

# Enduring principles in a changing world

**Melissa Hunt**

## Abstract

I have spent a large part of my professional life working in the Children's Hearings System in Scotland. This piece is about how and why the Children's Hearings System continues to be the way in which we try to improve the situation for children and young people who face adversity of different kinds. I look at the founding principles of the Children's Hearings System and how they have continued to be relevant in Scotland. The piece is also about the current challenges faced by the volunteers, professionals and families who are involved in the system and the work that is ongoing to address these challenges. The piece is a personal reflection – not a statement of the position of either the Children's Hearings System or the Scottish Children's Reporter Administration. Some of the reflections also formed the basis for an opinion article by the Principal Reporter, Neil Hunter, titled "Agenda: The new dialogue around the Children's Hearings system" which was published in Scotland in The Herald on 30th April 2018.

## Keywords

Children's hearings, children, young people, adversity, behaviour, welfare, justice, offending, rights, best interest, professionals

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Children's Hearings in Scotland are very different today. They are still called the same thing, Children's Hearings. They are still where a Children's Panel makes a decision. They still consider what is happening for children and young people who are in need of help. But they are not the same as they were. In 1971, the panel members in the Children's Hearing received the written information about the case – the parents or carers of a child did not<sup>i</sup>. In 1971, there were no timescales, checks and balances or regulations in respect of locking children up<sup>ii</sup>. In 1971, parents could have a solicitor represent them in a hearing, if they could afford to pay. Children have been able to have a legal representative appointed for them in certain situations since 2002. Relevant people have been able to have a legal representative appointed for them in certain situations since 2009, and the Children's Hearings (Scotland) Act 2011 made legal representation an unequivocal right for any child or relevant person who would wish it<sup>iii</sup>.

And, at the same time, Children's Hearings remain very true to their original incarnation in many ways. When Lord Kilbrandon died on 10<sup>th</sup> September 1989, aged 83, his obituary in the Herald newspaper referred to him as 'the architect of the children's panel system in Scotland and arch-devolutionist', who had written reports that led to the Children's Hearings System<sup>iv</sup> and a report which proposed a Scottish Assembly<sup>v</sup>. Scotland in 2018 is a country which continues to owe much to Charles Shaw – Baron Kilbrandon – but Scotland is also a country which is changing. Devolution has given Scotland a voice and the political passion for a Scottish solution. On 23<sup>rd</sup> November 2017, Nicola Sturgeon, First Minister of Scotland, gave the 15<sup>th</sup> Kilbrandon Lecture at the University of Strathclyde and concluded her speech by saying:

"We must ensure that we provide additional help, support, care or protection to the young people who need it most. It is an essential part of providing every child with the best possible start in life.

That needs strong support for universal public services. It requires a continuing focus on improving children's services specifically. It involves respecting, protecting and enhancing

children's rights. And in my view, it means involving and listening to young people whenever we make decisions about their lives.

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

That the Kilbrandon legacy is still inspiring and challenging Scotland is testimony to its relevance; it is testimony to the insight of the Kilbrandon Commission and to the way in which Scotland as a country continues to strive to look after its children.

The Children's Hearings System still relies on its volunteers from local communities – people who choose to give their time to help those children in their community whose circumstances have brought them to a Children's Hearing. It has not been radically 'professionalised' and remains a system where, fundamentally, the people you live amongst are making decisions about what should happen for you. The African proverb says 'it takes a village to raise a child'. In Scotland we use the village to find solutions to the often significant and severe problems families face in raising their children.

In 2017 there were approximately 2500 panel members sitting across Scotland. They sat in 34,106 Children's Hearings in 2016/2017. There are also 22 Area Support Teams, made up of approximately 250 people. Panel members and area support teams all volunteer to work with Children's Hearings Scotland. This is a massive volunteer resource to be trained, organised and supported in order for us to get it right in the decisions we make for children in Scotland. Children's Hearings have not been widely replicated – which may be seen as an indicator that they are not as successful as we may think. Perhaps it is this massive volunteer base which makes replication of the Children's Hearings System difficult.

Replicating the Children's Hearings System may be difficult, but it is not impossible. In 2008, the Bailiwick of Guernsey established The Child Youth and Community Tribunal, to offer children and young people in need or in trouble the

opportunity to have their case heard outside of a court environment – a system based on the Children’s Hearings System (both in principle and operation, with some differences<sup>vi</sup>).

