

PE1675/A

Scottish Government submission of 22 December 2017

I am writing to provide the Scottish Government's comments on the above petition. The petitioner is calling for an urgent change to the requirement that all children have to attend children's hearings, unless excused by 'the Panel'.

Let me preface this response by referring to Article 12 of the United Nations Convention on the Rights of the Child: "*When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.*"

The child is the most important person in any children's hearing proceedings. Children's hearings should be as welcoming, accessible and informal as possible. But it is indisputable that hearings make far-reaching and important decisions on sometimes difficult and distressing issues for children and their families.

At a national level, the Government's approach to supporting children and young people – Getting It Right For Every Child – emphasises the importance of children being placed at the centre of services and being listened to when decisions are being taken which affect them. If this is to work effectively, then it is crucial that children, young people and families are supported to understand what help is possible and what their choices may be.

It is right that the starting position should be that children are able to attend their hearing and to play the fullest part that they wish to in the discussion. But it therefore follows that hearings system partners need to support children and young people properly - to attend, to understand and to confidently take part in their children's hearings experience.

In relation to children's attendance, sampling done in certain areas suggests that only about 50% of children may attend. Each decision should be individually based. Each pre-hearing panel will consider the likely distress and impact upon a child. The hearing will also consider whether there are other means of collecting the views of the child and Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA) are developing their digital strategy to allow more varied means of ensuring that takes place.

Decisions are being taken at individual level based on recommendations. I would maintain that the current arrangements seek to draw a suitable balance between attendance and non-attendance. A decision to excuse attendance should be justified based on clear evidence as to why that is appropriate and in the best interest of the child. Conversely, where a view is taken that child should be present then the obligation to attend should be respected.

The hearing also has legal obligations to have regard to the views of the child or young person (section 27 of the Children's Hearings (Scotland) Act 2011). There is a presumption that from age 12 that a child can be presumed to form their own views but that does not preclude younger children from being able to express their views.

While various avenues exist for these views to be obtained and presented – and the digital programme being developed between SCRA and CHS will enhance such opportunities, having the child or young person attend in person ensures that the hearing can engage as appropriate with the child or young person.

The hearings discussions can be difficult and challenging and panel members have the power to manage the hearing to minimise the impact on the child. But at the end of the day the hearing may reach some fundamental decisions affecting the child or young person – where they live, with whom they live and with whom they have contact – and it is right that children or young people ought to be present both to participate in the discussions where appropriate – and to be made aware of what is happening and why.

We acknowledge that attendance does not of itself equate to participation. As you will know from this year's Education and Skills Committee's inquiry into children's hearings reforms, the modernised system is governed by the Children's Hearings (Scotland) Act 2011 ('the 2011 Act'). The Government's responses to that inquiry set out in detail the efforts of the SCRA, CHS and others to improve the hearings centres environments, to support more child-centred practice across the agencies, and to look forward to the potential alternative means of children's participation offered by the Government's investment in the Digital Strategy for the hearings system.

We plan to update the Education Committee on our progress in early 2018, and will ensure that we issue a copy to you in your role as Public Petitions Committee Convener.

In relation to excusing children, section 73 of the 2011 Act sets out clear circumstances under which a child may be excused from attending their hearing.

The hearing can excuse the child where the child has been the victim of a schedule 1 offence [offences against children], has (or is likely to have) a close connection with a person who has committed a schedule 1 offence, is (or is likely to become) a member of the same household as a child who is a victim of such an offence, or has (or is likely to have) a close connection with a person who has committed an offence under Parts 1,4, or 5 of the Sexual Offences (Scotland) Act 2009. However, the hearing must also consider whether the child's attendance is necessary to support a fair hearing for all parties who may be affected by the outcome, although the child's welfare remains paramount.

Section 73(3)(b) provides for the hearing to excuse the child where attendance may be damaging to the child's physical, mental or moral welfare. Section 73(3)(c) provides for the hearing to excuse the child where the hearing considers the child would not be able to understand the process.

