

# Children's Hearing Reform

## **SOCIAL WORK SCOTLAND SUMMARY RESPONSE HEARINGS FOR CHILDREN REPORT AND RECOMMENDATIONS AND MINISTERIAL RESPONSE**

*May 2024*

### **Introduction:**

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcomed the attention the Independent Care Review brought to children's hearings and the experiences of children and young people, and the subsequent Promise which has focused attention on the importance of reform in the children's hearing system. This aspect of the Promise and subsequent work of the Children's Hearing Review Group was therefore particularly welcome.

The Children's Hearing System is a core part of our children's welfare system, working with those children who require compulsory measures of care to ensure their protection and wellbeing. It sits within a wider care system and interfaces closely with the early help, child protection and the care context created by other legal orders and situations. Social Work operate in all of these spaces and is the one service which spans all legal contexts for children in contact with Scotland's care system.

Along with others, and particularly our partners in Children's Hearing Scotland and Scottish Children's Reporters Administration, we have long recognised that the principles upon which the hearing system was built are no longer working effectively. Over the years since 1968 the landscape of Scotland and the landscape of care has become more complex, and a range of changes have, for good and rights-based reasons, been made to the hearing system. The consequences of some of those changes has been to make the system more complex. It has also become more adversarial, and the children and young people the system is intended to serve have become 'lost'.

This report summaries aspects of the views of Social Work Scotland members from across the spectrum, and at all levels from Chief Social Work Officer to basic grade staff. Two specific focused events were held to consider the Hearings for Children report and the subsequent Ministerial response to the recommendations in that report. The report is supported by a separate document detailing views on each of the recommendations and government response – this summary provides some wider context and a flavour of some of the views.

We offer this summary as an indication of the support by Social Work Scotland members to reform and to provide some of the wider context for the more detailed comments contained in the recommendations document.

### **Foundational Issues:**

Social Work Scotland members remain keen to see reform of the children's hearing system and to play their part in making this happen. The hearing system is a core part of the work our members in children and families' services undertake, and a critical aspect of how we protect our children and ensure their wellbeing needs are met.

In consulting as part of formulating our response, several basic concerns have arisen, and we note these as context for what follows. It is acknowledged that some of the concerns arise from an ongoing sadness and lack of understanding about how such a critical piece of work could be undertaken without one of the core partners round the table, and that many of the recommendations may have been different had a wider understanding of the care system, existing scrutiny and the role of social work been part of the process. Members are on a journey in overcoming that sadness, but despite this there is overwhelming commitment to see reform and to be part of that reform. The concerns are listed to provide context for consideration of areas to take cognisance of in determining how that necessary reform might best be progressed.

- The context of financial restrictions and attention to staffing issues are missing from the report and cannot be ignored – reform cannot happen without attention to those aspects.

- Many of the recommendations are already being implemented or are part of existing practice/Promise activity. This allows any action plan developed by the Redesign Board to be more focused and significantly simpler than the lengthy Hearings for Children Report
- Members reflected a theme throughout the report and recommendations of basic distrust of social workers. This is reflected in the tone and language of the document and contrasts with the approach taken to other professions. There is across the board some dismay at the use of language within the report which conveys that lack of trust and respect for social workers, more so because it evidences current hearings practice. A better understanding of what social workers do outside of the hearing including understanding the skills and responsibilities of social workers, the legal context within which they operate, and the wider implementation authority would assist.
- Members indicated anxiety that the negativity around social work and social workers in the recommendations could if taken forward result in a continuation of the adversarial nature of hearings, including how social workers experience them, with the related damage this does to relationships with children and families. Managers cited the impact on staff retention of current hearing experiences. Strong words are used – bullying, abuse, distress, intimidation.
- Concern about the level of ‘scrutiny’ the hearing system wish to hold over social work practice and processes, and the lack of understanding of the scrutiny which is already in place. This is linked to a lack of understanding of the wider care system of which the hearing is one, albeit critical, part.
- Professional Standards in Children's Hearing System – expectations of professional standard and conduct are not felt to be well enough reflected in the report and recommendations.
- Worries that while a skilled chair is welcome, the extended role of the chair and their involvement out with the hearing could impeded the impartiality of the chair. Similarly, concerns were expressed about confusion of role and oversight.
- A misunderstanding about how case management and decision making happens in the care system.
- Concerns about panels dictating the priorities of the implementing authority – who have many legislative priorities to manage.

