

getting it right
for every child

**Children and young people's experiences of advocacy support
and participation in the Children's Hearings System**

Big Words and Big Tables



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and participation in the Children's Hearings System**

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Chris Creegan and Gillian Henderson, Scottish Children's Reporter Administration
and Caroline King, Save the Children

Scottish Executive, Edinburgh 2006

Acknowledgements

This project would not have been possible without the children and young people who took part in it. Thanks are also extended to their parents and carers who welcomed the researchers into their homes for the interviews with their children, and the adults who were interviewed. And finally, to SCRA's staff in its Glasgow and Lochgilphead offices were very accommodating and supportive throughout the consent process, and those SCRA staff who kindly transcribed interviews.

The project was developed and managed by Gillian Henderson from the Scottish Children's Reporter Administration, Elizabeth Morrison and Deirdre Watson from Who Cares? Scotland, and Douglas Hamilton from Save the Children. The research was conducted by Chris Creegan, Paul Bradshaw and Lynsey Russell-Watts from the Scottish Children's Reporter Administration and Caroline King of Save the Children.

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ISBN: 0-7559-5042-9

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B46140 04/06

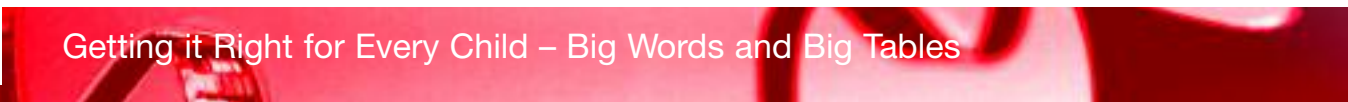
Published by the Scottish Executive, April, 2006

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Executive Summary

1. This research project was commissioned by the Scottish Executive to find out how advocacy for children in the Children's Hearings System compares with arrangements in other UK systems of child welfare and youth justice and those internationally, and what children and young people and the professionals who work with them think about advocacy arrangements in the Children's Hearings System and how these can be improved.

2. For the purpose of this research a broad definition of advocacy was developed by the research partners, that reflects the complexity of options that could help children and young people understand, communicate and participate effectively according to their age and understanding in Hearings processes and in important decisions which affect their lives:

'At its broadest, advocacy is the provision of information, explanations, support, simple encouragement to participate, or direct advocacy by way of representation. Children and young people involved in the Children's Hearings System experience a need for a mixture of these things at different stages in their involvement with the System and to differing degrees depending on their particular needs.'

3. A literature review revealed that there has been little research which directly sought the views of children and young people on their experiences of advocacy in the Children's Hearings System and none which involved young children. There was also little research evidence on children and young people's opinions on how advocacy arrangements in the Children's Hearings System could be improved.

4. Drawing on the findings from the literature review in terms of what is already known and to address the gaps in our knowledge of children's views and experiences of advocacy, the research project was designed to answer the following questions:

- **What are children and young people's experiences of advocacy in the Children's Hearings System?**
- **How do children and young people involved in the Children's Hearings System think that advocacy arrangements could be improved?**
- **How do adults' accounts of children and young people's experiences of advocacy and their views about how advocacy arrangements could be improved, differ from those of children and young people?**

5. Twenty-nine children and young people were interviewed for the research. Their ages ranged from 5 to 18 years at the time of the interviews. Nine were aged below 12 years old. Twenty-one were from an urban area and eight were from a rural area. Seventeen were boys and 12 were girls. Each child and young person who agreed to take part in the research, was asked to nominate an adult professional who they had worked with who would be asked to take part in a telephone interview. The adults nominated included social workers, key workers from residential care including children's units and secure units, teachers, counsellors, youth workers, children's rights workers and carers. Not all of those nominated were available for interview, and the final sample of those interviewed comprised of 13 adults, one of who was nominated by three young people. Those interviewed did however, reflect the diverse range of adults nominated by children and young people.

6. All but one of the children and young people interviewed for this research had an allocated social worker and consequently social workers were most commonly referred to by children and young people as providing advocacy support, involving a variety of roles and tasks.
7. Some relationships with social workers were characterised by children and young people as based on trust and respect and this facilitated the provision of advocacy support. For others, their experience of social work was less positive. Social workers were not seen as providing advocacy support and in some cases children and young people did not want them to be present at Hearings.
8. The presence of family members at Hearings was perceived by children and young people to be very important, though their advocacy support role was limited. It was rare for children and young people to describe the presence of parents as problematic, though adult respondents shed a different light on this in some cases. For some children and young people other relatives and carers played an important role at Hearings.
9. Advocacy support from independent children's advocates was not typically part of the experience of children and young people. However, where they had been involved the support was generally regarded by children and young people as very positive either over a long period of time or in relation to more limited intervention.
10. For children and young people in residential care, key workers became an important source of advocacy support at Hearings. Some children and young people discussed supportive relationships with a variety of other adult professionals including, befrienders, counsellors and community support workers. However, the extent to which they were involved in providing advocacy support in the Hearings System varied.
11. Children and young people's accounts suggest that there are a range of factors that may help or inhibit their participation in Hearings.
12. Factors that children and young people described as helpful to their participation in Hearings included:
 - **Providing papers which are accessible**
 - **Preparation and discussion before the Hearing**
 - **Knowing what to expect**
 - **Evidence of listening**
 - **Providing explanations**
 - **Creating a comfortable environment**
 - **Asking for views about possible decisions**



13. Adult behaviour that children and young people described as inhibiting to their participation in Hearings included:
 - Talking over children and young people
 - Using language and terminology that is not understood
 - Repeating statements or questions
 - Directing questions to others
 - Asking difficult or awkward questions
 - Talking about children and young people rather than to them
 - Being discouraged from speaking
14. Children and young people also described their own feelings and fears as inhibiting including:
 - Feeling shy or embarrassed
 - Feeling suspicious of adult motives
 - Feeling that adults did not listen to answers
 - Feeling that adults did not believe answers
 - Fear of an unknown process
 - Fear of outcomes
15. The qualities of an advocate identified by the children and young people interviewed for this research as important included:
 - Someone who listens
 - Someone who explains things
 - Somebody known
 - Somebody 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 the panel members at their Hearings

16. Children and young people interviewed for this research described a variety of experiences and articulated a range of needs and wishes in relation to advocacy support. Broadly speaking they fell into five categories, though children and young people's accounts, particularly those of older respondents suggested that they may have occupied more than one category over time.
- **There were those who did not understand the process sufficiently clearly to articulate their needs and wishes.**
 - **There were those who were disengaged from, and within, the Hearings process to the extent that they were unable or unwilling to identify whether they wanted advocacy support and who might best provide it.**
 - **There were those who were broadly content with the advocacy support they received.**
 - **There were those who identified adults who were already providing them with support outside the Hearings System as potential advocates.**
 - **There were those who identified the need for additional advocacy support, sometimes in addition to support they already received from parents or adult professionals.**
17. The research findings underline the crucial importance of listening to children and young people and keeping them informed in ways that are accessible to them. They confirm that those providing advocacy support being confidential, good listeners and able to communicate effectively with children and young people. They also suggest that continuity of support through the Hearings process is important.
18. Other qualities which children and young people described as important included loyalty, flexibility and sensitivity and an ability to challenge the panel members at their Hearings. Children and young people want advocacy support to be provided by people who are known to them. This may mean that it is best provided by people who have supported them and worked with them prior to their involvement in the Hearings System. Where this is not the case it means that a trusting relationship will need to be established prior to attending a Hearing to facilitate effective advocacy support.
19. An overview of the research findings suggests that while there is an *implicit* commitment to providing advocacy for children and young people in the Children's Hearings System, the extent to which this commitment is made *explicit* varies considerably. As a consequence while some children and young people have extensive experience of advocacy support and an appreciation of how it can aid their participation, the experiences of others are more limited. Children and young people may also have had varied experiences, both positive and negative, over time which have an impact on the extent to which children and young people are able to participate in their Hearings.



20. The evidence underlines the fact that children and young people have a range of expectations and aspirations in relation to advocacy support and who they believe may be best able to provide it. While the needs and wishes of some children and young people were, or could, be met by adult professionals whom they were already working with, others identified unmet needs which could in some cases be met by providing an independent advocate. The evidence also suggests that advocacy support is multi-faceted and for many children and young people it is unlikely to be derived from single source. Advocacy support as a process involving a combination of people who assume different roles and perform a range of tasks rather than a role which can be invested in one dedicated advocacy professional.
21. Children and young people's needs and wishes therefore change both at different stages of the Hearings process and over time. Age and levels of understanding are also relevant to their needs and wishes. The research also suggests that the extent to which children and young people are able to make choices in relation to their needs and wishes varies, for example in relation to age.
22. The research suggests that advocacy relationships are therefore not homogenous and involve a range of skills and tasks that need to be discussed and reviewed with children and young people, recognising that their expectations and needs will be contingent on a variety of factors. At different stages of the process and over time they may form with dedicated advocates, other adult professionals including social workers and parents/other relatives/carers. Where advocacy support is provided by those who are not dedicated advocacy professionals, for example social workers or parents, consideration needs to be given to how the roles or tasks performed by those complement or conflict with providing effective advocacy support. Both adults and children and young people may have relevant views about this which need to be taken into account.
23. The research findings suggest that children and young people may not necessarily perceive independence as a critical factor in determining whether an adult is able to provide advocacy support. On the other hand the fact that children and young people link trusting an advocate to the maintenance of privacy or confidentiality, and that they may want an advocate to be able to challenge the panel members at their Hearings, suggests that independence may be an important ingredient of advocacy support in practice. There is an important balance to be struck between advocacy support which is provided in the context of known and trusted relationships and advocacy support which involves an appropriate degree of independence.
24. The findings of this research enable us to expand and clarify our initial thinking in order to arrive at a new definition which builds on the original definition which was formulated at the outset of the research project. Advocacy and participation also need to be seen as two sides of the same coin. Thus, enabling participation also depends on other adults involved in the process, particularly panel members.
25. This research suggests that there is a need to strike a balance between a common approach to the provision of advocacy support in the Hearings System and a personalised approach which is responsive to the needs and wishes of individual children and young people at each stage of the Hearings process. Such an approach would recognise the need for a flexible but nevertheless consistent approach to advocacy provision with minimum standards.

26. The findings of this research suggest that the needs and wishes of children and young people could be met by devising a *common advocacy standard* that enables all agencies involved in working with children and young people in the Hearings System to have shared understanding of advocacy and its relationship to participation in Children’s Hearings. A common standard could provide a working definition of advocacy which draws directly on the experiences and perspectives of children and young people and explain how this can best be provided by agencies.
27. In order to ensure that those needs and wishes are met a *personal advocacy plan* could be drawn up with each child or young person and reviewed at each stage of the Hearings process. This could consist of a package of advocacy support that reflected the circumstances, needs and wishes of the child or young person taking into account what is known about support that is already available and identifiable gaps in provision. The personal advocacy plan could then be made available to, and understood by, all those involved in the process including panel members.
28. In determining how transparency and accountability are best provided in the context of a multi-agency approach, an important distinction to be made between ensuring that needs and wishes are met and the provision of advocacy support itself. These responsibilities do not necessarily need to be performed by the same agency or adult professional. There are various options relating to ensuring that needs and wishes are met. These include Children’s Reporters, social workers or other lead professionals and each has advantages.
29. Because the provision of effective advocacy support will involve a range of people and agencies, the provision of advice and information needs to be reviewed and considered including:
- **Advice to parents, other relatives and carers;**
 - **Information for professionals and panel members;**
 - **Accessible information for children and young people.**
30. This research also strongly suggests that changed behaviour on the part of adults involved in the Hearings System can make a significant contribution to enhanced advocacy and participation. In order to facilitate this training needs to be reviewed and considered including:
- **Training for professionals in delivering advocacy support;**
 - **Training for panel members in enabling children and young people’s participation.**
31. While advocacy support may best be provided by a combination of those already involved in supporting, and working with, children and young people, including independent advocates, there will be occasions where a gap in provision needs to be met by working with a particular professional or by providing an independent advocate. Where the latter is the case consideration needs to be given to how this would best be provided and funded (e.g. through arrangements between agencies working with the child or young person and existing national and local advocacy agencies and/or through a pool of advocates accessed *via* the Scottish Children’s Reporters Administration).



Chapter One: Introduction

Background

- 1.1 This research project was commissioned by the Scottish Executive to find out how advocacy for children in the Children's Hearings System compares with arrangements in other UK systems of child welfare and youth justice and those internationally, and what children and young people and the professionals who work with them think about advocacy arrangements in the Children's Hearings System and how these can be improved.
- 1.2 The research project was developed and managed by three organisations in Scotland:
 - **Scottish Children's Reporter Administration – is at the centre of the Children's Hearings System;**
 - **Save the Children – works to promote children's rights in the UK and around the world;**
 - **Who Cares? Scotland – provides independent, rights-based advocacy services to children and young people in public care.**

Each of these organisations is involved in various ways promoting and providing advocacy for children and young people in the Hearings System. The research was conducted by an independent social researcher employed by SCRA for the specific purpose of this study in collaboration with research officers at SCRA and Save the Children.

- 1.3 The research will inform the Scottish Executive's current review of the Children's Hearings System 'Getting it Right for Every Child' which, amongst other provisions, proposes to improve the protection of children's rights including the extent to which children and young people can express their views in decisions made about them.

Structure of this report

- 1.4 This report introduces the legal background to children's and young people's rights to participate in decisions made about them in the Children's Hearings System, explains what is meant by advocacy, and discusses what is already known about how much children and young people can participate in the Children's Hearings System and other systems of child welfare and youth justice. The methods section describes how children and young people and professionals working with them were selected to take part in the research, what they were asked and how interviews were carried out, and how information obtained from these interviews was analysed.
- 1.5 The main part of the report discusses the findings from the research in relation to three key sections:
 - **Who provides advocacy support in the Children's Hearings System?**
 - **What are children and young people's experiences of participating in Children's Hearings?**
 - **What do children and young people want from advocacy support?**

This enables us to compare and contrast children and young people's experiences and aspirations from a range of perspectives.

1.6 The final section draws together the evidence from the literature review of other research on children and young people’s participation in child welfare and youth justice systems, and the findings from this research to draw conclusions and set out policy and practice implications for the Scottish Executive to consider as part of its review of the Children’s Hearings System.

Legal background

1.7 The principle that children and young people are holders of human rights including their right to participate in decisions which affect them in all aspects of their lives is recognised worldwide (United Nations Convention on the Rights of the Child, ratified by the UK Government in 1991). In Scotland this is supported through provisions in the Children (Scotland) Act 1995, which recognises the right of children and young people to be consulted about decisions in their lives and for those views to be taken into account in decision-making. The Act embodies a set of key fundamental principles which apply generally to the operation of the Children’s Hearings System, including:

- that the child’s welfare should be paramount in all decisions;
- that children should have the opportunity to express views and have these views taken into account in decisions which affect them.

1.8 The first, known as the paramountcy principle, is considered by many to be dominant. In simpler terms this principle means that all decisions made should be in the ‘best interests’ of the child. The second, requiring the interactive participation of children in Hearings, pre-dated the 1995 Act and is recognised as a ‘foundation stone’ of the Children’s Hearings System. However, the extent to which this participation is realised in day-to-day operations has come under scrutiny in the context of the Scottish Executive’s current review of the Children’s Hearings System ‘Getting it Right for Every Child’.

What is advocacy?

1.9 For the purpose of this research a broad definition of advocacy was developed by the research partners at the outset of the research project. This definition reflected the complexity of options that could help children and young people understand, communicate and participate effectively according to their age and understanding in Hearings processes and in important decisions which affect their lives.

1.10 The definition of advocacy developed was:

‘At its broadest, advocacy is the provision of information, explanations, support, simple encouragement to participate, or direct advocacy by way of representation. Children and young people involved in the Children’s Hearings System experience a need for a mixture of these things at different stages in their involvement with the System and to differing degrees depending on their particular needs.’



- 1.11 The relationship between advocacy and participation is crucial. It is apparent in terms of Article 12 of the UNCRC that, if children and young people are to be able to participate in a meaningful way, they require information, support, and encouragement sometimes to be their own advocate and at other times to accept appropriate representation. The important thing is that the children and young people's needs in this crucial area are themselves seen as relevant and a right which others have a duty to fulfil. Where this is the case their need for advocacy will be prioritised, assessed and, wherever possible, explicitly matched to resources.
- 1.12 There are a number of important aspects associated with the realisation of effective participation for children and young people, though these are not mutually exclusive. To facilitate their involvement, some children and young people need information to enhance their understanding of their situation. Others identify someone to help them simply by being 'around' who can provide support and explanations, whilst others need a trained advocate or a representative. For example, Who Cares? Scotland very often helps children and young people to prepare written material for Hearings or simply helps them to work out what they wish to say and helps them to say it. At other times, and maybe in conjunction with other inputs, a solicitor will be the best person to assist them.
- 1.13 Advocacy in its many guises can serve as a means to achieve children and young people's participation as required by Scots and UK law, UNCRC and European case law and can help to ensure their experiences of the Children's Hearings System are both productive and positive.

What is already known?

- 1.14 A literature review was carried out as part of this project to find out:
- **What other research has said on children and young people's ability to participate in the Children's Hearings System.**
 - **How other systems of youth justice and child welfare in the UK and in other countries ensure children and young people's participation in decision making.**

The conclusions from this literature review are given below, and the full report is attached at Annex 1.

The Participation of Children and Young People in Welfare, Justice and Family Legal Proceedings: A Comparative Review – Conclusions

- 1.15 The principle of participation is a key feature of the Children's Hearings System, entrenched in the both the philosophy and legislation which govern the operation of the System. However, this review of research on the participation of children and young people in the Children's Hearings System, focusing on projects which sought the views of children and young people, has shown that this principle is difficult to put into practice. It was found that there is a complex situation where children often feel left out of discussion and are confronted with a range of barriers which makes it very difficult for them to participate and effectively express their views. Although a number of provisions do exist to help overcome these barriers and thus facilitate the participation of children and young people, there is a distinct gap in the research evidence of models of advocacy which children and young people themselves would find useful in supporting their participation in the Hearings System.

1.16 Despite the limitations reported on children's participation in the Children's Hearings System, the research evidence suggests that the mechanisms that exist and the extent to which they enable children and young people to participate in the Scottish Hearings System are at least as extensive if not more so than in other UK proceedings and those of other countries. However, this review has shown that there are common barriers preventing the participation of children and young people in welfare, justice and family decision-making in different types of proceedings and across international jurisdictions.

1.17 The similarities in terms of barriers have highlighted common issues to be addressed to facilitate participation. These are:

- **Children want to be listened to.**
- **Children must be given the opportunity to attend the proceedings concerning them.**
- **Confidentiality is essential to ensure that children will fully express their views.**
- **Children require to be kept informed. They have a right and a desire to be provided with information in a format suitable for them which explains processes, options, decisions and reasons for decisions.**

Where an advocate is seen as necessary, they must be:

- **Confidential.**
- **Knowledgeable about the system.**
- **Able to communicate effectively with children.**
- **Good listener.**
- **Be provided on a continuous basis to support a child throughout his/her case.**

Research aims

1.18 It was found from the literature review that there has been little research which directly sought the views of children and young people on their experiences of advocacy in the Children's Hearings System (apart from the work of Hallett and Murray, 1999), and none which involved young children. There was also little research evidence on children and young people's opinions on how advocacy arrangements in the Children's Hearings System could be improved. Drawing on the findings from the literature review in terms of what is already known and to address the gaps in our knowledge of children's views and experiences of advocacy, the research project was designed to answer the following questions:

- **What are children and young people's experiences of advocacy in the Children's Hearings System?**
- **How do children and young people involved in the Children's Hearings System think that advocacy arrangements could be improved?**
- **How do adults accounts of children and young people's experiences of advocacy and their views about how advocacy arrangements could be improved differ from those of children and young people?**



Chapter Two: Research Methods

The research sample

- 2.1 **Children and young people** – Qualitative research seeks to provide explanations about experiences, attitudes and behaviours rather than quantify their extent in the population being researched. The research sample was therefore designed to elicit views from a range of children and young people who had recently attended Children’s Hearings. The design of the sample aimed to reflect the diversity of children and young people attending Children’s Hearings in terms of gender, age, residence type (e.g. at home with parents or residential accommodation) and whether they lived in an urban or rural area. Glasgow was the urban area used in this research and Argyll the rural area.
- 2.2 Children and young people were selected by SCRA from its Referrals Administration Database (RAD) as those who were attending Hearings in either Glasgow or Argyll in the periods, in 2005, selected for recruitment. All children 5 years old or over scheduled to attend Hearings in these periods were selected. These children and young people and their parents/carers, were approached prior to their Hearings in SCRA’s Glasgow and Argyll Hearings Centres and asked if they would take part in the project as described in the ‘Consent/Ethics’ section below.
- 2.3 From this recruitment process, 38 children and young people consented to take part in the project. Some children and young people who initially consented to take part later changed their minds or were not available for interview. The final sample (see Table 1) comprised of 29 children and young people who were interviewed. In summary, the children and young people in the sample:
- **Ages ranged from 5 to 18 years at the time of the interviews**
 - **Nine were aged below 12 years old**
 - **Twenty-one were from an urban area and eight were from a rural area**
 - **Seventeen were boys and 12 were girls**
- 2.4 Though qualitative research studies vary in terms of sample size, the sample size used for this research is consistent with other qualitative studies undertaken to explore the experiences of children and young people. For example, a study of sexual exploitation amongst looked after and accommodated young people conducted at the University of Glasgow involved a sample of 28 young people (see Dillane *et al*, 2005) and a study of homelessness amongst young lesbian, gay and bisexual people conducted by the National Centre for Social Research which involved a sample of 33 (see O’Connor and Molloy, 2001). However, it is important to reiterate that while such qualitative samples aim to reflect the diverse characteristics of a given research population they are not designed to be statistically representative of that population. This means that while it is probable that the findings discussed in this report would be replicated in another similar sized sample, we have refrained from making statements about incidence or prevalence within the population as a whole as this would not be appropriate.

