



Review of the Children's Legal
Representation Grant Scheme:
Research Report

REVIEW OF THE CHILDREN'S LEGAL REPRESENTATION GRANT SCHEME: RESEARCH REPORT

**Rachel Ormston & Louise Marryat
Scottish Centre for Social Research (ScotCen)**

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Responsibility for this report lies wholly with the authors.

Rachel Ormston & Louise Marryat

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EXECUTIVE SUMMARY

Background to the study

1. The Legal Representation Grant Scheme allows children's hearings to appoint legally qualified safeguarders or curators ad litem to represent children when this is required either to allow the child to effectively participate at the hearing, or because it may be necessary to make a secure supervision requirement (or a review of such a requirement). The Scottish Government Education Information and Analytical Services Division, acting on behalf of the Children's Hearings Team, commissioned the Scottish Centre for Social Research (*ScotCen*) to conduct research to review the operation of the Scheme and to inform its future development. The study involved 51 in-depth telephone interviews with professionals including local authority clerks, reporters, legal representatives and panel members and 23 face-to-face interviews with young people in secure units who had experience of attending a hearing with a lawyer or legal representative.
2. This is a summary of the key findings. A report for young people is also available from the Scottish Government website.

Administration of the scheme

3. The Legal Representation Grant Scheme is currently administered separately in each Scottish local authority. The research found variations in many administrative aspects of the scheme, including: how solicitors were recruited to the local 'pool' of legal representatives; the background and qualifications of solicitors recruited to the scheme; how the decision to appoint a solicitor to a case was taken, and how individual solicitors were selected for particular cases.
4. Barriers to solicitors taking on Grant Scheme cases included: the amount of notice given for cases; high existing workloads; long distances to travel to hearings (particularly in rural areas or where the hearing was being held outside the local authority); and a perception that the fees were low.

The role of legal representatives in children's hearings

5. Participants in the study identified four potential roles for legal representatives in children's hearings:
 - a **legal/procedural** role, in ensuring the decision of the panel is legally correct
 - an **explanatory/advisory** role, giving children and young people advice on the process, the likely outcomes, their options and the implications of the hearings' decision
 - a **facilitation** role, in ensuring children and young people get their views across, and
 - a **challenging/arguing** role, actually making the case for those views to be acted upon.
6. These roles were not, however, given equal weight by all professional participants in the study. Moreover, one view was that the legal representative role is '*muddy*'. Among young people, there was a clear perception that legal

representatives should have a role in arguing for what the young person wants to happen, regardless of whether they agree that this is what is best for them. However, some young people did not have a definite idea of what their legal representative had been there for, and one opinion was that they did not fulfil any useful role.

Types of cases legal representatives are appointed in

7. Professionals interviewed for the study gave examples of legal representatives being appointed in three broad types of case: those where secure accommodation was being considered; those where tagging was an option; and those where legal representation might help secure 'effective participation' by the child. The latter included cases where the child had no independent adult support, where the child had learning difficulties, and where the child was a repeat offender. However, there was evidence of a lack of certainty over whether and when to appoint under the 'effective participation' criterion. This appeared to be reflected in variation in the extent to which such appointments were made in practice. There was also some uncertainty over whether legal representatives were required when the child or family brought their own lawyer, when secure was only being considered (rather than recommended) and where a secure order was being removed.
8. Young people suggested that they might also find having a legal representative useful in situations where hearings are repeatedly continued, cases where non-secure residential accommodation may be recommended, and where the young person is referred on offence grounds, particularly where they are new to the system. On the other hand, young people also suggested that legal representatives may not be needed if secure accommodation is not being discussed or if the outcome seems pre-determined, while a further view was that they are not useful at all in hearings.

Contact between young people and their legal representatives

9. The level of contact between young people and their legal representatives in advance of hearings varied. Young people described meeting their legal representative for the first time either in advance of the day of the hearing, immediately before the hearing, or having no contact with them at all prior to the hearing. Young people who had no or very minimal contact with their legal representatives before the hearing appeared to be particularly dissatisfied with the experience of having a lawyer. Reasons legal representatives gave for being unable to meet young people in advance centred on fees and notice, with both these barriers exacerbated where the young person resided at some distance to the lawyer's practice.

The impact of legal representatives on young people and hearings

10. The impact of involving lawyers on young people's participation in hearings was discussed in detail. The young people interviewed sometimes preferred their legal representative to speak for them in hearings because they were too shy, embarrassed or nervous to speak for themselves, or because they felt their legal representative could keep calmer or put arguments better than the young person.

However, young people also identified reasons to speak for themselves: one opinion was that doing so was easy, but other young people said they did not speak at all when their legal representative was not there. Another view was that having a legal representative simply made no difference either way to young people's ability to get their views across in hearings. Indeed, the main reason young people gave for being dissatisfied with their legal representative was that they had 'just sat there' and had not represented their views adequately.

11. Professionals also described the positive and negative impacts legal representatives could have on the hearing itself. They could improve the atmosphere by helping to keep clients calm, or they could inflame already volatile situations by not understanding their role. They could have a positive impact on communication by ensuring the panel heard the child's views, or they could silence the child and/or inhibit the panel from speaking. Legal representatives could help hearings focus on important legal issues, but they could also get 'bogged down in legal jargon'.

Suggestions for improving the scheme

12. Key suggestions from professionals and young people for improving the Grant Scheme included:

- Ensuring legal representatives take an active role in representing young people
- Providing more information about their role to professionals and families
- Widening the pool of legal representatives and/or having a national pool
- Appointing legal representatives in more cases
- Allowing reporters to appoint legal representatives without recourse Business Meetings
- Allowing young people some say over which legal representative they have
- Increasing or revising the fees
- Requiring legal representatives to meet with children or young people in advance of hearings
- Providing specific training and monitoring for legal representatives.

1 BACKGROUND AND INTRODUCTION

The Children's Legal Representation Grant Scheme

1.1 This report presents findings from a qualitative study reviewing the operation and impact of the Children's Legal Representation Grant Scheme from the perspective of young people and adults involved in the Children's Hearings System. The Scheme allows publicly funded legal representation for children and young people attending children's hearings when this is required either:

- to allow the child to effectively participate at the hearing, or
- because it may be necessary to make a secure supervision requirement (or a review of such a requirement)¹.

(Children's Hearings (Legal Representation) (Scotland) Rules 2002)

1.2 The Legal Representation Grant Scheme was first introduced in December 2001, with updated regulations in February 2002, in response to the verdict of the S v. Miller case. Prior to S v. Miller, legal aid was available for children to obtain advice from a lawyer before a hearing, but they were not entitled to free legal representation in the hearing itself. In March 2001, the Court of Session ruled that the absence of provisions allowing children to apply for free, independent legal representation in children's hearings appeared to breach their rights to a fair trial under Article 6(1) of the *European Convention on Human Rights* (ECHR). The *Children's Hearings (Legal Representation) (Scotland) Rules 2002* were therefore introduced to allow hearings to appoint legally qualified safeguarders² or curators ad litem³ to represent children whom they consider to meet the criteria outlined above.

1.3 The scheme was intended as an interim response to the S v. Miller verdict – at the time the initial regulations were introduced, the then Minister for Education and Young People, Cathy Jamieson, stated:

We wish to see how the new arrangements work before consulting formally on what longer-term changes, if any, may be required.

(Scottish Executive news release SE 5094, December 2001)

¹ Secure supervision is provided for children and young people who pose a risk of, or have previously, absconded, or who pose a risk to themselves or others. Scotland currently has a provision of 124 secure places, spread across 7 dedicated secure units. These units provide a full curriculum of care, delivering a range of educational, health and behavioural programmes for our young people. In addition, the units undertake tailored programmes of work to prepare the young people for their transition back into the community.

² Safeguarders are appointed to safeguard the interests of the child during children's hearings, primarily by producing a report about their circumstances and making recommendations about what course of action would best promote their welfare, taking account of the child's wishes and feelings.

³ Curators ad litem are legal representatives, usually solicitors, who are appointed by courts in Scotland where the court believes that the person lacks the mental capacity to make decisions for themselves.

1.4 The Scottish Government Education Information and Analytical Services Division acting on behalf of the Children's Hearings Team therefore commissioned the Scottish Centre for Social Research (*ScotCen*) to conduct research to review the operation of the Scheme and to inform its future development. The remainder of this introductory chapter summarises the policy and research background to the study and sets out the structure of the rest of the report.

Policy and research background

1.5 This section describes key features of the Children's Hearings System – Scotland's distinctive system for dealing with children and young people who have committed offences and/or are in need of care and protection. It describes the policy developments and debates that preceded the introduction of the Legal Representation Grant Scheme, before summarising earlier research on legal and other forms of representation for children and young people attending hearings.

About the Children's Hearings System

1.6 The Scottish Children's Hearings System was established in 1971 on the recommendations of the now famous Kilbrandon Report. It exists to deal with children and young people in need of 'compulsory measures of supervision' (*Children (Scotland) Act 1995*, s56(6)). Four key features distinguish the system from equivalent systems operating in many other countries:

1. It is a **unified** system, dealing both with young offenders and with young people in need of care and protection, on the basis that both have the same kinds of problems in their lives requiring the same kinds of solutions.
2. It is **welfare-based** – decisions are made on the basis of the child's welfare, not any offences he or she might have committed.
3. **Adjudication is clearly separated from disposal** – if there is any dispute over the facts of a case – for example, if a child or parent denies the grounds for referral to the hearing are true – the case is referred to the Sheriff Court for a 'proof' hearing. This 'proof' hearing is subject to all the usual rigours of due process. However, the actions to be taken once the facts are established is decided by a children's panel composed of three lay people.
4. The **participation** of the child and family members (or 'relevant persons'⁴) in discussing the best course of action is seen as essential in allowing all issues bearing on the child's welfare to emerge and in enlisting the support of children and families for the measures decided upon.

1.7 In addition to three panel members, the reporter who referred the case to the hearing is always present at hearings, and a social worker is also usually present. The child and 'relevant persons' have both a right and an obligation to attend hearings (although in some cases the child may be excused of this obligation if their attendance is thought either unnecessary or likely to be detrimental to their welfare. One of the 'relevant persons' may also be excused

⁴ Anyone with parental responsibilities and anyone who ordinarily has charge of the child.

if appropriate). Other people who may attend include safeguarders and 'representatives' of the child or family (which may now include legal representatives). The roles of safeguarders and other representatives are discussed further below.

- 1.8 After reviewing any reports provided and discussing the case with those present, the hearing may make one of three decisions:
1. To **discharge** the referral with no further action
 2. To make a **home supervision** requirement, where the child remains at home with social work supervision, or
 3. to make a **residential supervision** requirement, which may include being placed in a residential home, in foster care, or in secure accommodation.
- 1.9 As outlined above, it is particularly (though not exclusively) where the latter kind of disposal is being considered that a hearing may decide to appoint a legal representative to the child.

Representation in hearings and S v. Miller

- 1.10 Prior to *S v. Miller* and the *Children's Hearings (Legal Representation) (Scotland) Rules 2001/2* which followed the case, there was already provision for children to be 'represented' at hearings by various different individuals.
- 1.11 First, since 1985 children's panels have had the option of appointing a safeguarder, whose job is to safeguard the interests of the child during the proceedings. They do so primarily by producing a report about the child's circumstances and making recommendations about what course of action would best promote their welfare, taking account of the child's wishes and feelings. Safeguarders can be drawn from various backgrounds, including lawyers and social workers, and are wholly independent from both the local authority and the panel.
- 1.12 Second, the *Children's Hearings (Scotland) Rules 1996* state that any child may be accompanied to a hearing by a 'representative' whose function is to 'assist the person whom he represents in the discussion of the case of the child with the children's hearing' (Rule 11). A 'representative' could be a friend, teacher, youth worker, or indeed a lawyer, although prior to *S v. Miller* a distinction was made between a lawyer attending in this capacity and a lawyer attending as a child's legal representative. Pre-2001, lawyers attending hearings did not have the right to receive documents and would not have been eligible for publicly-funded remuneration (Lockyer, 1994a).
- 1.13 The verdict in the *S v. Miller* case and the introduction of the Legal Representation Grant Scheme represent the latest developments in a long running debate over legal representation in hearings. Those in favour (e.g. Fox, 1991, Cleland, 1996, Norrie, 1997 and 2000) argued that it was required to enforce the children's right to be heard, to protect their procedural rights and to ensure 'equality of arms' in terms of enabling children to 'present their own cases (as it were) in as favourable a light as they can' (Norrie, 1997:4). Norrie argued that it is 'entirely unjustifiable' to withhold free legal representation from

children when hearings have 'huge, even draconian powers' to restrict their liberty and to interfere with their family lives, albeit in the name of their 'best interests'.

1.14 On the other side, those who argued against a role for legal representatives in hearings (e.g. Lockyer, 1994 a and b, Sutherland, 1999 and Miller, 2000) claimed that their introduction was both unnecessary and potentially dangerous. Lockyer and Stone (1998) argued that children's procedural rights were already adequately protected by the reporter and the panel chair, while the introduction of legal advocacy to the Hearings System was seen as a threat to the 'informal, non-adversarial and direct participatory character' of hearings (Lockyer, 1994a: 62). There was concern that lawyers might speak instead of their client, and introduce (spurious) legal arguments and objections which could disrupt the informal discussion intended to characterise children's hearings. It was also suggested that someone in the safeguarder role was capable of both representing the child's views and protecting his or her best interests (Lockyer, 1994a), although others noted the tensions involved in this dual function. Scott (1995) suggested that 'a child who hears 'their' person in court asking the court to do something they do not want may be justifiably aggrieved'.

1.15 The issue of whether or not children should be able to access legal representation in hearings was, in legal terms, settled by the S v. Miller case. However, the arguments on either side remain relevant for any research which seeks to understand the impact of this verdict and the scheme which followed it on the experiences of children, families and professionals attending hearings.

Research on representation for children and young people attending hearings

1.16 Although the debate about introducing lawyers to children's hearings is long-standing, there is a relative dearth of research exploring children's representation needs in hearings, particularly from the perspective of children and young people themselves. Two recent exceptions are:

- a small scale qualitative study on the views of young people and professionals on representation in hearings conducted in the wake of the S v. Miller verdict but prior to the implementation of the Grant Scheme (Ormston, 2002), and
- a study exploring requirements for advocacy support more generally with 29 children and young people involved in the Hearings System (Creegan et al, 2006).

1.17 Ormston draws on the views of young people and professionals to identify three possible 'representative' roles children and young people may require in hearings:

- A supporter may say little, but offers moral support, often simply by accompanying children to hearings
- A facilitator may take a more active role, suggesting things the child might want to tell the hearing and in some cases doing so for them

- A legal advocate will go further again, not only ensuring the child's views are heard but 'fighting the child's corner' and actually advocating for those views to be acted upon.

1.18 Participants in the study expressed different views on what combination of these three types of 'representative' children and young people needed in hearings and on who was best placed to play these roles in practice.

1.19 Adult participants in this study (as in Hallett et al, 1998) also discussed familiar arguments for and against introducing lawyers to children's hearings. However, over and above 'general' arguments around involving legal representatives, a distinction also emerged between 'good' and 'bad' lawyers who might represent children in hearings. 'Bad' lawyers were viewed as those who adopt an adversarial stance, being overly critical and confrontational and inhibiting the informal discussion hearings are supposed to encourage. They might inhibit children's participation in hearings by taking over and speaking for the child rather than encouraging them to participate in the hearing themselves. 'Good' lawyers, on the other hand, were identified as those who had a good understanding of the Children's Hearings System and conducted themselves in line with its non-adversarial ethos. They would not be overly confrontational and would avoid entering into 'legalese', insisting on opening and closing statements, etc.

1.20 Creegan et al (2006) also explored what type of 'advocacy' different children required during the hearing process. Echoing many of the findings of other studies on what young people want from advocates (e.g. Gallagher, 1999, Cameron and Macfarlane, 2004), they identify the following characteristics as of particular importance to young people:

- someone who listens
- someone who explains things
- someone known
- someone who can be trusted
- someone who is loyal
- someone who is flexible
- someone who is sensitive
- someone who is approachable
- someone who can communicate with children and young people
- someone who will challenge panel members at their hearings.

1.21 The study also identified the importance of *continuity* of support throughout the hearing process, while at the same time highlighting that advocacy relationships might be formed with different people (dedicated advocates, social workers, parents/other relatives, and others) at different stages of the hearing process.

1.22 The current study builds on and extends the findings of these earlier studies by exploring in detail the *actual* impact of the Legal Representation Grant Scheme in practice. It explores the role that young people and adults see legal

representatives playing (and how this relates to the role of other adults who may be acting as ‘advocates’ for children and young people in some sense), and what effect this has on their participation in, and experience of, children’s hearings.

Aims and objectives of the study

1.23 The main aim of the research was to review the success of the Legal Representation Grant Scheme from the perspective of professionals and young people. The Scottish Government also identified various subsidiary objectives for the study, including establishing:

- Information about the **operation of the scheme** (number of cases, time allocated to the scheme by clerks and lawyers, views on the fee structure, background of lawyers involved)
- Key participants’ **understanding of the purposes** of the scheme and related regulations in general
- Understandings of the **reasons for legal representatives’ involvement** in particular cases
- Key participants’ perceptions of the operation of the scheme in practice, including:
 - **Quality** of legal work
 - **Flexibility** of the scheme
 - **Interaction** of legal representatives with children, young people and families and the impact on their experience of hearings
 - **Successful or unsuccessful aspects** of the scheme and areas for improvement.

Report structure

1.24 The remainder of this report is structured as follows:

- Chapter Two summarises the methods used for the study, providing details of the sample, data collection and analysis techniques.
- Chapter Three discusses administrative and practical aspects of the operation of the scheme, including: numbers of cases being dealt with; the practicalities of recruiting and appointing legal representatives; time and resources allocated to running the scheme and undertaking legal representative work; views on the fee structure; and details of training, feedback and monitoring procedures.
- Chapter Four examines both young people’s and professionals’ understandings of the role legal representatives play in hearings.
- Chapter Five explores the kinds of cases legal representatives are currently being appointed in and considers whether there are additional cases where it might be appropriate for hearings to appoint a legal representative.
- Chapter Six presents findings on both the *level* and *quality* of contact between young people and their legal representatives, exploring factors

that appear to inhibit or facilitate a good relationship between young people and their legal representatives.

- Chapter Seven explores perceptions of the impacts – both positive and negative – that the introduction of legal representatives to hearings has on both children and young people and hearings themselves.
- Chapter Eight summarises participants' suggestions on how the scheme could be changed or improved.
- Chapter Nine presents some overall conclusions from the study and discusses possible implications for future policy and practice.

1.25 A report of the study findings for young people is also available from the Scottish Government website (Ormston and Marryat, 2009).

2 METHODS

Introduction

2.1 This Chapter briefly summarises the research methods used for the study. Further detail, including topic guides and recruitment materials, are provided in Annexes to this report.

Who was interviewed

2.2 In summary, the study involved two phases:

- Phase One involved **51 telephone interviews with professionals** including children's reporters, local authority clerks, legal representatives and panel members.
- Phase Two involved **23 face-to-face interviews with young people** in secure units who had experience of attending a hearing with a lawyer or legal representative.

2.3 The study was qualitative in nature. Qualitative research aims to map the range and diversity of experiences, behaviours or views in relation to the subject of interest among a particular group or groups of people. The samples for qualitative studies are designed to ensure that both range and diversity are captured and that issues can be explored in some depth with each participant. They are not designed to provide robust statistical or numerical data about, for example the prevalence of a particular experience or behaviour. As such, qualitative samples tend to be smaller than those typically used for survey research.

Sample of professionals

2.4 The sample of professionals was selected to try and ensure that the study captured possible variations in use of and attitudes towards the Legal Representation Grant Scheme between different professional groups and professionals working in different areas of Scotland. Interviews were conducted with:

- 14 panel members
- 12 legal representatives
- 15 reporters and
- 10 clerks.

2.5 Children's reporters, panel members and legal representatives themselves are all heavily involved in children's hearings but in different roles, which might be reflected in different perspectives on the impact of the Grant Scheme. Local authority clerks are the professionals responsible for administering the Grant Scheme in each local authority area and as such were included for their views on practical aspects of the operation of the Scheme.

