and delay in establishing grounds

Hearings for Children: The Redesign Report

The HSWG has also heard that until grounds are established longer term planning for children can grind to a halt.

In 2021/22 just under half (48.9%) of CPOs were issued for children under two years old, 24.8% were under 20 days old. A child is more likely to be referred under a 'lack of parental care' ground in their first year of life than at any other time. For infants, timely decision-making has significant implications for their recovery and lifelong wellbeing and outcomes.

The significant impact of delay in children has long been discussed in Scotland—it is clear that there is not just one solution but a broader consideration of the multiple different factors impacting on delayed decision-making. In particular:

- The current delays to the Court system should be addressed and a review must be undertaken 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 where systemic delays may impact on their ability to form lasting and consistent relationships.
- There should be consideration of the implications and benefits of a statutory three month set time limit for the determination of grounds, with 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. The existence of a time limit in this way would introduce a discipline among practitioners, relevant persons, and other participants in the proof—and an added control for the Sheriff—that would have the overall effect of limiting unnecessary drift and delay.
- There should be consideration of how the legal profession may help to reduce systemic drift and delay, including whether a flat rate fee structure would make a difference in terms of reducing the drawing out of processes.
- Drift and delay can result from the requirement for relevant persons to obtain legal advice and for their legal advisers to then make preparations for the grounds proof in those cases in which grounds are disputed. There can be delay in awaiting the outcome of legal aid applications and in the solicitor's investigation of the evidence. There may also arise a perceived requirement for an independent social work report, a psychological or psychiatric assessment or parenting assessment. A parent may come late to the proceedings in need of legal advice in support of their right to a family life. Such delays can be mitigated against by disclosure by the Reporter of the information relied upon for the referral, and by pro-active 'case management' by the Sheriff. The Sheriff is already empowered to adopt an inquisitorial approach

to grounds proofs to secure an expeditious determination of the application for the establishment of grounds for referral. Those tools for the expeditious determination of disputed grounds for referral should remain in place and their use should be encouraged.

Recommendation

The reasons for structural and systemic delays in establishing grounds must be identified and eliminated. Potential solutions considered must involve the legal profession and must include:

- The benefit of a statutory three month set time limit for the determination of grounds, with scope for this to be extended in extreme circumstances, at the discretion of the Sheriff.
- Measures to prioritise the developmental needs of infants and babies where systemic delays may impact on their ability to form lasting and consistent relationships.
- Understanding whether a flat rate fee structure or changes to legal aid would make a difference in terms of reducing the drawing out the processes.

Sheriffs must use the tools at their disposal for the expeditious determination of disputed grounds for referral.



Interim orders prior to a Children's Hearing taking place

The removal of Grounds Hearings from the Hearing will have an impact on how interim decisions are made about the lives of children and their families. In a redesigned Children's Hearings System, decisions should be made promptly, timeously and with safeguards in place to prevent long periods between decisions and the resultant distress and uncertainty. For babies and infants this is particularly important to prevent ruptured attachments, distracted or anxious caregivers, and inconsistency in the formative weeks and months of their lives.

However, in some cases decisions cannot be rushed and time must be taken to ensure that decision makers within the Children's Hearings System (referrers, Reporters, Sheriffs and Panel Members) have all the information that they need to make decisions alongside children and families that will—in many cases—have lifelong consequences. In these instances it might be important for an interim order (an ICSSO) to be put in place, which would uphold children's right to be safe and focus supports around their welfare, best interests, and the broader needs of their family. Children and families should not be left without appropriate access to help and support while decisions are being made. They should be involved in decisions about what this should look like and what would make the most difference to meet the challenges in their lives.

At present, interim orders may already be in place, having been decided upon by the Panel at a Children's Hearing before grounds are established. In the reimagined system—where a Hearing would only take place after grounds have been established—it will be the Sheriff who will have more direct involvement in the first consideration of interim orders. Interim orders may therefore be established prior to proof hearings (within the Court setting) or during a proof hearing.

When considering interim orders the HSWG expects that the Sheriff will have access to the Child's Plan (if there is one) and, in terms of Shrieval competences, an understanding of how it has been developed, the inter-connection of the ongoing multi-agency reviews and child protection, care and support processes and the impact of decisions at Court and in the Children's Hearings .

The HSWG agrees with the proposal raised by the Collaborative Redesign Project 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 necessary.

Establishing grounds when babies and infants are involved

Hearings for Children: The Redesign Report

The Group therefore recommends that there should be full exploration of the making of interim orders for a specified time that is bespoke to a child's needs. The Sheriff and the Panel should be trusted to make appropriate orders without the need for mandatory reviews at short intervals of time. Orders by the Sheriff would be to regulate the period of time during a Sheriff Court process for the establishment of grounds and, after the establishment of grounds, between the Sheriff Court process and the first referral hearing before the Panel.

The implications of implementing this change should be considered in full, including with respect to children and families' ECHR rights and the right to appeal. 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.

Recommendation

Interim orders must be in place for a length of time that is in the best interests of the child.



Establishing grounds where babies and infants are involved

At present, grounds for referral must be agreed or established by the child and all relevant persons before a Children's Hearing can consider making decisions in their best interests. This includes children who are too young to understand or respond to the grounds. In practice this means that when relevant persons agree with the concerns raised, the court must still become involved for a Sheriff to establish the grounds on behalf of the child.

Recommendation

There must be no requirement for young children to agree with the grounds for referral. When all relevant persons agree the grounds and Statement of Facts, this must be sufficient to consider the grounds as agreed, with no need for additional proof proceedings.



Five

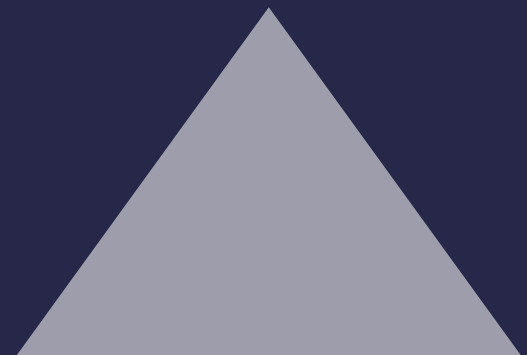
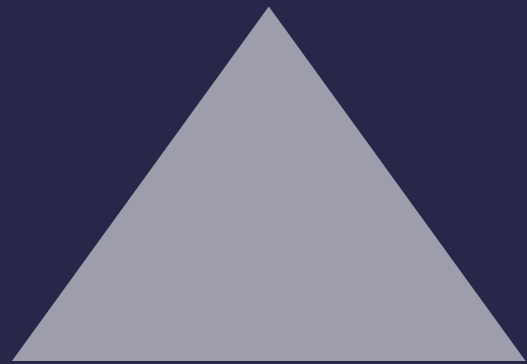
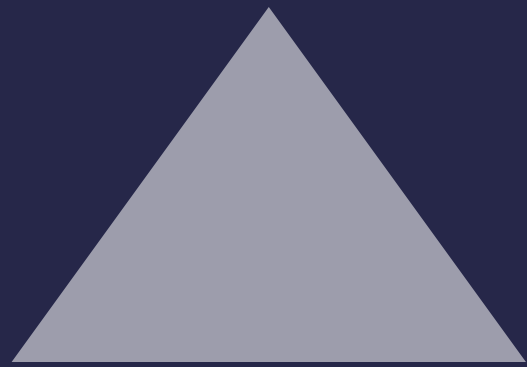
The reasons the Children's Hearings System has become involved in a child and family's life

What will these changes look like for children and families?

- Children and families will understand the reasons they have been referred to the Children's Hearings System. These will be written in a rights-based way and the process will feel more supportive. The good and happy things in children and family's lives will be talked about as well as the things that are difficult.
 - Grounds will be agreed in a separate process before children and families attend a Hearing.
 - Where possible children and families will meet the same Sheriff if they are in Court and their experiences in Court will be similar to their experiences in their Hearings.
 - There will not be long waits while grounds are being established.
 - There will be no requirement for little children to agree with the grounds for referral.
-

Six

The decision-making model



Why does Scotland need a Children's Hearings System?

The Children's Hearings System is the largest tribunal in Scotland (operating approximately 30,000 Hearings and supporting around 10,000 children a year before the pandemic years). **It 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.**

Among the values embraced by the HSWG were those of courage, boldness, and rigour, recognising that transformational change cannot be achieved without these. The Group avoided bringing preconceptions to its work and so, as part of the HSWG's considerations, the Chair of the Group met with the President of Scottish Tribunals, Lord Woolman, to discuss whether it would be appropriate for Children's Hearings to be administered by the Scottish Courts and Tribunal Service (SCTS) rather than by CHS and SCRA.

While the specialties of the Children's Hearings System as a whole and the sheer volume of cases it deals with render such a change unlikely, the timeframe for absorption would be so prolonged having regard to the current and pending incorporation of other tribunals by SCTS as to render this an impracticable consideration.

Additionally, children in Scotland have repeatedly shared their views about attending Court.⁵³ The Scottish Government has clearly stated that Court is no place for a child—indeed work is ongoing to ensure child victims and witnesses in Scotland are able to appear remotely and access the support of a Bairn's Hoose. It would appear counter-intuitive, therefore, if the HSWG were to recommend that more (as opposed to less) children should attend Court in the absence of Children's Hearings. Given the changes brought forward by the Children (Care and Justice) (Scotland) Bill, which will increase the number of older children referred to Children's Hearings, these considerations are particularly relevant.

The unique and inquisitorial Children's Hearings System is a much more appropriate decision-making forum for children and their families rather than the more formal and distressing experience of attending Court. **A redesigned Children's Hearing will offer an opportunity to truly listen to children and to their families, to discuss the nature of the challenges that they face and work together collaboratively, where possible, to find solutions.** This does, however, rely on significant changes to the current recruitment

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practices and to the competencies and qualities of the Chair, and of Panel Members.

A comparative study looking at decision-making models for children in need of care and protection around the world was prepared on behalf of the HSWG. The work was considered by the Group, and it concluded that there was not an alternative model that should be transposed into Scotland. This is for a number of reasons. The first of these was the unique framework of the Children's Hearings System that took these decisions out of the adversarial context of the civil and criminal courts. To stay true to this framework it is important to hold on to a Panel-based decision-making structure.

The HSWG has heard repeatedly that it is not that there are issues with the tribunal model itself, rather that the challenges around the existing administrative structure is that is reliant on the unpaid workforce. This reliance makes it difficult to achieve continuity of decision-making, sufficient accountability, and collaborative working alongside implementing authorities.

An inquisitorial approach to Children's Hearings

As described previously in this report, a strong feature throughout the HSWG's engagement and deliberation is a widespread desire to lessen the adversarial nature of the Children's Hearings System and to 'lower the temperature' in Children's Hearings themselves.

Often, despite the best efforts of Panel Members, children and families, and those working alongside them have reflected to the HSWG that Children's Hearings have become increasingly adversarial, in a clear departure from the original intentions of Kilbrandon. Foster carers spoke about Hearings sometimes seeming "uncontained" and "almost chaotic." The Group also heard children and adults with experience of attending Hearings talking about high levels of emotion, overlapping contributions and a sense of overwhelm for everyone involved—including Panel Members. Sometimes the way that Hearings are conducted can have an adverse impact on the important relationship between a child and family and their social worker. Social workers, spoke about the impact of the adversarial behaviour of some lawyers and the way that this causes distress to them and to the children and families they work alongside. Some parents spoke about not knowing how a Panel is going to act and reflected a strong sense of feeling "unsafe" during a Hearing—which could impact on their ability to listen, to participate, to understand, and to regulate.

Having heard these concerns, and reflected on what the Independent Care Review was told, **the Group has concluded that a Children's Hearing must operate explicitly as**

an inquisitorial, non-adversarial tribunal where the sole objective is to arrive at decisions that are in the best interests of the child.

There should be no competition or contest for an outcome and everyone who participates in a Children's Hearing, whether a social worker, parent or carer, or other person important to the child, should know that the Panel are charged with a safeguarding responsibility of treating the interests of the child as the paramount consideration.

The only objective 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? This may include removing children from a family's care to ensure that they are safe. Particular effort should be made to ask: what is going well for this family? What can we do to help you?

The proceedings of Children's Hearings must pivot towards understanding children and their needs in the context of their entire family, including brothers and sisters, their extended family, friends, people they love and trust, and their community.

It remains the case, nonetheless, that decisions by the Children's Hearings can, and do, impinge upon the rights of parents to a family life, but **it is possible to respect those rights whilst maintaining the informal, non-contentious nature of the Children's Hearings.**⁵⁴

There may be differences of opinion as to where the best interest of a child lies, but it is the role of the Panel Members to review all of the relevant information, including information that lies outwith the scope of the statement of facts supporting the grounds for referral, to consider it, to balance considerations, and finally to arrive at a decision.

To achieve this, 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, including by determining who is present at each stage, whilst effectively balancing rights of attendance and participation. This includes being cognisant of the fact that sometimes the mere presence of certain individuals without overt signs of violence and disruption can preclude the effective participation of others. The Chair must be supported to make those assessments and judgements in complex circumstances.

The Chair must have the flexibility to change the speaking order and arrangements, depending on the way that discussions are progressing and the authority to ask contributors to the meeting to leave the room after they have spoken, if that is in the best

⁵⁴ [McMichael v United Kingdom \(1995\)](#) 20 E.H.R.R. 205 at para. 102

interests of the child. In many cases it will be possible and desirable to have a number of parties and professionals in the Hearing room at once and for a conversation to take place. At other times, a more managed approach may be required due to the different personalities involved or the nature of the issues to be decided.

The HSWG believes that a shift towards wholly inquisitorial Children's Hearings will be made possible by a Children's Hearings System that builds in time and space to work relationally alongside children and their families and upholds their rights. A Children's Hearing System where families' strengths as well as challenges are recognised and where a concerted effort is made to shift the balance of power so that children and families feel considered as partners in decisions affecting their lives. This is even when those decisions are contrary to the original wishes of the family, but are necessary to ensure children are safe, recognising the independent, quasi-judicial function of the Panel.

By working together alongside children and families, making inquiries and asking relevant and proportionate questions about what is needed to overcome and face challenges in their lives, it is far more likely that children and families will feel able to engage and participate in the process of a Children's Hearing, even when it hard for them to do so.

Many of the recommendations contained within this chapter of the report reflect the ideas and suggestions from CHS's workforce via their engagement work which spoke about the need for relationship-based discussions and adopting a more participative and facilitative approach within Panel decisions.⁵⁵

⁵⁵ [CHS, Phase two consultation report to the Hearings System Working Group](#), January 2023

Recommendation

A Children's Hearing must operate explicitly as an inquisitorial, non-adversarial tribunal where the sole objective is to arrive at decisions that are in the best interests of the child.

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.



The composition of the Panel

A Children's Hearing is currently composed of three trained lay Panel Members living or working in the same local authority area as the child, who decide whether compulsory measures of supervision are required. The child's welfare is their paramount consideration.

Research undertaken by HSWG demonstrated that Scotland is unique in utilising lay persons to make decisions on involuntary care for children. The use of lay decision makers in the Nordic countries, whose child welfare committees or boards inspired the Kilbrandon Committee, has waned significantly in recent decades with most partly or completely ceasing to use volunteering as a principle of their Panel Membership.

Indeed, within Scotland, the Children's Hearings System is one of a very few tribunals that utilise volunteer decision makers. All Panel Members in the Scottish Courts and Tribunal Service are paid for their time. This is also true of other bodies such as the Mental Health Tribunal, the Parole Board and Redress Scotland. Adoption and Fostering Panels also use paid independent chairs, although they make recommendations rather than legally binding decisions.

The composition of the Panel

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In addition to the voices and experiences of children and families and care experienced adults who have shared their views of the challenges within the current Children's Hearings System and the conclusions reached by Independent Care Review, **it is increasingly clear that changes are also required to secure the sustainability of the Children's Hearings System.** CHS have spoken about current increasing challenges of recruiting volunteers, many of whom are understandably finding it difficult to take on unpaid roles in the current financial climate and is also reflective of a reduction in volunteering across Scotland. Many Panel Members have caring responsibilities or employment commitments which make volunteering particularly challenging. Becoming a volunteer Panel Member represents a significant commitment and a substantial amount of time required to attend training and to prepare and attend Hearings—this is simply not possible for many people at present.

Many Panel Members have shared a view that the role they signed up to as a volunteer appears vastly different to the reality of the role they fill at present. Many feel the burden and weight of the significant, life changing decisions being made within a Hearing and, despite the best efforts of Children's Hearings Scotland, feel unprepared for the more adversarial and increasingly complex circumstances with which they are faced. While all Panel Members are trained with the expectation of Chairing Children's Hearings, that role and the prospect of undertaking it becomes a source of anxiety for many.

The evidence is clear that the needs of the families who are referred to the Children's Hearings System are increasingly complex, with multi-faceted issues and oftentimes historic involvement with the 'care system', and inter-generational trauma. As Scotland's understanding of trauma and attachment increases, so too does the demand on the Hearing to understand and take into account this emerging evidence. This complexity is likely to increase with the introduction of higher numbers of older children following the passage of the Children (Care and Justice) (Scotland) Bill.

The assessment of the HSWG is that the burden of this responsibility should not be placed on the unpaid workforce, however skilled that workforce might be.

The fundamental decision-making model of the Hearing remains unaltered as it was 50 years ago. In order to take account of the changing nature of referrals received by the Children's Hearings, of the conclusions reached by the Independent Care Review to address the concerns raised by children, families and care experienced adults, and of the need to secure longer-term future of the Children's Hearings System so that it can operate effectively, the HSWG is of the view that changes must be made to the decision-making model.

Continuity of the Panel

Throughout all of the HSWG's engagement, one message has come across consistently from almost all the large numbers of children, families, care experienced adults, and people working alongside them that the Group heard from. This was shared repeatedly, loudly, and clearly: **the biggest difference that can be made is to ensure continuity of decision makers**. 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 their Hearing.

This was reflected by Panel Members themselves in the engagement work that CHS undertook with members of their workforce. They felt that continuity would help to build relationships with families and reduce the need to repeat difficult stories.⁵⁶

Continuity of decision-making affects the quality and consistency of decisions about, and for, children and their families, while continuity of decision makers helps children and families to feel more comfortable within a Children's Hearing. The Group has heard children and families with experience of the Children's Hearings System and members of the workforce speak about this for some time. It does a disservice to both Panel Members and to children and families to continue with the current system whereby a new Panel may be engaged every time a child and their family has a new Hearing. Panel Members should have an understanding of the challenges and problems that the family have faced, the issues that they have struggled with, the strengths that they have, the support that they have been offered, and the support they have received. By starting afresh every time a Hearing is required, that vital information and connection with a child and their family is lost.

One of the calls to action from OHOV is: *"I should have the choice to have some of the same Panel Members at my Hearings who get to know me over time."* Similarly, the Collaborative Redesign Project spoke about the importance of the continuity of professionals and decision makers in the Children's Hearings System. The concept that the Project developed states that the same decision makers should stay with the child and ensure that people are accountable for the decisions made.

In considering what changes are required, the HSWG has returned to the original Kilbrandon Report, and notes that the Kilbrandon Committee appeared not to be especially wedded to the concept of volunteerism. Rather, it was guided by the desirability of establishing a Panel of qualified individuals having the necessary personal qualities to meet the demands of Panel Membership, but who were also able to work alongside children and consider their needs. The report clearly recognises the potential challenge of

⁵⁶ [CHS, Phase two consultation report to the Hearings System Working Group](#), January 2023

the Children's Hearings System in meeting the needs of children and families through the services of volunteers. In some areas, the Kilbrandon Committee write, 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."*⁵⁷

In a redesigned Children's Hearings System with a more relational Chair who has met with the family and is able to preside over trauma-informed proceedings, the same Panel should remain in place, wherever possible, throughout a child and their families' engagement with the Children's Hearings System. Consideration of these issues within the HSWG and during the engagement sessions have recognised that the present reliance upon a volunteer force of Panel Members presents significant challenges in addressing the desire for continuity of, and improvements in, the consistency and quality of decision-making.

Achieving the level of continuity that is desired alongside improvements in the quality of decision-making and comprehensive writing is likely to only be achieved by the appointment of salaried Chairs and remunerated Panel Members.

Continuity of Panel Members will ensure continuity of involvement and engagement in the lives of children and families, working alongside them from the very beginning and seeing the impact of their decisions. For some areas this poses more of a challenge than others—particularly in rural areas. Some children and families may not like or gel with Panel Members or their Chair, and this may impact on their ability to engage fully with the support of the Children's Hearings System and to participate in the way that they may otherwise.

If it is not possible in some areas, or to avoid substantial drift and delay, for all three Panel Members to be the same at each Hearing a priority must be placed on ensuring that the Chair is consistent.

This aspiration should be met as far as practicable, but that where this becomes a physical impossibility due to unpredictable or unforeseen circumstances, then there should be work undertaken to put in place contingency plans and opportunities for incoming Chairs to work alongside the child and family, and to understand and take stock of pre-existing decisions and information. There should be provision in place to ensure that where there is a personality clash that impacts on the child and families' ability to fully engage in the process, there are ways to raise and resolve these. The children and young people with experience of the Children's Hearings System spoke about a 'back up' or 'understudy' Chair that should already have a knowledge of their situation. They also suggested that Chairs should travel if the child moves between local authorities. The HSWG thinks that these ideas should be earnestly considered as part of the broader work to put in place a

⁵⁷ [The Kilbrandon Report](#), Children and Young Persons Scotland, para 225

framework to implement these recommendations.

Recommendation

The decision-making model must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate.

As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing. This should also apply to Panel Members where possible and desirable.



How decisions must be made in an inquisitorial system

Following a referral to the Children's Hearing by the Reporter, having had grounds established, the decision-making model must consist of three distinct phases:

Firstly, a robust **preparatory phase**, where decisions and deliberations relating to procedure are taken into account (see below for further detail). This should be an opportunity to discuss what will happen at a Hearing, to ensure the child and family fully understand the process and know and are able to access their rights. This step should include an offer for the child and their family to meet the Chair in advance of the Hearing.

Secondly, the Children's **Hearing itself, which must be conducted in an inquisitorial manner**, beginning with an information gathering stage, during which the Panel will hear the views of the child and their family, their social worker and other important people working alongside them and who are important in their lives. This should supplement the

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written information, assessments, and reports that have been received by the Panel, the child and family, and will allow time and space for discussion with all the important people who have been involved in the child's life, including those who love and know them best. There should be no surprises in this stage of the Hearing. The information should all have been part of the reports received by the Panel, the child and family and by the Panel and the way that it is presented and discussed should be closely managed by the Chair, who must be cognisant of the preferences expressed by the child and their family during the preparation stage of the process.

The children and young people that Sheriff Mackie heard from with experience of the Children's Hearings System liked the idea of a Chair who was more in control of proceedings. They wanted to know that they would 'manage curveballs' and help them to feel comfortable and prepared. They spoke about the importance of the Hearing talking about the strengths of their family and the people that love them, and the good things happening in their lives.

The Chair shouldn't allow the adults in the room to go off track and say things that might be triggers for children.

—Young person with experience of the Children's Hearings System

At the end of the information gathering and discussion part of the Hearing there should be consideration of a short break to 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 offers the Hearing an opportunity to confer and to arrive at a unified decision, if possible.

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.

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. Snacks and drinks of the child and family's choice should be available, and consideration should be given to the practical arrangements of this break. If there are concerns about contact between some of the people attending a Hearing, this should include ensuring appropriate spaces for children and families to remain safe; this is particularly important for children and families who have experienced domestic abuse.

When making a decision, the Panel must safeguard and promote the welfare of the child throughout their childhood and must have regard to the child's views. Panels must

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produce decisions that are clear, accessible and in formats that children and young people can understand. Giving them time to confer and discuss their decision, and the reasons behind it, and to pause and reflect on what they have heard is likely to mean that when the decision is conveyed to children and their families, it is more robust and thought has been given to the tone, manner, and the way in which reasoning should and could be shared.

It is expected that the break would be quite short, however in more complex and challenging cases it might be appropriate to allow the Panel to take extra time to reach a decision. In this case, support should be in place to manage the understandable anxiety that might be felt by the child and family in the interim. Support may also be required to ensure practical arrangements are in place to keep children safe.

This is an area that seems appropriate to be tested and piloted with children and families and for the results to be shared and reflected on prior to national roll out.

Thirdly, a final stage at which the Panel, through the Chair, **would deliver its decision.**

At present, the child and their family remain in the room for the entirety of the Hearing and, until recently, the decision was relayed to them verbally, individually, by each Panel Member, one after the other. One expert that provided evidence and information to the HSWG commented that this sounded *“a bit like the X factor”*. The intention of presenting the decision in this way is linked to a requirement for the Panel to be transparent and open with the child and their family and to meet the legal requirement that each Panel Member gives an individual decision. However, in reality this can often feel traumatic and distressing for children and their families as they wait to hear the ‘verdict’ from one person after the other. It can also feel constricting for Panel Members, potentially reducing the quality of their decision-making.

In a redesigned Children’s Hearings System, after the short period of reflection, the Hearing should reconvene and the single decision of the Hearing must be shared verbally by the Chair. This must be delivered clearly using terminology that the child and their family understand, but with the understanding that it might evoke an emotional response from those listening to the decision and that a heightened state of anxiety, fear and distress might mean that those listening are unable to truly hear or take in what it means. An independent advocacy worker could also help children and their families to understand the decision.

The Chair must then be responsible, after the Hearing has taken place, for writing a fully reasoned decision, to be shared with the child and their family. This should be shared with the support of their social worker and/ or legal representative and other people, including support workers, working alongside them. A framework must be developed

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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. This will help to increase consistency in decision-making. Such a decision will take time to write, and this should be taken into consideration in the time limits for delivery of decisions which, in the interests of the child or young person, should be as soon as possible. The Chair must provide the decision within a reasonable time limit.

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 upon the Chair to reflect that there was a dissenting view.

While a fully reasoned decision will assist in improving openness and transparency and to inform appeals, this might be inappropriate for, and inaccessible to, children—especially very young children, and children with a learning disability. A summary of the decision in plain language in a format appropriate to the age and stage of the child should therefore be prepared and issued alongside the full decision. Similar accommodations may support family members with learning disabilities to, for example, understand the written decision more easily. The Collaborative Redesign Project 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.

This new process would 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.

Recommendation

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.

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.



Six

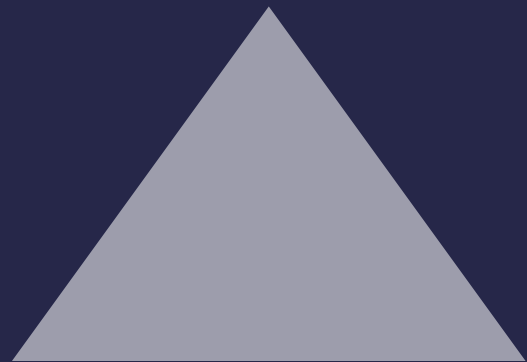
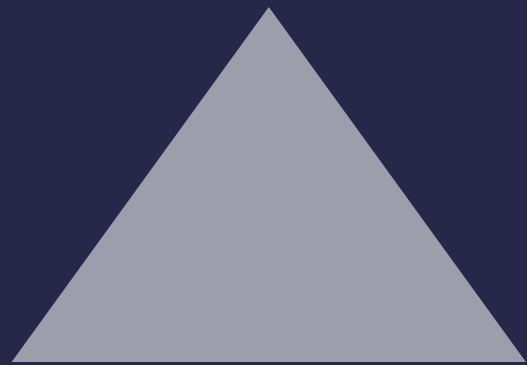
The decision-making model

What will these changes look like for children and families?