Table 1: Interviews with children and young people

Age	Urban area		Rural area		Total
	Female	Male	Female	Male	
5	1	1			2
6		1			1
7					
8					
9		1			1
10		1			1
11		1		2	3
12		1			1
13		1			1
14	5	3	1		9
15	2		3	1	6
16		2		1	3
17					
18		1			1
Total	8	13	4	4	29

2.5 **Adults** – Each child and young person who agreed to take part in the research, was asked to nominate an adult professional who they had worked with who would be asked to take part in a telephone interview. The adults nominated included social workers, key workers from residential care including children’s units and secure units, teachers, counsellors, youth workers, children’s rights workers and carers. Not all of those nominated were available for interview, and the final sample of those interviewed comprised of 13 adults, one of who was nominated by three young people. Those interviewed did however reflect the diverse range of adults nominated by children and young people.

Consent/Ethics

2.6 **Consent** – Informed consent was obtained by direct approach to children and young people (regardless of age) and their parent/relevant persons or carers in the Hearings Centres immediately prior to their Hearings. The research was discussed with the children and young people and those accompanying them, and they were provided with leaflets on the project with contact details of the researchers and how information about them would be used, and consent forms which they were asked to sign if they were willing to take part (Annex 2). During this stage the children and young people were also asked to nominate an adult professional who would be interviewed about their case but who would not be provided with any information that the child or young person had disclosed.



- 2.7 All information reported on children and young people and the adults who took part in the project was anonymised. During their interviews, the children and young people were asked to give a pseudonym for use when reporting their views.
- 2.8 **Disclosure of harm** – A Memorandum of Understanding was agreed by SCRA, Save the Children and Who Cares? Scotland which included a protocol to be followed in the event of actual or risk of harm disclosed by any child or young persons in the study. All those directly involved in the project had Disclosure Scotland clearance.
- 2.9 **Rewards** – Each child and young person interviewed was rewarded with a £10 gift voucher of their choice from either HMV, Argos, Woolworth's or Toys 'R' Us. Although children and young people were advised that this reward would be available during the consent process, the choice of reward was not discussed in detail until after the interview had been completed.
- 2.10 All the children and young people and adult professionals who took part, will be provided with a summary report of the research.

Data collection

- 2.11 The data was collected through the use of qualitative in-depth face to face interviews with the children and young people. Qualitative research was particularly appropriate for this study given the exploratory nature of the research. The interviews involved interactive probing and questioning methods which enabled flexibility in the structure and content of interviews. This facilitated exploration of individual circumstances and experiences in ways that were responsive to the accounts of individual children and young people. The interviews varied in length but were typically around 30-45 minutes. Sometimes interviews were longer because the child or young person's concentration levels varied and it took time to re-engage them. A longer interview did not necessarily guarantee better quality data and it was evident that some younger children became tired after a while which meant that the interview had to stop.
- 2.12 The interviews with children and young people were conducted using a topic guide which was developed by the research partner organisations in collaboration with the research commissioners and formed part of the research interview schedule (attached as Appendix 3). This described the key themes to be covered in each interview, and sub topics within each theme to be explored. All the interviews were tape recorded with the child or young person's consent and transcribed verbatim.
- 2.13 In common with other research conducted with children and young people a series of activities and props were developed to aid the conduct of the interviews. These were developed by the research team and tested with young people from Who Cares? Scotland. They included:
- **Vignettes – taped scenarios to outline typical Hearings;**
 - **World's worst/best Hearing – asking the child or young person to describe these on the basis of their experiences and perspectives;**
 - **Hot air balloon – to enable the child or young person to reflect on who was involved in their Hearings and how they took part;**

- **People mind map** – to identify key people providing support in the child or young person's life;
- **Emotion cards** – to assist the child or young person to focus on how they felt about Hearings and why;
- **The perfect advocate** – using cards labelled with characteristics to enable the child or young person to describe the qualities most important to them.

2.14 The extent to which these activities and props were used, and to which children and young people engaged with them varied between interviews. For example, some younger children preferred to draw things which were then used by the interviewer to explore and probe their experiences. Some older young people however preferred simply to talk, though emotion cards and perfect advocate characteristic cards enabled the interviewer to probe in more detail. In some cases using both the topic guide and the activities/props proved challenging because the child or young person was reluctant to talk. In a small number of cases literacy levels were a factor. For some, especially younger children, there were problems of recall even though a Hearing may have taken place with the last two to three weeks.

2.15 Children and young people were able to choose where the interview was conducted. In most cases, with the obvious exception of those in residential care at the time of the interview, children and young people chose to be interviewed at home. This often provided a further challenge for the interviewer in terms of privacy, since there were invariably other people, including parents, carers and siblings in the house at the time of the interview. Whilst some adults were happy to absent themselves from the process, others made it clear that they wished to remain in the room. In such circumstances it was sometimes a struggle to prevent them from interjecting in the discussion. For example when arriving at the home of one young man it was evident that his mother was drunk. She remained in the room and interrupted the interview until he asked her to go to another room because he could not concentrate. On the other hand, some children and young people chose to have someone else present. For example, one young woman wanted her boyfriend to sit alongside her though he took no part in the discussion, whilst another wanted her brother to remain in the room.

2.16 Other interviews were conducted within residential units, either children's units or secure units. While the setting was obviously different it was still necessary to negotiate with the child or young person and others present at the outset in order to ensure the maximum level of privacy that they were comfortable with.

2.17 A further difficulty was that children and young people and or their parents sometimes forgot that an appointment had been made and there was no-one at the home when the researcher arrived. This meant that a second appointment had to be made which usually proved successful, though in one case a young man failed to make the appointment on three occasions. In another instance, the researcher arrived at a children's unit at a time agreed with a young woman, but she decided she no longer wished to participate at that point.



2.18 The interviews with adult professionals were mainly conducted over the telephone. They were typically around 30 minutes in length. In some cases they were tape recorded and transcribed and in other cases notes were taken and a summary note produced for analysis.

Data analysis

2.19 The data collected from interviews was analysed using the Framework method of qualitative data analysis developed by the National Centre for Social Research (Ritchie and Lewis, 2003). Framework enables a systematic approach to the analysis of qualitative data through the three key stages of the analytic hierarchy, data management, descriptive accounts and explanatory accounts.

2.20 In this study we used Framework to analyse the data from the children and young people's interviews. The first stage involved familiarisation with the data and devising a thematic framework. Transcripts then were scrutinised in relation to the key topics in the thematic framework. The next stage involved charting the data in relation to those topics which broadly corresponded to the research questions. A series of thematic charts were drawn up for each interview and the data summarised under each topic. Finally, key emerging themes and patterns were identified. The charts allowed for detailed exploration of the data, exploring the range of views and experiences, comparing and contrasting the experiences of individual children and young people and seeking explanations for similarities and differences within the data.

Chapter Three: Who Provides Advocacy Support in the Children’s Hearings System?

- 3.1 In this section of the report we present the research findings concerning children and young people’s experiences of advocacy support provided by a range of adults including social workers, parents, relatives and carers, independent advocates and other adult professionals. It is important to recognise that children and young people did not generally make a distinction between advocacy support and other support. Nor did they always make a clear distinction between support provided in relation to the Hearings System and other ongoing support. Nevertheless, different forms of advocacy support emerge in children and young people’s accounts from the provision of information and explanation at different stages of the process, through to indirect and direct representation at Hearings.
- 3.2 Those most commonly identified by children and young people as providing support were social workers. This was perhaps inevitable as all but one of the children and young people interviewed had an allocated social worker at the time of the research interview. However, the extent to which support provided by social workers could be described as advocacy support varied. Parents were also identified as supportive and important though the extent to which they fulfilled advocacy roles and performed advocacy tasks was generally more limited than that of social workers. At the other end of the spectrum, legal representatives and safeguarders were far less widely referred to.

Social workers

- 3.3 Children and young people expressed a range of divergent views about social workers and the support they provided, both generally and in relation to the Hearings process. It was also common for children and young people to have had more than one social worker during their time in the Hearing process, and for them to express different views about particular social workers. In some cases this led to apparent ambivalence and at times contradictory accounts about the social worker role.
- 3.4 Advocacy support provided by social workers involved a range of roles and tasks. First, they were involved in providing information and explanations at various stages of the process. For example, Oli, aged 15, described how her social worker had helped explain things about the Hearing process to her, which was important if she didn’t understand the situation.
- 3.5 Secondly, they were involved in encouraging children and young people to participate, helping them to overcome their fears and to prepare for Hearings. For example, Zoe’s (aged 14) social worker had played a key role in encouraging her to go to her second Hearing after she had twice failed to attend the Sheriff Court. She had done this by spending time with her before and after the Hearing which helped to put Zoe at ease.
- 3.6 Thirdly, social workers were involved in providing indirect representation at Hearings in various ways which children and young people described as helpful, such as being a supportive presence. For example, Brian aged 14, described his current social worker as standing beside him, whilst John, aged 15, felt that his social worker was on his side. Speedy, aged 11, felt that his social worker was one of the people he needed to be present to prevent him from feeling scared.



3.7 Though younger children were less explicit in their descriptions of the support offered, it was evident that some also saw their social worker's presence at Hearings as supportive. For example, Christopher, aged 9, identified his social worker as amongst those present at his Hearings to support him, whilst Kate, aged 5, said that she wanted the social worker to be at the Hearings because she had been kind to her and her mum.

3.8 Fourthly, social workers were involved in providing direct representation in some cases, speaking for children and young people in Hearings. For example, Brian, aged 14 explained that he let his social worker answer questions from panel members because he sometimes became 'shy and embarrassed' in Hearings. Similarly, Larson, aged 16, said that though he generally spoke for himself, his social worker sometimes spoke for him at Hearings to help him get his point across in addition to providing more general support:

'Well my social worker he like, helps [me] out with different things, getting jobs, talking for [me] cos sometimes I've been to a panel and I've said umpteen things and they just don't listen to you, so my social puts it another way and they understand it that way.' **Larson, aged 16**

3.9 As can be seen from the examples given, these tasks and roles sometimes overlapped and children and young people might have experience of one or a number of them from the same or different social worker(s). In particular, they may have experience of both indirect and direct representation, either over time or within the same Hearing.

3.10 Where children and young people identified social workers as having provided various forms of advocacy support during the Hearings process, this had been usually been facilitated by a relationship characterised by trust and respect. In the case of Christopher, aged 9, he felt he could trust the social worker who supported him at his Hearing, unlike a previous social worker whom he didn't like.

3.11 Social workers who were able to provide advocacy support were perceived as listening to children and young people and good at talking to them. For example, Brian, aged 14, who had experience of more than one social worker, described the one who supported him as someone who listened and didn't 'say bad things' about him. Social workers with whom children and young people had developed such relationships and who therefore carried out these tasks were often the main source of advocacy support beyond that provided by parents, other relatives or carers.

3.12 The case of Jade, aged 14, provides an example a supportive type of relationship with a social worker, who as a result was able to play a central role in providing advocacy support in the Hearings system. Jade likened her relationship with her social worker to that of a friend, who listened to her:

'It's just I don't see [her] as a social worker. I see [her] as a friend because of the way she listens and that ... I can talk to [her] and feel that she listens, but when it was the other ones, I didn't feel as though they listened to me.' **Jade aged 14**

Both Jade and her social worker, who did see herself as an advocate for Jade, explained that their relationship had been built up over time. The fact that she had previously been involved with Jade's family meant that she was known and trusted by both Jade and her mother. The relationship that Jade had developed with her was contrasted positively to that with previous social workers. Her social worker's approach was to work with her closely in the run up to a Hearing, enabling Jade to comment on a draft of the report that was to be presented to the Hearing. Jade was able to talk to her if she felt nervous about the Hearing. The extent of Jade's confidence in her social worker and the importance attached to her role can be judged by the fact that on one occasion she said that she did not want a Hearing to go ahead because the social worker was not able to be present.

- 3.13 Those social workers providing advocacy support in the Hearings process were often also involved in giving more general support to children and young people. However, in other cases where social workers were said to have played a role in supporting children and young people, this did not necessarily relate directly to the Hearings process. They had for example been involved in steering them in the right direction and in helping to make things happen. For example, James, aged 14, whose main source of advocacy support was an independent children's advocate, and whose social worker had not attended his Hearing, explained that the social worker had provided other support such as arranging a new school place for him.
- 3.14 Other experiences of social workers were less positive and children and young people did not see them as providing advocacy support. These views ranged from ambivalence to overt hostility. At the ambivalent end of the spectrum Sarah, aged 13, complained that all one social worker did was take her out. Jay, aged 16, explained that although he met his social worker regularly to talk to her about what was going on, when it came to Hearings, she usually agreed with the panel members. He expressed a desire to have someone there to represent him, which by implication suggested that although he was not overtly critical of her, he saw her role as falling short of advocacy support.
- 3.15 In some cases children and young people's criticism of social workers extended to not wanting them to be present at Hearings. Sarah, aged 13, said of another social worker that she would prefer it if she didn't attend her Hearings because she felt suspicious of the role she played and excluded by her. Melanie, aged 15, who also had varied experiences of social workers, explained that although she felt that one social worker had helped, in general they did not talk to her before Hearings. She explained that she would rather they weren't at Hearings because panel members just listened to them.

'They don't care. They just get paid to do it. They're like all qualified people.' **Melanie, aged 15**

- 3.16 Kirsten, aged 15, also said that she would rather her social worker wasn't present at the Hearing. In contrast to those children and young people who described social workers as providing advocacy support by explaining things or involving them in the process, Kirsten felt that her social worker had not taken the time to explain what would be happening and that although she had told her she had to write a report this wasn't discussed with her and contained inaccuracies.



- 3.17 For Graham, aged 18, who had been in the Hearings System for several years, social workers merely did things because they had to. They were seen as representing the interests of the local authority rather than his own:

‘I don’t know just a lot of young people just don’t get on with social work at all, just don’t like them at all. I can’t stand them myself, just everything they do just feels as if they’re not doing it for the right reasons.’ **Graham, aged 18**

- 3.18 The issue of trust in social workers was also raised by adult respondents. For example, it was suggested that by one respondent who had worked with a young person over a long period of time as children’s advocate and later as an aftercare worker with a non-statutory agency that whereas social workers were seen as ‘care managers’, children’s advocates were seen as ‘pushers’, who focussed solely on pursuing the best interests of the child or young person. Other respondents who were themselves social workers commented that the extent to which a child or young person trusted social workers could be influenced by the relationship between the social work department and the child or young person’s family. For example where the child or young person’s family had a long history of involvement with social work, it would be likely that parents might discourage the child or young person from saying things to their social worker. For another social worker respondent the young person’s lack of trust in social worker was seen to be rooted in a wider lack of trust in people which had been influenced by his parents over time:

‘[He] found it extremely difficult to trust people. I think that was his biggest problem. His father and his mother just don’t trust social workers. He finds it hard to talk, that’s getting a wee bit easier and I think he’s gradually come to realise that when you’re saying things to him, even if it’s not what your wanting, what he’s wanting, I think he believes in his own way that it’s for his own good.’ **Social worker**

- 3.19 Children and young people invariably referred to having had more than one social worker, and for some their experiences varied between those who appeared to listen and get things done to those who they had a negative experience of or who were seen to be unhelpful or ineffective. Changes of social worker were commonly referred to by children and young people and identified as problematic. It was also evident that social workers were also not always present at Hearings and although duty social workers did attend the child or young person had not met them before, thus limiting the extent to which it was possible for them to provide support.

Parents and carers

- 3.20 Children and young people commonly referred to their relationships with family members, particularly parents, as being very important to them. Parents were described as looking after children and young people’s needs, setting boundaries and helping with behaviour. Mothers were described as being especially important for some young people, who were able to talk to them and trust them. For some children and young people living in care or living apart from their parents for various reasons, Hearings provided an opportunity to see them.

3.21 However, though one or both parents were usually present at Hearings, the extent to which they provided support which involved advocacy tasks was fairly limited. At Hearings it mainly involved indirect representation which, in common with the role sometimes played by social workers, included providing a supportive presence.

3.22 Children and young people overwhelmingly wanted various family members including parents to be present at their Hearings. In some cases it was merely the fact that they were present at the Hearing which was important to the child or young person and this applied across the age range. For example, Speedy, aged 11, explained that he needed them to be there along with his social worker, because he would be scared without them. For James, aged 14, having his mother present, together with his independent advocate, made being at his Hearing 'alright', while Larson, aged 16, described the contribution of his mother as:

'There and sitting with [me] so it's a bit of comfort and support.'

Larson, aged 16

3.23 It was less common for children and young people to describe parents as providing support either by giving information about the Hearing, explaining things or providing direct representation by speaking for them, though there were examples of this. Speedy, aged 11, described how his mother explained to him what was going to be happening at the Hearing and gave him information before and after. Without this support, he would not have known what to do at the Hearing.

'Because without those I wouldn't really know what to do or say or whatever. I wouldn't know what to do. And they actually told me how, what's going to happen and everything.' **Speedy, aged 11**

3.24 John, aged 15, explained that his parents' role extended to looking after his needs and on occasions speaking for him. Jade, aged 15, explained that panel members asked her mother about things, and that this was okay, because it helped her to feel less nervous. Colin, aged 15, also identified his parents as helping him to take part, in that he had depended on them to speak for him initially.

'They'll start me off by speaking for me and that'll be fine but if they wouldn't start it off I'd just be sitting [with my hands up at my face ignoring the panel].' **Colin, aged 15**

Bart aged 10, explained that his mother helped him and spoke for him on occasions:

'She helps me ... she speaks for me sometimes ... when I feel like speaking for myself, I tell my mum. I say, mum could I speak this one please.' **Bart, aged 10**

3.25 In some cases, children and young people explained that although they valued their parents' presence, they too had difficulty understanding what was happening at the Hearings for various reasons. For example, Jay's (aged 16) parents, whose first language was not English, relied on him or his elder sister to translate for them. They had asked for an interpreter, but this had not been provided. Speedy, aged 11, thought that even his mother did not always understand the words used by panel members.



3.26 It was rare for children and young people interviewed to express feelings that the presence of a parent at Hearings was problematic, perhaps because they felt this to be disloyal. However, Darren, aged 16, described feeling annoyed and embarrassed at the way in which his parents sometimes argued at his Hearings. Freddie, aged 15, was clear that since her mother had stopped attending her Hearings she had been able to approach them with a greater confidence (which she also partly attributed to experience). Adult respondents on the other hand did comment that a child or young person's parents' presence at a Hearing could be frustrating for them, even when the child or young person had made no reference to this. For example although Graham did not refer to his parent's presence being problematic even though he was explicitly asked about this, his after care worker said:

'One thing [he] did not like was his mum's interference. In my position I've gone through stages with [him] when we've had support planning meetings and agreed what's going to happen and I've had to say to [him] when his mum's there, "Have I got permission to tell your mum what's happening?", and he's given it to me. Then his mum has said something and he's withdrawn it.' **Aftercare worker/previous children's advocate**

3.27 Amongst the youngest children interviewed, Kate, aged 5, drew a picture of herself and her mother during the interview. She said that on one occasion she hadn't wanted to go to the Hearing because she had to sit beside her father, and had asked to move so that she was beside her mother. At the subsequent Hearing she was happy because her father wasn't there. With regard to her mother's presence, she explained that she didn't want to be at the Hearing by herself, and she was happy because her mother came too.

3.28 However, in other cases children and young people wanted parents to be present even in instances where young people acknowledged that those relationships were problematic. For example, Claire, aged 14 accepted that her parents did not always listen to her. In general, they had a tendency to be over-protective and treat her like a 'wean' which 'did her head in', but she would always want them at her Hearings. Graham, aged 18, said that he had always wanted his parents to be present, even after they had asked him to move out of the family home, and he had accepted that they had a right to be there.

3.29 Other relatives also provided support for some children and young people. For example, Christopher, aged 9, who lived with his older sister, explained that she helped him fill in a questionnaire prior to the Hearing, and that both she and his grandmother spoke for him in the Hearings which was okay. Craig aged 11, said that his grandmother helped by being there and helping him not to worry.

3.30 Other children and young people described carers, either those who they lived with or who provided ongoing support whilst they remained at home, as playing an important part in supporting them at their Hearings. For example, Bart, aged 10 was accompanied to his Hearings by his mother and his carer whom he spent time with on a regular basis. His carer had helped to explain the Hearing's decision to him after the Hearing. Tom, aged 11, said that his carers had 'talked for [him] when [he'd] been scared to talk'. When asked how they knew what to say on his behalf, he explained that he spoke with them prior to the Hearing and agreed that the carers would speak for him if he found it difficult to find the right words.

3.31 After her mother had stopped attending her Hearings, Freddie's (aged 15) carers still spoke for her on occasions and though this was seen as positive, it illustrated that a very fine balance requiring subtlety on the part of adults had been struck. In common with some other young people she had decided that she would rather speak for herself if she felt confident to do so, but adults might still make an input where she preferred them to do so:

'Just like if I say to them [her carers] I don't want to say this, they say tell your social worker and if the social worker hasn't brought it up they will bring it up.' **Freddie, aged 15**

Independent advocates

3.32 Working with independent advocates was not typically part of the experience of the children and young people interviewed for this research. However, there were some examples of children and young people working with, and being accompanied to Hearings by, children's advocates from independent agencies' services. In some cases these relationships were seen as very significant to the child or young person, having been developed over a long period of time. For James, aged 14, his advocate had maintained a constant presence in his life, even though he had worked with several social workers. Having her at the Hearings made 'a lot' of difference. This appeared to be based on his sense that she understood him:

'I don't know, she's just always there and she knows, she knows most about me than anybody else.' **James, aged 14**

However, he explained that on one occasion he would have liked her to speak for him, because it was his first Hearing, but he didn't know that he could ask her.

3.33 Graham, aged 18, had worked with two advocates from the same service over a period of four to five years. He saw them as playing the role social workers should have played. However, unlike social workers they appeared to act in what he considered to be his 'best interests'. He felt reassured that this was the case by the fact that they appeared to act without 'hesitation', so that if they said they would do something, they did it without having to refer to other people. Graham said that even when he had got used to attending Hearings, it was still important for his advocate to be there to provide support.

