Scottish Government 'Hearings for Children' Response – LG Lens

PAPER 3 Recommendations accepted with conditions

Theme	Colour
Overarching principles / practice / process	**Black**
Permanence	**Light blue**
Child protection/ planning for children	**Red**
Pre birth	**yellow**
Roles and responsibilities	**Green**
Advocacy/ children's Rights	**Purple**
Audit/ review	**Dark Blue**
Wellbeing / workforce	**Orange**
Secure care	**Dark orange**

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	Recommendation	SG Response	COSLA Response	SWS Response
2.1	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.	Realisation of this recommendation will require further consideration and consultation. Potential primary legislation proposals will be consulted on, in early 2024. Any tribunal process must conform to the standards of procedural fairness required by Article 6 (right to a fair trial) and implicit obligations engaged under, for example, Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR). In the UK, there is no statute which explicitly requires a tribunal to adopt either an adversarial or inquisitorial approach. Some tribunals, by their nature, will be more adversarial in nature, e.g. Employment tribunals, which predominately hear disputes between competing claims. Others, such as mental health or special educational needs tribunals, tend to function more as an inquisitorial hearing as they are tasked with obtaining facts to determining the best outcome for an individual.	Definition of what is meant by inquisitorial would be helpful	**Agree with an inquisitorial forum, but this needs defined –** it is a new term and will mean different things to different people. What this means for workforce needs more work. A focus on culture may be more helpful. **Workforce needs to cover the full core workforce -** panel members, chairs, reporters SW, but also solicitors, advocates safeguarders. Members again raised the issue of the behaviour of solicitors, and the extent to which this impacts on the child being at the centre of the process. SWS members note an issue with language - Panel forum is not a 'trial'. Going back to Kilbrandon may assist.

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		It is acknowledged that it may be useful to emphasise the centrality of an inquisitorial approach in a redesigned hearings system. We need to acknowledge that proceedings intrinsic to the hearings system legitimately differ in their approach - both before the children's hearing itself and the courts (when establishing grounds or acting on referral from a children's hearing). We would also need to engage with the judiciary in respect of these potential changes, given their role in relation to children's hearings cases, while mindful of judicial independence.		
2.3	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.	There are existing powers in sections 34 to 36 of the Courts Reform (Scotland) Act 2014 (legislation.gov.uk) for the Lord President and the Sheriffs Principal in relation to judicial specialisation. Given the operational implications, we intend to carefully consider the recommendation in the report on specialisation of sheriffs with the Lord President's Private Office (LPPO) and the Scottish Courts and Tribunals Service (SCTS). We note that judicial training is a matter for the Judicial		This was a recommendation of the Adoption Policy Review which as not previously accepted by government. It did have the support of much of the workforce and continues to do so. Increased understanding of trauma and family issues and the wider childcare system in judiciary would be beneficial. We note that in England this is in place to a large extent via Family Courts

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		Institute of Scotland, under the independent direction of the Lord President.		
3.3	Changes to the statutory referral criteria and to updating and modernising the language of ‘protection, guidance, treatment and control’ in section 60(2) of the 2011 Act must be considered.	We are supportive of the broader need to create a common, trauma informed use of language across the children’s hearings system and recognise that legislation should reflect this where possible. We are encouraged that the ‘Language Leaders’ work will assist policymakers in those efforts. Within the text of Chapter 3, the report proposed that the referral criteria be amended to: (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). We will consult on whether future primary legislation should reframe referral and compulsion tests. We will seek views on the basis of these proposed criteria, along with other potential approaches, as recommended in the report.		No specific issue in this for social work, but use of **simple easy to understand language is supported.**

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5.5	Interim orders must be in place for a length of time that is in the best interests of the child.	The context surrounding this recommendation in Chapter 5 clearly outlines the intention behind this recommendation, and it is a rationale with which the Scottish Government would agree. Certainly, where an action is considered in the best interests of the child, there should be sufficient flexibility to allow this action to be taken for the appropriate period of time. We will consult on this recommendation, and seek views on specific options to appropriately introduce flexibility to interim orders, whilst still ensuring that children's rights are protected.	Is this about maximum flexibility, is it removing an existing timescale or setting a new one?	**While broadly in agreement, this requires further consideration** in relation to ensuring that the parameters of the flexibility do not result in unintended delays. Issues of interface with other parts of the wider childcare system need consideration. While SWS members agree with the recommendation in principle, they also note that **this needs further discussion to understand why different lengths of interim orders would be required and the benefits of this to the child.**
5.6	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.	The Scottish Government supports tailored and pragmatic approaches to young children and their capacity to understand proceedings and to mitigate unnecessary delays to proceedings, whilst ensuring their rights are upheld. We will consult on how to amend existing legislation to give greater flexibility as part of a redesigned grounds process.		**While in principle this is supported, the rights of young children unable to speak for themselves need to be upheld.** This is a role social workers or immediate carers are well placed to reflect. Definition of young children is important, and how others