- Concern about a focus on one model - Family Group Decision Making. (previously Family Group Conferencing)
- Some concern that the language of care planning is being made too complex with the introduction of terms such as 'statutory plan' and 'voluntary/GIRFEC plan'.

Members additionally noted disappointment that the overriding commitment to the original Kilbrandon principles and model meant there has not been exploration of whether, over 40 years on, this model remains fit for purpose and whether alternatives or an updated model is indicated.

While the above reflects a range of concerns, and the level of disappointment which remains at the lack of inclusion of the profession in the working group, it is balanced by positive comments on a range of recommendations, and real hope about the potential for change and the positive impact on a system of reframing of language and inclusion of principles of respect and value. The social work profession wants to see and is giving priority to capacity to create together a system which has children at the centre and is respectful and valuing of all individuals. This sits alongside an awareness that a simple process of increasing understanding of the wider care system and existing practice and scrutiny would deal with many of the recommendations, and that there is a shared commitment to improvement. The social work profession is keen to do their part in making this happen.

### **Summary of Response:**

Social work Scotland has responded to the recommendations utilising the Scottish governments categorisations of recommendations – accepted, accepted with conditions, explore and consult, rejected, sub recommendations. Attention has been given particularly to those recommendations which impact on social work task. Our response is provided in detail in table form against the recommendations and Scottish Government response, and we provide here some examples of aspects of that detail within specific themes.

General Matters

There are a number of recommendations which repeat areas already highlighted in the Promise or being taken forward in other forums e.g. workforce matters, the trauma informed approach, working in a relational manner and commitment to siblings being placed together. SWS suggest that these are not included in the workplan for the Redesign Board, but are noted, given how critical matters such as workforce are for a redesigned hearing system.

Additionally, there are areas where several recommendations could be combined into one action e.g. those related to information about the hearing system.

Finally in terms of overarching considerations, some recommendations were felt to go beyond the scope of the hearing system. Our members suggested that those matters should be examined to determine if they are being actioned elsewhere, require separate attention or can usefully be included in the Redesign Boards work. An example would be 3.4 around audit.

*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.*

Outcomes linked to the hearing system are dependent on multiple agencies and are often part of wider audit processes. Any oversight should not provide additional burden but consider how improving work across boundaries and disciplines might enhance the effectiveness of decision making on outcomes for children. For social work, outcomes are also already scrutinised via the inspection process and cover all aspects of the care system.

Further Considerations:

While only a few recommendations were not acceptable by SWS members, eg 1.4 (that a two-tier system exists) some recommendations are viewed as acceptable in principle, but members consider that more discussion is required to understand the 'how and why' and if it is all workable. Some examples are:

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

While broadly in agreement, this requires further consideration in relation to ensuring that the parameters of this flexibility do not result in unintended delays. Issues of interface with other parts of the wider childcare system also need consideration and further discussion to understand why different lengths of interim orders would be required and the benefits of this to the child is needed.

*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.*

While in principle this is supported, the rights of young children unable to speak for themselves need to be upheld - a role social workers or immediate carers are well placed to reflect. Defining of 'young child' is also important, as is equity where an older young person has capacity issues.

*3.5 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.*

SWS understand where the thinking behind this recommendation has come from but would wish to explore further aspects of what is proposed before giving any endorsement.

Where child protection processes are initiated, whether compulsory measures are required will also already be routinely considered and explored. Similarly, in 'care and support' meetings – definition of what is meant by this phrase is required – this question will always be asked. This recommendation also links with others where it is suggested that the Reporter attend all meetings where Child Protection processes are underway. SWS would be concerned about this at both the information sharing level, and the likelihood that it may enhance the likelihood of referral.