'Just still just as important as it was when they were saying everything for me. They were still there for me and basically they still got asked questions (by) the panel member.' **Graham, aged 18**

3.34 Graham's after care worker who had previously been his children's advocate also felt that advocacy support in a broader sense had made a crucial difference to outcomes over time:



'I would say that if he hadn't had advocacy support, he would have been in real trouble because nobody would have been ... Okay mum and dad didn't think the social worker was doing anything. To a certain extent they didn't think the panel were doing anything either. They felt that he would just get a "go and behave yourself [Graham]", that he was getting no support from social work. If advocacy hadn't been there he wouldn't be where he is today, he would have been a lot worse.' **Aftercare worker/ previous Children's advocate**

- 3.35 In contrast to the experiences of Graham and James which had involved working with independent advocates over a number of years, Freddie, aged 15 who had worked with an independent advocate described the role played by that person as important but time limited in that she had worked with her on a specific issue. Once this was resolved, Freddie no longer felt a need for an independent advocate. Neil, aged 14, explained that there were occasions when he had been able to ask an independent advocate to say something he didn't feel confident about.

Other adult professionals

- 3.36 Other adult professionals who had accompanied the children and young people interviewed to Hearings included key workers from residential children's units, secure units or day centres. Such workers might become the main source of support for the duration of the child or young person's stay or attendance at the relevant institution. So for Mark, aged 11, his key worker at the residential children's unit which was some distance from his home town, became his main source of advocacy support.
- 3.37 Mark's key worker articulated very clearly that she played a dual role, reporting Mark's progress to the Hearing, whilst at the same time supporting Mark, enabling him to speak for himself and putting some points across on his behalf. She explained that she felt Mark was more comfortable with her playing that role than his social worker during the period he was in the unit because of the relationship he had been able to develop with her and other workers at the unit on a day to day basis.
- 3.38 For another key worker in a secure unit the advocacy support role was one she saw herself sharing with the young person's social worker, both in terms of providing information and explanations. She saw her role as helping young people to speak in Hearings, but letting the young person speak as much as possible. However, she was also aware that the young man she was discussing might be reluctant to say things in the Hearing which were negative about her and other workers at the secure unit, for fear of hurting their feelings.
- 3.39 Stacy, aged 15, had been accompanied to her first Hearing by a social worker. She had been annoyed because they were asking her social worker questions that she thought should have been directed to her, because she felt her social worker didn't really know her. However, at her second hearing she was accompanied by her day centre key worker, with whom she had developed a good relationship through regular contact over a number of months. As a result she was happy for questions to be directed to the key worker.

‘Well she knew me, like they were asking questions, asking her questions about me and she knew me so she knew like what to say and that so that didn’t really bother me because she’s like my key worker at day care so they were asking her how I was getting on at day care and that.’ **Stacy, aged 15**

3.40 Others discussed relationships with adults who had not been directly involved in the Hearings process such as teachers, key workers, befrienders or counsellors. For example, Claire, aged 14, had recently worked closely with a counsellor in an adolescent mental health team. Over a period of months, this relationship had developed into one which Claire experienced as supportive. She explained that she would have liked her counsellor to attend her Hearings with her, but said that she was unaware she could ask for this.

3.41 There were few references to either safeguarders or legal representatives. In fact the SCRA database revealed that only one child had a safeguarder, and though six had Curators ad Litem appointed by the court, though none were mentioned in the interviews. Three young people had experience of legal representatives. Kelly, aged 14, who was in a secure unit at the time of the interview, did refer positively to the role played by her legal representative.

‘It’s good to have them [legal representatives] because then you can speak to them and tell them what you want and what you don’t want and the same with the children’s rights officer, they’re good as well.’

Kelly, aged 14

In contrast, Melanie, aged 15, who had received legal representation at Hearings which took place when she was in a secure unit, felt that her representative had told the panel members what she thought, rather than what Melanie had told her.



Summary

All but one of the children and young people interviewed for this research had an allocated social worker and consequently social workers were most commonly referred to by children and young people as providing advocacy support, involving a variety of roles and tasks.

Some relationships with social workers were characterised by children and young people as based on trust and respect and this facilitated the provision of advocacy support. For others, their experience of social work was less positive. Social workers were not seen as providing advocacy support and in some cases children and young people did not want them to be present at Hearings.

The presence of family members was perceived by children and young people to be very important, though their advocacy support role was limited. It was rare for children and young people to describe the presence of parents as problematic, though adult respondents shed a different light on this in some cases.

For some children and young people other relatives and carers played an important role at Hearings.

Advocacy support from independent children's advocates was not typically part of the experience of children and young people. However, where they had been involved the support was generally regarded by children and young people as very positive either over a long period of time or in relation to more limited intervention.

For children and young people in residential care, key workers became an important source of advocacy support at Hearings.

Some children and young people discussed supportive relationships with a variety of other adult professionals including, befrienders, counsellors and community support workers. However, the extent to which they were involved in providing advocacy support in the Hearings System varied.

Chapter Four: What are Children and Young People's Experiences of Participating in Children's Hearings?

4.1 In this section we will seek to shed light on children and young people's experiences from a different perspective by focusing on different stages of the Hearings process and on the role of panel members. In doing so we will begin to identify the various factors which either help or inhibit the participation of children and young people in Children's Hearings.

Before the Hearing

4.2 A key inhibitor to participation was the nervousness or anxiety that children and young people felt prior to a Hearing. Whilst this was in part because they were unclear what would be happening at the Hearing, anxiety or suspicion about the potential outcome of the Hearing was also identified as a key issue.

'Because you don't know what's going to happen (you) get nervous, sort of thing, because you don't know what's going to happen to you, so you're wondering what is going to happen.' **Neil, aged 14**

4.3 Nervousness commonly related to where the child or young person was living and possible changes to those arrangements. If they were living at home, they feared being 'taken away' or separated from their parents. As Brian, aged 14, explained:

'They could click their fingers and that would be me away.' **Brian, aged 14**

James, aged 14, said that prior to his first Hearing he had been anxious that he would be taken away from his mother, because she had said to him that this was a possible outcome. He went on to explain that he felt that Hearings were different from other meetings that he attended, because the panel members were there to 'make a decision' about him.

4.4 For those already in a residential setting, such as Craig, aged 11, they may be frightened in case they were moved to a different school:

'[It's] worrying to see what they're saying, to see if they're going to tell you to move to a different school.' **Craig, aged 11**

4.5 Children and young people displayed varied levels of understanding, and indeed acceptance, of the grounds of referral to a Hearing. Those whom were older, for example those in the 14-18 age range, described the circumstances which had led to a referral. For example, young men referred to offending behaviour, whilst young women referred to failing to attend school. Younger children, particularly those in the 5-7 age range, were less clear although they might associate going to a Hearing as being related to something their parents had done or not done. For example, Kate, aged 5, referred to her mother's drinking, whilst Ross, aged 5, mentioned his mother arguing with his father.



- 4.6 Children and young people also questioned whether Hearings should determine what they could do and who they should be living with. For example, Claire, aged 14, had been told by her social worker that she would have to go to a Hearing because she had moved back in with her father who had alcohol and drug problems, having previously been staying with her mother. She reluctantly accepted that attending another Hearing would be necessary but said that she should be able to choose where she lived:

‘Yes, [going to another Hearing is] alright but it should be my decision who I stay with.’ **Claire, aged 14**

- 4.7 Children and young people aged 12 years old and above generally acknowledged that they had received their own papers prior to a Hearing. However, they offered different views about the extent to which this helped them to participate. Some such as Stacy and Kirsten, both aged 15, indicated that they had read the papers and that this was useful and had helped them to prepare for their Hearings.

‘I think [getting the papers] is important because then I knew like what was going on and what was getting said and that.’ **Stacy, aged 15**

‘And then you’d know sort of what was happening and a’ that and I could sort of I could prepare something like to say. Like if they said well why didn’t you do that or why did you do this whatever, then I could say well I didn’t really know that but yeah, I’d rather read [the papers] first.’ **Kirsten, aged 15**

- 4.8 Other children and young people, over 12, acknowledged that they had received papers, but said they hadn’t really read them. However, even those who had not read them generally felt that it was important that they were sent them. Others, such as John, aged 15, were less bothered and explained that their parents would have shown them the papers anyway. For Darren, aged 16, the whole experience of attending Hearings was one he simply didn’t like and he just put the papers in the bin.

‘I just don’t like going to panels. There’s no reason for it, I just don’t like it. I don’t like anything. I don’t like, I don’t like them. I don’t like going to those things.’ **Darren, aged 16**

- 4.9 Amongst those who had received them and read papers, most said they had understood them, though this was not always the case. Colin, aged 15, explained that he had needed help to read them:

‘Well I read some bits [of the papers] and I guess other bits I can’t understand.’ **Colin, Aged 15**

4.10 The awareness of children under 12 about papers and the extent to which they had read them or the contents had been explained to them varied. Craig, aged 11, said that he had seen papers but not read them. Bart, aged 10, said that he had seen papers, but that he couldn't read them himself:

'Cos well, like you get wee bits of paper for us to read them but I can't read them cos they're too wee.' **Bart, aged 10**

4.11 Children and young people referred to discussions with a range of adults prior to Hearings. Commonly these discussions were with social workers and took place either a few days before the Hearing or on the day itself. Key workers and parents also talked to children and young people prior to Hearings. Although such discussions were not necessarily detailed, they were seen as helpful because they enabled children and young people to understand what would be happening. Having some prior knowledge was seen as useful because it helped to reduce nerves. For Freddie, aged 15, it was important to get as much information as possible before the Hearing, because it meant she was in a position to ask questions when she was there.

4.12 Others, however, had not experienced such assistance and Sarah, aged 13, explained that 'no-one had ever sat and explained what was going on'. The mother of Ross, aged 5, who did not have an allocated social worker, expressed concern that the onus to explain the purpose of the Hearing and what would be happening there had fallen to her. She felt that it would have been very helpful if this role could have been undertaken by someone else.

At the Hearing

4.13 When asked about what it was like to be in the Hearing, children and young people referred to a range of emotions and reactions. Nervousness and anxiety were again common. Children and young people referred to feeling shy and embarrassed with people they didn't know. Oli, aged 15, referred several times during her interview to feeling 'small' and described sitting in front of panel members as nerve-wracking at first because they would all be 'looking at you because they're reviewing you'. The feeling of being exposed and nervous was echoed by other children and young people, such as Jay, aged 16:

'It's like three people, sat round this big table and just, like, discuss stuff and kind of scary, like going into a big room with, like, three strangers you don't know and you just talk to them about it and stuff.'
Jay, aged 16

Kirsten, aged 15, also referred to 'the whole big table thing' and being stared at:

'It's just like the way it's like because like there's three of them in front of you and then like you're sitting in the middle sort of thing and then like you always feel like everyone's sort of staring at you and thinking oh what are you on about, sort of thing.'
Kirsten, aged 15



- 4.14 Such feelings evoked embarrassment which made some children and young people reluctant to speak, even though they sometimes felt that they had to. For example when asked what made him feel nervous, Bart, aged 10, explained:

‘Cos when they’re all talking and I don’t know what they’re saying and that ... And they make me nervous cos I don’t know what to do and what to say.’ **Bart, aged 10**

Jade, aged 14, said that she did speak but that the nervousness made her ‘stutter’. Colin, aged 15, explained that although he would rather someone else spoke for him, he felt that because the panel members were there for him, he had to speak for himself.

- 4.15 Children and young people commonly referred to Hearings as boring or frustrating. They found it difficult to concentrate and felt that they were too long. For example, Larson, aged 16, explained that he felt both bored and anxious to get out and that these feelings were connected:

‘Just sitting in there, like see when you’ve been to it a couple of times just pure sitting there pure like bored, going off your nut cos some of them keep you in for like hours upon hours and your like that, I’ve heard all this and I just want to go home. Just really like bored just sitting listening to people talking about you that don’t even know you. [And] anxious just pure anxious to get out. Just anxious to get out of there cos it’s boring they are all really a mixture of the same thing.’

Larson, aged 16

However, John, aged 15, accepted that he needed to be there even though it was boring because it was important for him to be present when people were discussing him.

- 4.16 A source of frustration for some children and young people was the apparently repetitious nature of the questions asked at Hearings. Although Oli, aged 15, felt it was useful for details to be checked, so that panel members had all the right information, others felt irritated by it. For example, Mark, aged 11 was exasperated that panel members asked ‘the exact same’ questions every time even though he thought that they knew the answers. Brian, aged 14, expressed similar frustration:

‘It makes me cross even going there cos they just say the exact same things over and over again.’ **Brian, aged 14**

Melanie, aged 15, felt that such repetition indicated that panel members had not read the papers and did not listen to her properly:

‘They don’t ask me what I think. They’re meant to read my Having Your Say sheet, but I don’t know if they do, they don’t do anything about it. They just kept asking again cos they weren’t listening. It annoys me.’ **Melanie, aged 15**

4.17 There was some indication from children and young people of an awareness of efforts to enable them to participate in their Hearings, in addition to being asked questions. Some children and young people also indicated that it was their panel and that they were there for them, and that it was an opportunity to express how they felt. Others recounted experiences which they had found difficult. For example, Colin, aged 15, highlighted that the panel members wanted him to speak first, though this wasn’t necessarily perceived as a good thing. Oli, aged 15, referred to an occasion when a panel member had said “impress me” which she had found daunting. This had underlined the need for her to be prepared:

‘They give you a chance to say something, even though, it’s pressured and on the spot, like you’d have to be prepared for that sort of thing.’
Oli, aged 15

4.18 There was evidence to suggest that children and young people’s previous experience of Hearings may be important in terms of formulating how they view them and anticipate future experiences. Some older young people, for example those aged 15-18, who had been to Hearings over a number of years, were able to reflect on changes in their participation over time as they had grown more used to the Hearing setting and felt more confident and able to speak for themselves.

‘[At the first hearing I felt like] I should just sit and be quiet, but then I started speaking to them and I found it got easier.’ **Kirsten, aged 15**

4.19 Adult respondents too commented on changes over time and the way in which increasing maturity could have an impact on the child or young person’s willingness and ability to participate in Hearings. One social worker highlighted that fact for the young person she was working with, his ability to participate in Hearings reflected a wider difficulty with participation, though he had improved over time:

‘[His difficulty speaking] is not just with regard to Hearings. That’s a difficulty [he’s] got in any kind of setting, and as I said, I have been working with [him] for quite some time, and it’s not [just] an issue for [him] at a Hearing. That’s just the difficulty [he’s] got in day to day life. Certainly he has improved a bit compared to what he was, say this time last year.’ **Social worker**



- 4.20 Freddie's (aged 15) account suggested that as her circumstances had become more settled and with which she was happy she had started to feel confident about speaking and taking part in Hearings. Similarly, Kelly, aged 14, explained that when she was younger, she refused to go to Hearings, because she thought she was going to be sent to a children's home. When she was in a children's unit and panel members decided that she should stay there even though she was being bullied, 'it just felt like they were kind of letting [her] suffer more and more'. However, three years on she thought that panels were 'good' because people were prepared to listen and make decisions on the basis of her wishes.
- 4.21 In contrast, for Tom, aged 11, a Hearing decision had meant that he would no longer be able to see the key person, his father, who had helped him to take part in Hearings. He went from seeing his first Hearing as an opportunity to have his say and to express what was bothering him to anticipating future Hearings with uncertainty and unhappiness.
- 4.22 Children and young people's accounts also revealed different strategies for dealing with the experience of attending a Hearing. These ranged from those who found ways of engaging with the process to those who disengaged. For example, Kirsten, aged 15, explained that she tried to approach it in the way she would any other meeting:

'I just try not to think of it as a panel, because a panel is dead serious and it kind of rubs in your face a bit and then you're always dead scared, whereas I go, "oh no I've got to go", but then I just try not to think about that and speak as if I'm speaking to my social worker and then they got a lot easier.' **Kirsten, aged 15**

In contrast Darren, aged 16, said that he had listened to panel members the first time he had attended a Hearing, but that subsequently, he had 'just blank[ed] them'.

'I just go into my wee world ... I speak but there's no point in wasting your breath.' **Darren, aged 16**

- 4.23 Young children, particularly those aged 5-7, found it very hard to recall what had happened at Hearings. For example, Kate, aged 5, explained that people had been talking to her mother while she played:

'My mum was talking and they gave me a bit of paper to colour in.'
Kate, aged 5

Christopher, aged 9, initially couldn't recall much of what had happened in his Hearings, but after some prompting was able to remember some of the questions that panel members had asked him and the responses he had given.

The decision

4.24 Getting the decision was described by some children and young people as anxiety provoking and frustrating. The extent to which they felt that panel members took what they said into account when reaching decisions varied. For example, Jade, aged 14, felt that her views were taken into account, whilst Craig, aged 11, felt that they were taken into account 'a little bit'. However, both Sarah, aged 13, and Melanie, aged 15, felt that it was difficult to influence the decision because panel member's 'minds [were] made up'. Kirsten, aged 15, echoed this sentiment, and felt that panel members, sometimes had 'fixed' views and that she had no ownership over the decisions that were made.

'You just feel like you're just sitting there and then everyone's like making decisions for you sort of thing and then you don't know what to do with yourself basically.' **Kirsten, aged 15**

On the other hand a secure care worker explained that, for the young man she worked with, having a fair indication of the likely decision in advance of the Hearing could help to make him less anxious.

4.25 The extent to which children and young people understood the decisions made at Hearings also varied. Although explanations were given, these were not always easy to understand. For example, James, aged 14, explained that he needed to talk to his children's advocate after the Hearing because he had not fully understood what a Supervision Requirement was. He didn't ask any questions in the Hearing because he 'just wanted out'. Claire, aged 14, expressed frustration that after her first Hearing, which had resulted in a Supervision Requirement, neither panel members, nor her social worker, had properly explained to her what this meant.

4.26 Children and young people had both positive and negative experiences of decisions being explained to them. For example, Oli, aged 15, felt that getting the reasons for a decision was important because it was how she could tell whether or not she had been listened to. On the other hand, Melanie, aged 15, commented that panel members did not always explain why they had made decisions, and that even when they did she was too upset to take things in and walked away.

4.27 Some children and young people, such as Claire, aged 15, felt that they did not need to attend Hearings and that the decisions made, such as Supervision Requirements, were unnecessary. Stacy, aged 15, who had also been placed on a Supervision Requirement, felt that the decision to do this was made because it suited the panel members.

'So that they make decisions for me and not just like what would be easier for them or best for them.' **Stacy, aged 15**

Others voiced frustration that panel members wouldn't let them do what they wanted or what they thought was best for them. Melanie, aged 15, expressed anger that panel members could decide to place her somewhere against her wishes:



‘If I don’t want to go somewhere, then I don’t see why they can just send me.’ **Melanie, aged 15**

- 4.28 For Louise, aged 14, the way in which panel members reached decisions and whose views they took into account made her ‘annoyed’:

‘Then the Panel automatically think, “Well, the social worker knows her better than my mum does”, which is not true, so ... then they go with my social worker ... and my legal rep’. **Louise, aged 14**

After the Hearing

- 4.29 In contrast to the nervousness and anxiety felt before and during Hearings, it was common for children and young people to describe the way they felt after Hearings as relieved. However, this could be accompanied by feelings both of happiness and disappointment. Inevitably, this in part related to whether the outcome was one that they wanted, though happiness might simply relate to relief that the experience was over.
- 4.30 Disappointment might relate to either the decision itself or the experience of the Hearing. For example, Graham, aged 18, explained that on one occasion he had been frightened by a decision because it meant he would have to stay in a hostel. Whilst Christopher, aged 9, was scared when the Hearing decision was that he should remain in a children’s unit where he was being bullied. However, he said he could not tell panel members of his fears, and only told his sister after the Hearing.
- 4.31 Larson, aged 16, explained that he was disappointed when he felt that he had not been listened to, though this was coupled with resignation:

‘Like when I’ve no been listened to really, know what I mean, like a go an they make a decision, like they don’t agree with that decision but they are no really nothing you can do.’ **Larson, aged 16**

Larson explained that he saw no point in appealing Hearing decisions. The possibility of appealing was only referred to by older respondents and in general they took the same view as Larson. For example, Claire, aged 14, acknowledged that the panel members said she could appeal, and although she didn’t agree with the decision and saw no reason for another Hearing in the future, she accepted it.

- 4.32 Children and young people spoke with a range of people after their Hearings about what had happened and what the decision meant. This included parents, social workers and independent advocates. However, this did not always happen partly because of a desire to forget about the experience. For example, Speedy, aged 11, explained that when the Hearing was over, he didn’t want to talk about it afterwards.

The role of panel members

4.33 The experience of attending Hearings as described by children and young people, indicated that the behaviour of panel members could make a significant impact on their participation. Whilst some children and young people described panel members as friendly and felt that they listened to them, others felt that they didn't listen either all the time or some of the time. Some whose experience was mostly positive nevertheless recounted experiences where one panel member was unfriendly or 'moody' and this made the Hearing difficult. On the other hand, one adult respondent, who had attended a Hearing with a young man in her role as a secure care key worker, explained that he had been embarrassed by positive comments and praise from the panel members and others present at the Hearing, because it was not something he was used to:

'He was embarrassed maybe by some of the comments, but the comments were all positive, that we felt he could do well, but he does tend to not like to hear folk praising him. He's uncomfortable with praise.' **Secure care worker**

4.34 When children and young people felt that they were not being listened to, they found it frustrating and anxiety provoking.

'Well they do yeah, but I don't know, sometimes whenever like I tried at my third one I think it was, when I tried to answer a question they'd butt in and then start speaking over me and I then just ended up getting really annoyed and then I just sat down and be quiet because I thought that like it was all about your views are meant to be heard as well as theirs sort of thing and then I would speak, they would butt in and I couldn't speak any more sort of thing and I was like right, OK then I'll be quiet.' **Kirsten, aged 15**

For example, both Sarah, aged 13, and Larson, aged 16 felt that although they were asked questions, their answers were not listened to because they went 'in one ear and out of the other'. Children and young people offered a range of explanations for not being listened to. For example, Louise, aged 14, who was in a secure unit at the time of the interview felt that panel members did not listen to her because they thought of her as a 'problem':

'Because they're no' looking, they're not listening ... They're not concentrating. They're talking over me'. **Louise, aged 14**

On the other hand, Bart, aged 10, explained that he thought panel members didn't listen to him because of his age. When asked why he thought they didn't listen, he simply said 'Eh ... cos I'm wee.'