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				who may not have capacity are included
7.1	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.	We note the report's underlying thesis that a chairing member may only be entirely at the centre of a redesigned system if they are available on a full-time basis. Therefore, the comprehensive delivery of this recommendation is reliant on either [6.1.2] being accepted in full, or an alternative model which offers parallel, or broadly similar, availability. Further work is required to fully understand the development of 'relational' work, and how this translates to a future rights-respect decision-making model which makes decisions in the best interests of the child, but does not own responsibility for the implementation of decisions. We note that this recommendation refers to the Chair having an overview of the statutory Child's Plan for a Looked After Child, and have provided further narrative under the response to recommendation 11.1.		**This recommendation requires a lot of thought and consideration given the many other aspects which impact on it. A pure and principled position may not in practice be workable.** Consistency of individuals involved in the lives of children via the hearing system is a theme in the report. So also are roles and responsibilities. SWS has no issue with the role of the chair and panel members in working relationally in the panel itself and working to be child centred – which includes assessing material to come to a decision. However, they will seldom be the only forum making decisions about a child.

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				Other comments by Members: • The way in which a Chair engages with children and families must change. However, appropriate boundaries for the relationships a chair may develop are crucial • A consistent chair may be useful but their skills and training are critical. They must be able to deal with the distress and complexity • For this approach to work, the Chair would need also have a clear understanding of the wider care system. • It may become a confusing and too much for the family to have to deal with first the IRO, and so many other people and then this chair.

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				• Issue with the accountability, and responsibility of the whole role. • Where is the consideration about the role and responsibilities of a social worker. **Oversight of the child's plan (which is the duty of the local authority to agree) is not considered workable, and SWS has significant concerns about this part of the recommendation**. The Hearing is a decision-making body, not a children's planning forum. **Significant further work required.**
8.6	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.	This recommendation is being explored in discussion with the Principal Reporter (SCRA) and National Convener (CHS). Once those review discussions have concluded in the early part of 2024, the agreed activity will sit under the Practice and	One for SG, CHS & SCRA.	It may make no difference to SW who organises the date and time of a panel

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		Procedures workstream, which will be progressed under the Children's Hearings Redesign Board. Any potential future reassignment of current statutory roles may also need to be the subject of consultation.		
11.3	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.	We agree that there should be specific legal underpinning where a children's hearing is authorising particular measures and interventions. The Scottish Government would expect children's hearings to carefully consider the appropriate measures required on every Compulsory Supervision Order (CSO). Research undertaken by SCRA indicates that one of the principal advantages of home CSOs is their integral part of a hearing's "minimum intervention" approach, and that they can "provide a statutory means to protect children and young people with the least interference in their family life." This research also shows that, on average, young people on home CSOs have fewer concerns about their wellbeing than children on CSOs where they are accommodated away from home. This indicates that Hearings are effectively and proportionately reflecting the risk to the child in the type of CSO made.		**We agree with the minimum intervention principle – which in itself is a measure of prioritisation.** There is legally no difference in an order that allows a child to remain at home and one which has conditions to reside elsewhere. **It is not for the Panel to determine the priority a local authority gives to their work/how they manage demands** Members also note that the number of home supervision orders has dwindled and that there is some research querying their effectiveness. That does not mean that those children and receiving a lesser degree of attention.

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11.10	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.	This recommendation will be considered under the Practice and Procedures workstream, which will be progressed under the Children's Hearings Redesign Board, when it begins its work in early 2024. A thoughtful review is required of potential implications for permanence planning of systematising early reviews of children's hearings cases.		**SWS has concerns about how the Panel can become involved in permanence plannin**g, given the complexities of legislation and duties which rightly surround this area or work. **Requires considerable thought and further exploration.** **SWS do not consider that this recommendation can be accepted and actioned as a policy and practice action given the legislative duties around permanence.**
11.20	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.	This recommendation will be considered under the Practice and Procedures workstream, which will be progressed under the Children's Hearings Redesign Board. Children's hearings will review a Child's Plan for a Looked After Child, where one has been put in place, as part of their decision-making process. However, we do not consider that it is appropriate for a children's hearing to	Agree with SG and SWS - Oversight of the Child's Plan sits with the local authority - COSLA would not support additional scrutiny placed on one element of a child's plan by another organisation.	**Agree with early identification, but this can already be done.** There have been benefits in child protection registration of reviewing children who have been on the register for long period. However, **involvement in longer term planning and**

