Children's Hearings Redesign

SOCIAL WORK SCOTLAND RESPONSE TO CHILDREN'S HEARINGS REDESIGN – POLICY PROPOSALS: CONSULTATION

28 October 2024

INTRODUCTION

Social Work Scotland (SWS) 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 in the Independent Care Review and subsequent Promise, to the importance of reform in the children's hearing system.

While our member's views on the process of the Hearing Reform Working Group have been mixed, commitment from the social work profession and leadership to the need for change, and to making this change happen, is strong. Social Workers are often the only professionals who are engaged with children and their families before, during and after a hearing, building relationships and taking forward often difficult discussions and work to ensure that children's rights and best interests are fulfilled. They walk the journey through a wider range of interventions and processes with the family, and therefore bring to this consultation a wealth of knowledge and experience, covering the voice of children and families, and both professional and personal experience.

Social Work Scotland (SWS) members are keen to contribute on an ongoing basis to this work. Social workers are conscious of the unintended consequences of improvements to the hearing system over time, and how this has contributed to the current adversarial system which does not respect either the rights of the child who should be at the centre, or those who operate within the system to promote the best interest of the child.

The Children's Hearing System is a critical part of our care system in Scotland, providing a forum for ensuring care and protection for children who require compulsory measure of care. Not all children in need of care and protection require compulsory measure of care and the hearing system therefore must operate as part of a wider system which, as a whole, is designed to ensure that children's needs are met. Children's journeys are seldom linear and the interface between and understanding of the wider processes and the hearing system is therefore critical. Many of the comments which form part of this response reflect

that interface and provide context and detail about how the wider system and checks operate, something which is essential to ensure that the hearing system can undertake its remit for those who require compulsory measures of care, with no adverse consequences for other parts of the system – or the children it serves.

Scotland's hearing system remains unique in providing a forum where children are understood as requiring care and protection regardless of whether this is displayed in their own behaviours, or the behaviours of those around them. While an essential component of Kilibrandon's initial vision, this ongoing approach aligns to our GIRFEC national approach, now embedded in practice and something SWS members remain committed to. We note however that whether those principles could be embedded in a different form of tribunal is not something that has or is being explored.

This response is collated from engagement with our members and includes the views of practitioners, front line managers and leaders in social work across the profession.

CONSULTATION RESPONSE

The Principles of a Redesigned Children's Hearings System (Consultation Part 4)

Background

“The overarching principles of the Kilbrandon Report which have run through the legislation that developed the Children’s Hearings System remain as relevant today as in 1964 when it was first published. These principles have been found to be in accordance with European and international law relating to the rights of children and their families, when considering the provisions of the ECHR as enacted in the Human Rights Act 1998 and UNCRC, ratified by the UK in 1991.”

Hearings for Children report – May 2023

The principles of the Kilbrandon Report are well established and continue to be the right ones to underpin a redesigned children’s hearings system. The Scottish Government have no plans to change this fundamental approach.

However, the Hearings for Children report asked that:

“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.”

The adoption of an explicitly inquisitorial approach was central to the deliberations of the Hearings System Working Group and reflected their finding that the children’s hearings system was seen as “adversarial”. Adversarial legal proceedings involve two opposing sides, usually represented by lawyers, presenting their cases to an impartial judge, judges or jury. The nature and significance of the decisions being made within the setting of a children’s hearing mean that it can be an emotive and sensitive process for all participants, including for professionals.

Difficult, high stakes conversations that can be characterised by discomfort, challenge sometimes feeling accusatory towards professionals, a sense of undermining and exposure among a number of contributors, along with feelings running high, can all combine to an experience that feels fraught with hostility and jeopardy.

While their governing legislation does not explicitly require the adoption of an “adversarial” approach, some tribunals by their nature will be more adversarial, e.g. Employment Tribunals, which predominately hear disputes between competing claims. Others, such as Mental Health or Special Educational Needs and Disability Tribunals, tend to function more

as an inquisitorial hearing, as they are tasked with obtaining facts to determine the best outcome for an individual.

While the governing legislation for the Mental Health Tribunal for Scotland, for example, does not require an “inquisitorial” approach, it sets out overarching principles for discharging certain functions (see section 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003). These principles both drive the intended nature and character of the tribunal as inquisitorial, but also keep the person intended to be central to proceedings at their core. The Scottish Government will consider whether, to achieve the aim of making children’s hearings more inquisitorial, statutory principles such as these could be appropriately adapted for application in a redesigned children’s hearings system.

It is arguable that - at different phases - it will remain legitimate for the redesigned children’s hearings system to comprise features of both adversarial and inquisitorial approaches. The Scottish Government note the remarks of Lord Hope about the ‘genius of this reform’ [the inception of the hearings system] being a clear separation of substantive decision-making about the need for compulsory supervision from establishing matters of fact (Sloan v B, 1991 SLT 530 at p. 548))

The Scottish Government consider that it will be difficult to devise a rights-respecting process that is not in some respects adversarial - at least during the phases of the process that are concerned with the acceptance or establishment of facts justifying potential compulsory state intervention in children’s and families’ lives.

That said, when it comes to the identification of the necessary measures, if any, of support and supervision, it would be desirable to emphasise an inquisitorial approach.

By that, the Scottish Government intend for the forward-looking aspects of children’s hearings’ discussions and decisions to be optimistic, respectful, enquiring, problem-solving and collaborative - to the fullest extent possible.

‘Hearings for Children’ report stated (p207): ‘The Hearing itself should have the characteristic of an inquiry into the needs of the child or young person…. This inquiry should seek to ensure both the views of the child and their family are sought and considered, and that they are able to actively participate in discussions and contribute to decision-making processes in ways that are appropriate to them. Children and families should feel included in the decision-making process and gain a sense of working alongside the Panel to make strong and competent choices and decisions in the best interests of the child.’

The Scottish Government believes that many of the proposals being progressed and considered as part of the process of redesign will lead to a more inquisitorial approach in any event, thereby improving the experience of a children’s hearing for children and other participants.

However, the Scottish Government recognise that a legislative acknowledgement of overarching principles may emphasise and clarify the intended approach.

In considering this, the Scottish Government must be cognisant of any unintended consequences for proceedings that legitimately differ in their approach, or could unintentionally interfere with the independence of hearings themselves or the judiciary.

In 2016 the Children's Hearings Improvement Partnership (CHIP) published *Our Vision and Values for the Children's Hearings System* The cover of the document contains a quote from a young person – "*a children's hearing should be a conversation not a confrontation".* Much of this document remains relevant and the Children's Hearings Redesign Board are revisiting it as part of their ongoing work.

Proposal

Views are invited on the principles that should underpin a redesigned children's hearings system and whether it is necessary for these to be enshrined in legislation. (See section 4.1 of the consultation document)

1. **What principles should underpin a redesigned children's hearings system and why?**

Please give us your views.

While the term inquisitorial is used throughout the Hearings for Children report, it remains unclear what is meant by this term. SWS members are acutely conscious that children will only be before a children's hearing if something has gone wrong in their lives and circumstances and a measure of compulsory interference by the state in their lives is required. A level of conflict is inherent in such situations, but if managed well and focusing on the best interests of a child, can be more inquisitorial. SWS would be supportive of developing principles for the hearing system and focusing on those rather than titles that are more easily misunderstood such as 'inquisitorial'. Some members have noted that while technically the opposite of adversarial and describing a questioning approach the term does have some negative associations and that the definition itself describes the approach as 'asking a lot of questions especially in a way that makes you feel annoyed' (Cambridge dictionary)

SWS members strongest comments about the hearing system as it is currently relate to the adversarial nature of hearings which are regularly experienced by many social workers and their managers as traumatic, disrespectful and at times personally abusive. There is particular issue with lawyers utilising defence techniques to 'discredit' a social worker, and panel chairs lack of skills, knowledge and ability to manage such scenarios. This contributes to workforce stress, and members have provided local evidence indicating that social workers are leaving children and families social work as a direct result of experiences at Hearings. These experiences additionally often damage relationships with children and families. Members note that if they experience hearings in this way, then the experience of,

and impact on, families and children will be even more distressing. The purpose of the hearing and the voice/best interests of the child has become lost in implementation of previous changes e.g. in legal representation, which were a genuine attempt to be more inclusive and ensure rights were upheld and all those involved could access proper representation. However, this has led to unintended consequences within the dynamics in Hearings. It is essential that the redesigned hearing system changes the culture which has developed.

Comments gathered about principles include:

- *Principles for a redesigned hearing system must be underpinned by a culture of respect which is enforced.*
- *Alongside this, there should be an acceptance that children would not be attending a hearing had something not gone wrong in their lives, and there is a potential need for the state to intervene on a compulsory basis. As such, a level of disagreement and conflict is inherent in the hearing system as it upholds a child's right to safety, freedom from abuse etc.*
- *The 'child's best interests' must be underlined with appropriate authority for behaviours which are not putting this at the centre to be challenged.*
- *The principles of compulsory measures only being utilised if required – minimum intervention – should be retained and underline*
- *Characteristics of a hearing system should be respect (the biggest ask of social workers), clarity of role, an enquiring approach, and a separation of assessment and decision making*

2. **What would be the advantages and disadvantages of setting out overarching principles in legislation?**

Social worker Scotland members have not expressed strong views on whether principles should be enshrined in legislation but have questioned the benefit and need for this given there already exists a legislative framework and overarching principles in GIRFEC. They are of the view that principles can be developed and agreed without the need for legislation and that a collaborative approach to developing and agreeing principles would result in more effective commitment to operating to those principles.

There is additionally a concern that if principles are placed in legislation this may have the unintended consequences of opening doors to additional routes of complaint and legal challenge which would impact on decisions and complicate and potentially delay processes.

However, there is a suggestion from some members that placing the principles in legislation may add weight to embedding the change in behaviour needed from some participants.

Before a Children's Hearing (Consultation Part 5)

This section of the consultation paper considers measures relating to the processes before a children's hearing, including the use of certain forms of language, who can attend a hearing, and how the Scottish Government can support system actors to improve levels of participation and engagement with children.

Statutory referral criteria

In Chapter 3, the Hearings for Children report recommended that "Changes to the statutory referral criteria and to updating and modernising the language of 'protection, guidance, treatment or control' in section 60(2) of the 2011 Act must be considered." The report goes on to state that "referral processes should be underpinned by the key principles of rights-based proportionality, consistency, and timeliness".

Section 60 of the 2011 Act states:

60 Local authority's duty to provide information to Principal Reporter

(1) If a local authority considers that it is likely that subsection (2) applies in relation to a child in its area, it must make all necessary inquiries into the child's circumstances.

(2) This subsection applies where the local authority considers—

(a)that the child is in need of protection, guidance, treatment or control, and

(b)that it might be necessary for a compulsory supervision order to be made in relation to the child.

(3) Where subsection (2) applies in relation to a child the local authority must give any information that it has about the child to the Principal Reporter.

The Hearings for Children report highlights the terms "treatment" and "control" as being in need of modernisation and recommended that the legal implications of removing this language should be explored. The report proposed that the referral criteria could 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)

The language used in the children's hearings system, and in connected systems, professions and disciplines can have a profound effect on children and young people. The Scottish Government is supportive of the ongoing work to promote the common use of

accessible and sensitive language across the children's hearings system. The Scottish Government's ambition is that everyone within the redesigned children's hearings system is able to recognise the power of language, and this must extend, appropriately, to the language used in the legislation which governs the system. However, the Scottish Government have concerns that these proposed changes could have significant consequences across practice, case law and legislation, so it would be wrong to drive through change without a strong evidence base to indicate that particular changes are necessary. The Scottish Government are therefore interested in respondents' views on whether the existing criteria need to be updated in the way suggested by the report, and why.

3. **What elements of language in the existing referral criteria need to be updated, if any?**

SWS is supportive of the move to amend and update language in the care system to be more trauma informed and respectful of rights and feelings. We have actively supported the wide range of work already underway to reframe language and ensure this adequality reflects and supports understanding and experiences of children and families in need of support through the Hearing and wider care system.

Understanding of the power of language has developed since Kilbrandon and the cultural context of our society has changed. We are strongly supportive of developing more appropriate language but would note that:

- *Protection and guidance are core aspects of the hearing system, and we support retention of those terms. They are also easily understood by participants.*
- *Support and Guidance: We understand the concerns about the term 'control' but members are not of the view that replacing it with 'support' adequately reflects that the hearing system in its nature is about aspects of compulsory control over aspects of child's life. The terms used need to be honest as well as sensitive. Support is also a wide-ranging term, often used in a nebulous manner and would add complexity to the process by the need to specify what is meant. SWS is also of the view that this would result in extra challenges where appeals are made.*

  Acknowledging the difficulty with language, an alternative suggestion was 'The child or young person is in need of protection, care, and guidance .....such that compulsory intervention is likely to be required'.

- *Safety: SWS does not consider that the addition of the term 'safety' adds anything that is not already contained in the word 'protection'.*
- *Proportionality and Timeliness. We note the working group's suggestion that the referral process be underpinned by principles of 'rights-based proportionality, consistency, and timeliness' and the proposal to include proportionate and timely in the referral criteria. Given support for overarching principles of a hearing system, specific referral principles feel unnecessary. The terminology will also need*

explained. A more appropriate inclusion may be to reiterate the 'minimum intervention' principle within the Children (Scotland) Act 1995. Operationally this would require individuals making a referral to note why non-compulsory measures are not appropriate and compulsion is required at this point.

Please provide any other "elements of language" needing to be updated.

Our only other comment around language would be a commitment within any language work to 'say it as it is' and to consciously avoid and challenge use of acronyms and abbreviations.

4. **Do you support the proposed referral criteria from the Hearings for Children report?**

Partially.

Please explain your answer.

SWS supports amending the current language in the referral criteria but suggest some amendments to aspects of the proposed new referral criteria. See comments in Q3 above and Q5-7 below.

5. **What are the advantages or disadvantages of the proposed draft referral criteria?**

See response to Q3.

6. **Do you have any other comments about potential changes to the referral criteria?**

Please give us your views.

Please see answer to Q3 above.

7. **Do you support the proposal to change the applicable referral test that compulsory supervision 'might be necessary' to it being 'likely to be needed'?**

No.

Please explain your answer**.**

SWS members see little benefit to changing this wording.

Before the Hearing - Relevant persons

Chapter 8 of the Hearings for Children report makes the following recommendation:

"The preparation phase prior to a Hearing taking place must give particular consideration to the information held by the people who know the child best, including those working closely alongside them, and foster, kinship and adoptive parents. These people must be able to participate appropriately and share their views. Legislative or policy changes may be needed to the definition of 'relevant person' status to facilitate these changes."