2.6 Professionals were recruited primarily from across eight local authorities. These local authorities were selected based on:

- Their use of the Legal Representation Grant Scheme (based on the figures provided by local authorities to the Scottish Government on numbers of cases where a legal representative was appointed in 2007), to ensure a mix of areas with high, medium and low use of the scheme.
- Urban-rural – to ensure a mix of large urban, other urban/mixed and rural areas.
- Numbers of referrals to the Children’s Reporter (based on the Scottish Children’s Reporters Administration (SCRA) figures for 2006/7), to ensure a mix of areas with high, medium and low numbers of referrals to the Hearings System.

2.7 Additional interviews with clerks were also obtained in three further local authorities, while additional interviews with reporters were conducted in two local authorities which had not recorded any use of the Grant Scheme in the 12 months to December 2007 to explore the possible reasons for this lack of use. To protect the anonymity of study participants, selected local authorities are not named here and quotes are identified only by professional group (for adults) and a number – for example ‘Reporter 1’.

Sample of young people

2.8 Young people’s attitudes towards legal representation in hearings were sought from a sample of 23 young people recruited from four secure units across Scotland. Consideration of secure accommodation is not the only reason a legal representative can be appointed to a young person – they can also be appointed in cases where the panel considers it necessary to allow a child or young person to effectively participate at a hearing. However, interviews with professionals and advice from SCRA indicated that it is the most common reason for their appointment. Moreover, it was not possible for SCRA to use their Referrals Administration Database to isolate cases where a legal representative had been appointed on other grounds. Although database entries sometimes mention if a lawyer attended a hearing, it is not mandatory to record this. Further, where it is recorded, it is not always clear if the lawyer was appointed through the Legal Representative Grant Scheme or recruited directly by the family (who are entitled to bring their own lawyers, but would not be eligible to receive legal aid for this representation).

2.9 Young people were initially approached about the study by a member of staff from the secure unit, who discussed what would be involved using a leaflet provided by ScotCen (see Annex B for a copy of leaflets and advance letters to participants). Letters were sent to the parents of young people who agreed to participate informing them about the study and providing contact details for the research team in case they had questions or concerns. The 23 young people interviewed included nine girls and 14 boys, aged between 13 and 17 years-old. The young people were in secure accommodation for a range of reasons, often including both care and protection and offence grounds.

Parents/carers

- 2.10 The initial design for the study had included interviews with parents (or other carers/adult family members) as well as young people, to explore their perceptions of the service their child received from their legal representative. However, in spite of repeated attempts by the research team (by letter) and staff at secure units (over the phone and in person) to persuade parents or carers of the young people interviewed for the study to take part, only one parent volunteered (but was not interviewed).
- 2.11 Parental/carer interviews would have provided a different perspective on the presence of legal representatives in hearings and the role they play with respect to children and young people. However, the Legal Representation Grant Scheme only provides legal representation for children and young people and not for parents/carers. Thus while the absence of parents'/carers' views of the scheme is unfortunate, it does not prevent the research from addressing its key objectives (outlined in paragraph 1.23, above).

Data collection techniques

Professional interviews

2.12 Interviews with professionals were conducted by phone by ScotCen researchers and specialist interviewers. A topic guide provided an indication of the issues to cover with each participant, but these were used flexibly, with scope for the interviewer to follow-up in more detail on topics as they emerged. Separate topic guides were developed for each professional group, although there was considerable overlap in terms of coverage (see Annex A for full topic guides). Topics included:

- Appointing legal representatives
- Potential difficulties in the recruitment/retention of legal representatives (in general and for specific cases)
- Views on the fee structure
- Views on legal representatives involvement in hearings
- Views on the interactions between legal representatives and the children and young people they represent
- Views on the qualifications and skills legal representatives have/require
- Overall impressions of the scheme.

Young people interviews

2.13 Young people were interviewed face-to-face by members of the research team in a private room at the residential unit in which they lived.⁵ Interviews followed a loose topic guide aimed at exploring young people's involvement with their legal representatives within the broader context of their involvement in the Hearings System (see Annex A). In addition to the topic guide, interviewers used 'representative quality' cards, which set out different qualities a legal (or

⁵ Most of the young people were in secure units. However, several were in an open unit attached to a secure unit, having moved from secure to open accommodation.

other) representative might have or things they might do. Participants were encouraged to pick from these the cards that best described their legal representatives, as an aide to discussing their views and experiences.

2.14 As a 'thank you' for their participation, a £15 high street voucher was given to the Secure Unit for each young person who took part. Key workers at the secure units helped young people to spend these vouchers.

Data analysis

2.15 All interviews were digitally recorded and transcribed in full. Transcripts were then summarised for analysis using 'Framework'. Developed by the National Centre for Social Research⁶, Framework provides a consistent method for organising and condensing qualitative information to enable robust analysis. It facilitates both between case (looking at what different people said on the same issue) and within case (looking at how a person's opinions on one topic relate to their views on another) investigation. A charting 'matrix' of key topics was developed for each phase of the research, following familiarisation with the transcripts. Every transcript was then summarised under these key themes. These summary charts were then investigated to identify:

- the range of experiences and views on key issues
- similarities and differences between and within groups
- emergent patterns and explanations for particular experiences or opinions.

Reporting conventions

2.16 As discussed above (paragraph 2.3), qualitative research does not attempt to provide statistical inferences about the prevalence or distribution of particular behaviour or views. Rather, it aims to map range and diversity, and to explore the reasons for people holding particular opinions or having particular experiences. Given this distinction, this report attempts to avoid using 'quantifying' language which could be misconstrued as implying statistical inferences to a wider population.⁷

2.17 Verbatim quotations are used in this report to illustrate, amplify and clarify findings. Quotations from participants are always cited in italics, and are anonymised to protect their identities.

Participants' experience of the Legal Representation Grant Scheme

2.18 A key issue to emerge from interviews with both professionals and young people – and which affects the findings discussed in Chapters Three to Eight - was their different levels of experience of the Legal Representation Grant Scheme in practice. Professionals were deliberately recruited from areas which made different levels of use of the scheme. This meant that in some

⁶ ScotCen's parent organisation.

⁷ See White et al 'Reporting and presenting qualitative data' in Ritchie and Lewis (eds.) (2003) *Qualitative research practice: a guide for social science students and researchers*, London: Sage for more detailed discussion of this issue.

cases, professionals views of the scheme were based on experience of a very limited number of hearings with lawyers in attendance. Moreover, panel members in particular were not always clear on how lawyers attending hearings had been appointed – in some cases, they may have been appointed under the Grant Scheme, while in others they may have been lawyers hired privately by the family. With respect to the young people, three appeared to have attended hearings with their own lawyers, appointed by them in a private capacity rather than allocated to them under the Grant Scheme. One young person had experience of both a ‘private’ and a Grant Scheme lawyer, while in two cases it was unclear how the young person had obtained their lawyer.

- 2.19 Given these issues, participants in the research were not always able to limit their comments to lawyers who were operating under the Grant Scheme, as distinct from other lawyers working privately in hearings. Where relevant (and possible), the report attempts to distinguish where views and experiences appear to be particularly related to ‘privately-appointed’, non-Grant Scheme lawyers. However, given that it was not always clear which type of lawyer participants were talking about, it is worth bearing in mind that their opinions of the Grant Scheme may sometimes be affected by their experiences of other lawyers who represent children and families in hearings.

3 HOW IS THE SCHEME OPERATING IN PRACTICE? ADMINISTRATIVE AND PRACTICAL ISSUES

Introduction

3.1 The Legal Representation Grant Scheme is currently administered separately by each Scottish local authority, who submit quarterly claims to the Scottish Government to reimburse them for the fees paid to legal representatives. The Government's recent consultation on the Children's Hearings System explored bringing the running of the System under a single national body, which would undertake the functions currently delivered by the Scottish Children's Reporter Administration (SCRA), the Children's Panels and the Children's Panel Advisory Committee. The legal representation of children in hearings will also possibly come under the remit of this body (provisionally called 'The Children's Hearings Agency'). A key aim of this research was therefore to review the practical operation of the Legal Representation Grant Scheme, with a view to informing recommendations for its improvement.

3.2 This chapter summarises findings on administrative and practical issues relating to the operation of the scheme, including:

- recruiting legal representatives to the scheme
- views on the current restriction of the scheme to legally qualified safeguarders and curators ad litem
- the process of appointing legal representatives to individual cases
- legal representatives' motives for joining the scheme
- barriers to taking on specific cases
- attitudes to the current fee structure
- time and resources local authority clerks and legal representatives spend on processing or preparing cases, and
- training for and monitoring of legal representatives.

3.3 Differences in practice between areas and individuals are discussed where relevant. Most of the chapter is based on professionals' views, although young people's opinions and experiences are also mentioned where applicable.

Number of cases dealt with

3.4 The claims submitted to the Scottish Government by local authorities to cover legal representative fees suggest that use of the scheme varies widely. Several local authorities made no claims at all for legal representative appointments in 2007, while one area made over 100. This was reflected in clerks' and legal representatives' estimates of the numbers of cases they were involved in. The clerks interviewed for this study mentioned dealing with between 3 cases in the last 18 months up to 190 cases in the last 15 months. Lawyers in the large urban areas included in the sample reported taking on between 10 and 40 legal representative cases in the last 18 months, compared with between one and 12 for legal representatives in more rural or mixed local authorities.

Recruiting the pool of legal representatives

- 3.5 There was considerable variation in the methods used to recruit local ‘pools’ of legal representatives across areas. Four methods were discussed:
- inviting existing local safeguarders or curators to join the pool
 - writing to local law firms or the local Faculty of Solicitors to invite applications
 - placing a more general advertisement, and
 - lawyers contacting the local authority and volunteering to join the scheme.
- 3.6 Once potential legal representatives had been identified, they were either simply appointed, particularly where they had been invited to join from the existing pool of safeguarders or curators, or they underwent some further screening (involving an application form and/or an interview) to determine their suitability for the role. Interestingly, one view from a legal representative was that they would have turned down the role if they had been asked to go for an interview.
- 3.7 The frequency of recruitment of new legal representatives also varied from area to area, from not having recruited any new legal representatives since the scheme began in 2002, to reviewing the need for cover annually and actively recruiting on a regular basis. For those who had not refreshed the original pool, there was an acknowledgement that this was something that should now be considered, either because of a fall in the number of lawyers in the pool, or because the post was a public appointment, which it was suggested should be re-advertised every three years.
- 3.8 For some areas (particularly the large cities included in the sample), recruiting and retaining legal representatives was felt to be fairly easy. One clerk said there were ‘*queues of them waiting to get in*’. For other areas though, recruitment was more problematic, primarily because of a shortage of child or family law specialists and/or legally qualified safeguarders or curators in these areas. The key reasons clerks and reporters thought lawyers refused to take on the role were a perception that the fees were low (see below for further discussion) and high existing workloads.
- 3.9 The legal representatives interviewed for the study came from a range of legal backgrounds. Both large and small law practices were involved in the scheme, and the lawyers themselves included both generalists and child and family law specialists. All reported having considerable experience in child and family law through their other work however.

Restricting the scheme to safeguarders and/or curators ad litem

- 3.10 Section 5 of Annex 1 of the *Children’s Hearings (Legal Representation) (Scotland) Rules 2001*, states that legal representatives must hold a current practising certificate *and* be either a curator ad litem or a safeguarder. As discussed in Chapter One, curators ad litem are legal representatives, usually solicitors, who are appointed by courts in Scotland where the court believes that the person lacks the mental capacity to make decisions for themselves.

Safeguarders are appointed by children's hearings to safeguard the interests of the child, primarily by producing a report about their circumstances and making recommendations about what course of action would best promote their welfare.

- 3.11 Although generally participants in this study confirmed that the scheme was restricted to either safeguarders, curators or both, in some areas there was a belief that this was not always the case. Other professionals were simply not aware of the requirement. The main reason given for not restricting the scheme in this way was that the local pool of these solicitors was very small and additional resources were needed.
- 3.12 Opinions on whether the Legal Representation Grant Scheme should continue to be restricted to safeguarders and curators were mixed. Those who thought the requirement should continue commented on the wealth of knowledge and experience that safeguarders and curators brought to the legal representative role from their previous work. As well as skills in dealing with children and families, they were seen as having a detailed understanding of the Hearings System and its distinctive ethos. They were contrasted in this respect with criminal lawyers, whom it was felt do not always understand the ethos and could be more obstructive than helpful in their contributions. Clerks also identified administrative benefits from restricting the scheme, both in terms of only having to deal with a limited number of people and because new legal representatives would already have been through Disclosure Scotland and other checks when they were recruited to the safeguarder/curator pool.
- 3.13 Reasons for removing the restriction related both to capacity issues and to possible benefits to the Hearings System from extending the scheme. Where local authorities were struggling to recruit, there was more likely to be a feeling that the restriction should be dropped to widen the pool. It was suggested that the requirement may exclude perfectly able lawyers who have not signed up to the pool of safeguarders or curators, while another (reporter) view was that opening up the requirement could bring in fresh minds who were not *'encumbered with too much experience'*. Further, there was an argument that the legal representative role and safeguarder pools should be kept separate because of fundamental differences in the roles (see Chapter Four for further discussion).

Appointing legal representatives to individual cases

- 3.14 Participants mentioned three ways of appointing a legal representative to an individual child's case:
- A Business Meeting (attended only by panel members and a reporter) is held to discuss and approve the appointment, or
 - The reporter simply appoints a legal representative themselves, or
 - Panel members make the appointment during the child's hearing itself.
- 3.15 Business Meetings are usually called by the reporter when they have been informed in advance that secure accommodation is likely to be discussed. They typically take place a week or two in advance of the hearing. The

decision to appoint a legal representative is taken by the panel members, with the reporter there to provide background, evidence and advice on the legalities of the case. One reporter suggested that these Business Meetings are needed to make the appointment of legal representatives *'more formal and less discretionary by the reporter'*. An alternative view was that holding Business Meetings simply to appoint legal representatives in cases where secure accommodation is being considered is a waste of panel members' and reporters' time, since it is obvious that a legal representative is required in this situation.

- 3.16 There were examples of reporters deciding to appoint legal representatives without recourse to a Business Meeting, either in cases where in their opinion the criteria for secure accommodation had been met, or for emergency hearings where a legal representative had to be appointed at very short notice. Where panel members decided to appoint legal representatives within a full hearing, this was either because it was an emergency hearing and there was no time to call a Business Meeting beforehand, or because the circumstances requiring a legal representative were unknown to the reporter in advance.
- 3.17 Professionals reported varying degrees of involvement from children and young people in deciding to appoint a legal representative. At one end of the scale, the child or young person themselves could request to have a legal representative present, with a Business Meeting arranged on that basis to discuss the appointment. There were also cases where the child and family were informed that a Business Meeting was to take place and invited to feed in written comments if they wished. At the other end of the scale, some professionals said children and young people had no involvement at all in the decision to appoint a legal representative and were simply informed after the decision had been made. Among the young people interviewed for this study, some were notified that they had been appointed a legal representative in advance, either by letter from the panel, via other professionals (e.g. social workers or secure unit staff) or through contact from the legal representative themselves. In other cases, young people reported only finding out they had been appointed a legal representative on arrival at the hearing centre.

Deciding which legal representative to appoint

- 3.18 Once the reporter or panel has decided that a legal representative is required, a decision needs to be taken as to which individual to appoint. This was either done on a rota basis, on the basis of 'convenience', or by trying to match the legal representative to the child.
- 3.19 Rotas were held by the clerk, reporter, or another member of council staff. When a legal representative was required, they would simply contact the next person on the list. It was suggested that a rota system was the fairest way of selecting legal representatives, removing any suggestion of favouritism.
- 3.20 Examples of selecting by convenience included asking any legal representatives who were based in the local area where the hearing was to be held, or approaching a particular firm which contained several legal representatives to see if any were available.

3.21 'Case-matching' might occur where the child or young person had a legal representative at a previous hearing and the reporter put in a request for the same legal representative (see below for further discussion of continuity), or where the reporter felt a lawyer with particular personal characteristics was required. For example, a female legal representative was specifically requested for one young woman because of her past behaviour with male professionals. However, one young person interviewed for the study commented that she would have liked a female legal representative, as she got on better with women, but this option had not been offered.

Continuity of legal representatives

3.22 Professionals identified various benefits to young people from having the same legal representative throughout all the hearings where they require one, focusing on the advantages of having established a trusting relationship and not having to repeat personal details to a new person. However, another view was that it may not be necessary to have this continuity in all cases, particularly where a considerable amount of time had passed between hearings.

3.23 There were examples where young people interviewed for this study appeared to have one 'main' legal representative, but where this lawyer was not available for a particular hearing they might send a colleague from their firm instead. This was not seen as particularly problematic, as long as the legal representatives communicated with each other over the young person's case. However, young people who had been appointed more than one legal representative did also express the belief that it was better to keep the same legal representative.

3.24 The extent to which the current system facilitates continuity of legal representation between hearings was somewhat unclear. Comments from clerks' suggested that they would only try to get the same legal representative for subsequent hearings if the reporter requested this. But while some reporters said they made such requests, others stated that they had no say at all in who was appointed.

Motivations for joining the scheme

3.25 Legal representatives discussed various different motivations for joining the scheme, namely:

- An interest in child/family law
- Fees
- Social commitment to the work, and
- A desire to learn more about the Children's Hearings System.

3.26 As mentioned above, the legal representatives interviewed reported considerable experience in the field of child and family law, so it is not surprising that this prior experience, and the opportunity to gain further experience in this area, was a key motivator for joining the scheme.

- 3.27 Fees prompted contrasting responses: for one group of legal representatives, fees were definitely *not* a motivator, while for others, the £200 flat fee plus other expenses was one reason, alongside others, for joining the pool.
- 3.28 Other motivating factors included a feeling that the work was worthwhile, with a suggestion that some lawyers may see the work as a form of ‘community service’. Interest in finding out what happens to young offenders before they enter the adult system was also mentioned.

Barriers to appointing legal representatives to a specific case

3.29 Reasons for legal representatives turning down individual cases included:

- workload
- notice
- distance
- communication, and
- fees.

3.30 A high existing workload was said to be a common reason for lawyers turning down cases, particularly when combined with short notice. One experience was that there was nearly always very little notice because the nature of the cases requiring legal representatives often meant that these hearings were urgent. This caused problems because lawyers often had appointments at court and other work and *‘you can’t always drop everything for a hearing’*. Indeed, it was reported that a lack of lawyers available at short notice could mean that a child or young person was placed in secure accommodation without having had a legal representative present. It was suggested that in these cases the child or young person would receive a 22 day warrant, but would be brought back to a hearing more quickly so that a legal representative could attend. However, there was also evidence of legal representatives being very accommodating of the needs of hearings, with one clerk reporting that they sometimes take cases *‘at phenomenally short notice, in some cases, 30 minutes’*.

3.31 Distance to travel to hearings could be an issue, particularly if the hearing was being held at a secure unit in another local authority and in geographically dispersed local authorities more generally. This issue was exacerbated by legal representatives’ feelings about the fee structure. Indeed, there was evidence that work was being turned down if the hearing was outside the immediate area, since as one legal representative put it:

It’s a tremendous loss leader...if the child is in secure accommodation further away, it just becomes non-viable.

(Legal Representative 5).

3.32 Communication with young people was not identified as a major problem among the professionals interviewed, although there were examples where a legal representative had been unable to take on a case because the child or young person refused to instruct them. However, there was a suggestion that

language barriers may be a growing challenge for the scheme as an increasing number of children and families requiring interpreters are being seen in the Children's Hearings System.

