The Summary Report on the Consultation Responses Strengthening for the Future The Reform of the Children's Hearings System

31 July – 24 October 2008

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FOREWORD

REFORM OF THE CHILDREN'S HEARINGS SYSTEM

STRENGTHENING FOR THE FUTURE

I announced my intention to reform the Children's Hearings System in January 2008 as I know the distinctive Children's Hearings System makes a huge difference to young people's lives, guiding them through difficult times, behaviour and circumstances. I published a consultation paper in July 2008 which proposed legislative, structural and practice changes which could steer the reform programme. The consultation closed on 24 October having received 259 responses and this is a report on the analysis of those responses.

The Scottish Government is committed to making the lives of our children and young people better. We have taken steps to improve children's services, and place children and families at the heart of national outcomes which local authorities are committed to through their Single Outcome Agreements.

I believe we all have a responsibility to ensure childhood experiences are as good as possible. Working together we can ensure that children have the opportunity to flourish and become successful, confident, contributing and responsible members of society.

This further investment in the Children's Hearings System reaffirms our commitment to the Kilbrandon principles that underpin the system. These are as relevant today as they were when Lord Kilbrandon set them out in his report of 1964. However, we must recognise that children and their families are facing significantly different circumstances, reflective of modern society, but that children's panels still have a vital role to play in ensuring they receive the support and guidance that will help improve their lives.

In taking forward these reforms, it is my expectation that we will revitalise the Hearings System and secure a stronger and more consistent national approach to the Children's Hearing System, one which will enable children's panels to respond to the changes in society which have taken place since Children's Panels were first established over thirty years ago.

These reforms will place ownership of Children's Hearings firmly within panels. Children's panels will have the support of a bespoke organisation set up to ensure they have the necessary skills to make the best decisions for children and to represent their interests in the children's services arena. I expect panels to receive the highest quality of support and training in order that they, in turn, can make the highest quality of decision making to improve outcomes for children.

Central to the reforms is ensuring that local people are supporting local children which will lead to improvements in the local community. I value the work of panel members very highly and have ensured that, in all that the reforms will accomplish, the central role of volunteer panel members will remain a vital part of the system.

I am grateful to everyone who responded to the consultation. Dialogue will continue as we move through the reform programme, through formal and informal contact with individuals, representative bodies and organisations. As indicated in the consultation paper, a Strategic Project Board has been established, with membership drawn from a wide range of representatives involved, and interested in, the Children's Hearings System. This Board is chaired by Adam Ingram, Minister for Children and Early Years who will oversee the implementation of the reforms. We will report on the work of this Board at regular intervals.

I am also very grateful to the Board of the Scottish Children's Reporter Administration for their support as we worked through these proposals.

We are on the brink of shaping a very exciting stage in the development of our unique Scottish system of supporting young people through difficult times. We will realise a stronger, more influential service which continues to make its vital contribution to improving outcomes for children.

Fiona Hyslop MSP

Cabinet Secretary for Education and Lifelong Learning

INTRODUCTION

This summary identifies some of the key themes emerging from the responses and provides an overview of levels of support for the proposals. It is a presentation of the views of respondents, sorted by question, summarised as accurately and faithfully as possible.

Interpretation of the summary report

This summary does not purport to make any judgments about where the balance of argument lies, or make any recommendations regarding legislative or practice changes. In addition, it should be noted that where a number of respondents have been quoted as backing up a particular point, the number quoted should be taken as indicative rather than precise. This is because, where substantive comments are provided, there will always be issues of interpretation, which may have an impact on the complete accuracy of the figures provided.

What was the consultation about?

In January 2008, the Minister for Children and Early Years announced the Scottish Government's intention to create a single body to improve services for vulnerable children.

Following discussions with key stakeholders to develop the Scottish Government's thinking on the broad thrust of the reforms, the consultation document *Strengthening For The Future – A Consultation On The Reform Of The Children's Hearings System,* was published on 31 July 2008.