The term "relevant person" is well-established in legislation and policy. Being, or becoming, a relevant person confers certain rights and obligations on an individual. Relevant persons enjoy significant rights in relation to children's hearings, including rights to appeal, review determinations, and receive detailed papers relating to proceedings.

When an individual is automatically classed as a relevant person, there are no means to remove that status from them, other than via a court order having removed their Parental Responsibilities and Parental Rights (PRRs).

Under the Children's Hearings (Scotland) Act 2011, and its subordinate legislation, the legislation does not include a definition of 'parent', but the following people are considered to be "automatic" relevant persons:

• Any parent, whether or not they have PRRs (unless their PRRs have been removed by the court)

• Any other person who has obtained PRRs.

This definition means that a biological parent qualifies as a relevant person, regardless of the level of their involvement in the child's life. The Scottish Government would welcome respondents' views on this existing definition, and whether it would be appropriate for a hearing to have the power to remove automatic relevant person status where the involvement of an individual in hearings proceedings may not be compatible with the rights of the child or others.

There are mechanisms to allow the hearing or Sheriff to consider whether other people should be deemed relevant persons. A pre-hearing panel can be convened to consider whether to deem an individual to be a relevant person if it considers that the individual has (or has recently had) a significant involvement in the upbringing of the child. "Deemed" relevant persons can have their relevant person status removed in situations where their relationship with the child no longer meets the deeming criteria.

The Scottish Government recognises that, under the current legislation, there are no means for an individual to be deemed a relevant person prior to a pre-hearing panel taking place. The Scottish Government understands there may be justification for introducing a process for individuals to be deemed relevant persons at an earlier stage to ensure they are able to participate fully in the preparation phase before a hearing. The Scottish Government is interested in views regarding whether changes are required to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate.

It is the Scottish Government's view that, in practice, the preparation for a hearing, and the provision of information to a hearing, can and should involve appropriate consultation with the people who know the child best. This should happen at the relevant time either before a referral is made, or during the preparation for a hearing. This activity should, in the main, be undertaken by the local authority, with the children's reporter making additional inquiries where it is necessary.

This is provided for in current legislation and practice, but respondents' views are invited on where and how the current arrangements could be improved. In particular, the Scottish Government is interested in whether respondents feel it is necessary to legislate for the participation and engagement of a broader range of people in the preparation for a hearing. The Scottish Government would particularly be interested in views on whether there would be advantages in creating an additional class of person with certain rights to provide their views at an early stage, and to participate appropriately as the case proceeds.

8. What are the advantages and disadvantages of the current definition of "relevant person"?

The inclusion of the term 'relevant person' is useful and is a term which makes sense to professionals and lay people and families - who is 'relevant to my care'.

However, SWS is supportive of a simplification of the relevant person aspect of hearings, which has become overly bureaucratic and complex.

Parents should remain automatically relevant persons, and we suggest that for the purposes of a hearing, those caring for a child who is in alternative care should also be automatically deemed relevant as long as the child remain in their care eg children looked after by kinship or foster carers.

Some related consideration about the right for the manager of a children's house/secure establishment or similar care provision or their representative to be consulted, receive papers and attend a hearing would also be welcomed, noting the related but wider need to consider rights of attendance at a hearing – which social workers currently do not have.

9. Should the legislation include a definition of "parent" and if so, what should it be?

No.

Please explain your answer.

The definition of parent as someone holding parental responsibilities and rights is already well defined elsewhere in legislation and to add a possibly different lair of definition for hearings would make an already complex legal landscape more complex.

10. **Do you have any views on whether it would be appropriate for a hearing to have the power to remove relevant person status from any relevant person in certain circumstances and if so, please explain?**

Please give us your views.

While there are elements which are attractive in hearings having the power to remove relevant person status, SWS is of the view that it would be a dangerous precedent to set to enable a hearing to remove the right to be considered relevant in a children's hearing from those who hold parental responsibilities and rights in relation to a child, regardless of their level of involvement in that child's life. Lack of involvement can occur for a variety of reasons. It is our view that interfering with parental rights at a Hearing, could be challenged as a breach of that parent's legal rights and responsibilities and potentially lead to complex and time-consuming legal challenge. This could also have an adverse impact on the timely planning and decision making to meet the needs of the child.

11. **What are the advantages and disadvantages of an earlier process for deeming other people to be relevant persons?**

Deeming individuals as 'relevant persons' can delay proceedings and there is therefore benefit in a process which enables those who are 'relevant' to be agreed earlier in the process. However, to deem individuals beyond those with parental responsibilities and rights as 'relevant' before a hearing (if not already deemed relevant) risks complicating the pre-hearing process as it will require consultation with all relevant persons in the preparation and writing of a hearing report by the social worker.

Rather than complicate this aspect, SWS suggest that current practice in gathering information and views and the formulation of an assessment of need along with recommendations, should continue, and that guidance for this part of the process could underline the importance of speaking with all those who may be relevant to a child and their wellbeing.

SWS does not feel there is any need to legislate in this area. Existing guidelines in relation to GIRFEC and care planning are more than sufficient. Additional legislation risks making this aspect more time-consuming and complicated.

12. **What changes could be made to legislation to enable more effective gathering of information prior to a hearing and to support proper opportunities to participate for other people in the child's life?**

Please give us your views.

SWS is of the view that there is no need for any changes to legislation in relation to effective information gathering prior to a hearing. The Reporter is already empowered to make enquiries and in terms of the local authority role, assessment and care planning are underpinned by GIRFEC (legislation and guidance) which includes details of how to assess

a child's wellbeing needs using the national practice model and includes at its heart the views and voice of children and those who care for them. Any assessment of need currently, (under existing guidance and law), involves the participation and views of those who know a child best or who hold parental responsibilities and rights in relation to that child, as well as the child themselves. This is current social work and multi-agency (GIRFEC) practice.

13. **What are the advantages and disadvantages of the creation of an additional class of person whose views and participation are essential to the business of the hearing, but do not require the full rights and obligations of a relevant person?**

SWS members are concerned about creating an additional 'class' of individual. The landscape of those with parental responsibilities and rights, those who are relevant persons beyond this, and those who by dint of their role, will be involved e.g. education or social work, is already complicated enough.

The current position for deeming an individual relevant or no longer relevant is already complex and difficult for families to understand and professionals to navigate. For lay people the distinction between a relevant person and a semi-relevant person would add to this complexity – and if later proposals for safeguarders becoming invoked earlier in proceedings are progressed, the landscape becomes even more cluttered and complicated – and therefore difficult for children and their families to understand and professionals to navigate.

As noted earlier, ensuring that those critical to a child's care – social worker and those caring for a child - have a right of attendance and access to relevant paperwork would be a simpler way of proceeding.

Participation and attendance

Each child's view on how they participate in their hearing must be a significant feature of a redesigned system. Article 12 of the UNCRC is clear that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them, and their views must be given due weight in accordance with the age and maturity of the child.

Within the current children's hearings system, there are multiple ways for children and young people to appropriately participate – according to their age, stage and preferences.16 Enabling children to have a clear choice of how to participate in their hearing, unencumbered by administrative barriers, is in keeping with broader trauma-informed practice, and the Scottish Government is supportive of this in principle.

The Hearings for Children report recommends that:

"The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing."

Section 73 of the 2011 Act sets out the obligation for a child to attend their hearing, and the circumstances in which a child can be excused from their hearing. Further provisions on the child's duty to attend court proceedings are laid out in sections 103 and 112 of that Act. There is no provision to proceed in the absence of a child if they have not been, or cannot be, excused under the criteria in section 73.

Should the obligation to attend be completely removed, this could have concerning rights implications, for example where an offence ground is under consideration. However, the Scottish Government acknowledges that there is support for greater flexibility in this regard. System partners and stakeholders have reflected positively 16 Your Rights - SCRA 19 on the impacts of, and learning from, the emergency arrangements for children's hearings introduced by the Coronavirus (Scotland) Act 2020, which removed the obligation for children to physically attend their hearing. Anecdotally, the Scottish Government understand that this flexibility was well received by children and young people, and their families

14. **Do you agree with the recommendation to remove the child's obligation to attend their hearing, to be replaced with a presumption that the child will attend?**

Yes, with caveats.

If yes, what limitations would need to be applied to this presumption?

While we broadly agree, the presumption of attendance should be strongly put into practice to avoid any rights breaches, and the Reporter or Hearing should have the power to require attendance where circumstances require this. Such a power may be particularly relevant in terms of a child's rights where they have committed a serious offence or there is consideration of steps to restrict liberty of other rights. (Given the Age of Criminal Responsibility Act, the consideration of 'offence' grounds for under 12's is not relevant.)

Within this there should be consideration of how a child is facilitated to attend which could include partial attendance e.g. to state their acceptance of the grounds, and /or remote attendance. Evidence from local authority childcare reviews during Covid restrictions indicated that young people particularly appreciated the opportunity to attend a review remotely, and only for parts of the meeting.

15. **Does the hearing need a power to overrule the child's preference not to attend their hearing in certain circumstances?**

Yes.

Please explain your answer.

See response to Q14 above.

16. **What steps could be taken to support the child's participation and protect their rights, if they choose not to attend their hearing?**

Please give us your views.

Please see our response to Q14 above. Support to attend and participate is a practice issue which we do not consider requires legislation beyond what already exist apart from formalising being able to attend for part of a hearing and offering children the opportunity to express their view in other ways. This should not be restrictive and could include recordings, letters, and alternative communication methods such as board maker, particularly relevant for those with no or limited verbal communication. Additionally better use of technology would assist with engagement of children and young people. The expectation must be that the child is helped to express their views in all situations but especially where they will not be present at a hearing.

In relation to a child's rights, all public bodies must uphold a child's rights, and the principle of rights is at the heart of social work values.

17. **Should a child still be obliged to attend hearings held in consequence of offence referrals, or in consequence of the 2011 Act section 67(m) 'conduct' ground?**

Yes, with caveats.

Please explain your answer.

SWS are broadly supportive of this approach to ensure that the rights of those accused of offences are upheld, but note that if the power to require attendance is provided as outlined in our response to Q14, then referrals for offence grounds could be covered by those provisions, while retaining flexibility for complex situations, for example where a child with additional needs has committed an offence and attendance could be particularly traumatising. SWS would note that many young people referred to a Hearing will be there as a result of complexities.

Voices of very young children

Where the hearing relates to babies and infants who are too young to express a preference regarding their participation, the Hearings for Children report recommends:

"The voices and experiences of babies and infants must be captured and shared with the [hearing]."

18. Do you agree that particular arrangements should be made to capture and share the voices and experiences of very young children in a redesigned children's hearings system?

Yes.

If so, what should those arrangements be?

All children communicate, and babies and children communicate their feelings and gradually also their wishes. Capturing what a young child is telling us in their behaviour and presentation requires understanding of child development and how a child responds to consistent care and thus how they respond to inconsistent care or trauma. This is very different to an older child expressing their views on matters affecting them. Understanding the presentation and behaviour of a baby or infant and what they might be expressing through these reactions is a skilled area of practice which is focused on whether their needs are being met and their wellbeing and development protected and facilitated.

SWS is therefore of the view that this is a core part of the multi-agency assessment of need and resultant care plan and should be reflected in a hearing in this way – drawn from those who know and see the child and the feedback and views of those able to understand what a baby or infant's presentation is communicating. This is about parents, kinship and foster carers, social workers, health visitors and nursery staff, amongst others, using their professional and personal expertise to understand if an infant is appropriately thriving.

At the heart of the social work task and skill is assessment which brings information together with a particular focus on the views and voice of children and their best interests. What arises from the observations of those listed above would then be reflected in the social workers report to the hearing.

The offer of advocacy to the child

It is important that, in advance of a hearing, children and young people of all ages are involved in the consideration of how they can appropriately give their views. Where necessary, this should involve the support of a children's advocacy worker, and the Hearings for Children report also recommends "*there should be an immediate offer of advocacy at the point of referral to the Reporter for all children"* and "*the offer of advocacy should be repeated to children and to their families at different stages of the process."*

The current section 122 of the 2011 Act states that the chairing member of a hearing must inform the child of the availability of children's advocacy services. In practice, the offer of advocacy does happen before the children's hearing.

19. Should the focus and wording of section 122 of the 2011 Act be reformed to reflect an earlier, more agile and flexible approach to the offer of advocacy to the child?

Yes – possibly.

Please explain your answer.

SWS members are of the view that advocacy can add benefit to the existing opportunities for a child's voice to be heard and that flexibility could be an enabling factor in ensuring that advocacy is available where needed or appropriate.

However, members have also pointed out that many individuals will advocate on behalf of a child, including social workers, not only because it is required of them in terms of reflecting a child's views and wishes but also because this is part of the principles and role of the social work profession. This is an individual professional responsibility for a registered social worker. Social workers should always provide 'support and representation' to assist a child in relation to their involvement in a hearing'.

They have also reflected that the current national context of advocacy is becoming cluttered and can be confusing. Independent advocacy - separate from that specific to the hearing system - is available in local authorities. All local authorities have a children's rights officer and must have provision of advocacy for their looked after children. Many extend this to wider groups. Alternative opportunities are therefore already available where a child may not be attending a hearing, but requires or would benefit from separate advocacy support, for example children involved in child protection processes.

Members also noted that they often, and routinely, refer children to hearing advocacy services at an earlier point in the process and that this is resourced by the hearing advocacy providers.

It is therefore the view of SWS that there is already provision for earlier independent advocacy provision within local areas, and that exploring existing wider advocacy provision may be wiser before considering extending the offer of advocacy via the hearing system to the prehearing stage. However, formally enabling hearing advocacy providers to respond to referrals early if those working with the child or the child themselves wish this, (as distinct from it being a mandatory referral and offer), would remove any barriers and better reflect current practice. This could be done via amendments to the contract, making legislation changes unnecessary, ensuring that a child's rights are upheld.

To formally include the offer of advocacy via the hearing system at the point of referral – noting that at this point some children may not be aware of the referral, they may be dealing with distressing matters, and the referral may not proceed – also, in our view, raises rights issues connected to the sharing of information without this being evidenced as necessary and required.

We also note that any extension of advocacy provisions will have significant cost and resource implications.

20. **How should the rights and the views of children and young people of all ages, including very young children, be better represented in the children's hearings decision making?**

See Q19 above in relation to advocacy.

SWS members also have strong views that 'uninstructed advocacy' is not appropriate, and indeed is against the principle of advocacy. An individual must be able to instruct the person they wish to advocate on their behalf and where an individual e.g. a baby or individual with capacity issues, is not able to do that, then the person with parental responsibilities or guardianship is the one with the authority to instruct or not. To ignore this is to breach a child's rights and the parental rights of the parent or guardian.