Views on the fee structure

- 3.33 Fees for lawyers taking on cases under the Grant Scheme are currently set at flat rates of £200 for preparation and attendance at a new hearing, £80 for preparation and attendance at subsequent review hearings (plus an additional £50 where new substantive reports are to be considered), travel time of £10 per hour or part thereof and waiting time of £8 per half hour.
- 3.34 Legal representatives and clerks had distinct attitudes towards the adequacy of this fee structure. Where they had a view on it, clerks generally thought the fee structure was satisfactory, although one view was that it was too high where lawyers were representing more than one child in the same family or for repeat appearances for the same child. Legal representatives, on the other hand, thought the fees were low, particularly in comparison to their normal charge-out rates (given by one legal representative as in the region of £145 to £160 per hour). It was also suggested that there was a 'crazy difference' between the higher (first hearing) and lower (repeat hearing for the same child) flat fees. While the higher rate was considered more reasonable, the lower flat fee was described as losing lawyers money. It was also felt that there was just as much work involved in preparing for a second hearing (since it was considered unreasonable to expect legal representatives to remember the original reports in detail some months later without re-reading them) and that second hearings could last just as long if not longer.
- 3.35 However, legal representatives' expressed different attitudes towards whether or not the fees were a significant barrier to taking on cases. One view was that lawyers did not do legal representative work primarily for money, but rather because they enjoyed it, or viewed it as some form of 'pro bono'. For this group, the fees did not affect the amount of legal representative work that they took on. Others, however, reported either prioritising private work or cutting back on legal representative cases because of the fees. One legal representative described the pressure they felt from colleagues in relation to doing 'unprofitable' legal representation work:

Certainly other disciplines outwith litigation are constantly banging on about us not doing unprofitable work which, to be honest, this probably is. (...) if the charge-out rate's 165 an hour you can see that there's very little to play with in terms of possibly travelling half an hour each way to get to (TOWN) and back, and meeting the child, [and] attending the hearing. I think the sums will be pretty obvious (..) You know, it's something that it really costs us to do, in terms of our charge-out rate.

(Legal Representative 9)

- 3.36 As discussed above, geography and the distance to travel to a hearing both affected whether a case was considered financially viable, as did the number of visits required to be made to the child prior to the hearing.

Time and resources

- 3.37 Clerks spent a relatively small proportion of their time administering the Grant Scheme, even in those areas which made high use of the scheme. The reported range was between one to two hours per month and one day per week. One estimate was that it takes about 45 minutes to appoint a legal representative, from phoning them up to appoint to processing their fee claims. In some areas, clerks had assistance with the day-to-day running of the scheme from more junior staff.
- 3.38 The time legal representatives reported spending preparing for a hearing ranged from half an hour to two hours, with additional time for meeting the child in advance. Preparation time varied with the volume of social inquiry reports, how long the child had been in the system, and whether it was an initial or review hearing, as well as simply by how much time the lawyers allocated to preparation. One opinion was that the financial constraints imposed by the fee structure meant that the amount of time spent preparing for children's hearings was always limited and probably unsatisfactory.
- 3.39 Time legal representatives spent travelling to get to hearings was also discussed. The longest mentioned was a day and a half for a hearing a long way out of the area. It was also suggested that waiting times at the hearing centre could be considerable, particularly if the hearing was not the first of the session – one experience was that by the end of the day the legal representative could be waiting up to one and a half hours.
- 3.40 Hearings themselves lasted anything between 20 minutes and one and a half hours. Although legal representatives usually stayed for the entire hearing, sometimes the hearing could deal with the secure accommodation aspect quite quickly and then move onto something else, allowing the legal representative to leave. It was emphasised that this was fairly unusual, however.

Training, feedback and monitoring

- 3.41 Although some lawyers reported receiving relevant training as part of their Continuing Professional Development - for example, a Family Law Association course on 'working with children' - there were few examples of training developed specifically for the legal representative role. Two exceptions were:
- A group set up by legal representatives themselves in one local area. This met monthly to discuss issues related to working in the Hearings System and organised training and seminars specifically relating to the legal representative role.
 - A 'Buddy' system, set up by the Council, where new legal representatives were paired with more experienced legal representatives who they could ring for advice.
- 3.42 A booklet containing information about the Children's Hearings System for new legal representatives was also produced by the Council in one study area.

3.43 In terms of feedback and monitoring of legal representatives, the Chair of the Children's Panel might be consulted on their views of legal representatives when the local authority reappointed the pool. Otherwise, the view appeared to be that reporters or panel members would complain if there was something wrong, so *'no news is good news'*.

Key points

- Legal representatives were recruited to the pool in a variety of ways:
 - Local safeguarders or curators were invited to join
 - Applications were invited from local law firms and Faculties of Solicitors
 - Through general advertising, and
 - Lawyers volunteering for the role.
- There were mixed views on the ease of recruiting legal representatives - some areas had no problems, while others struggled to get adequate numbers.
- It was somewhat unclear from professionals' responses whether all areas were restricting legal representatives to safeguarders and/or curators ad litem, or whether they were sometimes drawn from a wider pool.
- Benefits of restricting the scheme to safeguarders/curators included the experience and knowledge that these professionals brought with them, both of the system itself and of dealing with children, and administrative benefits for the clerks.
- On the other hand, for areas who struggled with not having enough legal representatives available, the requirement could be problematic. It was also felt that it might be unduly restrictive.
- Legal representatives were appointed to individual cases in one of three ways:
 - Via a Business Meeting
 - By the reporter directly, or
 - By panel members during the child's hearing itself.
- Legal representatives were selected for cases either by rota, by convenience (choosing who is known to be available or local), or by matching them to the child (choosing the same lawyer for repeat hearings, for example).
- Various reasons were given for it being desirable for a child to keep the same legal representative across hearings, mainly relating to having built a relationship with them. However, it was not clear whether or not the system facilitated this in practice. Moreover, another view was that continuity was not very important.
- Motivations for lawyers joining the scheme included the fees (though not everyone saw these as motivating), interest and experience in child and family law, a social commitment to the work, and wishing to find out more about the Hearings System.
- Key barriers to legal representatives taking on cases were workload and availability, low fees, distance to travel to the hearing and short notice, often acting in combination with each other. Communication problems with the child were also mentioned in terms of occasional refusals to instruct.
- Legal representatives either thought the fees were low overall, or suggested the higher fee was satisfactory, but the lower fee was inadequate.
- Local authority clerks spent between one and two hours per month and one day a week administering the scheme.

- Legal representatives suggested that preparation time, time spent visiting the child in advance, time to travel to hearings and waiting time at hearing centres could all be substantial, with a perception that the time required to prepare for cases is not adequately covered by the fees.
- There were few examples of specific training for legal representatives. Local initiatives included a legal representatives' discussion group, a 'buddying scheme' and a leaflet explaining the system to new legal representatives.

4 HOW DO PEOPLE VIEW THE ROLE OF LEGAL REPRESENTATIVES IN CHILDREN'S HEARINGS?

Introduction

4.1 In the guidance notes issued to panel members immediately after the implementation of the Legal Representation Grant Scheme, the Scottish Executive stated that:

The main function of the legal representative should be to represent the child at any hearing decision

(Scottish Executive, 2002)

4.2 However, the meaning and nature of 'representation' in the context of children's hearings is not necessarily obvious. As discussed in Chapter One, 'representing' a child can mean supporting, facilitating or arguing for their views, or some combination of all three. The guidance note to panel members goes on to state that the legal representatives' role will involve:

- Ensuring the child is aware of the implications of any statement they may make, or of the possible consequences to their civil rights
- Representing the rights of the child, and
- Helping ensure their wishes are expressed.

4.3 The recent Scottish Government consultation document on the future of the Hearings System also suggested that:

The nature of a children's hearing is fundamentally different to a court. We suggest that the role of the legal representative is similarly different.

(Scottish Government, 2008)

4.4 This Chapter considers the views of young people and different groups of professionals on the role of legal representatives in hearings. Do they understand their role in a similar manner to the role set out in the guidance? What kinds of skills and qualities do people believe legal representatives need to fulfil their role? Do participants in hearings make a distinction between legal representation in panels and in other contexts? And do they make distinctions between the role of legal representatives appointed under the Grant Scheme and the role lawyers play when appointed by the child or family directly?

4.5 Finally, the decision in the S v. Miller case, which triggered the institution of the Grant Scheme, clearly stated that where legal representation was required, it was not adequate simply to appoint a safeguarder, since 'the appointment is made only to safeguard 'the interests' of the child and not to vindicate his rights' (Lord President in S v. Principal Reporter, 2001). This Chapter explores whether young people and professionals hold similar perceptions of the difference between the safeguarder and legal representative roles. It also

compares views on the role of legal representatives with attitudes towards other people who might represent young people in hearings.

Understandings of the role

Professionals' views

4.6 Four key elements to the role of 'legal representative' were identified by professional participants in the study:

- **Legal/procedural role** - Legal representatives fulfil a key function in ensuring that the decision of the panel is legally correct. This includes ensuring procedures are followed by the hearing, ensuring that the statutory criteria for secure accommodation have been met where this is being considered, and advising the young person on their rights to appeal the hearing's decision.
- **Explanatory/advisory role** – Professionals described legal representatives giving young people advice on:
 - The **process** – explaining what happens in the panel and simplifying things the young person might not understand.
 - Their **options** – including explaining what the panel may do, what positions the child could take in the hearing, and their options for appealing or requesting a review of the decision.
 - The **implications** – of agreeing to the grounds in terms of the Rehabilitation of Offenders Act⁸, of taking different positions in the hearing and of being sent to secure accommodation.
- **Facilitation role** – Legal representatives were viewed as playing a role in helping the child to get their views across, either directly (by encouraging the child to speak) or indirectly (by speaking for them). The impact of legal representation on the ways children get their views across is discussed in more detail in Chapter Seven.
- **Challenging/arguing role** – A final dimension of the legal representative role went beyond simply putting the child's views across for them and involved actually arguing for that position to be acted upon by the panel.

4.7 These four roles were not mutually exclusive – there were examples where legal representatives were seen as playing all four roles, or playing different combinations of these roles for different young people (depending, for example, on how much help a young person needs to get their views across). However, the roles were not given equal weight by all participants in the study. For example, one opinion among some panel members was that legal representatives were required to act primarily in a legal/procedural capacity. A related suggestion was that they were there mainly to '*cover the local authority and the Children's Hearings System's back*' so that they were not later open to challenge that they had not adequately protected children's rights (Panel

⁸ An appearance at a hearing becomes a 'criminal conviction' under this Act if the grounds for referral involving the commission of an offence by a child are admitted or are proved before the sheriff. Although such convictions are usually regarded as 'spent' after a specified period, and do not therefore need to be revealed to a prospective employer, there are a number of exceptions to this rule – for example, a young person might in the future need to disclose past offences which they had accepted in hearings if they wanted to work with children under 18.

Member 12). Another view expressed by some legal representatives was that their 'primary' role was mainly about ensuring the legal process was followed and to provide legal advice and explanation to the child, while their 'secondary' role was to put the child's position to the hearing.

- 4.8 Moreover, while members of all professional groups described legal representatives playing a role in helping put the child's views across, this was not always associated with a belief that their role was to actively *argue* for these views to be acted upon. Even among legal representatives themselves, there appeared to be subtle differences in how they perceived their role in this respect. As the following quotes illustrate, arguing the merits of the child's position in the hearing was sometimes seen as a central element of the job, while in other cases the legal representative's primary role appears to be thought of as protecting the child's legal position in the narrower sense of ensuring protocols are followed and understood.

As a lawyer for anybody – in court, in a children's hearing, or other tribunal – you're there within the rules to secure as much as you possibly can of what your client wants, even if what your client wants is patently against their interest.

(Legal Representative 5)

My job is to make sure that ... his legal rights and liberties are protected by me. ... I'm not doing a 'Perry Mason' and going into the background of the why's and wherefore's because of course as a panel, if they accept the ground of referral that's it.

(Legal Representative 2)

- 4.9 It is also worth noting that there was a lack of clarity about whether legal representatives should play a role in hearings where a child cannot or will not instruct them. A reporter described uncertainty among their colleagues over the appropriate course of action in such a case. The reporter felt that the legal representative could still 'represent' the child in the sense of giving the hearing their opinion about what should happen (which they recognised may differ from that of the child). Another view (expressed by a legal representative) was that it is not appropriate for a young child to have a legal representative in a hearing if they cannot instruct them.

- 4.10 This lack of consensus among professionals on the precise balance of roles the legal representative should play in general and in specific situations was reflected in a more explicit suggestion from a reporter that the role is '*muddy*', the legislation loosely drafted and that more guidance is needed.

Young people's views

- 4.11 Young people's views on the role of legal representatives fell under similar broad headings to those of professionals. They were seen as playing a legal role in scrutinising and challenging the panel on whether secure criteria were met, as well as scrutinising (and, where necessary, challenging) reports brought to the panel by social workers and others. Young people mentioned

being given advice by their legal representatives on a range of issues, including:

- Likely outcomes
- Which charges or grounds to deny
- Whether to appeal – which included being advised *not* to appeal because they did in fact meet secure criteria
- When to appeal, to maximise chances of success, and
- General advice on how to behave in panels (not being '*cheeky*' to panel members) and how to move on from their current situation (by keeping out of trouble, etc.).

4.12 Legal representatives simplified things young people did not understand about the panel and asked the panel questions to ensure the young person understood what was happening. They played a role in either speaking for young people or helping them to speak, or sometimes both.

4.13 In contrast with interviews with adults, a clear view emerged from interviews with young people that legal representatives have (or should have) a role to play in arguing for what the young person wants to happen. This role was variously described as to '*fight my case*', '*help get me out [of secure]*', '*win the case*', be '*on my side*' and be '*right in my corner*'. They saw their legal representatives' role as one of arguing for what the young person wants, even if the legal representative disagrees that this is best for them.

4.14 However, not all the young people participating in the study had a definite idea of the role their legal representative was supposed to play in hearings. One opinion was that they were just something to do with the fact they were going into secure accommodation. Another was that they did not fulfil any useful role in a panel because either:

- The young person could speak for themselves
- The young person knew what the outcome was going to be anyway, or
- The young person had other people there to support them.

4.15 The belief that having a legal representative was '*a waste of time*' was associated with young people feeling dissatisfied with their legal representative in general, reasons for which are discussed in more detail in Chapter Seven.

Skills and qualities required to fulfil the role

4.16 The key skills professionals identified as necessary to fulfilling the role of legal representative were: legal expertise, knowledge of the Hearings System and the ability to communicate with children.

4.17 Although one opinion was that the role played by legal representatives could possibly be done by someone without formal legal training if the person had a lot of experience with child welfare issues, this view was exceptional, with professionals from all groups mentioning various types of legal expertise as essential to the role. Expertise in child and family law was seen as either useful or essential, although it was acknowledged that in some geographical

areas there may be insufficient lawyers to limit the scheme on this basis. Knowledge of criminal law was also seen as potentially helpful, since it was suggested that panel members do not tend to be familiar with all the details of current criminal law.

- 4.18 Knowledge of the Hearings System encompassed: knowledge of the legislation governing hearings and the decisions open to them, including the conditions required for secure orders to be passed; understanding of the role of panel members (with a suggestion that legal representatives do not always give them credit as highly experienced lay people); and understanding of the legal representative's own role within hearings. This last point in part related to the extent to which participants saw the role of legal representatives in hearings as qualitatively different to the role of lawyers in courts – an issue discussed in more detail below.
- 4.19 Finally, the ability to communicate effectively with children and young people and also with other adults in the panel was seen as a key skill legal representatives need. Specific elements of the 'communication skills' required included: the ability to build rapport and win a child's confidence relatively quickly; being able to communicate complex legal issues in the child's own language; listening skills, in order to take effective instruction; knowing when it is and is not appropriate for the legal representative to intervene in a hearing; and patience and empathy towards the diverse family dynamics and situations of children and young people attending hearings. One view was that these communication skills could be learned, either through experience or via training (the Family Law Associations 'Working with children' course was mentioned); another was that some people are naturally better able to relate to and communicate with children.
- 4.20 Young people also emphasised the importance of communication and relationship building in discussing what skills legal representatives needed to represent them. One opinion was that legal representatives should focus on building up a relationship before turning to the legal aspects of their role:

Don't go straight into the legal stuff. Try and gain their trust first. Try to get to know them a bit ... Because if a young person doesn't like somebody, they'll not be able to work with them.

(Young person 16)

Representing children in hearings and other contexts

- 4.21 As discussed above, the Scottish Government's recent consultation suggested that the role of a legal representative for a child in a hearing may be different from that of a lawyer acting for a client in court. Two opposing attitudes towards this issue emerged from the legal representatives interviewed for this study. One view was that there is no difference – as described by the lawyer quoted above in paragraph 4.8, lawyers work to secure what their clients want and that role is the same in all contexts. Where they are working in panels, the panel is the 'adversary' if they want something different from the child. An alternative opinion was that there is a difference, primarily framed in terms of legal representatives adopting a less 'adversarial' role in hearings compared

with a court setting. It was suggested that the role of legal representatives in hearings is not to 'quiz' people or 'cross-examine' them and that their role is more 'low key' in a hearing compared with a Court setting.

- 4.22 This issue was further elaborated in discussions about whether or not participants saw any difference in the role adopted by lawyers who had been secured independently by the child or their family compared with the role played by legal representatives appointed under the Grant Scheme. One legal representative described herself adopting a more 'aggressive' stance towards the panel and social work at hearings where she had been appointed by the family directly, since panel and social work tended to be seen as the 'enemy' by the family. She contrasted this with hearings where she was appointed by the panel, where she felt she was there primarily to ensure legal procedures are followed and to appeal if there was any irregularity. This distinction was echoed in comments from panel members and reporters (where they were able to distinguish between legal representatives and family appointed lawyers - see paragraphs 2.18 and 2.19, above). It was suggested that privately appointed lawyers often advise the children 'don't admit anything' and encourage them to go to court to 'fight it out', which can add to confusion for the child. They sometimes appear unaware of the powers of the hearing and may behave in an (unnecessarily) confrontational manner.
- 4.23 A key question about all these distinctions is whether they simply imply differences in *style* between lawyers acting in court and in hearings and between legal representatives and privately appointed lawyers, or whether people also perceive a difference in their *substantive* roles. Discussion of legal representatives adopting a less confrontational or aggressive stance may simply imply adapting to the more informal style of the Hearings System. However, the issue of whether or not legal representatives should be actively attempting to secure the child's desired outcome, questioning and challenging the panel (albeit possibly in a 'fairly gentle way' (Legal Representative 1)) where their views are opposed to the child's, or whether their focus should primarily be on procedural issues raises questions about the actual substance of the role. In particular, it appears to raise issues over the appropriate balance between legal representatives' legal/procedural and challenging/arguing roles in hearings.

CASE STUDY – a young person’s views on the difference between a legal representative and a privately appointed lawyer

The distinctions adults drew between the role of family appointed lawyers and legal representatives appointed under the Grant Scheme were reflected in the views of the only young person interviewed who had clear experience of both types of lawyer. She felt her private lawyer challenged the social worker and the panel in hearings, a function she valued as she thought the panel were overly respectful of social workers. Seeing her lawyer confront the panel also gave her confidence to speak up herself. In contrast, her legal representative appeared to have a far less confrontational style. Although he would say ‘wee things’ to the panel, she felt he did not ‘speak back’ to them when they responded, leading her to feel that he ‘just sat there’ for much of the hearing.

Interestingly the relationship between the ‘style’ of these two lawyers and the ‘substance’ of what they were putting across was not straightforward. While the young person felt her legal representative was not as ‘smooth’ as her private lawyer because he would ask her what she wanted him to say, rather than just arguing for her, at the same time she felt that he ‘did what I wanted’ in the hearing. She contrasted this with her private lawyer, whom she felt did not always argue strongly for her in hearings when he thought the outcome she wanted was not what was best for her. She was not particularly happy when this happened, as although in one sense she was pleased her lawyer seemed to care for her, she felt that:

... if you’ve got a room full of people that are trying to do what’s best for you, sometimes it’s good to have somebody just to do what you’re telling them.

(Young person 8)

Moreover, although in one sense the young person appeared to enjoy the ‘adversarial’ style her private lawyer brought to the panel, she also recognised that elements of this might not be appropriate for a children’s hearing. She described how she sometimes found herself telling him that the panel was not interested in ‘proof’ or ‘evidence’ but rather what she had done that she might need help with.

Comparing legal and other representatives

4.24 As discussed in Chapter One, children may be ‘represented’ in hearings by a range of people other than legal representatives. This section discusses views on the similarities and differences in the roles played by other adults who may be involved in ‘representing’ children in some capacity, compared with the perceived role of legal representatives.

Safeguarders and legal representatives

4.25 As discussed above, the Lord President made a clear distinction between the safeguarder and legal representative roles in his verdict in S v. Miller. A similar

distinction is made in the Scottish Executive's guidance for panel members on the Grant Scheme, which states that:

A safeguarder safeguards the interests of the child, takes account of his/her views and interests and makes a recommendation on what is in the child's best interest. A legal representative will protect the child's rights and, if the child is able to instruct the solicitor, will act on the child's wishes. The legal representative need not consider the child's interests.

