Justice Committee

Courts Reform (Scotland) Bill

Written submission from Children’s Hearings Scotland

Introduction

1. Children’s Hearings Scotland (CHS) is a Non-Departmental Public Body established under the Children’s Hearings (Scotland) Act 2011, which entered into force on 24 June 2013. CHS assists the National Convener with the delivery of her functions in relation to the recruitment, selection, appointment and re-appointment, training, retention and support of volunteer panel members within the Children’s Hearings System. Further information about CHS and the National Convener can be found on our website www.chscotland.gov.uk.

2. In providing this written evidence we have focused our response on the parts of the Bill which directly impact on the Children’s Hearings System and the work of CHS and the National Convener:

- Summary Sheriffs for proceedings under the Children’s Hearings (Scotland) Act 2011
- Judicial Specialisation
- All-Scotland Jurisdiction (s41)
- The creation of the Scottish Courts and Tribunals Service (s120)

Summary Sheriffs

3. Our overriding concern is that decisions made by courts in relation to the Children’s Hearings System are made locally, timeously and are the best possible decisions for children, which lead to the best possible outcomes. Accordingly, we would welcome the introduction of summary sheriffs if this ensures local, timely, high quality decisions for children. We consider it essential that:

- there are a sufficient number of summary sheriffs in each local area to avoid delay and children, families and witnesses having to travel considerable distances; and
- there is a high level of quality assurance in recruitment, selection and training of summary sheriffs to meet the specialist demands of the judiciary under the Children’s Hearings (Scotland) Act 2011.

Judicial Specialisation

4. We welcome judicial specialisation. The Children’s Hearings System is Scotland’s unique approach to responding to children in need of care and protection. It is a partnership of various agencies, all of whom contribute to ensuring the best outcomes for children. It is essential that all involved understand and respect the fundamental principles on which the system is based. Judicial specialists will be able to gain and apply knowledge in relation to the hearings system, and the wider family law. We consider that this could lead to direct benefits for children involved in the children’s hearings system. However, similar to our comments on summary sheriffs, it is essential
that there are sufficient judicial specialists available across Scotland, not just in some areas, and that decisions are not delayed because a specialist is not available.

All-Scotland Jurisdiction (s41)

5. We strongly welcome s41(5) which excludes proceedings under the Children’s Hearings (Scotland) Act 2011 from the provisions in s41. As noted above, we consider it essential that decisions are taken locally and that children and families should not have to travel extensive distances to attend court.

The Scottish Courts and Tribunals Service

6. We note the proposal in s120 and related proposals within the Tribunals (Scotland) Bill to bring together a number of statutory tribunals and rename the Scottish Courts Service to the Scottish Courts and Tribunals Service. We also note the provision in Schedule 3, paragraph 3(5) which allows Scottish Ministers to add to the tribunals being brought into the Scottish Courts and Tribunals Service. We remain extremely concerned about the vulnerability of the national Children’s Panel to be brought within the proposed Scottish Courts and Tribunals Service by secondary legislation.

7. The Children’s Hearings (Scotland) Act 2011 was passed by the Scottish Parliament in late 2010 and entered into force on the 24th June 2013. This legislation ended a period of considerable uncertainty for the Children’s Hearings System and children’s panel members, as a result of several years of consultation. CHS assumed its full statutory functions on the 24 June 2013 and since this time has been working to consolidate the changes that the 2011 Act introduced. In our view, these proposals have the potential to reignite the uncertainty that the system had previously been living with for a number of years.

8. Despite consideration of the issue, in particular since 2012 when the Scottish Government first consulted on the Tribunals (Scotland) Bill, we remain to be convinced that the national Children’s Panel would be supported in the way that it needs to be as part of a national tribunals service. The children’s hearings system is a unique legal tribunal in Scotland. By its very nature a children’s hearing does not operate in the same way as any other legal tribunal in Scotland:

- Panel members are unpaid and have previously resisted suggestions that they should be remunerated;
- Arrangements and processes for the recruitment, training and support of panel members are specialised and would have to be replicated within any centralised support structure, thus negating the policy objectives of efficiency and effectiveness;
- The children’s hearing makes a decision about whether a child or young person requires compulsory measures of care: its purpose is not to review decisions already made by other bodies;
- Panel members record their own reasons for the decisions they take and do not have administrative assistance within the hearing.

9. Although part of a national organisation, the essence of the national Children’s Panel is that it is locally based. In recognition of this, the Children’s Hearings (Scotland) Act 2011 introduced Area Support Teams, which the National Convener must establish
to carry out delegated functions at a local level. 22 Area Support Teams have been established across Scotland and are also comprised of volunteers. We would be concerned whether support to the national Children’s Panel by a generic tribunals service could maintain this essential local element of the Children’s Hearings System.

Children’s Hearings Scotland
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