Our members also note that currently there are a large number of individuals who all have a role or duty to represent, or enable the representation, of a child's views – social worker, advocate, lawyer, safeguarder, parent, carer and the child themselves. This in itself contributes to the complexity, confusion in roles and the adversarial nature of hearings, which the Hearings for Children report highlighted and seeks to address.

Members have noted the existing role of the safeguarder in the hearing system which they believe currently provides this role and function.

The issue is therefore not adding to the complexity but helping children to be better represented, by ensuring simplification of current representation, roles and responsibilities.

21. **Should there be a statutory obligation to support the sharing of information to advocacy workers, and other people who can help children and families to understand their rights?**

No. Children's information is already legally shared widely as necessary. Any information sharing should be governed by existing GDPR and GIRFEC guidance. Where a child is of an age to consent to sharing of Information themselves that may be progressed but otherwise sharing would not be appropriate except where there are protection issues. Such situations are already covered in the National Child Protection Guidance.

Amplifying children's voices throughout the process

Existing legislative requirements mean that a hearing, pre-hearing panel, or Sheriff must ensure the child has the opportunity to express their views, in a manner they prefer, and decisionmakers then must have regard to those views. It is also a requirement that anyone providing any document to a hearing under the terms of the legislation, must include any

views given to them by the child. The chairing member of a hearing must also ask the child if their views are accurately reflected in the documents provided to the hearing.

However, it should be seen as the responsibility of all those involved with the child to capture their views, and to support methods of preparation for, and participation in, the various stages of the children's hearings system - appropriate to the child's age and stage. If the child is not going to attend their hearing, there should be a recorded process which assesses what has been done to support their participation in other ways, and to get their views, in a way that also makes clear recommendations on what more needs to happen before a hearing is convened.

The Scottish Government considers that there may be value in the creation of a statutory process, undertaken by the children's reporter, which:

• Records what has been done up to the point of referral to gather the child's views, including confirming that they have been offered advocacy.

• Applies a "best interests" test regarding appropriate participation prior to a hearing being arranged. This would account for the child's views on how they wish to attend/participate, their age and stage of development, and the nature of the matters due to be considered by the hearing.

• Makes any necessary further arrangements to gather the child's views and support their ongoing participation. This would include additional offers of advocacy and bespoke and enhanced forms of participation depending on the age and stage of the child, or any other needs they may have.

The Scottish Government is therefore interested in the views of respondents on how changes to participation might operate in practice, to ensure children's rights and best interests are upheld, and their views and wishes reflected to decisionmakers.

22. Do you support the creation of a statutory process, undertaken by the children's reporter, to record the capturing of children's views and participation preferences?

Partially.

Please explain your answer.

SWS see benefits in recording that the views of a child have been provided and expressed to evidence and uphold that right. Whether this needs to be laid down in legislation and extend to the formal complicated process outlined is questioned.

SWS is of the view that a simple recording that views were expressed and reflected in the various reports and presentations is sufficient. The Reporter already has the power to 'make what enquires they deem necessary', and to record how this task has been

undertaken including how children's voices have been reflected and heard. We would argue that no legislative change is necessary to ensure improvement in this area,

SWS is concerned that extending the Reporters role as outlined in the proposal, beyond the current enquiry role and data collection will result in recording of judgments about the appropriateness of the actions of those seeking and reflection a child's views This extends the role of the Reporter into a remit which potentially becomes scrutiny of the practice of contributors, without necessarily having the full information to make such an assessment. There is also a concern about what happens with the information should the conclusion be that practice has not been appropriate.

This however in no way detracts for the Reporters duty to make enquiries and this could include requests for additional information on the views of the child.

SWS are also concerned and not supportive of additional and 'bespoke or enhance' advocacy. This raised serious concerns amongst our members. A number of questions emerge from this, such as:

- *What does 'bespoke and enhanced' mean?*
- *How would this interface with existing advocacy and the statutory role of the social worker?*
- *What does it mean beyond the prehearing period?*
- *How will it be monitored and funded?*
- *Where will those 'bespoke and enhanced advocacy providers come from?*

Before the Hearing - Provision of papers

Chapter 8 of the Hearings for Children report includes discussion of the issues around the provision of information for hearings to children, families and panel members. It also describes the support given to those that may be seriously affected by reading deeply sensitive or repercussive material about their personal and family lives, especially where that happens without the right support, reassurance or explanation.

The current 2013 Rules of Procedure17 require that the child, each relevant person and any appointed safeguarder must receive certain papers as soon as practicable, and no later than 7 days before the hearing. Other reports, such as those produced by the safeguarder and the local authority are required to be provided no later than 3 days before the date of the hearing. The Hearings for Children report suggests that these timescales might not be sufficient to allow children and families to be adequately supported to understand and emotionally address the contents in a way that would help them to prepare properly for their hearing.

"There should be full consideration of the time a child and 'relevant person' is given to read and understand the information that they have received. ……Th[ere] may not be enough

time for a social worker, family support worker or advocacy worker to sit down with a child and family and help them to understand and process the information, however the balance between introducing drift and delay into the system and this being provided should be considered."

Hearings for Children report, Chapter 8

SCRA advise that actual usual practice is for papers to be provided to children and families well in advance of the minimum legal requirement of 3 days. Altering the time frames as set out in the current 2013 Rules of Procedure could have implications for the professionals involved in their production and could introduce delay

Any proposed change would need to balance the need to ensure that paperwork continues to be produced to the standard required, that the material remains relevant and current for discussions and decisions at the subsequent hearing, and that any new timeframes reflect the imperative to ensure that the best interests of children are served.

Chapter 8 of the Hearings for Children report considers a range of issues relating to the way in which information is currently provided. Non-legislative issues relating to the provision of information will be considered by the Children's Hearings Redesign Board rather than this consultation.

Chapter 8 also discusses the implications for panel members of timeframes for the provision of papers to them:

*"*There are few children and families that engage with Children's Hearings that have not experienced some degree of complexity and trauma in their lives. The papers received by the [panel members] can be substantial and include weighty reports by social workers, psychologists, parenting, and other assessment relating to health or education. Currently, Panel Members will commonly have only a few days, at most, to appraise themselves of these complexities ahead of a Hearing taking place. The Group has heard that sometimes the [hearing] does not have time to assess all of the information. In a redesigned Children's Hearings System all reports must be shared with plenty of time for Panel Members to review them."

23. Should the timeframes for the provision of papers in advance of a children's hearing to the child and relevant persons as set out in the 2013 Rules of Procedure be altered?

No, with caveats

Please explain your answer.

SWS members consider three days is acceptable and note that for a local authority report, good practice is that families and children will already be aware of the contents of the report

and recommendations and that a social worker should have provide them with a copy and gone through this with them prior to the reports being sent out for the Hearing.

24. Should the timeframes for the provision of papers to children's panel members as set out in the 2013 Rules of Procedure be altered?

No.

Please explain your answer.

Panel members will have their own views on this. There are though also wider issues in relation to timescales within the process. SWS members would note that the work to prepare a report is significant, especially for rural and island authorities, and the timeframe for providing this to the Reporter are already tight.

SWS appreciates the amount of paperwork, and the time required to consider this properly – and that three days will be challenging especially if a panel member is covering several panels.

However, part of the challenge facing panel members and others, including families, is the long, repetitive and complex reports and information requiring to be read and digested. Attention to this aspect of the process, would significantly enhance the ease of reading and understanding for all involved. For example, removing the need for all previous reports to be provided and utilising summaries would also reduce the trauma for families reading historical accounts of incidents as well as enabling a focus on the current needs of the child, as well as reducing the burden on report writers.

Such a move would not require legislative change.

Grounds of referral: concept and language (consultation Part 6)

'Hearings for Children' recommended that: The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.

Discussion and analysis around grounds of referral are set out in two sections:

• Grounds of referral: concept and language and

• Grounds of referral: processes.

Each section aims to pursue improvement to the children's hearings system in terms of experiences, fairness, efficiency and expediency, and is in response to recommendations identified as numbers 5.1.1, 5.1.3 and 5.1.4. in the Scottish Government response to Hearings for Children.

In this consultation, the phrase "grounds of referral" refers to the headline legal reasons expressing welfare concerns about a child and represent the legal justification for potential compulsory intervention. In statutory terms, grounds of referral are currently contained in s67(2) of the 2011 Act.

There are currently seventeen grounds. The "statement of grounds" denotes the document prepared by the children's reporter under section 89(2) of the 2011 Act, where they determine that a ground(s) of referral applies, and the child requires compulsory measures of supervision. The statement of grounds sets out the statutory ground(s) that best relate(s) to the primary presenting welfare concern, and this is accompanied with averments of fact to support the ground(s).

If, as Hearings for Children suggests, the language of grounds of referral should be better understood by children and families so that they might *"better …recognise themselves in the drafting"* then the processes for putting grounds to families and for having grounds established must reflect that.

Grounds of referral: concept and language

The Hearings for Children report states: *The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.*

The children's reporter will remain the "gatekeeper" to the system considering legal compulsory measures, while recognising the importance of working collaboratively alongside other professionals – linking where necessary to prior inter-related children's services' processes. The decision as to whether to impose compulsory measures of care will continue to rest, subject to rights of appeal, with a children's hearing.

The Scottish Government proposes to retain grounds of referral (to continue to be drafted within statements of grounds by the children's reporter) as the means for introducing welfare concerns about children and young people to a children's hearing.

The *status quo* will be retained with the statement of grounds acting as "the principal legal basis for decision making by a children's hearing", while allowing the hearing to have regard to all information which is relevant to its decision-making around compulsory measures of care

The Scottish Government seeks respondents' views on proposals – extrapolated from the Hearings for Children analysis - meaning that the statutory non-offence grounds could change from those currently listed in s67(2) of the Children's Hearings (Scotland) Act 2011- to grounds that are aligned to the statutory wellbeing indicators (safe, healthy, achieving, nurtured, active, respected, responsible and included) .

The intended benefits of that change would be to:

• maximise engagement with children and families by improving their understanding of the grounds - by using positive rather than negative language, wherever possible and appropriate.

• provide continuity of language and meaning for children and families and professionals alike - before, during and after a children's hearing and link to "other inter-related processes and meetings in their lives"

• link children's hearings' language and concepts to those familiar to the children's services workforce in inter-related processes, particularly around wellbeing assessment and the statutory wellbeing indicators.

• reinforce the concept that the children's hearings system seeks to minimise the use of technical language wherever possible.

The statements of grounds drafted under a redesigned scheme may have some potential to offer a more positive experience for children and families. The remainder of the statement of grounds could demonstrate how the underpinning SHANARRI indicators are not being met for the child in the absence of compulsory support and supervision.

At the stage of drafting grounds, in many cases families have already become unable or unwilling to accept the need for change. However, that situation should not be made worse by grounds that can be difficult for families to understand, or that can be perceived as accusatory.

For example, where the welfare concern is one of the child experiencing a lack of parental care, the current prescribed ground, under s67(2)(a) of the 2011 Act, which states, "*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' could be replaced with a new ground akin to "*the child is entitled to be cared for in a safe and nurturing environment*".

There would have to be a way to connect the grounds of referral with the supporting concerns. That would necessarily use language with a negative connotation, for example - "*The child has not been and/or is unlikely to be cared for in such an environment because: …."*, followed by statements of fact, containing sufficient specification. If a new ground of referral were to state - simply and clearly - the standard to which the family should be adhering and gives them and their lead professional/team around the child a goal to work towards, then that may improve both experiences and understanding.

In introducing new 'wellbeing expectations' grounds of referral in this way, there is a risk that some important welfare concerns might not be capable of being captured with the right degree of specificity.

The Scottish Government's ambition is for children's welfare and justice to be delivered in a responsive manner that maximises the potential for children and families to understand significant statements put to them, and to support them to participate fully in the processes affecting them.

The Scottish Government would be interested in respondents' views on the following questions:

25. Do you consider the current scheme of stating the grounds of referral sufficiently promotes the understanding of children and families as to why they are in the children's hearings system?

No.

Please explain your answer.

The current language is out of necessity legalistic, and therefore not always easy to understand for children and their families. Families rely on the detail behind the grounds to understands the referral.

26. Do you agree that there should be changes to the current approach to grounds of referral?

Yes.

Please explain your answer.

Greater ease of understanding would in the view of our members, be a positive step.

27. Do you agree with the proposal to set grounds positively as a range of wellbeing-orientated entitlements, before clarifying how the child's experience

or conduct falls short of expectations - to the point that compulsory care is needed?

No.

Please explain your answer.

SWS recognises the complexity of this area. While framing circumstances, including difficult messages, positively is very much supported by members, they note that for a child to be potentially in need of compulsory measures of care inherently means their wellbeing needs are not being met. As the reason for the referral, that needs to be clear.

However, members are supportive of an overarching context for all grounds which makes clear that children in Scotland should be safe, healthy etc, and that a referral to the Reporter indicates that this may not be the case for this child, then progressing to the details. Honesty and clarity for children and families is considered critical, and members advise that the existing grounds require explained to children and families and are keen that any amendments simplify and reduce that requirement.

To start grounds therefore with positive framing in line with the welling indicators is helpful. All children have the right to a good childhood, and the wellbeing indicators outline the domains which ensure good wellbeing. Reference to the wellbeing indicators aligns with the assessment process and the use of the national practice model within the GIRFEC approach, used across all relevant agencies, and could ensure consistency in language for children and families.

Members however are not supportive of framing the actual grounds/reason for referral against the wellbeing indicators. They cite examples where this practice in report writing has led to lack of clarity and honesty, and 'lots of words' to then explain what is meant. They strongly favour a clear but sensitively worded summary of what has led to the referral.

The example laid out in the consultation document of reframing lack of parental care to 'the child is entitled to be cared for in a safe and nurturing environment' is simply a statement which is true of every child and does not explain the reason for the concern making grounds potentially more complicated and defeating the purpose of any changes.

28. If a new scheme of grounds based on unmet expectations around wellbeing indicators were to be introduced, are any safeguards needed (statutory or operational)?

Yes.

Please explain your answer.

Please see the concerns of SWS members outlined above. Openness and transparency in the hearing system is crucial, and not accurately and clearly framing grounds could result in increases in challenge.

Should this route be progressed great care is needed to ensure that children and families understand clearly why a referral has been made and the evidence for this.

Grounds of referral: processes

Hearings for Children recommended at 5.1 that the "process of establishing grounds must change" and specifically: "

5.1.3 Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.

"5.1.4 A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds."