National figures on excusals are not routinely collected, but children's hearings can and do excuse children and young people using these powers. A Quality Assurance Exercise on 310 Pre-Hearing Panels was conducted by SCRA last year to explore practice in relation to how these meetings had considered children's potential

excusals from attending a Hearing. There are around 4000 pre-hearing panels each year across Scotland.

In 88.4% of cases sampled (274), the Pre-hearing Panel (PHP) excused the child from attending the Hearing. The subsequent Hearing confirmed the PHP decision in 96% of cases. Notwithstanding the decision of a PHP to excuse a child, the child has a right to attend their Hearing. Of the 274 cases where the child had been excused, 18 of the children attended their Hearing anyway.

That said, the Scottish Government remains open to reviewing whether the current balance and tests are right for children and young people. An open, understanding and welcoming system is the prerequisite for better participation. There is therefore a drive for greater transparency, receptiveness and child-centred plain speaking under the shared 'Better Hearings Action Plan' being taken forward by the Children's Hearings Improvement Partnership. There are a series of statutory and regulatory imperatives for the key agencies to support children to give their views, and it is critical that those are fulfilled.

We are not aware of mental health issues or other damage being caused to children and young people attending children's hearings.

For ease, I attach a hyperlink to SCRA's Children and Families Survey in 2016. The 636 respondents included 122 young people and 126 children (including 26 between the ages of three to six year olds). I have reproduced an extract in italics below:

<http://www.scra.gov.uk/wp-content/uploads/2016/06/Children-and-Families-Survey-2016-v1.pdf>

Participation in Hearings

□ 77% of young people felt like they were the most important person at their last Hearing, and 76% said that they had given their views. Of those who gave their views, 74% said they had felt listened to.

Equalities

□ 94% of young people felt that they were treated with dignity and respect by SCRA staff at the Hearings Centre.

□ 88% of adults and young people would prefer to come to Hearings on a weekday, and for the Hearing to be held in the morning.

□ 92% of young people had access to the internet and 8% did not.

Children's feelings about being at Hearings

□ 81% of young children (three to six years) indicated that they were 'happy' to be at their Hearing, 12% said they were 'OK' and 7% said they were 'sad'. Of children aged seven to 11 years, 63% said they felt 'OK' to be at the Hearing, 33% felt 'happy', and 4% felt 'sad'.

The petitioner cites the perceived absence of any independent oversight or review of the hearings system. As you will be aware, that system was extensively overhauled around 4 years ago. The reforms appear to be in good shape overall, but important improvement work remains and action is in train to do better for children and families.

You will also be aware that the current independent root and branch Care Review – Chaired by Fiona Duncan – aims to identify and deliver lasting change in the care system and leave a legacy that will transform the wellbeing of children and young people.

The lived experience and wisdom of people affected by care issues are at the very heart of the Review. The Review is actively listening to the voices of children and young people in care, care experienced people and their families and carers. The Review is currently in its Discovery phase, and we would encourage the Petitioner to make contact to share his own experiences - www.carereview.scot.

The Government remains open to considering whether we have the balance right between rights-proofing and process integrity on the one hand, and being more responsive to children's own needs and wishes on the other. The Digital Strategy initiative mentioned above may bring some opportunities for more children to give their views without attending in person. As part of our Family Justice Modernisation Strategy, we will be consulting next year on possible further legislative proposals in that area.

To summarise, significant effort is being expended to improve children's experiences before, during and after their hearings. It is important that children feel supported to play as full a part as they want to. There are arrangements to excuse children if need be. Children and families survey evidence does not point to children's hearings being inevitably damaging, corrosive experiences. Those with statutory responsibilities are relentlessly focused on further improvements. The Government remains open to further modernisation where that can be delivered in a rights-compliant way. And it is open to the Petitioner to share his experiences with the independent care Review.

While it was difficult to read about the petitioner's experiences, we do not think it necessary to take additional action at this stage on the basis of his current petition.