As well as carrying forward some proposals from the draft Children's Services Bill, it detailed proposals to create a single national body to bring together the work of the Children's Reporter service, the delivery and administration of Children's Hearings, and the recruitment and training given to panel members. It also proposed to bring the Panels of Safeguarders within the ambit of the new body.

Who responded to the consultation?

259 completed responses were received. 52% of these responses came from individuals and 48% were from organisations.

61% of respondents stated that they had direct involvement in the Children's Hearings System as a panel member.

24 Children's Panels and 26 Children's Panel Advisory Committees responded to *Strengthening for the Future*.

OVERVIEW

Most respondents agreed that reform of the Children's Hearings System was necessary.

There was support for changes at a national level that would improve consistency and practice in areas such as training, recruitment and promotion. A condition often attached to this support was that the Hearings system should retain the use of volunteers with local knowledge of the needs of their communities, and that any national reforms must not be at the cost of local delivery.

Some respondents emphasised the importance of building upon existing good practice and not losing this as a result of reforms. Respondents were often wary of changes that appeared to go against the voluntary ethos of the Hearings system.

There was broad agreement to the procedural reforms proposed in part 2 of the consultation paper, such as withholding information provided by the child, streamlining the establishment of the grounds for referral, simplifying warrant provisions, and a statutory right of access for children to papers.

Many respondents had questions about what the proposed changes would mean in practice for panel members, CPACs and other key players.

Very little support was received for the establishment of a single national body to oversee all aspects of the Children's Hearings System, along with very little confidence that independence of decision makers would be protected were this option to be taken forward.

QUESTIONS 1 TO 8: STRUCTURAL CHANGE

The role of the Scottish Government

Question 1: What is your opinion on the proposals for Government's role in the future?

88% of respondents expressed their views on this issue. Key themes emerging from comments were:

- views that Scottish Government should have ultimate responsibility for the Children's Hearings System
- views that Scottish Government should not abdicate responsibility for children's welfare
- views that Scottish Government should have role to ensure clear leadership in the new body
- views that Scottish Government's future role will help reduce inconsistencies across local areas and ensure independence of new body
- views that Scottish Government should not be involved in operational decision-making, to prevent the system becoming politicised
- concerns that resources for recruitment of panel members will decrease if Scottish Government is no longer involved
- concerns that panel members will lose prestige, and influence, if not appointed by Scottish Ministers

The role of Local Government

Question 2: What is your opinion on the proposals for local government's role?

85.8% of respondents expressed their views on this issue. Key themes emerging from comments were:

- views that the changes will give local authorities more opportunity to implement Panel decisions, and calls for the national body to have a role in monitoring the implementation of decisions by local authorities
- views that local authorities will need clear direction for their advanced role in developing effective partnerships for vulnerable children
- views that the re-focussing of the local authority role will lead to greater confidence in the independence of the system
- concerns regarding the consistency, delivery, funding and monitoring of local authorities promotion of the Hearings system, along with some calls for the national body or Scottish Government to have the overall promotion role (combined with local delivery). Accompanying concerns that reducing local government's role (training, recruitment) will reduce their motivation to promote the Hearings system
- calls from panel members for the consistent and efficient payment of expenses for volunteers

The New Body – The Children's Hearings Agency

Question 3: We invite views on the nature, functions and title of the new body.

83% of respondents expressed their views on the nature and functions of the new body. Key themes emerging from comments were:

- views that the national body would help to address the current inconsistencies in the system and bring greater consistency to areas such as recruitment and training. This view was sometimes qualified by concerns that a "one size fits all" approach that neglected local needs would not be effective in Scotland's diverse areas
- many views that the independence of the new body's functions would be crucial to its credibility and success. Such views were sometimes accompanied by fears for the independence of Safeguarders within the new body and serious concerns that SCRA should remain as a separate body. (These concerns were addressed in greater detail in response to Question 4 – Firewalls)
- views that the national body must be (and be seen as) independent of Scottish Government influence in its day-to-day operation and decision-making, as well as the need for separation of functions and responsibilities within the new body itself
- many concerns that the national body was a move away from Kilbrandon principles
- many views that the benefits of a national body must not be at the expense of local decision-making and delivery

The title of the new body

Of the 115 respondents who indicated a yes or no response to the suggested title, 44 of those (38%) expressed agreement with the title, compared with 68 (59%) expressing disagreement.