The Scottish Government has therefore given close consideration to the processes by which children and their families enter the children's hearings system, and how those processes impact them. If the language of grounds of referral is to be better understood by children and families with an aim they might "better …recognise themselves in the drafting", then the processes for putting statements of grounds to children and families; allowing them to meaningfully contest aspects of the statements of grounds; and for having grounds determined must all reflect that aim.

Over the following three sections, the Scottish Government is proposing a new approach covering the journey from initial referral (to the children's reporter) to the legal grounds being accepted or established. For ease of reference, a high-level flow chart and more detailed flow chart seek to explain potential redesigned processes around the children's reporter's investigation into grounds for referral and the consequent finding of facts, where required.

Engagement between the children's reporter and children and families

The Scottish Government has accepted recommendation 4.3.1 of the Hearings for Children report: "Once a referral has been received, the Reporter must work more closely alongside children and families, where possible. This should include: Ensuring the voices, views and experiences of children and their families are routinely part of the Reporter's investigation (and there must be consideration of a statutory duty on the Reporter to seek the views of the child and family if they wish to share them)."

Currently, the children's reporter writes to children (of sufficient age and maturity) - and families - at the initial stage of the investigation. The reporter then invites them to express their views on the referral, share any information or discuss any queries.

SCRA's website also contains information on how children and families can engage with the children's reporter. Response rates from children and families to the current approach are low.

The Scottish Government considers that further improvements to engagement between the children's reporter with children and families are primarily practice-based issues that can, at least in part, be addressed by SCRA. A programme of continual practice improvement, commencing with a review of current arrangements and efforts by the children's reporter to engage with children and families, is being considered.

Section 27 ("views of the child") of the 2011 Act obliges a children's hearing, pre-hearing panel or sheriff to give the child an opportunity to express views and thereafter to have regard to those views before making a decision about the child. Section 27 does not apply to children's reporters. Currently SCRA are operating a project to consider the implications of UNCRC Article 12 (a child's right to participation in decisions which concern them), applying their review work across the whole current role of the Reporter. This project will consider the children's reporter's approach to seeking views and information from children and families, along with how they can better gather and use views consistently and proportionately.

The programme of activity is capable of being developed within SCRA, but with visibility into that activity for the Children's Hearings Redesign Programme Board.

In light of Article 12 being incorporated into Scots law under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Government has not yet identified any significant potential added value by introducing a statutory duty – over what is already in place or being planned – to strengthen engagement between the children's reporter and children and families.

However, views are sought below on whether new legislative expectations may assist by confirming the central importance of these issues to a successful redesign of the system.

Children's views within Reporter investigation and decision making – a post-referral discussion?

One means of giving effect to the Hearings for Children recommendation around "consideration of a statutory duty on the children's reporter to seek the views of the child and family if they wish to share them" would be to statutorily oblige the children's reporter to offer a post-referral discussion with the child and family. This could be convened at any

point during the investigative stage of the children's reporter process, prior to any decision being taken.

Where the children's reporter decides upon receipt of the referral or during the investigation process that compulsory measures are not required, they should act in accordance with the 'minimum intervention' principle and end their investigation. This reflects the Principal Reporter's current practice direction that *"investigation[s] should be proportionate" and "case actions and decisions should be based on relevant, reliable information and objectively justifiable"* . There would be no statutory requirement on the children's reporter to offer a post-referral discussion for cases where the children's reporter's decision is not to arrange a children's hearing.

If proceeding with a post-referral discussion, the children's reporter would be present and the child and family may, if they wish, be accompanied by their representatives, including solicitor and advocacy worker where applicable. The purpose of this post-referral discussion would be to allow:

• the children's reporter to explain directly to the child and family the content of the referral, and welfare concerns behind it along with the purpose of any potential compulsory measures of care to address those concerns.

• the child to give their views directly to the reporter on the referral and have direct opportunity to inform the reporter's decision-making.

• the children's reporter to further assess whether compulsory measures of care may be necessary before making a final decision on whether to refer the child to a children's hearing.

• the children's reporter to assess whether the child and family are likely to accept any subsequent grounds of referral and plan accordingly.

The Scottish Government would welcome respondents' views on the suggestion for a post-referral discussion:

29. Do you support the introduction of the offer of a post-referral discussion between the children's reporter and the child and family?

No, with caveats

SWS notes that explaining why a referral has been made is already part of the role of the social worker and there is concern at the introduction of yet another discussion with a child.

However, the offer of a discussion when grounds are provided to a child, and family would offer an opportunity which some families may find useful. We are however, not of the view that this would require any legislative change.

As part of the work of the 'team around a child' effective communication from the Reporter to the Lead Professional is critical to ensure that there is a joint understanding about engagement with children and families and clarity on roles and responsibilities at different stages of the process. While roles differ professionals must ensure that families are not experiencing confusion across the system and having to retell 'their story' to different professionals.

While the explanation on the referral and ground may be helpful, there is concerns about the 'assessment' approach suggested by a reporter in these meetings and this requires additional clarity.

30. Who else, if anyone, should attend a post-referral discussion?

See comments above. SWS members suggest that the social worker as the one who will be providing the assessment report should be part of this discussion should these recommendations proceed.

Establishing grounds of referral

The Hearings for Children report proposes a bold new approach to the establishment of grounds. It recommends:

"Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings."

Currently, the children's reporter, having decided that a section 67 ground(s) applies in relation to the child and that compulsory measures of care are necessary, must arrange a children's hearing (a "grounds hearing"). The children's reporter prepares a statement of grounds for the grounds hearing, and the child and relevant persons are obliged to attend.

At the outset of a grounds hearing, the chairing member must explain the statement of grounds (alleged facts and relevance to statutory grounds for referral) to the child and relevant persons, and to ask whether each element of the statement of grounds is accepted. This process can be a disproportionate use of volunteer panel member time, where their principal role is to make substantive decisions in the best interests of the child.

The Hearings for Children report and the Scottish Government recognise that, in order to safeguard the rights of the child and relevant persons, there must be a process whereby a recognised decision maker considers whether the grounds of referral have been established.

Views are invited on a proposal that grounds hearings be replaced with '**fact finding hearings'** to be presided over by a new, **legally qualified member** operating within the environment of the children's hearings system (the "legal member"). A fuller description of

the potential role and function of the **legal member**, and the purpose of the **fact finding hearings** is outlined below.

The Legal Member

The Scottish Government invites views on the proposal that the role in determining grounds for referral currently performed by a sheriff be reformed, with the sheriff's current functions and powers being assigned to a new role - the 'legal member.' The legally qualified legal member would operate in the existing children's hearings centres but would not be a children's panel member.

The Scottish Government considers this proposal has the potential to proportionately fulfil the intent of the recommendations and narrative in Hearings for Children which proposed specialist Sheriffs[27] by providing for a specialist decision maker (of fact and interim decisions) while also minimising the exposure of children and families to the court environment.

The Scottish Government does **not** propose that the legal member replaces the decision-making role of the children's hearing relating to dispositive decisions around the child's welfare, but rather replaces the roles currently carried out by:

- grounds hearings (relating to procedural and *interim* decisions) and
- Sheriffs in determining statements of grounds.

If their introduction is supported, it is proposed that the 'legal member' may receive written and oral evidence with similar powers with which the Sheriff currently operates, and would then determine whether there should be findings made in relation to the statement of grounds.

Rules of procedure would need to be developed to support flexibility in the proceedings – making them adaptable to each child's particular circumstances (including age and stage of development). These proceedings should be handled as fairly, expeditiously and efficiently as possible, having regard to the age and stage of each child. The legal member, when determining statements of grounds could be given statutory powers (within new rules of procedure) to direct matters, including:

- any issues on which they require evidence.
- the nature of the evidence.
- the way in which the evidence is to be presented; and
- the exclusion of any evidence which is irrelevant or unnecessary.

If this approach were to be adopted, it is envisaged the legal member would operate the fact-finding function from children's hearings centres - with parties, representatives,

witnesses and all others required for the proceedings of proof also attending, or participating to an appropriate extent remotely in accordance with rules of procedure.

The Scottish Government considers that where a legal member makes a determination relating to grounds of referral, there would still be a right of appeal to court, adopting similar procedures to existing arrangements.

The proposed legal members would be legally qualified, competency-based and fee-paid, consistent with legal members of other Scottish tribunals. They would be provided with induction and ongoing education on their functions and would be subject to rigorous performance monitoring.

These proposals have potential to make the redesigned children's hearings system less dependent on competing demands within sheriff courts, and also better able to explore ways of identifying and eliminating sources of delay in establishing grounds. The proposals could also bring the realisation of the concept of continuity of decision-maker (expressed at recommendation 11.22 within the direct control of the appropriate and discrete mechanisms integral to the redesigned children's hearings system, and potentially relieving the courts system of the burden of this demand.

The Scottish Government seeks respondents' views on the following questions:

31. What would be the advantages and disadvantages of passing the fact finding function from sheriffs to a new cohort of legal members within the redesigned children's hearings system?

While appreciative of the intention behind this suggestion, SWS members consider that for ease of understanding and clarity, retaining the current role of the Sheriff in establishing grounds where facts are disputed should be retained. SWS has noted that families understand the court process – perhaps better than they understand the Hearing process – and that consequently establishing grounds in the court system has a simplicity and clarity which should be retained. It has also been noted that introducing a second 'level' of legal fact finding into the system could contribute to delays if facts are established and families or their legal representatives then seek to appeal this to the Sheriff Court.

Some members have noted that situating any legal members within the hearing centres may also risk accusations of impartiality.

32. Do you consider that this proposal fulfils the intention of the recommendation from the Hearings for Children report that there should be a consistent specialist sheriff throughout the process?

No.

Please explain your answer.

See response to Q31 above.

33. Do you have any views on the proposed retention of the appeal arrangements within a redesigned children's hearings system?

Yes.

Please explain your answer.

See response to Q30 above.

34. Other than a legal member or sheriff is there another person or body who could:

- present the statement of grounds to the child and family and receive responses?
- make interim orders?

Please explain your answer

SWS has not been able to provide alternative suggestions and are content that the fact-finding aspect of establishing grounds should remain with the Sheriff.

Fact Finding Hearings

Once the children's reporter decides that compulsory measures of care are necessary, the children's reporter would prepare a statement of grounds and refer it to a fact finding hearing. This would be attended by the child (subject to other possible reforms around the obligation to attend) and relevant persons (who may attend with the support of their advocacy workers and/or representatives). At that fact finding hearing, the legal member would explain the grounds of referral to the child and family and seek to elicit their responses.

In the event that the legal member is satisfied

i) that the child understands and accepts the statement of grounds and

ii) that the grounds are also accepted by the relevant persons, the legal member would require the children's reporter to arrange a children's hearing.

Currently where a statement of grounds is *not* understood and/or accepted, the children's reporter, at the direction of the children's hearing, applies to the Sheriff, who determines contested or non-understood elements of statements of grounds[29]. While children's court callings are held in private, and courts do make special arrangements to adapt the environment for children and families, court will always be an anxious and difficult experience for many children and families.

Under the proposed approach, if a statement of grounds is not understood and/or accepted by the child or relevant persons, the legal member could then defer the fact-finding hearing if necessary. This would allow them to consider evidence relevant to the statement of grounds, similar to a sheriff's current approach, while minimising the need for children and families to attend court.

The existing functions of the grounds hearing relating to *interim* decisions (including the making of an *interim* compulsory supervision order, medical examination order and *interim* variation of a compulsory supervision order) would transfer to the legal member, to be made as necessary at a fact finding hearing.

The Scottish Government seeks respondents' views on the following questions:

35. **What would be the advantages and disadvantages to replacing grounds hearings with a fact-finding hearing where the process would be undertaken by a single 'legal member'?**

As SWS is not supportive of introducing a legal member, we are also not supportive of their role in potential fact-finding hearings.

However, members can see benefits in simplifying and reducing delay in relation to establishing grounds. Appreciating the current hearing rules, members suggest that attention to how this is done and whether it needs to take place in a hearing setting may be more child-friendly, time effective and easier to understand.

36. Is it proportionate and necessary for there to be a fact-finding hearing in every case?

Where a child and parent accept the grounds there is no need for a fact-finding hearing. SWS also queries the terminology – the fact finding aspect of the hearing process is that undertaken by the reporter in gathering information and formulating grounds. The proposed fact-finding hearings are about acceptance or not of the grounds by the child and parents. A title which better reflects this may be helpful.

Babies, infants, very young children and the grounds of referral

The Hearings for Children report recommended that "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."

Under current legislation, where a child would not be capable of understanding or responding to the grounds (for example because the child is an infant), and the children's hearing does not discharge the referral, a Sheriff must determine the grounds of referral on

behalf of the child[30]. Where the grounds are accepted by the relevant person(s) before determination, a Sheriff may make a determination in a case without a hearing, in accordance with section 106 of the Act.

Where a child is very young it may be clear that they would not be capable of understanding, or they have not understood, the explanation of the grounds.

In these cases, where the grounds are agreed by all relevant persons, the requirement to involve a Sheriff can create a strain on capacity, and unnecessarily extend timescales.

The Scottish Government acknowledges the need to take a pragmatic andage-appropriate approach to young children, their important additional needs, and their capacity to understand proceedings.

Conversely, there may be a need to safeguard the child's interests by leaving it to a decision maker (be that a sheriff or legal member) to decide on the right subsequent procedure, having regard to all the circumstances of the case, including whether any grounds of referral have been accepted by relevant persons. This allows each child's unique needs and circumstances to be considered, and the appropriate course of action to be determined.

The Scottish Government is interested in respondents' views on whether any additional safeguards would be needed for very young children in a redesigned grounds process

The Scottish Government is interested in respondents' views on whether any additional safeguards would be needed for very young children in a redesigned grounds process.

37. In order to safeguard the interests of very young children, should the legal member or sheriff have discretion to convene a fact-finding hearing, even if all relevant persons accept the statement of grounds?

No.

Please explain your answer.

Taking account of parental responsibilities and rights, a parent or other person holding those parental responsibilities and rights has a duty to represent a child. For ease, simplicity and to accord with parental rights legislation, allowing the parent/person with parental responsibilities and rights to fulfil their duties in the hearing system and accept/reject grounds for young children seems to SWS members to be reasonable. This could remove some of the current bureaucracy rather than introducing additional bureaucracy.

38. Do you have any other views about how the youngest children should be supported in this part of the process to establish grounds of referral?

Please give us your views.

Young children – and those with additional needs which impact on their capacity and understanding – should be protected in grounds situations. They are not cognitively able to express a view so cannot be supported to do so. SWS agree with the Hearings for Children report that creating a process for them ta accept grounds is unnecessary.

Statutory time limits in establishing grounds of referral

The Scottish Government does not propose introducing statutory time limits on establishing grounds (*c.f.* recommendation 5.4.1[31]) because it is arguable that the proposals set out in this consultation, alongside wider non-statutory action, will combine to expedite processes around grounds of referral.