- A Children's Hearing will not feel confrontational. The main objective will be to think about what is best for the child and the way this happens will feel calm, coordinated and safe.
 - There will be a consistent, highly-qualified Chair of the Panel and two Panel Members.
 - To ensure the best decisions are made by the Panel, the process of how decisions are made will change.
 1. The Panel, children, and families will feel better prepared for the Hearing and involved in the decisions about how it should happen.
 2. The Hearing will take place and then there will be a break for everyone to have a rest and reflect.
 3. The Chair will share a verbal decision in a way that will be understood. A larger written decision, also understood by children and families, will be shared shortly after the Hearing.
-

Seven

The people making
decisions at
a Hearing



The role of the Chair

The management of the different, complex interplays often presented within and around a Children's Hearing require significant skill and understanding. In a redesigned Children's Hearings System, the requirement placed on the Chair will be to maintain an absolute focus on the best interests of the child and to uphold the rights of the child and the family within the context of an inquisitorial and non-adversarial system. Many of the individuals and organisations that the HSWG heard from spoke about the need for the Chair to 'hold the room', while birth parents spoke about the importance of a Children's Hearing feeling safe. This increased sense of safety is important to help minimise trauma and distress and is likely to facilitate and foster a greater sense of shared understanding and participation between all participants, including children.

The Collaborative Redesign Project highlighted a sense that, at present, no one within the Hearing has a 'case grip' or holds people and organisations accountable and has oversight from the very beginning of proceedings to the end of a child and family's journey within the system, which leads to drift and delay. The teams in the Collaborative Redesign Project also shared with the HSWG concerns about a lack of medium to long term decision-making for children and significant differences in the support a child receives in preparing for the Hearing, with 'no ownership of this role.' They said that people with experience of the Children's Hearings System felt that their voice, rights, and entitlements were not core, promoted, or upheld by the current system.

To address this, the Chair must be at the centre of the decision-making model. As described above, as far as possible, the Chair must be the same person at each Hearing a child and their family attends.

Working alongside the child and their families within a redesigned Children's Hearings System, the Chair will remain an independent decision maker, but the way in which they engage with children and families should change. The Chair will maintain the integrity of an inquisitorial Children's Hearing and:

1. Work in a **relational manner alongside children and their families**. This includes meeting with them before a Hearing takes place, if that is what the child or their family want, to help them to prepare for a Hearing, ensure that they fully understand why the Children's Hearings System is involved in their lives, what their rights are, and how to access them. This does not mean always telling children or families what they want to hear but finding kind and compassionate ways to be open and transparent about the decisions available to the Panel, and what they mean.

2. **Assess whether the information that the Panel is provided with will enable the Panel to make robust and informed decisions in the best interests of the child.** This includes assessing whether the Panel has been provided with a full and complete understanding of what has led the child and family to require the legal intervention and engagement of the Children's Hearings System.
3. Be aware of the **inherent power imbalances** that exist within a Children's Hearing and uphold the child and family's right to be part of the decisions that affect them. For example, between decision makers and children and families and other people involved in the Hearing, including social workers and other Panel Members. The Chair must help the child and their family participate in proceedings in a manner that suits them, where they feel jointly part of the decision-making process, and not bystanders or non-active participants.
4. Preside over **a robust and clear decision-making process**, upholding the child and family's rights, including the right to a fair trial and right to family life (ECHR Articles 6 & 8). Crucially, this means that the Chair will preside over the 'inquisitorial' nature of the redesigned system, focusing all participants on the best interests of the child and working to pre-empt and mitigate against adversarial or aggressive proceedings, wherever possible. The Chair will ensure a laser-sharp focus on the experience and outcomes relating to the child, taking a holistic view of the families' circumstances and encouraging the respectful participation of everyone who knows and loves the child. They must be flexible and responsive; a skilled communicator who is able to 'hold' and 'read' the room and able to not only consider, but also react and adapt, to the changing circumstances and the information that the Panel hears.
5. Work **collaboratively alongside the Reporter, other members of the workforce and children and families**. This includes having a clear 'grip' on proceedings, seeking to understand the appropriateness of the available help and support detailed within the Child's Plan, and ensuring that there is no unnecessary drift and delay, whereby children and families remain engaged with the Children's Hearings System for extended periods of time. The Chair must pay particular attention to the rights of babies and infants, who may not be able to speak for themselves.
6. Have **clear oversight of the order and the Child's Plan** and an awareness and understanding of the accountability and enforcement mechanisms and expectations of a redesigned Children's Hearings System.

Recommendation

The way in which a consistent Chair engages with children and families must change. The Chair of a redesigned Children's Hearings System must be at the centre of the decision-making model, maintaining the integrity of an inquisitorial Children's Hearing.

The Chair must work relationally alongside children and their families; assess the information provided to the Panel; uphold the rights of children and their families to be involved in decisions that affect them; preside over a robust and clear decision-making process; work collaboratively alongside others; and have clear oversight of the order and the Child's Plan.



The qualities and competencies of the Chair

The HSWG asked children, families and adults with experience of the Children's Hearings System: what criteria should a person meet to enable them to serve as a good Chair? What qualities, competencies, and skills should the Chair possess, and how should these be conveyed or determined?

In a redesigned Children's Hearings System, the Chair must be able to command respect and be respectful, and must be supportive and understanding of the aims, ethos and welfare-based approach that the Children's Hearings System seeks to take.

Further work is needed to list the specific criteria that should be linked to the Chair's recruitment alongside children, families and adults with experience of the Children's Hearings System. The competency-based recruitment framework currently used must be updated and developed in line with these recommendations and the aims of the redesign. For the Chair this includes **personal qualities**, such as kindness, compassion,

The qualities and competencies of the Chair

Hearings for Children: The Redesign Report

empathy and strong communication skills; **tribunal skills**, such as managing Hearings, sound judgement, presiding over proceedings, mediating challenging discussions, and sharing and interpreting complex information in a person-centred way; and **legal competence**, including knowledge of child law and practice, children and family's rights and a clear understanding of the intricacies of the Children's Hearings System and the broader child protection, and care and protection, statutory and non-statutory framework in Scotland. This should include the complexities of parallel processes relating to child protection, and care and support, including Team Around the Child, CPPMs, Looked After Child Reviews, Adoption and Permanence Panels, GIRFEC and the SHANARRI wellbeing indicators as well as the criminal justice system that may form part of a child and family's life if they are in conflict with the law.

The Hearing must take place with an understanding and an acceptance that the conversation might be difficult to hear, and to engage in, and that for some children and families they will be facing a heightened state of fear and distress that is linked to the biological way that they react to stress. The Chair must have an understanding of the different biological ways that trauma manifests itself in behaviours and must consider the impact of trauma on all participants' actions, their ability to focus, to participate in the hearing, and be alert to behaviours that might be escalating. The ability of the Chair to recognise behaviours that are linked to trauma and to find ways to diffuse conflict and allow participants in the room to regulate and calm is vital. This includes an ability to hold members of the legal profession to account if their questioning or challenging appears to be aggressive or adversarial, given the inquisitorial nature of the proceedings.

The children and young people that Sheriff Mackie met with as part of the HSWG's engagement work put it better. They said that it was important that a Chair would know how to talk to children by *"not using complicated words"* and should be able to *"know my stresses"* and how to identify triggers and minimise trauma. They said that Chairs should be asked *"Can I trust you? Are you honest?"* and they thought it was important that Chairs were applying for the role for the *"right reasons"*.

The Chair must also be cognisant of the dynamics of domestic abuse and the way that domestic abuse is perpetrated through Court and tribunal settings.

The Chair's personal skills are more important than the training they receive. I have had Panel Members in the past who did not listen to me or my Dad and only listened to the social worker's views. A stronger Chair would make sure we would both be listened to as this doesn't always happen.

—OHOV Board Member

The role of Panel Members and the value of community

As the Children's Hearings System has developed in the decades since the publication of the Kilbrandon Committee's Report, Panel Members have had to develop significant skills related to the management and conduct of Hearings. In an increasingly complex legislative and rights-based environment, where the challenges and circumstances facing children and families are also increasingly complex,⁵⁸ Panel Members must have detailed knowledge of the law relating to children, and the procedure of Children's Hearings.

The possession of tribunal skills and knowledge of the law did not seem to be in the contemplation of the Kilbrandon Committee at the inception of the Children's Hearings System. Indeed, the Kilbrandon Committee was clear that Panel Members should be recruited based on personal and not professional qualities.

In a redesigned Children's Hearings System there must be a return to the Kilbrandon Committee's original intention for Panel Members. Panel Members must be disburdened of the expectation of additional or specialist skills and knowledge to focus their knowledge on where the best interests of the child lie in each Children's Hearing. This means that, as with the Chair, the competency-based approach to the recruitment of Panel Members should be updated and developed in line with the recommendations in this report and the aim of the redesign. For Panel Members this should be based on criteria that focuses more on their personal qualities rather than the more demanding criteria that would require to be met by potential Chairs. The required work to underpin this approach should ensure that Panel Members' personal qualities include kindness, compassion, good communication skills, listening skills, an ability to comprehend and assess reports, process complex information, to be relational, non-judgemental and non-stigmatising in

⁵⁸ [SCRA, Complexity in the lives of looked after children and their families in Scotland: 2003 to 2016](#), 2018

their approach.

This is likely to improve the experience for Panel Members and address some of the issues that have arisen over the course of time.

It was also a key element of the Kilbrandon Report that Panel Members would be drawn from the community to which the children and their families belonged: *“The Panel would consist on any given occasion of three persons drawn from a list for the area in question all of whom would be selected at the outset as being persons who either by knowledge or experience were considered to be specially qualified to consider children's problems.”*⁵⁹

The children, families, and adults with experience of the Children's Hearings System that Sheriff Mackie has heard from talked about how much it matters to them that Panel Members are from communities that are local to the child and family the Hearing is about. If care experienced people felt safe and able to apply to become Panel Members the young people thought this was a good idea, but they said they liked the idea of Panel Members having the same aspirations or background as them or having things in common. **They spoke about the importance of being able to relate to the people making decisions.**

In a redesigned Children's Hearings System, these views must be taken seriously. A diverse range of Panel Members must be available from different age ranges, including younger people, and different backgrounds. It must remain the case that Panel Members are local to the area, wherever possible, and familiar with the services and supports of the local community. The HSWG hopes that the change referred to above with respect to remunerating Panel Members for their time will result in a more dynamic and diverse range of people making decisions alongside children and families.

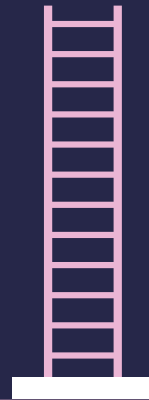
Some Panel Members are engaged in careers with employers who support and continue to remunerate them during the time spent as Panel Members. For others, with caring responsibilities, or who cannot afford to volunteer, it is not possible to apply to be a Panel Member at present, especially as the current cost of living crisis deepens.

59 [Kilbrandon Report](#), para 77

Recommendation

The competency-based recruitment framework currently used to recruit Panel Members must be updated and developed. For the Chair this must include personal qualities, tribunal skills, and legal competence. For Panel Members this must be based on criteria that focuses more on their personal qualities.

Where possible, Panel Members should be local to the community that the child and family are from, but there should be a focus on matching Panel Members to children and families to whom they can relate and who are empathetic to their experiences, challenges and circumstances.



Training and support of all Panel Members, including the Chair

The training of Panel Members must meet the needs of an inquisitorial Children's Hearings System. In addition to the skills listed for everyone involved in the Children's Hearings System (the impact of trauma, childhood development, neurodiversity and children's rights) all Panel Members must be supported to understand the simultaneous or parallel processes that children are often engaged in through the child protection, care and support systems so that there is complete clarity about what else may be happening in their lives.

The children and young people that Sheriff Mackie heard from suggested that part of the ongoing training for Panel Members could be to ask them to put themselves into a young person's shoes to see how a Hearing might feel. The HSWG has heard from CHS that this is currently a part of Panel Member's training and thinks it must continue. The Group agrees with the children and young people's view that Chairs should "*keep learning*". 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 within a Children's Hearing.

They should receive a high level of support in terms of both training and enhancing their skills and to help cope with any challenging or difficult decisions, and discussions. The children and young people suggested that perhaps experienced Chairs can help the new Chair and said it was important that Chairs should be prevented from being overloaded and asked to work alongside lots of children and families. The HSWG thinks these are important points that should be taken into consideration.

The HSWG has 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. The Group considers that this might be hard to implement in remote or rural areas or might not be desirable but recommends that it is given further thought and scrutiny as the implementation of the recommendations progresses.

Recommendation

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.

The potential value of specialist Panels or Panel Members with specialist training should be considered.



Recruitment and administration of the Panel

It is important to be clear that the HSWG is not recommending that it is required to start from a blank sheet with regard to recruitment of remunerated Panel Members. Many existing Panel Members have the required skills and qualities necessary to work alongside children and families within an inquisitorial Children's Hearings System. Many Chairs are already exceptionally skilled at 'holding the room', having a clear understanding of children and families' broader circumstances and working in a compassionate and relational manner.

However, the HSWG has heard that not all Panels currently operate in this manner—and all children and families' rights must be upheld. Many existing Panel Members may wish to remain Panel Members as the changes envisioned throughout this report are implemented. **Their continued service and engagement should be welcomed, and their understanding and flexibility as change takes place should be acknowledged.** The children and young people that Sheriff Mackie heard from, however, thought it was important to be clear that there should be no automatic right for existing Panel Members to remain Panel Members in the redesigned system. Recruitment and retention should be based on the competencies, skills and qualities identified. Rather than experience of the old system.

One of the calls to action from OHOV is to *"involve us in all aspects of recruiting and training Panel Members."* The inclusion of those with experience of the system within the recruitment and training of Chairs and Panel Members should continue to be developed within CHS operation and practice.

In order to be best placed to deliver a redesigned Children's Hearings System, CHS is implementing a revised Tribunal Support Model to improve the way CHS supports its Panel Members to make better decisions leading to improved outcomes for children across Scotland.

At present, the support for Panel Members is based on a local volunteer leadership model across 22 separate areas. The current organisational model, which is mainly reliant on members of the unpaid workforce, has been identified as operationally fragile and the demands on volunteers unsustainable. The new model would move from twenty-two volunteer-run areas currently led by Area Conveners to nine localities, each led by a paid volunteer manager with further support from paid wellbeing and partnership roles. The proposed model responds to volunteer concerns, addresses known vulnerabilities in the system, places significant emphasis on increasing quality and continuity, and makes CHS flexible for the future and prepares the common groundwork needed to address the

HSWG recommendations and keep the promise. Other changes include a centralisation of training material creation, wellbeing co-ordination and rota management.

These teams will ensure smooth running of the Hearing and will provide business and wellbeing support to Panel Members and provide rigorous quality assurance. CHS will continue to be responsible for the training and maintenance of standards for all Panel Members and Chairs. It will be critical to develop a coherent system that identifies the experience, competencies, and qualities that they are expected to have and to maintain provisions aimed at ensuring that those who are appointed meet and maintain those standards. There will be a need for increased scrutiny and oversight of decisions and decision-making processes and quality-assurance processes.

This will involve simplified management structures and a requirement to ensure fair and clear policy and processes, ensuring that the support, management, recruitment and removal of Panel Members reflect the importance of maintaining independent decision-making whilst also managing the competencies of the Chair and Panel Members.

To fully deliver on the promise, it will take more than changing what happens inside a Children's Hearing. Organisations, including CHS and SCRA, must have the right scaffolding in place to deliver and sustain transformational change. This means ensuring they are fully supported and resourced to adapt and flex to the changes required by the redesign.

Recommendation

The recruitment and training of Panel Members and maintenance of standards should continue to be undertaken by the National Convener.

CHS and SCRA must be fully supported and resourced to adapt and flex to the changes required by the redesign.



Other decision-making processes

As has been acknowledged previously in this report, alongside engagement in the Children's Hearings System, children and families may also be involved in multiple other decision-making processes. The Children's Hearings System does not stand alone as a disparate entity and referral to the Children's Hearings System does not signal a fresh start in decision-making. There may be GIRFEC related discussions, Team Around the Child meetings, child protection processes, review meetings or Looked After Child Reviews, Adoption and Permanence Panels, criminal justice proceedings or civil Court proceedings taking place alongside Children's Hearings.

The Independent Care Review heard that this landscape often feels complex and confusing for children and their families. There are often a number of different meetings with the same people for different purposes and statutory footings where children and families are asked to repeat their stories.

The Collaborative Redesign Project discussed this issue, stating that children and families can experience a duplication of meetings and a lack of consistency of process and decision-making between Hearings and social work reviews. They said: *"it is not always clear where decision-making powers lie, and the child and families' rights vary in each system."* Additionally, they felt that for members of the workforce this meant, *"operating in two systems duplicates time, effort and report-writing"* as well as blurring the lines of decision-making and responsibility.

In a redesigned Children's Hearings System it must be made clear to children and families, and to the workforce what the role and added value of the Children's Hearings System is. This will ensure that there is a concrete understanding of how it correlates with, and interlinks to other important, simultaneous child protection, care and support, permanence, and adoption processes that may be woven into and across children and family's lives. Decision makers in the Children's Hearings System must be cognisant of what else is happening and what has happened previously in the lives of children and families.

These parallel or simultaneous processes must not unintentionally duplicate or cut across the work of the Children's Hearings System. Children and families must experience a streamlined approach where all the professionals working alongside them collaborate together effectively and the processes are not overwhelmingly confusing and complex. All meetings must have a clear and specific purpose and information must be shared between them where it is relevant, proportionate, and in the best interests of the child and their family. **Where possible, the number of legal processes, forums, and meetings that children and families interact with should reduce—with the intention of streamlining and simplifying proceedings and mitigating against inbuilt**

structural delays which contribute to trauma and anxiety and add to the delay to a permanent decision being reached.

In a redesigned Children's Hearings System, the legal tribunal of the Hearing must be recognised as the central mechanism and forum for discussing things that are important to children and their families and to making decisions and legal orders alongside them in the best interests of children. The multi-disciplinary expertise that lies within parallel or simultaneous processes that form part of the broader child protection, care and support, permanence and adoption framework must inform and contribute to the decision-making of the Children's Hearings System, where this is relevant and proportionate.

To facilitate this, there should be a national review of multiple ongoing child protection, and care and support processes and meetings, including review meetings, and how they interact with each other to identify where unnecessary duplication takes place, where drift and delay is introduced, and where information could and should be better shared collaboratively with the Panel or Reporter to better inform decision-making.

Although this report identifies occasions where drift and delay can be reduced, understanding increased, and rights upheld by streamlining processes and integrating reports or decision-making, there will remain a complexity to the system which can make it extremely hard to navigate. Some of this complexity is unavoidable, and in some cases is necessary, due to the significant and serious issues being discussed. There should be no simplicity to a child being removed from their family or community or to a child having their liberty deprived. However, some of this complexity is due to years of enmeshed practice that has become tangled by multiple different, well-intentioned policy and part-implemented legislation. Much more should be done to minimise the trauma families feel by having to repeat themselves and feel judged by having different meetings about the same thing. Families should not be able to 'see the wires' behind the scenes.

Recommendation

The Children's Hearing must be clearly seen as the principal legal decision-making forum for children after grounds are established. Children and families must understand the role and added value of the Children's Hearings System and how it correlates to the other inter-related processes and meetings in their lives.

There must be a national review of multiple ongoing child protection, care and support processes and meetings, including review meetings, to identify where unnecessary duplication takes place, where drift and delay is introduced, and where information could and should be better shared collaboratively with the Panel or Reporter to better inform decision-making.



The role of the Reporter once grounds have been established

The HSWG has heard from children and young people with experience of the Children's Hearings System that in a Children's Hearing there is sometimes confusion as to who the Reporter is and what their role is. Some of the children and young people that met with Sheriff Mackie understood the Reporter to be in the room to "take notes." There was a clear understanding of the role and involvement of Reporters in the referral process, but the children and young people seemed unclear about their role after that point. One young person shared a view that they have found "some Chairs ask too many questions to the Reporter (which) loses trust for the young people that (the Chair) knows what they are doing." NSPCC's briefing to the HSWG stated that "Reporters were commonly experienced as 'standing back' or not getting involved in panel proceedings, which is seen as contributing to some of the more adversarial aspects of the system in the last decade."⁶⁰

⁶⁰ NSPCC Scotland, Some essential features of a Children's Hearings System attuned to the needs and rights of looked after infants, 2022

Role of Reporter once grounds have been established

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However, the HSWG have also heard examples of Children's Hearings where the Reporter was seen to have a positive influence in the room and times when children and families felt that the Reporter was a consistent person whom they had formed a relationship with. Some foster carers that The Promise Scotland spoke with talked about the Reporter "*keeping the Panel right*".

Reporters currently have a right to attend Children's Hearings and play different roles in Hearings which broadly come under four elements: (1) fulfilling statutory functions (completion of the record of proceedings and forms); (2) supporting fair process which includes offering a view or intervening when a procedural irregularity is about to develop; (3) aspects of care to those in attendance and; (4) meeting health and safety obligations. Whilst these functions may not always be obvious to children and families, they impact on the legality, fairness and safety of Children's Hearing proceedings.

The HSWG has considered in detail the Reporter's ongoing role in the Hearing in the context of what the Group has heard. As the initiator of the proceedings, the Reporter has an interest both in how a Children's Hearing is conducted and in the outcome of the Hearing itself for children and for their families.

The Reporter also has an important role in responding to appeals by the preparation and lodging of written answers and making representations at appeal hearings.

The complete withdrawal of the independent agency that a Reporter provides would either risk the efficacy of the Hearing in its inquisitorial role or place the Chair in the position of engaging in operational functions that would undermine or blur their independent role of directing the inquiry and as decision maker. Crucially, the processes in place to uphold Article 6 of the ECHR have been tested in Court and found to be strong, and therefore removing them risks undermining confidence in Children's Hearings.

As the implementation of the recommendations within this report progresses, the review of CHS and SCRA's respective functions (referred to above) and the transformation begins to take shape, it is likely that—as with all roles in the Children's Hearings System—there will be changes to the role and functions of the Reporter. Some of these changes may mean that the Reporter's attendance will not be required at every Hearing.

The HSWG recommends that the Reporter's right to attend a Children's Hearing at the discretion of the Principal Reporter should be retained. The Principal Reporter, as part of their role, must consider whether the attendance of Reporters is in the best interests of children and their families. Reporters must only attend a Hearing when they have a meaningful contribution to make.

If it is deemed suitable, appropriate and necessary for the Reporter to attend a Hearing, clear measures should be in place to explain the role of the Reporter in a Hearing in a

Role of Reporter once grounds have been established

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way that children and families understand and, where possible, for this to be the same Reporter that children and families will have engaged with as part of the referral processes and establishment of grounds.

Recommendation

The discretion of the Principal Reporter to decide whether a Reporter should attend a Children's Hearing should be retained.

Reporters must only attend a Hearing when they have a meaningful contribution to make and, in their view, it is in the best interests of children and their families.

Clear measures should be in place to explain the role of the Reporter in a Hearing in a way that children and families understand.

Where possible, a Reporter attending a child's Hearing should be the same Reporter that children and families will have engaged with as part of the referral processes and establishment of grounds.



Seven

The people making decisions
at a Hearing

What will these changes look like for children and families?

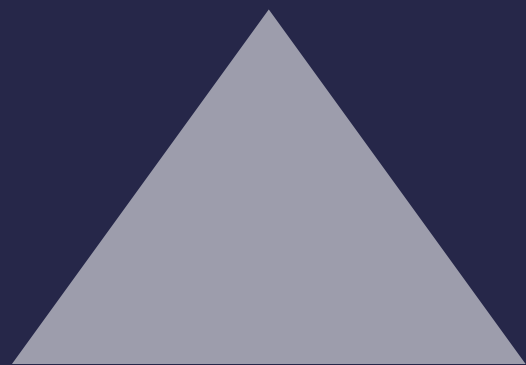
- All Panel Members will be able to work closely alongside children and families and they will be kind, empathetic and respectful.
 - The Chair will become a familiar face for the child as they follow them through their journey in the Hearings System. The Chair will know the child's background so they will not need to retell their story at every Hearing. Having a better understanding of the child's story will also support the Chair and the Panel make the best decisions.
 - Upholding the family's right to a fair Hearing and right to family life will be an important part of the Chair's role.
 - Children and families will feel safe, listened to and respected. They will feel that their Hearing is being managed as the Chair will have the skills needed to 'hold the room'.
 - The Chair will know how to follow up on the big decisions made in a Hearing and have a responsibility to hold others accountable for actions they agreed to.
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- During a Hearing, everyone in the room will be supported to share their view and the discussion will not be overwhelmed by the strongest voice.
 - Children and families will not feel overwhelmed by the number of people in a Hearing as everyone in the room will be a clear role. This means that Reporters will only attend a Hearing when they have a meaningful contribution to make, and it is in the best interests of children and their families.
 - When possible, the Reporter attending the Hearing will be familiar to the child and their families as it will be the same Reporter they engaged with as part of the referral processes and establishment of grounds.
 - The other meetings and processes that children and families may be part of relating to their protection, care and support will feel part of the same system and children and families won't be confused about the purpose of them.
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Eight

The participation
and preparation
before a Children's
Hearing



Involving children and families in preparing for a Hearing

A robust planning and preparation phase prior to a Hearing taking place will result in 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.

By including the child and their family more consistently in the planning prior to a Children's Hearing taking place it may help them to feel included, and to seek ownership of it. Offering children and their families choices and tailoring a more bespoke Hearing to meet their needs—including consideration of any learning disabilities, the particular needs of younger and older children, and mental health challenges—and adhering to those choices and preferences, helps children and their families to feel heard and respected. OHOV have identified a number of areas where there is an opportunity to include children more closely in the planning process. One of the Calls to Action is: *"to consider what a child needs to be safe and comfortable to be able to take part in their Hearing."*

However, it should also be noted that sometimes children and families do not wish to be involved in the intricate details of the planning and would prefer to be directed where and when to attend, and to leave the details to the Reporter and Chair to plan. This choice should be available to them too.

A more robust preparatory phase will 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.

This approach should be tested and evidenced to ascertain the benefits of a lengthier and more comprehensive preparation phase prior to a Hearing taking place—including fully understanding whether it renders re-referrals less likely, eases the burden on social workers, increases comprehension of the system, reduces the adversarial nature of proceedings and fosters a greater sense of multi-agency working that works alongside and complements the Children's Hearings System rather than asking it to sign off on decisions being made elsewhere.

Throughout this report there has been a clear emphasis on reducing drift and delay in all aspects of the system. It should therefore be noted that the HSWG is aware that preparing

for a Hearing in the way described below may introduce a systemic delay into the system while processes are explained, rights are accessed and engaged, voices are heard, choices are made, comprehensive reports are written and relationships are formed. Clear timeframes should be placed around this so that the period cannot be extended indefinitely.

Recommendation

There must be a more robust preparation phase in advance of a Children's Hearing, which must involve children and their families.



A child and family's first contact with the Hearing

At present, it is the Reporter who would send a letter with a scheduled date for a Hearing and a sentence (underlined and in bold) about the requirement for a family to attend the Hearing. The HSWG thinks that this approach needs to change, to better foster an understanding about Children's Hearings and the reason that one will take place.

The HSWG agrees with the call to action from *Our Hearings Our Voice*, which says that *"all your communications with me (letters and legal papers) should be written in a way that gives me the facts in a way that I can understand."* This should start from the very first communication and should not come in the form of a formal letter, but should be an invitation to meet the Chair.

In a redesigned Children's Hearings System, grounds will be established prior to a Hearing taking place. From this point onwards, having listened to the voices of children and young people with experience of the Hearings and heard the importance of children knowing their Chair and the Chair working in a relational way, the HSWG thinks that 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.

Such a change is not as straight forward as it sounds and would bring with it a number of legal and administrative complexities. This proposed change should therefore be the subject of full and robust testing and trialling of possible administrative and managerial models involving the engagement of CHS and SCRA and should be part of the aforementioned review of their respective functions.

Prior to a Hearing taking place, children and their families must be supported by their social worker, and the other people working alongside them to discuss the process, to share any concerns, and to ensure any outstanding queries are answered. Local authorities, CHS and SCRA must work together to consider how best to plan and prepare all children and their families for optimal support, understanding, and participation in their Children's Hearing.

