



A BRIEF BACKGROUND

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Children's Hearings: a Brief Background

The Foundation of the Children's Hearings System

Scotland's Children's Hearings system represents one of the radical changes initiated by the Social Work (Scotland) Act 1968, now incorporated in the Children (Scotland) Act 1995.

There was a concern in the late 1950s and early 1960s that change was needed in the way society dealt with children and young people in trouble or at risk. A Committee was therefore set up in 1960 under Lord Kilbrandon to investigate possible solutions. The Committee reported in 1964. It found that children and young people appearing before courts, whether they had committed offences or were in need of care and protection, had common needs. The Committee considered that the existing juvenile courts were not suitable for dealing with these problems because they had to combine the characteristics of a criminal court with an agency making decisions on welfare. Separation of these functions was therefore recommended. The establishment of facts (where they were disputed) was to remain with the courts, but decisions on what action was needed in the welfare interests of the child were to be the

responsibility of a new and unique kind of hearing. On 15 April 1971 Children's Hearings took over from the courts most of the responsibility for dealing with children and young people under 16, and in some cases under 18, who commit offences or who are in need of care and protection.

In 2011, a new Act, the Children's Hearings (Scotland) Act 2011 was passed. The Act strengthens and modernises the system and includes the appointment of a National Convener and the creation of a new body, Children's Hearings Scotland. The Act will not be fully implemented until late 2012. While there will be procedural reforms, the fundamental role/responsibility of a panel member will not change. The information in this leaflet relates to the current Children's Hearings system.

How it works

Currently, the grounds (legal reasons) for bringing a child or young person before a hearing are set down in section 52(2) of the Children (Scotland) Act 1995 and include that the child:

- is beyond the control of parents or carers;
- is at risk of moral danger;
- is or has been the victim of an offence, including physical injury or sexual abuse;
- is likely to suffer serious harm to health or development through lack of care;
- is misusing drugs, alcohol or solvents;
- has committed an offence;
- is not attending school regularly without a reasonable excuse;
- is subject to an antisocial behaviour order and the Sheriff requires the case to be referred to a Children's Hearing

Children under 16 are only considered for prosecution in court for serious offences such as murder, assault which puts a life in danger or certain road traffic offences which can lead to disqualification from driving. In cases of this kind the Procurator Fiscal has to decide if prosecution is in the public interest. Even if so, it is still by no means automatic that the child will be prosecuted. The Procurator Fiscal may refer the child or young person to the Reporter (see below) for a decision on whether

referral to a hearing is more appropriate.

Where the child or young person is prosecuted in court, the court may, and in some cases must, refer the case to a hearing for advice on the best way of dealing with the child. The court, when it considers that advice, may also refer the case back to a hearing for a decision.

The Reporter

The Reporter is an official employed by the Scottish Children's Reporter Administration. All children and young people who may need compulsory measures of supervision must be referred to the Reporter. The main source of referrals is the police and social work, but other agencies such as health or education can make a referral, as well as any member of the public or even the child him/herself.

When the Reporter gets a referral, they must make an initial investigation before deciding what action, if any, is necessary in the child's interest.

The Reporter must consider whether there is enough evidence to support the grounds for referral and then decide whether compulsory measures of supervision are needed.

The Reporter has statutory discretion in deciding the next step and they may:

- decide that no further action is required. The Reporter will write to the child/young person and usually the parent or other relevant person (see below for definition of “relevant person”) to tell them of this decision.
- refer the child or young person to the local authority so that advice, guidance and assistance can be given on an informal and voluntary basis. This usually involves support from a social worker.
- arrange a Children’s Hearing because they consider that compulsory measures of supervision are necessary for the child.

The Children’s Panel

The Children’s Panel is a group of people from the community who come from a wide range of backgrounds. Panel members are unpaid and give their services voluntarily, but are carefully selected and highly trained. They must be at least 18 years old but there is no upper age limit.