So, Kilbrandon’s legacy is multi-faceted. His legacy is in a system which separates out the finding in fact from the decisions about what should happen next. His legacy is in a system that identifies the ‘children in trouble’ as a result of their behaviour or the behaviour of others and recognises that any child’s ‘needs and deeds’ should be addressed together. His legacy is in a system that seeks to engage the child, their family, involved professionals and members of the community (the three members of the Children’s Panel) in a constructive dialogue. In order for there to be a dialogue, there has to be an equal playing field, and for children and families who have experienced or who continue to experience adversity this may mean they require additional support, legal representation or advocacy in order for them to participate fully and effectively. Lord Kilbrandon’s legacy is in a system which recognises that your family is vital and has to be actively involved in decision-making.

His legacy is in a system where the focus should be on the child and the child’s welfare, and where decisions are made in the child’s best interest – and those working in the system today would all say they try to adhere to this. However, we also know that losing sight of the child is very easy in a meeting where there is conflict, no clear consensus and many, at times very loud, adult voices. His legacy is in a system where minimum intervention in the life of a child and family is the approach taken by the system, but that is very difficult to explain when a Children’s Hearing convenes for 3 children, all of whom have a representative and a solicitor (9 people), four relevant people, all with representatives and solicitors (21 people), 3 different schools (24 people), 3 different social workers (27 people) and their team leaders (30 people). The principles are sound, but can, at times, be difficult to reconcile with the practical realities of the cases being dealt with by the Children’s Hearings.

Back to the legacy – it is no wonder really that Kilbrandon’s legacy is in a system which continues to be, at its best, flexible and responsive. The Children’s Hearings can react at very short notice, for example, when a child protection

order is granted, or when a child requires to be admitted to secure accommodation on an emergency basis. The Children's Hearings can act in preventative ways: the most 'common' ground for referral to a Children's Hearing is "the child is **likely** to suffer unnecessarily, or the health or development of the child is **likely** to be seriously impaired, due to a lack of parental care". A Children's Hearing can also be educational in its approach, asking parents or adult carers to make positive changes, and / or asking a young person subject to a Compulsory Supervision Order to engage with a number of measures, intended to improve their circumstances.

Kilbrandon's legacy is also now in a system which operates in an increasingly complex legislative environment, alongside other 'systems' also necessarily focused on the protection of children and the administration of justice. The Children's Hearings 'system', the child protection system, the health system, the education system, and the legal system in the criminal and civil courts, all run alongside each other and at times overlap with each other. The Kilbrandon legacy is a 'system' which jostles with the other 'systems' that children and families have to navigate on a daily basis and which, for those families, can – on occasion – be confused and confusing, misunderstood, misrepresented and misdirected. Everyone working in all these systems is human, after all.

Modern life is complex. When systems and professionals become involved, and when families do not agree with their involvement, life becomes even more layered and complicated. A Children's Hearing takes place when two factors are present: 1) evidence for grounds for referral to a Children's Hearing and 2) when compulsory measures of state intervention in the life of a child or young person is required – very often because a family, for whatever reason, is unable or unwilling to engage on a voluntary basis with professionals and / or the plan developed by professionals. Children's Hearings, particularly at the beginning of the process, are not meetings where everyone is in agreement. People can fundamentally and vocally disagree – about the reason for the hearing; about responsibility and culpability; about the impact of life events on children and about the recommendations being made for children by professionals (for example). Children's Hearings can be difficult meetings – in all the senses of the

word – problematic, hard, tough, trying, grim, challenging, demanding, testing – for all those present; children, families and professionals.

In addition to a Children’s Hearing often being inherently ‘difficult’, recent Scottish Children’s Reporter Administration research looked at child protection and complexity, and concluded that the lives of parents and the problems they face, and the systems around child protection in Scotland, have become more complex over time. The report concludes:

**“Yes - child protection in Scotland has become more complex over time.** There are multiple factors that affect the care and protection of children which have become more complex, in particular the extent of problems faced by parents. Legislation and practice change to protect looked after children has also added complexity to the lives of vulnerable families both directly through their involvement in legal processes and indirectly through increased family fragmentation through interventions to take children into care. This increased complexity in child protection has implications for all professionals working within the Hearings System, especially for the training of Children’s Panel Members and professionals and in their decision-making to protect vulnerable children. Importantly, it has implications for those families who find themselves involved in an increasingly complex legal system.”