Some children and families will require additional and enhanced support to help facilitate their understanding and involvement in the system. For example, children and families with learning disabilities, for whom English is not a first language, unaccompanied children, and babies and infants. Information about the Hearings and what happens at a Hearing should be available in formats that children and families can understand—including in alternative languages and easy to read formats. Children and families may also still want to access websites and other information about the Children's Hearings System. The improvement work that CHS and SCRA are undertaking in this regard (which includes films and presenting information about the Hearings and how they take place in different ways) should include consideration of the changes contained within this report in terms of describing the redesigned Children's Hearings System and an inquisitorial approach.

Recommendation

The first information that a child receives about the Hearing must change.

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. The mechanisms for this change should be included in the review of CHS and SCRA's functions referred to earlier.



Local authorities, CHS and SCRA must work together to consider how best to plan and prepare all children and families for optimal support, understanding of, and participation in their Children's Hearing.



An option to meet the Chair in advance of a Hearing

Children and families have said that they often feel confused and overwhelmed by the different processes they are engaged in where aspects of their family life and circumstances are being discussed. They want more choice about what happens, how it happens and where it happens and they want to be involved in the most important decisions affecting their lives in a meaningful way. This does not mean that there should not be clear processes or mechanisms to speak to children and families honestly about the challenges and strengths in their lives, but rather this should be done in a way that allows them to feel comfortable, safe, and fully engaged.

SCRA have identified a significant body of work with respect to preparing children and families for a Hearing. This includes expanding on the work from Better Meetings, analysing experiences from virtual and hybrid Hearings, easy to use forms, building on the new 'Hearing about Me' form, considering methods of participation, and exploring video content as well as more creative options to participate. SCRA have also been promoting pre-Hearing visits to Hearings Centres in letters, on website, leaflets, and on social media, and have created short and informative films and new leaflets.

However, the HSWG thinks that this improvement work can and should go even further than that.

Panel Members should tell me their name and why they became a Panel Member. Do not judge me. Get to know me. Try to step into my shoes and understand what my life is like and what is important to me.

—OHOV 40 Calls to Action

In advance of a Hearing taking place, a child and their family should have an opportunity to meet their Chair at a ‘get to know me’ meeting outwith the formal setting of a Hearing. For children living away from home, the Chair must consider whether it would be appropriate to, or how to, meet family members. Separate meetings may be required for family members if there are concerns about domestic abuse.

The importance of knowing, and knowing about, the adults who are making decisions in the lives of children and young people emerged as one of the key concerns in discussions with the care experienced young people of OHOV, Better Meetings Moray and the VIP group supported by CELCIS. The Chair should work relationally with the family, but should not intend to form a relationship with the child and 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.**

An invitation to meet with the Chair should be voluntary. There should be provisions in place to ensure that children and families are aware that the meeting is voluntary, what its purpose is, and what the alternative option may be (proceeding straight to a Pre-Hearing Panel or a Hearing). Children and families have often spoken about the overwhelm that they feel about the involvement of multiple professionals in their lives and of being asked to retell their story a number of times. Although the children and young people that Sheriff Mackie heard from felt that a meeting of this kind was a good idea, there will be plenty of others that do not want to. This should be respected, and there should also be opportunities for children and families to choose how they want the meeting to take place, with an understanding that for some children and families this might work better virtually.

The discussion should be an opportunity for the child and their families’ preferences about how they would like the Hearing to take place to be discussed and shared and for the Chair to work alongside the child and their family to understand more about the practical support that should be in place to help them feel safe and comfortable at their Hearing. For example, the child and their family might talk about who they might want to attend their Hearing and who they meet feel safe and comfortable sitting next to. They might also want to talk about potential triggers or practical things that would help them to feel safe and more at ease when the Hearing takes place.

However, it should be absolutely clear that the meeting is not an opportunity for procedural decisions to be taken or agreed. If the child and family do not wish to attend this meeting there should be a way for them to express their views and preferences about the proceedings in an alternative way that should help the Panel to preside over the Hearing in an inquisitorial way.

Attention should be paid to the scheduling of this meeting, given that children will have school, nursery, playdates and other important commitments and that adults may have caring responsibilities, work or other appointments.

It should also be recognised that in the meeting there will be an inherent imbalance of power and so it may be helpful to consider whether the child and their family would like their social worker, advocacy worker or other trusted support worker or friend to attend alongside them.

In order to maintain the independence of the Hearing and uphold ECHR Article 6 rights, there should be consideration for the Chair—with the permission of the child and their family—to write a note of the discussion to share with everyone who has a right to receive information relating to the Children’s Hearing. However, as the Children’s Hearing is a non-adversarial tribunal whose sole objective is to arrive at measures to be applied on a referral in the best interests of the child, the independence of the Hearing is unlikely to be undermined by such a process. And, to the extent that there might be some incursion on its independence, that is outweighed by the benefits to the child or young person, and the conduct of the Hearing.

The way in which this proposal may work for younger children and for older children in conflict with the law must be fully considered.

Recommendation

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. 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.



When, where and how long: scheduling and timing of Children's Hearings

The children and young people that Sheriff Mackie heard from told him that it makes a difference to them when and where a Hearing takes place.

The HSWG agrees that the timing of a Hearing should pay particular attention to what else is happening in a child's life to ensure that there are no conflicting important dates such as birthdays, school tests and exams. When Hearings are planned, greater consideration must be given to the flexibility of Hearing times to accommodate the needs and preferences of the child and their family. It may be appropriate for Hearings to take place later in the afternoon or in the evenings, or perhaps even at the weekend.

SCRA are in the early stages of testing a 'child-friendly scheduling' approach in Ayrshire. This aims to ensure Hearings are scheduled at a time that children and their family identify as being suitable, through working alongside those already in established relationships with them, including advocacy workers. Learning from this approach should be shared so that the Children's Hearings System can adopt this more child-friendly approach to when Hearings take place across Scotland, wherever possible.

Some of the children and young people that spoke to Sheriff Mackie told him that Hearings should be "as short as possible," while others reflected that Hearings should be more spaced out so there is time if they need to run over. The HSWG is of the view that there should be room to be flexible, for Hearings to be paused or to continue for longer periods of time depending on how the conversations are proceeding and the impact of the discussions on children and their families.

It must be the responsibility of the Chair to ensure the right amount of time is allocated for each child's Hearing. In some instances, it may be appropriate for a longer time period to be allocated for the Hearing due to the complexity of the issues being discussed. Given the introduction of a reflective pause in proceedings, it is expected that the Hearing will naturally last longer than 45 minutes in many cases. Children's Hearings must be planned to the individual needs of each child and their family. Arbitrary time limits must be discontinued—but time at Children's Hearings must be used valuably and remain focussed.

The HSWG understands that significant work has also been undertaken to ensure Hearings Centres are more family-friendly and easily accessible in recent years. The Our Hearings Our Voice calls to action ask for changes to be made to the physical environment

of Hearings Rooms, including ensuring good confidentiality, updating Hearings Rooms and waiting rooms, removing big tables, and paying attention to sensory and play needs.

The Group welcomes these positive changes and encourages further consideration of where Hearings take place to ensure alignment with the ethos and intention of a redesigned Children's Hearings System. It may be appropriate for Hearings to take place outwith Hearings Centres in locations where families feel more comfortable or where it might better suit their overall needs. For example, some children might prefer a Hearing to take place at school so that they do not have to take time away from their class or friends, others may not like that idea. Safety planning should be a primary consideration where domestic abuse is involved. There is no reason in the current legislation why these considerations should not be in place.

At present, a significant number of Hearings take place virtually or in hybrid settings. Some children and families prefer this option, other children and families prefer to attend in person. The preferences of children and families in this regard should continue to be observed.

There must be a balance between meeting the child and their family's preferences with respect to when and where a Hearing takes place and the need to avoid extensive periods of time when a child and family is waiting for it to happen. Additional choice in this regard will also be reliant on significant increase to the capacity of those administering Hearings. Until the anticipated reduction to the number of children requiring compulsory measures, in line with the promise, occurs, the implementation of these recommendations must take into account the need for additional resourcing to accommodate the change.

The scheduling and administration of Children's Hearings involves much more than reviewing a rota and sending out a date to children and the important people in their lives. There are a considerable number of issues to consider and plan for, rights to balance and uphold, and processes to be put in place to ensure a Hearing can operate in accordance with ECHR Article 6.

Given the increased flexibility about timing and location expected in a redesigned Children's Hearings System to better uphold the rights of children and their families, wherever possible and appropriate, it is anticipated that the scheduling of Hearings is likely to become more complex. This complexity should not be felt by children and their families.

While the current responsibility for scheduling lies principally with the Reporter, the reimagined system may lead to the transfer of certain functions. In light of this, 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 should be part of the aforementioned review of CHS and SCRA's respective functions.

Recommendation

Children's Hearings must be planned to the individual needs of each child and their family. Arbitrary time limits for the length of Children's Hearings must be discontinued.

Greater consideration must be given to the flexibility of Hearing times and locations to accommodate the needs and preferences of children and their families. It may be appropriate for Hearings to take place later in the afternoon or in the evenings, or perhaps even at the weekend and in places close to them, or where they feel comfortable and safe.

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 should be part of the aforementioned review of CHS and SCRA's respective functions.



Pre-Hearing Panels and Pre-Hearing meetings

As discussed above, any meeting between the Chair and a child and their family cannot involve making procedural decisions. At present there are provisions for Pre-Hearing Panels to take place prior to a substantive Hearing. Most commonly this is about deciding whether to remove the obligation to attend from the child or a relevant person, or to determine relevant person status where this is not clear.

After the Chair has met with a child and their family and shared the information via a written report with the Reporter and the other parties, there may be no need for further consideration or discussion about how the Hearing might proceed. However, for some children and families—particularly when tensions might be running high—there are a number of competing issues and complex discussions, or there are a large number of

people working alongside the family, and interested family members that may need to be discussed in more detail prior to a Hearing taking place. 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 and to express learning about subsequent Hearings.

This 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 '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).

The HSWG therefore recommends that the feasibility of, and positive and potential negative consequences of more routine pre-Hearing planning meetings should be explored. The intention of this change would be to reduce bureaucracy and encourage robust planning with a view to minimising future adjourned Hearings, but this should not engender a culture of meetings about meetings. Pre-Hearing planning meetings should be purposeful, proportionate, and necessary with an aim of reducing and not contributing to drift and delay.

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. The Group believes 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.

Recommendation

The feasibility of, and positive and potential negative consequences of pre-Hearing planning meetings must be explored.

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.



Hearing from the people who are important to a child

Research has consistently made it clear that children want the number of people in their Hearing to be limited to those who are strictly necessary. This also indicates that having a high number of people present in a Hearing can impede participation by children and relevant persons.⁶¹

The HSWG agrees with children and families that the important people in their lives should be the ones who are involved in the discussions. In some cases, this includes foster carers and kinship carers who 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. Often, those

61 [Scottish Government, Child Protection Guidance 2021](#) (page 63 para 2.160)

working closely alongside children and families in this way can provide a unique insight into the things going well in their lives in addition to the challenges that they face.

For babies and infants, in particular, professionals in universal and specialist services involved in the infant's care 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.

Foster and kinship carers must be able to consistently contribute their experience of the infant's wellbeing to the Hearing in a meaningful way. For children where adoption is being considered there should be no reason prospective adoptive parents cannot sensitively be included in discussions.

The preparation phase prior to a Hearing taking place must give particular consideration to the information and knowledge about a child and their family that is held by those who know them well, especially foster, kinship and prospective adoptive parents. These important people must be included and engaged in Children's Hearings when it is most appropriate, and they must have the opportunity to participate and share their views alongside the child and their family. Similarly, the rights of brothers and sisters to participate and be part of their siblings' Hearing should be upheld and this should be part of the preparation process.

All of this should be discussed with the family in advance, so that the Hearing contains no surprises, and the integrity of an inquisitorial system is preserved. Legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes.

For people who might find it difficult to physically attend a Hearing due to emotional or practical concerns there should be ways for information and views to be shared in advance, either through a written report or a recording. The option for this to be recorded in advance of a Hearing taking place, and shared at the Hearing should be offered for those people who would prefer to engage with the Hearing in that way.

Recommendation

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.

The rights of brothers and sisters to participate and be part of their siblings' Hearing must be upheld.

Legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes.

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.



Children's attendance at their Hearings

Currently, children must attend Children's Hearings, although there are provisions for a child to be excused. In practice, the provision for excusal from a Hearing is used frequently and there is a wide variation in attendance across Scotland, depending on the age, stage and development of the child as well as geographical differences.

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. This is discussed in more detail below.

For other children it is important that the exclusion provision is not habitually or routinely applied but rather there is a balanced and informed discussion, with the child, to make a determination about their attendance.

To ensure better alignment with the UNCRC, **the existing obligation for the child to attend should be removed and replaced with a presumption that the child will attend their Hearing, with some limitations. In particular, there should be an exemption to this presumption for babies and infants.** The Chair should operate based on the presumption that a child will attend and should ensure that the child is fully informed of their right to attend and how this would be facilitated. However, children must have the right not to attend if they would prefer.

There are currently a range of options available to help facilitate children's attendance within the Children's Hearings System, including virtual attendance if children would feel more comfortable with that. This range of options should remain in place and expand in accordance with emerging research, evidence and shared learning from other tribunals, and ongoing improvement work.

“At the moment they force you to go to the Hearing and you shouldn't have to if you don't want to. Talking about things that make you uncomfortable makes you feel really small.”

—Young person with experience of the Children's Hearings System

If a child does not wish to attend their Hearing then there should be clear mechanisms in place to help the child understand what was discussed at the Hearing and what decisions were made. If a recording was made of the Hearing consideration should be given to whether the child should have access to that—with support in place—after the Hearing has taken place. 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 below); a short summary; and a child-friendly statement on the decisions (see below). These options should be considered in full and tested as part of ongoing improvement activity.

Given that the current system can feel daunting and distressing it is unsurprising that many children—and families—do not wish to attend their Hearings. In a redesigned system, that aims to ask questions and listen with intent, that includes children and families in the planning and preparation and in the decision-making, offers them choices about engagement and participation that scrutinises the level of support that has been asked for and offered, it is likely that more children will want to attend their Hearing.

A Hearing must feel like a child and families' Hearing, not a local authority's or a social worker's Hearing.

Recommendation

The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing.

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.

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.



Information shared with the Panel in advance of a Children's Hearing

The type of information contained in social background reports prepared by local authorities for Panel Members to review are prescribed in legislation. The assessment by the local authority has to include a child's long and short terms needs; how those needs can be met; proposals for safeguarding a child's welfare; proposals for the care of a child; the nature of the services proposed for a child; and alternative courses of action. Reports also include evidence from multi-agency partners much of which constitutes necessary information to inform Panel Members.

The HSWG is clear that information shared with the Hearing should be represented and

summarised clearly and concisely, with further detail being available to the Panel if they want to interrogate it further. Report writing should be rights-based, taking into account families' strengths as well as the challenges in their lives and should be clear and concise. Reports must be of high quality and must reflect the voices, views and experiences of children and their families and must meet the needs of the Hearing. Good decisions must be based on strong, robust, evidence-based reports with clear recommendations. The challenge has been how to enact this in practice.

Too often within the current system, however, Children's Hearings are deferred due to the quality and/or lack of up-to-date information in reports. Panel Members are sometimes provided with inadequate or insufficient reports that mean decision-making is impacted and other times information is too historical and not focused on the child and family's current situation. Sometimes this is due to the high numbers of children and families that social workers are working alongside which means they are unable to give reports the diligence and attention that they would like to. The concerns relating to the recruitment and retention of social workers and the capacity of social workers to resource the requirements of the Hearing in terms of the provision of information is referred to earlier in this report and must be addressed in line with the recommendations within this chapter.

Throughout the lifespan of the Children's Hearings System there have been significant and numerous discussions, meetings and groups established at national and local level about the types of reports and information that should be presented to the Panel. This is with the aim of facilitating good decisions and improving information sharing to avoid the need for children and families to re-tell traumatising parts of their lives. As part of the implementation of these recommendations, it is important to come to a clear resolution that prevents these ongoing, circular discussions that is taken forward and managed in a coordinated way across the operation of the Children's Hearings System.

To facilitate this, efforts should be prioritised to devise national standards for reporting, including the development of a standardised pro forma report template that works across all 32 local authorities and captures all the relevant information held by the different agencies and organisations to aid robust and evidence-informed decision-making by the Panel. This should be operational across the Children's Hearings System, recognising different assessments and approaches across Scotland but creates standardised reporting processes. Children and families' voices must be a central part of these reports. The HSWG recommends that this is led nationally but should include multi-agency and local authority representation. The work to develop this must include consideration of the many other reports that have to be developed for other meetings and processes and how these can be streamlined to avoid duplication of reports being written for various different decision-making bodies. This can lead to heavy bureaucratic procedures and prevent practitioners from focusing on the needs of children and families.

Improvement work in this regard should also take into account the feedback from children and families about information that is no longer relevant being provided to the Panel, and whether the inclusion of lengthy chronologies is helpful.

The Child's Plan, accompanied by clear succinct information and recommendations from other multi-agency forums should form the basis of the information that the Panel receive and how they make their decisions. An inadequate Child's Plan that does not effectively meet the child and families' needs could have significant, lifelong consequences and therefore should be afforded significant scrutiny and opportunities for the Panel to review it, taking into account the views of children and their families.

If an FGDM process has taken place and a family plan has been created, the child and their family should be asked whether they consent to sharing it with the Hearing and if they agree, this must be submitted as relevant information by a local authority, or other partner, or it can be spoken to in the Children's Hearing.

Although the Children's Hearings System is an inquisitorial system, it is likely that parts of the reports provided by social work will be challenged by others. The Panel will likely want to challenge and test recommendations included within the reports. This process may feel robust, but should not be experienced as aggressive and adversarial and will be controlled by the Chair. It is critical that Panel Members receive multi-agency reports which present a well-argued rationale for a recommended decision in a child's best interests, as well as reasons why alternatives are not recommended, and that report writers are given time and supported to do this.

Having consistent Chairs in place will assist with the way in which evidence and reports are presented as they can rely on their overall pre-existing knowledge of the child and their family, ensuring they can access new information speedily and in a way that does not re-traumatise the child and ask them to share information repeatedly.

There are few children and families that engage with the Children's Hearings that have not experienced some degree of complexity and trauma in their lives. The papers received by the Panel can be substantial and include weighty reports by social workers, psychologists, parenting, and other assessment relating to health or education. Currently, Panel Members will commonly have only a few days, at most, to appraise themselves of these complexities ahead of a Hearing taking place. The Group has heard that sometimes the Panel does not have time to assess all of the information. In a redesigned Children's Hearings System all reports must be shared with plenty of time for Panel Members to review them.

Recommendation

National standards for providing reports to the Children's Hearings must be prioritised, including the development of a standardised pro forma report template that works across all 32 local authorities and captures all the relevant information held by the different agencies and organisations to aid robust and evidence-informed decision-making by the Panel. This should be operational across the Children's Hearings System, recognising different assessments and approaches across Scotland but one that creates a standardised reporting process. This must be led nationally but include multi-agency and local authority representation.

The Child's Plan, accompanied by clear succinct information and recommendations from other multi-agency forums, should form the basis of the information that the Panel receive and how they make their decisions.

All reports must be shared with plenty of time for Panel Members to review them.



Sharing reports with a child and their family in advance of their Children's Hearing

The Group has also heard that sometimes information sent to children and their families sometimes 'lands on the doorstep'. This may include a statement of the ground of referral, a social work report, a Safeguarder report, any direction from the Sheriff after an appeal, a copy of the child's views, and any other relevant report.

Sometimes these papers are lengthy and contain information that is hard to read, digest,

Sharing reports with a child and family in advance of a Hearing

Hearings for Children: The Redesign Report

and understand with short timeframes before a Hearing will take place. Sometimes the detailed information contained within the papers might cause additional trauma and distress, particularly to children who may receive the papers, and subsequently relive traumatic incidents.

The Group has heard that sometimes too much information is shared with the child and their family, including more extensive and detailed information about the background of the important people in their lives, and descriptions of things that they themselves have not witnessed or been part of. Reading this information may cause distress and retraumatise children and risks causing further harm. Reading about the trauma and harm that may have occurred in your life, and/ or the challenging circumstances surrounding your family in one go can feel overwhelming and distressing.

The HSWG is therefore of the view that there should be a review of how information is shared and communicated between the Hearing and the child and their family, including a discussion of how information that they have a right to receive can be shared in a way that minimises trauma and distress. This should include ensuring that children and their families have support when the papers are received to help them understand and digest them, for example from social workers, family support workers or advocacy workers. It should also include ensuring that information shared is proportionate and necessary.

Birth parents raised concerns with Sheriff Mackie about the accuracy of some of the information that they are sent. An inquisitorial system with a consistent Chair should reduce the risk of incorrect information going unchallenged and unchanged in reports.

There should be full consideration of the time a child and 'relevant person' is given to read and understand the information that they have received. At present, information is generally provided at least seven days before the Hearing, although in terms of the rules, it only has to be provided at least three days before. This may not be enough time for a social worker, family support worker or advocacy worker to sit down with a child and family and help them to understand and process the information, however the balance between introducing drift and delay into the system and this being provided should be considered.

Recommendation

Children and families must be fully supported when their papers arrive from the Hearing. Information shared with children and their families must be proportionate and necessary and steps should be taken to minimise trauma, distress, and misunderstanding.

A child and 'relevant person' must be given appropriate time to read and understand the information that they receive.



Eight

The participation and preparation before a Children's Hearing

What will these changes look like for children and families?

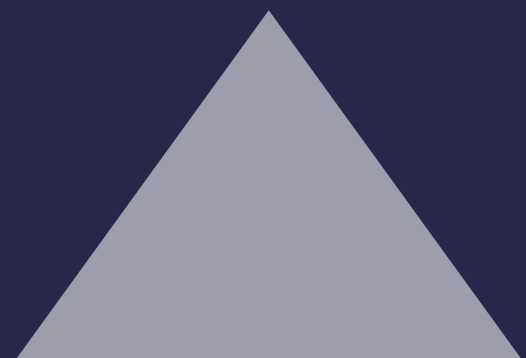
- The preparation phase before a Hearing will feel more detailed and inclusive, ensuring children and families are involved and children feel ownership over their Hearing.
- Communication about the Hearing will be sent in the name of the Chair, making interactions with the Hearing feel more streamlined and less confusing to children and families.
- Before a Hearing, children and their families will be given an opportunity to meet the Chair in a 'get to know me' meeting so they are a familiar face at the Hearing, and to learn more about the process.
- When possible, Hearings will take place at a time and place which causes the least disruption in the lives of children and families. They will be able to share their preferences and feel the system is being flexible to meet their needs.
- The Chair will be able to make decisions about how the Hearings will look and feel without needing to get the whole Panel together.



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- All communication from the Hearings System will be easy to understand. Children and families will be supported when papers are received.
 - Children will be encouraged to attend their Hearings and supported to make sure their voices are heard. If children do not come to their Hearing there must be ways to include them in the processes anyway and to listen to their views, even if they are very little.
 - All children will be supported to understand what was discussed and what decisions were made.
 - The Panel will have access to the Child's Plan and information about children and families that is shared with the Panel will reflect their voices and make sense to them. The important people in a child's life will be involved in the discussions where appropriate.
 - Children, families, and the workforce will be given the time needed to read the information they receive before a Hearing takes place.
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Nine

The voices and
involvement of
children and their
families in the
Hearing



The participation and involvement of children and the important people in their lives in their Hearings

Children and families' views matter. One of the fundamental requirements of the UNCRC is to allow the voices of children to be heard in any proceedings affecting them (Article 12). The promise concluded that *“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.”*⁶² The most crucial aspect of the information and discussion stage of a Hearing in a redesigned Children's Hearings System is the participation of children and their families.

Children repeatedly told the Independent Care Review and the HSWG that their voice is not always properly heard when it comes to deciding who should be in their Hearing, who should not, whether they can have an opportunity to be alone with the Panel, and what they think. Both the child and relevant persons have a right to attend a Hearing, and they have the right to speak at and contribute to the Hearing.

The organisations working as part of the Children's Hearings System have made a considerable number of improvements with respect to listening to children's voices and their wider, meaningful participation in Hearings and broader processes. Members of the Panel community reflected to CHS that the voice of children and young people is key to making the best decisions in Children's Hearings. Priorities for them to continue improving on were listening to children and having a clear understanding of the child's life and their views. There were a range of thoughts on how best to help children and young people to participate, with an overwhelming desire to have the child's voice at the centre of a Hearing.⁶³

The assessment of the HSWG is that there is still work to do. **Children and families' voices must not be drowned out by the noise of the system.** This includes the constant hum of the processes moving around them, the people who work alongside them who also hold and want to share information and experiences, and the legal duties and mechanisms of the Hearing. Children and families are experts in their own lives and their expertise in what has happened to them, what their strengths are, and what challenges they face should be acknowledged and respected. There is an inherent power imbalance when a Hearing takes place—given the quasi-

62 [The Promise, 2020](#), page 12

63 [CHS, HSWG Issues List: CHS Community's Contribution to #KeepThePromise](#), 2022

judicial role of the Panel and the role of compulsion. However, in a redesigned system the Chair must name this and must ensure proceedings operate in an open, honest, and transparent way to help address the power imbalance. There are many examples of ways in which this can be adjusted, including ensuring that all participants in the Hearing (especially the child) know that their voice carries weight, understand what is happening and why, and be active participants in decision-making rather than being observers or bystanders.

The Hearing itself should have the characteristic of an inquiry into the needs of the child or young person in which the Chair plays a pivotal role in directing the scope of information to be presented to the Panel, and the manner in which it is presented. This inquiry should seek to ensure both the views of the child and their family are sought and considered, and that they are able to actively participate in discussions and contribute to decision-making processes in ways that are appropriate to them. Children and families should 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.

During a Hearing itself there should be a focus on the best interests of the child and the following measures should be in place to facilitate this:

- Children and their families should be helped to understand their choices and rights relating to their participation. Options should be given to a child's preference about how they may wish to express themselves throughout their interaction with the decision makers in the Children's Hearings System. Some children may wish to speak in person, others may wish to write a letter, make a video, or use other means to share their views.
- For many children and families an independent advocacy worker can help to support children and families to participate in their Hearings in the way described.
- If the Chair deems it appropriate, the child or young person should be offered the opportunity of being the first and last voice in the Hearing. Where children are not physically present, through choice or because they are too young, the Chair should begin proceedings with a summary of the child's views.
- The child and/or family should have the opportunity of speaking alone with the Panel.
- The Chair should regularly check in with the child and family during proceedings to ensure 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, if it is appropriate
- The Chair should have the authority to determine how information and views should

be heard during the Hearing, in what order and who should remain in the room. The approach to determining who is present in the Hearing must be considered through the lens of ensuring the effective participation of those who have an interest in the decision.

- To support the implementation of these recommendations, 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 or a manner suitable, must be commenced with appropriate resourcing and included in the sequencing and framework governing the implementation of these recommendations.

This approach aligns with the proposal set out in the Collaborative Redesign Project, which states that children feel powerless in a system that uses compulsion to secure their attention. The proposal sets out a vision for a decision-making forum that is bespoke to the child's needs and where the voice, care, and protection of the child is core. The HSWG agrees with the approach set out in the proposal and the idea that a decision should not be made until the decision makers are satisfied that the child's voice has been heard.

Particular skill is required in interpreting the voices of babies and infants. 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 keep themselves safe.⁶⁴ 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.

Equally, older children may have specific communication needs that require skilled support to ensure they can effectively participate in the decision-making process.

⁶⁴ [Keeping the Promise to Infants, 0-3](#), April 2023

Recommendation

Children and families should 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.

Children and their families must be helped to understand their choices and rights relating to their participation in their Hearing.

The voices and experiences of babies and infants must be captured and shared with the Panel.

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 or a manner suitable, must be commenced.