- a large number of respondents expressed disagreement with the word 'agency', believing that the term suggested remoteness or had negative connotations

- 56 respondents suggested an alternative to "agency", with 26 respondents suggesting "service" and 10 suggesting "administration"

Independence of Functions and European Convention on Human Rights (ECHR) Compliance

Question 4: Do you have any thoughts on how the necessary separation ("firewalls") can be achieved in the structure and day-to-day business of the new body?

71.8% of the respondents expressed their views on this issue. Key themes emerging from comments were:

- views that SCRA and Safeguarders must remain separate from the new body
- many views that the proposed firewalls would not ensure separation or prevent conflicts of interest in practice
- concerns that the different elements of the new body must be seen by the community to be independent, in compliance with ECHR and with no perception of conflict of interest
- views that if the current 'tried and tested' Children's Hearings System conforms to ECHR, then it should be retained and improved
- suggestions that the firewalls are enshrined in legislation, and opposing views that there is no need for official firewalls which would increase bureaucracy and remoteness
- suggestions for distinct heads for each function with equal levels of authority, to be seen as service providers and not owners of functions, with heads reporting directly to a chief officer
- comments that firewalls must respect independence and working in partnership, with clear definitions of roles and job descriptions
- suggestions that firewalls be monitored and supported through training, administration and organisational processes
- views that the Scottish Government have the responsibility to work on the proposals and to produce a detailed model that could be considered more fully

The Chief Executive Officer (CEO)

Question 5: What are your views on the proposed role and functions of the Chief Executive Officer?

69.5% of the respondents expressed their views on this issue. Key themes emerging from comments were:

- views that 'Chief Executive Officer' was not an appropriate role or title (in particular given that the Principal Reporter and President would not be accountable to the CEO), and suggestions for alternative titles e.g. Chief Administrative Officer, Chief Operating Officer
- views that the extent of the CEO's responsibilities, accountability and independence must be clearly defined

- views that the CEO should have knowledge of the Children's Hearings System and that the post should be time limited
- concerns that the appointment of a CEO (and their support staff) would create another layer of bureaucracy and that the funds would be better spent elsewhere e.g. resources for children
- concerns that the appointment of a paid CEO was a move away from the spirit of the Children's Hearings System
- suggestions that the CEO should have ultimate accountability – and therefore make decisions affecting the whole organisation – and opposing views that the remit of the CEO should not stray beyond administrative functions
- views that the CEO's responsibilities should include facilitating dialogue between the different groups under the new body
- questions regarding the relationship between CEO, Principal Reporter and President, who would have final decision-making power for finance and resources, and suggestions that such roles and responsibilities must be set out in statute
- views that final decision-making power should rest with the Board

Principal Reporter and Reporters

Question 6: We invite comment

a) Separation of functions

73% commented on the proposal of separating out the tasks currently undertaken by the reporter, and 59.5% commented on the proposal to allow reporters to give procedural advice. Key themes emerging from comments were:

- views that the reporter's current dual role of reporting to the panel and giving legal advice is unfair to children, young people and families and is not ECHR compliant
- views that currently reporters interpret their role differently, with some being fairly interventionist and some being virtually silent during a hearing, and that there is a need for the reporter's role in the hearing to be clarified and consistent
- views that here is a clear need for a children's reporter to have, and be seen to have, no vested interest in any particular outcome at a hearing
- concerns that separate teams of reporters would add to costs and bureaucracy, complicate hearings, and break continuity of the relationship between the reporter and children/families, while doing nothing to improve outcomes for children
- particular concerns in rural areas that separate teams of reporters would not be feasible
- views that it is essential to have appropriate procedural advice to the Panel to ensure that children have a fair hearing, without making the proceedings unnecessarily legalistic – and suggestions that a 'clerk to the hearing' could provide this advisor role