(Scottish Executive, 2002)

4.26 Among the professionals interviewed for this study, one view mirrored this distinction exactly. A legal representative who played both roles in different hearings described how she saw the two roles:

If I'm wearing a legal reps hat, you know the child says 'I'm absolutely against what's being proposed' I think my function would be to put that view forward, even if I felt that that view was not in the child's best interest. Whereas the safeguarder is the other way round in the sense that I would put forward what I thought to be in the child's best interest even if that was something that the child was vehemently opposed to.

(Legal Representative 12)

4.27 However, there was also some evidence that the distinction between the two roles could be confusing. For example, a legal representative suggested the differences in the roles could be difficult to separate for children and families - they know that a person is a lawyer and they think they are there as *their* lawyer even when they are acting as a safeguarder. There was also some evidence of reporters and panel members struggling to see the difference in practice between the two roles. It was suggested that panel members can find it odd where one lawyer may be switching roles at different hearings on the same day.

4.28 Most of the young people interviewed for the study had no experience of having a safeguarder, but among those who did their views mirrored the difference in perceptions among adults. One young person described how a safeguarder had visited her at home and asked her views on what she would like to happen, but then had advocated for the opposite in the panel, which she felt aggrieved about. She saw her (privately appointed) lawyer, in contrast, as *'biased'*, sticking up for the young person even if he did not agree with her. Another young person who had experience of both a (privately appointed) lawyer and a safeguarder in the same hearing felt that it was just like having *'two lawyers'*, since they had both been arguing for the same thing for him.

Other representatives

4.29 Young people discussed a range of other people who might ‘represent’ them in hearings, including social workers, children’s rights officers⁹, parents or siblings and a range of other key workers (e.g. Who Cares?¹⁰ Workers, inclusion workers, staff from schools or secure units). The main reasons for the different attitudes young people expressed towards these alternative ‘representatives’ appeared to be:

- the quality of the representative’s relationship with the young person (and whether or not this was more positive than the young person’s relationship with their legal representative)
- the personal characteristics of the representative
- whether or not they were perceived as independent from ‘the system’, and
- whether or not the young person believed they would put the young person’s views across adequately.

4.30 For example, in relation to children’s rights officers, four main views emerged.

- One was that they were *‘like a lawyer, but better’*, because they were *‘nice’* to the young person, having been out to visit her several times (in contrast with her legal representative, who she met only briefly before a hearing). The young person also preferred her children’s rights officer because she was female and she felt she got on better with women.
- A second opinion was that children’s rights officers were not a good alternative to legal representatives because they were not seen as independent:

They’re all employed by these people. I’d rather have a lawyer, that’s employed separately.

(Young person 14)

In terms of which professionals young people perceive as ‘independent’, it is worth noting, however, that comments from legal representatives suggested that they did sometimes feel that young people viewed them as a *‘stooge’* who had been *‘imposed on them’*. Thus legal representatives appointed by panels may not be immune to being seen as ‘part of the system’ in this way.

- A third perspective was that legal representatives and children’s rights officers play very different roles – that a legal representative ensures everything is being done correctly, while a children’s rights officer is just there to ensure the young person is *‘keeping well’*.
- Finally, another position, which reflects the difficulties some young people may have engaging with the many adults who sometimes ‘represent’ them, was that the children’s rights officer was *‘just someone’*

⁹ Children’s Rights Officers are employed by some local authorities to work with children and young people who have been or are ‘looked after’, to help them know what their rights are and represent their views at meetings.

¹⁰ A voluntary organisation that works with ‘looked after’ young people.

else that was there' and the young person wasn't sure how they differed from their legal representative.

4.31 In relation to social workers, although one view was that they could help children get their views across to the panel, another experience was that they either say what they think and not what the young person thinks, or that some social workers say nothing at all.

Key points

- Participants in the study identified four potential roles for legal representatives in children's hearings:
 - A **legal/procedural** role, in ensuring the decision of the panel is legally correct.
 - An **explanatory/advisory** role, giving children and young people advice on the process, the likely outcomes, their options and the implications of the hearings' decision.
 - A **facilitation** role, in ensuring children and young people get their views across.
 - A **challenging/arguing** role, actually making the case for those views to be acted upon.
- These roles were not, however, given equal weight by all participants in the study. It was suggested that the legal representative role is '*muddy*' and that more guidance is needed.
- Among young people, there was a clear view that legal representatives should have a role in arguing for what the young person wants to happen. However, not all young people fully understood why their legal representative was there or thought they played a useful role.
- Legal representatives were thought to need legal expertise, knowledge of the Hearings System and the ability to communicate well with children in order to fulfil their role effectively.
- Opposing views existed on whether the role of legal representative is different from either the role lawyers play in court, or the role lawyers play when acting for a child or family in a private capacity in hearings. One opinion was that lawyers simply work to secure their client's desired outcome in all contexts. Another was that legal representatives in hearings are, and/or should be, less adversarial.
- A key question is whether this implies solely a difference in style or a difference in the substance of what legal representatives are attempting to achieve in hearings.
- Understandings of the difference between safeguarders and legal representatives varied. On one view, they are entirely different. However, another perspective was that the difference in roles could be difficult for families, panel members and reporters to understand.
- Young people's attitudes towards other people who might represent them in hearings varied depending on the quality of their relationship with that person, the person's personal characteristics, whether they were seen as 'independent' and whether the young person believed they would put their views across adequately.

5 WHAT KINDS OF CASES ARE LEGAL REPRESENTATIVES APPOINTED IN?

Introduction

5.1 The *Children's Hearings (Legal Representation) (Scotland) Rules 2002* state that legal representatives may be appointed in cases where:

- (a) legal representation is required to allow the child to effectively participate at the hearing, or
- (b) it may be necessary to make a supervision requirement (or review of such requirement) which includes a requirement for the child to reside in a named residential establishment and the child is likely to meet the criteria for secure accommodation.

5.2 While appointing a legal representative where secure accommodation is being considered may appear relatively straightforward, the SCRA's guidance to reporters on legal representation notes that 'The Court [in *S v. Miller*], regrettably, gave very little in the way of indicators to help in the further interpretation of what is meant by 'effective participation' (SCRA, 2002). However, the guidance does identify three general indicators from the judgements in *S v. Miller* which may help determine if legal representation is required to enable 'effective participation'. These include:

- **Gravity of allegation** – Lord Penrose's opinion was that 'where there is an allegation of a criminal offence of such seriousness that the liberty of the child may be at issue, either at the interim stage or on final disposal, it appears highly likely that the possibility of representation and, where appropriate, legal aid, must be open'.
- **Complexity of legal issues** – Lord Penrose again stated that 'The allegation of what in ordinary terms is a criminal offence might raise complex issues of law, is a factor which may be taken to point to the need for legal representation'.
- **Children 8-18¹¹ of limited capacity** – Lord McFadyen's judgement states that a hearing may involve 'a child of limited intelligence or limited social skills', and that 'not every such child will have available to him an articulate lay representative able and willing to assist him at hearing'. It also highlights the fact that in some cases the interests of such children may diverge from those of their parents.

5.3 This chapter explores the kinds of cases professionals reported legal representatives being appointed in. It explores whether or not there was any uncertainty or difficulty over appointing in cases where secure accommodation was being discussed, before discussing what types of cases legal representatives are appointed in which might come under the 'effective participation' criterion. Next, it considers professionals' and young people's views on the appropriateness of cases in which legal representatives have

¹¹ The age of criminal responsibility is 8 in Scotland, below which a child is considered to lack the mental capacity to commit a crime.

been appointed - in particular, whether there are additional cases where it might be appropriate to appoint a legal representative under the current criteria. Finally, it briefly considers reasons for low use of the scheme in areas where few appointments were made in the 12 months to the end of 2007.

Types of cases legal representatives had been appointed in

5.4 Reporters, panel members and legal representatives discussed three main types of cases where in their experience legal representatives were appointed:

- Cases where **secure accommodation** was being considered or recommended
- Cases where **tagging** was being considered or recommended, and
- Other cases, which might come under the '**effective participation**' criterion.

5.5 Each of these are discussed in turn below.

Secure accommodation

5.6 The main reason professionals discussed for appointing a legal representative was that secure accommodation was being considered or recommended for the child. Appointing a legal representative in these cases was generally viewed as being a statutory requirement. However, there were two areas of uncertainty with respect to this criterion.

5.7 First, there was a lack of clarity on whether a legal representative was still required in situations where the child or family had already appointed their own lawyer. One view was that a legal representative was not required in this situation, but equally there were examples where such hearings had been attended by both a legal representative and a privately appointed lawyer.

5.8 Second, there was evidence of uncertainty over whether legal representation was needed in hearings where secure accommodation was only a possibility to be discussed (as compared with hearings where it was very likely it would be recommended), or in hearings where the recommendation was likely to be the *removal* of a secure accommodation order.

Tagging

5.9 Professionals in areas where electronic tagging was being used as an alternative to secure accommodation under the Intensive Support and Monitoring Service pilots¹² mentioned appointing legal representatives in these cases. This was seen as necessary since tagging the child or young person involved a restriction of their liberty, as with secure accommodation. However,

¹² ISMS involves a 24 hours wrap-around support package (intensive support), which includes up to 30 hours per week of education, and a movement restriction condition (MRC). Compliance with the MRC is monitored via an electronic monitoring device (tag) which is placed on the young person's ankle (or wrist) and a monitoring box which is placed at their residence. Following a pilot, the scheme was rolled out nationally in April 2008. For more details, see - <http://www.scotland.gov.uk/Topics/Justice/youth-justice/Page/service>

there was some evidence that not all professionals were completely clear whether legal representatives were required in tagging cases.

'Effective participation' cases

5.10 The third category of cases where legal representatives had been appointed was those where it appeared that the child required legal representation to enable their 'effective participation'. Three specific types of cases were discussed:

- Where the child or young person had **no independent adult support** – for example, because their parents did not attend hearings or because they had a difficult relationship with their parents.
- Where the child or young person had **learning difficulties**, and
- Where the child or young person was a **repeat offender** (but was not yet meeting the criteria for secure accommodation). It was suggested that a legal representative was an ideal independent person to point out the severity of the possible consequences for the child or young person, both of agreeing to the grounds (and therefore potentially having a criminal record) and of carrying on with offending behaviour (and possibly being secured). One opinion was that legal representatives were in a better position than social workers to give the young person this information, as young people may think social workers are only telling them these things to scare them.

5.11 In some cases, legal representatives were appointed for overlapping reasons – for example, in one case a legal representative was appointed to a boy with learning difficulties who was also heavily offending, as an extra layer of support and because the panel were unsure how much he was understanding. In another case, a child who had a difficult relationship with their guardians was appointed a legal representative both because their behaviour might lead to secure and because they lacked independent adult support.

5.12 While deciding whether to appoint in cases relating to secure was generally considered straightforward, there appeared to be less certainty over whether and when to appoint in other types of cases. There was evidence of variation in whether individuals and/or areas ever appointed legal representatives in cases that might be covered by the 'effective participation' criterion. Several issues appeared to influence practice here:

- First, there was a lack of consensus over whether there was **any need to appoint legal representatives** in cases where issues other than secure accommodation or tagging were at stake. One panel member view was that while the panel might hope that the family would appoint a lawyer in other types of cases, it was only appropriate for the hearing itself to appoint where secure accommodation was being considered.
- Second, it was suggested that **legal representatives would not be any help in cases involving complex issues**. This was either because panel members are supposed to be well versed in legal issues and the reporter is also present to help guide proceedings, or because

safeguarders could serve these kinds of cases better and were being appointed instead.

- Third, there was a **lack of clarity over what types of cases would be eligible** for legal representation under this broader criterion. One panel member perception was that they had never come across a case that would require legal representation for reasons other than the consideration of secure accommodation. Another opinion was that the criteria are so vague that legal representatives are simply not being appointed in 'non-secure' cases.
- Fourth, it was suggested that sometimes it could be **difficult to identify cases in advance** where legal representation was required to guarantee effective participation. For example, a reporter said they felt a young person could have used legal representation because of their learning difficulties, but their level of learning difficulties had not been apparent from the pre-hearing reports.
- Finally, **availability of legal representatives** was also cited as a reason for not appointing in a wider variety of cases. For example, a reporter suggested that while they might wish to appoint in cases where a child or young person was a persistent offender but was not yet heading to secure, a lack of available legal representatives was '*an enormous issue*', which meant they were unable to do so in most of these types of case.

5.13 More generally, it was suggested that the wider focus of the requirements for legal representatives had been lost and that across the country, appointments were generally focused on secure.

Appropriateness of appointments

5.14 Professionals were asked whether they thought there were any cases where legal representatives had been appointed inappropriately, and whether there were any additional cases where they thought they should have been appointed. Although some professionals expressed negative attitudes towards the involvement of legal representatives in hearings (see Chapter Seven), there was no evidence that they felt their appointment had been inappropriate in terms of the rules of the Grant Scheme. What did emerge, however, were a number of *additional* actual and hypothetical cases where panel members and reporters felt that a legal representative *could* have been appointed. The types of cases identified were often very similar to the cases discussed above under 'effective participation', further highlighting variations in how this criterion is applied in practice. They fell into four main categories:

- Cases where the child **lacks independent adult support**
- Cases where the child or young person has **difficulties understanding proceedings or their rights**
- Cases where the child or young person is **unable to speak for themselves or to engage with the hearing**, and
- Cases where the child is **continually offending** but is not yet at the point of being considered for secure accommodation. Concern was expressed that such children may fail to appreciate the implications of

accepting offence grounds in terms of the *Rehabilitation of Offenders Act 1974*:

They happily trot along to the hearing and on occasion they happily accept things that will have lifelong consequences for them. And I don't think they realise what they are accepting.

(Reporter 7)

5.15 The young people interviewed also discussed various additional scenarios in which they felt it might have been useful to have had a legal representative present. These included:

- Situations where **hearings keep being continued** with no final disposal – one young person had experienced this and felt that if he had had a lawyer at the time they would have been able to stop this from happening.
- Cases where the child is likely to go into **non-secure residential care**, as well as for secure care.
- Cases where the young person is at a hearing on **offence grounds** (mirroring suggestions from some professionals), particularly if there has not been a proof hearing. It was suggested that this might be particularly helpful when a child is new to the system, since they may be more likely simply to accept the grounds and agree with the panel, whereas a lawyer would be willing and able to challenge these grounds.

5.16 On the other hand, young people also discussed situations where they felt it was *not* necessary to have a legal representative present at hearings:

- One opinion was that they were not needed **if secure accommodation was not being discussed**.
- Another was that they were not needed **if the outcome in terms of secure accommodation was already set** – in that either they would definitely be staying in secure, or they would definitely be getting out.¹³
- Finally, the view that legal representatives were **not needed at all** was expressed, particularly by young people who had particularly negative experiences of having a legal representative (reasons for which are discussed in more detail in Chapter Seven).

¹³ Though as noted in Chapter Four, there was evidence that some young people valued having a legal representative even when they were unable to change the outcome of the hearing.

Reasons for low use of the scheme

5.17 Additional interviews were undertaken with reporters in several areas who had not used the scheme at all in the previous 12 months, according to claims returned to the Scottish Government from their local authority. It was reported that these areas only appointed legal representatives in cases where secure accommodation was being considered, and that such cases came up only rarely for them. Attitudes to low use of the scheme were mixed – one reporter view was that legal representatives ought to be appointed in more cases in their area, particularly in cases involving offence grounds, while another was that there was no need to extend the scheme's use. Views on whether or not use of the scheme should be extended are discussed further in Chapter Eight.

Key points

- Legal representatives have been appointed in three types of cases:
 - Those where secure accommodation was being considered
 - Those where tagging was being considered, and
 - Those where legal representation might help secure 'effective participation' by the child.
- With respect to secure cases, there was evidence of some uncertainty over whether legal representatives were required where the child or family had appointed their own lawyer, where secure was only being considered (not recommended), and where a secure accommodation order was being removed at a hearing.
- The kinds of cases where legal representatives were appointed that would come under the 'effective participation' criterion included:
 - Cases where the child had no independent adult support
 - Cases where the child had learning difficulties, and
 - Cases where the child was a repeat offender.
- There was evidence of a lack of certainty over which cases it might be appropriate to appoint legal representatives in under the 'effective participation' criterion.
- This lack of certainty was reflected in variation in practice, influenced by:
 - Lack of consensus over whether there is any need to appoint legal representatives in cases that do not involve secure accommodation
 - A view that legal representatives may not be any additional help in these cases
 - A suggestion that it was sometimes difficult to identify appropriate cases in advance of the hearing itself, and
 - A lack of availability of legal representatives, which could inhibit the extent to which they were used for a wider variety of cases.
- While professionals viewed the cases in which legal representatives were being appointed as appropriate, some identified additional cases where they felt a legal representative could or should have been appointed. These cases largely mirrored the kinds of cases where some areas were already appointing legal representatives under the 'effective participation' criterion.
- With respect to children who are persistent offenders in particular, concern was expressed that without legal representation they may not always appreciate the

consequences in terms of the *Rehabilitation of Offenders Act* of agreeing to the grounds of referral.

- Young people also identified additional cases where they thought having a legal representative might be useful including:
 - Situations where hearings are repeatedly continued
 - Cases where non-secure residential accommodation may be recommended, and
 - Cases where the young person is referred on offence grounds, particularly where they are new to the system.
- However, young people also suggested that legal representatives may not be needed if secure accommodation is not being discussed or if the outcome seems pre-determined, while another view was that they are not useful at all in hearings.

6 CONTACT BETWEEN YOUNG PEOPLE AND THEIR LEGAL REPRESENTATIVES

Introduction

6.1 In describing the kind of advocate they would like at a children's hearing, the children and young people interviewed for Creegan et al (2006) wanted to be accompanied by people they already knew and trusted. However, the report notes that the process of becoming known could occur gradually or quickly, with being approachable, listening and talking to children and young people before doing things and respecting them all identified as crucial ingredients in developing a supportive relationship.

6.2 This Chapter explores the level and quality of contact between children and young people and their legal representatives, both before and between hearings. It describes the range of experience and practice identified by participants and examines views on what 'adequate' levels of contact would be. It then explores young people's comments on factors that help establish good communication between them and their legal representatives.

Level of contact

Young people's experiences

6.3 Young people described three different experiences in terms of the level of contact they had with their legal representatives in advance of the hearings:

- Meeting them in advance of the day of the hearing, either at the lawyer's office or at the young person's residence
- Meeting on the day and at the hearing venue only, sometimes for as little as five minutes, sometimes for longer, or
- Not having any advance meeting at all with their legal representative.

6.4 Attitudes towards the adequacy of meeting legal representatives on the day of the hearing only were mixed. One view was that 10 to 15 minutes was usually enough to tell them what the young person wanted. Another was that a short meeting before a hearing was inadequate, because *'they dinnae ken anything about you in that five minutes'* (Young person 10). There appeared to be an association between level of contact and young people's satisfaction with their legal representative - those who had no meeting at all or a very short meeting were particularly dissatisfied with the whole experience of having a legal representative, whereas those who met them in advance of the day of the hearing included those who were the most happy with their legal representatives.

6.5 Young people's experience of contact with their legal representatives after and between hearings was similarly varied. Legal representatives sometimes spoke to them immediately after the hearing, to discuss appeals for example. However, there was some evidence to suggest that where the outcome was not the one the young person had hoped for, taking instruction immediately after a

hearing may not always be practical or appropriate. For example, one young person described *'kicking off'* after a hearing where they were placed in secure accommodation and feeling unable to speak to their legal representative at the time. Meetings between hearings, phone contact and written contact were all mentioned, though the potential pitfalls of relying solely on written contact were highlighted by the fact that one young person said they had binned all their letters from their legal representative. However, some young people said they did not have any contact at all with their legal representatives after or between hearings.

