



Law Society  
of Scotland

# The Children's Hearing System – Taking Stock of Reforms

Response to the call for written evidence by The Law  
Society of Scotland

13 March 2017



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Family Law Sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Education and Skills Committee's call for evidence *The Children's Hearing System – Taking Stock of Reforms*. The Sub-committee has not answered all of the questions post but has the following comments to put forward for consideration.

## General Comments

The Sub-committee is of the view that there would be good reason for including two additional grounds of referral to the Children's Hearing system. These suggested new grounds are as follows:-

- 1) That the child-
  - a) is or is likely to be subjected to female genital mutilation,
  - b) is or is likely to be a member of the same household as a person who has been subjected to female genital mutilation, and/or
  - c) has or is likely to have a close connection to a person who has arranged, facilitated or carried out female genital mutilation.
- 2) That the child has been trafficked into the United Kingdom and special measures are needed to support the child.

## **Have the reforms in the Children’s Hearings (Scotland) Act 2011 produced the desired outcomes?**

The Sub-committee are not in a position to comment.

## **Are current strands of policy work across children’s services sufficiently coordinated and complementary?**

The Sub-committee notes that there has been a great deal of policy work across children’s services. Consideration should be given as to how to bring this work together in order to facilitate its management.

## **Thinking back over the last 10 years, to what extent has the ability of children to participate in their Hearings changed? What factors have had the greatest influence on any changes?**

The greater emphasis on the participation of children in hearings is to be praised, but there are still barriers to participation which could be improved upon. The following are suggestions for such improvements:

- Greater use of attendance of the child by remote means, including permitting remote attendance for grounds hearings. This could be achieved by removing the requirement that the child first be excused under the quite stringent tests in section 73 of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”). Consideration could be given to defining “attendance” at hearings as being by remote means. At present, a child who is capable of understanding the explanation of the grounds of referral must attend that portion of a grounds hearing, even if that child would qualify for excusal under section 73. Standards for remote attendance would be required and are advisable.
- Procedures to make it easier for children to make an application for a non-disclosure request.
- Giving pre-hearing panels the power to consider non-disclosure requests.
- Requiring those submitting reports to the hearing to provide a simpler version for the child that is appropriate to his or her age and stage. This would make it easier for children to understand the information being provided to the hearing and the recommendations. The “child-friendly” versions could also be provided to children under the age of 12, which is the age at which reports are provided. The child will thereby be better able to understand the process and to form a view.

## **What is your view on the involvement of solicitors in the Children’s Hearing system?**

The involvement of solicitors in the Children's Hearing System is limited but essential to ensuring that the hearings are fair tribunals in accordance with rights under the European Convention on Human Rights and the United Nations Convention on the Rights of the Child. The presence of solicitors does not create an adversarial forum.

Under the Children (Scotland) 1995 Act it was considered necessary for a child for whom a movement restriction condition was in contemplation to be provided with legal representation in the same way as when secure accommodation authorisation was likely. Under the 2011 Act this is not the case. Any adult who is faced with this serious limitation of freedom of movement will have legal representation. It is a potential breach of human rights legislation that children are not and serious consideration to be given to including access to automatic children's legal aid for such children.

**What is your view on the interaction between Children's Hearings and the courts?  
Can improvements be made in how they work together?**

The Sub-committee is not in a position to respond to this question.



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