- concerns about the increased risk of error or data-loss e.g. during hand-over of case from reporter to clerk
- concerns that changes to the reporter's role would lead to 'first and second class' reporters, reduce expertise, weaken the system through lack of knowledge and lead to more appeals
- reservations that if the Scottish Government believes the current arrangements comply with the requirements of ECHR, then why change them?

b) & c) Do you have any other suggestions about how the concerns about separation of functions might be addressed? Are there other functions which need to be re-considered or re-allocated?

39.4% of the respondents expressed their views on this issue. Key themes emerging from comments were:

- suggestions that a thorough in-depth study of ECHR provisions should be made before committing to any course of action
- views that reporters could be given clear guidance about the extent to which they should offer procedural advice in the course of a hearing
- suggestions that the panel chair/specific panel members could be trained to address legal advice (and opposing views that this would not be reasonable or practical)
- suggestions that the advice role could be performed by a 'Clerk to the Hearing'
- views that children and families should have access to impartial legal advice based within the new national body/from legal representatives with knowledge of the Children's Hearings System

President of the Children's Panel

Question 7: What are your views on these proposals?

121 respondents expressed their views on this issue.

Key themes emerging from comments were:

- views that the new post would lead to greater consistency in terms of recruitment, training, support and supervision of panel members
- concerns that the new post was a move away from the local, voluntary ethos of the Children's Hearings System
- concerns that the new post was unnecessary and would add bureaucracy/increase costs
- concerns that too much responsibility was being invested in one person

Safeguarders

Question 8: What are your views on these proposals?

174 respondents to *Strengthening For The Future* expressed a view on this proposal.

Key themes emerging from comments were:

- views that the independence of safeguarders must continue in order to maintain impartiality: for the child's best interests (in particular, so that their voices could be heard) and so that families would view safeguarders as 'apart' from the Children's Hearings System
- views that national training, monitoring and payment systems would help improve/maintain standards
- views that the recruitment/selection of safeguarders should be kept local
- views that the ability of panel members to call upon safeguarders with particular skills/experience was more important than the right of safeguarders to indicate preferred local areas
- support for a single panel of safeguarders as long as it is outside the new body (and therefore separate from children's reporters)
- concern that the proposal would mean another layer of bureaucracy and increased costs

QUESTIONS 9 TO 14: POLICY AND LEGISLATIVE CHANGES

New Statutory system on the legal representation of children

Question 9: We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people (in the circumstances specified above) who are involved in the Children's Hearings System.

178 respondents to Strengthening For The Future expressed a view on this proposal. 69 (39%) of those expressed support for the development of a code of practice.

Key themes emerging from comments were:

- desire to defer commenting until the publication of the Review of the Children's Legal Representation Grant Scheme: Research Report
- views that legal representatives must be specialists in child law
- views that legal representatives should be experts in the Children's Hearings System (and the differences between a panel hearing and court)
- views that any new scheme must be focussed on the best interests of the child
- suggestions for 'stand-by' or a pool of legal representative specialists
- concerns that any change to the current system must carefully balance the rights of the child vs. the rights of society
- suggestions for the provision of advocacy services to children whose liberty may not necessarily be at risk but who do require counselling and support

Withholding information provided by the child

Question 10: What are your views on the proposal?

Of the 223 respondents who indicated a yes or no response to this proposal, 137 (68%) of the respondents expressed clear support for the proposal, with a further 36 (18%) expressed qualified support, compared with 27 (13%) who clearly disagreed.