Every local authority has a Children’s Panel, and panel members sit on hearings on a rota basis. There are three panel members, of which there must be a mix of men and women.

The hearing must decide whether compulsory measures of supervision are needed for the child and, if so, what they should be.

Across Scotland there are around 2,500 Children's Panel members. They are carefully prepared for their task through initial training programmes and they will develop their knowledge and skills during their period of service through experience and attending in-service training.

Selection and Appointment of Panel Members

Members of a Children's Panel are appointed by Scottish Ministers. Every local authority has a Children's Panel Advisory Committee (CPAC), which is responsible for recommending individuals for appointment as panel members. For new panel members this normally involves attending information sessions, completing application forms and attending interviews and group discussions. References are also followed up, and an enhanced police check by Disclosure Scotland is carried out. The initial period of appointment is three years and is renewable on further recommendation from the CPAC, following monitoring of performance.

The Hearing

A Children's Hearing is a lay tribunal of three members. It must not be wholly male or female and aims to have a balance of age and experience. One of the three panel members will chair the hearing. The hearing considers and makes decisions on the welfare of the child or young person before them, taking into account all the circumstances, including any offending behaviour.

The hearings can consider cases only where the child/young person, the relevant persons (see below) accept the grounds for referral as stated by the Reporter, or where they accept them in part and the hearing decides it is proper to proceed.

Where the grounds for referral are not accepted, or the child does not understand due to age or ability (unless the hearing decides to discharge the referral), the case is referred to the Sheriff to decide whether the grounds are established. If the Sheriff is satisfied that the grounds are correct, the Reporter will arrange another hearing.

There will be circumstances in which temporary/emergency measures will be necessary. A Sheriff has the power to grant a Child Protection Order where it is considered that the child is in immediate danger. This is usually reviewed by a Children's Hearing on the second working day after the order has been granted.

A Children’s Hearing is able, in certain circumstances, to issue warrants. For example, if a child fails to attend a hearing a warrant may be issued to make sure they attend another hearing. If it is necessary to find a child and keep him/her in a “place of safety”, a Place of Safety warrant may be issued. This may last a maximum of 22 days; it can be extended on review by another Children’s Hearing for a further 22 day period each time, but only up to a total of 66 days. After that, the Reporter must apply to the Sheriff for any further periods of 22 days, if that is necessary.

The hearing, or the Sheriff in certain court proceedings, may appoint an independent person known as a Safeguarder. The role of the Safeguarder is to prepare a report to assist the hearing in reaching a decision in the child’s best interests.

Relevant Persons

The definition of a “relevant person” is set out in Section 93(2)(b) of the Children (Scotland) Act 1995, and is a person who has (or has been legally granted) parental rights or responsibilities for the child, or any person who normally has charge of, or control over, the child (but this does not include someone who only works with the child as part of his/her employment).

What Happens at the Hearing?

A hearing is usually held in the child's or young person's home area. The layout of the room is relatively informal with the participants usually sitting round a table. Normally, the child/young person must attend and always has the right to attend all stages of his/her own hearing. The hearing may decide that the child does not have to attend certain parts of the hearing – or even the whole hearing – if, for example, matters might come up that would cause the child significant distress.

It is important that the relevant persons (e.g. the parents) should be present at the hearing so that they can take part in the discussion and help the hearing to reach a decision. Their attendance is compulsory by law, and failure to appear may result in prosecution and a fine. The child/young person and the relevant persons may take a representative to help them at the hearing, and each may choose a separate representative. However, this does not mean that they don't have to attend themselves. In certain cases the hearing may appoint a publicly-funded Legal Representative.

The parents or other relevant persons and their representatives can be excluded from any part of the hearing so that the panel members can get the views of the child/young person, or if the child may be distressed by their presence. However, the chairperson must afterwards explain the substance of what has taken place in their absence. Although the

proceedings are private, a person from the press is allowed to attend the hearing, but may be asked to leave the room if the hearing decides it is necessary in order to get the views of the child, or if the child may be distressed by their presence. The press is not allowed to disclose the identity of the child.