4.35 Children and young people suggested that there were various ways in which they could tell whether panel members listened to them. Behaviour said to indicate that panel members did listen included making eye contact, both asking and answering questions, not using complex language and making decisions that reflected their wishes.

4.36 In contrast, panel members talking to each other, looking away from you or talking over you were said to be indicators of panel members not listening. John, aged 15, explained that he could tell when panel members were not listening because of 'the way they acted' and did not feel that there was anything he could do to make them listen. Panel members asking the same questions repeatedly could also be taken as an indication that they were not listening by some children and young people, or as Larson, aged 16, explained:

'If you say something they say the opposite, they're obviously not listening to you.' **Larson, aged 16**

4.37 Jade, aged 14, commented that panel members sometimes 'whispered' to each other which made her feel uncomfortable because they were talking about her. Stacy, aged 15, said that she felt 'awkward' when people were talking about her and asking other people questions about her, rather than asking her directly.

4.38 Whilst some children and young people felt that they understood what panel members were saying, others commented on difficulties with language and terminology. For example, Mark, aged 11 said panel members used 'big words' that he did not understand. Claire, aged 14, referred to panel members talking 'posh' and using words that she didn't understand so that she had to ask them what they meant.

'No, they were using big words and I had to say to them I don't know what you're talking about and they said it.' **Claire, aged 14**

Speedy, aged 11, said that he was sometimes 'baffled' by the words used by panel members and this made him fearful of 'saying something stupid'.

'You think the panel's all right but then they start talking in big words. That first one it started off OK but then it just got, then they just got into big words. Because they just keep yapping on, blah-blah-blah-blah-blah, and nobody understands.' **Speedy, aged 11**

4.39 Children and young people had different experiences of being asked questions by panel members. Whilst they were commonly asked about their present circumstances, for example where they were living or how school was progressing, they felt that they were not necessarily asked what they wanted to happen. Stacy, aged 15, who had attended two Hearings, described very different experiences. At the first Hearing, she felt that everybody was talking 'about her', at the second Hearing, it felt different because they asked her questions, including what she wanted to happen.

'[At the first hearing I felt] a bit left out because they just said like we're going to give a supervision requirement for a year and like nobody told me what it was about or anything like that.' **Stacy, aged 15**

'Like they asked me questions and how I felt about the decision that was made and asked me about myself and that. But I could like understand what they were saying this time.' **Stacy, aged 15**

4.40 Some children and young people felt a sense of powerlessness and an inability to influence outcomes. Bart, aged 10, said that he felt powerless when panel members didn't listen and when asked what this meant he explained:

'You try and say something but you feel powerless because they don't listen to you. And you're trying to say something they just, cos they're bigger than you, they've got louder voices so you try and say something and they just go louder and louder and louder and louder.'

Bart, aged 10

John, aged 15, felt that panel members did not always respect his views because when he denied something, they had not believed him. Whilst questions asked by panel members were sometimes perceived to be hard, for some the experience was easier than anticipated. For example, James, aged 14, said that the questions were 'easy' because he has simply been able to answer 'yes' or 'no'.



Summary points

Children and young people's accounts suggest that there are a range of factors that may help or inhibit their participation.

Factors which children and young people described as helpful included:

- Providing papers which are accessible
- Preparation and discussion before the Hearing
- Knowing what to expect
- Evidence of listening
- Providing explanations
- Creating a comfortable environment
- Asking for views about possible decisions

Adult behaviour that children and young people described as inhibiting participation included:

- Talking over children and young people
- Using language and terminology that is not understood
- Repeating statements or questions
- Directing questions to others
- Asking difficult or awkward questions
- Talking about children and young people rather than to them
- Being discouraged from speaking

Children and young people also described their own feelings and fears as inhibiting including:

- Feeling shy or embarrassed
- Feeling suspicious of adult motives
- Feeling that adults did not listen to answers
- Feeling that adults did not believe answers
- Fear of an unknown process
- Fear of outcomes

Chapter Five: What do Children and Young People want from Advocacy Support?

What kind of advocate do children and young people want?

- 5.1 In general the children and young people interviewed did not articulate a wish to be represented at Hearings by someone that they were not already working with. They wanted to be accompanied by people they already knew and trusted, including family members. With the exception of younger children, for example those aged 5-7, they were able to discuss what they valued in supportive adults and in some cases relate their answers to people they were already working with.
- 5.2 The importance of working with people who were already known was commonly emphasised. It was suggested that people who didn't know you would be less likely to listen to you or understand you. One observation was that there were already three faces you didn't know, which made it very important to be represented by someone you did know.
- 5.3 However, being known did not of itself guarantee a relationship of trust. Moreover, the process of becoming known might occur gradually or quickly. For example, Claire (aged 14), who valued her relationship with her counsellor, had decided she could trust her around the time of their second meeting. Adults also needed to be approachable and be able to talk to children and young people. Listening and talking to children and young people before things were done for them was seen as vital because it enabled a young person to get their point across.
- 5.4 Trust and respect were identified as crucial ingredients to a supportive relationship with an adult representative. Trust was commonly linked to privacy, so that children and young people were able to say things that would not be repeated to family members, or indeed panel members, unless they had previously consented to this happening.
- 5.5 Adults, including panel members, could demonstrate respect by listening to children and young people and 'not looking down their noses' at them. Two young women explained that they did not want to be treated like 'daft wee lassies'.

'Cos when I go to talk I feel as if they're sitting talking to each other. When I'm trying to get my point across ...I feel as if they're treating me like a daft wee lassie. I'm not a wee lassie but I feel as if they're treating me as if, well she's not really here so just ignore her.' **Jade, aged 15**

- 5.6 Such experiences suggest that the perceived distance of the adult from the young person in terms of social experience may have an impact on the efficacy of engagement and encouragement to participate. It underlines the importance of adults, not only being able to see the young person's experience from their perspective, but the young person believing that they have the capacity to do so. Respect might also be perceived by young people as a mutual or two way process. For example, one young woman, Zoe, aged 14, explained that forming a relationship of respect with her social worker meant that she should be challenged by her too.



5.7 Loyalty was also said to be valuable by some children and young people. For example, one young man said that it was important to know that someone was '100%' by him and 'able to stand by his side', whilst another emphasised the need for people to 'stick up' for him.

5.8 Children and young people also stressed the importance of people explaining things to them when they were unsure of what was happening. For one young woman doing this before the Hearing was important, so that she was able to get her point across to the panel members. In some instances children and young people wanted people to be able to speak for them and explain things on their behalf, though they wanted to be able to choose when this happened. They might want a representative to speak on their behalf when they were shy or embarrassed, or when they were unable 'to find the right words'. Zoe, aged 14, explained that questions asked by panel members could be hard and she did not always know the answers:

'Because I don't know like all the questions, and the questions that they ask you are sometimes hard questions and I can't like answer them, so I've got somebody else there who knows and does the talking.' **Zoe, aged 14**

5.9 The accounts of children and young people suggest an important balance between 'talking for you' and gaining the confidence to speak for yourself. For example, Tom, aged 14 explained that talking for him had helped when he felt fearful:

'They've talked for me when I've been scared to talk.' **Tom, aged 14**

In contrast, Freddie, aged 14 explained that over time she had gained more confidence:

'(I'm) more confident after all the other ones. But if they [the decisions] don't suit me I'll speak up.' **Freddie, aged 15**

5.10 For some children and young people, it was important that an advocate would be able to challenge the panel members at Hearings or provide them with support in doing so.

'Right, see if the panel turned round and goes but we don't want her to go out then my social worker would challenge them, my social worker would go but (she) has been good so we're not putting her back there so that's a challenger.' **Kelly, aged 14**

5.11 Challenging panel members might involve the advocate standing up to them or telling panel members if the questions they asked were hard or unreasonable. Challenging the panel members was also seen as very important in relation to decisions made, though this was not necessarily expressed as a desire to appeal against the decision. In part this may be because children and young people saw little point in appealing against decisions that they felt had been made prior to Hearings or which both social workers and panel members were agreed upon. Darren explained that someone challenging the panel members on his behalf would prove that they were on his side:

‘Well that is if somebody challenges the panel, I trust, they know the system, they’re on my side, they’re sensible, they listen. What more do you want?’ **Darren, aged 16**

- 5.12 The only apparent difference relating to gender was that some young women indicated that they would prefer a female advocate.

The Hearings environment

- 5.13 Children and young people interviewed also offered some comments about the Hearings environment and how it could be improved. For example Kirsten commented:

‘I think it should be like quite a relaxed environment sort of thing and like easy going instead of like, cos then if it was you wouldn’t feel all those things and then you’d be Well first of all like three of them sitting there looking at you sort of thing because that’s the way it sort of feels sometimes and it’s like dead intimidating and that. I don’t know, I think if it was just like, quite sort of like, I don’t know, if it was like more calm and relaxed sort of thing and then like you could just like speak to them instead of like just well this is what happens sort of thing, I think it would be a lot better.’ **Kirsten, aged 15**

Another commented that it was very hot and uncomfortable, whilst another said that she felt that the curtains were closed out of an adult concern for privacy, and that the room could be brighter. Others felt that the layout of the room was too formal, and that the ‘big table’ could be dispensed with. One social worker explained that both the young woman she worked with and her mother were intimidated by the formality of Hearings and that the Hearings process itself acted as a barrier to providing advocacy support. Another social worker also commented on the formality of the Hearings environment:

‘I don’t think it’s child friendly. I just feel it’s awful formal with everyone being Mr or Mrs, but [the young person] will call me [by my first name] and social workers by their first names. There’s a table between us and it’s not very friendly. It’s certainly the rules, but it’s not the best room, it’s the marriage room we use. It’s a big long table with others sitting at the end and chairs quite far back. Maybe it’s got to be like that, but I think it’s just awfully formal.’ **Social worker**

- 5.14 Other suggestions from children and young people were that it would be better if the Hearing was held in a different setting, e.g. at home, with one person rather than a panel of three, or if children and young people were given more opportunity to write their own reports.



- 5.15 One young woman (Freddie, aged 14) reflecting on her experience and one girl (Kate, aged 5) both mentioned the importance of toys for younger children. Freddie had found Hearings very difficult when she was younger and Kate was currently finding her circumstances very difficult. The toys in both cases seemed to be seen as a way to detach or disengage with what is going on ‘around you’:

‘Cos I can play and I don't need to listen to all that garbage and that sounds better.’ **Kate, age 5**

What kind of advocacy support do children and young people want?

- 5.16 The extent to which children and young people displayed an understanding of concepts such as advocacy, participation and representation varied, in part in relation to age and experience. Although, the term ‘advocate’ was not generally understood, children and young people were more familiar with terms such as children’s rights, representative and support. Some older respondents who had used independent advocates, did recognise the term advocacy, though they did not use it themselves.
- 5.17 One former children’s advocate suggested that it was difficult to make the choice of an advocate a real choice for children or young people because in practice parents rather than children or young people approached the advocacy project in which he had been based. He suggested that there was a need to educate children and young people about what was available. A social worker suggested that there might be a role for peer educators based on her experience that for some children and young people bringing friends to Hearings with them had helped. Representation was more widely understood by children and young people, with the exception of the youngest respondents, i.e. those aged 5-7.
- 5.18 When asked what they understood by the term representation, they either referred to other terms or to particular people who they saw as representing them or in some cases both. For example, Christopher, aged 9, said that he understood it to mean support, something which was provided by his sister and his social worker. Whilst not all respondents felt they had been represented at Hearings, for those who had, social workers, independent advocates and key workers were all described as representatives, as were parents, other relatives and carers.
- 5.19 It was common for children and young people to refer to more than one adult as representing or supporting them. This might include a combination of social worker and parent or other relative, or a combination of two adult professionals. Examples of the latter combination included social worker and key worker, or independent advocate and after care worker. However, some children and young people who were accompanied to Hearings by both social workers and parents whose presence they found supportive, still felt that there was no-one there to represent them.

- 5.20 Those providing representation also changed over time. Most commonly this related to a period of residence in a children's unit or secure unit, when the key worker would assume the lead role. For those remaining at home, a key worker at a day centre might attend Hearings and play a supportive or representative role. It might also relate to a change of circumstance, for example from parent to carer or because of a change in social worker. However, as we have already seen, the extent to which different social workers fulfilled advocacy tasks, and the extent to which they were perceived as having the skills or qualities to do so, varied.
- 5.21 Amongst social worker respondents there was something of a tension here. One view was that it was possible to combine an advocacy role with that of assessing the child or young person's needs. However, it was accepted that this was not necessarily the traditional social work view, and that in any case the advocacy relationship with the child or young person needed to be seen in the context of the push and pull of relationships involved in the child or young person's situation. Another view was that providing advocacy support was a different role that required someone who had the ability to be more independent such as a befriender. One social worker who did see herself as providing some advocacy support, explained that whether social workers saw themselves as providing advocacy support or not, children and young people didn't necessarily see social workers as advocates.
- 5.22 The representation identified within Hearings by children and young people was both indirect, i.e. various tasks and roles which enabled them to participate from a supportive presence to helping them say things, and direct i.e. speaking on their behalf. It is important to recognise that speaking on their behalf could be regarded as both helpful and unhelpful to participation, depending on whether it was done on the basis of consultation and consent. Indirect and direct forms of representation were not necessarily seen by children and young people as mutually exclusive. The need for both indirect and direct forms of representation could be interchangeable either within one Hearing or at a series of Hearings over time.
- 5.23 Outside the immediate setting of the Hearing, the advocacy tasks most commonly identified by children and young people were providing information and explanations about the Hearings process and Hearings outcomes, both before and after Hearings.



Summary

The qualities of an advocate identified by the children and young people interviewed for this research as important included:

- Someone who listens
- Someone who explains things
- Somebody known
- Somebody 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 the panel members at the Hearing

Children and young people interviewed for this research described a variety of experiences and articulated a range of needs and wishes in relation to advocacy support. Broadly speaking they fell into five categories, though children and young people's accounts, particularly those of older respondents, suggested that they may have occupied more than one category over time.

First, there were those who did not understand the process sufficiently clearly to articulate their needs and wishes. This was particularly true of those in the youngest age group whose recall of Hearings was also limited and whose participation within Hearings appeared to be very limited.

Second, there were those who were disengaged from, and within, the Hearings process to the extent that they were unable or unwilling to identify whether they wanted advocacy support and who might best provide it. However, even amongst this group, children and young people were able to identify the skills and qualities which they regarded as potentially important in an advocate.

Third, there were those who were broadly content with the advocacy support they received. This was usually provided by more than one person, and it was usually the perceived qualities of those individuals which were regarded as important rather than their formal titles or roles. In some cases children and young people felt that there were already enough people involved and did not want to see somebody new introduced into the process.

Fourth, there were those who identified adults who were already providing them with support outside the Hearings System as potential advocates. These respondents were not necessarily aware that they could ask such adults to accompany them to Hearings.

Fifth, there were those who identified the need for additional advocacy support, sometimes in addition to support they already received from parents or adult professionals. In some cases the research interview enabled children and young people to understand and articulate such a need more clearly.

Chapter Six: Conclusions

- 6.1 The introduction to this report referred to a definition of advocacy which was formulated by the partner organisations involved in the research:

‘At its broadest, advocacy is the provision of information, explanations, support, simple encouragement to participate, or direct advocacy by way of representation. Children and young people involved in the Children’s Hearings System experience a need for a mixture of these things at different stages in their involvement with the System and to differing degrees depending on their particular needs.’

The research has enabled that definition to be explored through the experiences of children and young people who have been involved in the Hearings System and some of the adult professionals who have worked with them.

- 6.2 The research findings also build on the findings of the literature review. First they underline the crucial importance of listening to children and young people and keeping them informed in ways that are accessible to them. Second they confirm that those providing advocacy support being confidential, good listeners and able to communicate effectively with children and young people. Third they suggest that continuity of support through the Hearings process is important.
- 6.3 However, as the summary provided at the end of Chapter 5 indicates, they also suggest that other qualities are important to children and young people including loyalty, flexibility and sensitivity. Moreover the extent to which an advocate is perceived to be effective may depend on children and young people believing that an advocate is prepared to challenge the panel members on their behalf. Crucially, children and young people want advocacy support to be provided by people who are known to them. This may mean that it is best provided by people who have supported them and worked with them prior to their involvement in the Hearings System. Where this is not the case it means that a trusting relationship will need to be established prior to attending a Hearing to facilitate effective advocacy support.
- 6.4 As the summary points provided at the end of Chapter 4 demonstrate, the findings also suggest that there are a range of factors which may inhibit or promote the participation of children and young people in their Hearings. These relate to the behaviour of adults involved in the Hearings process including panel members, the Hearings environment and to the feelings, and sometimes fears, of children and young people themselves.
- 6.5 An overview of the research findings suggests that while there is an *implicit* commitment to providing advocacy for children and young people in the Children’s Hearing System, the extent to which this commitment is made *explicit* varies considerably. As a consequence while some children and young people have extensive experience of advocacy support and an appreciation of how it can aid their participation, the experiences of others are more limited. Children and young people may also have had varied experiences, both positive and negative, over time. These factors have a demonstrable impact on the extent to which children and young people are able to participate in their Hearings.



- 6.6 The evidence underlines the fact that children and young people have a range of expectations and aspirations in relation to advocacy support and who they believe may be best able to provide it. As indicated at the end of Chapter 5 above, the needs and wishes articulated by children and young people interviewed for this research broadly fall into five categories. These categories illustrate that while the needs and wishes of some children and young people were, or could, be met by adult professionals whom they were already working with, others identified unmet needs which could in some cases be met by providing an independent advocate. The evidence also suggests that advocacy support is multi-faceted and for many children and young people it is unlikely to be derived from single source, so that for example the presence of parents may complement the support provided by an adult professional or vice versa. In that sense it is helpful to see providing advocacy support as a process involving a combination of people who assume different roles and perform a range tasks rather than a role which can be invested in one dedicated advocacy professional.
- 6.7 Children and young people's needs and wishes therefore change both at different stages of the Hearings process and over time. Age and levels of understanding are also relevant factors here. There are however some overriding issues, most importantly the need for advocacy support to be provided by people in known and trusting relationships which are built over time. The research also suggests that the extent to which children and young people are able to make choices in relation to their needs and wishes varies, for example in relation to age.
- 6.8 Advocacy relationships are therefore not homogenous and involve a range of skills and tasks that need to be discussed and reviewed with children and young people, recognising that their expectations and needs will be contingent on a variety of factors. At different stages of the process and over time this relationship may form with dedicated advocates, other adult professionals including social workers and parents/other relatives/carers. Where advocacy support is provided by those who are not dedicated advocacy professionals, for example social workers or parents, consideration needs to be given to how the roles or tasks performed by those complements or conflicts with providing effective advocacy support. Both adults and children and young people may have relevant views about this which need to be taken into account.
- 6.9 A further issue which needs to be considered here is that of independence. The traditional role of a dedicated advocacy professional is in part based on the independence of that person from other professionals or adults involved in a child or young person's life. However, these findings suggest that children and young people may not necessarily perceive independence as a critical factor in determining whether an adult is able to provide advocacy support. On the other hand the fact that children and young people link trusting an advocate to the maintenance of privacy or confidentiality, and that they may want an advocate to be able to challenge the panel members at their Hearings, suggests that independence may be an important ingredient of advocacy support in practice. Trust and independence are, of course, not necessarily mutually exclusive. Nevertheless this research reveals that there is an important balance to be struck between advocacy support which is provided in the context of known and trusted relationships and advocacy support which involves an appropriate degree of independence.

6.10 In summary, the findings of this research enable us to expand and clarify our initial thinking in order to arrive at a new definition which builds on the original definition formulated at the outset of the research project. Advocacy and participation also need to be seen as two sides of the same coin. Thus, enabling participation also depends on other adults involved in the process, particularly panel members.

F *Advocacy is a means by which the extent to which children and young people participate in the Children's Hearings System can be maximised and by which the quality of that participation can be enhanced. Advocacy for children and young people in the Children's Hearings System may involve both indirect and direct forms of representation.*

Indirect representation may include the provision of information, explanations, providing a supportive presence, encouragement to participate and assistance with speaking, i.e. prompting, word choosing. Direct representation includes speaking on behalf of the child or young person, with their consent and after consulting with them about what they would like to say. Indirect and direct forms of representation are not mutually exclusive, even within an individual Hearing.

Children and young people involved in the Children's Hearings System have needs and wishes for a mixture of these things at the various stages of the Hearing cycle and at different stages of their involvement in the System. These needs and wishes may change over time depending on factors such as age, experience, living and family circumstances.

It is therefore necessary to see the provision of advocacy as a process which is negotiated and re-negotiated with the child or young person rather than something that is fixed and determined at the outset of their involvement in the System. Rather than being located in one person, i.e. an advocate, it is likely to involve a range of people, both adult professionals and parents, other relatives and carers. These people may assume a variety of roles and perform a range of tasks which may be both integral to, and independent of, the Hearings process and the issues being addressed with it.

Children and young people have their own views about the qualities and skills that such people need to have in order to take on these roles and perform these tasks in ways that are useful to them. They also have views about the particular people or combination of people who are they regard as supportive and who they wish to be involved in providing advocacy. Of particular importance is the need for those providing advocacy support to be in known and trusting relationship with the children and young people.

The provision of effective advocacy therefore involves understanding and being sensitive to each individual child or young person's views and circumstances which may change over time and on engaging in ongoing dialogue with children and young people about their needs and wishes.]