The role of technology during a Hearing

The HSWG understands that other tribunals in Scotland and internationally are increasingly recording proceedings. 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.

Sheriff Mackie discussed this idea with children and young people with experience of

the Children's Hearings System. There was a mixed reception. 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. There was also a strong consensus that a young person 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. 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.

Some of the young people were in support of accessing the recordings from childhood as an adult. It was agreed that watching or listening to a recording afterwards would be helpful as *"emotions are high and you leave and can't remember."* Others were not so sure and there was a lot of discussion about the way that a recording might impede or inhibit proceedings and the practicalities of storage and retention.

Although there was a bit of uncertainty around the video recording, the concept of having a written record of everything that was said—or perhaps an audio recording of the proceedings—was considered to be a welcome suggestion. The Collaborative Redesign Project also discussed the recording of Hearings. One proposal states that a recording would enable children and families to review what was said at a Hearing and help inform if they wish to appeal or make a complaint.

There should be a full examination of the practicalities and consequences, positive and negative, and the impact that this would have on the rights of children and their families of recording Hearings. This should include consideration of the legality and data protection issues surrounding this approach. As part of this work there should be consideration of a written transcript of proceedings as an alternative or as an addition to a recording, in line with the views of the young people that Sheriff Mackie heard from.

Additionally, given the number of virtual and hybrid Hearings that are ongoing, the HSWG recommends that 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.

Recommendation

There should be a full examination of the potential benefits and consequences of recording Hearings. This should include a full assessment of the impact this would have on the rights of children and their families.



Nine

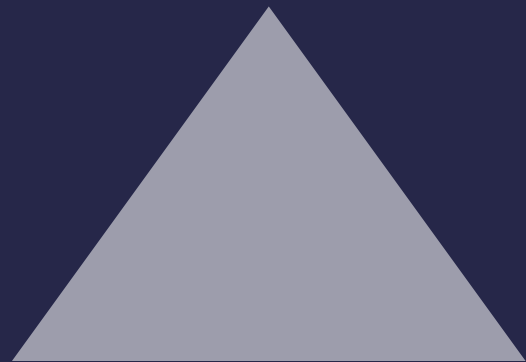
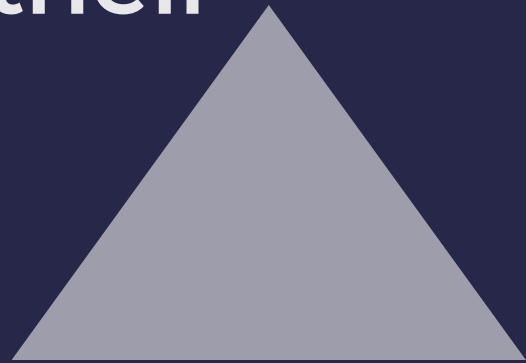
The voices and involvement of children and their families

What will these changes look like for children and families?

- Children and families will feel empowered to be involved in their Hearings and recognised by those working alongside them, including Panel Members, as the expert of their lives and their stories.
 - The decision-making process will be inclusive and give children and families the feeling of working alongside the Panel to make the best decisions possible. Their rights and the choices about how they want to share their views and participate will be clear.
 - Children and families will be actively encouraged to participate and share their views in Hearings.
 - There will be special ways to listen to younger children.
 - The use of recording and written transcriptions in a Hearing will be considered. Improvement work will continue to explore other uses of technology to support children and family to share their views.
-

Ten

The people
working alongside
children and their
families



Throughout this report there has been clear reference to members of the paid and unpaid workforce working alongside children and families, their competencies, skills and training. This chapter, therefore, makes reference only to those roles that have not been mentioned previously, or for whom their integral role within a Hearing has not been fully explored.

The role of the legal profession

There has been an increase in the presence of legal representatives attending Children's Hearings over recent years. Given the significance of the decisions being made by the Hearing and the subsequent impact on the lives of children and families, legal representation is not only an important right for children and families that they must be able to access, but also good practice. The benefit of legal support for children and families can be recognised in not only providing support through the process but also articulating the thoughts and feelings of children and families for better understanding of their Hearings.

The increase in legal representation has fundamentally changed the nature and operation of Children's Hearings. The changes brought in through the Children (Care and Justice) (Scotland) Bill are likely to mean an increased number of older children referred on offence-based grounds, who may wish to have legal representation. The HSWG has thought carefully about how to balance the right to legal representation for children and families and the valuable role that lawyers play in the system with the desire that has been so clearly articulated for an inquisitorial and non-adversarial approach to Children's Hearings.

Within the current system there are plenty of examples of good practice where lawyers have had a positive influence on the discussions at a Children's Hearing, have helped children and families to make sense of proceedings, and have been a calming and reasonable presence. However, the HSWG have heard examples of lines of questioning by lawyers which have felt aggressive or threatening. Concerns about the behaviour and presentation of legal professionals were raised in particular by social workers, who spoke about feeling intimidated, a lack of respect, and a sense that their relationship with the child and family could be undermined by an adversarial approach to the proceedings led by lawyers. They reflected a concern about the voices of legal professionals feeling particularly loud in the proceedings, often being unchallenged by the Panel, and drowning out quieter voices and perspectives, particularly the child.

CELCIS research from 2016 found *"the majority of solicitors act in a constructive and valuable way in the Hearing System, but a minority act in ways that are out of keeping with the ethos and approach of the Hearing System. Some do not have the requisite knowledge*

to take part effectively, and do not consider the best interests of the child within the process.”

⁶⁵The Independent Care Review heard similar concerns. The promise stated that *“lawyers must act in a way that is accessible, understandable and not overtly adversarial. Scotland must consider the creation of an accredited legal specialism to set standards for legal professionals representing children. Those standards must uphold children’s rights, understand trauma and attachment and how to operate in a setting that seeks to uphold children’s wellbeing.”*

In order to realise this vision, **there should be efforts to ensure the conduct of lawyers representing children and relevant persons throughout the Children’s Hearings System is in line with the ambition for Children’s Hearings to be inquisitorial rather than adversarial.** That does not mean that the numbers of lawyers within the system should reduce or that there is no place in a redesigned system for challenge. Rather that questions should be posed calmly and appropriately, with an understanding of the complexities of the circumstances being discussed and mindful of what appropriate behaviour within the context of the Children’s Hearings System is expected.

Whilst lawyers have an overarching duty to represent the best interests of their client, it should be clear that a Children’s Hearing is not a space where there is an overt, adversarial competition of rights. The paramount consideration is the best interests of the child.

The HSWG has heard evidence from Clan Childlaw about the work that is being undertaken to drive forward the conclusion of the Independent Care Review relating to a specialist accreditation for lawyers representing children and young people and research into understanding the legal needs of children and young people in conflict with the law.

The Group welcomes this work, and fully supports the development of an accreditation. All legal representatives working alongside children and families engaged in the Children’s Hearings System should have specialist knowledge of the system and should work in a respectful and open manner. They should be trained in the areas described above that the promise asks of all those working within the system (the impact of trauma, childhood development, neurodiversity and children’s rights).

In addition to this, legal representatives should have an awareness and understanding of the particular needs of babies and infants with respect to attachment and their developmental milestones and timescales, and of the impact of domestic abuse and the way in which the Courts and Children’s Hearings can be used to exacerbate this abuse. However, it is important to be clear that the concerns raised about the conduct of lawyers in Children’s Hearings will not be addressed through training alone. There should be further consideration of how lawyers can be more acutely attuned to the specialist nature

⁶⁵ [CELICIS, Role of Solicitors in Children’s Hearings System](#), 2016

of the Children's Hearings. In particular:

- There should be a review of the pre-existing Code of Practice that lawyers are required to adhere to and of the processes with respect to the register of solicitors eligible to provide legal assistance to children, maintained by the Scottish Legal Aid Board.
- Expectations about conduct should be shared with lawyers during the preparation phase before a Children's Hearing takes place. Safeguards should be put in place so that questions can be shared and asked respectfully and in the spirit of considering the best interests of the child.
- There should be mechanisms to review practice and to reflect on how lawyers should be held to the standard expected of them at Children's Hearings. The understanding of the HSWG is that the Scottish Legal Aid Board currently routinely view files, but not conduct.
- The role of the Chair is particularly significant in their ability to hold expectations of conduct throughout the Hearing. There should be ways for the Chair to raise concerns about the behaviour of the legal profession, if required, so that poor practice can be highlighted. Regular forms of feedback and reflection and continuous professional development are essential, in addition to support for lawyers themselves to discuss and process what they have heard and seen, given the challenging and sometimes distressing nature of the discussions taking place within a Children's Hearing.
- There should be consideration of the development of rights of audience so that lawyers should demonstrate certain skills and attributes before being able to appear on behalf of children and relevant people at a Hearing.

Recommendation

The conduct of lawyers representing children and relevant persons throughout the Children's Hearings System must be in line with the ambition for Children's Hearings to be inquisitorial rather than adversarial.



Recommendation

There must be a review of the pre-existing Code of Practice that lawyers are required to adhere to and of the processes with respect to the register of solicitors eligible to provide legal assistance to children, maintained by the Scottish Legal Aid Board.

There must be mechanisms to review practice and to ensure that lawyers are held to the standard expected of them at Children's Hearings.

There must be consideration of the development of rights of audience so that lawyers should demonstrate certain skills and attributes before being able to appear on behalf of children and relevant people at a Hearing.



The role of Safeguarders

The role of the Safeguarder within the Children's Hearings System is to safeguard the interests of the child. Sections 30 and 31 of the 2011 Act oblige the Children's Hearings and Sheriff to consider appointing one: for the Hearing, this is at any time when they are still deciding matters in relation to the child; and for the Sheriff when they are determining grounds or dealing with appeals and no Safeguarder has been appointed by the Panel. Both the Children's Hearings and the Sheriff must give reasons for their decision to appoint a Safeguarder.

The HSWG has heard that the appointment of Safeguarders has been experienced differently across the Children's Hearings System. Many times, Safeguarders have provided high quality reports with summaries that are clearer than those provided by other agencies and have provided a valuable contribution to the Children's Hearing. However, there has been reflection that the report from a Safeguarder has sometimes duplicated information that the Panel already had, from those already working with the child and family. Sometimes it was felt that the Safeguarder report was given more gravitas than the views and reports of those working directly alongside children and families on a regular basis and who knew them well.

In a redesigned Children's Hearings System, the HSWG is of the view that there remains a role for the specific contribution of Safeguarders for some children. In particular when grounds for referral are being established, a Safeguarder can often facilitate the child and families' understanding of the process and their involvement may act as a catalyst for resolution of agreement on the grounds for referral.

With the changes proposed throughout this report regarding more consistency of decision makers and more participation of children and families, it is likely, that the number of Safeguarders may reduce and specialise in parallel to what will happen in terms of the broader system.

Therefore there needs to be active management of the role of Safeguarders as the changes around the Children's Hearings System are implemented. The governance processes should enable highly skilled and qualified Safeguarders and should continue to facilitate 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 Safeguarders 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 a Safeguarder is and how this role aligns with the other people that are attending and contributing to the discussions about their lives. The HSWG acknowledged that the skills and backgrounds of Safeguarders can differ and that it may be beneficial for a legally qualified solicitor to be appointed by the court when considering the establishment of grounds. Similarly, different skills and experience are required when considering the medium- and longer-term plans for the child when appointed by a Children's Hearing. The ability for more tailoring of Safeguarders to the needs of the child and the remit of the appointment should be considered.

There should be an understanding that Safeguarders appointed to safeguard the interests of the child when grounds are being established may not be required by the subsequent Children's Hearing to make a decision in the child's best interests. Where there is added value in their involvement at that stage, this should be considered however it should not be presumed. Therefore, 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.

Recommendation

There must be active management of the role of Safeguarders as the changes around the Children's Hearings System are implemented, with consideration of regionalised approaches if required.

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.



The role of the social worker in a Children's Hearing

Social workers have a pivotal role to play in a redesigned Children's Hearing and should be fully supported to understand and action the recommendations. This includes

proportionate and adequate resourcing for child and family social work teams.

As set out above, in order for the inquisitorial Children's Hearings System set out within this report to operate effectively, social workers must have the time and space to work alongside families. They must have the capacity to answer questions and discuss information, and to respond to enquiries about the information provided with a robust understanding of the needs of the child and their family. This is not possible for many social workers given the current under-resourcing and challenges with recruitment and retention.

As the redesign takes shape and these issues are resolved, the HSWG thinks it is important to consider what training is provided to social workers prior to their attending a Children's Hearing. Social workers undertake extensive training relating to children and families, child development, and other areas. However, it is important that social workers' training covers the processes and structure of the Children's Hearings System in adequate detail and supports them in developing the reports that decision makers will need to inform their decision-making.

The HSWG has also heard that sometimes it is not always possible for a Children's Hearing to be attended by a social worker who knows a child and their family well. When this does not happen—for example, because a social worker has only just met a child or their family, then it is likely that decision-making will not be as robust, and that children and families will feel unsupported and less likely to fully understand or share their views about the support that they need to meet the challenges they face.

Sometimes a change in social worker is unavoidable due to periods of absence such as sickness, holiday, or a change in roles. However, the practice of a duty social worker attending a Children's Hearing at extremely short notice without any understanding of the background to the child and families' circumstances, and without having even met them must stop as far as possible. It is not an adequate solution to low staffing levels to ask a social worker to attend a Children's Hearing without sufficient time to prepare and get to know the child and family—this is fair for neither the social worker nor for the child.

This recommendation cannot be implemented overnight—further drift and delay must not be introduced into the system in this way. Social workers are required to undergo an extensive period of education and training and there is clearly further interrogation of the research and evidence about the reasons for these issues in the first place.

However, a route map should be produced which identifies this recommendation as a longer-term goal and identifies steps that can happen immediately to reduce this practice. This might include a team leader or supervising social worker who is aware of the child and families' circumstances filling in when the allocated worker is unavailable, for example. This should be considered in the context of broader work to address the recruitment

and retention issues in relation to children and families social work, and with the aim of ensuring that social workers who attend Hearings understand the lives of the children and families to whom the Hearing relates.

Recommendation

Social workers' training must cover the purpose, processes, and structure of the Children's Hearings System in adequate detail and must support them in developing the reports that decision makers will need to inform their decision-making.

Social workers who attend Hearings must have an in-depth understanding of the lives of children and families to whom the Hearing relates.



Ten

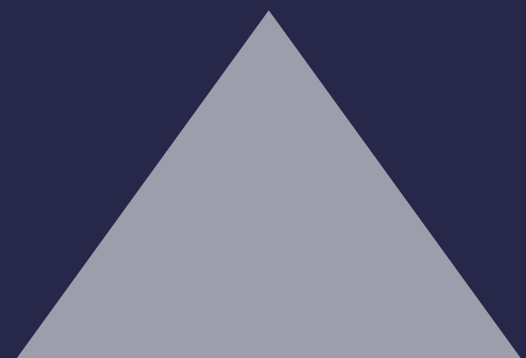
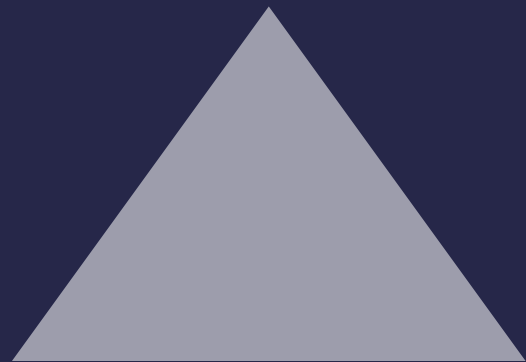
The people working alongside children and their families

What will these changes look like for children and families?

- Everyone in the room at a Children's Hearing will have clear roles and responsibilities which will be explained to children and families. They will use clear language and will be respectful to each other.

Eleven

The decisions
available to the
Children's Hearing
and the support
for children and
their families



The status of decisions made at Children's Hearings

Panel Members at a Children's Hearing are making some of the most serious and significant decisions possible about the lives of children and their families. To uphold a child's right to be safe and protected, the Hearing is empowered to make legal orders and consider applying compulsory measures that restrict a child's movement, deprive them of their liberty, or make interventions about where they live and the help and support they receive.

The HSWG has heard concerns that Children's Hearings are sometimes viewed as an opportunity for decisions made in other forums to be 'rubber stamped'. The Group has heard that there is sometimes a sense of disrespect, especially by lawyers, for decisions made by volunteer Panel Members. Others have spoken about decisions made at a Hearing not being taken as seriously as decisions made at Court, and that there is a sense that the Children's Hearings System has 'lost authority'

Matters of status (divorce, custody/ residence, contact arrangements and adoption) were historically the preserve of the supreme civil court, the Court of Session, based upon the long-held principle that matters of status were of the utmost importance and should only be decided at the highest level. Given the significance of the decisions that the Children's Hearings System is making, its importance within the hierarchy of tribunals in the country should be recognised.

Many of the redesign recommendations are to ensure that the Children's Hearings System attains that recognition through improvements to the composition of the Panels, the conduct of proceedings, and the quality of decision-making. Children's Hearings should be recognised by children and families, the people working alongside them, and the broader workforce as the best place for these decisions to be made, due to the significant skills, expertise, and values of the decision makers and the broader workforce. They should not be a place 'to get an order', but a place where considered and thoughtful decision-making, alongside children and families and the people that know them best, takes place. Children and families need to trust and have confidence in the Children's Hearings System, and those working within and alongside the Children's Hearings System must also have justifiable confidence in it. If Children's Hearings are not afforded the respect and gravitas that is required due to the significant, life-changing nature of the decisions that are being made, then the entire system will be undermined.

Compulsory Supervision Orders

The key decision and questions at a Children's Hearing is whether the child requires compulsory measures of supervision and, if so, what measures. The measures which can be included in a Compulsory Supervision Order are wide-ranging and can include specifying where the child should live, how often they should see their family, and/ or they can require the implementation authority (usually the Local Authority where the child lives) provide support or specific services.

In a redesigned Children's Hearings System, there must be a much closer relationship between what is in an order and the help and support that a family needs to address the challenges that are in their life. This is because the decision about whether a child should remain at home or live with family, foster carers, or in other places and for how long, can be dependent on the amount of help and support their family needs and what that support looks like.

For any tribunal to make robust decisions, they need all the information that they can. Panel Members must therefore include robust scrutiny of the Child's Plan and ensure that legal orders much more specific about the help and support that children and families require than at present. This will ensure children and their families are able to share their views within their Hearing on the support in their plan and what else they think they might need. Crucially it will allow an opportunity for discussion, inquiry, and review about whether there are the services and resources in place to adhere to the plan and uphold children and families' right to help and support in line with Article 18 of the UNCRC. In a redesigned system, as set out above, bespoke help and support must be available and tailored to the child and their family's needs.

However, as discussed above, the HSWG acknowledges the reality that many services that would help children and families to overcome the challenges in their lives in the way envisioned by the promise are not available at present for a multitude of different macro and micro reasons, many of which are beyond the remit of this Group. In the interim, therefore, there must be open and transparent discussions between the implementing authority, the child and their family, and the Panel about what has been provided, what can be provided, and what cannot be provided. There should be innovative and flexible use of resources and supports so that, wherever possible, the Panel can be assured that the child and family are receiving the help that they need. This may include the explicit use of discretionary funds available to social workers.

There are already opportunities within existing legislation for orders to specify requirements for the implementation authority to carry out in relation to the child and family. The terms of a Compulsory Supervision Order can be wide ranging and flexible. There is nothing to stop a Hearing applying this level of specificity in practice

at the moment—so this change will not require legislation. Instead, there should be consideration of how a closer link between the Compulsory Supervision Order and a Child's Plan would work in practice and how the Children's Hearings System coordinates more closely with the implementing authority, including the Reviewing Officer, if there is one.

It is important to be clear that this report is not recommending that the Chair of a Children's Hearing or the Panel become involved in practice. Instead, this is about ensuring there is one place—the legal tribunal of the Children's Hearing—that holds the 'full picture' of the circumstances of a child and their family and scrutinises the help and support that is available to ensure it can make the most appropriate decisions with respect to compulsion and legal orders.

Knowing that the Hearing will review the Child's Plan will ensure that any legal orders are robust and specific should facilitate social work and multiagency partners to make clear, targeted recommendations, that can then form the basis of the Hearing's judgement. While the significance and centrality of the Child's Plan should inform measures taken to ensure implementation of Compulsory Supervision Order's, it should be recognised that an opportunity arises for a degree of collaboration and co-operation between the Hearing and multi-agency meetings.

The power the Hearing has is to ensure that specific support that the child requires is clearly articulated in the order and then subject to the accountability and expectation that comes with it. Creating more specificity within orders will be a culture shift for Panel Members who are more used to making higher level decisions about whether compulsory measures of supervision are required, rather than the detail of those measures and expectations of implementing authorities.

The centrality and specificity of the order is critical as, unlike the Child's Plan, the implementation authority has a legal duty to implement the terms of a Compulsory Supervision Order. Therefore whilst the Hearings should not become, or be perceived as the place in which to secure services for children and families, the duty imposed on an implementing authority to comply with an order does provide an opportunity to be crystal clear about the needs and rights of children and families living around the 'care system' and to ensure that they receive what they need.

Recommendation

The Hearing should engage in robust scrutiny of a Child's Plan.

There must be a closer relationship between what is in an order and the help and support that a family needs to address the challenges that are in their life. All orders must be specific about the help and support that the child and family require.



Home supervision orders, where the child continues to live at home while subject to a Compulsory Supervision Order, should have the same degree of specificity and urgency as orders that require a child to be looked after away from home. There should not be a sense of a 'lower' degree of help and support being available or required because a child is remaining at home—in fact, in some cases the reverse is true. In order to prevent the circumstances that led to a child being referred to the Children's Hearings System from deteriorating and escalating, the Hearing has a role in ensuring the help and support in place is adequate, proportionate, and appropriate.

Recommendation

Home supervision orders must have the same degree of specificity and urgency as orders that require a child to be looked after away from home.



Family Group Decision Making and Restorative Justice

The HSWG is of the view that, if appropriate, Children's Hearing's should be empowered to create space for Restorative Justice and FGDM processes to take place, by deferring Hearings for a sufficient time. The Panel would have no direct involvement but would have the crucial role of permitting and allowing space for the process to be tried.

This would require Panel Members to pause proceedings and set a further date for return whilst more informal processes are allowed to take place. This ability and power to create space must not be allowed to create drift and must be used with clear date parameters to report back to the Hearing. However, it should also be clear that informal, voluntary and evidence-based processes such as these should be considered, explored and given time when possible, safe and in the best interests of children and their families.

Recommendation

Panels must be empowered to create space for restorative justice and FGDM processes to take place, by deferring Hearings for a sufficient time.



Secure Care authorisations

Secure Care is, for some children, the safest and most appropriate place to live for short periods of time. However, it is important to be clear that by the time Secure Care is required there have often been numerous missed opportunities to prevent the acute crisis, or ongoing and persistent challenges in children and families' lives that lead to a child living in Secure Care. There is an over-representation of children with additional support needs in Secure Care, demonstrating the inability of other services, including education, to meet the needs of these children.⁶⁶ For some children, the absence of

⁶⁶ [The Promise, 2020](#), page 80

appropriate support for them, or for their families, has contributed to the challenges, cumulative trauma, and complexity in their lives.

There must be an understanding of the collective responsibility amongst the decision makers within Children's Hearings System, the implementing authority, and other duty-bearers with corporate parenting responsibilities, to work compassionately and urgently alongside these children and their families. This will provide them with the help and support that they require to prevent further harm and trauma, and to ensure they feel safe, happy, loved, and able to reach their full potential.

Significant work, led by the Scottish Government and CYCJ, is ongoing to consider how best to uphold children's rights in Secure Care and realise the Independent Care Review's conclusions that Scotland fundamentally rethink the purpose, delivery, and infrastructure of Secure Care. This work must be informed by the findings of the Independent Care Review, the Hearings System Working Group and those children and adults with direct experience of Secure Care, including the STARR Group.⁶⁷ It must connect closely to the importance of early help and support for children and families, including those on the 'edges of care' with a primary focus on preventing the need for Secure Care at all, in the same way the Children's Hearings System has been asked to specialise and reduce the number of children needing compulsory measures of supervision.

The HSWG has carefully reviewed the conclusions reached by the Independent Care Review relating to Secure Care in the context of the redesign of the Children's Hearings System. The Group is of the view that the following changes should take place to assist with the implementation of these asks and with the ongoing work to redesign Secure Care:

- All decision makers within the Children's Hearings System should have a clear understanding of what Secure Care is and the significance of depriving a child of their liberty. This should extend beyond a visit to a Secure Care setting (though this should be encouraged) to training, awareness and understanding of what Secure Care is like for children and the lifelong impact of the deprivation of liberty. This should be developed alongside children and adults with experience of Secure Care.
- All decision makers should also have a clear understanding of the complexity of circumstances that may lead to a child requiring Secure Care. Decision makers should be able to work alongside children and their families in a non-judgmental and non-stigmatising manner to inquire what additional support they may need to overcome some of the complex challenges in their lives that cumulatively may appear unsurmountable. The increased complexity of the circumstances in the lives of these children and their families should be met with kindness and compassion, in addition to a robust and evidence-based understanding of the issues that have led them to this

⁶⁷ www.cycj.org.uk/what-we-do/starr/

point.

- Before an order authorising Secure Care is made, the Panel must be satisfied that this is in the best interests of the child involved and should fully explore with the implementation authority what alternative, appropriate, options to Secure Care are available in local areas.
- 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 redesign of Secure Care and the ask of the promise to ensure community- based alternatives are available.
- There should be additional effort to ensure that children who are placed in Secure Care following a Children's Hearing fully understand their rights and how to access them, have been offered legal representation and advocacy, and continue to be offered legal representation and advocacy if they do not wish to engage with these services at first. Particular attention should be paid to ensuring that children living in Secure Care understand the reasons behind the decision to put legal orders in place with respect to Secure Care and what happens next. They should also be informed of how to share their views about how things are going with the Hearing and how to ask questions about their ongoing care.
- Children living in Secure Care must be fully involved in decisions that affect them, and be provided with the opportunity to share their views at, and with their Children's Hearing in the same way as other children. Innovative and flexible ways to allow children to engage and participate in developing their Child's Plan and in sharing their views about legal arrangements and onward planning should be considered.
- The Child's Plan for children living in Secure Care should be scrutinised by the Panel and their unique requirements for help and support should be included as part of the legal order. The Chair of the Hearing should have an ongoing role in reviewing how things are going for the child and their family in line with the Secure Care Standards.⁶⁸ Help and support that is bespoke to children living in secure care should be prioritised for children in Secure Care, including education, healthcare, and therapeutic mental health and trauma recovery support. The particular needs of children with additional support needs, those who are from Black and Minority Ethnic Communities, and those who have English as an additional language should be taken into account.
- The Panel should place expectations on the implementing authority with regard to helping children who are living in Secure Care to maintain relationships that are

68 [Secure care: pathway and standards - gov.scot](https://www.gov.scot) (www.gov.scot)

important to them, and connections to their family and community, where it is safe to do so. Sometimes the locations of Secure Care are geographically challenging for family members and friends to get to - this should be taken into account, and help and support, including financial support, should be provided where necessary to help maintain relationships and connections. These arrangements should be reviewed on an ongoing basis.

- All decision makers in the Children's Hearings System should have a clear understanding of Child Sexual Exploitation, Child Criminal Exploitation, trafficking, and grooming. Decision makers should have support in terms of contextual safeguarding and trauma recovery and be alert to the need for bespoke support for child victims including referrals to the National Referral Mechanism. Additionally, the Guardianship Service should be connected to any legal orders and to the oversight of the Panel. Where children have been placed in Secure Care due to concerns about their broader safety this should be made clear to the Panel.
 - The timescales for children living in Secure Care should be reviewed to ensure that they are appropriate. There should be no expectation or understanding that children should be living for long periods of time in Secure Care, but rather the presumption should be, that it is a temporary measure. An exit plan should be put 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
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Recommendation

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 redesign of Secure Care and the ask of the Independent Care Review to ensure community-based alternatives are available.