Professionals' views on current practice

- 6.6 The practice reported by legal representatives interviewed for the study reflected young people's different experiences. There were examples of legal representatives visiting young people at secure units, sometimes travelling many miles to do so. Equally, there were cases where the legal representative only met them on the day of the hearing for anywhere between 10 minutes and an hour. There were no examples of legal representatives saying they had not met the young person at all in advance of the hearing, however, although there were cases where they had no contact between hearings.
- 6.7 As with young people, there were different perspectives among legal representatives, panel members and reporters on whether meeting on the day of the hearing only is adequate. One view was that it is not adequate, because it does not give the child a fair chance to brief the legal representative, or give the legal representative chance to build a relationship with the child. As one reporter put it: *'How can you take instructions from a child unless you've built up some sort of rapport?'* (Reporter 1). A legal representative who felt advance meetings were essential reported turning down hearing cases because it was too far to travel and too costly to visit the young person in advance (especially where they were in secure at some distance from the lawyer's practice).
- 6.8 An alternative perspective was that meeting 10 to 15 minutes in advance of a hearing is adequate for taking instruction, or that it is fine because the legal representative is only there to ensure the child's legal rights are upheld. This suggests that opinion on what constitutes an 'adequate' level of contact may in part depend on how people see the role of legal representative - a role which is mainly legal or procedural would arguably require less building of rapport between a young person and a lawyer than a role which also encompassed arguing their case and/or facilitating their participation. It was also suggested that this level of contact was adequate because children will either talk to a legal representative or not, or because there is only so much a young person can tell you before a hearing.
- 6.9 Reasons given for legal representatives being unable to meet children in advance of the day centred around fees and notice. As discussed in Chapter Three, the fee for legal representation work is currently a flat rate, which covers both preparation and attendance at the hearing. One position was that given this fee structure, it was simply not economically viable for lawyers to meet children in advance of the day of hearings. The notice given to legal representatives was also a problem, with participants contrasting this with the

(longer) amount of notice they had for cases where they were acting as safeguarder or curator. Both these factors were even bigger barriers where the young person was in secure accommodation at some distance from the lawyers practice.

Easy to talk to?

6.10 Among young people who had good relationships with their legal representatives or privately appointed lawyers, two main factors were discussed that made them easy to talk to. The first is strongly related to level of contact – getting to know them was seen as key. For example, one young person who had a privately appointed lawyer said that he was easy to talk to:

'Cos I've had him for a wee while. He wasnae easy to talk to at first, but as we progressed I got to trust him more and [I] like him now, so that's how he's easy to talk to.

(Young person 16)

6.11 Another young person said that if she got a new legal representative now she probably would not speak to them as she would not know them. As noted above, not all young people felt that meeting their legal representative just before a hearing was inadequate, and as Creegan et al discuss a young person can sometimes feel they have got to know a representative quite quickly. However, this finding does emphasise the importance of including enough time for legal representatives to build rapport with young people, with what constitutes 'enough time' likely to vary between young people. A second factor identified with being easy to talk to was the young person feeling the legal representative had listened to them.

Big words?

6.12 One factor that earlier research has often raised as a barrier to effective communication between young people and adults in hearings is adult use of legal jargon or 'big words' (e.g. Griffiths et al, 2000). The 'representative quality cards' used in interviews with young people included 'used big words' in order to explore whether this was also a barrier to communication with legal representatives. Interestingly, young people's opinions on this issue did not fall into a straightforward dichotomy of 'good' lawyers using 'easy language' and 'bad' ones using 'big words'. Rather, they made a distinction based on whether the 'big words' were directed at the panel or at the young person, with a perception that directing 'big words' at the panel could be a good thing from the young person's perspective because the panel might find this kind of language persuasive:

He put a few bigger words in to persuade the panel I think.

(Young person 17 – referring to his privately appointed lawyer)

6.13 In relation to using 'big words' with the young person, one experience was that their legal representatives did not do this:

[He] just talks normal, like I would to one of my pals.

(Young person 14)

6.14 Another was that using some 'big words' with the young person was fine, as long as the legal representative translated the language that they or the panel used into terms the young person could understand. In fact, one young person thought the fact that her legal representative had used 'easy language' was a bad thing, since it made her feel he was speaking to her like she was an *'idiot'*. Thus effective communication with some young people may be less about avoiding 'big words' – which may be mentioned in hearings anyway in putting the 'grounds of referral', for example - and more about ensuring they are clearly explained.

Key points

- The level of contact between young people and their legal representatives in advance of hearings varied. Young people described either meeting them in advance of the day of the hearing, meeting them immediately before the hearing, or having no contact with them at all.
- Views on the adequacy of meeting with a young person on the day of a hearing only were mixed among both young people and adult professionals. One opinion was that this is adequate for telling a legal representative what they want/taking instruction; another was that it is inadequate for finding out about the young person's case, or for building a relationship with them.
- Reasons legal representatives gave for being unable to meet children and young people in advance of the day of the hearing centred around fees and notice, with both these barriers exacerbated where the young person resided at some distance to the lawyer's practice.
- Those young people who had no or very minimal contact with their legal representatives before the hearing appeared to be particularly dissatisfied with the experience of having a lawyer.
- The main factors young people discussed that made their legal representatives easy to talk to were getting to know them and feeling they listened to the young person.
- Use of 'big words' by legal representatives was not necessarily viewed as a problem as long as these were directed at the panel and not the young person and/or they were explained in terms the young person they could understand.

7 WHAT IMPACT ARE LEGAL REPRESENTATIVES HAVING ON YOUNG PEOPLE AND ON HEARINGS?

Introduction

- 7.1 The most important issue in terms of the success of the Legal Representation Grant Scheme is what impact it is having - first, on the children and young people who are being represented and second, on the hearing process itself. As discussed in Chapter One, prior to the schemes' introduction there was much debate about whether lawyers would have a positive or negative influence on the Hearings System as a whole and, in particular, what their influence would be on young people's participation in hearings. Those opposed to the involvement of lawyers in hearings suggested lawyers would limit the direct participation of young people in discussions about their future and that they would alter the character of hearings, making them more formal and adversarial. Those in favour of legal representation for young people in hearings felt that, on the contrary, legal representatives would help young people be heard and would also have benefits in terms of safeguarding their legal and procedural rights.
- 7.2 This chapter explores which, if any, of these hopes and fears about the scheme are borne out by the experience of young people and professionals of its impact in practice. It starts by looking at the specific issue of legal representatives' impact on children and young people's participation in hearings. Next, it explores the effects of having legal representation on young people's experience of hearings more generally. These include both their experience of the hearing *process*, and their views on the impact on *outcomes* of hearings. Finally, the chapter considers the effect of introducing legal representation on hearings themselves – on legal procedures and processes, communication and atmosphere within hearings.

Impacts on children and young people's participation in hearings

- 7.3 As discussed above, one of the key concerns about the introduction of lawyers to the Hearings System was what impact it would have on young people's participation in hearings. Previous studies have noted that some young people find it very difficult to speak in hearings. Griffiths et al (2000) identified four key barriers:
- difficulties understanding technicalities and procedures
 - difficulties with adults 'talking over them'
 - feelings of fear and anxiety at hearings; and
 - difficulties relating to some (though by no means all) panel members, because of a perception that they use 'posh' or difficult language.
- 7.4 So does the presence of legal representatives in hearings help or hinder the process of young people making their views known? The comments of both young people and professionals interviewed for this study suggest that legal

representatives can have a positive, negative or mixed impact on both direct¹⁴ and indirect¹⁵ participation in hearings by young people. As similar themes were discussed by young people and professionals, their views are presented together here, with any notable differences highlighted.

Indirect participation (having someone speak for you)

7.5 Young people described various benefits from having a legal representative speak for them in hearings.

- First, they found it helpful when they were too shy, embarrassed or lost for words to speak for themselves. It was suggested that having a lawyer was like having a '*second mouth*' who could speak when the young person was nervous or did not want to speak for themselves.
- Second, it was suggested that lawyers can '*keep calm*' where the young person might start shouting if they were putting their views forward alone. Adult professionals echoed this point, suggesting that legal representatives sometimes played a role in mediating between the child and other adults in the hearing – for example, by challenging other adults where the child finds it difficult to do so, or struggles to do so without becoming aggressive.
- Third, sometimes young people felt their lawyer '*puts it better*' than they would, while a related opinion was that having a lawyer speak for them avoided '*messing up*' the young person's chances.

Direct participation (speaking for yourself)

7.6 Young people also recognised that there could sometimes be good reasons for them to speak for themselves – including the idea that it was less confusing for panel members to hear things '*straight from the horse's mouth*' and that it was worth speaking up as it could make a difference to the panel's decision. Young people gave examples of how their legal representatives helped them speak up directly, including offering support or reassurance, providing a '*bit of back up*' and giving the young person ideas of what to say:

When he was speaking to panel members, he was saying stuff ... like he was putting words in my head that I could say.

(Young person 12)

7.7 It was also suggested that seeing their lawyer challenge the panel could give the young person confidence to challenge what was being discussed too.

7.8 Comments from professionals also recognised the role legal representatives could play in encouraging and supporting children to participate in hearings directly. For example, a reporter echoed the young person cited above with respect to the confidence young people can gain from hearing their legal representative speak for them:

¹⁴ Where the young person themselves speaks.

¹⁵ Where the legal representative puts the young person's views across for them.

I actually had a hearing today with the legal rep and what I noticed was that (...) the legal rep had their opportunity to speak and spoke up and when they did that the young person jumped on the back of what the legal rep was saying. So I think, you know, having that one person speaking up for you actually enabled the child to speak for themselves.

(Reporter 8)

- 7.9 It was suggested that in some cases the presence of legal representatives can help focus the young person's contribution on those issues that are most relevant to the hearings' decision.

Does having a legal representative make any difference?

- 7.10 Not all young people felt that having a legal representative made any difference to their ability to get their views across in hearings. This was either because young people thought their legal representatives had been unhelpful in this respect, failing to speak up for them, or because they felt confident enough to speak for themselves without any additional adult support. Professionals also suggested that where children could speak for themselves, legal representation made no difference to their participation. It was noted that it is part of the panel's job to ensure that children's views are heard, so the presence of legal representatives should not have any impact on their participation in hearings.

- 7.11 However, while some young people felt speaking in hearings was 'easy', others said that they did not speak in hearings at all when their legal representative was not there to put their views for them. For example, one young woman said she just wanted to get her hearings 'over and done with', so if her legal representative was not there she would just say it 'doesnae matter' in response to the panels questions. In situations like this, a young person suggested that the panel would just listen to the social worker who does not always want the same things as the young person. There was also a perception that no one other than legal representatives are willing or able to say the things that young people want them to say in hearings. For example, one young person contrasted legal representatives with social workers and other adults, saying:

*They [the legal representative] are just there ... to say what **you** want, whereas your social worker and that are there to say what **they** want.*

(Young person 21)

Silencing young people?

- 7.12 Finally, young people also mentioned some instances where their lawyers had advised them *not* to speak in hearings, saying 'dinnae incriminate yourself' or to 'keep [your] mouth shut'. Panel members also described cases where they felt lawyers had silenced the young person. However, the young people who made these comments had privately appointed lawyers, rather than legal representatives appointed through the Grant Scheme, while it was unclear which type of lawyers panel members comments related to.

Impacts on children and young people's experience of the hearing process

- 7.13 In addition to helping young people make their views known in hearings, both young people and professionals identified a range of other impacts that legal representatives could have on young people's experience of the hearing process. These are summarised briefly here, since in part they overlap with discussion of the role of legal representatives already presented in Chapter Four.
- 7.14 First, legal representatives were seen by both young people and professionals as playing a valuable role in protecting children and young people's legal rights within the Hearings System, by engaging in the kind of legal scrutiny of proceedings described in Chapter Four.
- 7.15 Second, legal representatives were viewed by young people and professionals as providing young people with independent adult support in hearings. For young people, this related to feeling they had someone '*on my side*', while professionals also suggested that having an independent person to represent them could help young people feel '*it's not the world against them*' (Reporter 13). As discussed in Chapter Four, young people were divided over whether anyone else could provide this kind of support in a hearing.
- 7.16 Third, legal representatives could help young people better understand the hearing process by explaining things to them during the hearing, setting out their legal rights and options and being someone to ask questions of. Young people also described legal representatives playing a role in preparing them for 'negative' outcomes (from the young person's perspective) – for example, explaining that it is likely they will be secured. This appeared to be seen in a positive light by young people – suggesting that having a legal representative forewarn them of the panels' likely decision might help young people accept the outcome more easily.
- 7.17 One view among professionals was that this explanatory role was absolutely essential for young people:

I mean, quite often panels who've been to all the training, they'll ask for guidance again as to 'what is the secure criteria?' (...) And if they're looking for guidance, (...) then it would really be very difficult I think for a child and a parent to be expected to understand that without the benefit of legal advice.

(Reporter 3)

- 7.18 Having someone in this role acted as a safeguard against, for example, children accepting the grounds purely to get the hearing over with or saying they understood out of '*bravado*'. However, an alternative opinion among professionals was that the social worker or the panel would be available to explain things to the child if the legal representative was not there, so it was unclear that having a legal representative really improves the child's understanding in hearings.

7.19 The main reason young people gave for feeling *dissatisfied* with the performance of their legal representatives was a perception that they had not represented their views properly in the hearing - as one young person put it, they felt their legal representative *'just sits down and does nothing'*. They described feeling that they had *'quiet lawyers'* who did not argue for them and appeared to just agree with the panel. Even young people who generally had good relationships with their legal representatives complained about specific occasions where they felt they had not spoken enough in the hearing or commented on the fact that the main thing they would *not* want from a legal representative would be for them to just sit and agree with everything the panel says.

7.20 These comments were echoed in the experience of some panel members and reporters, who described instances where they felt the legal representative had made no contribution at all to the hearing. One reporter view was that this type of conduct was *'worse than useless'*, since if the child was capable of handling the hearing on their own they would not require a legal representative.

7.21 Other complaints from young people included:

- feeling their legal representative had not listened to them – an indicator of which was that the legal representative had not put the young person's position forward in the panel, seeming instead just to go along with the panel's recommendations, and
- feeling that their legal representative did not care about them and appeared just to be attending for the money.

Impacts on the outcome

7.22 As well as affecting young people's experience of the *process* of taking part in a hearing, there was a clear view among the young people interviewed that having a legal representative present to speak on their behalf could in some cases actually change the *outcome* of the hearing (mainly framed in terms of preventing or overturning a secure accommodation order). For example, one young person felt that her legal representative had *'changed the panel around'* every time they had attended. However, even where a young person felt that their legal representative had not changed the outcome of the panel, their presence could still have a positive impact on the young person's experience of the hearing process in terms of the *'peace of mind'* they found from hearing someone put their arguments across. As one young person put it:

Obviously I didn't want to go to secure; nobody wants to go to secure. But I was sort of accepting that I probably was going anyway, but I thought 'well, if you can do your best to try and get me out of it, that would be good. But if you cannae, ken, I can understand'.

(Young person 14)

Impacts on the hearing process – legal procedures, communication and atmosphere

7.23 In addition to discussing the effects of having legal representatives on young people's participation in and experience of hearings, professional participants in particular also discussed the impact of legal representatives' involvement on hearings themselves. Professionals identified impacts in four areas:

- on **legal procedures and processes** within hearings
- on **communication** in hearings
- on the **atmosphere** of hearings, and
- on the **length** of hearings.

Legal procedures

7.24 Reporters and legal representatives commented that by safeguarding the legal rights of young people lawyers can also help hearings ensure that legal procedures are correctly followed. One reporter view was that having a legally qualified person present can have benefits in terms of ensuring there is more '*analytical analysis*' of whether the criteria for secure accommodation have been met, rather than the decision being an '*emotional response*' to the child's situation. A related comment from a reporter was that the presence of a lawyer could prevent people from avoiding distressing issues that may need to be discussed to ensure the decision is legally correct. It was suggested that ensuring all these issues are addressed in full strengthened the panel's decision and cut down on appeals.

7.25 However, one panel member opinion was that hearings operated in a professional and correct manner regardless of whether a lawyer was present or not. Further, while professionals gave various examples where contributions from legal representatives had a positive impact on the hearing process, panel members and reporters also cited various instances where they felt lawyers had made inappropriate contributions to hearings. These included treating the hearing '*like a court room*', getting '*bogged down in ... legal jargon*' and giving inappropriate advice or asking reporters questions they would expect lawyers already to know the answer to. This type of behaviour was attributed to not knowing enough about the Hearings System. Although one belief was that this behaviour was particularly prevalent among privately appointed lawyers, another was that legal representatives appointed under the Grant Scheme also sometimes brought a 'court mentality' to hearings. A related panel member concern was that the introduction of legal representatives could be the start of a '*slippery slope*' towards a more legalised or court-like system. Thus while legal representatives could have a positive impact in terms of ensuring legal procedures are followed within hearings, there was also a suggestion that they might bring with them a legal style which was not viewed as appropriate to the distinctive setting of hearings.

Communication

7.26 Legal representatives' impact on communication within hearings related both to their role in facilitating (or inhibiting) the child's participation (discussed above),

and to their communication with other adults in the hearing. It was suggested that their role in facilitating the child's participation could have positive impacts for the hearing as well as the child, in helping ensure that panel members hear the child's views. For example, a panel member described a case where the child had told his legal representative in advance that he did not do one of the things mentioned in the grounds for referral, but in the hearing itself he had gone along with the grounds to get it over with. The lawyer had stopped the hearing and advised his client to be honest and to say if he did not do it. It was also suggested that legal representatives could sometimes get information from children that they might not tell their social worker, because legal representatives are seen as more independent, and that they can convey helpful information that might be misrepresented by parents. A related suggestion was that legal representatives can help ensure children and young people hear the panel's views by advising them to listen to what is being said even if they do not agree with it.

7.27 However, as discussed above, some panel members expressed more negative attitudes to the impact of lawyers on young people's participation. Moreover, as well as potentially inhibiting young people from contributing to hearings, it was also suggested that they might inhibit the panel from speaking, or at least make them more nervous about doing so. For example, reporters described some panel members being *'more jumpy'*, *'intimidated'* or *'uptight'* when legal representatives attended, while a panel member felt their presence could *'make you very conscious of not saying anything that could be construed the wrong way'* (Panel Member 12). However, another reporter opinion was that although panel members in their area had been anxious initially after the scheme was introduced, this had now mostly diminished.

7.28 A related panel member view was that some lawyers enjoyed *'point scoring'* in hearings and did not value the panel members' knowledge and experience. However, interestingly, comments from young people suggest that they may sometimes view such tensions between lawyers and other adults in hearings in a positive light. For example, one young person spoke positively of how he thought *'the panel are afraid of the lawyers, 'cos my lawyer just sits there with his big book and he goes 'That's wrong. That's wrong. That's wrong''* (Young person 22). One belief among professionals was that, again, this type of confrontational behaviour was more common among privately appointed lawyers – an idea backed up by the fact that such comments from young people tended to relate to private lawyers. However, there were examples where panel members felt Grant Scheme lawyers had behaved in a similar way. In any case, this finding highlights the fact that behaviour that may make other professionals uncomfortable may be valued by young people in situations where they may feel no one else is on 'their side'.

Atmosphere

7.29 Panel members and reporters cited various examples where they felt the presence of legal representatives had affected the atmosphere of a hearing, both in positive and in more problematic or ambiguous ways. First, it was suggested that they could improve the atmosphere by helping to keep their clients calm. For example, a reporter described a situation where the child had

been interrupting the hearing continually and becoming very agitated, but his legal representative had been able to reassure him that he had the situation in hand and would explain everything to him again at the end of the hearing. Second, it was suggested that legal representatives sometimes bring a 'formality' or 'seriousness' to the proceedings. Although the Hearings System is designed to be less 'formal' than a court setting, this added gravity was not always seen as negative – for example, a reporter suggested that it is not *'necessarily a bad thing when something as important as ... a restriction on liberty is being discussed'* (Reporter 10). Third, it was suggested that in some cases the presence of a lawyer could inflame an already volatile situation. For example, a panel member described a situation where he felt the lawyer had not understood their role and the family had become angry as a result. It was also suggested that if the young person takes a 'defensive' position (i.e. not wanting to go into secure or denying the grounds), the situation can become more contentious simply because the legal representative has to put forward the child's views of non-acceptance.

Length of hearings

7.30 Another possible impact on the hearing process relates to the length of hearings. One perception was that the involvement of legal representatives could result in longer hearings, either because the legal representative was late or because they were asking to speak to child at the time the hearing was due to start. The opposite was also argued, however - because hearings were more 'focused' when legal representatives attended, it was suggested that they could in fact be quicker.