However, the Scottish Government is interested in respondents' views around introducing a procedural rule whereby if the grounds of referral have not been established by a specified time, that situation should trigger a review by the decision maker (be that a sheriff or legal member).

The Scottish Government is interested in respondents' views around introducing a procedural rule whereby if the grounds of referral have not been established by a specified time, that situation should trigger a review by the decision maker (be that a sheriff or legal member).

39. A period of three months has been suggested as a time limit for triggering a review where an application to determine grounds of referral has not been dealt with.

Please give us your views.

SWS agree that a time limit for triggering a review is appropriate. That review however must be endowed with power to progress the matter ie make a decision on grounds, rather than simply review and confirm the importance of grounds being established.

SWS members cite many examples where delays in establishing grounds result impact significantly on planning and stability for children and elongate the uncertainty

40. Do you support a defined time period for triggering a review of the progress of the case?

Yes.

If you support defining a time period, but not the suggested three months, should another time period be considered?

See above. SWS would also be supportive of a statutory time period within which grounds must be established, This would underline our commitment in Scotland to UNCRC, giving establishing of 'grounds' a similar status and importance to criminal proceedings for adults.

We note that for children even a relatively short period of 12 weeks is significant particularly for very young children. A swift establishing of grounds would enable decisions to be taken quickly and more in tune with our growing knowledge of trauma and its impact on children and minimising the impact on critical core relationships.

Potential involvement of safeguarder in grounds establishment proceedings

The Hearings for Children report puts forward the view that enabling the involvement of a safeguarder earlier in the redesigned process would be beneficial to some children and to decision makers. The report then states '*Where there is added value in their involvement [at a subsequent children's hearing], this should be considered however should not be presumed.'*

The Scottish Government seeks respondents' views on the potential involvement of safeguarders during and beyond grounds establishment in redesigned children's hearings proceedings. (See section 6.8 of the consultation document)

41. Do you agree that there should be earlier consideration of the appointment of a safeguarder in a redesigned system?

No.

Please explain your answer.

At the early referral and investigation and grounds stage of the hearing system, children have not yet been agreed as in possible need of compulsory measures of care. There are also already a lot of individuals involved in a child's life, particularly where there is existing involvement of social work and other agencies in developing a child's plan, as is the case in the majority of referrals.

SWS question what the purpose and value of introducing yet another individual would be, and what sense this would make to families. It also provides another individual with details of a child's life where this may not be required, again opening the possibility of challenge around sharing of personal information without identified need.

Finally, SWS members note that their role in preparing an assessment report for the Reporter and hearing covers all that is required at this point in the proceedings.

42. Should the proposed legal member have discretion to appoint a safeguarder to assist them with establishing the grounds of referral?

No.

Please explain your answer.

A safeguarder does not and in the view of SWS members should not have a role in determining grounds. This introduces a conflict of interests and is likely to be extremely confusing for children and their families.

43. Do you support the suggestion that a safeguarder's early appointment to a child (before grounds have been established) should be presumed to end once grounds have been established?

No.

Please explain your answer.

Please see response to Q42 and Q43. SWs is strongly against appointment of a safeguarder at an earlier stage and particularly before grounds are established. Should this proceed, then it is a potential recipe for confusion and additional complexity.

The Role of the Children's Reporter (consultation part 7)

Enhancing the role of the children's reporter

Discussion around enhancing the role of the children's reporter is set out in the following sections:

- Pre-birth activity by the children's reporter.
- Pre-referral involvement of the children's reporter.
- children's reporter's relationship with the child's plan.
- children's reporter's right to convene a new hearing without bringing fresh grounds.
- Re-referrals to the children's reporter within certain timescales.

Pre-birth activity by the children's reporter

The Scottish Government have conditionally accepted the terms of recommendation 3.6.1 within the Hearings for Children report, and seeks respondents' views on the following recommendation: *"When it is considered that compulsory measures may be required immediately upon a child's birth, the Reporter must be engaged in multi-agency processes*

and decision making and must be empowered to undertake an investigation and prepare draft grounds for referral before a baby is born."

The Scottish Government recognise the important benefits of pre-birth planning by health and social service professionals, and of adhering to the well-established concept of effective early intervention approaches. It is important for local services to plan interventions in an inclusive manner with expectant parents, at as early a stage as possible. Health and social services often work collaboratively to identify pregnancies where there are significant potential child welfare risks and concerns, and to develop child plans which include support for the expectant parents in developing parental skills for the benefit of the entire family unit, not least the wellbeing of the child if/when subsequently born.

Engagement with specialist pre-birth support services is undertaken by families on a voluntary basis. There is no current involvement for the children's hearings system before a child is born. A children's reporter currently has no role in a child's case until a referral is received by them. Referrals to the children's reporter can only be made after a child's birth, as this is the point at which the child becomes a legal person who can be the subject of a referral. The Scottish Government understand that agencies working with expectant parents consider they are not permitted to share information with the children's reporter ahead of a child's birth on this basis.

Similarly, it is not currently possible to apply for a Child Protection Order until after a child is born. There are no proposals from the Scottish Government in this consultation, or contained within the Hearings for Children recommendations, to change that position.

In terms of the specific recommendation highlighted above, the Scottish Government considers there are both benefits and risks in involving the children's reporter prior to a child's birth.

Where compulsory interventions are anticipated immediately or shortly after a child's birth, if professionals working with expectant parents were empowered to share information with the children's reporter, that may support efficient and expeditious children's reporter investigation and decision making at the point when the child is born.

However, the Scottish Government is alert to the risk that obliging professionals to consider sharing information with the children's reporter ahead of a child's birth could risk damaging trust in an already delicate relationship between some expectant parents and professionals (including social workers, family nurses and health visitors). This may hinder or prevent work in developing child plans intended to support expectant parents in developing parental skills for the benefit of the child after their birth.

In these circumstances, it is also possible that the involvement of the children's reporter may unintendedly place additional stress on the expectant parents which could be detrimental in particular to the health of the expectant mother and unborn child.

The Scottish Government is carefully considering the potential implications of this proposal, including from all the relevant rights holders' perspectives, and it intends to engage with the Information Commissioner's Office directly on the connected data protection issues. To further inform the Scottish Government's considerations, respondents' views are sought on proposals for expanding the children's reporter's role to pre-birth situations. In particular:

44. How could a redesigned children's hearings system better protect babies shortly after their birth?

Please give us your views.

SWS members are of the view that the current processes for identifying risk prior to a child's birth work well and are considered to be a priority by those agencies most closely involved. The National Guidance for Child Protection clearly outlines expectations where there is risk identified prior to a child's birth, and there are no barriers in the current system to sharing information or discussion with the Reporter in order to facilitate referral at the point of birth.

45. What can be done to improve interagency pre-birth preparatory work?

Please see SWS comments in Q44 above. This aspect of practice, which is primarily in the pre-Hearing part of our childcare system, works well and is closely followed by all agencies in line with GIRFEC and the National Child Protection Guidance. No additional changes to facilitate referral to the Reporter are required.

Pre-referral involvement of the children's reporter

The Scottish Government have accepted the following recommendation (3.5) of the Hearings for Children report:

"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."

The children's hearings system is a rights-based system which necessarily involves clear delineation between the roles of the children's reporter and agencies who regularly refer to them. That delineation of roles must be tempered with the need for effective collaborative working to promote the wellbeing of each child. The children's reporter is currently able to achieve that latter ambition as a matter of practice in a pre-referral discussion by:

a. engaging with a potential referrer about a case, noting that the children's reporter can neither prevent nor require a referral; nor can the children's reporter give any undertaking or expectation about what specific action will be taken if a referral is actually made.

b. attending and observing a child protection case conference (although not acting as a member of the case conference) which can consider whether to refer the child to the children's reporter among other matters.

c. sharing information about the child with agencies who have responsibilities for the child, in a way that is compliant with data protection requirements. This may extend to social work, health and education professionals who are involved in child protection proceedings relating to the child. The purpose of sharing the information is to assist the person or persons to whom it is disclosed to decide on whether to refer the child to the children's reporter.

d. in certain limited situations, using information received during a pre-referral discussion to form the basis for the children's reporter's consideration that "it appears the child might be in need of protection, guidance, treatment or control" (see section 66(1)(b) of the 2011 Act), triggering the consequent decision on whether to convene a children's hearing.

Revision in 2023 of the "National Guidance for Child Protection in Scotland 2021" brought new prominence to the role, and potential contribution, of the children's reporter. This new guidance revision reiterates conditions when early referral to the reporter might be needed, adding that referral to the children's reporter should be considered at all stages of the child protection process, and decisions to either refer or not refer need to be recorded.

The Children's Hearings Improvement Partnership has also developed guidance for making referrals to the children's reporter. The guidance is available to referring agencies "during other child protection and care and support meetings and discussions". It is expected that this guidance may be reviewed further by the Children's Hearings Redesign Board.

Any move to enhance or expand the role of the children's reporter prior to referral must not complicate experiences, or cause confusion or duplication between the roles of the various professionals involved in supporting the child. In such sensitive and critical systems, there must be justifiable trust for, and between, the professionals and decision makers in each of the separate processes, along with clear understanding of, and respect for, their roles.

The Redesign Board is well placed to a review the existing guidance and protocols, to consider any need for revised and fresh guidance and protocols so as to achieve a "consistent approach to partnership working between agencies" as recommended by Hearings for Children.

46. Do you agree that non-statutory action (practice improvements and guidance updates) is sufficient to deliver an enhanced pre-referral role for the children's reporter in a redesigned hearings system?

Yes with caveats.

Please explain your answer.

SWS do not believe additional legislation is required and agree that practice improvement could be considered if required and evidenced.

As outlined in the consultation document there is current guidance in child protection with early consideration of a referral to the reporter built into existing processes.

SWS members do not agree with the suggestion of reporters attending meetings as this blurs boundaries and roles. Child Protection processes and procedures adhere to principles in the GIRFEC approach which includes ensuring that only relevant professionals attend meetings involving families. It is unclear why attendance of a reporter would add to the process where effective and early communication is an integral part of the existing approaches.

The Hearings for Children report was written at a point where local areas were working towards implementation of the updated National Child Protection Guidance (2023) and there is a significant concern that a redesign of the Children's Hearing process may impact negatively on existing processes in the wider children's services context without the evidence of the problem this seeks to resolve.

The multi-agency children's services community – which goes significantly beyond the those involved in the hearing system - must be involved in any discussion about changes to current Child Protection processes.

Children's reporter's ability to call a review hearing

The Scottish Government have given further consideration to recommendation 12.8 of the Hearings for Children report:

"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."

A "review hearing" is held to review an existing compulsory supervision order (CSO). A range of circumstances exist in which a review hearing must be arranged (see section 137(1) of the 2011 Act).

Currently, when the children's reporter considers that a ground under section 67 of the 2011 Act applies and that it is necessary to make a CSO, the ground must be accepted or

established before any CSO is made and implemented. In the case of a child who is already subject to a CSO, a new ground for referral must also be accepted or established before review of the existing CSO can proceed on that basis.

It is important to consider how a child's rights would be protected if a children's reporter had absolute discretion to call for a CSO review hearing on the basis of new facts which had neither been accepted nor established. It is important to bear in mind that the children's hearing, in reviewing a CSO, has the option of introducing new measures of care which potentially carry more restriction on the freedoms of a child.

The Scottish Government accordingly consider it appropriate that the children's reporter may only review a CSO in light of new welfare concerns after any new ground of referral is accepted or established. This can be contested by the child and family under the scrutiny of a sheriff (or, if adopted, a 'legal member') in respect of the factual element – and considered by the review hearing from a welfare perspective. A statement of grounds (containing grounds of referral) is the principal basis for decision-making by a children's hearing.

Should a CSO require to be varied for reasons unconnected with newly emerging or newly identified child welfare concerns (for example, issues with engagement or implementation), a review hearing can be arranged where the local authority (in certain circumstances), child, relevant person, or other person who has a statutory right to do so, requires it. In the case of a child or other person requiring a review, the review can currently only take place after three months of the CSO having been made, continued or varied.

The Scottish Government wishes to consult on whether the current three-month period within which a CSO cannot be reviewed - at the request of a child, relevant person or other entitled person - should be abolished or shortened.

There is concern that a genuine need for review may arise within the three-month period. Therefore, it is arguable that a child, relevant person and/or entitled person should have the right to make representations to a hearing without waiting for up to three months. This particularly applies in respect of very young children, where three months can represent a significant period in relation to their own whole life to date.

The Scottish Government seek respondents' views on the following issues associated with any potential change:

The Scottish Government wishes to consult on whether the current three month period within which a CSO cannot be reviewed - at the request of a child, relevant person or other entitled person - should be abolished or shortened. (See section 7.4 of the consultation document)

47. Do you think it would be appropriate for the children's reporter to be able to initiate a review hearing before the expiry of the relevant period?

Yes.

Please explain your answer.

SWS members have no issue with Reporters being empowered to call a review hearing at any point where this is indicated by circumstances.

48. Do you think the statutory three month period should be revised so that individuals who are entitled to request a review of a child's compulsory supervision order (CSO) can do so within a shorter time period?

Yes with caveats.

Please explain your answer.

SWS members note that in a rights-based system it is inappropriate that a reporter may call a hearing at any time, but a child may not. However, they are of the view that if this is to extend to children their parents then there must be a legitimate reason for the review, to avoid repeated unnecessary reviews and resultant delays in progressing plans.

Re-referrals to the children's reporter within a given timeframe – a trigger for other action?

The Scottish Government has explored recommendation 4.4.4 of the Hearings for Children report: 'The following measures should be considered with a view to reducing the number of 'repeat referrals' and increasing coordination between the children's hearings system and the other parts of the 'care system': 4.4.4 Re-referrals of children to the Reporter within a specific timeframe should be considered as part of a continuation of the previous concern, rather than new circumstances, and wherever possible should be considered by the same Reporter."

The Scottish Government agrees with the concept of the children's reporter developing a cumulative understanding of a family's challenges, strengths and circumstances. The Scottish Government also supports minimising both intersecting referral activity and the number of children's hearings proceedings.

There is also support at the level of principle for the same children's reporter (along with some continuity in children's hearings' personnel) looking again at a supervised child's case when new information becomes available.

However, a child's circumstances can be fluid, as can their views and wishes.

This proposal could have impacts on children's rights, where 're-referrals' prompted by fresh concerns risk being inappropriately linked to established previous concerns about a child, without that child or their family being able to contest the new alleged facts.