Chapter Seven: Policy and Practice Implications

- 7.1 What does all this tell us about how advocacy may best be provided? What emerges is the need to achieve a balance between a common approach to the provision of advocacy support in the Hearings System and a personalised approach which is responsive to the needs and wishes of individual children and young people at each stage of the Hearings process. Such an approach would recognise the need for a flexible but nevertheless consistent approach to advocacy provision with minimum standards.
- 7.2 It is interesting to note here that a recent report concerning child abuse in the Western Isles (Scottish Executive, 2005) includes a recommendation that ‘the Scottish Executive should set up a national system for all children involved in Children’s Hearings and other inter-agency meetings to have the opportunity of an advocate, when decisions are made about their care needs and protection’. However, the type of advocacy envisaged in this recommendation concerns providing an adult whose focus would be the best interests of the child or young person in relation to the outcomes of Hearings or inter-agency meetings. This research, in contrast, has focussed on the provision of advocacy in relation to the Hearings process and therefore the best means of securing and facilitating the active participation of children and young people in their Hearings.
- 7.3 The findings of this research suggest that rather than providing a ‘national system’ of advocacy, the needs and wishes of children and young people could be met by devising a *common advocacy standard*. This would enable all agencies involved in working with children and young people in the Hearings System to have shared understanding of advocacy and its relationship to participation in Children’s Hearings. Such a common standard could provide a working definition of advocacy which draws directly on the experiences and perspectives of children and young people and explain how this can best be provided by agencies. It could explain how agencies can meet children and young people’s needs and wishes in relation to advocacy and participation through enhancing skills and awareness of adults involved in the Hearings process and ensure that gaps in advocacy support are met. It could also involve providing the child or young person with information (including explaining it to them in person) about their rights in relation to representation and participation.
- 7.4 In order to ensure that those needs and wishes are met a *personal advocacy plan* could be drawn up with each child or young person and reviewed at each stage of the Hearings process. This could consist of a package of advocacy support that reflected the circumstances, needs and wishes of the child or young person taking into account what is known about support that is already available and identifiable gaps in provision. The personal advocacy plan could then be made available to, and understood by, all those involved in the process including panel members.

- 7.5 A key question which arises here is how can transparency and accountability be provided in the context of a multi-agency approach? Whose responsibility should it be to ensure that the personal advocacy needs and wishes of each child or young person are met? There is an important distinction to be made here between ensuring that needs and wishes are met and the provision of advocacy support itself. These responsibilities do not necessarily need to be performed by the same agency or adult professional. There are various options relating to ensuring that needs and wishes are met. These include Children's Reporters, social workers or other lead professionals and each has advantages.
- 7.6 For example, allocating the responsibility to Children's Reporters may be considered to be advantageous. First their role does not of itself involve providing advocacy support and therefore they are able to stand back and make an assessment of what is needed. This creates a separation between ensuring that advocacy support is provided and providing it in practice. Second achieving consistency may be easier because Reporters are employed by, and accountable to, a single national agency. Third it would place the responsibility for providing advocacy support at the heart of the Hearings System. On the other hand it could be argued that social workers or other lead professionals may best placed to undertake the responsibility. First because they will already have been involved with the child or young person prior to their involvement in the Hearings System, they may have more detailed knowledge and experience of their circumstances. Second because they are known to the child or young person, they may be better placed to enter into a dialogue about the way needs and wishes are met and reviewed over time.
- 7.7 Because the provision of effective advocacy support will involve a range of people and agencies, the provision of advice and information needs to be reviewed and considered including:
- **Advice to parents, other relatives and carers;**
 - **Information for professionals and panel members;**
 - **Accessible information for children and young people.**

The findings of this research also strongly suggest that changed behaviour on the part of adults involved in the Hearings System can make a significant contribution to enhanced advocacy and participation. In order to facilitate this training needs to be reviewed and considered including:

- **Training for professionals in delivering advocacy support;**
 - **Training for panel members in enabling participation.**
- 7.8 The research findings also suggest that while advocacy support may best be provided by a combination of those already involved in supporting, and working with, children and young people, there will be occasions where a gap in provision needs to be met by working with a particular professional or by providing an independent advocate. Where the latter is the case, consideration needs to be given to how this would best be provided and funded, e.g. through arrangements between agencies working with the child or young person and existing national and local advocacy agencies and/or through a pool of advocates accessed via the Scottish Children's Reporters Administration.



Chapter Eight: Further Research

- 8.1 Conducting this study has raised a number of issues which may be explored through further research.
- 8.2 First, it is clear that the findings described in this report are less illuminating in relation to the experiences of younger children. Given some of the issues referred to above concerning levels of engagement and recall, it is suggested that research in this area might benefit from observation in addition to interviews.
- 8.3 Secondly, doing the research raised a number of issues in relation to interviewing children and young people. Some of these are referred to in the section on data collection. As part of the fieldwork for this research, those interviewing the children and young people recorded their observations about the interview environment and process. This produced a range of data which could be analysed in more detail and which in turn could offer suggestions about exploring some of these issues further, for example issues of privacy and confidentiality.
- 8.4 Thirdly, the interviews with adults conducted for this research were supplementary to those with children and young people, whose accounts have been given prominence in producing this report. In order to capture a more detailed and robust picture of the views of adults involved in the Hearings process, including panel members, it would be necessary to design a purposive sample and conduct further research.

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Annex 1

The Participation of Children and Young People in Welfare, Justice and Family Legal Proceedings: A Comparative Review

Information and Research

May 2005



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This literature review was carried out by Paul Bradshaw with contributions from Jenny Simpson, Indiya Whitehead and Gillian Henderson.



Introduction

Participation in Principle

The participation of children and young people in decisions which affect them is a principle that has found much support in recent years on an international, national and local level. At its broadest international level, support and motivation for the participation of children and young people in all aspects of their lives is most clearly provided through the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the Convention provides that:

1. *States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

(General Assembly of the United Nations 1989)

Since being passed by the General Assembly of the United Nations in November 1989, the Convention has been ratified by over 170 states, including the United Kingdom (in 1991). Ratification involves a commitment by states to bring their law, policy and practice into line with the standards set by the Convention with implementation monitored by an international committee of experts. Whilst the UNCRC still provides the dominant philosophy behind child participation, the principle has more recently received further international support from the Committee of Ministers in the Council of Europe. In *Recommendation No. R(98)8 on Children's Participation in Family and Social Life*, the Committee asserts that "Participation of children is crucial in influencing the conditions of their own lives" and recommends that governments of Member States take steps to promote children's participation in family and social life and to further remove barriers to this participation (Council of Europe: Committee of Ministers 1998).

In Scotland, the principle of participation of children and young people in decisions which affect them, particularly welfare decisions, is supported through provisions in the Children (Scotland) Act 1995 (CSA 1995) which brings together aspects of family, child care and adoption law that affect children, and provides the statutory base for the operation of the Children's Hearings System. The Act incorporates three key principles of the UNCRC into Scottish legislation and practice: non-discrimination (Article 2), a child's welfare as a primary consideration (Article 3); and, crucially, listening to children's views (Article 12) (Marshall et al, 2002). In short, the Children (Scotland) Act 1995 recognises within primary legislation the right of children and young people to be consulted about decisions in their lives and for those views to be taken into account in decision-making. The Act embodies a set of key fundamental principles which apply generally to the operation of the Children's Hearings System, including:

- **That the child's welfare should be paramount in all decisions**
- **That children should have the opportunity to express views and have these views taken into account in decisions which affect them.**

The first principle above, known as the paramountcy principle, is considered by many to be dominant. In simpler terms this principle means that all decisions made should be in the 'best interests' of the child. The second principle, requiring the interactive participation of children in Hearings actually pre-dated the 1995 Act and is recognised as a foundation stone of the Children's Hearings System. However, despite the participation of children and young people being grounded both in statute and, perhaps more importantly, in the broader philosophy of the Hearings System, the extent to which this participation is realised in day to day operation has come under scrutiny in the context of the Scottish Executive's current review of the Children's Hearings System.

Review of the Children's Hearings System

Getting It Right for Every Child, the first comprehensive review of the Children's Hearings System since its inception in 1971, was launched by the Scottish Executive in April 2004. This review comprises two phases: phase one was a national public consultation exercise. The aims of this stage of the Review were to listen to the views of Scottish people on the Children's Hearings System and to "... open discussions on the issues facing the Hearings System, its principles and its objectives" (Scottish Executive, 2004:1). The aim of the second phase, beginning in 2005, is to "... work with those in the System and others to consider what detailed changes to structures and legislation might be necessary to bring about the type of system we want to see in place for Scotland's children" (Scottish Executive, 2004:1).

One of the primary issues which emerged from phase one was how the System engages with children and young people and how they participate in the Hearings process. The view that this was not fully effective was shared by a range of respondents, not least young people themselves. For example, Stevenson's and Brotchie's analysis of the phase one responses notes that there "... was a strong view amongst young people who participated in the consultation that Hearings needed to do more to demonstrate that they were listening to young people and being responsive to their needs and wishes" (2004:26). Given these concerns, a key issue being considered at phase two is what can be done to improve the participation of children and young people in the Hearings System and, in particular, the provision of advocacy and support for children and young people taking part in it.

This literature review is part of a wider research exercise jointly devised and supported by the Scottish Children's Reporter Administration, the Scottish Executive, Save the Children Scotland and Who Cares? Scotland. The research aims to contribute to discussion of the aforementioned issues during phase two of the review by examining the experiences of children and young people of existing advocacy arrangements, the effectiveness of these arrangements, and whether they could be improved or if there are alternative models that could be considered. It is intended that this information will inform the discussion and help shape the future provision of advocacy for children and young people.



The literature review is separated into two linked sections. The first section reviews existing research on the participation of children and young people in the Children's Hearings System with particular focus on research projects which sought the views of children and young people. This highlights the existing provisions and mechanisms for enabling children's participation in the Children's Hearings System, the problems associated with these specific provisions, and the wider problems associated with ensuring effective participation of young people in the Hearings System generally. The second stage of the literature review explores research on approaches to securing effective participation by children and young people in youth justice and child welfare decisions in contexts other than the Children's Hearings System with particular reference to international models, approaches and evidence where they exist. It seeks to describe forms of advocacy and identify examples of advocacy practice that exist elsewhere in order to provide information that may be used to inform the development of young people's participation in the Children's Hearings System.

Participation and Advocacy

Advocacy is a complicated concept which holds different meanings in different contexts. Because of this ambiguity a definition of advocacy has been agreed by the research partners. This definition encompasses a range of options provided flexibly by various people and which would be available to children and young people to enable them to understand, communicate and participate effectively in accordance with their age and understanding in hearing processes and, ultimately, in important decisions which affect their lives.

At its broadest, advocacy is understood as the provision of information, explanations, support, simple encouragement to participate, or direct advocacy by way of representation. Children and young people involved in the Hearings System experience a need for a mixture of these things at different stages of their involvement and to differing degrees depending on their particular needs.

The relationship between advocacy and participation is crucial. It is apparent in terms of Article 12 of the UNCRC that, if children and young people are to be able to participate in a meaningful way, they require information, support, sometimes encouragement to be their own advocate and at other times appropriate representation. The important issue is that children's and young people's needs in this crucial area are themselves seen as relevant and a right which others have a duty to fulfil.

The partners in this research exercise believe that advocacy in its many guises can serve as a means to achieve children's and young people's participation as required by Scottish legislation and the UNCRC and can help to ensure their Hearings experiences are both productive and positive.

Section 1 – Children’s and Young People’s Participation in the Children’s Hearings System

Legislation – Historic

The principle of participation of children and young people in the Children’s Hearings System has been firmly established in legislation and statute since the System’s inception. Whilst this basis in law does not guarantee participation by children, the importance of the legal foundation means it is essential and useful to consider the legislative provisions in the first instance.

Kilbrandon Report

The Children’s Hearings System was set up on the basis of recommendations made in 1964 by a Committee led by Lord Kilbrandon. The Kilbrandon Committee, charged with finding solutions to the rise in the rate of youth offending and delinquency in post-war Scotland, found that the majority of cases coming before the Scottish juvenile courts were on offence rather than care grounds, and that the vast majority of offences committed by children were trivial in nature. The Report by the Committee put forward a set of rather radical and far reaching recommendations for a new national co-ordinated system to deal with children in need of compulsory measures of care. This system would remove children under sixteen years of age from adult criminal procedures, with the exception of extremely severe offences, and bring all cases in need of “compulsory measures of care” to a the Children’s Hearing comprised of three lay volunteers. Kilbrandon believed that this informal, relaxed setting would promote effective communication between all concerned, and, importantly, provide an atmosphere conducive to the child’s participation.

‘We do not consider that it is either necessary or desirable to seek to lay down any rigid framework governing the panel’s proceedings. The questions arising are in our view likely to emerge most clearly only in an atmosphere of full, free and unhurried discussion.’ (1964, s109)

Social Work (Scotland) Act 1968

Kilbrandon’s recommendations were realised in statute via the Social Work (Scotland) Act 1968, and the Children’s Hearings System was established following the implementation of the Act in 1971. Although there is little specific reference within the Social Work (Scotland) Act 1968 to children’s participation in the Hearings process, the Act does require local authorities, when they are making a decision which relates to a child, to “so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding” (Social (Work) Scotland Act 1968 s20(1)).

Statutory provisions more specific to the participation of children and young people in their Hearings were provided through the Children’s Hearings (Scotland) Rules 1986. Under Rule 19(2) the Chairman of the Hearing is expected to discuss the case with and seek to ascertain the views of the child and their parent(s) on what particular decision with respect to the child would be in his/her best interests.



Legislation – Current

The Hearings System as envisaged by Kilbrandon and established under the Social Work (Scotland) Act 1968 has been retained, largely unchanged, for over 30 years. However, it was given a new statutory framework by the Children (Scotland) Act 1995 which introduced some important, and more obvious, qualifications relating to the participation of children and young people in Children's Hearings.

First, the child is granted the right and placed under an obligation to attend all stages of the Hearing. This represents a significant change from the previous situation under which the child had a duty, but not the right to attend. As such, the current provision allows that, unlike previously, if the child insists on attending the Hearing, he or she is entitled to do so and cannot be excluded from any part of the Hearing. Secondly, under section 16 of the CSA there is an express statutory obligation on the Children's Hearing, taking account of age and maturity, to give the child "an opportunity to indicate whether he wishes to express his views", to "give him an opportunity to express them" and to "have regard to such views as he may express" (Children (Scotland) Act 1995 s16(2)).

Changes in the primary legislation were also reflected in changes to the Children's Hearing Rules. Updated in 1996, the new rules repeated the fundamental sentiments of the previous arrangements, but provided more detail and appropriate mechanisms through which the views of the child may be conveyed to the Children's Hearing. For example, in clear reference to Article 12 of UNCRC, the 1996 Rules allow that the child's views may be provided either by a representative or may be submitted by the child in writing, audio or video tape or may be provided by any safeguarder appointed by the Hearing. Furthermore, a Hearing may not reach a decision unless an opportunity has been given for the views of the child to be obtained or heard (Children's Hearings (Scotland) Rule 1996 (Rule 15)).

From Principle to Practice?

Whilst participation by children is laudable in theory, and providing a statutory basis to allow children to participate in their Children's Hearings is essential as an elementary step, legislative arrangements supporting the principle of participation do not automatically equate to participation of children in practice.

Erickson (1982), in research conducted over 20 years ago, found that children displayed varying levels of participation in their Hearings. Of the 105 Hearings observed,¹ she noted that one third of children were recorded as actively speaking out and elaborating, whereas around half demonstrated a more moderate level of involvement when responding to questions (1982:97). More recently, Hallett and Murray (1998) in their observations of 60 Hearings which took place in 1995, found that, on average, the child or young person made 17 contributions to their Hearing. However, the researchers are quick to qualify that "the number of the contributions does not really indicate the level of participation, as their contributions were notable for their brevity" (1998:47). Indeed, of the 904 contributions by children and young people recorded during these observations, three-quarters (76%) were of one line or less of typed text comprising one-third where the response was monosyllabic or a simple affirmation or negation (1998:47).

¹ Eligibility for selection was restricted to those aged between 12 and 15 years appearing on offence grounds of referral whose cases received final disposition at the observed Hearing.

Whilst the above evidence suggests that opportunities for participation, albeit limited in many cases, exist within the Hearing, the opinions of children and young people themselves often run contrary to this where they feel they haven't been given an opportunity to speak and subsequently consider that Panel Members haven't listened to them. Young people attending a seminar on Children's Hearings in Scotland, held in 1992 to mark 20 years of the Hearings System, stated that in some cases they felt 'left out' at the Hearing, with the general discussion and specific questions being directed around them rather than with them:

'I feel left out. They talk to your ma and da all the time.'

'At my panel they were asking my parents more questions. They weren't asking me enough.' (Milne, 1992:17)

Similar sentiments were voiced by young people interviewed by Hallett and Murray (1998). The researchers found that a number of young people thought that Panel Members had not really listened to them and one young person thought that Panel Members had not attempted to seek her opinion as no questions had been addressed to her (1998:66). Given that this research was conducted pre-1995, it is possible that the provisions introduced through the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Rules 1996 which place greater emphasis on achieving the participation of children and young people in their Hearings may have impacted on this situation. However, evidence from young people attending a consultation event on the Hearings System in 2004 (Who Cares? Scotland, 2004) suggests the sentiment remains. Young people attending the event stated a general desire to be more involved in the Hearing itself, beyond simply being able to attend. In particular, they felt that Panel Members should provide them with more opportunity to speak and to listen to what they had to say.

'Panel members should listen to young people, speak to you more, make you feel more comfortable.'

'If the Panel is there for the young person, why do they only talk to adults?'

'It's about the young people so you should be more involved.'

(Who Cares? Scotland, 2004:1 & 2)

In reference to these sentiments, the same young people attending the Who Cares? Scotland consultation suggested that many of the characteristics of a 'good' Children's Panel Member were related to the extent to which they involved young people in the Hearing. A good Panel Member was overwhelmingly considered to be "someone that listens to you" and that involves you in discussion (Who Cares? Scotland, 2004:11 & 12).

In concession, there is considerable acknowledgement in the literature that seeking the views of children and young people is not only one of Panel Members' most important but also most difficult tasks (Scottish Executive, 2003; Scottish Committee of the Council on Tribunals, 2002). Griffiths and Kandel (2000a) for example, in their qualitative and ethnographic study of proceedings involving children in Scotland and New York found that:



‘While panel members who were interviewed all agreed that it is essential to hear the child’s story about the circumstances giving rise to a referral directly from the child, most admitted that this is an uphill struggle.’ (2000:175)

Hallett and Murray (1998) found that Panel Members often employed ‘warm up’ topics using informal subject matter directed at the child or young person covering for example, what they liked at school or the sports that they were interested in as a method of making the child or young person feel comfortable and encouraging him or her to subsequently discuss more difficult topics later in the Hearing (1998: 49). Although the researchers found that this was generally unsuccessful as a strategy for involving the young person, they added, in accolade, that “there is no doubt that panel members tried often and hard, even in the face of difficult topics and angry or withdrawn participants” (1998:50).

Such findings are further evidenced by the views of children and young people themselves. The Who’s Hearing? seminar report (Milne, 1992) states that even when young people were asked their opinions by Panel Members, this did not always represent effective participation in the eyes of the young person. As one young respondent revealed:

‘Just because the panel says to you “are there other things you’d like to say?” it doesn’t mean you can start and tell all your problems. Anyway, they only ask you at the end of your hearing and you just want to get out of there as fast as possible and have a cigarette and think about something else.’ (Milne, 1992:13)

Similarly, Hallett and Murray (1998:60) found that in some cases, when Panel Members asked the children and young people what their views were, they received limited responses. In one example they reveal that five young people, when asked ‘was there anything that you wanted to say about that recommendation?’ said ‘no’.

Inhibitors to Participation

Such findings reveal the complicated nature of facilitating discussion at a Hearing and the difficult task that Panel Members are faced with when trying to engage with young people. Further evidence demonstrates the complex mix of factors that constrain children and young people from participating in their Hearings. These factors can be grouped into three broad categories, as noted by Griffiths and Kandel (2000a:178).

1. **Conflicting loyalties:** in this situation, the child may be reluctant to portray their parents in a negative light or to undermine their parents by voicing a preference in opposition to theirs.
2. **Fear:** children may be reluctant to talk because they are unfamiliar with the Hearings System and fear what the Hearing may do.
3. **Disaffection:** either through
 - a. the procedures and formalities of the forum which are often quite technical;
 - b. a lack of communication where they are excluded from discussion in terms of the language used and/or because the discussion is directed towards adults; and/or
 - c. miscommunication where what children and young people say is misinterpreted by Panel Members.

Conflicting loyalties was an inhibitor voiced by young people and some professionals in most of the research studies examined. One young person in Hallett's and Murray's research noted that her participation had been inhibited simply by the attendance of her mother and father:

'I was stuck in the middle of my Mum and Dad as if we were a cosy wee family. Nobody seemed to see the pressure my Mum and Dad were putting on me just by a movement or a look.'

(Hallett and Murray, 1999:37)

Further testimony from the *Scotland's Children: Speaking Out* report supports this position, as one young person commented:

'My stepdad always used to cough, just a little cough to warn me. He gave me that cough in the Hearing and I couldn't speak.'

(Scottish Office, 1994:4)

Milne reports that one young person felt very embarrassed when asked to talk about his mother in the Hearing when she was sitting next to him (1992:19). Who Cares? Scotland also reported general feelings from young people about not being able to talk freely in front of family members and agency representatives (2004: 3 & 4). In addition, Hallett and Murray (1998:80) found that, amongst Panel Members and professionals interviewed, the presence of parents/carers as an inhibitor to participation for some children and young people was noted more than any other single factor.



Fear is something Griffiths and Kandel (2000a) attribute especially to those young people who are attending their first Hearing. However, it is clear that, first Hearing or not, young people are often nervous and frightened about having to speak in front of strangers. Hallett and Murray noted that in one instance a child had been so overwhelmed by the occasion that he just put his head down (1998: 68). In many cases this could be attributed to a lack of knowledge amongst children and young people about the Children's Hearings System, the powers of the Children's Hearings and what will actually happen at the Hearing itself. Milne notes the comments of one young person who "didn't have a clue" what was going to happen at his first Hearing (1992:14). Whilst the child has a right to written notification of their Hearing, the research evidence suggests that very often this notification is problematic for recipients (Hallett and Murray, 1998:63). Indeed, a report by the Scottish Committee of the Council on Tribunals (2002) concluded that the letter is "too formal and perhaps even frightening". The *Scotland's Children Speaking Out* report reached a similar conclusion stating that young people found the pre-Hearing papers to be "confusing and alarming" (Scottish Office, 1994:4). Evidence from the *Who's Hearing* seminar demonstrates the problems. One young person commented:

'The first I knew of the date of my hearing was when a recorded envelope came and on the back was a stamp "Reporter to the Children's Panel". It made me feel ashamed and I couldn't understand the language on the letter they sent me.' (Milne, 1992:14)

The procedures and formalities of the Hearing in some cases lead to confusion for young people and work against the child's ability to participate (Griffiths and Kandel 2000). Erickson reports that:

'... the hearings were observed to proceed, in most cases, directly to the grounds of referral, either without any explanation of the purpose of the hearing or with one couched in legalistic terms regarding the establishment of the grounds.' (1982:95)

Erickson's respondents noted that the legal aspects of establishing the grounds was one of three significant areas of difficulty affecting young people's ability to participate, the others being 'big words' and contradictory decisions (1982: 96). The language used within the Hearing is in fact widely cited as a difficulty by children and young people. Although in many cases this appears to be directly related to the legal nature of some of the vocabulary being used, for some children even the language of the general discussion presents difficulty. The children participating in the *Who's Hearing* seminar complained variously about Panel Members use of 'jargon' and 'long words' (Milne 1992: 28). Young people in Hallett and Murray's research stated that they felt panel members were speaking "too posh" and that sometimes "there were some words that were confusing" (1998:68). Problems with language often extend beyond the Hearing discussion – problems have already been noted with the language used on the Hearing notification letters.