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.

The timescales for children living in Secure Care must be reviewed to ensure that they are appropriate and in their best interests. There must be no expectation or understanding that children should be living for long periods of time in Secure Care, but rather the presumption should be that it is a temporary measure.

An exit plan must be put 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.



Brothers and sisters

The significance of sibling relationships, the impact of children being separated from their brothers and sisters, and the importance of staying together wherever safe and possible to do so, has long been shared by children and care experienced adults. The Independent Care Review spoke of the pain and lifelong consequences of that separation.

Scotland already has a presumption that children will stay together with their brothers and sisters, and this had been strengthened in the Children's Hearing System in recent years.

The HSWG is aware of a significant amount of work that is ongoing in Scotland with respect to the rights of brothers and sisters for children engaged with the 'care system', including through the national Staying Together And Connected group. The Group has therefore not gone into detail about this in this report.

However, the Group is keen to ensure that the implementation of these recommendations is cognisant of, and connected to the broader work connected to brothers and sisters. The Group heard from children and families with experience of the Children's Hearings System about the challenges that children and families can experience with multiple different Hearings taking place for different children in the same families. It has heard that different Chairs and Panel Members can take different approaches, and sometimes the help and support or contact arrangements differ significantly between children in the same family. Sometimes, this is indicative of the Hearing taking a bespoke approach to the best interests and uniqueness of the children they are working alongside. Other times, this is indicative of a lack of cohesion and connectiveness in decision-making for children in the same family. This can cause a sense of confusion and distress within families where the complex procedures and multiple meetings are hard to keep track of.

The HSWG thinks that **more should be done to think about families where multiple children are engaged with child protection, and care and support processes including the Children's Hearings System.** This includes, wherever possible, the same Chair being present at each separate child's Hearing. Improvements to pre-Hearing planning, a single point of contact, and a consistent Chair for all brothers and sisters should ensure better cohesion between decisions which affect the same family.

Recommendation

The processes and support available for families where multiple children are engaged with child protection, and care and support processes including the Children's Hearings System must be streamlined and connected.

Wherever possible and appropriate, the same Chair should be present at each separate child's Hearing for the same family (brothers and sisters).



Consistency of caregivers for children when they cannot remain at home

The promise was clear that the *“bedrock of how Scotland cares must be consistent, loving relationships to support children.”*⁶⁹ The number of moves that children experience should be limited as much as possible and carers should be supported to care. The HSWG is aware of the national challenges with respect to ensuring that there are enough loving and safe homes available with supported foster carers. The Scottish Government is currently leading work to address these challenges.

In a redesigned, inquisitorial Children’s Hearings System, the Children’s Hearing has a role in ensuring that where it is not possible for children to remain at home, either temporarily or for longer periods of time, that the number of moves they experience is minimal. Wherever possible, the legal order should be for a child to remain in one place until either they return home or longer-term plans are realised.

The Hearing also has a role in ensuring that the Child’s Plan contains specific supports for foster, kinship, and prospective adoptive parents to ensure that placements do not ‘break down’ wherever possible, and that children are not moved due to a lack of appropriate help and support for them and their carers.

If a move is unavoidable, the Panel has a role in inquiring into the circumstances of this change and in ensuring that the legal order is linked to supports that will prevent future moves.

69 **The Promise, 2020**, page 60

Recommendation

The Hearing must ensure that, wherever possible, children remain with consistent caregivers when it is not possible for them to remain safely at home.

Children's Hearings must question and test the extent to which implementing authorities are fulfilling their legal and policy requirements with respect to providing consistent, safe, protected, and loving homes for children and ensuring that the legal tests that exist in statute are being fully exercised.

Where relationships have broken down, an inquisitorial approach to the Children's Hearings System must allow for conversations about how to rebuild these in the best interests of children and their families.



Long term planning for children: adoption and permanence

All children deserve a loving permanent home. They deserve to know where they will live and grow up without the need for Children's Hearings to review this. The HSWG believe that no child should require the intensive support of the Children's Hearings System for more than a few years, at most. For most families, this will provide enough support, structure, and services that compulsory measures of care will no longer be needed. However, for some children, returning home safely will not be possible and alternative permanent care will be needed.

The main ways this can be achieved are via Adoption Orders, Permanence Orders, and Residence Orders. The Children's Hearings System has some involvement in applications for Adoption and Permanence Orders, as advice from the Children's Hearing has to be obtained and provided to the Court if the child is subject to a Compulsory Supervision Orders.

Residence Orders may be considered and recommended by the local authority as part of a Child's Plan however there is no role for the Children's Hearings System in the application for such an order. These orders are often sought where the plan is for the child to reside with other family members in kinship care arrangements and, like Permanence Orders, can last until the child turns 16 years old.

Long-term planning for children with respect to these three orders takes place in local authorities. Depending on the arrangements in the particular local authority, consideration of permanent placement out with the family home will usually be discussed initially at Looked After Child Review meetings. There may be specific Permanence Panels, which may also consider long-term plans for a child. Parallel planning will often be undertaken by a child's social worker. If returning home to the care of a child's parent(s) is ruled out, a child may be referred to the local authority's adoption and fostering committee for recommendation. If they recommend approval of the plan, it will then be sent to the Agency Decision Maker to be considered.

Although there is no formal statutory role for the Children's Hearings System prior to this stage, the Hearing may be aware of the plans for rehabilitation or permanence. They should be able to challenge or support the Child's Plan. The Children's Hearings System plays an important role in safeguarding a child temporarily if they cannot return home (through a CSO) and providing a space where a child's parents can challenge these longer-term planning arrangements by the local authority in an independent, legal forum. Such decisions for the family can be very powerful, as it may be the only place (notwithstanding judicial reviewing of a local authority decision) where the parents have a place to have their views considered independently and have a right of appeal to the Sheriff.

Adoption and Permanence Orders will always remain the best option for a small number of children. The current system, described above, whereby children and families must navigate local authority processes (Adoption and Permanence Panels, Matching Panels) and the Children's Hearings System (Review Hearings and Advice to Court), as well as the Sheriff Court, is too complex. At each stage, different information is provided to different decision makers, the rights to legal representation vary, as do the rights of appeal and challenge.

Furthermore, depending on whether a Permanence Order or direct petition to the court for an Adoption Order is sought, the Children's Hearings System's options change during the Court process. The Group heard that the complexity of the current system is not meeting the needs of anyone involved, whether children, families, prospective adopters, professionals, or Panel members. This must change, starting with a full review into the legislation and governance processes which govern Adoption, Permanence, and Residence Orders.

As these processes are enacted, drift and delay in decision-making about the permanent care of looked after infants and very young children remains a significant problem in Scotland.⁷⁰ SCRA research on permanence planning and decision-making for looked after children⁷¹ in Scotland posed the question of whether a set timescale should be introduced 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 a permanence order. The HSWG thinks that this is worth considering further, 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.

In a redesigned Children's Hearings System, the Hearing must question and test the extent to which the implementing authorities' existing requirements are being fulfilled and must ensure that the legal tests that exist in statute are being fully exercised. This includes scrutiny as part of the regular review processes of how long children have been subject to orders, and an inquiry into whether it is possible for children to be removed from orders, or whether more permanent solutions should be found to address ongoing challenges where circumstances have not significantly changed.

In a redesigned Children's Hearings System, the continuous professional development of well-trained Chairs and Panel Members who have a good understanding of attachment, the needs of babies and young children should also lead to an expectation of early concurrency and long-term planning at the Hearing. Particular attention should be paid to scrutinise Child's Plans with a focus on the needs of babies and infants, given the research which shows that they are at risk from harm and disadvantage by a lack of consistency of carers in their early lives.

For children 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 consideration by the Hearing, in collaboration with the implementing authority, of what a longer-term plan for their care might look like. This may include concurrency planning, which has twin plans: returning a child home to their birth parent(s) is the primary aim. The secondary plan is for a permanent placement and adoption, with the carers with

⁷⁰ SCRA 2015; University of Stirling, 2019

⁷¹ SCRA 2015. **Permanence planning and decision-making for children in Scotland. Adoption and Children (Scotland) Act 2007.** Permanence-research-main-report.pdf (scra.gov.uk)

whom the child has been placed. Instead of exhausting all alternative options before making a new plan, agencies work toward adoption, concurrently, with efforts to return a child safely home. For those children who have been placed subject to a concurrency plan, the details of short, medium, and long-term goals for assessment and child placement should be integral to their Child's Plan.

This is not to develop a presumption that children will be removed from their families or that families' circumstances cannot change, but rather to ensure that loving, stable, secure homes are considered early, and that Panels are able to question implementing authority decision-making, which should be in line with the promise.

Recommendation

There must be closer links between local authority decision-making relating to adoption, permanence and residence orders and the legal tribunal of the Children's Hearing. Efforts must be made to streamline aspects of decision-making when a Permanence Order or Adoption Order has been applied for.

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.

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.



Maintaining relationships between children and the important people in their lives

The Hearing is often asked to make decisions on when, how often, and for how long children can spend time with the important people in their lives. These decisions can be some of the most complex and challenging that are made by the Hearing and are fraught with trying to meet a variety of needs and wants, whilst keeping the child's best interests at the forefront.

Children have the right to be safe, which includes emotional safety.

Too often children are not able to see people that are important to them or are not able to see these people in the way they would like. It is also true that young people have been the subject of orders where they were required to have contact with people or parents with whom they did not want to. Sometime contact can be traumatising and distressing, for a multitude of different reasons.

Purposeful decision-making around contact is not well understood or applied across the sector and the purpose of contact can be much more than children having face to face time with people who hold significant relationships in their lives.

For this reason, it is essential that the voices and views of children and their families are taken into account when contact arrangements are being considered and made by the Panel. Children should be taken seriously when they say that they do not want to have contact with the important people in their lives, and there should be flexibility within the system for them to change their minds.

The Panel should take into account the views of younger children in the ways described throughout this report, and there should be no blanket assumption that putting contact arrangements in place is positive for either the child, or their family. Emotional and physical safety and the possibility of contact causing distress and further harm, or rupturing attachments should be a primary consideration of the Panel in addition to the possibility of contact being safe, warm, loving, and positive.

When children first come into the care of the local authority, unable to live at home because of concerns about their wellbeing, they are often traumatised and need security and stability. Spending time with people who may not have been able to meet their needs must be based on quality, as well as quantity, and pay attention to the impact and effect that contact will have on children.

Maintaining relationships between children and the important people in their lives

Hearings for Children: The Redesign Report

There is a need for this to be well supported so that relationships are given time and space to repair. Adults involved in a child's life must have the ability to manage a child's conflicted emotions about the situation they find themselves in. At the same time, the time spent in contact should offer support to parents, with clear expectations to accept and address the challenges and complexity in their lives that have led their child to require alternative care. There should also be a clear expectation to demonstrate not only their ability to meet their child's needs in contact but also to address any external life issues that may be preventing them from keeping their child safe.

It is known that where Panels make decisions that diverge from social work recommendations around contact between a child and an important person in their life, the decision was generally for more contact to be in place. It is understandable that Panels want to make decisions that uphold the relationships around the child and that must be a priority, but it is also true that these decisions require thoughtful understanding around issues of domestic violence and trauma. The Hearing should have a sound and evidence-based understanding of the impact of domestic abuse and the way in which contact arrangements and processes can be used to perpetuate domestic abuse.

These considerations have led the HSWG to recommend that as part of ongoing improvement work to keep the promise there must be the development of national best practice guidance around the issue of 'contact' and maintenance, repair, and development of safe relationships. This should not just be applicable with respect to the Children's Hearings System but should be relevant to all decision makers who make important decisions about who, and how children should be in contact with. These decisions require skilled, thoughtful decision makers, able to synthesise and analyse information through a child rights framework and high levels of collaborative working alongside children, families, and the people working alongside them who know them best.

It is also vital that Sheriffs, who have a role in making early decisions around contact before grounds are established, are fully confident of a child's needs and the purpose of contact when faced with legal representation and unproven allegations. To assist with this, it may be helpful for Sheriffs to be able to access a specific Contact Guideline, similar to the Young Person's Sentencing Guideline to ensure consistency of understanding and application of contact across Scotland.

There is now a duty on implementing authorities to uphold sibling relationships. Orders should have a high degree of specificity with respect to contact, to ensure safe, loving, mutually supportive relationships are upheld and protected. For siblings who each have individual Child's Plans and orders through the Hearings System, there needs to be consistency of approach so that there are not competing orders in place with differing 'contact' requirements.

Contact arrangements form a significant part of the important work that needs to take place with duty holders to help children return home within a timescale that promotes their emotional, physical, and legal security. Where children are not able to return home, consideration of how relationships are maintained, or children remain aware of their histories, must become the focus of 'contact'. Decision makers need to be clear about the range of options by which children can keep in touch with the important people in their lives in a safe way and with their history and the people within it. Some of these options may include not having face to face, or direct contact, but sensitively helps children with life story work and leaves the door open for a return to relationships as children get older. Given the recommendations set out within this report and within the promise relating to the consistency of long- term caregivers, attention should also be paid when children seek to maintain contact with these caregivers after they return home. The HSWG understands that this might be difficult for the child's family but considers that there is a role for the Hearing in helping the child and family to navigate this so that there is not an abrupt end to a relationship that was important in a child's life.

Where contact is not taking place in accordance with the legal order there should be discussion and enquiry into why not and whether there might be any practical barriers which are making the maintenance of these important relationships difficult or whether the level of contact should be changed to benefit the child.

Recommendation

National best practice guidance around the issue of 'contact' and maintenance, repair and development of safe relationships must be developed.

Orders must have a high degree of specificity to ensure safe, loving, mutually supportive relationships are upheld and protected.

For siblings who each have individual Child's Plans and orders through the Hearings System there needs to be consistency of approach, so that there are not competing orders in place with differing 'contact' requirements.



There must be clear processes for a Hearing to inquire about what is working and what is not working with respect to contact arrangements as part of regular review processes.



Support for families after a Hearing has taken place

Sometimes, it is the parent or parents of a child that will require more help and support than the child to address the challenges in their lives.

The parents asked to engage with the Children's Hearings System have often experienced trauma and harm themselves, or have multiple, complex needs themselves. The promise recognises that families involved in the criminal justice system, experiencing domestic abuse, problematic substance use, or mental health problems are also more likely to come into contact with the 'care system'.⁷²

In truth, the system needs to show compassion and love for these parents too—so that, in turn, they can face the challenges in their own lives and enable a more supportive, safe, and loving environment for their own children. For some of these parents this is exacerbated by the surrounding structural inequalities that mean they live in unsuitable homes, are unable to find and maintain employment, and are living in poverty. Sometimes the way that they cope with their own past trauma and with the current trauma of their children being involved in the 'care system' is through the solace of substances, alcohol, or risk-taking behaviour—for some they cannot see another way.

This is not to excuse lack of safety or protection that children might experience in the care of their family, but merely to encourage the Panel and those working alongside children and families to exhibit curiosity about why unhealthy and unsafe behaviours persist even when support may be available, and in the face of the most serious and significant of consequences.

⁷² [The Promise, 2020](#), page 52

Repeatedly, including in the most recent Supporting Roots report, birth parents have asked for services that get alongside them, that work collaboratively and comprehensively, and which understand and respond to the nuances and complexities in their lives. This is significantly challenged by the complexity of fragmented and unpredictable funding arrangements underpinning the provision of support services, which is siloed into different areas when in reality people do not experience challenges in these siloes. The evidence points to a need for multi-disciplinary, 'one stop shop' collaborative and co-located services to address the complex needs of parents that should foster a sense of safety and trust- which is often lost following the beginning of legal interventions into family life.⁷³ The provision and availability of these support services must be prioritised, with an understanding of the impact of high-quality, trauma-informed support on addressing intergenerational trauma and improving the likelihood of both children within the Children's Hearings System and any subsequent children remaining safely at home with their families and communities.

As stated above, the aim of the promise with respect to 'one family one plan' must be enacted as revisions are made to the processes around the Child's Plan. The Hearing of a redesigned Children's Hearings System must remain focused on the best interests of a child, but there should be an understanding of the needs of the family in order to uphold these best interests, and the right to care, safety, and protection. **It is not enough to put a legal order in place and then return children home to the same or similar circumstances after a period of time has passed. Families must be provided with the help and support that they need to address the challenges in their lives.** The Hearing should seek clarity regarding the provision of help and support set out for the family, including foster, kinship, and prospective adoptive families, in the Child's Plan and should be clear about its expectation of the implementing authority and multi-agency partners. This should include any financial support a family may need to receive to maintain contact arrangements, or to mitigate against any changes in income when a child is no longer living at home, including to benefits.

This is not only to increase the likelihood that problems and challenges can be resolved and addressed with appropriate help and support in place, so that children can return home, but also because it is widely known that even when children are on legal orders and live away from home for long periods of time, when they turn 16 they often return home. It is essential therefore that the homes they return to have had every opportunity to address the issues which led to the child's removal from the family home.

The HSWG highlights in particular the importance of 'perseverance' of not giving up on people, and of recognising that circumstances change, and that sometimes efforts to improve challenges in people's lives ebb and flow in accordance with external circumstances. If families are not engaging in the support that is available, the Hearing must enquire about the circumstances surrounding this and seek to understand what

⁷³ Scottish Government, Final Report: Supporting Roots, February 2023

alternative provision may be more appropriate.

The Group has heard suggestions, including from social workers themselves, that the family should have a separate social worker to the child. This is particularly relevant after a child may be living away from the family home, but the family still require support to help make the necessary changes that might resolve some of the challenges they face. This is a longer-term aspiration—and clearly not practical to implement immediately, given the current challenges with recruitment and retention. However, it should be considered and explored within the broader work to keep the promise and the option for a family to have a separate social worker should be in place by 2030.

Additionally, the Panel should be aware of unintended consequences of a child living apart from their family. Research indicates that sometimes when children are living with kinship carers, or in their community this can serve to isolate birth parents from their own families. Family or community-based events are sometimes sites of potential ‘unplanned’ contact with their children. The fractured nature of care experienced parent’s relationship to their own family was also highlighted as a problem, indicating a need for targeted support for parents with care experience.⁷⁴

The Independent Care Review heard from parents who talked about a profound sense of loss and grief—akin to a bereavement—when children are removed. The trauma of that separation can be profound and lifelong. The promise said that *“Scotland must not abandon those families. Families must continue to be provided with therapeutic support, advocacy, and engagement in line with principles of intensive family support.”*⁷⁵

Research has demonstrated that for birth parents, losing a child or children through child welfare processes has significant impact in both the short and the long term. In terms of physical and mental health, and in terms of social deprivation and stigma, the effects can be long-lasting: *“The consequences of these needs go unmet can be extreme, with links to mental health difficulties for mothers and fathers, and to suicide attempts and completions for mothers demonstrated by research.... There is an increased need for effective support that addresses the needs of affected families, in addition to work that seeks to support family preservation.”*⁷⁶

If a child is removed from the care of their birth parent(s), the Children’s Hearings System does not have any ongoing, direct responsibility for the wellbeing of parents once the child has been placed permanently. Nevertheless, considering the evidence about the impact of a child on birth parent(s) and the possibility that the family may have subsequent children, the Hearing should feel emboldened to enquire as to the planning and supports in place for families experiencing child removal. In particular the evidence about the benefits of peer support, the importance of crisis mental health support, and substance use support

74 **Scottish Government, Final Report: Supporting Roots**, February 2023

75 **The Promise**, 2020, page 63

76 **Scottish Government, Final Report: Supporting Roots**, February 2023

should be considered given the heightened need for support for families directly at the point a child is removed.

Children and care experienced adults told the Independent Care Review and the HSWG of situations where they returned home after lengthy periods of time in care when the circumstances of their family had remained the same or deteriorated. **Appropriate evidence-based help and support should be available to help families to recover and rebuild their lives after a child has been removed from their care, including with respect to future pregnancies and with an understanding that children may return home once they turn 16.**

Recommendation

The Hearing must seek clarity regarding the provision of help and support set out for the family, including foster, kinship, and prospective adoptive families, in the Child's Plan and must be clear about its expectation of the implementing authority and multi-agency partners. This should include any financial support a family may need to receive to maintain contact arrangements or to mitigate against any changes in income when a child is no longer living at home, including to benefits.

If families are not engaging in the support that is available, the tribunal must inquire about the circumstances surrounding this and seek to understand what alternative provision may be more appropriate.

The Hearing should be made aware of any unintended consequences of a child living apart from their family, including isolation due to the contact restrictions which may prevent a birth parent from having contact with their family or attending community events.

Appropriate evidence-based help and support must be available to help families to recover and rebuild their lives after a child has been removed from their care, including with respect to future pregnancies and with an understanding that children may return home once they turn 16.



Support needs of all 16 and 17 year olds

Including more 16 and 17 year olds within the scope of the Children's Hearings System will require orders that have an understanding and clarity about their specific needs and, if the referral is on the basis of offence grounds, to have confidence that the issues surrounding the offending behaviour is being addressed.

The Children (Care and Justice) (Scotland) Bill will have resourcing implications for both CHS and SCRA, however it is also clear that in order for Scotland to have a supportive response to 16 and 17 year olds, as intended by the Kilbrandon Committee and the promise, they must be in receipt of orders that make clear the supports that they require. That will have resourcing implications for multi-agency partnerships to develop an early supportive approach that prevents further offending.

Older children may not have the broader support of their family and may be parents themselves. They may also have housing, transport, employment, education, training, and other needs to help them overcome the circumstances that led to their engagement with the Children's Hearings System. Some children may require mental health and trauma recovery support as well as other specific needs to uphold their right to health, education, and support. As with all orders from the Children's Hearings, these must be well reasoned, clear about expectations, and have sufficient accountability and review to ensure that what is intended for 16 and 17 year olds is achieved.

The tribunal should have oversight of the transition plans for children who are nearing their 18th birthday so that there is no 'cliff edge' in terms of help and support when they become an adult.

Recommendation

There must be sufficient resources and multi-agency planning and collaboration with the Children's Hearing to ensure the additional, specific needs, of all 16 and 17 year olds are met.

The tribunal must have oversight of the transition plans for children who are nearing their 18th birthday so that there is no 'cliff edge' in terms of help and support when they become an adult.



Avoiding drift and delay in the Children's Hearings System

Compulsory orders were never intended to be long term solutions to the care and protection of children. When children remain on orders in excess of two years it can indicate a lack of progress with care planning for a child's longer term emotional, physical, and legal security, or multiple renewed concerns about a child. The HSWG is therefore of the view that where the Children's Hearing identifies that a child has been subject to compulsory measures of supervision for longer than two years there should be an in-depth review. This should determine whether this is in the best interests of the child or whether alternative, longer-term arrangements should be made. This review should include scrutiny of the efficacy of the Child's Plan.

Recommendation

There must be a mechanism for the Children's Hearing to identify when a child has been subject to compulsory measures of supervision for longer than two years, after which there should be an in-depth review to determine whether this is in the best interests of the child or whether alternative, longer-term arrangements should be made. This review should include scrutiny of the efficacy of the Child's Plan.



The creation of an 'exit' plan

The HSWG understands the concerns raised by 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.

All children and families and implementation authorities should understand what is expected of them and what needs to happen to 'exit' the Children's Hearings System. The Group therefore recommends that the proposal from the Collaborative Redesign Project is tested in local areas and a national approach is created to ensure 'exit plans' are developed for children with clear targets and timescales, not just measures. These should be considered at Review Hearings and be part of the oversight work undertaken by the Chair in a redesigned system.

Drift and delay identified through the promise must end. Putting the Child's Plan at the centre of Hearing decision-making should allow Hearings the ability to scrutinise the child's journey so that family support, supported return to family, and or permanence is actively managed. These final options and an exit plan must be in the Panel's mind at all times.

Recommendation

All children and families and implementation authorities should understand what is expected of them and what needs to happen to 'exit' the Children's Hearings System.

The concept of a child's 'exit plan' out of the Children's Hearings System, with clear targets and timescales, should be developed and tested in local areas.



Appealing the decisions made at a Hearing

Once the Hearing has reached a decision, the child or their family may appeal to the Sheriff against the decision of the Hearing. The Sheriff is provided with a wide discretion in relation to the management and conduct of the Appeal and may hear evidence, especially but not exclusively, if the ground of appeal relates to the way in which the hearing was conducted. The Sheriff also has the discretion to call for reports for the purpose of assisting in determining the appeal. In the current system, the Reporter's role is to manage appeals against the decisions of the Hearing as the respondent. Reporters will lodge a copy of the Hearing papers and the record of proceedings with the Court, may lodge

answers to an appeal and the Sheriff may hear evidence from the Reporter and others in appeal proceedings.

The legislation and supporting procedural rules granting the various statutory roles and duties of the Reporter are predicated on the assumption that the Reporter is present at the Hearing and a witness to how it is conducted.

At present, the decision whether to defend decisions of the Tribunal rests solely with the Principal Reporter of SCRA. There has been discussion within the HSWG about whether that responsibility should shift to the National Convener of CHS, as the person responsible for advising, training and quality assuring Panel Members.

However, there does not appear to be any need to change the current appeals mechanisms from SCRA to CHS, particularly as it is highly unusual for tribunals to defend appeals in higher Courts and may call into question the independence of the decision-makers on an ongoing basis. It would be inappropriate to open the Children's Hearings System up to legal challenge in pursuit of a change that would not demonstrably improve decisions for children and families.

The HSWG recognised that the ability to appeal decisions is an integral part of the Children's Hearings System, however it may feel like yet another complex system for children and families to navigate. To aid the ease and transparency of appeals, the HSWG recommends:

- There should be a consistent Sheriff in the grounds and appeal processes. Children and families currently appear in front of different Sheriffs for different parts of their journey through The Children's Hearings System. This adds to the complexity felt by the children and families and can lead to having to retell their story to another new face. The continuity of specialist Sheriffs would support consistent decision-making across grounds and appeals and ensure the experience of children, young people and their families in Court align with their experience before the Hearing.
- As outlined above, Sheriffs should be seen as part of the Children's Hearings System and have specialist training in order for them to make considered and informed decisions alongside children.
- The current appeals process is difficult to navigate, and the system does not support children and families to access their rights effectively enough. Appeal rights are explained at the end of a Hearing which is a difficult moment to absorb the complex process and their key rights and is followed up in writing. This results in children and families not always understanding their rights to appeal or knowing whether they have a valid appeal point. In a redesigned system, the right to appeal must be supported by the Children's Hearings System and the Courts by making them accessible, understandable, and timely. All children and families should have access to trauma-informed, specialist legal support if they wish to challenge a decision of the Hearing.

- At present, Panel Members who made the decision are not informed that a decision made by the Hearing has been submitted for appeal, nor the outcome of the decision. The HSWG acknowledges the learning and training opportunities which could be obtained by reviewing the Sheriff's decision. This would support better decision-making and therefore, better outcomes for children and families. To ensure feedback loops play a role in the continuous improvement of Hearings, Sheriffs should request a copy of appeal decisions be included in Panel papers.

Recommendation

Wherever possible, there must be a consistent Sheriff in the grounds and appeal processes.

The right to appeal must be accessible and understandable to children and families.

To ensure feedback loops play a role in the continuous improvement of Hearings, Sheriffs should request a copy of appeal decisions be included in Hearing papers.



Eleven

The decisions available to the Children's Hearing and the support for children and their families

What will these changes look like for children and families?

