

PE1768/B

Scottish Government submission of 27 March 2020

I am writing to provide the Scottish Government's comments on the above Petition, which is calling for proceedings in a Children's Hearing to be Minuted or recorded.

The Committee has also requested further information on the Children's Hearings Improvement '*Panel*' (Partnership), including why parents and children are not involved.

The Petitioner has stated that the Reporter is present to provide legal advice to the Panel members. I should clarify that the Reporter does not provide legal advice to the Hearing or to children, young people or to families.

It should be noted, however, that under the Children's Hearings (Scotland) Act 2011, it is the responsibility of the National Convener to provide legal advice to the Children's Hearing if this is requested by panel members. The independence of the children's hearing panel members is protected in that statute.

Children's Hearings to be Minuted or Recorded

In relation to the Petition, the Committee will be aware from the SPICe Briefing already provided that the procedures to be followed at a Children's Hearings are set out in [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Rules 2013](#).

These include:

Rule 6 - Duties of chairing member of a pre-hearing panel or children's hearing and

Rule 6(1)(c) includes a requirement for the chairing member to ensure that a record is made of the decision or determinations made and the reasons for the decision or determinations.

Rule 13 - Record keeping duties of the Reporter in relation to children's hearings

Rule 13(3)(h) includes a requirement for the Reporter to keep a record of the details of any decision or determination made by the Children's Hearing or pre-hearing panel or any other course of action taken by the Children's Hearing.

It is the decision of the Hearing which is the subject of any appeal, not the discussion of the Hearing. Case law is clear that the reasons given by a children's hearing should be a clear and intelligible statement of the material considerations to which the hearing had regard (see *JM v Eileen Taylor*, Locality Reporter Manager, [2014] CSIH 62).

There are a number of tribunal and court proceedings which, like children's hearings proofs, are not fully recorded so there is no verbatim record of the proceedings.

Where a decision of a children's hearing is appealed to the Sheriff, the Sheriff can consider whether the hearing's reasons for its decision are adequate, and the Sheriff can hear evidence, if that is considered necessary, to determine whether the Hearing's decision was justified.

The Scottish Children's Reporter Administration (SCRA) Statistics 2018-19 show that there were almost 32,000 children's hearings in Scotland, and only 2.6% of them were subject to appeal. Less than half of those appeals were upheld.

Children's Hearings are a legal decision making tribunal, but to help ensure that the child or young person is able to give their views, they are designed to be as informal as is possible. The discussions are often of extremely sensitive matters, and in that context, the chair of the hearing is under a duty to keep the numbers of persons present at a hearing at the same time to a minimum. To introduce recording of Children's Hearings proceedings could undermine the ethos of the system, making exchanges more formal and possibly inhibiting young people when asked to give their views at the Hearing, as well as reducing the current participative approach. This would run counter to the findings of the recent Independent Care Review. It also carries the risk that recorded material could be used for a prohibited purpose, such as publishing material, which is prohibited by section 182 of the Children's Hearings (Scotland) Act 2011. This prohibits the publication of anything whether written or recorded which may identify a child who is the subject of a Hearing. This includes the child's address or school.

Please also note also that the child and the child's relevant persons can be supported at the hearing by both a lay and a legal representative.

Children's Hearings Improvement Partnership

The Children's Hearings Improvement Partnership (CHIP) is a national multi-agency strategic group where national leaders work together to improve the experience of ,and outcomes for, children and young people involved in Children's Hearings. The purpose of the CHIP is:

- To identify issues for the hearings system and drive performance and practice improvement;
- To agree shared priorities/risks for the hearings system and build and monitor focused improvement programme;
- To explore collaboratively opportunities to use our collective resources, experiences and insight to best effect;
- To act as a consultation forum for partners to identify best practice to inform new policy and strategy to link effectively with the children's policy agenda;

There are currently three Workstreams, which will be revised and refreshed in light of the report of the Independent Care Review:

- Policy Scanning Group

- Better Hearings
- Outcomes and Benefits

The group meets quarterly to review work undertaken by the various Workstreams, assess new policy and legislation which may impact on the hearings system, and formulate strategic multi-organisational responses to challenges and changes. Further information on the CHIP Aims, Vision and Values can be found [here](#).

In the coming weeks and months, the work of the CHIP will focus on responding to the Independent Care Review in a collaborative, creative and strategic way. The group will continue to prepare for forthcoming changes as a result of the incorporation of the UNCRC; commencement of the Age of Criminal Responsibility (Scotland) Act 2019; the introduction of the National Advocacy Service; and potential changes to routes into the system for 16-17 year olds, among others. Throughout the development of these various reforms, the views of children and families have been gathered, and their feedback responded to.

While it is correct that there is no direct representation of children and families on the CHIP membership of national strategic and professional leads, children and families are certainly involved in the group's work. It is important to note that many of the CHIP member organisations have their own programmes to hear the voices of children, young people and families. However, there are two particular channels which ensure that the voices of children and young people have influence in the work of the CHIP.

A fundamental strand of the CHIP work is the development, implementation and monitoring of the Better Hearings project, now in its second year of operation. The development and dissemination of best practice through this project has had significant success in improving the experiences of children and families navigating the hearings system. This project has embedded the views of children and families throughout, and will continue to do so as it drives operational improvement. The first report of the project is available [here](#).

Over the coming year, the CHIP is looking forward to the growing influence and input of the Our Hearings, Our Voice Board. Our Hearings, Our Voice is an independent board for young people from across Scotland aged 8-18 who have current or very recent experience of the Children's Hearings System. The Board reports directly to the CHIP, and the Board's Facilitator represents their interests as a CHIP member.

The aim of Our Hearings, Our Voice is to ensure children and young people have a direct decision making role in the improvement of the Children's Hearings System. The influence of Our Hearings, Our Voice has grown considerably since its establishment in 2018. In 2019, as they developed their priorities for change, they have been able to give their views directly to decision makers at the highest level, including meetings with the First Minister and the Minister for Children and Young People, and also reach a large number of MSPs through the "What is a Children's Hearing" exhibition and event held in the Scottish Parliament. More information on the Our Hearings, Our Voice board can be found [here](#).