Key points

- Reasons young people sometimes preferred their legal representative speaking for them included:
 - That they were too shy, embarrassed or nervous to speak for themselves
 - That the legal representative could keep calmer than the young person
 - That the legal representative put it better and avoided 'messing up' the young person's chances.
- However, young people also identified reasons to speak for themselves. One opinion was that doing so was easy, while other young people said they did not speak at all when their legal representative was not there.
- Legal representatives could help young people to speak directly by offering support and giving them ideas of what to say.
- Some young people and professionals, however, felt that having a legal representative made no difference to their ability to get their views across in hearings.
- Young people and professionals also gave examples where legal representatives had advised young people not to speak, although it was unclear whether any of these cases related to legal representatives appointed under the Grant Scheme.
- Legal representatives also had an impact on young people's experience of hearings more generally in terms of:
 - Protecting their legal rights

- Providing independent adult support, and
 - Helping them understand the hearing process.
- Young people also felt that in some cases their legal representative had influenced the outcome of the hearing, although there was evidence that their presence could have a positive impact in terms of the young person's 'peace of mind' regardless of the outcome.
- Reasons young people gave for feeling dissatisfied with their legal representatives centred on a perception they had 'just sat there' and had not represented their views adequately in the hearing.
- The involvement of legal representatives could also affect the hearing process itself in four areas:
 - Legal procedures and processes
 - Communication
 - Atmosphere, and
 - Length.
- Legal representatives could help hearings ensure that the legal procedures are correctly followed and help focus analysis on important legal issues.
- However, there were also examples of legal representatives making inappropriate contributions to hearings and getting 'bogged down in legal jargon'.
- Legal representatives could help ensure the panel heard the child's views.
- However, they could also have a negative impact on communication by inhibiting the panel or making them nervous.
- Tensions between panel members or social workers and lawyers could be viewed differently by young people and professionals – there were examples where young people appeared happy when their lawyer challenged other professionals with whom the young person did not agree.
- Legal representatives could improve the atmosphere of hearings by helping to keep their clients calm and bringing an appropriate level of gravity to the proceedings. Alternatively, where they did not understand their role they could inflame already volatile situations.
- There was no consensus on what, if any, impact involving legal representatives had on the length of hearings.

8 HOW DO PEOPLE THINK THE SCHEME COULD BE IMPROVED?

Introduction

8.1 This chapter summarises the various suggestions young people and professionals made for improving the Legal Representation Grant Scheme.

Role of legal representatives

8.2 As discussed in Chapter Seven, the main complaint young people made about legal representatives was that they 'just sat there' during hearings and did not represent them or their views adequately. One suggestion from young people was therefore that legal representatives should take a more active role in hearings:

Like just not sit about and just say nothing and just wait.

(Young person 12)

8.3 It was also suggested that panel members, social workers, families and children and young people needed more information about the role of legal representatives. Providing this information could help '*bring down some of those barriers that sometimes cause a wee bit of an atmosphere*' (Reporter 3) when a legal representative is involved. It was commented that a lot of the current information about the scheme is scattered across various different documents and it would be helpful to have it all in one place.

Recruitment of legal representatives to the scheme

8.4 Professionals in areas that were struggling to find legal representatives for cases made various suggestions about how to extend the pool. These included:

- Increasing the fees to make the position more attractive
- Widening the pool to include lawyers who are not safeguarders or curators, and
- Having a national pool of legal representatives. This would be helpful particularly for cases where young people are being held in secure accommodation outside the local authority that is organising the hearing, since it would avoid the difficulties and costs of either sending a legal representative to another area, or finding one from that area.

Appointing legal representatives in specific cases

Types of cases

8.5 As discussed in Chapter Five, one opinion among panel members and reporters was that legal representatives should be appointed in more cases where secure is *not* currently being considered. Three slightly different views were expressed by professionals on how the use of legal representatives could be increased, however:

- One view was that extending the use of legal representatives would not require a change in the current rules – rather, the problem was that panel members had forgotten that they could appoint in cases where secure accommodation is not an issue. This might be rectified by ensuring advice and training is given to panel members so that they fully understand the rules.
- Another view was that the criteria for appointing in these kinds of cases are too vague at the moment and that more specific criteria are required.
- A third view was that provision should be widened, so that there is more opportunity for legal representatives to be paid for attending routine hearings and reviews. It was suggested that legal representation could help families feel they had put their views across in hearings where, for example, social work is recommending reduced contact between a child and parents, and could therefore reduce the number of appeals in such cases.

The appointment process

8.6 As discussed in Chapter Three, it was suggested that the requirement to hold Business Meetings to appoint a legal representative in cases involving secure accommodation was an unnecessary '*bureaucratic nonsense*'. Thus one recommendation was that in cases where secure accommodation was going to be discussed, reporters should be able to appoint a legal representative without holding a Business Meeting. Other suggestions from professionals relating to the appointment process included:

- Reporters being able to appoint legal representatives directly, without going through the local authority (to reduce the administrative chain), and
- Ensuring that the same legal representative acts for children at repeat hearings (to provide continuity as discussed in Chapter Three).

8.7 Suggestions from young people included either having a choice over the gender of their legal representative, or being able to meet them before the hearing and decide if they are a good person to represent them.

Fees

8.8 As discussed in Chapter Three, fees were a source of discontent among legal representatives, so unsurprisingly many of their suggestions related to amending the fee structure. Specific suggestions included:

- Raising the fees, either overall or for review hearings (which attract the lower rate) in particular
- Introducing a separate fee to cover the legal representative meeting with the child in advance of the hearing.
- Paying for time involved (as opposed to having flat fees), and
- Reviewing compensation for travel time.

8.9 On the administrative side, clerks requested that a time limit be put on legal representatives claiming fees back, while another suggestion was that the Scottish Government pay legal representatives directly, to reduce the administrative burden on councils.

Contact between children and young people and legal representatives

8.10 As discussed in Chapter Six, young people and professionals both identified a lack of contact between the legal representative and the child or young person in advance of the hearing as a flaw in the system. It was suggested that it should be made a prerequisite that legal representatives meet the child before the hearing, and that they should not be paid unless they do so.

Training and monitoring

Legal representatives

8.11 Views on whether training for legal representatives was needed and whether it should be compulsory were mixed. One view was that it would be especially useful for those legal representatives who are not already used to the Children's Hearings System (with a suggestion those who were already safeguarders might not need this). A related suggestion was that if the scheme was opened up to lawyers who are not already safeguarder or curators, then some kind of compulsory training would be required.

8.12 This training could cover:

- How the Children's Hearings System operates (terms of the Children Act, key roles, etc.)
- Differences between the safeguarder and legal representative roles, and
- How to interview and represent children.

8.13 The lack of a more formal feedback and monitoring system was identified as a flaw in the system. One suggestion was to introduce a centralised set of standards, against which legal representatives could be appraised to check they have the requisite skills and competencies and are up to date with relevant rules and regulations.

Others

8.14 As discussed above, one opinion was that panel members might require further training on when to appoint legal representatives, as well as more information about the legal representative role. However, an alternative view was that panel members did not need further training, both because they had already been given written information on the scheme and because it was the reporters' job to advise them on whether legal representatives were needed.

Other changes

8.15 Other suggested changes to the current operation of the scheme included:

- Having hearings in the late morning or afternoon so that they don't clash with lawyers' court commitments.
- Requiring legal representatives to prepare a report, rather than just verbally summarising what the child thinks (this was felt to be especially appropriate for younger children who are not able to express their views).
- Preventing legal representatives from attending proof hearings at the Sheriff Court with a child if they have represented them in a children's hearing. One reporter view was that this created a conflict of interests and could result in legal representatives advising the child or young person to deny charges so that they could then take the case to a proof hearing

A complete change of system?

8.16 Finally, there were a group of professionals, who felt either that the system needed a complete overhaul or that it should just be got rid of. Two possible alternatives to having privately employed lawyers take on individual cases were suggested:

- First, moving to a system of on-call legal representatives. The on-call legal representative would be like a duty solicitor in the Sheriff Court, who is a retainer for the day.
- Another solution was to scrap the current system and create a child law centre, which employed solicitors who would build expertise in dealing with children and would represent them in hearings on a 'not-for-profit' basis.

8.17 There was also a view that the system should be scrapped without replacement, as panel members are already fully trained to do everything in the child's best interests. This coincided with a feeling that as long as there was someone there to speak for the child, they did not need a legal representative present.

Key points

Key suggestions for improving the operation of the Grant Scheme included:

- Ensuring legal representatives take an active role in representing young people in hearings
- Providing more information about the role of legal representatives to professionals and families
- Widening the pool of legal representatives and/or having a national pool of legal representatives
- Appointing legal representatives in more cases
- Allowing reporters to appoint legal representatives without recourse to Business Meetings
- Allowing young people some say over which legal representative is appointed to them
- Increasing or revising the fees

- Requiring legal representatives to meet with children or young people in advance of their hearing
- Providing training and monitoring to legal representatives (and possibly other professionals working in the Hearings System).

More radical suggestions included:

- Moving to a system of on-call legal representatives
- Creating a child law centre of 'not-for-profit' solicitors, or
- Scrapping the system without replacement.

9 CONCLUSIONS AND IMPLICATIONS FOR POLICY

Introduction

9.1 The previous Chapter set out a wide range of specific suggestions that participants in this research made for improving the Legal Representation Grant Scheme in the future. Rather than simply reiterating these individual recommendations, this Chapter reflects on some of the overarching themes to emerge from the research and suggests some issues Scottish Government and other policy makers may wish to reflect on in taking the scheme forward.

Defining the legal representative role

9.2 The Scottish Government's recent consultation on the Hearings System suggested that the legal representative role should be different to the role lawyers play in courts. A key question to emerge from this research is whether this difference is solely a matter of style, or whether the substance of the role should also be fundamentally different. Should legal representative simply be ensuring they take a less aggressive stance in hearings, adapting their language and behaviour to a style more appropriate to the less formal setting of a hearing? Or should there also be a difference in the role they play with respect to a child in a hearing compared with a client in court? It is suggested that this latter question may relate to the extent to which legal representatives actively argue the child's case in a hearing, as opposed to simply ensuring legal procedures are followed and understood.

9.3 In considering these questions, the Scottish Government should bear in mind evidence from this study that young people may expect lawyers acting for them in hearings to argue for what they want to happen. Indeed, one of the key reasons young people gave for feeling dissatisfied with the role their legal representative played was feeling they had not put forward much of an argument for them. Moreover, it is worth noting that while arguing the merits of their client's case may sometimes create tensions in a hearing if other adults disagree that this is what is best for that young person, there was evidence that young people may value hearing someone speak up for what they want even where this makes no difference to the outcome.

Addressing variation in practice

9.4 This report has identified a number of variations in the operation of the Grant Scheme in practice. In particular, there were differences with regards to both recruiting a pool of legal representatives; and appointing them in individual cases. Some of these differences may be addressed if the administration of legal representation in hearings is taken into the proposed new national body with responsibility for the Hearings System. However, it will be important for this body to be aware of the reasons for existing local variations – for example, if this new agency were to set out standard requirements for legal representatives, they need to bear in mind that in some areas of Scotland there may be fewer lawyers who specialise specifically in child and family law and/or fewer legally qualified safeguarders.

- 9.5 Other variations may require addressing through further training or guidance – for example, variations in the types of cases in which legal representatives are being appointed across the country. The Scottish Government and SCRA may wish to consider whether it is possible to build in more detailed monitoring of the use of legal representatives, so that such variations in practice can be more easily assessed in the future. For example, reporters could be required to identify both the fact that a legal representative was appointed and the reasons for this appointment on the Referrals Administration Database. There may also be an argument for recording whether or not any of the issues that might trigger legal representation arose for a child, to enable comparison of cases where legal representatives are and are not being appointed.
- 9.6 A final key area of ‘variation’ is between legal representatives appointed under the Grant Scheme, and lawyers appointed privately by the child or family. There was some evidence that behaviour that was more negatively viewed by other professionals might be more prevalent among privately appointed lawyers. It appears that it is not uncommon for lawyers to attend hearings in a private capacity, in spite of the fact that they would not be eligible for (state-funded) remuneration for this work. Given this, it may be worth exploring with the Law Society and others what training and guidance is available to *all* lawyers on working with children in the Hearings System, in order to try and ensure that all lawyers doing this type of work are adequately prepared.

The impact of fees on the service delivered

- 9.7 As discussed in Chapter Three, there was a strong view among legal representatives that the Grant Scheme fees are very low. As a result, it appeared that in some cases the amount of time lawyers spent preparing for cases, their willingness to travel longer distances to hearings and their willingness to meet the child in advance were contingent on being prepared to view this work as a kind of ‘pro bono’, for which it was accepted they would not be fully remunerated. In considering whether changes are needed to the fee structure in order to guarantee that every child receives an equally good service from their legal representative, the Scottish Government may also wish to examine how the Legal Representation Grant Scheme compares with and overlaps with legal aid. For example, at the moment lawyers can claim legal aid for advice and assistance given to children in advance of a hearing. It is not completely clear, however, whether or not this scheme is, or could be, used by legal representatives to pay for visiting a child to prepare for a case.

Ensuring children and young people’s views are taken into account

- 9.8 Finally, in making any changes to the system for legal representation and in designing training and guidance for professionals, it is essential that the views of young people on what they do and do not find helpful are taken into account. The Scottish Government may wish to consider whether it is possible to build more say for children and young people into the scheme. This could encompass both giving them some choice over the legal representative they are appointed (which may lessen the chance of this legal representative being seen as a ‘stooge’ for the system), and ensuring their views are collected as part of any future feedback and monitoring of the scheme.

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ANNEX A – TOPIC GUIDES

The topic guides used in the study are reproduced below for reference. It is important to note that in qualitative research topic guides are used as more or less loose aides to discussion to ensure all relevant topics are covered – the ordering and wording of questions will vary depending on the experiences and information given by individual participants.

Local authority clerks

The interview aims to explore:

- Involvement in managing the appointment process
- Views on time spent managing appointments
- Any difficulties in recruiting/retaining legal reps through child's case
- Views on fees
- Views on the qualities/experience of legal reps in the pool
- Views on only drawing legal reps from safeguarders/curators ad litem
- Overall impressions of the scheme – what, if anything, they would change

Introduction and consent

Background information

- Introduce self and ScotCen
- Recap funding and purpose of study:
 - funded by the Scottish Government to feed into the Children's Hearing Branch review of the legal representation grant scheme
 - Purpose – to explore the views of professionals on the operation and impact of the scheme. We'll also be talking to reporters, solicitors and panel members, as well as children and family members.

Interview format

- We want to find out your perspective on how the scheme is operating. While we have some specific questions about how the scheme is operating in your area, for most questions we're just interested in your views.
- Interview will cover various issues including:
 - Their involvement in the appointment process and the time commitment involved
 - Views on appointing legal representatives, including any challenges to getting them to take on/retain cases
 - Views on the fee structure
 - Views on the qualities/experience of legal reps and their suitability for appointment.
 - Views on restricting legal reps to only Safeguarders/Curators ad Litem
 - General views on how the scheme is working and how it could be improved

- Confidentiality
 - we would like to record this interview, to save us taking notes and to make sure we don't forget anything you tell us
 - no one other than a transcriber and researchers at ScotCen will have access to this recording or to the transcript of it
 - may use quotations in report, but won't report any names, or attribute comments to their local authority
- Appreciate their participation is voluntary – let us know if any questions they prefer not to answer
- Timing (around 35-45 minutes)
- Any questions?

TAPE RECORDER ON

Confirm happy to proceed and happy for interview to be recorded

Appointing legal representatives – practicalities and challenges

- Can you tell us a bit more about what you do and what the different elements of your job are?
 - If it's clear that there are various elements to the clerks job, please try to ensure that throughout the interview they are referring to the Legal Representation Grant scheme and not, for example, the safeguarder scheme.
- How long have you been in your role as legal clerk to the Hearing system?
- Can you describe your involvement in administering the legal representation grant scheme?
- How much of your time does administering the scheme take in the average month?
 - Does anyone help you with this?
- Who else is involved in recruiting people to the pool of legal representatives?
- How many legal representatives are you able to recruit from for children's hearings cases in your area?
 - How many are curators ad litem, safeguarders or both?
 - Is the same person ever appointed as Safeguarder and legal rep for the same case?
- How many cases have you been involved in over last 18 months where a legal representative was required for a child/young person attending a children's hearing?
- How do you recruit people to your pool of legal reps?
- How do you choose which legal representative to approach first for a particular case?
- What is your impression of the willingness of the legal reps you have appointed in the last 18 months to participate in the scheme?
- Have you ever experienced any difficulties getting a legal representative to take on a case under the children's hearings grant scheme?
 - If yes, what?
 - If not mentioned, probe on whether any of the following were barriers:
 - Amount of notice given to legal rep

- Distance to travel
 - Workload
 - Communication difficulties with child/young person
 - Fees
- Was an alternative legal representative found?
- How often do you experience such difficulties appointing a legal representative to a child attending a hearing?
- Do you usually appoint the **same** legal representative for children at any subsequent hearings they attend? If not, why not? What about for proof hearings?

Views on the fee structure

Info for interviewers:

The fees legal representatives are paid at for representing children at hearings are as follows:

- **Higher flat fee** for attendance and preparation = £200 (paid for prep and attending new hearings, where legal rep wasn't previously involved in the case)
 - **Lower flat fee** for attendance and preparation = £80 (paid when attending review hearings/hearings for cases the legal rep was already involved in)
 - **Additional fee for considering new report** = £50 (paid when a substantive new report is to be considered at a subsequent hearing)
 - **Travel time** = £10 per hour where solicitor works more than 30 miles by road from Hearings Centre
 - **Waiting time** of £8 per half hour where a case is delayed more than 15 minutes
- What are your views on the fee structure of the children's hearings legal representation grant scheme?
 - If not adequate, how should the fee structure be changed?
 - Do all solicitors claim travel and waiting time (where applicable)?
 - How strict are solicitors about claiming the different elements of the fees?

Quality of work of legal representatives

- What is your impression of the suitability in terms of qualifications, skills and experience of the legal reps you have appointed in the last 18 months?
- Has a panel/reporter ever sought your views on the suitability of legal reps for particular cases?
- Is there any specific training for legal reps working under the grant scheme in your area?
 - If they mention safeguarder training, do legal reps who are NOT safeguarders get any training for their role?

Qualifications/skills of legal representatives

- Legal representatives are currently required to be either a Safeguarder or a Curator ad Litem. What are your views on this requirement?
 - What, if anything are the benefits of restricting appointments in this way?

- What, if anything, do you see as problematic about the requirement?
- Do you think this should continue to be a requirement?
 - Why/why not?

Overall impressions of the scheme

- What is your overall impression of how well the legal representation scheme is working in practice?
 - Strengths and weaknesses?
- What, if anything, would you change about the scheme?
- Any other comments about the scheme?

Ending the interview

- Thanks for their time
- Reassure re. confidentiality/anonymity. Check there's nothing they would not want discussed in final report.
- Ask if alright to call back if need to check any details after the interview
- Check if they have any questions
- Give them contact details for research team in case have questions later on.

Panel Members

The interview aims to explore:

- Process of appointing legal representatives – extent/nature of their involvement in decisions, how and why decisions are made to appoint or not
- Positives/negatives of legal reps involvement in hearings
- Interaction between legal reps and the children they represent
- Views on skills legal reps need/have
- Views on limiting legal rep role to safeguarders/curators
- Overall impressions of the scheme – what, if anything, they would change

Introduction and consent

Background information

- Introduce self and ScotCen
- Recap funding and purpose of study:
 - funded by the Scottish Government to feed into the Children's Hearing Branch review of the legal representation grant scheme
 - Purpose – to explore the views of professionals on the operation and impact of the scheme. We'll also be talking to legal clerks, solicitors and reporters, as well as children and family members.