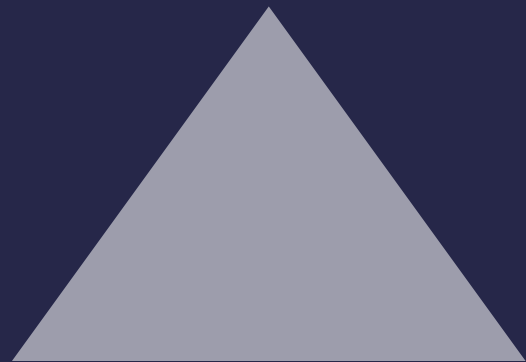
- Children and families will receive the help and support outlined in the Child's Plan, which will be linked to the child's order.
- Orders will be more specific about the help and support children and families need and will protect safe, loving, and supportive relationships.
- Children will not live in Secure Care for longer than need and their rights will be upheld.
- Wherever possible, the same Chair should be present at Hearings for brothers and sisters too.
- Wherever possible, children must remain with consistent caregivers when it is not possible for them to remain safely at home.
- Panels will think carefully and take into consideration what it means for a child to be away from their family.
- Children will be able to see the important people in their lives when it is safe for them to do so.



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- Children and families will be provided with help and support after a Hearing takes place.
 - The specific needs of 16 and 17 years olds will be met by organisations working together within the Children's Hearings System.
 - Children will not be in the Children's Hearings System for longer than needed.
 - Children, families, and those working alongside them will understand what needs to happen to 'exit' the Children's Hearings System.
 - Children and families will feel the appeal process is understandable, accessible, and timely.
 - When possible, the Sheriff in the appeals process will be familiar to the child and their family.
-

Twelve

The oversight,
enforcement,
accountability and
review of a
child's order



Who should the order apply to?

The promise was clear that to ensure implementing authorities are able to fulfill their obligations to children and families, Scotland must *“test the extension of the enforcement and compulsion powers to ensure both families and those with statutory responsibility are compelled to attend and comply with the orders of the Hearing.”*⁷⁷

At present, only children may become subject to compulsory measures of supervision. Only the child and local authority can be compelled to do something by a Compulsory Supervision Order. The CSO can impose a wide range of measures which may affect family members, however it is only the child upon whom these measures are imposed. Throughout the course of the HSWG’s work the Group has heard that this should change and heard the view that CSOs should be placed on either parents or the family, or the local authority as well. The HSWG has considered this carefully and The Promise Scotland sought legal advice on the impact of any changes.

The Group has reviewed the evidence and information that it heard and received and has concluded that the application of compulsion should remain with the child.

Applying compulsion to a child’s family would fundamentally change the structure and scope of the Children’s Hearings System and would remove the laser- sharp focus from being on the best interests of the child. As stated above, rather the CSO should be specific and targeted so that the implementing authority is clear what needs to be done to support a child and their family. There should be an understanding of shared accountability for the order. It should be clear what the responsibilities are for the child and their family, and what the responsibilities are for the implementing authority. It should also be clear what happens when either the child and their family or the implementing authority do not, or are not, able to fully engage in, or deliver the supports agreed should be in place at the tribunal.

⁷⁷ *The Promise, 2020*, page 41

Recommendation

The application of compulsion should remain with a child, but there must be a strengthened understanding of the importance of their family and the support they require as part of the link between the order and the Child's Plan.



Oversight of the order

Engagement with the workforce at SCRA identified an observance of long-standing problems with lack of resources to support children and families: *"there is a need to build the appropriate resources around the child and family and have greater accountability and clarity about what happens when resources are not available or orders cannot be implemented."*⁷⁸

Full implementation of the order is particularly important for children and families—the stakes are high. If the order goes well, the support is in place and rights are upheld and the order may be removed, and children may be able to remain at home or return home. If the order does not go well there may need to be further discussions about a permanent move away from home for children. For children who continue to be 'looked after', implementation of the order will mean that they are supported in ways that are right for them and they are able to stay in relationship with people that are important to them.

Currently, the first opportunity that the Hearing has to hear that an order or measure is not being complied with by the implementing authority is at a Review Hearing. This may be a review called by a child's social worker because the order needs reviewed or is not being complied with. However, often, it is not until an Annual Review that the lack of implementation of the order comes to light. This can lead to children and families 'drifting' through the system with inadequate help and support in place or being subject to statutory involvement in their lives for far longer than necessary.

⁷⁸ SCRA Keeping The Promise Reform Project-Report on SCRA Staff Engagement (2022)

At present children and families have no right to request a review for three months. If services and support are not being provided during this time in the way that was discussed at a Hearing, for example with respect to contact arrangements, there is no right to review.

There is a need for real clarity that **if families are being asked to comply with measures set out in an order, and will be held to account (with serious, significant and potentially life- changing consequences), others who have been asked to do things set out in an order must be held to account too.** There should be no sense of a power imbalance where the pressure is on children and families to comply with an order that is seen as optional for the implementing authorities. This is something that the Group has heard many times—including a sense that orders made by a Sheriff are more readily complied with by implementation authorities than orders made at a Hearing.

A redesigned Children's Hearings System will have a much closer connection between the tribunal and the other ongoing child protection, and care and support processes in a child's life. A much stronger, more consistent Chair with a responsibility to hold the child's 'story' and be more engaged and aware of how things are going for the child and the family. Once a Hearing has concluded, the tribunal must be empowered to maintain oversight of orders and exit plans (see above) made by Hearings, to consider concerns reported to them regarding implementation, and to take appropriate action in response to those concerns. This will be enacted by putting in place a more immediate and flexible response to concerns that a CSO is changing or might not be being fully or appropriately implemented.

It is important to address how children's and families social work teams are feeling about their ability to implement orders. As stated previously in this report, the HSWG has heard consistently and persistently from social work that recruitment and retention of social workers is reaching crisis levels, with high numbers of agency staff working alongside children and families. There is no question about the will and appetite to ensure children who are subject to compulsion receive the help and support that they need, but there is concern about the ability of implementing authorities to meet statutory duties.

The approach that the HSWG recommends, therefore, is moving away from a focus on one individual social worker and building a system that allows for a problem solving, collaborative and inquisitorial approach. Rather than approaching discussion about implementation of orders and lack of help and support from a defensive place, the aim is to create a system where issues can be addressed, resolved, and shared with the best interests of the child at its heart.

A redesigned system must continue to be seen as having the authority to hold the implementation authority to account for any failures to deliver on the order. However,

the focus should be less on enforcement but rather, in line with the inquisitorial nature of the new system, should be an inquiry about what has happened, and what needs to change. There should be an understanding that scenarios change within families and that people move jobs, services close, and resources shift within local authorities. Pragmatic discussions and inquiries by a Chair with a strong 'case grip' and a Children's Hearings System that engenders an enabling environment must lead to more frank and transparent conversations on a much more regular basis about how things are going.

The following changes should be made with respect to how the tribunal is kept informed of progress and any changes to the implementation of the order:

1. There must be ways for the child, family, and the important people in their lives to keep in touch with the tribunal about how things are going

Young, care experienced people have told the HSWG that they have felt excluded from discussions and decisions around implementation of their orders and of a desire to have more of a say in what happens after a Hearing. This is especially when services are not being provided or when significant decisions are made that mean big changes in their lives. The current three-month time limit before the child or relevant person can request a review by giving appropriate notice to the Reporter can leave children, young people, and their families disempowered when they feel CSOs are not working as intended.

Therefore, the HSWG thinks that there should be ways for children, families, and other important people in their lives, including the people that work alongside them, such as teachers, health workers and social workers, to draw to the attention of the Chair concerns they may have in respect of the implementation of CSOs or other material changes in the circumstances of a child that might warrant a review.

It is not considered appropriate that the child or others might have direct access or contact with the Chair, but that a simple process be established to enable them to make contact with the team at CHS supporting the Chair. The HSWG has heard lots of different ideas about how this might happen. The Collaborative Redesign Project suggested an app, which let children and families 'report' that the order was not being followed, or they were not getting the help that they needed.

The children and young people with experience of the Children's Hearings System that Sheriff Mackie met liked the idea that issues could be raised with the Children's Hearings System after a Hearing has taken place. There was an emphasis that this should be done in a way that works best and is easiest for the young person and that lots of work should be done to mitigate against unintended consequences, particularly if this involved an app or other technology. They wanted to remind the Group that not everyone has access to the internet. They also raised an idea about the young person requesting a private meeting with the Chair after the Hearing, but the HSWG think it is important for the Chair

to retain their independent role as the primary decision maker.

2. Where necessary, the tribunal must be able to require the implementing authority to regularly report back to the tribunal on progress

In a redesigned Children's Hearings System there must be an expectation that when the tribunal considers it necessary, local authorities proactively report on the implementation of orders. There should be further discussion and consultation on how this should look in practice—this must not become an overly cumbersome or bureaucratic process that promotes an industry of reports.

This would be an opportunity to highlight any concerns about the perceived non-engagement of the family or concerns about resource constraints which may have an impact on access to help and support set out in the Child's Plan. It would allow the Chair to review progress and to ascertain if there is a need for an earlier Review Hearing.

3. There must be a review of the duty to seek a review if an implementation authority is aware that the CSO is not being complied with.

The implementation authority already has a duty to seek a review if they are satisfied that the CSO is not being complied with. This must be followed. There should no longer be Children's Hearings where the tribunal discovers that children have been separated from siblings, moved home, and had major decisions made for them without the oversight of, and against the decision of, the tribunal. It is understandable that local authorities find it difficult to say that orders are not being well implemented and support is not in place. Adversarial systems can often create defensive practice. However, the intent in a redesigned Children's Hearings System is to facilitate a supportive, inquisitorial system, where local authorities have a responsibility to highlight to the tribunal that the terms of an order are not being implemented and to share recommendations or seek guidance, amendment, and clarity from the Hearing, alongside children and families, about what should happen. The purpose of this should be solution-focused, open, and transparent—particularly if there are resource constraints limiting the ability of the implementing authority to uphold the rights of children and their families.

Reinforcing the responsibility of the local authority to highlight when things are not going well is an important part of creating a system that facilitates good working between all those involved. There should be a sense of two-way information flow between the tribunal and the local authority that are working as part of the same system, removing duplication, and streamlining meetings and decisions rather than duplicating them.

This should include clear links between the tribunal and other parallel or simultaneous child protection, care, and support processes, where they are still happening—while being clear that it is the tribunal that is the central and crucial decision-making forum. Child

protection reviewing processes should be viewed as part of the same system and the Chair should be able to regularly access an up-to-date copy of the Child's Plan.

It would be consistent with the enhanced role of the Chair in the re-imagined Children's Hearings System, for the implementation authority's requirement for a Review Hearing in these circumstances, to be directed to the Chair and not the Reporter, as at present.

4. The Chair must be responsible for maintaining oversight of the implementation of the order

At the point of making an order, the Chair should be aware of how often the implementing authority should be reporting back to the tribunal. Regular check in and review will help prevent drift and delay. It is important to keep the child and family involved throughout the review process. This should not be an anonymous exercise; their views must be sought and the decision on the next steps is one for the Chair to make.

Frequency of these review and oversight processes must be bespoke based on the needs and circumstances of the child and their family. There should be an understanding that, for some children and families, additional scrutiny and oversight is required to see how things are going and how the order is working. This might include families with particularly complex challenges such as older children in conflict with the law, or for babies and infants to ensure their developmental needs are being met, for whom time passes more quickly and the first few years of their life are foundational.

Children and families should understand that it is the Hearing that has oversight of the legal order and the support that it contains, that it has responsibility for ensuring positive momentum, and that children are subject to legal orders for as short a time period as possible.

It should be very clear that the responsibility for implementing the CSO is not down to one individual social worker, but rather the implementing local authority as a whole. One social worker should not be held responsible for the provision of services in the implementation of a CSO, especially where this may be the consequence of a lack of resources, which may be as much of a frustration to the social worker, as to the child and their family.

It must be clear that the implementation authority extends beyond social work. There is a duty to collaborate across health, education, justice, and other services—and there should be an understanding of the expectation on these other areas and their role in implementing the order.

Recommendation

The Hearing must be empowered to maintain oversight of orders and exit plans made by Hearings, to consider concerns reported to them regarding implementation, and to take appropriate action in response to those concerns. This will be enacted by putting in place a more immediate and flexible response to concerns that a CSO is changing or might not be being fully or appropriately implemented.

There must be ways for the child and their family, and the important people in their lives, including those working alongside them, to keep in touch with the Hearing about how things are going.

There must be a provision that enables the Hearing to make a requirement for the implementing authority to regularly report back to the Hearing on progress.

It must be clear that the implementation authority extends beyond social work. There is a duty to collaborate across health, education, justice and other services—and there must be an understanding of the expectation on these other areas and their role in implementing the order.



What happens if things are not working well—or if there is a need for significant changes?

There may be understandable reasons for deviance from a child's order (for example, a deterioration in mental or physical health which makes contact arrangements change for a short period of time) but a Chair with a strong 'case grip' should be informed and there

should be mechanisms to ensure that the child understands the situation.

When the Hearing is made aware of a concern or a challenge in implementing the order, or that things are working really well and the recommendation that the order be terminated, the Chair should review the information that has been shared and should have the discretion to consider the appropriate next steps for the child and their family. This will include a range of options available on how to proceed, for example:

1. Recording a decision that no further action is required. Highlighting the concern to the implementing authority via a letter or other form of correspondence and asking for a response, directing that the issue of concern be addressed or asking for clarification.
2. Arranging an early Review Hearing to allow a full discussion to take place.

The process described above aims to address the ask from children, families, care experienced adults, and those working alongside them to put in place mechanisms to discuss what is happening in a child's life and why things are not happening the way set out in the order without always needing a formal Hearing to take place.

While the changes set out above must address the immediate needs of the child and their family in the implementation of a CSO, it must also form the foundation for the establishment of a process of data collection and reporting by the Chair parallel or simultaneous to child protection, and care and support processes to address accountability at a more senior and strategic, budgetary level (see below).

It should be considered whether the decisions made by the Chair at this stage would be subject to judicial review and how information received by the Chair should be shared with the child and family and other people involved in their lives.

The child and family should be informed of the Chair's decision, including if no action is required.

Recommendation

When the Hearing is made aware of a concern or a challenge in implementing the order, or that things are working really well and the order should be removed, the Chair must review the information that has been shared and should have the discretion of considering the next steps, and should have a range of options available on how to proceed—informing the child and family about their decision. These may include taking no further action, highlighting the concern to the implementing local authority, or directing that an early Review Hearing is required.



Review Hearings

After the Chair's enquiry into the issue raised, through communication with the implementation authority, there may be a satisfactory resolution through correspondence and discussion with those concerned. However, there may be a need for a Review Hearing to take place.

Where it is decided a Review Hearing is necessary, the expectation would be that the parallel or simultaneous child protection care and support processes align with the Hearing and information is shared to inform and make recommendations—not duplicate. A collaborative approach to addressing concerns around implementation will offer continuity in the development of the Child's Plan and consistency in decision-making in respect of the child. The Review Hearing must draw on the expertise of the social worker and their often unique insights to the circumstances affecting a child and their family rather than focussing upon a defensive accountability by the social worker of their practice which is often the effect of the current process.

In an inquisitorial system, the Review Hearing should be the place for an open and honest

inquiry into what progress has been made, where the strengths of the family lie and what challenges there might have been in meeting the terms of the order. The Review Hearing must be characterised by curiosity into the reasons why it has been difficult to comply with the terms of an order.

A closer connection between the implementation of the order and the family must mean that where there is a problem, it can be discussed rather than it being brought to the attention of the Hearing a year later. Earlier engagement when something is not working might mean that additional or more intensive support could be put in place to prevent an acute crisis from taking place—or it might mean that steps towards concurrency planning or permanence are initiated at an earlier stage, in line with children's developmental needs and milestones.

A Review Hearing must be done alongside families—not to or for them. There must be space and understanding that progress is not linear, and support should be flexible, responsive, and framed around the changing needs of children and their families. What might have changed in a family's circumstances? How might help and support be framed in a different way?

Recommendation

A Review Hearing should be seen as an opportunity for a full and frank discussion alongside the child and family with the benefit of an independent Chair, and not a place for adversarial proceedings. They should be characterised by curiosity into what has gone wrong and what is needed to change.

In an inquisitorial system, the Review Hearing should be the place for an open and honest inquiry into what progress has been made, where the strengths of the family lie, and what challenges there might have been in meeting the terms of the order.



Options for enforcement

The provisions for enforcement of a CSO contained in s.146 enable the Children's Hearing to direct the National Convener to give notice to the implementation authority of an intended application to the Sheriff Principal for an enforcement order. In determining whether to give the National Convener such a direction, the Children's Hearing is directed not to take into account any factor relating to the adequacy of the means available to the authority to enable it to comply with the duty. A lack of resources is not a basis upon which an implementation authority can evade implementation of a CSO (there is no such restriction imposed on the Sheriff Principal).

The HSWG recognises the requirement for formal measures for enforcement of decisions by Children's Hearings. The current system whereby the National Convener can seek enforcement of a CSO via the Sheriff court is to remain. The Group proposes the recommendations above as an enhancement of those provisions in the context of an inquisitorial Children's Hearings System and a desire to provide a more immediate and flexible response when CSOs are not implemented fully that responds to the voice of the child and their family.

More oversight from the Hearing, more active reporting on implementation by implementing authorities, and better links between the Hearing and the other parallel processes should mean that there are ample opportunities for joint working between the implementing authority, child and family, and the Hearing to identify challenges and address them at a much earlier stage.

A rights-based approach should be adopted to implementing the order. This should be a primary priority for those with responsibility for organising services and setting budgets and there should be clear processes for understanding what is behind breaches of orders at local and national level and sharing information at senior level to identify patterns and put in place additional support and resources where required. For example, if it is identified that a particular local area is unable to meet legal duties due to an absence of a particular type of support there should be mechanisms for this to be identified and addressed.

The Reporter and new information or grounds for referral

The lives of children referred for a Hearing, and their families, do not stand still following a referral. Situations remain dynamic and relationships and circumstances change. It is often the case that the Reporter receives new referrals for children who are already subject to Compulsory Supervision Orders.

In the vast majority of such cases the decision is taken not to commence new grounds as the child is already subject to a CSO. There is, however, no means for the Reporter to draw the attention of the Hearing to the new information. In a redesigned Children's Hearings System that aims to streamline and simplify the processes and systems relating to relevant and appropriate information being shared alongside children and their families, the HSWG recommends that the Reporter is given the discretion to call for a Review Hearing to allow the Hearing to consider such new information.

The Chair in such cases would exercise their discretion whether to direct the arrangement of a Hearing in light of the new information.

As areas of disputed facts and new information are already permissible discussions during a Hearing⁷⁹, there should be no need to consider additional grounds, as standard, when the concerns they contain can be discussed in the Hearing. The expanded powers of the Reporter, as set out above, would mean that the Reporter would be able to call a review when new referrals are being received. This would ensure that a child's needs could be addressed quickly without the need for new grounds to be investigated and established, whilst retaining that option for the Reporter, if needed.

With closer links between the Chair and the enforcement of orders, and a greater emphasis on the calling of Review Hearings when an order may need reviewed, the expectation is that fewer re-referrals for children on orders will take place.

79 O v Rae and M v Authority Reporter

Recommendation

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.

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.



Twelve

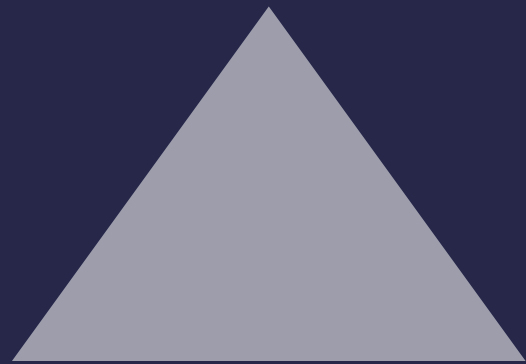
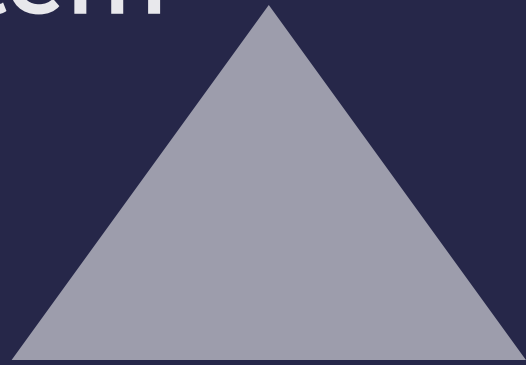
The oversight, enforcement, accountability and review of a child's order

What will these changes look like for children and families?

- Although the decisions of the Hearing will continue to be focused on the child, the Hearing will consider the importance of support for the whole family.
 - The people responsible for making sure an order is implemented will have more power to make sure children and families are receiving the support that was promised to them.
 - Children, families, the important people in their lives, and those working alongside them will be able to keep in touch with the Hearing about how things are going.
 - Review Hearings will be a supportive place for open and honest conversations about progress, strengths, and challenges.
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Thirteen

The accountability
of the Children's
Hearings System



Oversight of decision-making (quality control and inspection)

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

The Children's Hearings System is dependent on many organisations and individuals to deliver the best outcomes for children and families; from CHS and SCRA to implementing authorities, advocacy providers, legal representatives, and Safeguarders. The HSWG and Collaborative Redesign Project gave serious consideration to the creation of a new accountability body to hold the whole system to account, drive improvements, and evidence improved outcomes for Scotland's children.

There is real merit to this suggestion, however, the Group believes this should be revisited by the programme for delivery and implementation (see below) put in place to oversee the implementation of these recommendations once a clearer plan and structure for the system is fully agreed. If each organisation is working independently and collaboratively to implement the recommendations, it may not be necessary for additional oversight of the entire system. Alternately, if there continue to be multiple cross-over points where children and families experience multiple organisations at one time, additional accountability structures will be required to ensure the focus of every decision taken by organisations is the best interests of children.

The role of the Care Inspectorate is also crucial in ensuring that the implementing authorities are upholding the rights and needs of children and families who have interaction with the 'care system.' The HSWG is aware of work that is ongoing with the Care Inspectorate to ensure inspections reflect what matters to children and families. In particular it is important that through the inspection process, the Care Inspectorate consider how CSOs are supported and prioritised with implementing authority planning processes. Through the joint inspection process, multi-agency planning processes that should facilitate the supports that children and families need must be actively considered. Agencies that hold and resource the 'care system' have a duty to collaborate with each other and Care Inspectorate must consider that responsibility through their inspection processes. How well children are supported on CSOs, should be a priority consideration.

Finally, it is important to note the decisions that Panel Members make are akin to that

of judicial decision-making and must be independent. Independent, however, does not mean not accountable. CHS has a clear role here in the recruitment, training, and quality assurance of all Panel Members. This ongoing training must use composite data and stories to inform Panel Members of themes, patterns, trends and to learn from previous decisions. The development of a model of salaried Chairs who can develop their practice, continue to reflect on their approach, and participate in high quality training should lead to improved decision-making and confidence of approach.

Recommendation

The programme for delivery and implementation put in place to oversee the implementation of these recommendations should consider whether there is a role for a new accountability body to ensure ongoing quality assurance, continuous improvement and oversight of a redesigned Children's Hearings System.

Through the inspection process, the Care Inspectorate should consider how CSOs are supported and prioritised with implementing authority planning processes.



Data sharing, collection, and management

Within the current Children's Hearings System SCRA provides official statistics, which are published, as well as local and national operational and performance data used by partners including Police Scotland, Child Protection Committees, CHS and local authorities. SCRA's research team undertake studies on effectiveness through longitudinal studies and evidence-based qualitative research.

Each year, the National Convener must also prepare and submit a report to Scottish Ministers about the implementation of CSOs nationally and in each local authority. The

intent behind this provision is to know why decisions are being made for children, what works, and how it is improving their wellbeing. However, there are difficulties with the operation of this responsibility as CHS and the National Convener have no access to the decisions made by Children's Hearings and much of the data required to complete such a report is not collected by local authorities.

It is therefore difficult for the National Convener to report on the efficacy of orders when they have no access to the data. Information about how well children are being supported on orders is held by a whole range of organisations and it is difficult to make assessments without in depth understanding.

To support better understanding and a more collaborative approach within the Children's Hearings System, an improved way to effectively and more consistency collect, share, and learn from data across the Children's Hearings System must be developed.

Local authorities must be supported to hold and provide the data to inform and support national and local understanding of the implementation, impact and outcome of decisions made by the Children's Hearings System, to better enable informed and reflective decision making for all partners and improve outcomes for children and families.

Where issues arise due to legislation, for example, GDPR restrictions, all partners should work towards positive solutions. This includes SCRA and CHS fully exploring means of effectively sharing or jointly controlling data in order that the outcomes and impact on the wellbeing of children can be better understood.

This important change will also help to improve decision-making and improve the development of learning of Panel Members. Understanding the impact of decisions is important not just to give Panel Members confidence, but in order to ensure there is continued improvement in the practice of decision-making and delivering reasons. It is critical as the redesigned system develops that Chairs and Panel Members are able to participate in training that reflects the reality of current practice and reflects on the efficacy of the decisions that have been made.

Ultimately, improved data sharing will lead to improved training, learning and development for all decision makers in the Children's Hearings System and support local authorities to plan, develop, and deliver help and support alongside children and their families.

This change should also make it easier for the National Convener to uphold their existing statutory obligation and share relevant and proportionate information annually with relevant governance structures (for example, Children's Services Planning Partnerships) to provide local decision makers with relevant, timely reflections on the experiences within the Children's Hearings System. The information should be anonymised, but it would be important that it is from the entire system, including Reporters and implementation authorities, as it can provide reflections on type of local referrals, decisions made and

implementation around orders. This could help to inform broader planning about what help and support is most effective and the development of Children's Services Plans.

Stronger approaches to collection and sharing of information across the whole system in this way would allow the development of local baselines to be developed and of an ability to understand the impact of formalised, legal processes on the lives of children and their families.

This information could also be of use to the Care Inspectorate in the exercise of their inspection responsibility. It would allow them to consider how the rights of children who have an order from the Hearing are supported.

Recommendation

An improved way to effectively and more consistency collect, share and learn from data across the Children's Hearings System must be developed:

Local authorities must be supported to hold and provide the data to inform and support national and local understanding of the implementation, impact and outcome of decisions made by the Children's Hearings System, to better enable informed and reflective decision making for all partners and improve outcomes for children and families.

Where issues arise due to legislation, for example, GDPR restrictions, all partners should work towards positive solutions. This includes SCRA and CHS fully exploring means of effectively sharing or jointly controlling data in order that the outcomes and impact on the wellbeing of children can be better understood.

The National Convener should seek to share relevant and proportionate information annually with relevant governance structures (for example, Children's Services Planning Partnerships) to provide local decision makers with relevant, timely reflections on the experiences within the Children's Hearings System.



Complaints mechanisms

The HSWG has heard many times that the complexity of the system makes it difficult for children and families and other people involved in Children's Hearings to complain about the process and their experience of various parts of the Children's Hearings System. There is a limit to which complaints can be streamlined where there are an array of professionals and organisations.

The HSWG welcomes improvement work currently being taken forward by CHS around joint complaints processes. In a redesigned Children's Hearings System there is benefit to ensuring that there is a single point of access to make a complaint about various parts of the system, even if some of that would be to signpost to other regulators, such as Scottish Social Services Council or Law Society.

Recommendation

There must be a single point of access for children and families and others who wish to make a complaint about an aspect of the Children's Hearings System.



Thirteen

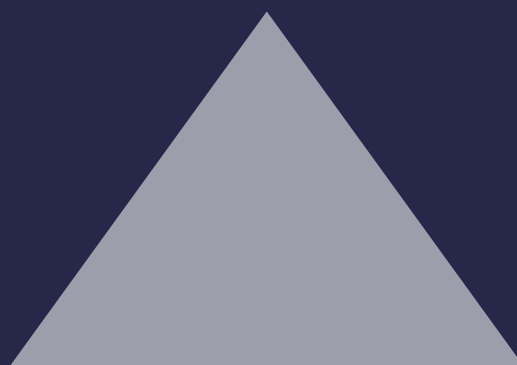
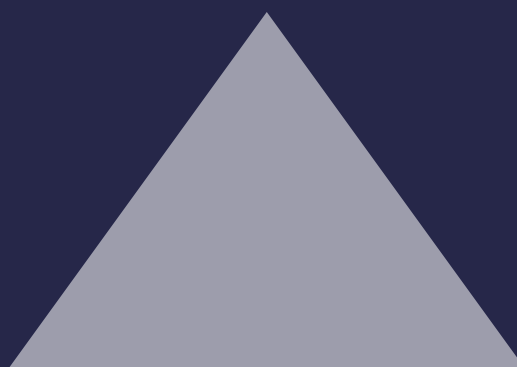
The accountability of the
Children's Hearings System

What will these changes look like for children and families?