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		have oversight of a Child's Plan devised to meet a wellbeing need on a voluntary basis where children, young people and their parents are free to decline any proposed plan or actions. It is also worth noting that a distinction should always be made between scrutinising the content and efficacy of the Child's Plan for a Looked After Child, and determining if compulsory supervision measures are still required. The role of the Child's Plan is to plan support for the child first and foremost, and the quality of a plan alone does not determine the need for compulsory measures by a children's hearing.		**scrutiny of the child's plan are not areas where SWS can at the moment agree** – see other comments. Panels role is to determine if a child need compulsory measures of care; it is not currently to decide if permanence is appropriate/in child's best interests – there are other statutory routes for deciding on permanence. **We agree with SG position that it is not appropriate for the hearing to have oversight of the child's plan**. Plans agreed at a hearing are one aspect of child's plans and oversight of this lies legally with the local authority in line with GIRFEC. It would not be appropriate to have different scrutiny dependent on what type of order a child is on. Introduction of terms such as 'statutory plan' and 'voluntary plan' are new and possibly not that helpful – GIRFEC is

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				one approach and as it is in legislation, all plans are statutory.
11.21	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.	In line with the Scottish Government response to recommendation 4.4, we support the concept of an ‘exit’ plan to connect any compulsory measures with voluntary support for a child or young person. Where a GIRFEC Child’s Plan is already in place, an exit plan should be incorporated into this plan to ensure that there is one document which sets out the expectations from the Hearing placed on the child or young person, their family and the implementation authority. This proposal could be explored on a policy rather than legislative basis, in line with the GIRFEC Child’s Plan constituting a non-statutory plan.		**No issue raised about an exit plan,** but the plan for post hearing should be the child’s plan. **SWS would not support the introduction of another plan.** See also comments on language - statutory and voluntary. A child’s plan after a CSO is terminated will still be statutory – and the child may also remain on subject to legal orders eg a PO.
12.8	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.	There is currently no freestanding or self-initiated legal power for the Reporter to require a review hearing. The only option the Reporter has is to bring new grounds if there is a referral (which can be led by the Reporter) or to discuss with the social worker who may then request a review hearing.	Think we would need a fuller definition of how to determine “where appropriate” or we are giving individual Reporters flexibility.	**While in principle this seems reasonable this depends on what the new grounds are – and there are issues of transparency and fairness for the children.** What would trigger a review, and how we ensure that there is not over involvement in this

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		SCRA have advised that consultation with their Reporter staff indicated support for this proposal. However, further consideration needs to be given to the value and fairness of this approach compared with a Reporter putting new grounds for referral which set out, and can evidence the basis for, the intervention. Given the requirement for new legislative powers, public consultation will be required to consider the proposal in detail.		type of decision is also important.
13.2	Through the inspection process, the Care Inspectorate should consider how CSOs are supported and prioritised with implementing authority planning processes.	The Care Inspectorate (CI) agrees that it has a crucial role to play in ensuring that children and young people receive high quality care and support to meet their needs and enhance their safety and wellbeing. For those on a CSO, how these are implemented and how children experience the service(s) provided by implementation authorities, and how their rights are upheld and promoted all need to be considered. While this is not a current focus of the CI's joint inspection programme which has a focus on children at risk of harm, further work could be done to scope the possibility of inclusion.		**Members query what problem is seeking to be resolved with this recommendation?** CI already have a role in strategic inspection to consider wellbeing and outcomes for children – previous strategic inspections have focused on child protection, or on child protection and corporate parenting duties, both of which include aspects of how CSO's are implemented. Further scrutiny is provided in registered service

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				inspections, children's services planning, children's rights planning and corporate parenting planning. Additionally local authorities have their own internal quality assurance processes. **The prioritisation of CSO's is not a matter for the Hearing,** CSO are one part of the Scottish care system and local authorities and social work services in particular, have a duty to prioritise all aspects of their statutory duties.
13.4	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.	This recommendation will be considered under the Practice and Procedures workstream, which will be progressed under the Children's Hearings Redesign Board. This work will be pursued with the objective of streamlining, simplifying and consolidating the varying current approaches to inviting and responding to complaints and other feedback. Further work is required to assess its necessity, to understand how this might operate in practice and whether	Who will that single point be, is this about signposting or setting up a standalone CHS complaints system, there needs to be parity for CYP not involved in hearings and interaction with the SPSO.	**Query – how does this interface with SPSO child friendly complaints processes under consideration and with existing local authority complaints processes?** If related only to SCRA and CHS, it seems reasonable for their to be one route. Can compliments also be recorded?

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		any legal, rights or information sharing issues may arise.		