Mechanisms for Participation

The evidence above has focused on the problems that some children have participating in their Children's Hearings. As such, a rather negative picture has been painted of the participatory principle underlying the Hearings System, clouding the fact that some children and young people are satisfied with their Hearings experience and feel that they have been able to contribute effectively to the decision-making process. Erickson noted that "the majority of children expressed satisfaction with their participation level" (1982:97) and Hallett and Murray report the comments of one young person who considered their contribution to the hearing to have influenced the final decision:

'I thought they listened to me and took in what I said and actually used what I said to make their decision.' (1998:66)

However, the principle of participation is not about achieving effective participation for *some* children but rather allowing the views of *all* children to be heard, should they wish, in the Hearings System. In an effort to achieve this, and to avoid some of the difficulties expressed by children and young people, a number of mechanisms currently exist which seek to ensure the voice of the child is heard in their Hearing. They are:

- Excluding relevant persons from the Hearing
- The ability to bring a representative – including Who Cares? Scotland young persons' workers and Children's Rights officers, but no indication of the extent to which these are used and how effective
- Safeguarders
- Legal Representation
- Papers for children

Excluding Relevant Persons

A wealth of evidence was cited surrounding the difficulties children and young people have speaking out in front of their parents/carer. To encourage the child to participate in these situations, the legislation allows that such persons can be excluded from the Hearing for a period to allow the child to speak privately (Children (Scotland) Act s46 (1)(a)). Indeed, Panel Members and professionals interviewed in Hallett and Murray's study identified this method as a way of facilitating discussion more than any other (1998:80). The extent to which this is effective in all cases is questionable however, as the Chairman of the Hearing is under the obligation, at the end of the exclusion, to explain to the excluded party the content of the discussion that took place in his or her absence. It is not possible therefore, to use the exclusion as a method of protecting the child's confidentiality. One Children's Reporter in Hallett's and Murray's research commented:

'If you say to a child who has been abused "well, we're going to talk to you now, but when your mum and dad come back in we're going to tell them what you've said", you might well just say, "well don't bother".' (1999:37)



Inviting a Representative

The Children's Hearing (Scotland) Rules 1996 in Rule 11 gives the child and parent a right, separately, to invite a representative to attend a Hearing. The representative may assist the person represented in the discussion of the child's case and can be anyone for example, a sibling, a friend, a teacher or a lawyer. In this context, however, a lawyer does not attend in the role of a legal advisor and indeed, until recently, there was no provision for paid legal representation at any Hearing. In other words, this provision allows a child or young person to invite someone to a Hearing who may encourage or facilitate the child's participation by supporting them or indeed speaking on their behalf. Fraser (2004) notes the role that Children's Rights Officers and Who Cares? Scotland workers often play in this respect but as she rightfully acknowledges no research has been undertaken on the "efficacy and availability of these children's representatives" (2004:56).

Safeguarder

Safeguarders were introduced into the Children's Hearings System in the mid-1970s. Currently, under section 41 of the Children (Scotland) Act 1995, a Hearing or a Sheriff may appoint a Safeguarder in any circumstance where they feel it is necessary to safeguard the interests of the child in the proceedings. The purpose of appointing a safeguarder is drawn from the paramountcy principle and seeks to determine what action is in the best interests of the child. Whilst the role of the safeguarder is not expressly detailed in either the 1995 Act or in any related rules and regulations, safeguarders are expected to prepare a report based on consultation with the child, the child's family and any other significant persons. This report should attempt to identify the relevant issues and make a recommendation as to what disposal would best serve the child's interests.

The lack of detail surrounding the safeguarders' role means that it can be interpreted in slightly different ways. Lockyer suggests that in some cases safeguarders consider it to be part of their function to assist the child or young person in expressing his or her view (1994:58). In contrast, evidence also exists which suggests that, perhaps owing to the fact that many safeguarders are lawyers, they do not view their role as one of child advocacy, but rather as one of making recommendations based on an assessment of the child's welfare (Griffiths and Kandel, 2000a:177).

Legal Representative

Legal representatives are provided in specific circumstances at Hearings as a result of the impact of the European Convention on Human Rights (ECHR) becoming embodied in UK legislation (via the Human Rights Act 1998). In the case of *S v. Miller* (2001b), the Court of Session considered whether the non-availability of legal aid at a Children's Hearing contravened the child rights under Article 6(1) of the ECHR. The court found that in certain cases, the absence of any possibility of paid legal representation may represent an infringement of the child's rights in this sense. Accordingly the Scottish Executive, in the Children's Hearings (Legal Representation) Scotland Rules 2001, provided for the appointment of legal representatives in two specific situations:

- Where legal representation is required to allow the child to effectively participate at the Hearing; or
- Where it may be necessary to make a Supervision Requirement which includes a secure accommodation authorisation (deprivation of liberty).

Whilst the introduction of legal representation in such cases is to be seen as positive in terms of ensuring that the rights of the child are being protected, opinions are mixed on the usefulness of legal representatives in ensuring the participation of the child in the Hearing. For some commentators, the introduction of legal representatives to the Hearing forum is a move away from Kilbrandon's informal setting which promotes 'an atmosphere of full, free and unhurried discussion' (1964, s109). Indeed, as Hallett and Murray note:

'The extension of legal representation may be viewed as a challenge to the cherished (relative) informality of the hearings and the unwelcome import of adversarial practices from the criminal justice system into a welfare-based arena.' (1999:45)

Papers for Children

Papers for children were introduced in 2003 following a challenge in *S vs. Miller* (2001a). The basis of this challenge was that the lack of provision of Hearing papers to the child amounted to a breach of Article 6 of ECHR. More specifically it was accepted that the Hearing did not satisfy the requirement of a 'fair tribunal' due to an 'inequality of arms'. As such the papers for children scheme allows that, generally speaking, children over the age of 12 years automatically receive the same reports as Panel Members and relevant persons. Children between 8 and 12 years may receive reports, if they wish to see them. Report writers can indicate to the Reporter, on a separate sheet, information which they feel would be detrimental to the child – this information is not sent with the child's papers. The papers for children scheme may go some way to assist participation by ensuring that children are informed of all the circumstances of their case.

Suggested Mechanisms for Participation

Clearly, the provisions set out above go some way beyond the overarching principles enshrined within the primary legislation in ensuring effective representation of the best interests and legal rights of the child in the Hearing, allowing that the child is more informed of their situation and, to some extent in some cases, facilitating the child's participation in the Hearings process. However, it is also evident that such provisions do not stretch widely enough to ensure that all children referred to the Reporter have the opportunity to effectively participate.

In a number of the papers reviewed, academics, professionals and young people offer some suggestions which they believe would improve on the current situation in the Children's Hearings System and it is useful to consider these before examining practice in other systems.



Being Better Informed

Children involved in the *Who's Hearing?* seminar made a range of suggestions that they considered would have improved their experience of the Hearings System and allowed them to feel that they had satisfactorily participated in the process (Milne, 1992). The children and young people suggested that better information could be provided beforehand which would inform them on what to expect at a Hearing and what they could and could not do. One young person commented that being able to speak to someone who had already been through the process would have been very useful:

‘I think there should be some kind of helpline for kids, not run by adults but by kids who’ve already been to a panel. Because if you’ve been to a panel you know what to tell people who’ve never been before.’

(Milne 1992:15)

A number of families in Hallett’s and Murray’s research (1998:63) highlighted the role that social workers had played in preparing them for a Hearing by explaining aspects of the written notification as well as the grounds of referral, the purpose of the Hearing and the possible outcomes.

A Personal Written Report

The Children’s Hearings Rules (1996), as discussed above, allow the child or young person to submit their views to the Hearing in written form. This mechanism already exists through the ‘Having Your Say’ form although there is little evidence on the extent to which it is used and whether it is effective. Indeed, some young respondents contributing to the Who Cares? Scotland consultation were not aware of the ‘Having Your Say’ form but considered something of this nature to be a good idea in allowing young people to have their views considered by Panel Members without the young person having to speak. Young attendees at the *Who's Hearing?* seminar voiced support for a similar mechanism, suggesting that being able to write their own report for consideration by the Hearing and having someone to help them prepare it would be extremely helpful (Milne 1992:13).

‘There should be a form for a young person to fill out before they attend a panel to get their views taken into account.’

(Who Cares? Scotland 2004)

‘I do think children should get to write a report of their own but I think they should get help – like from a secretary or someone – to do it properly. That way they’ve more chance people will read what they think and take it seriously.’ (Milne 1992:13)

Child's Representative/Advocate

Two papers considered in this section put forward proposals for the introduction of a children's 'representative' or 'advocate' role into the Hearing to facilitate participation by children and young people (Duquette, 1994; Fraser, 2004). These are proffered by experts on the System rather than children and young people themselves, and indeed the existing research is lacking in terms of young people's views on such a role. A further paper presents the views of Scottish children and young people more generally on issues around the provision of an advocacy service for them (Cameron and MacFarlane, 2004).

The first proposal is put forward by Duquette (1994) who suggests that children and young people should be "independently represented" in a Children's Hearing by a child advocate who would "look out for the interests and wishes of the youth who is the subject of the hearing" (1994:133). Duquette broadly defines the role of child advocate as follows:

- **Continuous:** An advocate is appointed to assist the child from the very beginning to the very end of his or her involvement in the Hearings process.
- **Consistent:** As far as possible, the same advocate will be available to the child throughout his or her time in the Hearings process.
- **Independent:** The advocate would be employed by an organisation separate from all other parties to the Hearing.
- **Universal:** The advocacy system would be available, without discrimination, to *all* children coming before a children's hearing.

Duquette's advocate would not only pursue the interests of the child in the Hearing but also beyond the Hearing forum with the local authority, the police and the education system. Such a role would be best filled by a range of people working together including lay volunteers, social workers and lawyers rather than one person from a particular profession. Duquette compares this arrangement to the Court Appointed Special Advocate (CASA) service that has been established in some American jurisdictions. This system combines social workers, lawyers and volunteers within a single child advocacy enterprise (1994:135).

The benefits for children and young people are four-fold. First, the introduction of child advocates would enhance the protection of children's rights within the Hearings System without losing sight of the overarching welfare principle or the informal, non-adversarial approach of Hearings. Secondly, advocates would allow the voice of the child to be heard in the Hearing by meeting with the child in private beforehand and teasing out the issues pertinent to the child and presenting these views on behalf of the child in the Hearing. Thirdly, the advocate would be in a position to assist the Hearing by providing independent assessment and assisting with the decision-making process. Finally, the advocate can independently evaluate the effectiveness of the service being provided to the child.

Whilst broadly agreeing with Duquette, Lockyer (1994) offers a number of criticisms, principally that a separate child's advocate detracts from the "consensual model of the hearing" (Duquette 1994: 141). He suggests such a role would more effectively be played by a social worker or parent. The introduction of another professional into the Hearing forum, Lockyer adds, would only result in making the forum more adult-oriented, detracting from the child-centred approach of the Children's Hearings System.



Fraser (2004), drawing on Ormston (2002), argues that a child's representative in the Hearings System may require to be different in different situations (2004:52). A *supporter* would be in the form of a trusted adult providing reassurance and support to the child throughout the process. A *facilitator* is an expert on the System and uses his or her knowledge and skills to help the child participate more fully. Finally, a *legal representative* is necessary in situations where the child's legal interests need to be protected. Whilst the children's representative may take a different form at different times, Fraser argues that the main quality a representative should have is "the ability to engage with children of all ages at a level which is meaningful to them" (2004:54). She notes further:

'A child's representative needs to have time to explain the Hearing process so that the child feels confident that he/she understands what the Hearing will be like ... a representative needs to commit time to get to know the child, discuss his/her situation and the areas in which they would like to make their views known. The child needs time to understand that he/she can have a view on what happens and that this view will be taken seriously.' (Fraser, 2004:53)

Research on advocacy services for children

Research has been conducted on the provision of advocacy services for children and young people more broadly in Scotland. Cameron and Macfarlane (2004) undertook a study to explore four key issues surrounding advocacy for children and young people.

- **Whether young people would use an advocate and in what situations they would find advocacy helpful**
- **What kind of advocacy service and models of advocacy young people would find helpful**
- **Potential barriers preventing young people using advocacy and ways of overcoming these**
- **Appropriate stakeholders views on the issues that need to be addressed to take forward advocacy for children and young people at a local and national level in Scotland.**

The research found that young people did identify a need for advocacy, particularly in situations where they feel vulnerable such as in the Children's Hearings System, when homeless, using hospital services or when in contact with police or social workers. Confidentiality within the advocacy service was a key issue for young people. Whilst the young people didn't mind their parents knowing that they were using an advocate, they did not want what they discussed with the advocate to be shared with anyone else. Respondents stressed the importance of the advocate explaining what information could be kept confidential and what would be disclosed to parents/carers. As some young people commented:

‘The advocacy role could be explained to parents, but not divulge to the parents what the young person has talked about.’

‘They [the advocate] should explain what the boundaries are – what they would keep to themselves – and what they would tell others.’

(Cameron and Macfarlane, 2004:6)

The young people identified a number of key characteristics that they considered important in a good advocate. They were concerned about the advocate being patient, trustworthy, loyal, effective and able to listen; they were not concerned about independence. Views on the optimum age of the advocate were mixed, which, the authors suggest, demonstrates a need for choice (2004:6). Whilst gender was not a major issue it was acknowledged to be more important when dealing with more sensitive issues. The competency and knowledge of the advocate were both considered to be important to the young people – they wanted someone who was “clued up” and “knew their way round the system” (2004:6).

The main barrier to advocacy for the respondents was lack of information. Many of them had never heard of the concept before, indeed they found the term off-putting and suggested using a more practical term in its place. A number of ways were identified in which young people could find out about advocacy services including posters, leaflets and magazine articles. Such information, they added, should be in a format agreeable to young people using bright colours and humour with no jargon. Flexibility of the service was considered necessary to allow for the often chaotic and demanding lives of some young people.

The young people interviewed highlighted the need to recognise the links between rights, advocacy and participation. Similarly, they acknowledged the importance of understanding the difference between representing the child’s views and the best interests of the child. They considered it a necessity to have each concern represented separately by an advocate and a rights worker, although it was believed both could sit within the one organisation. Advocacy would be a “specialist” service rather than the universal one Duquette suggests. Resources would require the advocacy arrangements to be targeted at children in vulnerable situations. The young people also recognised the need for flexibility and information, although in the latter case they stated that adults must also be made aware of the services and their benefits to children.

Cameron and Macfarlane’s research identifies both a need and a backing for the provision of broader advocacy services for children and young people in Scotland. The current situation is, however, far from what their respondents would like as demonstrated by evidence in the Advocacy Safeguard Agency’s *Map of Independent Advocacy Across Scotland* (2004). On examining independent advocacy provision across fifteen health board areas in Scotland, the report identified gaps in advocacy services for children and young people in all areas.



Section 2 – Participation and Advocacy Beyond the Children’s Hearings System

As noted in the introduction, the UNCRC has been ratified by over 170 States worldwide indicating a commitment from each of these states to adhere to the principles within the Convention, including those contained within Article 12(2) concerning the participation of children and young people in “any judicial and administrative proceedings affecting the child”.

In a review of reports to the UN committee charged with monitoring implementation of the UNCRC, Marshall (1997: 34-53) highlights the provisions which have been established in some states. These provisions include both informal processes and more formal, judicial procedures. In terms of the former, the Danish Social Assistance Act, for example, allows that children of 12 years have the right to be consulted about proposed measures of family assistance. Similar provisions have also been established in Norway. In Sweden, the Social Services Act states that “a child must be given the opportunity of speaking on its own behalf in dealings with social services, especially when the question arises of placing the child away from its parental home” (Marshall, 1997:36). In Canada, where more formal, judicial procedures are adhered to, the provisions introduced differ in each state. In Alberta, children over 12 years are considered capable of giving ‘reasoned views’ and ought to be consulted in proceedings concerning them. In Ontario, the Children’s Law Reform Act provides that the courts shall consider the ‘views and preferences of the child’ in private custody disputes. Whereas in Manitoba, the Child and Family Services Act allows that children aged 12 years and over are entitled to be notified of any family support or child protection proceedings and to be given an opportunity to express their views and preferences.

However, as the evidence in section one demonstrates, statutory provisions do not necessarily or immediately translate into effective participation by children and young people in decision-making which affects them. Indeed, as Marshall notes, “While these provisions are to be welcomed, monitoring is clearly necessary to ensure that they are working effectively” (Marshall, 1997:36). In view of this, section two of this review aims to explore research on approaches to securing effective participation by children and young people in proceedings involving them (other than the Children’s Hearings System). This exercise seeks to identify and examine models of participation and advocacy, in the broadest sense, especially where evidence suggesting effectiveness was available directly from children and young people. The review identified three broad types of proceedings involving children for consideration and where useful literature was available. These are:

- **public law/youth justice/welfare proceedings;**
- **family or private law proceedings; and**
- **family group conferences.**

In each area, evidence was gathered on the extent to which children are involved in decision-making, any barriers that prevent their participation and mechanisms which are currently in place to facilitate children’s and young people’s participation.

Public Law, Youth Justice and Welfare Proceedings

Public law, covering both youth justice and child welfare proceedings, is by far the broadest category being considered in this review and the category in which arguably, there is most international variation in procedures. The variations between different countries' systems for dealing with youth justice and child welfare concerns are great. As such, it is necessary to bear in mind that what may be shown to be effective as a mechanism for achieving participation in one system may not transfer successfully to another system. The problems inherent in comparisons of this kind are aptly noted by Buist and Whyte (2004) in their recent international review of decision-making and service provision for children and young people who offend.

'Many different models [of youth justice and child welfare systems] exist; few are completely satisfactory; compromises abound. The manner in which each country has responded to children's needs and risks cannot be understood in isolation from their historic development, which makes comparison problematic.'

(Buist and Whyte, 2004: v)

Relevant information on public law proceedings was available from the United States, England and Wales, and Canada – all systems that are adversarial in nature. This is considered below.

Children's Involvement in Decision-Making

Measurement of the actual extent of children's participation and involvement in public law proceedings is somewhat scarce. However, *Your Shout!* (Timms and Thoburn, 2003), a NSPCC-funded survey of over 700 looked-after children in England and Wales included a range of questions on the extent to which young people felt they had participated in the proceedings which had led to them coming into the care of a local authority.

Whilst some of the young people surveyed would have been accommodated at the request of a parent/carer or themselves, the majority would have been the subject of a range of different court proceedings. In such proceedings in England and Wales, the child's views are normally provided to the court by a solicitor and the child's guardian to the extent that the presence of the child in court has become extremely rare (Agnello-Hornby, 2003). As such, it is not surprising to find that less than one quarter (23%) of the *Your Shout!* sample said that they had been to court when decisions were being made about them. Of those children who did not go to court, 17% indicated that they would have liked to (Timms and Thoburn, 2003:9).

Interestingly, unlike Children's Hearings, the non-attendance of the child at welfare proceedings concerning them is not unusual, particularly in jurisdictions where adversarial procedures are followed. Griffiths and Kandel (2000), for example, in their study of family court proceedings in New York State explain that in abuse and neglect cases in particular "... the child's voice is virtually never heard 'directly' or 'audibly' – for their 'protection' the children are often kept far from the courthouse door" (2000:167).



Of the young people who had attended court in the *Your Shout!* survey, only around one quarter (27%) were given an opportunity to speak to the judge directly. 13% of the court sample admitted that they did not wish to speak to the judge even given the opportunity, although one fifth admitted that they would have liked the chance. Of those children who did not attend court but indicated they would have liked to, the proportion was higher with 34% stating that they would have liked to speak to the judge.

Considering participation and involvement more broadly, young people in the *Your Shout!* survey were asked whether they felt they were listened to and their rights had been respected (Timms and Thoburn, 2003:12). Whilst 43% of those answering the question indicated that they felt they had been listened to, almost one-third (31%) said that they had not been listened to and the remainder simply didn't know. One young person added:

'I would have wanted my opinion to be listened to rather than just my carer's [opinion]. But the social workers should have been listening to me instead of just the opinion of the carer.' (Timms and Thoburn, 2003:13)

The indication is therefore that children appear to have only limited involvement, certainly of a direct nature, in court-based welfare proceedings. Evidence from parts of the process beyond the courtroom supports this. Thoburn (2004) in discussing children's involvement in planning and review services (part of the care process in England and Wales) notes, "... it appears that in many cases children's wishes are either not clarified or not respected about how the review process should unfold" (2004:128). In addition, studies by Farnfield (1997) and Boylan (1996) indicate that children felt they were not being listened to in child protection conferences and care reviews.

Barriers to Participation

Perhaps the most obvious barrier identified in the evidence above, is that the children feel they are not being heard. This often stems from the exclusion of the child from the discussion/ decision-making forum, and, when they are present, a lack of opportunity to speak. As has been noted, a fair proportion (34%) of young people in the *Your Shout!* survey who did not attend court reported a wish to have attended and further to be given the opportunity to speak to the judge (Timms and Thoburn, 2003).

In addition, Thoburn (2004) notes the importance of acknowledging the family power dynamic when encouraging children and young people to express their views and in basing decisions on those views. This indicates that children may not want to express their views if they feel they will be undermining their parents. Indeed, further research, (Schofield and Thoburn, 1996) found that children are happier when social workers adopt methods of consulting them during the care process which do not place them in opposition to their parents.