Also allowed to attend a hearing is a CPAC member, for the purpose of monitoring panel members' performance, and members of the Scottish Committee of the Council on Tribunals. Other observers may attend a hearing, but nobody is admitted unless they have a legitimate concern with the case or with the hearings system and have the agreement of the chair of the hearing, the child and the child's family. The hearing is therefore a small gathering able to proceed in a relatively informal way and to give the child and parents the confidence and privacy to take a full part in the discussion about what needs to be done for the child.

The hearing has to decide on the measures of supervision which are in the best interests of the child or young person. It receives a report on the child and his/her social background from a social worker in the local authority, and where appropriate from the child's school. Medical, psychological and psychiatric reports may also be requested.

Parents, and in general the child if they are over 12, are provided with copies of the reports at the same time as the panel members. The hearing discusses the circumstances of the child fully with the parents, the child

or young person and any representatives, the social worker and the teacher, if present. As the hearing is concerned with the wider picture and the long-term well-being of the child, the measures which it decides on will be based on the welfare of the child. They may not appear to relate directly to the reason that was the immediate cause of the child's appearance at the hearing. For example, the hearing may decide that a child or young person who is not receiving adequate parental care should not be removed from the home, because suitable support is available within their home area. Alternatively, a child who has committed a relatively minor offence may be placed away from home for a time if it appears that the home background is a major cause of the child's difficulties and the hearing considers that removal from home would be in his/her best interests.

Supervision Requirements

If the hearing thinks that compulsory measures of supervision are necessary, it will make a Supervision Requirement, which may be reviewed annually until the child becomes 18. The hearing has wide scope to insert conditions in the Supervision Requirement, and the local authority is responsible for ensuring it is carried out. In most cases the child will continue to live at home but will be under the supervision of a social worker. In some cases the hearing will decide that the child should live away from home with relatives or other carers such as foster parents, or in one of several establishments managed by the local authority or voluntary organisations, such as children's homes, residential schools or secure accommodation. It may also decide who the child may have contact with, and when.

The Antisocial Behaviour etc. (Scotland) Act 2004 also gave hearings the power to restrict a child or young person's movement. This involves intensive support and monitoring services (monitoring is facilitated by an electronic "tag") where the young person is restricted to, or away from, a particular place. The electronic tag must be supported by a full package of intensive measures to help the young person change their behaviour.

There is, however, no element of punishment in a hearing decision, so it does not for example have the power to fine the child/young person or the parents. All decisions made by hearings are binding on that child/young person. A Supervision Requirement can be terminated when a hearing decides that compulsory measures of supervision are no longer necessary.

Review Hearing

A Supervision Requirement must be reviewed at another hearing within a year otherwise it lapses. A hearing may specify an earlier review date. The child or relevant person may request a review after three months, and the local authority can call for a review at any time. The Reporter has a duty to arrange review hearings. At a review hearing, which is again attended by the child and relevant persons, the Supervision Requirement can be continued, changed or discharged.

Appeals

The child or young person, or the parents, may appeal to the Sheriff against the decision of a hearing, but must do so within 21 days. Once an appeal is lodged, it must usually be heard within 28 days. After that, the Sheriff's decision may be appealed to the Sheriff Principal or the Court of Session on a point of law only.

Legal Advice and Legal Aid

Prior to the hearing, legal advice is free or available at reduced cost under the Legal Advice and Assistance Scheme, to inform a child or the relevant persons about their rights at a hearing and to advise about acceptance of the ground for referral. Similarly, legal aid may be available for preparation for appearance in the Sheriff Court either when the case has been referred for establishment of the facts or in appeal cases.