Permitting re-referrals may be appropriate as a means of reducing the number of repeat referrals in respect of children already subject to supervision within the children's hearings system. Fresh action may reflect ongoing or escalating difficulties which continue to meet or exceed the statutory threshold for referral to a hearing. Under the principles of GIRFEC's National Practice model, planning support for a child or young person is a dynamic and evolving process of assessment, analysis, action and review. Any forward course of action should continue to reflect this.

49. Do you consider that a child being re-referred to the children's reporter within a certain timeframe should result in that 're-referral' being treated as forming part of the pre-existing referral?

No.

If yes, what is an appropriate timeframe from the original referral for re-referrals to be treated in this way?

Whilst appreciating the desire to reduce repeat grounds processes and minimise the processes a child may be subject to, SWS members are of the view that that there are significant children's rights issues with the suggestion that a re-referral be treated as part of the original referral.

- *The issue may be very different to the original – an offence referral rather than welfare/protection*
- *It removes the right of the child and their parent to accept or reject the new grounds*
- *It creates a skewed 'history' of why a child is in the hearing system*
- *That history no longer becomes a note of established facts*
- *Major decisions may be made based on new grounds which have not been established*

The Children's Panel and Children's Hearings (Consultation Part 8)

Scottish Ministers did not accept the Hearings for Children recommendation which specifically sought to introduce a full-time, salaried chairperson alongside two paid panel members for each children's hearing.

The national children's panel is the largest legal tribunal in Scotland. Ministers took the view that the particular structure of this recommendation would have had broad and unsupportable consequences, including a significant and unsustainable funding

requirement. There were also significant implications for the workforce resource demands both within, and beyond, the children's hearings system.

However, the Scottish Government is supportive of investing in additional capacity for the decision-making function within a redesigned children's hearings system. This includes exploring further whether changes could or should be made to the make-up of the national children's panel and to the composition of particular types of hearings proceedings – to promote more capacity, continuity and confidence. Potential changes could include:

- whether the entire panel should be remunerated in some form, or that should be confined to certain categories,
- whether the current number of panel members is appropriate for all types of hearings proceedings and ancillary decision making,
- whether the panel should include specialist hearings members to make decisions in certain types of children's cases or
- whether individual, specially recruited and qualified, panel members should be given authority to make decisions - in a one or two member forum - which are currently the preserve of a full children's hearing of three panel members.

Under the 2011 Act, the National Convener is an independent position, and they have the authority to appoint members to the children's panel.[32] The consideration of potential changes in this area would therefore, in addition to a number of other factors, be predicated on full and further consultation with CHS, the National Convener, and the current children's panel community.

Scotland's children's hearings system is distinct from other tribunals in its use of volunteer members for legally binding decision-making. While volunteerism is not expressly stated in legislation, the custom and practice is well-established and has served Scotland's children well for over 5 decades. The Scottish Government notes that accompanying policy documents for the Children's Hearings (Scotland) Act 2011 state that members of the children's panel should be, as they had been since the systems' inception, volunteers: 'The existing children's panels will be replaced by a single national Children's Panel, comprising volunteers from local communities who will continue to be recruited and sit as panel members for hearings in their local communities.

Children's Hearings Scotland will, through the area support teams, work closely with local authorities to provide support to ensure that all children's hearings make nationally consistent and high quality decisions in relation to children and young people.'

The Scottish Government recognises the value of local people making decisions about children who live in their own area, and the vast array of experience and expertise brought to the system by volunteer panel members offering extraordinary time, skill and energy to the children and families from their own community who may need help and support.

The Scottish Government has deep respect for the track record and outstanding public service of volunteer children's panel members. A careful combination of supports and understandings have been constructed over the years, and that has been essential to the unbroken success and delivery record of the current children's panel construction. Real care has to be exercised in the discussion of further reforms in this area.

However, it is also recognised that the legal decisions taken by panel members have grown more complex, and the environment more contentious and litigious over the years. It is arguable that the current wholesale reliance on lay members may be asking too much of an unpaid volunteer community.

As previously noted, the National Convener is independent of Government and all others in discharging his functions and has the authority to appoint members to the children's panel. For further background about the appointment of members to the national Children's Panel, please see sections 4 and schedule 2 of the 2011 Act.

The Scottish Government have been collaborating with the National Convener and CHS officers to develop and assess a range of potential future roles within a reconfigured children's panel. Scottish Ministers are inclined to the view that any potential new investment in developing and sustaining new children's panel roles should be understood as an agenda of 'reinforcement' rather than wholesale 'replacement', but respondents' views are sought on these issues.

A redesigned children's panel

The Scottish Government recognises that the make-up of the children's panel overall, and the long-standing use of volunteers in these key roles, are emotive issues. Any discussion on the future of the panel should not be considered adverse commentary on the extraordinary contribution of volunteers through the decades. However, it is right, in light of the Hearings for Children report and its recommendations, to consider whether the volunteer mode – alone - is the most appropriate approach, especially as the cases that fall to children's hearings trends towards greater complexity and requires additional stability and sustainability.

The ultimate viability of each configuration, and combination of configurations, is contingent on the outcome of discussions and decisions on the future role(s) of chairs, panel members and children's reporter / SCRA staff, as well as whether new demands will be made of the tribunal members.

By way of illustration, the current system demand (and the anticipated demand flowing from commencement of the Children (Care and Justice) (Scotland) Act 2024) has been applied to a range of potential modifications to the current 'single class of lay unpaid panel member' model. Some of the potential reconfigured children's panel roles, and the appropriate roles that they might play in deciding cases in a redesigned system, are reproduced below.

- 1 Paid Chair and 2 Paid Panel Members (only for complex cases[33]) - other cases decided by volunteers.
- 1 Paid Chair, 1 Paid Specialist Panel Member, and 1 Volunteer Panel Member – for certain cases
- 1 Paid Chair and 2 Paid Specialist Panel Members
- 1 Volunteer Chair and 2 Paid Specialist Panel Members
- 1 Paid Chair and 2 Volunteer Panel Members
- 1 Paid Chair and 1 Paid Panel Member
- 1 Volunteer Chair and 1 Volunteer Panel Member – for certain cases

The Scottish Government invites initial views from respondents on these potential approaches and intends to engage in deeper dialogue with the National Convener, children's panel members and system partners in the months beyond this consultation – once analysis has been completed and firmer forward policy positions have been adopted in respect of the issues covered in this consultation.

A redesigned children's panel

Views are sought on the possibility of some measure of payment for panel members.

50. Do you believe the children's panel element of the children's hearings system should retain the unpaid lay volunteer model in whole or in part?

SWS members are of the view that the critical aspect is having panel members who have the knowledge and the skills and ability to perform what is an increasingly complex role.

51. Would you support some measure of payment for panel members, over and above the current system of expenses, in return for the introduction of new and updated expectations?

Yes with caveats.

For social work, the critical issue is ability and attracting the level of skill required for the current and redesigned system. How this is achieved is for others to determine. Members have noted however that it is unlikely to be feasible without some level of renumeration.

52. Do you have any views on the introduction of new roles into the children's panel?

Paid Chair

Paid specialist Panel Member – possibly including care-experience

Paid Panel Member

Volunteer Panel Member

Please explain your answer.

SWS members are strongly of the view that there should be only one 'class' of panel members and that the introduction of 'specialist' panel members, whether that is defined by care experience or complexity of hearings, risks introducing unnecessary conflict and status into the hearing system. Such issues would risk influencing the nature of hearings to the detriment of the children it seeks to serve.

All panel members must be fit for the role. Only children whose lives are not going well, whose needs are not being met and whose wellbeing requires compulsory state intervention should come before a hearing. Making decisions to intervene in a child's life in those situations is, as social workers know perhaps better than any other profession, a skilled and emotionally demanding undertaking. This is a huge ask of volunteers, however well selected, supported and trained.

The involvement of young people who have experience of the hearing system and wider care system is of infinite value in assisting Scotland as we develop and improve our childcare system. This in itself - as the experiences of the independent review, Our Hearings Our Voices and the range of Champions Boards across Scotland tells us - requires investment in the support and nurturing of children and adults, to enable them to contribute such valuable perspectives and to speak on behalf of the wider care experienced community. SWS members, from their own experiences of involving care experienced young people in service development and supported employment, have expressed concern at the suggestion that the hearing system should actively seek care experienced individuals to sit on panels. This is not because their voice and input is not vital, but because of the significant risk and danger of traumatisation and abuse that can result from asking individuals to manage the complexities of hearings and the situations they face there, when they themselves may not have resolved all of those issues. Triggering their own trauma is a risk even for the most carefully planned and supported individuals. SWS members spoke eloquently of the importance of 'voice' in the hearing system but of finding safer and more appropriate ways of ensuring this than encouraging the care experienced community to become panel members.

53. Recognising that payment of panel members/chairing members would represent a significant new national investment in decision making, do you have views on priority resourcing for other parts of the system?

Yes.

Please explain your answer.

Children are our future, and not to invest has consequences for their futures and societies future. SWS soes not have a 'position' in relation to payment of panel chairs and members, but as noted earlier, are of the view that whatever is required must be done to ensure that

the right individuals with the right skills and knowledge and ability to deal with trauma and difficult decisions, are attracted to the role. Members have commented that the level of skill required for a Panel Chair is unlikely to be achievable without renumeration.

We are also concerned that the whole system is considered – chairs, panel members, safeguarders social workers reporters etc. No one part of the system is more important than others and it would be dangerous to consider capacity and resources for one part without paying similar attention to the rest of the system.

54. Each children's hearing currently consists of 3 panel members, with one chairing:

- Should the number of panel members required for each hearing be reduced?

No Fewer panel members risks reducing the check and balances critical to good decision making.

- Should all panel members, on completion of appropriate training, still be required to chair hearings?

No Chairing is a particularly skilled role and not all panel members will wish or have the skill and experience to act as chair.

- Should some children's panel members be paid for 'specialist' knowledge, while others' involvement remains voluntary? E.g. a specialist panel member may have a particular qualification or expertise in childhood development, ACEs, or be a professional with prior experience of working with children in some other capacity

No. SWS consider that this would be a dangerous step. Qualification or experience in a particular area may mean an individual has skills and knowledge which would make them a suitable panel member or chair, but there should be a criteria/competencies for both roles which should be met by all panel members.

All children deserve the same attention to and standard of decision making where this is about their wellbeing and possible state interference in their lives.

- Should care-experienced members be considered 'specialist' given their experiences of the system?

No. Please see our comments in relation to Q53. All individuals involved as panel members should be able to meet competencies and we should actively avoid any potential traumatisation of individuals who become panel members and who are themselves care experienced.

The Chair of the children's hearing

The Hearings for Children report links the establishment of a full-time chairing member to a number of connected recommendations.

These additional recommendations have been accepted in principle but must be subject to broader consideration given that the redesigned roles of chair and panel members have yet to be confirmed and will be subject to further work following this consultation.

The following recommendations and associated discussion are considered appropriate for grouping together:

Engagement with the Chairing member before the Children's Hearing

The Hearings for Children report asks that: In advance of a hearing taking place, the child or young person and their family should be offered an opportunity to meet the Chair outwith the formal setting of a hearing. Consideration should be given to the production of a note of the meeting shared, with the permission of the child and their family with everyone who has a right to receive information relating to the children's hearing by the Chair.

This proposal potentially could foster a more relaxed, informal atmosphere for the child to meet the chairing member of the hearing, reducing uncertainty about the hearing room, the panel members and process.

The Scottish Government considers that many of the desired benefits could be achieved without the need for a full-time salaried chair, and there is much to recommend in the mainstream of existing good practice. However, careful consideration needs to be given to whether what is actually required is a dedicated further meeting, or just a more informal opportunity for the Chair and panel members to greet the child and family and introduce themselves just before the hearing on the given day.

Clear boundaries would need to be set around any introductory meeting to ensure there was no discussion of the substance or focus of the pending children's hearing. Discussions of that type would then have to form part of the formal record, thereby removing the benefits sought under a more informal approach.

The Scottish Government would instead support more informal measures – for example, through practice guidance – which would allow a chairing member to make introductions, offer any appropriate reassurance and explain to the referred child and family what will happen next (should it be appropriate to the particular circumstances of the case).

Engagement with the Chairing member before the Children's Hearing

Views are sought in relation to the potential engagement with the chair before the children's hearing.

55. Should the chairing member of the hearing meet the referred child, their family or representatives to welcome them to the centre and offer any appropriate explanations and reassurances before the actual children's hearing?

Yes with caveats.

Please explain your answer.

There are huge benefits to the child and their family seeing the hearing centre in advance of the hearing itself – knowing where they are going what it looks like, how it is laid out, who will be there and what their role is etc. Indeed, many SWS members described how this informal and child friendly approach already happens in their localities, and the benefits it brings. Adding in meeting – informally – the panel chair may be an additional benefit but is not considered essential by our members. The views of young people may be best taken to understand if this would be necessary.

56. If a meeting is held in the hearings centre with the chairing member, would you support this being an informal meeting?

Yes.

Please explain your answer.

See comments above in Q55. This should be informal and should not be minuted, with no discussion about grounds, circumstances etc. It should ONLY be about ensuring the young person is familiar with the surroundings and what will happen, to reduce anxiety and facilitate them to take part when the hearing occurs.

Children's hearings decision making in a redesigned children's hearings system

Hearings for Children proposed that 'the final decision will be a majority decision. If there is a dissenting view from a Panel Member, the Chair must reflect that in the written decision.'

The current decision-making approach already operates by majority. That is, regardless of the view of the chairing member, where two children's panel members take a decision then that majority holds sway and becomes the applicable decision. Any dissenting, or minority, decision is noted in the Decisions and Reasons document.

However, should the make-up of the children's hearing, and the roles of children's panel members within that, change in a redesigned children's hearings system, how the decision-making model operates may also need to be reviewed.

The Scottish Government would welcome respondents' views on whether the majority decision approach should be maintained, or whether in light of potential changes to the decision-making model, consideration should be given to alternative approaches.

The Hearings for Children report states: “At the end of the information gathering and discussion part of the Hearing there should be consideration of a short break to enable the Panel[sic] to retire and reflect on the information they have received and to confer on their decision.”

“This break will also allow the child, their family, and other important people in their lives to reflect on what has been discussed, and to decompress and have some time away from the intensity of the Hearing.”

The Scottish Government is supportive of changes to practice which would allow a period of adjournment and reflection for decisions to be taken away from the hearing room, before being relayed to the child, family and representatives.

Currently, children’s hearings are expected to deliver their Decisions & Reasons verbally without recourse to an adjournment.

Introducing a brief period of recess to consider and outline the decision of the children’s hearing - which could then be delivered by the chairing member - may assist in greater clarity of decision-making. It would avoid the need for three successive decisions and reasons to be narrated as currently takes place, potentially thereby minimising the repetition of traumatic material.