SWS agree that the delineation between referral and the role of the reporter is important and should be retained.

Other recommendations require considerable additional thought and consideration or are ones with which SWS cannot currently agree. An example is 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.*

Aspects of this recommendation require a lot of thought given the many parts of the wider system which are impacted – a pure and principled position may not be workable in practice. SWS has no issue with the role of the panel chair and panel members working relationally in the panel itself and being child centred. However, they will seldom be the only forum making decisions about a child, and there are accountability issues if the chair takes on a wider role in a child's life – and this may be confusing for child and family. Consistency of chair is helpful but their skills and ability to manage complexity are critical.

We agree with Scottish Government position in relation to 11.2 that it is not appropriate for the hearing to have oversight of the child's plan. Oversight of the child's plan is not considered workable or appropriate, and SWS has significant concerns about this part of the recommendation. The Hearing is a decision-making body, not a children's planning forum.

Plans agreed at a hearing are also one aspect of child's plans and oversight of this lies legally with the local authority in line with GIRFEC and wider child care review legislation and guidance. It would not be appropriate to have different scrutiny dependent on what type of order a child is on.

Overarching Principles:

Social Work Scotland members agree that the hearing system should be inquisitorial in nature but would welcome some indication of what this means in practice.

Members consider that underlying principles of respect for all involved is crucial if this is to be achieved. This will not least address the concerns of social worker and their managers reflected so strongly in our consultation process about the adversarial nature of the current system and what this means for children. A change in culture is indicated to make this happen, as is attention to workforce and the criticality of the whole workforce – panel

members, chairs reporters, solicitors, social workers advocates and safeguarders all being part of this.

Permanence:

Permanence is rightly an area where there is significant scrutiny and legislation and process already in place. Hearings to date have not had a role to play in permanence beyond the advice hearing where a permanence order is being sought, or the discharge of a compulsory supervision order when child is for example secured via a kinship care order.

There are a number of recommendations which indicate a stronger role for hearings in permanency e.g. 11.1 and 11.2.

SWS has concerns about how the Panel can become involved in permanence planning, given the complexities of legislation and duties which rightly surround this area of work. Involvement in longer term planning and scrutiny of the child's plan are not therefore areas where SWS can at this point give agreement. The children's panel's role is to determine if a child is in need of compulsory measures of care; it is not to decide if permanence is appropriate/in child's best interests – there are other statutory routes for deciding on permanence. Children's Hearing by their nature are also short-term decision-making forums with a requirement to review decisions at maximum of 12monthly intervals. This is therefore a recommendation that requires major legislative change given the current duties around permanence. Members query whether this is required given it was not an area of change or improvement highlighted by Promise or adoption policy review.

Specialist sheriffs was a recommendation of the adoption policy review, and at the time had the support of the workforce. Any increase in understanding of trauma and family issues and the wider care system in judiciary would be beneficial.

## **Conclusion and Thoughts:**

Social Work Scotland and our members are keen to be an ongoing part of the reform of the hearing system and appreciate the inclusion of a CSWO and SWS representative on the Redesign Board alongside other key partners. As the leadership organisation for social



work, we are committed to improvement in this core part of our system to protect children in need of compulsory measures to ensure their wellbeing. Engagement in the process of collating views has demonstrated the strength of that commitment.

Critical to a constructive way forward is respect for those involved and redefining the tone of this work to reflect the commitment of all parties and the core values underpinning an inquisitorial and respectful hearing system which works for children. In the spirit of that foundation, we will share the full response to the recommendations, underlining the commitment of our members and the wider workforce to doing our part in the reform needed, and moving beyond the feelings reflected earlier in this document. Members are keen to build on existing improvement work, and to see clarity of roles, shared values and positive shared language. SWS will use our networks and relationships to work with our partners to make the changes required, contributing to the reframing of language and developing a positive programme of work which will bring the necessary change and hope to the hearing system, making it work for those involved and particularly the children and young people we serve.

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