Interview format

- We want to find out your perspective on how the scheme is operating. While we have some specific questions about how the scheme is operating in your area, for most questions we're just interested in your views.
- Interview will cover various issues including:
 - Your involvement in deciding to appoint a legal representative
 - Views on Legal Reps involvement in hearings – positives and negatives
 - Interaction between legal reps and children they represent
 - General views on how the scheme is working – what, if anything, you would change
- Confidentiality
 - we would like to record this interview, to save us taking notes and to make sure we don't forget anything you tell us
 - no one other than a transcriber and researchers at ScotCen will have access to this recording or to the transcript of it
 - may use quotations in report, but won't report any names, or attribute comments to their local authority
- Appreciate their participation is voluntary – let us know if any questions they prefer not to answer
- Timing (around 35-45 minutes)
- Any questions?

TAPE RECORDER ON

- Confirm happy to proceed and happy for interview to be recorded

1. Involvement in appointing legal representatives

Aim here is to find out to what extent and how they have been involved in decisions about appointing legal reps in their area, what factors are taken into account in deciding to appoint, and their views on the appropriateness of cases where a legal rep has been appointed in their area.

- How many cases have you been involved in over last 18 months where a legal representative was appointed?
- And were you involved in the decision to appoint a legal representative in these cases?
 - IF NO – as far as you know, how was the decision made?
 - Who was involved?
 - At what stage was the decision made? Before the Business Meeting, at the Business meeting or later?
 - IF YES – probe for further details about the appointment process
 - Who is usually involved in discussions about whether to appoint?
 - At what stage is the decision made?
 - What factors do you take into account in deciding whether to appoint?
 - How easy or difficult is it to decide whether a child needs a legal rep?
 - Probe for examples where it was easy/difficult and why.
- What reasons have legal representatives been appointed in cases you have been involved in over the last 18 months?
 - Probe for whether appointed when:
 - a secure accommodation order was being considered
 - an existing secure placement was being reviewed
 - tagging was being considered
 - the case involved complex issues.
 - If yes – what made the case(s) complex?
- Have there ever been any cases in your area where in your view the criteria could have been met, but a legal representative was **not** appointed?
 - Probe for details.
 - Why was it not considered necessary to appoint a legal rep in these cases?
- What are your views on the appropriateness of the cases where a legal representative has been appointed in terms of the legal representation rules?

2. Continuity of legal representatives

- In your experience, have children/young people had the **same** legal representative at subsequent hearings?
 - What was the impact of this (for the child/for the hearing process)?

3. Legal representatives' involvement in hearings

Explore views of the impact of legal representatives attending hearings with a child – positives and negatives.

- What, if anything, do you think involving a legal representative for the child under the grant scheme brings to the hearing process?
- What, if any, problems have you experienced?
 - If not mentioned, probe for any impact of legal reps attending hearings on:
 - How long the hearing lasts?
 - Focus/nature of discussion?
 - Atmosphere of the hearing?
- What is your view on how the legal representatives you have encountered have conducted themselves in hearings?
 - Probe for views on:
 - Attendance/punctuality?
 - Quality of the work they do?
 - Understanding of the ethos of hearings?

4. Interaction between legal rep and child

Aim here is to explore quality of communication between children and legal representatives, as well as the impact of having a legal representative on children's participation and understanding in hearings.

- What is your impression of how effectively legal representatives communicate with the children/young people they represent?
 - Probe for examples of good/bad practice where mentioned.
- Probe for impression of level of contact between legal rep and child –
 - before hearing
 - during hearing
 - between initial and subsequent hearings
 - Is this adequate?
- What, if any, impact does having a legal rep involved have on a child's participation and understanding in the hearing?
 - If time - probe on direct (speaking themselves) vs. indirect (via lawyer).

5. Qualifications/skills of legal representatives

Want to know views on restricting legal representatives to Safeguarders or Curators, and views on skills legal representatives working in hearings need and have.

- Legal representatives are currently required to be either a Safeguarder or a Curator ad Litem. What are your views on this requirement?
 - What, if anything are the benefits of restricting appointments in this way?
 - What, if anything, do you see as problematic about the requirement?
 - Do you think this should continue to be a requirement?
 - Why/why not?

- What skills do you feel legal representatives representing children in hearings require?
 - Do the legal representatives you have seen appear to have these skills?

6. Overall impressions of the scheme

Summary of overall impressions – good and bad – and especially anything they would change.

- What is your overall impression of how well the legal representation scheme is working in practice?
 - Strengths and weaknesses?
- What, if anything, would you change about the scheme?
- Any other comments about the scheme?

Ending the interview

- Thanks for their time
- Reassure re. confidentiality/anonymity. Check there's nothing they would not want discussed in final report.
- Ask if alright to call back if need to check any details after the interview
- Check if they have any questions
- Give them contact details for research team in case have questions later on.

Children's reporters

The interview aims to explore:

- Process of appointing legal representatives – how and why decisions are made to appoint or not, number and kinds of cases appointed to (or not)
- Any difficulties in recruiting/retaining legal reps through child's case
- Positives/negatives of legal reps involvement in hearings
- Interaction between legal reps and the children they represent
- Views on skills legal reps need/have
- Views on limiting legal rep role to safeguarders/curators
- Overall impressions of the scheme – what, if anything, they would change

Introduction and consent

Background information

- Introduce self and ScotCen
- Recap funding and purpose of study:
 - funded by the Scottish Government to feed into the Children's Hearing Branch review of the legal representation grant scheme
 - Purpose – to explore the views of professionals on the operation and impact of the scheme. We'll also be talking to legal clerks, solicitors and panel members, as well as children and family members.

Interview format

- We want to find out your perspective on how the scheme is operating. While we have some specific questions about how the scheme is operating in your area, for most questions we're just interested in your views.
- Interview will cover various issues including:
 - Deciding to appoint a legal representative
 - Recruiting/retaining solicitors to act as legal reps in hearings
 - Views on Legal Reps involvement in hearings – positives and negatives
 - Interaction between legal reps and children they represent
 - General views on how the scheme is working – what, if anything, you would change
- Confidentiality
 - we would like to record this interview, to save us taking notes and to make sure we don't forget anything you tell us
 - no one other than a transcriber and researchers at ScotCen will have access to this recording or to the transcript of it
 - may use quotations in report, but won't report any names, or attribute comments to their local authority
- Appreciate their participation is voluntary – let us know if any questions they prefer not to answer
- Timing (around 35-45 minutes)
- Any questions?

TAPE RECORDER ON

- Confirm happy to proceed and happy for interview to be recorded

1. Appointing legal representatives - practicalities and challenges

Aim here is to find out about how legal representatives are appointed in their area – what kinds of cases are they appointed to (or not), who is involved in the decision to appoint, what factors are taken into account in deciding whether a legal representative is necessary, views on appropriateness of cases where a representative has been appointed in their area.

- How many cases have you been involved in over last 18 months where a legal representative was appointed?
- Talk me through what happens when a legal representative is appointed in your area.
 - Who is usually involved in discussions about whether to appoint?
 - Reporter, panel chair, other panel members, others?
 - At what stage is the decision made?
 - Before the Business Meeting, at the Business meeting or later?
 - What factors do you take into account in deciding whether to appoint?
 - How easy or difficult is it to decide whether a child needs a legal rep?
 - Probe for examples where it was easy/difficult and why.
- What reasons have legal representatives been appointed in cases you have been involved in over the last 18 months?
 - Probe for whether appointed when:
 - a secure accommodation order was being considered
 - an existing secure placement was being reviewed
 - tagging was being considered
 - the case involved complex issues.
 - If yes – what made the case(s) complex?
- Have there ever been any cases in your area where the criteria could have been met, but a legal representative was **not** appointed?
 - Probe for details.
 - Why was it not considered necessary to appoint a legal rep in these cases?
- What are your views on the appropriateness of the cases where a legal representative has been appointed in terms of the legal representation rules?

2. Potential difficulties in recruitment/continuity of legal representatives

Explore any barriers to securing legal representatives in their area, and ascertain whether once solicitors are recruited they stay involved throughout a child's time in the hearing system.

- Have there been occasions where a legal representative was appointed but was unable to represent the child/young person at the actual hearing?
 - If yes, why were they unable to represent them?
 - If not mentioned, probe on whether any of the following were barriers:

- Amount of notice given to legal rep
 - Distance to travel
 - Workload
 - Communication difficulties with child/young person
 - Fees
- At what point did they decline to represent them?
 - Before or after initial contact with the child/young person?
- Was a replacement legal representative found?
- In your experience, have children/young people had the **same** legal representative at subsequent hearings?
 - If not, why not?
 - What was the impact of this (for the child/for the hearing process)?

3. Legal representatives' involvement in hearings

Explore views of the impact of legal representatives attending hearings with a child – positives and negatives.

- What, if anything, do you think involving a legal representative for the child under the grant scheme brings to the hearing process?
- What, if any, problems have you experienced?
 - If not mentioned, probe for any impact of legal reps attending hearings on:
 - How long the hearing lasts?
 - Focus/nature of discussion?
 - Atmosphere of the hearing?
- What is your view on how the legal representatives you have encountered have conducted themselves in hearings?
 - Probe for views on:
 - Attendance/punctuality?
 - Quality of the work they do?
 - Understanding of the ethos of hearings?

4. Interaction between legal rep and child

Aim here is to explore quality of communication between children and legal representatives, as well as the impact of having a legal representative on children's participation and understanding in hearings.

- What is your impression of how effectively legal representatives communicate with the children/young people they represent?
 - Probe for examples of good/bad practice where mentioned.
- Probe for impression of level of contact between legal rep and child –
 - before hearing
 - during hearing
 - between initial and subsequent hearings
 - Is this adequate?
- What, if any, impact does having a legal rep involved have on a child's participation and understanding in the hearing?

- If time - probe on direct (speaking themselves) vs. indirect (via lawyer).

5. Qualifications/skills of legal representatives

Want to know views on restricting legal representatives to Safeguarders or Curators, and views on skills legal representatives working in hearings need and have.

- Legal representatives are currently required to be either a Safeguarder or a Curator ad Litem. What are your views on this requirement?
 - What, if anything are the benefits of restricting appointments in this way?
 - What, if anything, do you see as problematic about the requirement?
 - Do you think this should continue to be a requirement?
 - Why/why not?
- What skills do you feel legal representatives representing children in hearings require?
 - Do the legal representatives you have seen appear to have these skills?

6. Overall impressions of the scheme

Summary of overall impressions – good and bad – and especially anything they would change.

- What is your overall impression of how well the legal representation scheme is working in practice?
 - Strengths and weaknesses?
- What, if anything, would you change about the scheme?
- Any other comments about the scheme?

Ending the interview

- Thanks for their time
- Reassure re. confidentiality/anonymity. Check there's nothing they would not want discussed in final report.
- Ask if alright to call back if need to check any details after the interview
- Check if they have any questions
- Give them contact details for research team in case have questions later on.

Legal representatives

The interview aims to explore:

- Their professional background
- The background to their involvement in scheme – numbers and kinds of cases taken on
- Any barriers to taking on cases/continuity of involvement
- Views of the fee structure
- Positives/negatives of legal reps involvement in hearings
- Interaction between legal reps and the children they represent
- Views on skills legal reps need/training needs
- Views on limiting legal rep role to safeguarders/curators
- Overall impressions of the scheme – what, if anything, they would change

Introduction and consent

Background information

- Introduce self and ScotCen
- Recap funding and purpose of study:
 - funded by the Scottish Government to feed into the Children's Hearing Branch review of the legal representation grant scheme
 - Purpose – to explore the views of professionals on the operation and impact of the scheme. We'll also be talking to legal clerks, reporters, and panel members, as well as children and family members.

Interview format

- We want to find out your perspective on how the scheme is operating – while we have a few specific questions about how many cases you've been involved in and what fees you have been paid for these, for most questions we're just interested in your views.
- Interview will cover various issues including:
 - Your professional background
 - The background to your involvement in the scheme and the numbers and kinds of cases you have taken on
 - Any barriers to taking on cases
 - Views on the fee structure
 - Views on the impact of having legal reps attend hearings under this scheme
 - Contact between you and the children/young people you represent
 - Views on skills/training needs for legal reps working in hearings
 - General views on how the scheme is working
- Confidentiality
 - we would like to record this interview, to save us taking notes and to make sure we don't forget anything you tell us
 - no one other than a transcriber and researchers at ScotCen will have access to this recording or to the transcript of it

- may use quotations in report, but won't report any names, or attribute comments to their local authority
- Appreciate their participation is voluntary – let us know if any questions they prefer not to answer
- Timing (around 35-45 minutes)
- Any questions?

TAPE RECORDER ON

- Confirm happy to proceed and happy for interview to be recorded

1. Background to their involvement in the scheme and caseload

Establish basic details about professional background, length of involvement in scheme, numbers of cases taken on, types of cases, views on appropriateness of cases they've been allocated.

- Check/confirm whether they are a Safeguarder or a Curator ad Litem, or both
- How long have you been a Safeguarder and/or Curator ad Litem?
- What kind of legal practice do you work in?
 - What kinds of cases do you typically take on?
- When did you first get involved in representing children in hearings under the Legal Representation Grant scheme?
 - *(NB the scheme only started in 2002, so if mention a date before this please probe)*
- What motivated you to get involved in the legal representation grant scheme?
- How many children/young people have you ever acted as legal representative for in hearings?
 - And in the last 18 months?
 - How many separate hearings has this involved attending?
 - How much time, on average, do you spend preparing and attending a hearing under the legal representation grant scheme?
 - Maximum and minimum lengths of time they've spent preparing/attending?
 - Different for initial and review hearings?
- What reasons have you been given for being asked to represent children/young people at hearings?
 - Probe for whether ever appointed when:
 - a secure accommodation order was being considered
 - an existing secure placement was being reviewed
 - tagging was being considered
 - the case involved complex issues. If yes – what made the case(s) complex?
- Do you feel the cases you have been allocated are appropriate?
 - If no, probe for reasons.

2. Potential barriers to accepting requests for legal representation at hearings

Explore any barriers to taking on cases and whether able to stay involved throughout a child's case.

- Have there been occasions where you have been asked to represent a child or young person at a hearing but were unable to so?
 - If yes, probe for reasons.
 - If not mentioned, probe on whether any of the following were barriers:
 - Amount of notice given
 - Distance to travel to the hearing
 - Workload
 - Communication difficulties with child/young person
 - Fees
 - At what point did you decide not to represent them? Before or after initial contact with the child/young person?
- Where a child you represented has attended multiple hearings – including, e.g., reviews of secure accommodation – have you been involved in **all** their hearings?
 - If not, why not?
 - What is your view on this?

3. Views on the fee structure

Info for interviewers:

The fees legal representatives are paid at for representing children at hearings are as follows:

- **Higher flat fee** for attendance and preparation = £200 (paid for prep and attending new hearings, where legal rep wasn't previously involved in the case)
 - **Lower flat fee** for attendance and preparation = £80 (paid when attending review hearings/hearings for cases the legal rep was already involved in)
 - **Additional fee for considering new report** = £50 (paid when a substantive new report is to be considered at a subsequent hearing)
 - **Travel time** = £10 per hour where solicitor works more than 30 miles by road from Hearings Centre
 - **Waiting time** of £8 per half hour where a case is delayed more than 15 minutes
- How many cases have you been paid the higher flat fee for preparation and attendance (£200) in the last 18 months?
 - And how many times have you been paid the lower fee of £80?
 - What are your views on the fee structure?

4. Legal representatives' involvement in hearings

Establish views of own role within hearing and positives and negatives of involvement.

- What do you see as your primary role in hearings where you are acting as legal representative?
 - *Further probes if time and not already mentioned:*
 - How, if at all, does your role as legal rep for children in hearings differ from being a legal rep in other contexts?
 - What are the key similarities or differences between your role as legal representative and your role as Safeguarder/Curator?
- What, if anything, do you think involving a legal representative for the child under the grant scheme brings to the hearing process?
- What, if any, problems have you experienced?

5. Interaction between legal rep and child

Aim here is to explore quality of communication between children and legal representatives, as well as the impact of having a legal representative on children's participation and understanding in hearings.

- How much contact is there between you and the children/young people you represent in hearings
 - before hearing?
 - during hearing?
 - between initial and subsequent hearings?
 - Is this adequate?
- How easy or difficult do you find it to communicate with the children/young people you represent?
 - What, if anything, are the barriers here?
- What, if any, impact do you think having a legal rep involved has on a child's participation or understanding in the hearing?
 - if time - probe on direct (speaking themselves) vs. indirect (via lawyer)

6. Qualifications/skills of legal representatives

Want to know views on restricting legal representatives to Safeguarders or Curators, and views on skills and training needs.

- Legal representatives are currently required to be either a Safeguarder or a Curator ad Litem. What are your views on this requirement?
 - What, if anything are the benefits of restricting appointments in this way?
 - What, if anything, do you see as problematic about the requirement?
 - Do you think this should continue to be a requirement?
 - Why/why not?
- What particular skills do you feel legal representatives representing children in hearings require?
- Have you had any specific training to prepare you for this kind of work?
 - If so, what?
 - What, if any, training do you think might be required for solicitors representing children in hearings?

7. Overall impressions of the scheme

Summary of overall impressions – good and bad – and especially anything they would change.

- What is your overall impression of how well the legal representation scheme is working in practice?
 - Strengths and weaknesses?
- What, if anything, would you change about the scheme?
- Any other comments about the scheme?

Ending the interview

- Thanks for their time
- Reassure re. confidentiality/anonymity. Check there's nothing they would not want discussed in final report.
- Ask if alright to call back if need to check any details after the interview
- Check if they have any questions
- Give them contact details for research team in case have questions later on.

Young people interviews

About this topic guide

We expect that our approach to interviewing young people for this study will need to be very flexible, tailored to both their individual experiences of having a legal representative(s) and to differences in their ability/willingness to engage with different styles of interviewing (predominantly verbal vs. more activity-based, for example).

This topic guide is therefore intended to be used flexibly. It starts by summarising the issues we would like to find out about. It then suggests a variety of questions and/or activities we might use to explore these issues with young people. The precise combination and order of questions vs. activities will vary depending on the individual interview.

What we would like to find out

Key issue:

Does involving a legal representative improve the experience **or** the outcome of hearings for children/young people?

Subsidiary issues (to help us find this out):

1. The **'story'** of the young person's involvement with their legal representative(s) – and how this fits in with the story of their involvement in the hearing system
2. The young person's understanding of and views on **why the legal representative was appointed** to them
3. The **impact of having a legal representative** on the young person, particularly on their experience of hearings
4. The young person's views of their **relationship** with their legal representative
5. Their views on **successful and unsuccessful** aspects of the legal representation grant scheme
6. Anything they would **change** about the scheme

Some issues to bear in mind during the interview

- Some young people may have had **other solicitors**, not appointed under the scheme, attending hearings with them. As far as possible, we need to try and distinguish this from the legal representative appointed them by the panel.
- **Language** – young people are unlikely to have heard of 'the legal representation grant scheme', and you'll need to establish early on how they refer to their legal representative (e.g. 'my lawyer'). If you know or can establish what their legal rep was called, it may be easier to refer to them by name. In general we need to be careful of language (e.g. things like 'proof hearings', 'grounds of referral', etc.) – make sure you are pitching things at the right level for each young person and reflecting the language they are using to describe things.

- **Asking about feelings** – sometimes people find it hard to reflect on how they felt about something. It may be easier to ask them more factual questions – e.g. what they remember about a hearing – in the first instance. How they felt may well come out as part of this.

Introduction

- Introduce self and ScotCen
- Explain study:
 - we're doing it for the Scottish Government
 - they're looking into the scheme that allows young people attending hearings to have a lawyer with them, and want to know what people think about it
 - we're also talking to panel members, solicitors, legal representatives, children's reporters, as well as to other young people and to some parents.
- Explain interview format
 - some questions and some activities to help us discuss issues
 - we're interested in your views – no right or wrong answers
 - taking part is your decision - let us know if any questions they prefer not to answer
- Explain confidentiality and disclosure policy
 - would like to record - to save us taking notes and to make sure we don't forget anything you tell us
 - only person who types up the recording and research team will be able to listen to this
 - won't use any names or anything that would let people know who they are in report
 - won't normally pass on anything they tell us – only situation we might need to is if you tell us something that makes us worried that you or someone else is at risk of being hurt.
- Any questions?

TAPE RECORDER ON

- Confirm that we've explained to them
 - What the interview is for
 - That we would like to record it
 - That we won't use any names in reports, and
 - That we won't normally pass on anything they tell us unless we are worried that they or someone else is at risk of being hurt
- Ask them to confirm they're happy to proceed.