- Children and families will feel the improvements organisations will continue to make.
 - The right organisations will share the right information at the right time to make sure they understand if the lives of children have improved.
 - There will be one place to go to make a complaint about the Children's Hearings System.
-

Fourteen

The implementation
of the
recommendations



Implementation of Recommendations

Hearings for Children: The Redesign Report

The report should not just be welcomed and set aside—the vision for change must translate into reality.

No single agency or organisation is responsible for delivering on all aspects of the redesign. Local authorities, COSLA, social work departments, third sector organisations, legal organisations, independent advocacy providers and professional bodies all have a part to play alongside the core organisations delivering the Children’s Hearings System under the clear leadership and oversight of the Scottish Government.

Similarly, no single recommendation will deliver transformational change—it is their collective implementation that will transform children and families’ experiences of the Children’s Hearings System.

The redesign must be progressed at pace and underpinned by clear governance and accountability mechanisms so that it is crystal clear who is responsible for which action, how the recommendations will be resourced, sequenced and implemented and how they will link to—and not duplicate—other ongoing important policy areas including UNCRC incorporation and other workstreams to keep the promise.

A high-level, collaborative programme for delivery and implementation must be put in place, led by the Scottish Government.

A programme board, Chaired independently, should oversee the development and execution of the national implementation of the recommendations by securing and developing:

- Strategic multi-agency and multi-organisational leadership and understanding at national and local levels;
- A coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of the recommendations;
- Significant commitment to and clarity around how the changes will be resourced;
- A clear and comprehensive accountability framework so that duty bearers are aware of what they must do and when by and how they will be held to account for delivery.

This initial work that has begun in the Appendix to the report, where suggested duty bearers and recommendation types have been set out must be built upon so that is clear which recommendations are able to commence immediately and relate to improvement activity, which will require testing and further consultation, and which will require legislative change, including via the Promise Bill. For many of these recommendations, which do not require legislative change, there is no reason to wait.

Implementation of Recommendations

Hearings for Children: The Redesign Report

There must be clear governance framework linked to the programme for delivery and implementation. Identified duty bearers who have responsibility to continue to implement these recommendations should report to this programme, acknowledging where that work must operate on a collaborative basis. The Promise Scotland is committed to helping the Scottish Government to develop this programme.

This work must take place with a clear understanding and comprehension of the need for the existing Children's Hearings System to be constantly and consistently operational, and to uphold the rights of the children and families currently involved in the system. Public and professional confidence in the Children's Hearings System must be maintained as these changes are considered and implemented.

There is significant potential for this process to cause increased confusion, distress and overwhelm for the workforce, and for children and families if it is not managed well. Careful, considered, and thoughtful planning is required so that the workforce feel part of the changes and supported, not burdened with another siloed approach to improvement that they do not feel fully equipped to enact.

The starting point for changes, improvement, and transformation should be the benefit to children and families and the way that their experiences will change should be kept in mind throughout.

A national delivery plan must include:

Oversight of ongoing improvement work

Significant, welcome improvement work is ongoing within the Children's Hearings System. This includes work around letter writing, child-friendly scheduling, improving language, and other pilots and projects referred to throughout this report.

There must be clear oversight and accountability of this improvement activity as part of the implementation of these recommendations, so that it feels cohesive, transparent, and less piecemeal. Where improvement work is demonstrably successful, learning should be shared and leadership at national level is required to develop secure and sustainable funding streams to maintain the improvements and to test, develop, and roll out consistently what works, and to communicate this to the workforce.

It may also be the case that some improvement activity is no longer required as it relates to practice or process that a recommendation of this report seeks to retire. Joined up, strategic thinking and clear reporting and accountability must be at the heart of improvement activity within the nationally agreed strategic aims, linked to outcomes for children, and supported by robust data to evidence impact. The potential for confusion,

duplication and a lack of transparency should be removed through fully connecting improvement activity to the national delivery plan implementing the recommendations of the redesign.

Identification of areas for legislative change

The Promise Bill, committed to by the Scottish Government in the Keeping the Promise implementation plan,⁸⁰ must include the necessary statutory changes to implement the recommendations within this report.

The required statutory changes and the commencement and implementation of these changes should be included in the national delivery plan.

As work to draft the Bill progresses this must include whether a legislative approach that pulls together in one place all the relevant legislation that underpins the 'care system', including with respect to the Children's Hearings System, would be beneficial. The exact detail of this is outwith the scope and remit of the HSWG, but it could include looking at legislation and regulations relating to children at risk of becoming looked after, kinship care, child protection processes, adoption, and permanence.

As set out in the promise, at present there is not a clear and consistent understanding or interpretation of the various pieces of legislation and policy underpinning the 'care system', including the Children's Hearings System. In order for the redesign to be successful this clarity would encourage the development of consistent practice and ways of working alongside children and families. Wherever possible, children and families should experience the Children's Hearings System and the broader 'care system' as streamlined and coherent. Unnecessary complexities and duplication of processes and practice should be removed.

Identification of areas for testing and further consultation

Some of the new approaches to the underlying structures of the Children's Hearings System proposed within this report should be tested and the impacts of any changes should be analysed and understood before becoming legislative proposals. Although the testing phase that led to the development of this report engaged with a broad range of organisations and members of the workforce there will be others who wish to share a view—the Children's Hearings System is extensive and the HSWG's expectation is that more detailed work to co-produce these proposals alongside children and families will be

80 [Scottish Government, Keeping the Promise- implementation plan, March 2022. page 7](#)

required as the Promise Bill takes shape.

Where legislative change is not needed but tests of change or pilots are required, this should be done in an evidenced manner, where options for change are piloted in collaboration with local authorities, CHS and SCRA and findings are evidenced and shared with the oversight body created to implement the recommendations. Testing should not be viewed as progress stalling, but rather there should be clear communications and timescales around testing approaches which should form part of the overall action plan. Lengthy pilot schemes that are under-funded or under-evaluated that fizzle out do not serve the best interests of children and families seeking reform or help to keep the promise. Where approaches are tested, learning should be gathered and shared, and concepts should be developed and rolled out in line with the aims of this redesign and the recommendations set out within this report.

Clear sequencing and identified priorities

The organisations and workforce forming the Children's Hearings System is currently in the midst of preparing for the implementation of the Children (Care and Justice) (Scotland) Bill; the biggest legislative change for the system in a decade which will significantly expand the volume and complexity of children's referrals. At the same time, they are being asked to prepare for other concurrent changes, including UNCRC incorporation, the commitment to ensure all children and young people have access to a Bairns Hoose by 2025, and steps to shift 5% of the health and social care budget to early help and support for families.

Collaborative work should therefore be undertaken to sequence the implementation of the recommendations in this report so that they can be prioritised, tested, and developed in a coherent way that leads to real change. This should not be limited to the redesign of the Children's Hearings System but should include the other concurrent policy changes so that the workforce is clear about what is happening, and when, in line with the actions identified in Plan 21-24 and the timeline to keep the promise by 2030.

In particular, it will not make sense to recruit a significant number of new unpaid Panel Members into the Children's Hearings System in line with the Children (Care and Justice) (Scotland) Bill to meet the needs of the additional numbers of older children expected to engage with the Children's Hearings System if the intention is to subsequently adopt the proposals within this paper for a paid workforce of highly skilled and consistent Chairs in the near future. An implementation timeline for the Children (Care and Justice) (Scotland) Bill must be prioritised, taking into account the wider changes proposed to the Children's Hearings System.

This is particularly important given the core conclusion of the promise, described in detail

within this report for the Children's Hearings System to specialise while the changes brought in through the Bill are likely to engage approximately an additional 3,900 to 5,300 referrals of between 2,600-3,400 children and their families per year into the existing system.⁸¹

Detailed work to ensure the changes are fully and sustainably resourced

Many of the organisations working alongside children and families, including social work services, are facing significant and unparalleled resource constraints. The capacity of the current Children's Hearings System has been characterised by those the HSWG has engaged with as 'threadbare'.

Many of the changes set out within this report will require additional resources to support more robust decision-making, to listen better to children and families and work alongside them through a more relational approach. It is not enough to add to the workload of an already beleaguered system, who is currently working alongside some of the most vulnerable children and families in Scotland. Children and families need to ensure that the help and support that they receive from the broader workforce and their engagement in the Children's Hearings System is high quality, bespoke, and meets their needs and upholds their rights.

The recommendations cannot be implemented within the resources currently available. Significant investment must be made. The financial modelling that accompanies this report begins to set out the scale of investment that will be required to keep the promise, which received cross party support, in these areas.

Accountability mechanisms

Clear measures should be developed so that the children and families, care experienced adults, the Scottish Parliament and the Scottish Government, local authorities, and other partners understand how the implementation of the redesign is going—what is working well, what needs to move forward faster, and what needs to happen to overcome challenges to progress. These challenges should be identified quickly and there should be mechanisms to break down barriers and ensure that change happens at pace.

⁸¹ Children (Care and Justice) (Scotland) Bill Financial Memorandum. Financial Memorandum (parliament.scot)

Robust communications

The next steps of the redesign process must be communicated clearly and effectively to children, families, care experienced adults, and the workforce. There should be a clear communications plan for children, families, and the workforce so that there is awareness of what the redesign means, when changes will start being tested and taking place, and which parts of the system are responsible for which areas. This includes members of the workforce who will be aware that their role might change in the coming months and years as the recommendations are implemented. It should also include the broader workforce, not just those working within the Children's Hearings System itself.

A review of the communications materials, that are shared by the key organisations working alongside children and families will be required to ensure that the Children's Hearings System is articulated clearly and in line with the vision set out in this report.

The voices and experiences of children, families and adults with experience of the Children's Hearings System

The governance structure monitoring the implementation of these recommendations should include representation from children, families, and adults with experience of the Children's Hearings System. Where appropriate, improvements and practice should be co-designed alongside those with lived and learned experience, including members of the workforce working alongside children and families.

However, this should not place a burden on children and adults with experience of the Children's Hearings System. There are many areas where their views are already well documented, known and understood. We must not be constantly asking children, families, and care experienced adults to reaffirm what they have already shared. Their views and experiences should be at the heart of this transformation.

Recommendation

A high-level, collaborative programme for delivery and implementation must be put in place, led by the Scottish Government. A programme board, Chaired independently, should oversee the development and execution of the national implementation of the recommendations by securing and developing:

- Strategic multi-agency and multi-organisational leadership and understanding at national and local levels;
- A coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of the recommendations;
- Significant commitment to and clarity around how the changes will be resourced;
- A clear and comprehensive accountability framework so that duty bearers are aware of what they must do and when by and how they will be held to account for delivery.



A national delivery plan must include:

- Clear oversight and accountability of improvement activity so that it feels cohesive, transparent, and less piecemeal. Where improvement work is demonstrably successful, learning should be shared and leadership at national level is required to develop secure and sustainable funding streams to maintain the improvements and to test, develop, and roll out consistently what works, and to communicate this to the workforce.
- Identification of areas for legislative change, which should be included within the Promise Bill.
- Identification of areas for testing and further consultation.
- Collaborative work to sequence the implementation of the recommendations in this report so that they can be prioritised, tested, and developed in a coherent way that leads to real change. This should not be limited to the redesign of the Children's Hearings System but should include the other concurrent policy changes so that the workforce is clear about what is happening, and when, in line with the actions identified in Plan 21-24 and the timeline to keep the promise by 2030.
- Detailed work to ensure the changes are fully and sustainably resourced. The recommendations cannot be implemented within the resources currently available. Significant investment must be made.
- Development of accountability and governance mechanisms.
- A robust approach to communicating and sharing the changes with children, families, and those working alongside them.
- Where appropriate, improvements and practice should be co-designed alongside those with lived and learned experience, including members of the workforce working alongside children and families.

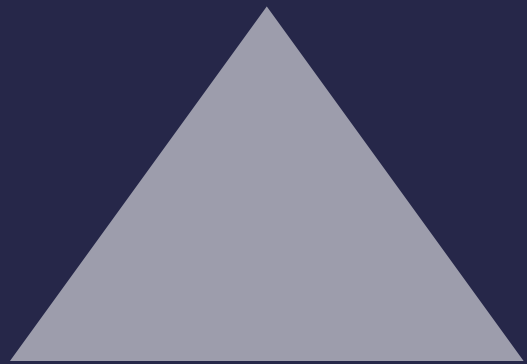
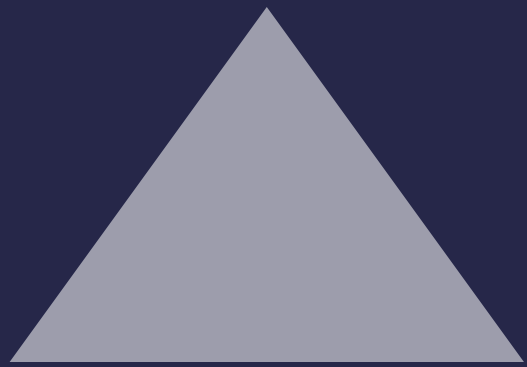


Fourteen

The implementation of these recommendations

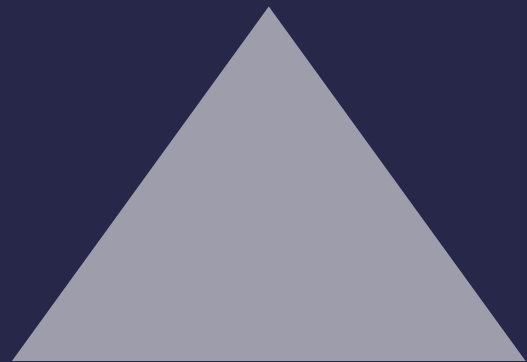
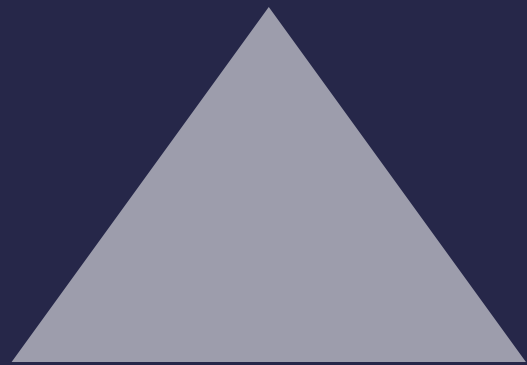
What will these changes look like for children and families?

- The redesign of the Children's Hearings System will truly transform the lives of children and their families.
- Change will happen. And everyone will work together to make sure it does, alongside children, families and adults with experience of the Children's Hearing System.
- A plan for change will be led by the Scottish Government.
- What children and families say is working well in different areas across Scotland will be implemented nationally.
- There will be clear communication about these changes for children, families, and those who work in and around the Children's Hearings System.



Appendix One

Summary of recommendations



This summary of the recommendations within this report sets out an initial effort to determine the type of change the redesign of the Children’s Hearings System requires. Broadly these recommendations fall into at least one of three categories:

- Policy change,
- Practice improvement and
- Legislative change.

The list includes an **initial effort** to identify ‘duty bearers’ in relation to recommendations. The term ‘duty bearer’ has been used to encompass a broad range of organisations with responsibility for working alongside children and families in and around the Children’s Hearings System. It is intended to begin to reflect **which organisations must be supported in delivering the change**— as part of the broader implementation programme. These organisations cannot make the changes alone, placing additional duties on top of already overwhelmed members of the workforce. They must be supported and fully resourced to **work differently** in order to make change happen, in line with the conclusions of the Independent Care Review.

As stated earlier, many of these recommendations will require additional investment in order to uphold the rights of children and families, keep the promise and implement the changes.

This list is **intended to be indicative**—a starting point for more nuanced and intricate discussions about which organisations must be supported to deliver the recommendations. It is anticipated that as the work progresses and scrutiny of the recommendations advances the list will expand and flex. Nevertheless, it was felt necessary to demonstrate the **extent of collaboration** that will be required across the many different organisations working across Scotland to transform the experiences of children and their families.

1. The success of the redesign of the Children's Hearings System

The following actions have a fundamental impact on the Children's Hearings System's ability to deliver the recommendations in this report and must be prioritised:

- All children and families must be able to access the help and support that they need, in the way that they need it, in line with the conclusions of the Independent Care Review.
- There must be 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. A national plan must set out how this will happen in Scotland by 2030.
- Multi-agency partnerships must be supported to be clear and ambitious about developing accessible routes to holistic whole family support and how these are central to the development and delivery of each area's Children's Services Plans. This includes universal access to holistic, whole family support and more intensive support for families that need it.
- Work should be done to review the impact and effectiveness of help and support for families working voluntarily alongside local authorities, to ensure that there is not a sense of a two-tier system of help and support for children who are on legal orders and children who are not, and to improve outcomes for children and families and uphold their right to help and support.
- The challenges relating to the recruitment, retention, and resourcing of child and family social work teams must be urgently resolved. This requires sustained investment, developing practice, and implementing the specific conclusion of the Independent Care Review around supporting the workforce so that they alone do not feel the burden and responsibility of statutory involvement in children and families' lives.
- There must be serious, sustained attention on maintaining and sustaining the children and families' workforce to ensure that they are able to undertake the complex work that is required of them in a way that is characterised by a rights-respecting, trauma-informed approach. This includes the third sector workforce.
- There must be consistent high quality provision of Family Group Decision Making and restorative justice services across Scotland.

The implementation of these recommendations must be linked to the national work to reduce poverty and to meet the child poverty targets.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities, third sector, Community Service Planning Partnerships,

2. The scaffolding around the Children's Hearings System

An overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce should be made that explicitly describes the Children's Hearings System as inquisitorial. This will foster an inquisitorial approach and culture within the Children's Hearings System and ensure there is a clear understanding across the entire system of what this means.

Type: Legislative change, policy change

Duty bearer: Scottish Government, CHS, SCRA

There must be a coordinated approach to establishing an appropriate, considered, and non-judgmental language of care in Scotland. A clear plan must be developed for identifying and implementing systemic policy, practice and legislative changes required to ensure consistent use of this language across all 32 local authorities.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, CHS, SCRA, third sector

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. Sheriffs must have a clear understanding of trauma, childhood development, neurodiversity and children's rights and the dynamics of domestic abuse.

Type: Policy change

Duty bearer: Lord President, JABS, SCTS, Scottish Government

There must be national oversight by the Scottish Government of the resourcing and provision of training in the impact of trauma, childhood development, neurodiversity and children's rights for everyone involved in the Children's Hearings System.

Type: Practice improvement, policy change

Duty bearer: Scottish Government

There must be a clear understanding at all levels of a redesigned Children's Hearings System about what children and families' rights are and how they should be accessed and upheld.

Type: Policy change

Duty bearer: Scottish Government, Local Authorities, SCTS, SCRA, CHS, third sector, Safeguarders Panel

There must be changes to the way a Child's Plan is put in place:

- Every child who comes to a Children's Hearing must have a Child's Plan, or a clear timeframe for when their Child's Plan will be in place.
- There must be national template for a Child's Plan.
- The Scottish Government update of the GIRFEC guidance on the Child's Plan must align with the conclusions of the Independent Care Review and the conclusions of this report. In particular, the Child's Plan must include further consideration of the support needs of the family.

Type: Legislative change, practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities

There must be a 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. This must be overseen by the Scottish Government as part of the broader work to implement the recommendations in this report and to keep the promise by 2030.

Type: Practice improvement

Duty bearer: Scottish Government, SCRA, CHS

3. The pathway to the Reporter

The following changes must be made regarding referrals to the Reporter:

- Updated national referral guidance must be issued to those working alongside children and families, which encompasses the core aims of the redesign. This must include the particular needs of babies and infants and their developmental milestones and should be clear that referral processes should be rights-based and underpinned by the key principles of proportionality, consistency, and timeliness.
- The workforce must be supported to work relationally alongside children and families, to ask their views and listen and act on the responses they receive about the help and support that would make the most difference in their lives and to use their judgement about whether a referral to the Children's Hearings System is appropriate route for a particular child and their family.
- Changes to the statutory referral criteria and to updating and modernising the language of 'protection, guidance, treatment of control' in section 60(2) of the 2011 Act must be considered.
- All organisations within the Children's Hearings System must ensure that they have adequate audit arrangements in place to review and openly report on the quality, consistency and impact of their decision-making and outcomes for children.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, third sector, CHS, SCRA

The role of the Reporter prior to a referral being made to the Children's Hearings System must be enhanced. 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.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, SCRA, Local Authorities

There must be changes to the way that the Children's Hearings System engages with a family before a child is born:

- 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.
- Wherever possible, the Reporter's investigation prior to a baby being born must involve seeking the voice of expectant parents.
- Expectant parents must be offered the support of an advocacy worker and a lawyer at the same time or prior to the Reporter's involvement. Changes may be required to the legal aid rules to facilitate this.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, SCRA, Local Authorities

Specialist training must be provided to decision makers within the Children's Hearings System and those working as part of the children's justice system or directly alongside children in conflict with the law so that they know and help children access and understand their rights and the way in which the Children's Hearings System interacts with the criminal justice system. This includes for Reporters, Chairs, Panel Members, police officers, social workers (including community justice social workers) and lawyers as a

minimum—some of this has already started and must continue.

Type: Practice improvement

Duty bearer: Lord President, SCTS, COPFS, SCRA, CHS, Scottish Government

When the Reporter is making a decision about whether to refer a child to a Children’s Hearing on care and protection grounds rather than offence grounds, they must have regard to the longer-term implications of the establishment of grounds for referral on offence grounds and the, albeit limited, reportability or disclosure of this later in life.

Type: Policy change

Duty bearer: SCRA

All children and young people up to age 18 who are convicted at Court should have the opportunity of either a remit to the Children’s Hearing or a request for the advice of the Children’s Hearing by the Court (an Advice Hearing), in accordance with the terms of the Children (Care and Justice) (Scotland) Bill.

Type: Legislative change (through the Children (Care and Justice) (Scotland) Bill)

Duty bearer: Scottish Government

4. The introduction of advocacy, legal advice and the Reporter

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 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.

- The offer of advocacy should be repeated to children and to their families at different stages of the process.

Type: Practice improvement, policy change, legislative change

Duty bearer: The Promise Scotland, advocacy providers, Scottish Government, SCRA, CHS

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.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, SCRA, CHS, Scottish Legal Aid Board, legal service providers

Once a referral has been received, the Reporter must work more closely alongside children and families, where possible. This should include:

- (1) Ensuring the voices, views and experiences of children and their families are routinely part of the Reporter's investigation (and 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).
- (2) Making connections between other simultaneous child care and protection processes, and removing duplication, confusion and overwhelm where possible;
- (3) Reviewing the Child's Plan (if there is one) as an integral part of understanding the help and support that has been put in place for children and for their families.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, SCRA

The following measures should be considered with a view to reducing the number of 'repeat referrals' and increasing coordination between the Children's Hearings System and

the other parts of the 'care system':

- The potential value of a 'closure report' sent from the implementing authority to the Reporter should be explored.
- There must be an option for the Reporter to produce a more specific and detailed written report to the local authority with more of an analysis of the investigation process, particularly if children and families are more involved in discussions alongside the Reporter, where appropriate.
- Where appropriate help and support for children and families has not been provided, there should be further collaboration between the Reporter and the local authority, and the potential use of the measure contained within s.68(5) should be explored.
- Re-referrals of children to the Reporter within a specific timeframe should be considered as part of a continuation of the previous concern, rather than new circumstances, and wherever possible should be considered by the same Reporter.
- There must be improved mechanisms to better capture data to understand the impact of voluntary measures and why children are re-referred to the Reporter.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, SCRA

5. The reasons the Children's Hearings System has become involved in a child and family's life

The process of establishing grounds must change:

- 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.
- Where relevant and appropriate, the Statement of Facts should include strengths and positive elements of a child's care in addition to the challenges in their lives.
- Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.

- A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, SCRA

A child and families' experience at Court should align as much as possible with the experience at a Hearing in terms of the physical environment and the expected conduct of an inquisitorial approach.

Wherever possible, there should be a consistent Sheriff throughout the process who is specially trained and skilled.

Type: Practice improvement, policy change, legislative change

Duty bearer: Sheriffs Principal, SCTS, SCRA, Scottish Government

The appointment of a Safeguarder must be routinely considered during the process to establish grounds.

Type: Practice improvement, policy change, legislative change

Duty bearer: Sheriffs Principal, SCTS, Safeguarders Panel, SCRA, Scottish Government

The reasons for structural and systemic delays in establishing grounds must be identified and eliminated. Potential solutions considered must involve the legal profession and must include:

- The benefit of a statutory three month set time limit for the determination of grounds, with scope for this to be extended in extreme circumstances, at the discretion of the Sheriff.
- Measures to prioritise the developmental needs of infants and babies where systemic delays may impact on their ability to form lasting and consistent relationships.

- Understanding whether a flat rate fee structure or changes to legal aid would make a difference in terms of reducing the drawing out the processes.
- Sheriffs must use the tools at their disposal for the expeditious determination of disputed grounds for referral.

Type: Practice Improvement, policy change

Duty bearer: SCTS, Scottish Government

Interim orders must be in place for a length of time that is in the best interests of the child.

Type: Practice improvement

Duty bearer: SCRA, SCTS, Scottish Government

There must be no requirement for young children to agree with the grounds for referral. When all relevant persons agree the grounds and Statement of Facts, this must be sufficient to consider the grounds as agreed, with no need for additional proof proceedings.

Type: Practice improvement, policy change, legislative change

Duty bearer: SCRA, SCTS, Scottish Government

6. The decision-making model

A Children's Hearing must operate explicitly as an inquisitorial, non-adversarial tribunal where the sole objective is to arrive at decisions that are in the best interests of the child. This includes:

- 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.

- The decision-making model must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate.
- As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing. This should also apply to Panel Members where possible and desirable.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, CHS, SCRA

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.

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.

Type: Practice improvement, policy change, legislative change

Duty bearer: Scottish Government, CHS, SCRA

7. The people making decisions at a Hearing

The way in which a consistent Chair engages with children and families must change. The Chair of a redesigned Children's Hearings System must be at the centre of the decision-making model, maintaining the integrity of an inquisitorial Children's Hearing. The Chair must work relationally alongside children and their families; assess the information provided to the Panel; uphold the rights of children and their families to be involved in decisions that affect them; preside over a robust and clear decision-making process; work collaboratively alongside others; and have clear oversight of the order and the Child's Plan.

Type: Practice improvement, policy change, legislative change

Duty bearer: CHS, SCRA, advocacy and legal service providers, Local Authorities, Scottish Government

Changes must be made to the recruitment and training of Panel Members:

- The competency-based recruitment framework currently used to recruit Panel Members must be updated and developed. For the Chair this must include personal qualities, tribunal skills, and legal competence. For Panel Members this must be based on criteria that focuses more on their personal qualities.
- Where possible, Panel Members should be local to the community that the child and family are from, but there should be a focus on matching Panel Members to children and families to whom they can relate and who are empathetic to their experiences, challenges and circumstances.
- 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.
- The potential value of specialist Panels or Panel Members with specialist training should be considered.
- The recruitment and training of Panel Members and maintenance of standards should continue to be undertaken by the National Convener.

Type: Policy change, Practice Improvement

Duty bearer: CHS, SCRA, Scottish Government

CHS and SCRA must be fully supported and resourced to adapt and flex to the changes required by the redesign.

Type: Policy change, Practice Improvement

Duty bearer: CHS, SCRA, Scottish Government

The Children's Hearing must be clearly seen as the principal legal decision-making forum for children after grounds are established. Children and families must understand the role and added value of the Children's Hearings System and how it correlates to the other inter-related processes and meetings in their lives.