Legal Representation at a Hearing

Legal representation is provided free of charge for a child or young person where the panel members sitting on the hearing consider it likely that there may be a recommendation of secure accommodation, or where legal representation is needed to allow the child to participate effectively at the hearing. In some circumstances legal representation can also be provided to relevant persons. Children's Legal Representatives are members of special panels maintained by local authorities and are qualified solicitors who work in public or private practice. Legal Representatives are expected to be sensitive to the atmosphere and ethos of the Children's Hearing. All costs of legal representation are met by the Scottish Government.

Resources

The Scottish Government funds the Scottish Children's Reporter Administration (SCRA) in respect of the salaries and training of over 400 full-time staff, provision and management of hearings premises and IT support. The Scottish Government also contributes annually towards the funding of training of panel members of CPACs. This funding provides for Training Officers, who prepare and deliver training, based at Aberdeen, St Andrews and Glasgow Universities, and the Musselburgh campus of Queen Margaret University (Edinburgh). Responsibility for meeting the additional costs of this training rests with local authorities, who are also responsible for providing appropriate facilities for the assessment and supervision of children and for carrying out the Supervision Requirements made by hearings. The Scottish Government also meets in full the costs of legal representation at hearings (see above) and supports the annual national recruitment campaign and support measures for panel members. In addition, a significant cost is met by local authorities in supporting the operation of Children's Panels.

Research and Statistics

The Hearings system has been the subject of a considerable body of research, much of it carried out by researchers based at Scottish universities, sometimes with support funds from other countries.

A review of research has also been published along with a number of significant studies. Detailed references to recent or significant publications can be found in the section of Further Reading.

Further Reading

Websites

- www.childrenspanelscotland.org
- www.chscotland.gov.uk
- www.scotland.gov.uk
- www.scra.gov.uk

Legislation

- Antisocial Behaviour etc. (Scotland) Act 2004
- Children (Scotland) Act 1995
- Children (Scotland) Act 2011

Publications and research

Available via the Children's Hearings website:

- Scottish Youth Justice Baseline (November 2004)
- 'Getting it Right for Every Child' – Consultation on the Review of the Children's Hearing System (July 2004)
- Dealing with Offending by Young People: A Follow-Up Report (November 2003)
- National Standards for Scotland's Youth Justice Services (November 2002)
- Blueprint for the Processing of Children's Hearings Cases – Second Edition (March 2001)
- Freagarrach: Evaluation of a Project for Persistent Young Offenders (February 2001)
- The Evaluation of Children's Hearings in Scotland: Volume 4 – Where do we go from here? Conference Proceedings (July 2000)
- It's a Criminal Waste: Stop Youth Crime Now, Report of the Advisory Group on Youth Crime: (June 2000)
- An Evaluation of the SACRO (Fife) Young Offenders Mediation Project (May 2000)
- The Evaluation of Children's Hearings in Scotland: Children in Focus (April 1999)

- Children, Young People and Offending in Scotland (December 1998)
- Evaluation of the Hamilton Child Safety Initiative (December 1998)
- The Evaluation of the Children’s Hearings in Scotland: The International Context, C. Hallet and N. Hazel (1998)
- The Evaluation of Children’s Hearings in Scotland: Deciding in Children’s Interests, C. Hallet and C. Murray with J. Jamieson and W. Veitch (1998)
- The Kilbrandon Report: Children and Young Persons Scotland (1964)

Other

- A Guide to Children’s Hearings, G. Moore (1989)
- Children’s Hearings and the Sheriff Court, Brian Kearney (2000)
- Children’s Hearings in Scotland, Kenneth Norrie (1997)
- Juvenile Justice in Scotland: 25 Years of the Welfare Approach, Andrew Lockyer and Fred Stone (1998)
- Kilbrandon Lectures (see Publications page of the Children’s Hearings website)
- Youth Justice and Child Protection, Malcom Hill, Andrew Lockyer and Fred Stone (2007)