Main topic guide

Start by asking the young person to tell you about their involvement with the Children's Panels in general, then move on to their involvement with their legal representative.

You may find it helpful to actually draw a 'map' or 'timeline' of key events.

Key things you should try to find out about are listed below. This is not intended as an exhaustive list of questions to be followed prescriptively – just as a tool to help remind you about things to ask about. Second-level bullets indicate additional things to ask about as appropriate. You may find you want to use further activities to explore some of these issues in more detail (e.g. feelings about legal rep being present at the hearing).

- Their first Children’s Panel
 - When their first Children’s Panel was
 - Why they first had to go to one
 - What they remember about their first Panel/Hearing
 - Where was it?
 - Who was there?
 - What do they remember about what was said?
 - What did it feel like?
 - What happened at the end/after?
- How many Panels/Hearings they’ve been to since (and experiences of these – as above)
- The first time they heard they were getting a legal representative/solicitor¹⁶
 - How did they find out they had a legal representative?
 - Who told them?
 - When was this (just before the hearing? A week before? Or what?)?
 - What did they think about having one?
 - Why do they think they got a legal rep?
- Their first meeting with their legal rep
 - When did they first meet their legal rep?
 - Where was the first meeting?
 - What did they think of them when they first met them?
 - What did they talk about?
- Their first Panel/Hearing with a legal representative
 - Who else was there?
 - Probe if not mentioned – Safeguarder? Social Worker? Panel Members? Reporter? Anyone else (teachers? Youth workers?)
 - Where was it held?
 - Whether they talked to their legal rep before the hearing (and if so, what about)?
 - What their legal rep said/did in the hearing? (To them/the panel/others people in the hearing)
 - What else they remember about the hearing and the legal reps role?
 - Was it different or the same from other Hearings, without a legal rep? How?
 - (Probe: Whether they felt they got their views across? What the panel decided? How they felt?)
 - How they felt about having a legal rep in the hearing?

¹⁶ NB if seems they have had a family solicitor as well as one appointed by the panel, please try (as far as possible) to distinguish between this and solicitor appointed by the panel in discussion.

- What happened at the end of this Hearing?
 - How did they feel about the panel members decision/what happened next?
- Did their legal rep talk to them after the Hearing? Have they spoken to them since? Probe for details.
- Subsequent Panels/Hearings with and without legal reps
 - How many hearings been to since their first with legal rep?
 - Have they had a legal rep at every hearing since?
 - **If no:**
 - probe for reasons for hearings – e.g. secure reviews, other hearings when not in secure.
 - How they felt about not having a legal rep at these hearings
 - Were they able to get their views across in these hearings? Were they asked for their views?
 - What happened at the end of these hearings (what did the panel decide)? How did they feel about that?
 - Has it been the same legal rep?
 - If no, probe for what it was like having a new solicitor and how they felt about this
 - And how many legal reps has had
 - Probe again for what legal rep said/did at subsequent hearings, what difference it made, etc.
- Have they ever been to Sheriff Court
 - For proof hearings (where they disagreed with why they'd been sent to a hearing)/other reasons?
 - If so, do they remember what the reason was?
 - Did they have a legal rep?
 - Was it same legal rep they had in hearings?
 - If not, how did they feel about this?
 - Explore relationship between legal rep in Panels and legal rep in Sheriff Court – continuity, differences, similarities.
- Were there particular hearings/occasions where they found having a LR useful?
- Were there other times where they would have found having a LR (or someone else) to represent them useful? Why?

Other more general issues to explore (possibly using activities)

- What did they like about their legal rep?
- What didn't they like?
- What do they think legal representatives should be like?
- What should they do in hearings?
- What shouldn't they do?
- **Involvement of other kinds of 'representative'**
 - Have they ever brought someone else with them to represent them/help them in the hearing?
 - If so, who?
 - What did this person do/say before/during/after the hearing?
 - (How) did it help having them there?
 - Comparisons with having a legal rep
 - Did their representative do anything different from the legal rep? Did the legal rep do anything different? *Etc. – probe in detail as appropriate.*
 - Which did they prefer?
- **If they mention ever having had a safeguarder:**
 - Probe on:
 - what they thought they were there for
 - what the safeguarder did/said in the hearing
 - what the safeguarder did/said before/after the hearing
 - Find out what, if any, conversations they had with their safeguarder – what were these about? When/where did they take place?
 - Did the safeguarder help them get their views across in the hearing?
 - do they think safeguarders are different from LR's? If yes, how?

Emotion cards activities

You have a set of laminated cards showing different emotions. You can use these, for example, to explore with participants **how they felt at hearings (a) with and (b) without their legal rep.**

Remember to use these as stimulus to further discussion – e.g. if felt ‘nervous’ at hearing without legal rep but not at hearing with them, need to find out why (may not be down to legal rep!).

Remember also that some young people may have literacy issues – you may need to read the cards out (or not use them)

Representative role/qualities cards

You have another set of laminated cards which set out various things a legal representative might do and qualities they might have. You can use these, for example, to discuss **(a) what their legal representative was like and (b) what they think a legal representative should ideally be like.**

For example, you could get them to sort them into piles of characteristics their solicitor did and didn’t have, or you could get them to ‘rank’ them in order of characteristics it’s more and less important for a legal rep to have.

People in a hearing cards

You have a set of cut out figures, labeled with people who might attend a hearing. You can use these, for example:

- To help them **remember who was at hearings** with them
- To help them talk about **what their legal rep said and to who** in the hearing
- To discuss **who most helps them** in a hearing – which may be useful in terms of understanding how legal reps fit into the overall picture for young people
- To discuss **who has most power over what happens** in a hearing – which again, may help illuminate their perceptions of the legal reps role.

Ending the interview

- If hoping to interview their parent(s) mention this.
 - We won’t discuss their answers with their parents.
 - We just want to find out what their parents thought about the young person’s legal rep.
 - Report any objections/questions they have about this to the research team asap.
- Thank them for their time
- Remind them that we won’t pass recording on, and won’t use names in reports.
- Let them know we’ll be producing a short report for young people to let them know what we found out - check if they would like a copy
- Make sure they have a leaflet about the study, with research team contact details

- Any questions?

ANNEX B – ADVANCED LETTERS AND LEAFLET

Advanced letter to clerks

March 2008

Research on the Children’s Hearings Legal Representation Grant Scheme

Dear Sir/Madam,

As you will be aware from Shona May’s e-mail of 14th March, the Scottish Government has recently commissioned the Scottish Centre for Social Research (ScotCen) (www.natcen.ac.uk/scotland) to conduct research to feed into the Children’s Hearing Branch review of the legal representation grant scheme, which allows for children attending hearings to be appointed a publicly funded legal representative drawn from the local panel of Safeguarders and Curators ad litem. The first part of the study aims to explore the views of professionals, including Local Authority staff, Panel Members, Children’s Reporters and Legal Representatives, on the operation and impact of the scheme and on ways it might be improved. Findings from the study will be fed back to policy makers who are reviewing how best to provide representation for children attending hearings in the future.

As a manager of the appointment process we would like to invite you to take part in a short telephone interview (approx. 30-45 minutes) to find out your views on how the scheme is operating in your area. In particular we are interested in hearing what you think about:

- your involvement in the scheme, including how much time you spend on administering it
- the process of appointing legal representatives, including any challenges to getting them to take on/retain cases
- the fee structure
- the qualities/experience of legal representatives in your pool
- views on restricting the scheme to Safeguarders/Curators ad Litem and
- general views on how the scheme is working and how, if at all, it could be improved.

As well as how much time you spend administering the scheme, we would also like to know in how many cases a legal representative has been required for a child attending a hearing in your area in the last 18 months and how many legal representatives are available to you to choose from. You may like to check these points advance of the interview.

Lesley Birse, our Research Support Manager, will be contacting you by phone or e-mail in the next week or so to arrange a convenient time for us to interview you. If you have any further questions, Lesley will be happy to put you in touch with a member of the research team who will be able to discuss the study in more detail.

Your participation is, of course, voluntary and we appreciate that your time is precious. However, it is very important that we get a wide range of views from

people involved with the legal representation grant scheme so I do hope you will agree to take part. Our interviewer will treat everything you say in the strictest confidence in accordance with the Data Protection Act. We would like to record the interview, to save the interviewer taking notes and to ensure that we do not forget anything you tell us. No one other than a transcriber and the research team at ScotCen will have access to this recording or the transcript of it, and no names or anything which could identify you individually will be used in any reports.

If you have any queries or want to know more about the research please contact the a member of the research team at ScotCen - Rachel Ormston (r.ormston@scotcen.org.uk) or Louise Marryat (l.marryat@scotcen.org.uk) on 0131 228 2167.

Thank you for your time and we hope to speak to you soon.
Yours,

Rachel Ormston
Research Director

Advanced letter to panel members

April 2008

Research on the Children's Hearings Legal Representation Grant Scheme

Dear Sir/Madam,

As you may be aware, the Scottish Government has recently commissioned the Scottish Centre for Social Research (ScotCen) (www.natcen.ac.uk/scotland) to conduct research to feed into the Children's Hearing Branch review of the legal representation grant scheme, which allows for children attending hearings to be appointed a publicly funded legal representative drawn from the local panel of Safeguarders and Curators ad litem. The first part of the study aims to explore the views of professionals, including Local Authority staff, Panel Members, Children's Reporters and Legal Representatives, on the operation and impact of the scheme and on ways it might be improved. Findings from the study will be fed back to policy makers who are reviewing how best to provide representation for children attending hearings in the future.

We would like to invite you to take part in a short telephone interview (approx. 30-45 minutes) to find out your views on how the scheme is operating in your area. In particular we are interested in hearing what you think about:

- The process of deciding to appoint a legal representative and the kinds of cases they are appointed in
- Views on legal representatives involvement in hearings - the role they play, their conduct, any positives or negative of their involvement
- The interaction between legal reps and children they represent
- The skills legal reps representing children in hearings need, and
- Views on limiting the legal representative scheme to safeguarders/curators

We would also like to know one or two specific details about your experience of the scheme, which you may like to check in advance of the interview, including:

- how many children's cases you have been involved in where a legal representative was appointed in the last 18 months
- what reasons legal representatives have been appointed in these cases.

Lesley Birse, our Research Support Manager, will be contacting you by phone or e-mail in the next week or so to arrange a convenient time for us to interview you. If you have any further questions, Lesley will be happy to put you in touch with a member of the research team who will be able to discuss the study in more detail.

Your participation is, of course, voluntary and we appreciate that your time is precious. However, it is very important that we get a wide range of views from people involved with the legal representation grant scheme so I do hope you will agree to take part. Our interviewer will treat everything you say in the strictest confidence in accordance with the Data Protection Act. We would like to record the interview, to save the interviewer taking notes and to ensure that we do not forget

anything you tell us. No one other than a transcriber and the research team at ScotCen will have access to this recording or the transcript of it, and no names or anything which could identify you individually will be used in any reports.

If you have any queries or want to know more about the research please contact the a member of the research team at ScotCen - Rachel Ormston (r.ormston@scotcen.org.uk) or Louise Marryat (l.marryat@scotcen.org.uk) on 0131 228 2167.

Thank you for your time and we hope to speak to you soon.

Yours,

Rachel Ormston
Research Director

Advanced letter to Reporters

April 2008

Research on the Children's Hearings Legal Representation Grant Scheme

Dear Sir/Madam,

As you may be aware, the Scottish Government has recently commissioned the Scottish Centre for Social Research (ScotCen) (www.natcen.ac.uk/scotland) to conduct research to feed into the Children's Hearing Branch review of the legal representation grant scheme, which allows for children attending hearings to be appointed a publicly funded legal representative drawn from the local panel of Safeguarders and Curators ad litem. The first part of the study aims to explore the views of professionals, including Local Authority staff, Panel Members, Children's Reporters and Legal Representatives, on the operation and impact of the scheme and on ways it might be improved. Findings from the study will be fed back to policy makers who are reviewing how best to provide representation for children attending hearings in the future.

We would like to invite you to take part in a short telephone interview (approx. 30-45 minutes) to find out your views on how the scheme is operating in your area. In particular we are interested in hearing what you think about:

- The process of deciding to appoint a legal representative and the kinds of cases they are appointed in
- Any issues you have experienced around recruiting or retaining solicitors to act as legal reps in hearings
- Views on legal representatives involvement in hearings - the role they play, their conduct, any positives or negative of their involvement
- The interaction between legal reps and children they represent
- The skills legal reps representing children in hearings need, and
- Views on limiting the legal representative scheme to safeguarders/curators

We would also like to know one or two specific details about your experience of the scheme, which you may like to check in advance of the interview, including:

- how many cases you have been involved in where a legal representative was appointed in the last 18 months
- what reasons legal representatives have been appointed in these cases.

Lesley Birse, our Research Support Manager, will be contacting you by phone or e-mail in the next week or so to arrange a convenient time for us to interview you. If you have any further questions, Lesley will be happy to put you in touch with a member of the research team who will be able to discuss the study in more detail.

Your participation is, of course, voluntary and we appreciate that your time is precious. However, it is very important that we get a wide range of views from

people involved with the legal representation grant scheme so I do hope you will agree to take part. Our interviewer will treat everything you say in the strictest confidence in accordance with the Data Protection Act. We would like to record the interview, to save the interviewer taking notes and to ensure that we do not forget anything you tell us. No one other than a transcriber and the research team at ScotCen will have access to this recording or the transcript of it, and no names or anything which could identify you individually will be used in any reports.

If you have any queries or want to know more about the research please contact the a member of the research team at ScotCen - Rachel Ormston (r.ormston@scotcen.org.uk) or Louise Marryat (l.marryat@scotcen.org.uk) on 0131 228 2167.

Thank you for your time and we hope to speak to you soon.
Yours,

Rachel Ormston
Research Director

Advanced letter to Legal Representatives

June 2008

Dear Sir/Madam

Research on the Children's Hearings Legal Representation Grant Scheme

As you may be aware, the Scottish Government has recently commissioned the Scottish Centre for Social Research (ScotCen) (www.natcen.ac.uk/scotland) to conduct research to feed into the Children's Hearing Branch review of the legal representation grant scheme, which allows for children attending hearings to be appointed a publicly funded legal representative drawn from the local panel of Safeguarders and Curators ad litem. The first part of the study aims to explore the views of professionals, including Local Authority staff, Panel Members, Children's Reporters and Legal Representatives, on the operation and impact of the scheme and on ways it might be improved. Findings from the study will be fed back to policy makers who are reviewing how best to provide representation for children attending hearings in the future.

As a legal representative, we would like to invite you to take part in a short telephone interview (approx. 30-45 minutes) to find out your views on how the scheme is operating in your area. In particular we are interested in hearing what you think about:

- Any barriers to taking on or retaining children's hearing cases
- The fee structure of the legal representation grant scheme
- The impact of having legal reps attend hearings under this scheme – what role you play; positive and negative experiences of involvement
- Contact and communication with the children you have represented under the scheme
- Training needs, and
- Views on limiting the legal representative scheme to safeguarders/curators

We would also like to know a few specific details about your experience of the scheme, which you may like to check in advance of the interview, including:

- When you first got involved in representing children in hearings under this scheme
- How many children/young people you have acted as legal representative for in the last 18 months, and how many separate hearings this has involved attending
- What reasons you were appointed in these cases
- How many cases you have been paid (a) the higher (£200) and (b) the lower (£80) flat fee for in the last 18 months

Lesley Birse, our Research Support Manager, will be contacting you by phone or e-mail in the next week or so to arrange a convenient time for us to interview you. If you have any further questions, Lesley will be happy to put you in touch with a member of the research team who will be able to discuss the study in more detail.

Your participation is, of course, voluntary and we appreciate that your time is precious. However, it is very important that we get a wide range of views from people involved with the legal representation grant scheme so I do hope you will agree to take part. Our interviewer will treat everything you say in the strictest confidence in accordance with the Data Protection Act. We would like to record the interview, to save the interviewer taking notes and to ensure that we do not forget anything you tell us. No one other than a transcriber and the research team at ScotCen will have access to this recording or the transcript of it, and no names or anything which could identify you individually will be used in any reports.


If you have any queries or want to know more about the research please contact the a member of the research team at ScotCen - Rachel Ormston (r.ormston@scotcen.org.uk) or Louise Marryat (l.marryat@scotcen.org.uk) on 0131 228 2167.

Thank you for your time and we hope to speak to you soon.
Yours,

Rachel Ormston
Research Director

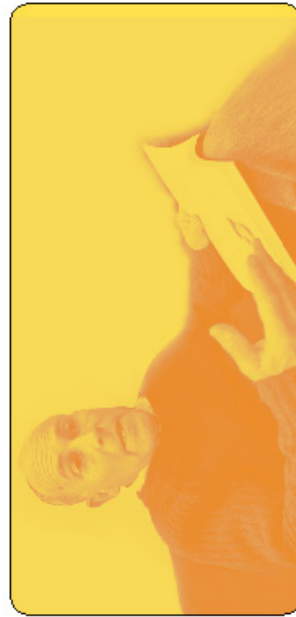
Leaflet for young people

This leaflet was printed on double-sided A4 and folded to make an A5 leaflet.



Scottish Centre for
Social Research

ScotCen (Scottish Centre for Social Research)
73 Lothian Road
Edinburgh
EH3 9AW
Tel: 0131 228 2167
www.scotcen.org.uk



Solicitors and children's panels



What is it about?

We would like to speak to young people about having solicitors at children's panel meetings. We are interested in what you remember about having a solicitor and what you thought about them.

Who is it for?

The research is being paid for by the Scottish Government. We will write a report of what we find out for them.

What is it for?

We would like to know whether having solicitors helps young people when they are at children's panels or not.

The findings will help the Scottish Government think about what support young people who go to children's panels need.

Why do you want to speak to me?

We would like to speak to you because you have had a solicitor represent you at a children's panel meeting.

Who is doing it?

Independent researchers from ScotCen are doing the interviews. ScotCen is not part of the Government or the Children's Panels. It is independent.

If you decide to take part, Chris, Sara, Rachel, Irene or Louise will come to speak to you.

What will I be asked to do?

Taking part would involve a short interview – up to 45

minutes. We will talk with you about your experiences in children's panels and about having a solicitor.

There are no right or wrong answers – we are just interested in what you remember and what you think.

If it is OK with you, we would like to tape record the interview. This is so we don't have to take notes and don't forget what you tell us.

Do I have to do it?

No, it's up to you. You do not have to answer any questions you are not happy with.

Will anyone see my answers?

Only the researchers at ScotCen and the person who types it up will listen to your interview. We will not use any names in our report.

We will not tell anyone else that you said something unless you tell us something that makes us worried you, or someone else, may be hurt.

Will I find out the results?

ScotCen will produce a leaflet telling young people what we have found out. If you would like to be sent a copy, please let us know.

I want to know more – who can I speak to?

Phone the ScotCen Office – 0131 228 2167 – and ask to speak to Rachel or Louise. Or you can e-mail them: r.ormston@scotcen.org.uk or l.marryat@scotcen.org.uk

Information letter for parents of young people recruited to the study

Study on young people's views of having solicitors at children's panel meetings

Dear

I am writing to you to let you know that your son or daughter may be asked to take part in a research project about young people's views on having solicitors at children's panel meetings. The research is being paid for by the Scottish Government. The findings will help them think about what support young people who go to children's panels need.

Taking part will involve a short interview (up to 45 minutes) with a researcher from the Scottish Centre for Social Research (ScotCen). ScotCen is an independent research organisation – it is not part of the Government or the Children's Panel. The interview will ask them what they remember about having a solicitor at a panel, and what they thought about this.

If your son or daughter agrees, the interview will be tape recorded. This is so that the researcher does not have to take notes and so that they remember everything. Only the researchers at ScotCen and the person who types it up will listen to the interview. No names will be used in any reports. ScotCen will not pass on anything that is said during an interview, unless a young person mentions something that makes them worried they may be hurt.

Your son or daughter does not have to take part if they do not want to. They do not have to answer any questions they are not happy with.

If you have any questions about the study, please phone the ScotCen Office – 0131 228 2167 – and ask to speak to me or Louise. You can also e-mail us: r.ormston@scotcen.org.uk or l.marryat@scotcen.org.uk

Yours faithfully,

Rachel Ormston
(Research Director)

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