There must be a national review of multiple ongoing child protection, care and support processes and meetings, including review meetings, to identify where unnecessary duplication takes place, where drift and delay is introduced, and where information could and should be better shared collaboratively with the Panel or Reporter to better inform decision-making.

Type: Policy change, Practice improvement, legislative change

Duty bearer: Scottish Government, Local Authorities, CHS, SCRA, Advocacy and legal service providers, third sector

The discretion of the Principal Reporter to decide whether a Reporter should attend a Children's Hearing should be retained. Reporters must only attend a Hearing when they have a meaningful contribution to make and, in their view, it is in the best interests of children and their families.

Type: Policy change

Duty bearer: SCRA

Clear measures should be in place to explain the role of the Reporter in a Hearing in a way that children and families understand.

Type: Practice improvement

Duty bearer: CHS, SCRA, Scottish Government, Advocacy providers

Where possible, a Reporter attending a child's Hearing should be the same Reporter that children and families will have engaged with as part of the referral processes and establishment of grounds.

Type: Policy change, Practice improvement

Duty bearer: SCRA

8. The participation and preparation before a Children's Hearing

There must be a more robust preparation phase in advance of a Children's Hearing, which must involve children and their families.

Type: Practice improvement, policy change

Duty bearer: CHS, SCRA, Scottish Government

The first information that a child receives about the Hearing must change. 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. The mechanisms for this change should be included in the review of CHS and SCRA's functions referred to earlier.

Type: Practice improvement, policy change

Duty bearer: CHS, SCRA, Scottish Government

Local authorities, CHS and SCRA must work together to consider how best to plan and prepare all children and families for optimal support, understanding of, and participation in their Children's Hearing.

Type: Practice improvement, policy change

Duty bearer: Local Authorities, CHS, SCRA

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. 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.

Type: Practice improvement

Duty bearer: CHS, SCRA, Scottish Government

Children's Hearings must be planned to the individual needs of each child and their family. Arbitrary time limits for the length of Children's Hearings must be discontinued. Greater consideration must be given to the flexibility of Hearing times and locations to accommodate the needs and preferences of children and their families. It may be appropriate for Hearings to take place later in the afternoon or in the evenings, or perhaps even at the weekend and in places close to them, or where they feel comfortable and safe.

Type: Practice Improvement

Duty bearer: CHS, SCRA, Local Authorities

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 should be part of the aforementioned review of CHS and SCRA's respective functions.

Type: Practice improvement, legislative change

Duty bearer: CHS, SCRA, Scottish Government

The feasibility and potential positive and negative consequences of pre-Hearing planning meetings must be explored.

Type: Practice improvement, legislative change

Duty bearer: CHS, SCRA, Scottish Government

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.

Type: Practice improvement, legislative change

Duty bearer: CHS, SCRA, Scottish Government

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. Legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes.

Type: Policy change, practice improvement, legislative change

Duty bearer: Scottish Government, CHS, SCRA, Local authorities, third sector, advocacy providers

The rights of brothers and sisters to participate and be part of their siblings' Hearing must be upheld.

Type: Policy change, practice improvement

Duty bearer: Scottish Government, CHS, SCRA, Local authorities, advocacy providers

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.

Type: Practice improvement

Duty bearer: CHS, SCRA, Local Authorities, third sector, advocacy providers

The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing.

Type: Policy change, legislative change

Duty bearer: Scottish Government, CHS, SCRA

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.

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.

Type: Practice improvement

Duty bearer: CHS, SCRA

National standards for providing reports to the Children's Hearings must be prioritised, including the development of a standardised pro forma report template that works across all 32 local authorities and captures all the relevant information held by the different agencies and organisations to aid robust and evidence-informed decision-making by the Panel. This should be operational across the Children's Hearings System, recognising different assessments and approaches across Scotland but one that creates a standardised reporting process. This must be led nationally but include multi-agency and local authority representation.

Type: Practice improvement, legislative change

Duty bearer: Local Authorities, CHS, SCRA, Scottish Government, Health Boards

The Child's Plan, accompanied by clear succinct information and recommendations from other multi-agency forums, should form the basis of the information that the Panel receive and how they make their decisions.

Type: Policy change, Practice improvement

Duty bearer: Local Authorities, CHS, SCRA, Scottish Government

All reports must be shared with plenty of time for Panel Members to review them.

Type: Practice improvement, legislative change

Duty bearer: CHS, SCRA, Local Authorities, Scottish Government

Children and families must be fully supported when their papers arrive from the Hearing. Information shared with children and their families must be proportionate and necessary and steps should be taken to minimise trauma, distress, and misunderstanding.

Type: Practice Improvement

Duty bearer: CHS, SCRA, Local Authorities, advocacy and legal service providers, third sector, Scottish Government

A child and 'relevant person' must be given appropriate time to read and understand the information that they receive.

Type: Practice improvement, legislative change

Duty bearer: CHS, SCRA, Local Authorities, Advocacy and legal service providers, Scottish Government

9. The voices and involvement of children and their families in the Hearing

Children and families should 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.

Type: Policy change, practice improvement

Duty-bearer: Local Authorities, CHS, SCRA, Scottish Government, Advocacy providers, third sector

Children and their families must be helped to understand their choices and rights relating to their participation in their Hearing.

Type: Policy change, practice improvement

Duty-bearer: Local Authorities, CHS, SCRA, Scottish Government, Advocacy providers, third sector

The voices and experiences of babies and infants must be captured and shared with the Panel.

Type: Policy change, practice improvement

Duty-bearer: Local Authorities, CHS, SCRA, Scottish Government, Advocacy providers, third sector

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 or a manner suitable, must be commenced.

Type: Policy change, legislative change

Duty bearer: Scottish Government, CHS

There should be a full examination of the potential benefits and consequences of recording Hearings. This should include a full assessment of the impact this would have on the rights of children and their families.

Type: Policy change, legislative change

Duty bearer: Scottish Government, Information Commissioner, SCRA, CHS, advocacy providers

10. The people working alongside children and families

The conduct of lawyers representing children and relevant persons throughout the Children's Hearings System must be in line with the ambition for Children's Hearings to be inquisitorial rather than adversarial:

- There must be a review of the pre-existing Code of Practice that lawyers are required to adhere to and of the processes with respect to the register of solicitors eligible to

provide legal assistance to children, maintained by the Scottish Legal Aid Board.

- There must be mechanisms to review practice and to ensure that lawyers are held to the standard expected of them at Children's Hearings.
- There must be consideration of the development of rights of audience so that lawyers should demonstrate certain skills and attributes before being able to appear on behalf of children and relevant people at a Hearing.

Type: Practice improvement, policy change, legislative change

Duty bearer: Law Society of Scotland, CHS, Scottish Legal Aid Board, SCTS, Scottish Government

There must be active management of the role of Safeguarders as the changes around the Children's Hearings System are implemented, with consideration of regionalised approaches if required.

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.

Type: Legislative change, policy change, practice improvement

Duty bearer: SCRA, Scottish Government, CHS, SCTS, Safeguarder Panel

Social workers' training must cover the purpose, processes, and structure of the Children's Hearings System in adequate detail and must support them in developing the reports that decision makers will need to inform their decision-making.

Type: Practice improvement

Duty bearer: Universities and Colleges, Scottish Government, Local Authorities

Social workers who attend Hearings must have an in-depth understanding of the lives of children and families to whom the Hearing relates.

Type: Practice improvement, policy change

Duty bearer: Local Authorities, Scottish Government

11. The decision available to the Children's Hearing and the support for children and their families

The Hearing should engage in robust scrutiny of a Child's Plan.

Type: Practice improvement, policy change

Duty bearer: CHS, Local Authorities, Health Boards, third sector, Scottish Government, advocacy providers, third sector

There must be a closer relationship between what is in an order and the help and support that a family needs to address the challenges that are in their life. All orders must be specific about the help and support that the child and family require.

Type: Practice improvement, policy change, legislative change

Duty bearer: CHS, Local Authorities, Health Boards, third sector, Scottish Government, advocacy providers, third sector

Home supervision orders must have the same degree of specificity and urgency as orders that require a child to be looked after away from home.

Type: Practice improvement, policy change, legislative change

Duty bearer: CHS, Local Authorities, Health Boards, third sector, Scottish Government, advocacy providers, third sector

Panels must be empowered to create space for restorative justice and FGDM processes to take place, by deferring Hearings for a sufficient time.

Type: Policy change

Duty bearer: CHS, Scottish Government, Local Authorities, third sector

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 redesign of Secure Care and the ask of the Independent Care Review to ensure community-based alternatives are available.

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.

The timescales for children living in Secure Care must be reviewed to ensure that they are appropriate and in their best interests. There must be no expectation or understanding that children should be living for long periods of time in Secure Care, but rather the presumption should be that it is a temporary measure.

An exit plan must be put 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.

Type: Policy change, Practice improvement

Duty bearer: CHS, Local Authorities, Health Boards, Secure Care providers, Scottish Government

The processes and support available for families where multiple children are engaged with child protection, and care and support processes including the Children's Hearings System must be streamlined and connected.

Wherever possible and appropriate, the same Chair should be present at each separate child's Hearing for the same family (brothers and sisters).

Type: Policy change, legislative change

Duty bearer: Scottish Government, CHS, Local Authorities

The Hearing must ensure that, wherever possible, children remain with consistent caregivers when it is not possible for them to remain safely at home.

Children's Hearings must question and test the extent to which implementing authorities are fulfilling their legal and policy requirements with respect to providing consistent, safe, protected, and loving homes for children and ensuring that the legal tests that exist in statute are being fully exercised.

Where relationships have broken down, an inquisitorial approach to the Children's Hearings System must allow for conversations about how to rebuild these in the best interests of children and their families.

Type: Practice improvement

Duty bearer: Scottish Government, Local Authorities, CHS

There must be closer links between local authority decision-making relating to adoption, permanence and residence orders and the legal tribunal of the Children's Hearing. Efforts must be made to streamline aspects of decision-making when a Permanence Order or Adoption Order has been applied for.

Type: Practice improvement, policy change

Duty bearer: Local Authorities, SCRA, CHS, Scottish Government

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.

Type: Practice improvement, legislative change

Duty bearer: Scottish Government, Local Authorities

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.

Type: Practice improvement, policy change

Duty bearer: SCRA, Local Authorities

National best practice guidance around the issue of 'contact' and maintenance, repair and development of safe relationships must be developed.

Type: Policy change, Practice improvement

Duty bearer: Scottish Government, Local Authorities

Orders must have a high degree of specificity to ensure safe, loving, mutually supportive relationships are upheld and protected.

Type: Practice improvement

Duty bearer: CHS, Scottish Government

For siblings who each have individual Child's Plans and orders through the Children's Hearings System there needs to be consistency of approach, so that there are not competing orders in place with differing 'contact' requirements.

Type: Practice improvement, policy change

Duty bearer: CHS, SCRA, Scottish Government, Local Authorities

There must be clear processes for a Hearing to inquire about what is working and what is not working with respect to contact arrangements as part of regular review processes.

Type: Practice improvement, policy change

Duty bearer: CHS, SCRA, Scottish Government, Local Authorities

The Hearing must seek clarity regarding the provision of help and support set out for the family, including foster, kinship, and prospective adoptive families, in the Child's Plan

and must be clear about its expectation of the implementing authority and multi- agency partners. This should include any financial support a family may need to receive to maintain contact arrangements or to mitigate against any changes in income when a child is no longer living at home, including to benefits.

Type: Policy change

Duty bearer: CHS, Local Authorities, Scottish Government, third sector

If families are not engaging in the support that is available, the tribunal must inquire about the circumstances surrounding this and seek to understand what alternative provision may be more appropriate.

Type: Practice improvement

Duty bearer: CHS, Local Authorities, Scottish Government, third sector

The Hearing should be made aware of any unintended consequences of a child living apart from their family, including isolation due to the contact restrictions which may prevent a birth parent from having contact with their family or attending community events.

Type: Practice improvement

Duty bearer: CHS, Local Authorities

Appropriate evidence-based help and support must be available to help families to recover and rebuild their lives after a child has been removed from their care, including with respect to future pregnancies and with an understanding that children may return home once they turn 16.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities, third sector, Health Boards

There must be sufficient resources and multi- agency planning and collaboration with the Children’s Hearing to ensure the additional, specific needs, of all 16 and 17 year olds are met.

The tribunal must have oversight of the transition plans for children who are nearing their 18th birthday so that there is no ‘cliff edge’ in terms of help and support when they become an adult.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities, third sector, Health Boards

There must be a mechanism for the Children’s Hearing to identify when a child has been subject to compulsory measures of supervision for longer than two years, after which there should be an in-depth review to determine whether this is in the best interests of the child or whether alternative, longer-term arrangements should be made. This review should include scrutiny of the efficacy of the Child’s Plan.

Type: Policy change, legislative change

Duty bearer: SCRA, CHS, Scottish Government, Local Authorities

All children and families and implementation authorities should understand what is expected of them and what needs to happen to ‘exit’ the Children’s Hearings System. The concept of a child’s ‘exit plan’ out of the Children’s Hearings System, with clear targets and timescales, should be developed and tested in local areas.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities, SCRA, CHS

Wherever possible, there must be a consistent Sheriff in the grounds and appeal processes.

Type: Policy change

Duty bearer: Lord President, JABS, SCTS, Sheriffs Principal, Scottish Government

The right to appeal must be accessible and understandable to children and families. To ensure feedback loops play a role in the continuous improvement of Hearings, Sheriffs should request a copy of appeal decisions be included in Hearing papers.

Type: Practice improvement, policy change

Duty bearer: SCRA, CHS, SCTS

12. The oversight, enforcement, accountability and review of a child's order

The application of compulsion should remain with a child, but there must be a strengthened understanding of the importance of their family and the support they require as part of the link between the order and the Child's Plan.

Type: Practice improvement, policy change

Duty bearer: Scottish Government, Local Authorities, CHS

The Hearing must be empowered to maintain oversight of orders and exit plans made by Hearings, to consider concerns reported to them regarding implementation, and to take appropriate action in response to those concerns. This will be enacted by putting in place a more immediate and flexible response to concerns that a CSO is changing or might not be being fully or appropriately implemented.

Type: Legislative change, policy change

Duty bearer: Scottish Government, Local Authorities, CHS

There must be ways for the child and their family, and the important people in their lives, including those working alongside, them to keep in touch with the Hearing about how things are going.

Type: Practice improvement, policy change

Duty bearer: SCRA, CHS, Scottish Government

There must be a provision that enables the Hearing to make a requirement for the implementing authority to regularly report back to the Hearing on progress.

Type: Policy change, legislative change

Duty bearer: Scottish Government, Local Authorities, Health Boards, CHS, SCRA

It must be clear that the implementation authority extends beyond social work. There is a duty to collaborate across health, education, justice and other services—and there must be an understanding of the expectation on these other areas and their role in implementing the order.

Type: Practice improvement

Duty bearer: Local Authorities, Scottish Government, Health Boards, CHS, SCRA

When the Hearing is made aware of a concern or a challenge in implementing the order, or that things are working really well and the order should be removed, the Chair must review the information that has been shared and should have the discretion of considering the next steps, and should have a range of options available on how to proceed—informing the child and family about their decision. These may include taking no further action, highlighting the concern to the implementing local authority, or directing that an early Review Hearing is required.

Type: Practice improvement, policy change, legislative change

Duty bearer: SCRA, CHS, Scottish Government, Local Authorities

A Review Hearing should be seen as an opportunity for a full and frank discussion alongside the child and family with the benefit of an independent Chair, and not a place for adversarial proceedings. They should be characterised by curiosity into what has gone wrong and what is needed to change.

In an inquisitorial system, the Review Hearing should be the place for an open and honest inquiry into what progress has been made, where the strengths of the family lie, and what challenges there might have been in meeting the terms of the order.

Type: Practice improvement, legislative change, policy change

Duty bearer: CHS, SCRA, Local Authorities, Scottish Government

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.

Type: Practice improvement, legislative change, policy change

Duty bearer: CHS, SCRA, Local Authorities, Scottish Government

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.

Type: Practice improvement, legislative change, policy change

Duty bearer: CHS, SCRA, Local Authorities, Scottish Government

13. The accountability of the Children's Hearings System

The programme for delivery and implementation put in place to oversee the implementation of these recommendations should consider whether there is a role for a new accountability body to ensure ongoing quality assurance, continuous improvement and oversight of a redesigned Children's Hearings System.

Type: Policy change, practice improvement, legislative change

Duty bearer: Scottish Government, CHS, SCRA

Through the inspection process, the Care Inspectorate should consider how CSOs are supported and prioritised with implementing authority planning processes.

Type: Practice improvement

Duty bearer: Care Inspectorate, CHS, SCRA, Scottish Government

An improved way to effectively and more consistently collect, share and learn from data across the Children's Hearings System must be developed:

- Local authorities must be supported to hold and provide the data to inform and support national and local understanding of the implementation, impact and outcome of decisions made by the Children's Hearings System, to better enable informed and reflective decision making for all partners and improve outcomes for children and families.
- Where issues arise due to legislation, for example, GDPR restrictions, all partners should work towards positive solutions. This includes SCRA and CHS fully exploring means of effectively sharing or jointly controlling data in order that the outcomes and impact on the wellbeing of children can be better understood.
- The National Convener should seek to share relevant and proportionate information annually with relevant governance structures (for example, Children's Services Planning Partnerships) to provide local decision makers with relevant, timely reflections on the experiences within the Children's Hearings System.

Type: Practice improvement

Duty bearer: SCRA, CHS, Local Authorities, Information Commissioner

There must be a single point of access for children and families and others who wish to make a complaint about an aspect of the Children's Hearings System.

Type: Practice improvement

Duty bearer: CHS, SCRA

14. The implementation of those recommendations

A high-level, collaborative programme for delivery and implementation must be put in place, led by the Scottish Government. A programme board, Chaired independently, should oversee the development and execution of the national implementation of the recommendations by securing and developing:

- Strategic multi-agency and multi-organisational leadership and understanding at national and local levels;
- A coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of the recommendations;
- Significant commitment to and clarity around how the changes will be resourced;
- A clear and comprehensive accountability framework so that duty bearers are aware of what they must do and when by and how they will be held to account for delivery.

A national delivery plan must include:

- Clear oversight and accountability of improvement activity so that it feels cohesive, transparent, and less piecemeal. Where improvement work is demonstrably successful, learning should be shared and leadership at national level is required to develop secure and sustainable funding streams to maintain the improvements and to test, develop, and roll out consistently what works, and to communicate this to the workforce.

Appendix One: Summary of recommendations

Hearings for Children: The Redesign Report

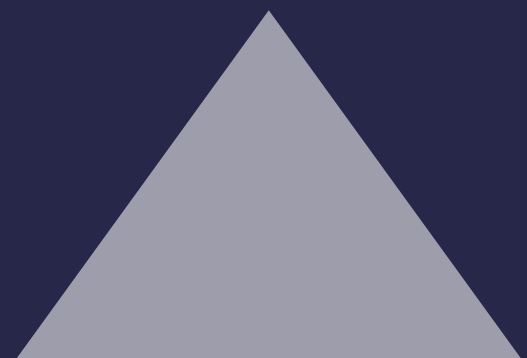
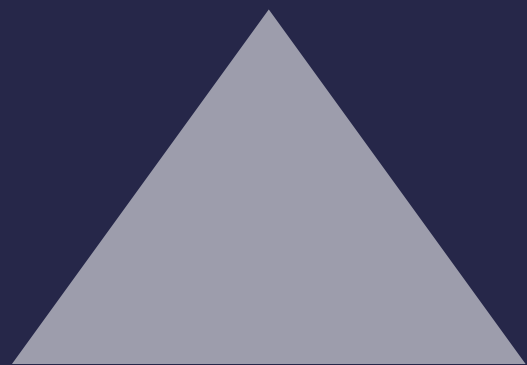
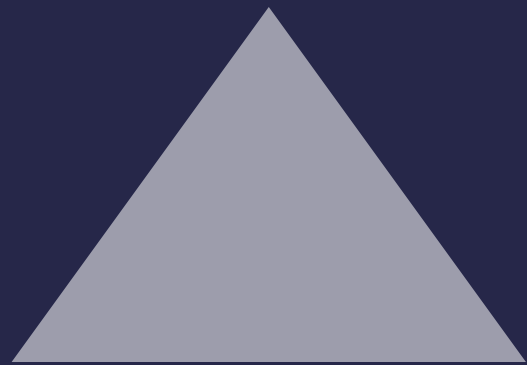
- Identification of areas for legislative change, which should be included within the Promise Bill.
- Identification of areas for testing and further consultation.
- Collaborative work to sequence the implementation of the recommendations in this report so that they can be prioritised, tested, and developed in a coherent way that leads to real change. This should not be limited to the redesign of the Children's Hearings System but should include the other concurrent policy changes so that the workforce is clear about what is happening, and when, in line with the actions identified in Plan 21-24 and the timeline to keep the promise by 2030.
- Detailed work to ensure the changes are fully and sustainably resourced. The recommendations cannot be implemented within the resources currently available. Significant investment must be made.
- Development of accountability and governance mechanisms.
- A robust approach to communicating and sharing the changes with children, families, and those working alongside them.
- Where appropriate, improvements and practice should be co-designed alongside those with lived and learned experience, including members of the workforce working alongside children and families.

Type: Practice improvement, Policy change, legislative change

Duty bearer: Scottish Government

Appendix Two

Summary of the
proposals produced
by the Collaborative
Redesign Project



Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>All children and young people will have the right to a family meeting when decisions need to be made about their care, support and protection. The FGDM service will be overseen by a national body to allow for high- quality training and quality assurance.</p>	<p>Aspects of the proposal included; particular recommendation on consistent provision of FGDM.</p>
<p>New referral criteria will be applied to respond to the needs of individual children, when they require compulsory measures to be considered.</p>	<p>Aspects of the proposal included; particular recommendation on statutory changes to the referral criteria.</p>
<p>GIRFEC practices will be consistently applied across Scotland to ensure support and early intervention for children and families through effective multi-agency working.</p> <p>Research should be undertaken to understand the reason for voluntary disposals; understand the reasons why referrals have not converted to Hearings; understand the number of re-referrals and why there is a reason to re-refer; and analyse referral volumes and conversion rates by local authorities.</p>	<p>Aspects of the proposal included within the report. SCRA have begun to undertake some of this work already.</p>

Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>Pre-birth and child protection case conference, Reporter involvement, establish facts/ compulsion pre-birth.</p>	<p>Aspects of the proposal included; particular recommendation relating to Reporter involvement and drafting of grounds prior to a baby being born.</p>
<p>A wider menu of decisions will be able to respond to the individual needs of children.</p>	<p>Aspects of the proposal included; particular recommendation relating to the options available to the Reporter.</p>
<p>The accountability for implementing voluntary care plans will be strengthened, effecting positive change for children and families and decrease the need to refer to the Children's Hearings System. Young people will have access to advocacy and be involved in making their care plans.</p>	<p>This proposal comes with a list of unintended consequences but was carefully considered and some aspects were included.</p>
<p>Children and young people will feel empowered through Article 12 to provide their views during the Reporter's investigation and their views are heard and considered within the Reporter's decision-making.</p>	<p>Aspects of the proposal included; particular recommendation about the Reporter working closely alongside children and families and hearing their views, where possible.</p>

Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>There will be automatic referral to advocacy with option to opt out.</p>	<p>Recommendation made relating to advocacy provision being offered more frequently and repeatedly at an earlier point.</p>
<p>Children who allegedly have committed high gravity offences will be enabled to remain within the Children’s Hearings System and out of the ‘adult’ criminal courts.</p>	<p>Proposal carefully reviewed but felt to be outwith the remit of the HSWG.</p>
<p>Facts will be established prior to the child and family’s first experience of a Hearing so that Hearings can focus on supportive problem solving. Hearings are inquisitorial and solutions focused.</p>	<p>Aspects of the proposal included; particular recommendation relating to no Grounds Hearings.</p>
<p>There will be one person or role constant from end to end to build a relationship, listen to wants/needs/worries, ensure process is understood, and has ‘case grip’. Role is respected, has convening powers, and ensures accountability. Support should be embedded into the system.</p>	<p>Aspects of the proposal included; HSWG believed it important not to introduce a new role, given what children and families say about retelling their stories, but recommendations around the enhanced role of the Reporter and Chair and access to advocacy incorporates some of this concept.</p>

Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>Children and families will only attend physical Hearings as necessary; legal orders will be actively monitored and responded to in real time so that change is effected when necessary.</p>	<p>Aspects of the proposal included.</p>
<p>Children will have power, agency and choice in a Hearing. Every Hearing, meeting or event will be tailored to a child's needs.</p>	<p>Aspects of the proposal included; particular recommendation about more detailed preparatory phase which must include listening to children and families' voices about their preferences.</p>
<p>There will be greater continuity of all professionals and decision makers in the Children's Hearings System to ensure greater accountability, reduce drift and delay, remove the need for children to retell their story, and build relationships; 'no new people' principle.</p>	<p>Aspects of the proposal included.</p>
<p>Every child and family will understand at the outset and end of a Hearing what they are expected to do in order to exit the Hearings System.</p>	<p>Aspects of the proposal included; particular recommendation with respect to exit plans.</p>

Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>One system driven by one constant person. Child will have the same Panel chair from first to last Hearing.</p>	<p>Aspects of the proposal included; particular recommendation with respect to continuity of Panel Members.</p>
<p>There will be confidence in the decisions of the Hearing and that the support they identify will be provided. Health and Social Care Partnerships, all decisions of Hearings, and Interim orders would be subject to National Convener accountability proceedings.</p>	<p>Aspects of the proposal included.</p>
<p>Children and families will get the supports they deserve as quickly as possible by providing a quick and easy way for children and families to inform the Hearing if orders aren't being followed as intended.</p>	<p>Aspects of the proposal included.</p>
<p>Children are given the choice of how to be informed about what took place at their Hearing.</p>	<p>Aspects of the proposal included.</p>

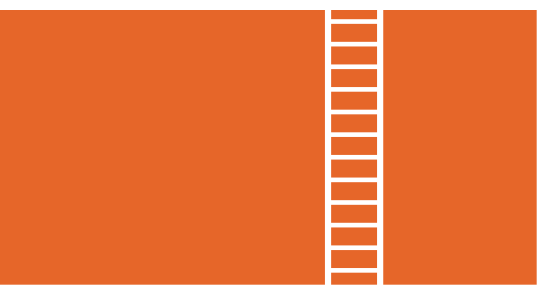
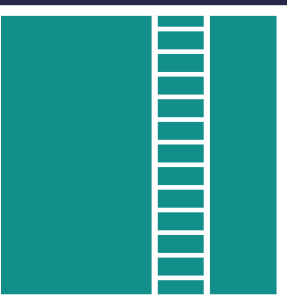
Appendix Two: Summary of the proposals produced by the Collaborative Redesign Project

Hearings for Children: The Redesign Report

Vision of the Proposal	Status in the report
<p>Recording Hearings will support a robust complaints procedure to ensure that all those working in the system are able to be held to account; support quality assurance through feedback loops to ensure continuous improvement and ensure professional standards are upheld.</p>	<p>Aspects of the proposal included; particular recommendation about exploring the feasibility of recording Hearings.</p>
<p>Specialist Sheriff will be provided bespoke trauma skilled training in the needs of children and families. These trained Sheriffs will support consistent decision making across grounds and appeals.</p>	<p>Aspects of the proposal included; particular recommendation about specialist Sheriffs and training.</p>
<p>External, independent scrutiny will hold the Children's Hearings System to account for the outcomes of children.</p>	<p>Aspects of the proposal included.</p>

In addition to the proposals listed above, the Collaborative Redesign Project also produced more than fifteen additional concepts, a few of which are incorporated within this report. These were:

- Hearings will be recorded so Panel Members can watch what happened at the last Hearing.
- The Children's Hearings System will not be for last resorts.
- Sheriffs specialise in Hearings work.
- Grounds for referral will be framed as unmet needs or rights.
- Same Sheriff will deal with appeals as grounds.



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