A key barrier for children and young people in contributing to decisions affecting them in welfare proceedings, according to the evidence available, is a lack of information. A number of findings within the *Your Shout!* survey suggest this to be the case. Children directly involved in court proceedings, reported being kept generally well informed – 84% of this group reported that someone had explained to them what was happening. However, within the sample as a whole, 37% of respondents stated that no-one had explained what was happening. The respondents were given opportunities to add ‘other comments’ to the set questions. Analysis of responses to these questions show that, in terms of understanding the court process, 34% of the young respondents in the sample as a whole believed that they had not been given enough information. One young person commented:

‘I would have liked more info and would of liked to have more say in the matter.’ (Timms and Thoburn, 2003:13)

Mechanisms to Facilitate Participation

A range of mechanisms currently exist which seek to facilitate the participation of children and young people in the public law proceedings examined. All of these are largely influenced by the adversarial nature of the proceedings and are as such concerned with the representation of children’s and young people’s views in court.

In England and Wales, the child’s case is presented to the court in the majority of cases by a solicitor and a Children’s Guardian. It is the Children’s Guardian role that facilitates the expression of the child’s interests and wishes in public law proceedings as an adapted form of the previous Guardian ad Litem. The service is provided by the Children and Family Court Advisory and Support Service, which was established in April 2001 through an amalgamation of the Guardian ad Litem service, the Court Welfare Service and the children’s division of the Official Solicitor. The Children’s Guardian is independent of all other parties to the proceedings where the child’s welfare is an issue. Their function is to speak to the child and ascertain the child’s views in respect of the case, they will also speak to family members and others associated with the child before preparing a report for submission to the court, which children are entitled to see. Significantly, whilst the child’s views may be expressed within the report, its core object is that the Guardian recommends what he or she considers in the best interests of the child – a conclusion which may differ from what the child wants.

Although thus far little research exists on the effectiveness of the Children’s Guardian, some research, conducted by the Children’s Society (Bourton, 2000), is available. This assesses the effectiveness of the previous and very similar role of Guardians ad Litem. A total of 28 children were interviewed, of whom 25 believed that their Guardian ad Litem had listened to them. In some cases, however, the difference between what the Guardian ad Litem saw as best for the child and what the child wanted created a negative assessment. As one young person commented:

‘I don’t think she [the Guardian] understood ... I know she wanted me to go to stay with mum. She didn’t understand why I didn’t want to go.’ (Bourton, 2000:17)



Crucially, almost three-quarters of the children interviewed rated the ability to listen to children as the most vital quality of an ideal Guardian and 43% reported that the ability to explain the legal process to children was very important. Whilst there is no doubt from the research that Guardians ad Litem contributed considerably to the outcomes of the court cases, since the report concluded that the outcome would have been different in 15 out of 21 cases, there is little to indicate that their contribution was beneficial in providing an outcome agreeable to the young people involved. Neither does the report indicate that Guardians ad Litem ensured that the young people themselves felt they had been given an opportunity to participate effectively in proceedings.

Mechanisms similar to the Children's Guardian exist in other jurisdictions. Griffiths and Kandel (2000a) describe the role of the Law Guardian in family court cases in New York State. Statute requires that in all abuse, neglect, persons in need of supervision and juvenile delinquency proceedings children are represented by a Law Guardian, which the authors describe as a "cross between an attorney, advocating for the child's wishes, and a Guardian ad Litem, taking an independent position based on the child's best interests" (2000:169). The Law Guardian is the child's key spokesperson in court and like the Children's Guardian, interviews the child to ascertain his or her wishes before presenting a report to the court. The rules governing the role of Law Guardians express that they are to function primarily as the child's 'lawyer', operating from a rights stance. However, there is provision to introduce a best-interests approach where it is considered that the child is immature and that the child's wishes are contrary to the child's best interests. The authors note that when interviewed, the majority of Law Guardians admitted that "they primarily took a best-interests welfare view, but one informed by what the children said they wanted" (2000:170). Significantly, whilst the Law Guardians report playing an effective role and carrying out extensive investigations into children's wider lives, the young people themselves were less convinced of the Guardians' thoroughness and their ability to connect with the young people they are supposed to be supporting.

'Several children summarised their interaction with their law guardians as having first met at the courthouse, the lawyers using big words, telling them what to do and not really explaining things ... Several pointed out that the law guardians were members of the community elite, and hence more connected outside the courtroom to judges and lawyers than to the working class families who are typically the parties in court.' (Griffiths and Kandel, 2000)

A number of arguments exist against the representation of the child's best interests as the primary consideration over the expression of their views and protection of their rights. Eitzen (1985), cited in Hallett and Hazel (1998), argues that a child's legal interests are often not well represented by experts such as Guardians ad Litem. Ramsay (1993), also cited in Hallett and Hazel (1998), makes a case for advocacy that is based on instruction directly from the child rather than someone deciding what may be in their best interests. She recommends that lawyers should represent the child's wishes where the child is considered capable of making a measured decision.

Griffiths and Kandel (2000a: 169) also note the use of the “Lincoln hearing” in family court proceedings in New York State. This is where the judge interviews the child in private in chambers. The judge, the child, a court stenographer and the child’s law guardian are present in the judge’s chambers. Whilst a stenographic record is made of the interview it is non-public and sealed, only the law guardian may review it and only to check for accuracy (usually done in the judge’s chambers).

The Court Appointed Special Advocate (CASA) system in the United States serves to assist children and young people involved in public law proceedings in all 50 states. This volunteer advocacy programme serves three purposes (Hallett and Hazel, 1998), to:

- **Investigate the child’s situation on behalf of the judge and determine facts.**
- **Speak for the child in court, representing the child’s best interests; and**
- **Act as a broader ‘watchdog’ for the child for the life of the case providing continuity and protecting the child’s legal interests.**

Recent legislative changes in England and Wales have seen an increased role for advocacy for children and young people. Whilst such services have existed for a long time, the implementation of section 119 of the Children and Adoption Act 2002 on 1 April 2004, which obliges local authorities to establish procedures for considering complaints by looked after children and children in need, gives these services an increased role and puts them in higher demand.

The services are provided in the main by a number of key players, including specialist advocacy providers (Voice for the Child in Care, National Youth Advocacy Service, Children’s Rights Officers and Advocates, Voices from Care Cymru, Voice of the young person in care) and larger voluntary sector organisations, including NSPCC and Barnardo’s. The services are governed by a set of national standards published by the Department of Health in 2002. These standards set out the core principles that children and young people can expect from advocacy services and provide a framework under which local authorities can plan, develop and review the practice of child advocacy.

Standard 1: Advocacy is led by the views and wishes of children and young people

Standard 2: Advocacy champions the rights and needs of children and young people

Standard 3: All advocacy services have clear policies to promote equality issues and monitor services to ensure that no young person is discriminated against due to age, gender, race, culture, disability, or sexual orientation.

Standard 4: Advocacy is well-publicised, accessible and easy to use

Standard 5: Advocacy gives help and advice quickly when they are requested

Standard 6: Advocacy works exclusively for children and young people

Standard 7: The advocacy service operates to a high level of confidentiality and ensures that children, young people and other agencies are aware of its confidentiality policies

Standard 8: Advocacy listens to the views and ideas of children and young people in order to improve the service provided

Standard 9: The advocacy service has an effective and easy to use complaints procedure

Standard 10: Advocacy is well managed and gives value for money

(Department of Health, 2002)



Voice for the Child in Care

An in-depth study was undertaken of one service, Voice for the Child in Care (VCC), to provide detail on the role that the advocate fulfils, and the comments of children and young people who have used the service.

Established in 1975, VCC operates to provide children in care with a voice and to campaign for improvements in the lives of children and young people in care (Voice for the Child in Care, 2004). Currently the organisation has a head office in London and four regional offices covering all local authority areas in England. In 2003-04, VCC provided a direct advocacy service to almost 3,000 children and young people in England.

VCC's seven key aims are:

- To empower children and young people to speak out for improvement to the quality of their lives by providing information, advice and advocacy.
- To raise awareness of children's rights and promote the full implementation of the UNCRC.
- To campaign for changes in law, policy and practice for the benefit of children and young people in care and those in need.
- To support the active participation of children and young people in the development of the law, policy and practice and in the delivery of services.
- To deliver high quality services to children and young people.
- To ensure equality of opportunity and anti-discriminatory practice in the delivery of all services.
- To provide a link for people and agencies who aspire to good childcare practice in their daily work.

Practically speaking, VCC provides three distinct types of advocacy for children and young people – individual advocacy, visiting advocacy and independent services.

- *Individual advocacy* is undertaken on a one-to-one basis where a child has contacted VCC through the national helpline because they have a problem with their care arrangements. An advocate will then meet with them to help them resolve the issue. Recently, VCC has developed a range of specialist individual advocacy services tailored to the specific needs of children with disabilities, those with mental health issues, unaccompanied asylum-seeking children and care leavers (VCC, 2004:7).

- VCC provides independent *visiting advocacy* to children and young people in children's homes, secure care, residential schools and psychiatric hospitals. Regular visits mean that the advocate becomes a familiar and trusted person who children can approach with any problems. This service is currently provided for 51 children's homes, 24 secure units, 3 secure training centres and 10 Young Offender Institutions.
- The *independent services* were set up in 1991 to provide 'Independent Persons' to assist in the investigation of complaints under the Children's Act 1989.

The advocate's assistance can take a number of forms. VCC's research demonstrates the range of different situations in which a VCC advocate can become involved and the different methods through which they support the young person (VCC, 1998). In some instances, VCC has assisted children with complaints against local authorities. This involved simply discussing the issue with the child and providing them with the information they need to make the right decision, and writing letters on behalf of the young person after agreement of what the content of the letter should be. Advocates have also prepared children for review panels and assisted them, either through providing them with support at the panel or presenting the child's issues on their behalf. In some cases, advocates have enlisted additional support, for example, by assisting the child to instruct a solicitor where he or she is entitled to legal representation.

A number of broad positive characteristics and benefits of advocates emerge from the narratives in *Shout to be Heard*. Of importance is that children and young people like that advocates listen to what they have to say. They also appreciate that advocates are comfortable with young people and can communicate easily with them. One young girl commented:

'Once I met her I relaxed straight away. She seemed to be really at ease with young people, she also had some of the street slang down as well which gave her some cool points. Someone acceptable to be seen out on the street with!' (VCC, 1998:74)

In particular young people find it helpful that advocates can explain things to help them understand the often complex processes that they are involved in. Finally, it is clear that children and young people savour seeing real results and, in addition when these are in their favour because of the advocates' support.

Thus, in recent years advocacy for children and young people has been placed higher on the agenda in England and Wales, and more advocacy provision of the sort detailed in the VCC profile is available to children and young people than ever before. However, Plummer (2004) identifies a number of difficulties with the increased provision. First, there is a lack of understanding amongst professionals about the advocate's role, which can lead to conflict. Also, conflict can arise because advocates guide young people in their own direction, a direction sometimes completely opposite to that desired by the professionals involved in the case. The provision of services is also problematic: whilst all the guidance recommends that advocacy services should be independent, Plummer notes that a number of local authorities employ their own advocates, calling the independence of the service into question.



Private and Family Law Proceedings

Private law proceedings involving divorce, contact and custody arrangements are generally more standardised across the international arena than public law proceedings. In some jurisdictions they are similar in form to public law proceedings and may, in some cases, be heard in the same court. Considerable debate has occurred, often at an international level, on the role that children's preferences or wishes should play in decisions taken about residence and contact arrangements following the separation and divorce of their parents (Cashmore, 2003).

Children's Involvement in Decision-Making

Chisholm (2000), cited in Cashmore (2003), indicates a number of ways in which children and young people can be involved in the family law process. They can be kept informed of what is happening, be given an opportunity to express their feelings and wishes, contribute to the consideration of options and in some cases provide "creative and useful solutions not considered by the adults" (Cashmore, 2003:159).

Research exists across a number of jurisdictions on the extent to which children are involved in the family law decision-making process. A review of this evidence suggests that the potential involvement discussed by Chisholm is not universal. Indeed, he acknowledges such sentiments himself.

'My impression is that internationally and locally, it has been more the exception than the rule to involve children in primary dispute resolution [custody and access].' (Chisholm, 1998:7)

Approximately one-third of children in Marshall's *et al* (2002) feasibility study on children's views on matters that affect them under the CSA 1995, said that they had not had a say in the decisions, affecting their lives, made in legal proceedings. In the same study, the children and young people expressed that they felt they were not being listened to by adults and that adults did not do enough to help children understand what was going on. A survey of 200 parents involved in contact disputes in England and Wales undertaken by the Children's Legal Centre found that of those parents who had been to court for a contact order, 66% said that the court had not been made aware of the children's wishes (Moylan, 2004). Where the children's views had been expressed in court, 43% of instances had been via a court welfare officer. Staying in England and Wales, Douglas *et al* (2001), cited in Cashmore (2003), found that less than half of the 7 to 15-year-old children interviewed had been asked who they would prefer to live with but that over half (55%) said they wished they had been asked. Further afield, the results of an Australian study reported by McDonald (1990) cited in Cashmore (2003), showed that only one-quarter of 8 to 12-year-old children stated that they had been consulted about initial contact arrangements. Similarly, research in New Zealand found that 37% of the children aged between 6 and 15 years interviewed were consulted about initial contact arrangements (Gollop *et al*, 2000 cited in Cashmore, 2003).

The extent to which children are given an opportunity to present their views directly in the proceedings almost mirrors that in adversarial welfare proceedings. Indeed, evidence demonstrates a professional reluctance to allow children to participate in such a manner. A survey of judges and lawyers in Canada shows that whilst over three-quarters of respondents (78%) thought that legislative reforms or service improvements were necessary to better enable children to voice their views when parenting decisions affecting them were made, only 15% believed direct testimony by the child to be an appropriate way to achieve this (Paetsch *et al*, 2001). And in Scotland, Marshall *et al* (2002) found that only 17% of judges would consider speaking to the child, should the child write to the court requesting this.

Barriers to Participation

Children and young people involved in research undertaken by Marshall *et al* (2002) were asked what, for them, were the biggest barriers in stating their views and being heard. The responses highlighted a number of issues. One of the most common barriers was reluctance amongst young people to talk about certain subjects or to express their views for fear of hurting other people's feelings. Children do not want to upset the sometimes delicate balance of their relationships with the other people involved, as this quote from a 14-year-old boy demonstrates:

‘... you're probably thinking you really want to say something and then you change it because you know it's going to hurt people's feelings and like it's probably just the relationships that you're going to break up and you really don't want to do that.’ (Marshall *et al*, 2002:41)

Children also felt that they weren't being listened to by adults and, further, that adults do not do enough or provide any information to help children understand the process that they are involved in and the decisions being made. A number of children in the study made a specific reference to adults' poor listening skills. The lack of sufficient information for children, in a form and at a time when they most needed it, was strongly felt by almost all the respondents.

Mechanisms for Participation

In Scotland the legislative position of children and young people involved in family law proceedings is, like their legal position in the Children's Hearings System, provided by the Children (Scotland) Act 1995. In considering whether or not to make an order on parental responsibilities, children must be given an opportunity to indicate whether they have any views. If they do, the child or young person must be given the opportunity to express these views and have them taken into account by the court (s11(7)(b)). As with the similar provisions in relation to the Hearings System, these conditions are subject to practicality and the age and maturity of the child.

Similar statutory backing for the child's participation in family law proceedings exists in other legal jurisdictions. There are also a number of identifiable mechanisms, some unique to particular jurisdictions and others more universal, which seek to enable the child's practicable involvement in the family law process.



The submission of written reports, prepared by children themselves, exists in a number of jurisdictions. In Scottish court proceedings, if children are served they receive a Form F9 which requests their views by allowing the child to complete a box entitled “What I Have to Say About My Future”. The form also allows the child to nominate someone to tell the Sheriff about their views including a friend, relative or other person. The child is able to fill this in and send it back to the court. Research by Marshall et al (2002) found that of the 31 children and young people consulted only one young person had filled in Form F9 and the rest had never seen it. Infrequent use of the form was also reported by Sheriffs. Despite this, the young people interviewed thought that they or their peers would consider using the form if they received it. There was also support from children and legal professionals for the use of letters written by children to the court as an effective way of bringing children’s views into proceedings. However, as to some extent with the Form F9, this mechanism relies on children having the ability and confidence to write something they feel adequately conveys their views.

Cashmore (2002) identified mediators as one the “main avenues” for children’s views to be included in proceedings. A more informal approach, mediation allows parties to review decisions outside of the courtroom by using an impartial person to guide disputing parties, to help them make informed decisions using conciliation and to develop mutually acceptable agreements. Whilst in principle the process seems more amenable to incorporating the views of children, in practice this does not appear to be the case. As Cashmore comments:

‘There is a fair degree of similarity of practice across jurisdictions in that most family mediators and conciliators in Australia, New Zealand, Canada, the United States and the United Kingdom do not directly seek the views of children in the mediation or conciliation process.’
(2002:163)

Court counsellors and Court Welfare Officers are a more common method through which children’s views are brought before the court (in the UK, Canada, Australia and New Zealand). A position similar to the Guardian ad Litem, the court counsellor is charged with preparing a report which, generally speaking across jurisdictions, is required to address the ascertainable wishes and feelings of the children, taking into account their age and maturity. Chisholm notes that such reports are “one of the recognised ways of obtaining information about the children’s wishes” (1998:5). However, such wishes are based on an assessment by the court counsellor or court welfare officer who is preparing the report and as such the child’s views may not be explicitly outlined in the report. A worrying trend in this respect, noted by Cashmore (2002:163) is that in many cases children do not appear to have an opportunity to review the report before it is submitted. As such, the child cannot dispute any misinterpretation in the author’s assessment of his or her wishes.

Legal representation is available in most jurisdictions. The assistance provided by the solicitor can be varied. In Scotland, for example, a child’s solicitor may provide help completing Form F9 or may write to the court on the child’s behalf. Permission may also be sought to include the child as a third party to the action. Alternatively, the lawyer may appear on the child’s behalf. However, Cashmore (2002) notes that in a number of countries, the direct involvement of children with lawyers is low with few children having their own legal representation. Research by Murch et al (1999), cited in Cashmore (2002), showed that most parents’ solicitors said they do not talk to the children; 45% admitted they would never talk to a child, but a little over one-quarter

(28%) said they would consider doing so. In Scotland, where solicitors did speak to children, Marshall *et al* (2002) found that most solicitors interviewed believed that ascertaining a child's wishes involved asking them about residence and contact. Only a small number saw it as an opportunity for the child to express their views (2000:40). Despite these flaws, Marshall *et al* (2000) found that children who were represented by a lawyer during the process had a much more fulfilling participatory experience. All of the children who had their own lawyer felt that they had had a say in decision-making. Furthermore, those who had been legally represented had positive views of the experience. The children believed that lawyers had provided them with a "vital channel" for expressing their views which may otherwise not have been available.

In some cases, to facilitate the expression of the child's views, the judge may ask to speak directly to the child. Views from the *Your Shout!* survey on public law proceedings in England and Wales showed that in some cases children are keen to have this opportunity. Drawing on evidence from family law, Cashmore notes:

'Some children are very keen to talk to the judge. Some clearly feel frustrated about not being heard or having their views 'filtered' and want to go straight to the decision-maker. Others are keen to get their views across without having their parents involved in the process.'

(Cashmore, 2002:167)

The mechanisms in place to facilitate participation by children and young people in family law proceedings appear less than adequate as evidenced by the views expressed by children and young people in the studies discussed in this review. Whilst the evidence from children and young people does not provide a pre-prepared solution to this problem, there are a number of identifiable changes to the process that young people consider necessary for their effective participation.

First, children want to know what is going on. Marshall *et al* (2002), reviewing three research projects on children involved in divorce proceedings, found that the young people in all studies felt significantly ill-informed. They lacked both understanding of the legal process surrounding divorce and information about their personal family situation. It is clear that children and young people would like information on the process itself, the options that are available and how decisions are taken. Secondly, children want a say in decisions that directly affect them. We have already seen how a number of children and young people feel that they are not listened to in family law proceedings. As such, they express a wish to be consulted about their opinion and have their views taken into account in the decision-making process. Confidentiality is very important in ensuring the participation of children and was a high priority for many informants in the research considered here. In acknowledgement of the concerns over confidentiality in these proceedings, children and young people in Marshall *et al*'s research offered a compromise. They stated that as long as clarity was offered on confidentiality and that children could form a trusting relationship, they may be comfortable with sensitive information being shared to facilitate decision-making.

Cashmore (2002) argues that the biggest barrier to children's participation in family law proceedings is the lack of follow-up mechanisms – a drawback that is related, in some part, to the lack of information and the lack of opportunity to have a say. Building in feedback mechanisms would allow children to correct misinterpretations and would provide accountability of adults to children. He suggests a number of feedback loops which could be introduced into the process:



- Mediators could ask parents whether they have talked with their children about available options.
- Allowing children to see the family report would be respectful of their right to be informed of how their information will be used.
- Separate legal representatives for children should explain what they will say in court, how they will say it and ask whether that is what the child expects them to say.
- A quality assurance process at the end of proceedings, asking children how satisfied they were with how their legal representative treated them and took account of their views.
- Children should be asked how they would feel if the court came to a conclusion different to their preferred option.
- Children should be made aware that the court's decision may be different to their preferred option and why, before and afterwards.

(Cashmore, 2002:169)

Family Group Conferences

One common approach to decision making in several welfare and justice systems is the use of Family Group Conferencing. This approach, originating in New Zealand, is shared by Australia, England & Wales and Canada. Family Group Conferences are decision making forums in which the young person, their family, extended family and community members as well as welfare and justice professionals have an opportunity to meet and reach a consensual decision, using their collective expertise, on support and action regarding the young person's welfare. The aim of the use of a Family Group Conference is to:

‘... help the family and the family services department come to a protective solution for the child that avoids court involvement.’

(Australian Law Reform Commission, 1997:17.44)

The conferences comprise a meeting, convened by an independent co-ordinator, where the child, family members, extended family members and relevant professionals will attend, discuss the child's situation and decide on a relevant course of action.