The Scottish Government would welcome respondents’ views on whether the majority decision approach should be maintained, or whether in light of potential changes to the decision-making model, there should be consideration given to alternative approaches. (See section 8.4 of the consultation document)

57. Do you support the proposal that the children’s hearing should have a brief period of recess/adjournment before reaching their decision and sharing it with those present?

Yes.

58. Do you agree that the majority decision-making approach should be maintained?

Yes - assuming the panel continues to be made up of three panel members.

59. Should the children’s hearing be asked to reach a unanimous decision during adjournment, in order to minimise repetition and potential retraumatisation?

A unanimous decision is preferable but if not achievable a majority decision is acceptable as currently. Children and others should not be left for extensive periods awaiting a decision.

60. If a majority decision approach remains, would you agree that any dissenting decision should be noted and explained?

Yes, this is critical. Reasons for the majority view should similarly be explained.

Decision-making and specificity of measures in a Compulsory Supervision Order (CSO)

The Scottish Government has heard, in response to a previous consultation on policy proposals for the recent Children (Care and Justice) (Scotland) Act, that it would be desirable to introduce more clarity and specificity in CSO decisions, particularly those placing children away from home with kinship or foster carers, or in recognised regulated childcare institutional settings like residential schools.

Such a move would be to assist children to challenge interventions and restrictions that had not been explicitly authorised by a Sheriff or hearing. This engages questions of restriction up to the level of restraint.

61. Do you agree that it is desirable or necessary to introduce clearer authorisation for particular interventions with children, or particular interferences with their liberty, on the face of measures included in an Interim Compulsory Supervision Order or Compulsory Supervision?

Yes partially.

Please explain your answer.

SWS members consider that there are benefits to greater clarity in decisions. However, they raise several important aspects to this cautious welcome to greater specificity:

- *The purpose of clearer decisions should not be to enable challenge to interventions but to ensure clarity and understanding in relation to what is being sought by imposition of the order and any related conditions/authorisation.*
- *The freedom of the implementation authority to determine how best the condition of a compulsory supervision order are met should remain. SWS members raised concerns that too much specificity would both hinder meeting a child's needs and be used by Hearings to 'force' implementing authorities to undertake tasks in a particular manner.*

62. If so, do you agree that a 'maximum authorised intervention' is an appropriate means of delivering that clarity to children and to professionals?

No.

Please explain your answer.

SWS members have concerns about 'maximum authorised intervention'. Children's Panel's may already impose conditions to a CSO, and a simple written explanation of the aim of that CSO as part of the decision is a more appropriate method of ensuring clarity for child, family and implementing authority. This would also ensure that the role and expectations of the local authority as implementing authority are clear.

Imposition of specific 'conditions' about day-to-day care such as how and when restraint may be used, or how a child protection or looked after plan is taken forward should not be imposed. These must be left to those responsible for implementing that care.

Timely notification of children's hearings decisions

Hearings for Children recommended*: 'The Chair must provide the decision within a reasonable time limit.'*

The decision of the children's hearing is currently communicated to the child and family immediately within the hearing room, with the written decision transmitted by SCRA on behalf of the children's hearing within 5 working days per Rule 88 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. Rule 88 also prescribes the information that is to be transmitted, and identifies the classes of person entitled to receive that information. The Scottish Government seeks respondents' views on the current approach.

63. Is the current time frames for written confirmation of the decision by the children's hearing (5 working days) still appropriate?

Yes.

Please explain your answer.

Five days gives enough time for the Reporter to write up the decision but does not leave the child and family waiting too long.

64. Should certain children's decisions (e.g for an ICSO) have accelerated notification timeframes, relative to the urgency of the decision?

No.

Please explain your answer.

The same 'rules' should apply to all decisions. If a quicker response can be provided then this is beneficial in all situations

Continuity of Panel members in children's cases

Hearings for Children considered the issue for continuity of panel and chairing members, envisioning continuity for each case where possible. *"As far as possible the Chair must be the same Chair each time a child and their family attend a Hearing. This should also apply to Panel Members where possible and desirable*."

Of relevance here is Rule 3 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013, which states that:

3.— (1) Where a children's hearing is held in relation to a child, by virtue of the Act or any other enactment, the children's hearing may request that the National Convener select, where practicable, one of the members of that children's hearing to be a member of the next children's hearing to be arranged in relation to that child.

The issue of consistency, or continuity, of panel members for the referred child is a challenging and complex area from both rights and resourcing perspectives.

However, it is broadly agreed that a greater degree of continuity (that is, one or more of the same panel members sitting on the same child's hearings) can be desirable and can improve the experience for the child.

The Practice & Procedure manual published by CHS cites the 'Better Hearings' research by SCRA as evidence for this position.

This research cited the views of children, young people and practitioners within the system. It found broad consensus that a greater understanding of a child's life and circumstance will lead to more informed decisions by panel members, as well as reducing the need for a child to either tell, or hear, their story on multiple occasions with different children's panel members.

Judicial consistency has been promoted in family law court processes both in Scotland and other jurisdictions to ensure cases continue to progress and minimise drift and delay. It is perhaps likely that children's panel member continuity would follow this pattern and improve children's experience, especially in particularly complex cases.

However, the children's panel – and each children's hearing - needs to remain an independent and impartial tribunal. Different individual children's panel members being involved in different cases goes towards supporting the impartial consideration of the individual child's case facts and circumstances. Excessive use of continuity may undermine the necessary objectivity of individual children's panel members and may not necessarily be in the best interests of every child.

The recommendation to have the same chair for each child's successive hearing is complex, particularly where the system doesn't currently support a full-time chair approach. While the Scottish Government is generally supportive of moving towards a presumption of

continuity, modelling for continuity and consistency is deeply complex. The Scottish Government would welcome views on wholesale continuity where practicable, including a position where, perhaps, only one panel member is consistent across each case.

65. Should consistency or continuity of chairing members be the default position for each child's hearing?

Yes, with caveats, that it is preferable but not essential to ensure that panels are not delayed if a chairperson is unavailable. In such a scenario another panel member familiar with the child's case should be on the panel.

66. Would you support one single children's panel member's consistent involvement as an alternative approach?

Yes. This is also likely to be more achievable. SWS members also consider that a level of continuity of panel is helpful for each child but that broadening this to other children from the same family is unnecessary and would introduce complexity which would not be helpful to the system or the children.

Substantive vs Procedural decisions

The Scottish Government is supportive of the position adopted by Hearings for Children in regard to consideration of the types of decisions which do and don't require a full children's hearing: "In a redesigned children's hearings system there must be a separation between procedural decisions relating to the hearing itself and the decisions made by the hearing. There should be an assessment to understand which procedural decisions a Chair can take without the need to convene a full Panel [sic] in advance of a hearing. This should include scrutiny of whether anything needs to change in legislation or procedural rules to better facilitate decision-making and eliminate structural drift and delay in the system."

Currently, each children's panel member is assigned a number of 'sessions' per month (around two, on average), one session in the morning and one in an afternoon in busier areas. Each hearings session will contain up to three separate cases, fewer if the children's reporter considers that an individual case is more complex and will have to take longer than the allocated slot.

Following analysis of the recommendations in the Hearings for Children report, the Scottish Government believes there may be scope to change which decisions require a full children's hearing of three children's panel members, in line with established expectations and with the 2011 Act.

It may be considered appropriate, subject to further full legal analysis, that some procedural decisions could be taken by an individual children's panel member (usually the assigned

chairing member), or potentially a ‘legal member’ before the grounds are determined – see section 6.

This would free up capacity for other children’s panel members to engage in substantive decision making, so that allotted sessions could be used more appropriately for substantive discussions and decisions in the best interests of a child - as opposed to procedural matters at which the child or their family may not be present.

This would also allow for increased capacity of the total panel member community, reducing the number needed by removing a significant number of hearings from the allotted sessions.

Examples of where ‘procedural’ decisions could be taken, and where there is no requirement for the referred child to be in attendance include:

- Pre-hearing panels covering:
  - Deem or un-deem a relevant person, subject to the existing routes of appeal.
  - Excusal of child or relevant person from attending.
  - Attendance by electronic means.
- Advice hearings.
- Review of a Child Protection Order.

67. Should children’s panel members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member children’s hearing?

Yes.

Please explain your answer.

Where a decision is procedural there is often no need for a full hearing to be convened.

68. Are there other areas you would consider appropriate for a single-member decision making approach?

Yes with caveats.

Please explain your answer

SWS agree that single person decision could usefully be made to excuse a child for attendance, to deem or ‘undeem’ a person as a relevant person, and to determine if electronic means of attendance are acceptable. We do not agree that this would be appropriate for a continuation of a child protection order or an advice hearing given the significance of such an order, nor for advice hearings. These are more than procedural matters.

69. Would you propose additional safeguards to accompany these proceedings and decisions?

Yes.

Please explain your answer.

A child and any relevant person should have the right to appeal, and to request that a full hearing.

The Powers of the Chair during a Children's Hearing

The Hearings for Children report made several recommendations relating to the powers of the chairing member of a children's hearing. Particular emphasis is placed on those attending the children's hearing, and how the Rules of Procedure, along with training provided by the National Convener and the relevant CHS practice guidance should enable the chair to robustly and effectively manage attendance and participation. The relevant recommendation states:

"The existing Rules governing a Children's Hearing must be sufficiently robust to ensure that the Chair is able to manage the dynamics and conduct of an inquisitorial approach to a Children's Hearing. This includes determining who is present at each stage of a Children's Hearing, whilst effectively balancing rights of attendance and participation, and having the flexibility to change the speaking order and arrangements and the authority to ask contributors to the meeting to leave the room after they have spoken, if that is in the best interests of the child."

The report made it clear that this includes recognising the potentially challenging relationships between attendees which may affect participation, even when there are no outward signs of violence and disruption.

There are existing powers to manage attendance at a children's hearing, including the exclusion of relevant persons, in both the 2011 Act and the 2013 Rules of Procedure. The chairing member also has a responsibility under section 78(4) of the 2011 Act to keep the number of people in attendance to a minimum.

However, the Scottish Government acknowledges that these are highly complex issues, and there could be benefits to creating a set of clearly stated statutory powers to enable more robust management of hearings. The Scottish Government also agrees that empowering the chairing member to take difficult decisions on participation and attendance could help minimise hostility and promote inquisitorialism - by making these decisions clearer and backed by potential future primary legislation.

Views are welcomed on empowering the chairing member to take difficult decisions on participation and attendance. (See section 8.9 of the consultation document)

70. Would it be beneficial for the chairing member to have a robust and clearly stated set of powers to manage how and when people attend and participate in the different phases of a children's hearing?

Yes with caveats. Certain individuals should have the right to attend at all times and this should include the social worker as the representative of the implementing authority. Any decisions about attendance/management of a panel should also be a shared responsibility between the Reporter and the Panel Chair. Those chairing are part of the dynamic of the Panel and while more experienced and supported panel chairs should minimise the current level of disrespect and challenge experienced in hearings, safeguards against panel chairs themselves being part of unhelpful dynamics would provide a safety net and reassurance to those attending.

This issue of lack of respect, to the extent of undermining and at times abusive behaviour, is one of the most significant aspects of the current system raised by social workers, linked particularly to the role of chairs, and the influence of legal representatives. Safeguards are therefore of particularly importance to our members.

71. Are the existing powers of the chairing member and of the hearing sufficient to protect the rights of all involved?

No.

Please explain your answer**.**

We are of the view that there is nothing preventing respect in the hearing being implemented currently, though the opposite is often seen in practice. However, additional safeguards may assist in ensuring that this becomes a standard feature of hearings.

72. What enhancements could be made to the existing powers of the chairing member and the hearing to promote inquisitorial approaches?

Please give us your views.

As noted earlier in our response, what an 'inquisitorial' system looks like is not entirely clear. SWS members would like to see a system where respect and the child's best interest are at the heart, and where there is clarity that the hearing system in itself will always have an adversarial element given the remit it has in deciding if compulsory state intervention in a child and family life is needed.

Recording of Children's Hearings

The Hearings for Children report considered the potential benefits of recording children's hearings. The development of that recommendation included consultation with children and young people. Their views on this issue were reflected in the report and were broadly in favour of recording hearings. The report concluded by recommending that:

"There should be a full examination of the potential benefits and consequences of recording hearings. This should include a full assessment of the impact this would have on the rights of children and their families."

The Scottish Government has committed to exploring this further as part of the broader consideration of the practice and procedure in a redesigned hearings system.

The Scottish Government takes careful note of the views put forward by children and young people and captured in the Hearings for Children report. The Scottish Government recognises that there are both benefits and drawbacks to recording hearings.

Respondents' views are therefore sought about whether hearings, in full or in part, should in principle be recorded. Comments and suggestions are also invited about the benefits and risks of video, audio or written recordings.

Respondents' views are therefore sought about whether hearings, in full or in part, should in principle be recorded. Comments and suggestions are also invited about the benefits and risks of video, audio or written recordings. (See section 8.10 of the consultation document)

73. In your view, should children's hearings be routinely recorded?

No.

Written Audio Video Other

If yes - which method of recording should be routinely used?

A written summary record of a hearing may be useful for a child and other attendees

74. What are the main benefits and risks of this method of recording hearings?

SWS considers that recording hearings open a number of risks in relation to ownership and GDPR/privacy. It is also considered that once a recording is available, there will be demands for its use for other matters e.g. complaints, wider legal proceedings, fitness to practice matters, as evidence in wider matters relevant to the child etc.

75. If only the decision element of a children's hearing were to be recorded, would this change your view?

Yes. SWS members have no objection to recording only the decision, and for this to be an audio recording.

Child friendly summaries of decisions

The Hearings for Children report asked that: *a summary of the decision made by the Hearing in plain language and in a format appropriate to the age and stage of the child must be shared alongside the full decision. There must be consideration given to whether this would also be appropriate for family members.*

The Scottish Government is generally supportive of this proposal but recognises that it may have resource implications and impose a requirement for the chairing member or other suitably qualified person to oversee any 'translation' to a child-friendly document - to ensure consistency with a legally binding decision.

This recommendation links to wider considerations about the role of the chairing member and other children's panel members within children's hearings, and improvements to the reporting and delivery of decisions. It is also linked to future decisions about the child's attendance at their hearing and considerations of their ability to participate. If processes for the production of child-friendly summaries of decisions are to be developed, this must be considered and progressed alongside other relevant changes.

"While a fully reasoned decision will assist in improving openness and transparency and to inform appeals, this might be inappropriate for, and inaccessible to, children—especially very young children, and children with a learning disability. A summary of the decision in plain language in a format appropriate to the age and stage of the child should therefore be prepared and issued alongside the full decision. Similar accommodations may support family members with learning disabilities to, for example, understand the written decision more easily."