Key themes emerging from comments were:

- views that the proposal would help to protect children
- views that withholding information would help encourage the child to speak more freely and provide more information to the hearing
- views that the rights and safety of the child should be paramount
- concerns regarding how parents, carers etc would learn about (and defend themselves against) false claims
- concerns regarding how information that has been withheld (but that contributes to a hearing decision) is recorded

- views that the proposal would reduce the 'open' nature of the Children's Hearings System
- concerns that withholding information might increase the risk to children's safety - with parents coercing them after the hearing to reveal what was said
- concerns that 'keeping secrets' from their parents would be harmful to the child
- concerns that withholding information would not comply with the ECHR requirement for 'equality of arms'

Streamlining the establishment of grounds for referral

Question 11: What are your views on this proposal?

Of the 207 respondents who indicated a yes or no response to this proposal, 187 (89%) of the respondents expressed support for the proposal, and 15 (7%) expressed qualified support, compared with 8 (4%) who disagreed with the proposal.

Key themes emerging from comments were:

- views that the proposal would improve the efficiency of the system and be a better use of panel resources
- views that it would reduce distress for children and their families
- concerns that the new system be robust and efficient
- concerns that the best interests of the child – particularly their rights and safety - are not compromised
- questions regarding who would assess the competency of the child e.g. panel, Safeguarder.
- concerns that young children should be represented by a legal representative/Safeguarder

Procedural changes to the Children's Hearings System: Simplifying warrant provisions and the Principal Reporter releasing the child from detention

Question 12: Do you agree these are areas which should be addressed?

Simplifying warrant provisions: Of the 195 respondents who indicated a yes or no response to this proposal, 190 (94%) expressed support, compared to 4 (2%) who disagreed.

Key themes emerging from comments were:

- strong consensus that this was an opportunity to reduce bureaucracy and improve the effectiveness of the system
- views that the changes would save time and reduce emergency hearings
- views that the changes would enable the child's needs to be met sooner
- views that the current warrant system was necessarily complex and did not need fixing

Releasing the child from detention: Of the 198 respondents who indicated a yes or no response to this proposal, 169 (85%) expressed agreement and 13 (7%) expressed qualified support, compared to 6 (3%) who disagreed.

Key themes emerging from comments were:

- majority view that a fuller investigation was in the best interests of the child
- views that there should be an agreed timescale within which the children's reporter should conduct their investigation and make a decision about a hearing
- concerns about any potential delay to decision-making which causes uncertainty and disruption to the child's life
- concerns that provision would be needed to protect released children
- concerns that it would reduce the panel's role

Papers for Children

Question 13: Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

Of the 202 respondents who indicated a yes or no response to this question, 193 (96%) of the respondents expressed support for the proposal, compared with 9 (4%) who were not content.

Key themes emerging from comments were:

- strong consensus that children should have a statutory right of access to papers
- equally strong consensus that this right should be fettered according to the child's maturity and competence
- concerns that harmful information should be withheld in the best interests of the child
- views that the right of access should be age-restricted (especially limiting access to children 12 and over)
- views that children can only participate effectively in hearings if they have access to appropriate information
- views regarding who should have the role of helping the child understand/contextualise the information e.g. Safeguarder
- view regarding who would decide how the papers would be fettered e.g. reporter
- concerns that papers for children be presented in a child-accessible language
- suggestions for a temporary withholding of information in the best interests of the child

Other legislative implications

Question 14: Are there any other issues which you think might be addressed in the reform programme or proposed legislation?

147 respondents to Strengthening For The Future suggested issues to be addressed.

Key legislative suggestions were:

- remove ability of local authority to overrule panel decisions on secure accommodation
- power for panel to demand action from parents
- powers for panel members - legal rights for paid absence from work, the right to attend hearings at a national level
- reform to the Grounds for Referral e.g. specifically accommodating children and young people who experience domestic abuse

Key reform programme suggestions were:

- improvements to Children's Hearings training – for panel members and for social workers
- improvements to performance monitoring and accountability in all areas
- making better use of I.T. – in administrative support and at hearings, and a website with best practice and training resources
- improvements to support for, and representation of, panel members – expenses, resources, rota management, support following difficult hearings
- better gathering of views from children, young people and families

RR Donnelley B60492 05/09

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