Some of the figures and statistics about the observed changes are interesting, including an increase in emergency protection and appeals, and an increase in the amount of information which has to be carefully handled (non-disclosure orders which specify that someone is not to receive certain pieces of the information they are entitled to):

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**Frequencies of complex Children's Hearings-related events from 2003-04 to 2015-16**

<b>% INCREASES</b>	<b>% DECREASES</b>
<b>19%</b> - Children Protection Orders	<b>0.2%</b> - Hearing held
<b>87%</b> - Pre Hearing Panels/Business Meetings	<b>2%</b> - Children with SCOs
<b>115%</b> - Appeals	<b>8%</b> - Applications for proof concluded
<b>137%</b> - Interim Compulsory Supervision Orders/Warrants	
<b>191%</b> - Non Disclosure Orders	

In addition, Children's Hearings all recognise that children and young people have agency, can make decisions and will have a view on the situation they are in, as well as a view about any changes which should or could be made. Children and their families are actively encouraged to fully participate in Hearings, and their participation should be effective – and appropriately supported so that this can be a reality. Children, young people and their parents or relevant people have rights – and the system has to respect and uphold those rights wherever possible.

This means that the power in a Children's Hearing probably now sits with the people whose rights and responsibilities would be directly affected if a Children's Hearing makes a decision that allows the state to intervene in their lives – not with the decision-maker in the process. If a family accepts the validity of professional concerns and agrees to work to address them then there is no need for any compulsory measures to be put in place; no need for a compulsory supervision order, or indeed a Children's Hearing. However, in reality, children, young people and their parents or relevant people do not see, or feel, that they have this power and can, at times, feel very powerless in the face of the full

force of the state; hence the ongoing need for them to be supported – through effective and available advocacy, legal representation or other means.

It is remarkable that, in 2018, Children’s Hearings are still fundamentally the same and that Lord Kilbrandon’s founding principles endure. But they have shifted shape – every time Children’s Hearings convene to consider the situation for a child and their family, they are, in their new guise, genuinely trying to effect change in new ways - through positive and effective engagement, through transparent planning, through honest dialogue, and through structured and agreed review.

Children’s Hearings have embraced and assimilated the challenges of rights, of agency and of fairness, and are well placed to continue to face the challenges of the digital age as they move into the future.

## **About the author**

I am the Police & Public Affairs Manager for the Scottish Children’s Reporter Administration (SCRA) in Scotland. SCRA is a non-departmental public body employing Children’s Reporters – officials who decide whether children and young people aged 0 – 18 require a Children’s Hearing in order to consider whether there should be a Compulsory Supervision Order put in place for them. SCRA works alongside Children’s Hearings Scotland – a public body who supports the volunteer Children’s Panel members across Scotland who make the decisions in Children’s Hearings. Before working in policy I was a Children’s Reporter – and I became a Children’s Reporter after I left a teaching post in a Sixth Form College in the North East of England to complete further study in Psychology and Criminology & Criminal Justice.

<sup>i</sup> Parents or carers for a child began to receive papers following the case of McMichael Vs United Kingdom (1995); children began receiving papers in 2001.

<sup>ii</sup> Secure accommodation regulations were introduced by the Health and Social Services and Social Security Adjudications Act 1983.

<sup>iii</sup> Children's Hearings (Scotland) Act 2011, Section 78 and 2013 Rules r.11 (2).

<sup>iv</sup> Lord Kilbrandon chaired the Committee on Children and Young Person's Scotland, who first met in 1961 and reported in 1964. The Social Work (Scotland) Act came into force in 1968 and the Children's Hearings system began to operate from 15<sup>th</sup> April 1971.

<sup>v</sup> From 1972 to 1973 Lord Kilbrandon chaired the Royal Commission on the Constitution which made recommendations which led to the referendum in the late 1970's.

<sup>vi</sup> <http://guernseyroyalcourt.gg/article/1756/The-Child-Youth-and-Community-Tribunal> for more information on what happens in Guernsey.