Hearings for Children report

Views are sought on the provision of child friendly, plain English summaries of decisions. (See section 8.11 of the consultation document)

76. Should there be a statutory requirement for the production of age and stage appropriate summaries of Children's Hearing decisions?

Yes with caveats.

Having decisions available in plain language is positive, extending this to pictorial representations e.g. Board maker for those who may not be verbal.

However, there is a danger that having a range of age and stage appropriate material will become bureaucratic and complex – who decides what is appropriate, what happens if

there is then dispute about this? Can a chair hold the skills to undertake this for all ages and stages and all abilities?

SWS therefore suggest that advice is sought from Speech and Language Therapists and Each and Every Child on how best to progress this area. Noting that the average reading age in Scotland is determined to be 9 years, consideration of whether all decisions could be written in easy language would result in a more rights based and user friendly system.

77. Should the specific needs of other family members, especially other children, be taken into account when decisions and reasons are being prepared and issued?

No, with caveats.

Please explain your answer

The parent and child involved should receive the decision in language and format that is suitable. Taking into account ability beyond this becomes complex and may have minimal impact.

Family Group Decision Making (FGDM) and Restorative Justice

The Hearings for Children report considered that Family Group Decision Making (FGDM) and restorative justice processes should be pursued where appropriate, prior to a referral to the children's reporter, and potentially after a reporter referral. The report recommended that: *"[Hearings] must be empowered to create space for restorative justice and FGDM processes to take place, by deferring hearings for a sufficient time***."**

The operation of FGDM and restorative justice services, and how they may appropriately interact with children's hearings, require careful consideration.

The Scottish Government does have concerns about the potential impact of deferring children's hearings – especially when the intention is to minimise the number of those hearings to the point that only those that are absolutely essential still remain - in order to pursue these other processes.

When a child is referred to a children's hearing, it has been determined by the children's reporter that they are likely in need of compulsory measures to address concerns about their welfare. Other routes of support, such as FGDM or restorative justice, may have already been considered, or they may still be thought to be helpful – but that should not delay a children's hearing making a decision, or the implementation of essential support to the child through a CSO. The Scottish Government is therefore interested in views on how these processes might appropriately interact with a redesigned children's hearings system.

We are seeking views on the operation of Family Group Decision Making (FGDM) and restorative justice services, and how they may appropriately interact with children's hearings, require careful consideration. (See section 8.12 of the consultation document)

78. Is it appropriate for children's hearings to defer their decision in order for Family Group Decision Making or restorative justice processes to be offered, or to take place?

No with caveats.

Please explain your answer.

Hearings may already continue a hearing for a variety of reasons. This does not exclude exploration of specific matters.

SWS is strongly supportive of family focused and restorative practices, with examples from across the country where those work well. In many situations such approaches, in line with GIRFEC and early intervention will have been taken before a child appears before a hearing. The minimum intervention principle also means that where the necessary change can be achieved through no compulsory approaches this must be taken.

SWS is however, also strongly against requiring specific methods and models of intervention to be utilised. This mitigates against doing what is best for a child and family, and limits the scope of work, and adoption of any new models. Members have many positive examples of Family Group Conferencing (the previous name by which Family Group Decision Making was known) but many have also invested heavily in Signs of safety and other family network type approaches. It is inappropriate to restrict implementing authorities and particularly to require use of models where those models are licenced and come with conditions for use and issues of fidelity.

79. What other ways could consideration of these processes feature in the redesigned hearings system?

Please give us your views.

These approaches and others are relevant across the children's care system. Underlining their usefulness is sufficient - they do not require to be built into the hearing system.

After a Children's Hearing (consultation part 9)

After the Hearing – the length of interim orders

Under section 86 of the 2011 Act, an interim compulsory supervision order has effect for the "relevant period" as defined in section 86(3). That is, if the order does not cease to have effect sooner, the cut-off is 22 days beginning with the order being made, or in the case of an extended order, 22 days beginning with the order having been extended.

Under the emergency Coronavirus (Scotland) Act 2020, the period for which an interim CSO could apply was temporarily extended to 44 days. This was essential for the continued safe operation of the children's hearings system during the pandemic, and its introduction was only justifiable with reference to that emergency. However, the learning and feedback from the use of an extended time limit is instructive here, and it was broadly positive. Approximately 77% of all Interim Orders made from 7 April 2020 to 8 September 2021 made use of this extended time limit. It was applied flexibly but proportionately, and limits were only extended as much as they needed to be in the best interests of the child. This offers an important contribution to the evidence base for redesign.

The Hearings for Children report recommended in Chapter 5 that "… there should be full exploration of the making of interim orders for a specified time that is bespoke to a child's needs ." The report states that "It may be helpful to consider retaining the limit as a default, with a discretion to extend the time period to suit the circumstances of the child and to meet the child's best interests".

The Scottish Government agrees that trust should be placed in decision makers to implement interim compulsory supervision orders for the appropriate time in the best interests of the child, taking into account appropriate and necessary considerations of ECHR rights and rights of appeal.

The Scottish Government is therefore interested in respondents' views on how positive changes can be made with respect to the duration of interim orders, while safeguarding the rights of children and families.

We are interested in respondents' views on how we can make positive changes with respect to the duration of interim orders, while safeguarding the rights of children and families. (See section 9.1 of the consultation document)

80. What are the advantages and disadvantages of increasing the statutory 22 day time limit for the duration of interim compulsory supervision orders (ICSOs)?

Increasing the time period and thereby minimising the need for a child to return to a hearing to continue an interim order simply because grounds have not been established is a benefit. However, extending the time limit could also mean it takes longer to establish grounds, and risk leaving children subject to interim orders for longer.

SWS members are not supportive of an open-ended interim order period to be determined by the panel chair. There needs to be some limitations, and an open-ended time period risks leaving children without the protection they need.

81. Do you feel that there should be more flexibility in the duration of these interim orders?

Yes with caveats.

If so, in what circumstances and what maximum duration do you consider appropriate?

See comments in previous question. To protect children's rights, there should be a limitation to the length of the interim order. SWS would favour two/three set time periods, to be chosen depending on the reason for the interim order, rather than it being open ended.

82. Could ICSO reviews be undertaken by lone children's panel members? (See section 8.8 of the consultation document)

Yes with caveats.

Please explain your answer.

Please see answer to the section on grounds of referral. If the review is necessary because grounds have yet to be established, then a decision by the chair would be acceptable.

After the Hearing – the concept of a child's exit plan

"The HSWG understands the concerns raised by children, families and care experienced adults with experience of the Children's Hearings System that, at present, there is not a clear understanding about what needs to happen to 'exit' the system. As a result, children can remain subject to legal orders for long periods of time, sometimes longer than is necessary. 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."

Hearings for Children report, Chapter 11

The Scottish Government's response to the Hearings for Children report indicated support for 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 could be incorporated into this plan to ensure that, where possible, 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.

The Scottish Government notes that the policy-based GIRFEC plan is entirely voluntary, while the exit plan would link to compulsory measures. So, while the creation of a statutory "exit plan" could be explored, further consideration would be required around what that would contain and how that would link with a GIRFEC plan (where one exists) and the potential range of other statutory plans that could exist for a child. As outlined above, key aspects of this proposal could be explored in practice and policy rather than on a legislative basis, in line with the GIRFEC child's plan constituting a non-statutory plan. However, the Scottish Government would welcome respondents' views on proposals for a child's exit plan from the children's hearings system and the appropriate underpinning for this.

83. Do you support the proposal to create a child's exit plan from the children's hearings system?

Yes with caveats

84. What elements should be included in a child's exit plan?

Please give us your views.

SWS in our response to the Hearings for Children report and Scottish Government response noted that we fundamentally disagree with the new presentation of children's plans as 'statutory plans' and GIRFEC plans. All plans are 'GIRFEC' plans and all have a statutory basis.

A child should have a single plan, and GIRFEC is the overarching framework for all assessment and plans for children in Scotland regardless of the reason for that plan – and many children will have several reasons for having a plan. GIRFEC is also enshrined in statute making all plans statutory plans. The process for creating a plan is also the same regardless of the reason for that plan – child protection concerns and plan, looked after plan, or a single agency plan. And all should be created alongside the child and their family.

All children subject to compulsory measures of care will have a child's plan and when compulsory measures are no longer indicated that plan should reflect the reason for this, and any ongoing support being provided in the next stage of the child's journey.

SWS members are of the view that the plan should have integrated into it 'what next' where a recommendation to terminate a compulsory order is being made. An additional 'exit plan' would be repetitive an unnecessary additional work.

System redesign overall

85. Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned children's hearings system?

Please give us your views.

Legislation in itself does not produce improvement and SWS members are keen that as much as possible of a redesigned hearing system is achieved by working together, respecting roles and remits and understanding the wider context beyond the hearing system. Utilising existing processes and opportunities and reflecting together on practice to achieve the outcomes sought is the most effective way of bringing about the change everyone is seeking.

Secure accommodation timescales for review

The Hearings for Children report states: The timescales for children living in Secure Care must be reviewed to ensure that they are appropriate and in their best interests. There must be no expectation or understanding that children should be living for long periods of time in Secure Care, but rather the presumption should be that it is a temporary measure.

Background

Secure accommodation is the most intensive and restrictive form of childcare available in Scotland, whereby children up to age 18 are placed in a locked setting, and receive high intensity, trauma-informed care, support and education. This normally occurs through involvement of the children's hearings system or the criminal justice system, due to a level of concern around the risks, or actual significant harm, which parts of a child's behaviour pose to themselves and/or others.

The use of secure accommodation should only happen in exceptional circumstances, where it is the only means by which a child and/or others can be kept safe. Depriving a child of their liberty is one of the most serious interferences a state can impose on a child's rights, and this must be absolutely necessary and proportionate in all cases.

There are currently 78 secure places available in centres run by four secure accommodation services in Scotland - Rossie Secure Accommodation Services; Good Shepherd Centre; Kibble Education and Care Centre; and St Mary's Kenmure, all of which are independent charitable organisations. Scotland's secure accommodation centres offer therapeutic care, education and support, taking account of the trauma which the children may have experienced before being placed there.

Proposal

The Scottish Government is clear that children who require to be placed in secure accommodation should only be placed there for as short a period as necessary, when they meet the statutory criteria for being accommodated there.

The 2011 Act sets out criteria for a secure accommodation authorisation being imposed in a compulsory supervision order, an interim compulsory supervision order,

a medical examination order or a warrant to secure attendance ("a relevant order").

These criteria will be amended by the Children (Care and Justice) (Scotland) Act 2024 ("the 2024 Act") so that, in future, before a children's hearing or sheriff imposes a secure accommodation authorisation in an order, they must be satisfied that it is necessary and that:

- the child has previously absconded and is likely to abscond again unless they are kept in secure accommodation, and, if they child were to abscond, it is likely that their health, safety or development would be at risk;
- the child is likely to engage in self-harming conduct unless they are kept in secure accommodation; or
- the child is likely to cause physical or psychological harm to another person unless they are kept in secure accommodation.

Criteria for implementing a secure accommodation authorisation will continue to apply under section 151 of the 2011 Act and the Scottish Government will consider any amendments required to secondary legislation to support implementation of the 2024 Act. As things stand, regulation 10 of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 sets out arrangements for review of a child's secure placement where they are subject to a relevant order with a secure accommodation authorisation. It requires that the relevant chief social work officer must review the placement from time to time and carry out the following mandatory reviews:

- a first review within 7 days of the placement,
- a second review within 1 month from the date of the first review, and
- thereafter, subsequent reviews within 1 month from the date of the previous review.

A review must also be carried out whenever the child or relevant person requests one.

The Scottish Government notes that in an emergency situation and subject to stringent conditions, a child in Scotland may need to be placed in secure accommodation without the authority of a children's hearing or a sheriff. The Secure Accommodation (Scotland) Regulations 2013 specify the maximum period during which a child may be kept in secure

accommodation in this scenario. The statutory limit is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days, except in very limited circumstances in which a further period of 24 hours is available[35].

The placement of children who are accommodated in secure accommodation via provisions of the Criminal Procedure (Scotland) Act 1995 must also be kept under regular review. Currently, the relevant local authority's chief social work officer and the head of the secure unit must ensure that they make arrangements to review the child's case—

- within 7 days of the placement being made,
- at such times as appear to them to be necessary or appropriate in light of the child's
- in any event, at least every 3 months[36].

Following the review, the child may only be kept in secure accommodation where the chief social work officer and the head of unit are satisfied that this is in the child's best interests.

The Scottish Government has carefully considered the existing timescales and believes that they are still appropriate to protect children's rights.

86. Do you agree that the timescales for review of a child's placement in secure accommodation in Scotland, as laid out in legislation, are still appropriate?

Yes.

Please explain your answer.

These are appropriate, short periods and ensure that a child's liberty is not restricted for any longer than necessary. The placing of responsibility is clear and at the highest of levels.

SWS are of the view that any changes in relation to secure should be progressed as part of the Reimagining Secure Care work.

Assessing Impact

Background

The Scottish Government propose to carry out impact assessments alongside the development of any new legislation which would be required to implement the changes proposed in this consultation.

These include a Data Protection Impact Assessment, Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation). The Scottish Government would be

interested in your views on these areas to help develop these and any other necessary assessments.

The Scottish Government will carry out impact assessments alongside the development of any new legislation which would be required to implement the changes proposed in this consultation. We would be interested in your views on these areas to help us in developing these and any other necessary assessments.

87. **What, if any, do you see as the data protection related issues that you feel could arise from the proposals set out in this consultation?**

Please give us your views.

There will be data protection issues to be considered related to any recordings, and any steps to extend the remit of Reporter, safeguarder and panel chair

88. **What, if any, do you see as the children's rights and wellbeing issues that you feel could arise from the proposals set out in this consultation?**

Please give us your views.

Please see earlier responses in relation to timescales, recording of hearings, changes to relevant persons, changes to number of panel members and how hearings are configured, and those proposals which suggest that panels for some children could be undertaken with different panel configurations. There may also be rights issues in the role of the Reporter before referrals, and earlier involvement of the safegaurder

89. **What, if any, do you see as the main equality related issues that you feel could arise from the proposals set out in this consultation?**

Please give us your views.

Children must be treated equally, and we are not aware of any issues related to protected groups which cannot be managed in practice.

We would also suggest that an islands impact assessment is required.

90. **Do you have any other suggestions where you consider that new legislation is needed to deliver a successfully redesigned children's hearings system?**

Please give us your views.

No.

For further information, please contact:

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