Family Group Conferences are facilitated and organised by an independent facilitator and can have different foci – child welfare, youth justice, and education decisions are some broad examples. The conferences are generally founded upon welfare principles with the attendant paramountcy of the ‘best interests of the child’. The family focus of the conference strives for democratic decision making with the young person's participation.

Children's Involvement in Decision-Making

Research on the extent to which children participate in Family Group Conferences is scarce, especially studies where the views of children and young people have been collected. Research on Family Group Conferences in New Zealand raises concerns about the efficacy of participation by young people (Paterson and Harvey, 1991 cited in Dalrymple, 2002). The findings show that, unlike some of the public law and private law proceedings examined above, children were present in four out of five Family Group Conferences, but that adults interviewed in the same study thought that in fact children should be excluded from conferences. Findings from Clarkson and Frank's (2000) evaluative project in England, cited in Horan and Dalrymple (2002), suggest that, on the whole, young people do not feel that they are heard in the conference process. Further evidence from a University of Sheffield study (Beecher *et al*, 2000, cited in Horan and Dalrymple, 2002) showed that, although children and young people appear to be involved in the conference planning stage, they are not as likely to fully participate in the conference proceedings. Swain & Ban (1997), in their study of Family Group Conferences in Victoria, Australia, also question the quality of 'democracy' in the decisions made by families. Whilst they ascertain that "the majority of families do make responsible, caring decisions for the well-being of their children" they stress that family decisions can be made with "little regard to the rights of some of its members" (Swain & Ban, 1997:46).

Barriers to Participation

Dalrymple (2002) lists some of the barriers which affect young people's participation in Family Group Conferences. In some cases, it is clear that children and young people are often inhibited by the presence of other family members and do not wish to talk in front of them. This problem is related to the unequal power dynamics that often exist in families, a barrier also acknowledged in the *Seen and Heard* report. It is also acknowledged in the literature that some children may lack the confidence and the support to clearly articulate their views within the conference. The *Seen and Heard* report notes that those children with "poor verbal skills or no family support" are most likely to be excluded from effective participation. There is an indication, as in other types of proceedings, that children do not understand the language being used and, crucially, feel that adults are not listening to them.

Concern is also raised by research on Family Group Conferences in New Zealand and Australia that the wishes of the family were prioritised over the needs of the child. Some commentators argue that not only are children 'disempowered' by the adult-orientated decision-making forum that is the Family Group Conference, but also that by empowering the family to reach a democratic decision, conferences disempower the child making it difficult for him/her participate effectively (Dalrymple, 2002).

Mechanisms for Participation

In an effort to overcome these conflicts of interests and power inequalities, some countries have incorporated advocacy into the planning of their Family Group Conferences. For example, conference co-ordinators in Newfoundland and Labrador in Canada ensure that each child or young person who has been abused is accompanied by a support person, an "individual whom they can trust and who can serve as their spokesperson throughout the conference as needed" (Pennell & Burford, 1994:80 cited in Dalrymple, 2002). The support person can be either a relative, guidance counsellor or foster parent. Such mechanisms can be described as 'natural' advocacy. This is a concept of advocacy which focuses on providing a support person from the



child or young person's family or community. This is built on the premise that young people in trouble often find it easier to talk to someone they know and trust. Such a system has also been developed elsewhere in Canada. The Office of the Child, Youth and Family Advocate provides training and recognition for individuals whom children and young people identify as a suitable support person (Dalrymple, 2002b).

The concept of individual advocacy has also been applied to assist children and young people to participate in Family Group Conferences. A current example of such provision can be found in Barnardo's Family Group Conference project in Wiltshire. A significant number of the children involved in this project saw the advantage of having an independent advocate, with 51 of the 79 children choosing to use an independent advocate (Horan and Dalrymple, 2002).

Research on Family Group Conferences in a number of jurisdictions recognises a need for advocacy in the form of a representative who may speak for the young person and/or help them speak for themselves to facilitate their effective participation. However, in practice it appears that advocacy is not being utilised. For example, research in Sweden reports that within the period of the study children only took part in 50% of Family Group Conferences and advocates were only appointed in a few cases (SWALA, 1997).

Comparison of the literature on Family Group Conferencing in New Zealand, Australia, USA, Canada, England and Sweden suggests that there are common difficulties in ensuring young peoples' participation in the decision-making process, and a difficult balance between the promotion of the young person's 'best interests' and their effective participation. There are also similar barriers to children's participation to those experienced in other systems such as the Children's Hearings System, mainly related to conflicts of interests and power inequalities between the child and their family. Independent advocates/representatives for children in Family Group Conference proceedings have been shown to be successful ensuring children's participation and influence on decision-making in a number of studies. However, this is not the norm, and despite post UNCRC rights based legislation in many countries, a strong culture of youth participation practice is not widespread.

Conclusion

The principle of participation is a key feature of the Children's Hearings System, entrenched in the both the philosophy and legislation which govern the operation of the System. However, this review of research on the participation of children and young people in the Children's Hearings System, focusing on projects which sought the views of children and young people, has shown that this principle is difficult to put into practice. It was found that there is a complex situation where children often feel left out of discussion and are confronted with a range of barriers which makes it very difficult for them to participate and effectively express their views. Although a number of provisions do exist to help overcome these barriers and thus facilitate the participation of children and young people, there is a distinct gap in the research evidence of models of advocacy which children and young people themselves would find useful in supporting their participation in the Hearings System.

Despite the limitations reported on children's participation in the Children's Hearings System, the research evidence suggests that the mechanisms that exist and the extent to which they enable children and young people participate in the Scottish Hearings System are at least as extensive if not more so than in other UK proceedings and those of other countries. However, this review has shown that there are common barriers preventing the participation of children and young people in welfare, justice and family decision-making in different types of proceedings and across international jurisdictions.

The similarities in terms of barriers have highlighted common issues to be addressed to facilitate participation. These are:

- **Children want to be listened to.**
- **Children must be given the opportunity to attend the proceedings concerning them.**
- **Confidentiality is essential to ensure that children will fully express their views.**
- **Children require to be kept informed. They have a right and a desire to be provided with information in a format suitable for them which explains processes, options, decisions and reasons for decisions.**

Where an advocate is seen as necessary, they must be:

- **Confidential.**
- **Knowledgeable about the system.**
- **Able to communicate effectively with children.**
- **Good listener.**
- **Be provided on a continuous basis to support a child throughout his/her case.**



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Annex 2

Advocacy Support for Children and Young People in the Children's Hearings System

Information for Children and Young People

What is this all about?

We are doing a project on children and young people's experiences of Children's Hearings. We want to talk to you to find out if you feel able to take part in your Hearings and whether you think that the people there listen to you. We need your help to find this out as we are interested in what YOU think. We will also want to talk to someone who has worked with you to ask them about help with Hearings available for children and young people where you live.

Who are we?

The project is being done by a team of people. Our names are Chris Creegan, Caroline King and Lynsey Russell-Watts.

Chris Caroline Lynsey

What do I have to do?

We would like to meet with you for between half an hour and an hour to talk about your experiences at Children's Hearings. We are interested in whether you feel you were allowed to speak and join in at your Hearing and whether you feel that you were listened to. We would also like to know about anyone who has helped you to join in – before, during or after Hearings – and what they did to help. We would also like to ask you about anything that stopped you from speaking or joining in.

Where will this happen?

We can decide on a good place to meet together: this could be your house, your school, a youth club or somewhere else near where you live.

Why should I talk to you?

You are the most important person at your Hearings, so it is important for us to find out what you thought. This is a chance for you to have your say: we will listen to you. You can help us to find out how things could be changed by telling us what was good and bad about your Hearings and about ways in which people could help young people join in. This will help to make Hearings better for all children and young people who go to them. After the interview, we will give you a voucher to thank you for taking part.

Will you tell anyone what I say?

We might write down what you say and would like to tape record the whole interview so that we don't forget what you say. BUT we will not let other people listen to your tape, see what we've written or tell them what you've said.

No one except the researchers will know your name or where you live. The only time we would tell anyone what you said was if you told us you were in danger. We will need to talk to another adult if this happens, but we would speak to you about it first.



How do I take part?

If you would like to talk to us, you will need to tell us that you agree by filling in the form inside this leaflet. We will also ask your parent or carer to check that it's OK with them: there is another leaflet for them and a form for them to fill in.

Can I change my mind?

Yes, of course. You can change your mind at any time, even during the interview. You just need to tell us. We will not mind.

What happens afterwards?

We will write a report about what all the children and young people who have talked to us have said, but we will not use your name (or anyone else's!). No-one will know who said what. The report will help to work out what could be done to help children join in more with their Hearings. We will send you a report telling you what we have found out from everyone.

Can I talk to you first?

Yes, of course. We would be very happy to talk to you. You can:

Email us:

Chris: chris.creegan@scra.gsx.gov.uk Lynsey: lynsey.russell-watts@scra.gsx.gov.uk

Caroline: c.king2@savethechildren.org.uk

Phone us:

You can phone our Information Assistant, Danielle Adam on 01786 459558.

Write to us:

Advocacy Project, Information and Research, Scottish Children's Reporter Administration,
Ochil House, Springkerse Business Park, STIRLING FK7 7XE

Consent Form

If you would like to take part, please read this form carefully, tick the boxes that apply and sign your name.

We would like to talk to you about your experiences of going to Children's Hearings, about whether or not you felt you could join in, and about people who might have helped you do this.

Would you like to talk to us?

Yes

No

We would like to tape what you say so that we don't forget it. We will not let anyone else listen to it, and we will not tell anyone your name or what you said.

Are you OK with this?

Yes

No

You can stop whenever you like. We will not mind.

If you have read the leaflet and are happy to take part, please sign below.

Signed.....

Name

Age.....years Date



Annex 2 (continued)

Advocacy Support for Children and Young People in the Children's Hearings System

Information for Parents and Carers

The Research Project

This is a project carried out by the Scottish Children's Reporter Administration, Save the Children and Who Cares? Scotland. It is funded by these organisations and by the Scottish Executive. The project aims to discover what improvements could be made to Hearings in terms of children's participation. Its findings will inform the Scottish Executive's current review of the Hearings System.

The project will explore children and young people's experiences of the support which helps them to contribute to their Children's Hearings. Children and young people will be asked about how far they feel able to give their views at Hearings and about factors which influence this. These factors may be about the difficulties children and young people have participating and the ways in which they are helped to join in. Interviews will also be carried out with professionals who have worked with the children and young people to assess the nature and availability of advocacy services in the local area.

What would my child have to do?

The project involves interviews with children and young people (aged 5–16) who have recently attended a Hearing. The interviews will last between half an hour and an hour and will take place either at home, at school, or at another agreed location. As well as talking to the researcher, children might draw pictures or play games related to the interview topic.

Children and young people will be asked about their experiences of Hearings including whether they feel that:

- they were able to give their views;
- they were listened to;
- their participation affected the outcome.

We will also explore their experiences of any support they may have received.

Travelling expenses to or from the interview (if it does not take place at home) will be reimbursed. All children and young people who are interviewed will also be given a £10 voucher (for music/books) as a reward.

Confidentiality

Although interviews will be recorded for research purposes, children and young people's names and personal details will not be revealed. What each individual child or young person says will remain confidential. So though quotations from interviews will be used in the final report, the names of children and young people will not be. What individual children and young people say will not be discussed with anyone. However, we will need to contact the appropriate agencies if a child or young person tells us that s/he is in danger.

Feedback

The research findings will be published in a written report. All participating children and young people will be provided with a brief report summarising the findings.



Consent

The project will be explained to children and young people, and they will be asked to sign a form agreeing to join in. However, they will be able to withdraw at any time if they no longer wish to continue. Parents/carers are also asked to give written consent to their child's participation in the study. This can be given by completing the slip inside this leaflet.

If you have any questions, or require further information, please contact:

By letter:

Advocacy Project, Information and Research, Scottish Children's Reporter Administration,
Ochil House, Springkerse Business Park, STIRLING FK7 7XE

By phone:

Danielle Adam, Information Assistant: 01786 459558

By email:

Chris: chris.creegan@scra.gsx.gov.uk Lynsey: lynsey.russell-watts@scra.gsx.gov.uk

Caroline: c.king2@savethechildren.org.uk

I have read the leaflet 'Information for Parents and Carers' and agree/do not agree* to my child being interviewed as part of the research study 'Advocacy Support for Children and Young People in the Children's Hearings System'. (*Please delete as appropriate)

Signed

Name

Date

Child's Name

Annex 3

Advocacy Support for Children and Young People in the Children's Hearings System

Research Interview Schedule for children/young people



OBJECTIVE

To find out about children and young people's experiences of participating in their Children's Hearings and the efficacy of advocacy arrangements provided

AIMS

- To explore what advocacy, participation and representation mean to children/young people and their experiences of them
- To consider the child/young person's experience of Children's Hearings and advocacy support
- To discuss the role of different people involved providing advocacy/enabling support for the child/young person and what worked/works
- To explore the extent to which the children/young person felt they were able to influence the outcomes of their Hearings
- To discuss the ways in which children/young people feel that advocacy can best be provided

Consent process

- Meet with child/young person and parents/carers before Hearing
- Introduce self
- Provide with information materials and explain the research
- Ask if interested
- If yes, ask if okay to get in touch within the next 7 days once had an opportunity to look at the materials and to check happy to take part and to arrange a time and place for the interview – discuss possible places at this stage
- If no, thank for their time
- Discuss parental/carer consent if under 16
- Contact within 7-14 days of meeting

At the interview

Check the child/young person still has a copy of the leaflet. Ask if have had an opportunity to look at it. Go through it and discuss any issues, which it highlights.

Make sure the following are covered:

- The child protection policy: Highlight that we will not talk to other people about what you say unless we are worried that you or someone else might not be safe or in serious danger of getting hurt.
- Discuss how the information will be used (in a report, but what each individual says will not be disclosed to anyone except the researchers) and how the information will be anonymised (use of pseudonyms).
- Recording – introduce the tape recorder, explain how it works and agree how the session will be recorded.
- Discuss consent issues and agree ways to enable the child/young person to opt out if they want to of certain questions or the research interview. (Use of red card for stopping/moving on at any time.)
- Written consent.
- Discuss with the young person how they prefer to do the interview, for example, would they prefer to have an open discussion, to do activities, to write, or to draw.
- Agree a good amount of time for the interview to take/time to finish by.



Interview Topics

1. Finding out about the child/young person

Introductions – what age s/he is, whether s/he has brothers and sisters, who s/he lives with, where s/he goes to school, what s/he likes to do in his/her spare time, etc.

Activities which could help in this:

Photos of family and friends, drawings, discussion about the local area

Five 'things' about me bubbles

2. Participation/Advocacy/Representation

Start to unpick the concepts of advocacy, participation and representation – what do these mean to children/young people/what are their experiences of them?

Activities which could help in this:

Vignettes of informal situations (for example a birthday celebration), more formal situation (for example, going to the doctors, a discussion about bullying at school) as well as Children's Hearings scenarios. These will be recorded for interviewer and CYP to listen to together.

3. Experiences of Children's Hearings/advocacy support

Ask the child/young person to talk through his/her Hearing(s)

- Preparation
- The Hearing
- Implementation of the Hearing decision

(Keep the stages of before, during and after as a context throughout the interview)

Discuss:

Did they see the papers for the hearing? Were they sent their own copy? What did they think about this?

Who was at the hearing? Was there any problem with this – for example, conflicting loyalties with people being present, people being absent?

The young person's ability to participate and to make their views known in the Hearing, for example was the child/young person asked for their views?

How did they feel about being asked/not being asked? Did they feel able to say what they wanted? Was there anything about the hearing that prevented them from doing this?

What advocacy arrangements were provided? How well did these work?

Were there any other inhibitors to participation e.g. level of formality, language used, lack of communication with the child/young person, questions being directed towards adults, misinterpretation of what children/young people say by adults/Panel members?

Are there other measures that may have enabled participation?

For example, papers being sent, measures taken to ensure the physical environment is conducive, information that is sent out prior to the hearing being accessible, possibility of expressing their views in writing beforehand.

What doesn't help/what has hindered participation?

The young person's ideas on how advocacy/participation could be improved. Probes around excluding relevant persons, the ability to bring a representative, safeguarders, legal representation, papers for children.

Activities which could help in this:

[World's worst Hearing]/ World's best Hearing
Hot Air Balloon

4. The role of different people in providing advocacy support/enabling participation – before/during/after Hearing

Who are the people in the child/young person's life?

For example, family, friends, youth workers, social workers, teachers, legal representatives, safeguarders etc.

How does s/he know them?

What role does s/he play in supporting the child through the Hearings process?

What are some of the positive characteristics of people who have helped the child/young person to participate in Children's Hearings/other events in his/her life?

i.e. Start to unpick the people who are important, what their skills are, what methods they use, how relationships are established, how they are maintained, the importance of influence etc

So, for example, if a mum is viewed to be a good advocate, what is it about that person that could be transferable/'systemised' for other/all children/young people.

Activities which could help in this:

Mind map



5. Advocacy, participation and the outcomes for young people

What were the outcomes of the Hearing?

How does the child/young person view his/her participation in the Hearing (before, during and after)?

What impact does the child/young person feel his/her participation had on the outcomes of his/her Hearing?

Did the child/young person feel that their views were taken into account by the Panel in reaching its decision?

Did the child/young person feel they – and their views – were respected?

Were there any tensions/dissonance between the outcomes and what the child/young person expressed/wanted to express/felt they had expressed?

If there were, what was the child/young person's understanding of this/experience of how this was dealt with – what helped/didn't help in this situation?

What was the role of any advocacy support received in this?

Activities which could help in this:
Emotion cards

6. How can advocacy be best provided/what are the important features/how can it be improved?

What is it that is important about advocacy support

- in Hearings?
- may be useful to also explore other situations the child/young person has experienced, particularly if he/she finds it difficult to draw on his/her experience of Hearings

Activities which could help in this:
Prioritising different aspects of advocacy/The 'ideal' advocate

7. Other issues

Any other issues the child/young person wants to raise? Check they're happy with how the interview has gone/with what they've said. Want to add or clarify anything?

Finishing up

- Thank the young person for taking part
- Remind them the interview is confidential
- Check whether they still wish to stick with the adult/professional previously nominated/Why did they choose this person?
- Ask them to pick a pseudonym
- Ask them if they have any questions
- Thank you voucher

Outline how they can keep in touch with the outcomes of the research/how we will keep in touch with them. Provide them with contact names/numbers.

Activities

1. Vignettes

Scenarios could be used to outline 'typical' Hearings and as a basis to discuss with the child/young person their views on this, what is good about it, not so good, how it compares with their experiences. Could also use vignettes of other situations to explore what has enabled/hindered participation for the young person.

2. Worlds worst Hearing/World's best Hearing

Ask the child/young person to describe the world's worst Hearing. Compare this with the world's best Hearing. This could be done using cards. The child/young person could be asked to select cards/add others that are important and to then prioritise them. This could be done as a diamond ranking exercise, on a continuum of 1 to 10, or in order of most important to least or less important

3. The hot air balloon

Could use the diagram of the hot air balloon and relate it to a Children's Hearing.

Who needs to be on board?

What needs to be in place for the young person to take part?

What might blow the Hearing off course?

What prevents you from taking part?



4. People mind map

Identify key people in the child/young person's life and use a mind map to extend this to others. Then look at the characteristics of these people, whether they encourage/discourage the young person's participation in Hearings/other situations.

5. Emotion cards

These cards with different faces/words could be used to focus in on how the child/young person has felt about their Hearing(s) and why.

6. Prioritising different aspects of advocacy

Using cards ask the young person to prioritise different aspects of advocacy. The child/young person could be asked to select cards/add others that are important and to then prioritise them. This could be done as a diamond ranking exercise, on a continuum of 1 to 10, or in order of most important to least or less important.

Examples of statements:

- Someone who listens to me
- Someone who explains things well
- Someone who is separate from other people at the Hearing
- Someone who is there just for me
- Someone who keeps what I say private
- Someone to help me find the right words
- Someone to speak for me
- Someone who helps me to speak but who doesn't speak for me

7. The 'ideal' advocate

Ask the child/young person to draw a person and identify the characteristics/actions which are important to help participation in a Children's Hearing. This could also be done using the cards as described above.

Advocacy Support for Children and Young People in the Children's Hearings System

Research Interview Schedule: Adult/Professionals



Introduction to the research

- Explain background and purpose of research, including how the information will be used, and issues around anonymity.
- Highlight that the researcher has already spoken to the young person.
- Explain that the young person was asked to identify a key adult for the researchers to speak to. Send consent form from the young person for this to the adult professional. (If the young person can't/doesn't want to identify a person an alternative has been agreed that we can interview a key adult/professional within the local authority area where the young person lives.) Explain that the aim of this interview is to explore the advocacy support provided for the young person.
- Highlight that information shared by the young person will not be shared in this interview (although the interviewee will be welcome to keep up to date with the research outcomes).
- Ask if okay to speak/organise a time to speak for 20 or so minutes.

Topics

Explore the advocacy support in place for the young person (or young people if the adult/professional is not directly 'related' to the young person).

Ensure there is a clear understanding of how 'advocacy' is being defined within the research.

Discuss with the interviewee the periods of before the young person's hearing, during and after his/her hearing:

- **Who** was there
- **What** advocacy support was provided (and how does this compare to the support for other young people)
- **Where** was it provided
- **When** was it provided

How effective do you view the advocacy support to have been?

Were there any barriers to providing effective advocacy support? Or, factors that enabled the provision of effective advocacy support?

Were there any barriers to the young person participating effectively in his/her hearing (that the advocacy support couldn't/wouldn't have helped with)?

Do you think the young person's participation/voice was reflected in the outcomes of the hearing?

If yes, in what way?

If no, why not?

If there was dissonance between what the young person was 'saying' and the outcomes of the hearing how was this dealt with?

How do you feel the young person's experience will impact on his/her future participation?

Ideally, what advocacy support for children and young people in the Children's Hearing System would you like to see in place?

Are there any other issues you would like to raise?

Thank the interviewee for his/her time and highlight how s/he can find out about progress with the research. Send a summary once the research is completed.





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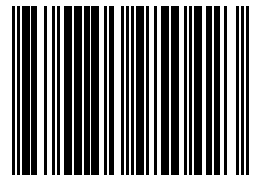
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ISBN 0-7559-5042-9



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