



EQUALITY & HUMAN RIGHTS IMPACT ASSESSMENT (EHRIA)

EHRIA PUBLICATION

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This is a summary of the key decisions/actions taken in the recent EHRIA, and has been separated from the full EHRIA document for publication on SCRA's external website in compliance with statutory requirements.

The Scottish Children's Reporter Administration (SCRA) are pleased to publish the outcome of this Equalities and Human Rights Impact Assessment on:

VIRTUAL CHILDREN'S HEARINGS INCLUDING ELECTRONIC TRANSMISSION OF PAPERS

The emergency response of the Virtual Children's Hearing & Electronic panel papers has been introduced as a matter of exigency as a result of the Covid19 pandemic and UK and Scottish Government social distancing rules and movement restrictions. The Virtual Hearing has been introduced to enable the continued functioning of statutory decision making in the Children's Hearing for Scotland's most vulnerable children and families, who require to have a Children's Hearing whilst the UK and Scottish Government social distancing rules and movement restrictions remain in force.

In very basic numerical terms the introduction of Virtual Hearings will, of necessity mean there is less capacity than in non-Covid times. In 2018/2019, SCRA held 31,653 Children's Hearings across Scotland. As an average across each of the 52 weeks of the year that is approximately 609 Hearings a week. Using VScene, each Locality will have between 10 and 20 Children's Hearings a week – 90 to 180 Hearings. At the maximum (all Localities running 20 Virtual Hearings) that is roughly 1/3 of the normal operation. Therefore, capacity to hold Hearings is significantly diminished.

In addition as a result of the impact of Covid-19 on the Scottish Courts and Tribunals Service there is an emergency response to the operation of the Children's Hearings Referrals Court. In 2018/19, the Court determined matters in 2,837 proof applications and concluded 651 appeals of decisions of Children's Hearings; in 2019/20 it is likely that statistical returns will show delay across decision making at court and subsequent delay in a case having a substantive decision made at a Children's Hearing.

Getting the Virtual Hearing in place has been a herculean effort on many fronts – not least in the technical and logistical undertaking. However, ultimately the Children's Hearing exists as a finely

balanced and tuned decision making body, in which there are clearly defined and delineated rights and which doesn't operate as intended or legislated if its balance is affected. The principles of fairness, transparency, and reasoned decisions are key components. These rights have been hard fought, have been introduced over time and should not be eroded in any way as a result of an exigency process which has been introduced in order to maintain the national statutory system.

Between 23rd March 2020 and 4th May 2020 the approach to the virtual children's hearing was tested and developed. Administrative children's hearings between the Reporter and three panel members continued – but so did testing of increased participation within the virtual children's hearing – through the involvement of legal representatives for children and families; social workers and children and families themselves.

Respecting Rights

The appeal rights which exist within the Children's Hearings System have not been affected by the introduction of the Virtual Hearing or by the electronic transmission of papers. Children and families are still able to appeal the decisions of the Children's Hearing (within the timescales as currently amended by the Coronavirus (Scotland) Act 2020) and as such have a well-established legitimate challenge to any action by a public body in respect of the Children's Hearing which they think is unfair, unreasonable or prejudicial. However, in 2018/2019 there were 651 appeals of 31,653 Children's Hearings held across Scotland (approximately 2% of the Hearings). This number is figurative for a number of reasons, however, indicates that the vast majority of Hearings are not 'normally' appealed and suggests that this 'remedy' may not in and of itself be an accessible avenue for children and families to take. In addition, the 'review rights' of children and relevant people are unaffected by both the emergency Virtual Hearings response and the emergency Coronavirus (Scotland) Act 2020. These rights as laid out in Section 132 of the Children's Hearings (Scotland) Act 2011 allow any child or relevant person to request a review of any Compulsory Supervision Order, which can occur 3 months after an order has been made and in addition to the rights of appeal mean that there is another route to have decisions challenged / revisited / reconsidered.

It is important to have the rights which require to be respected clearly articulated and highlighted so they remain in sight when we are making process / procedural decisions. Professor Norrie is clear in the 3rd edition of Children's Hearings in Scotland p4 "The children's hearing is a quasi-judicial tribunal that has many of the powers of a court and it must, therefore, for the protection of all those who appear before it, conform to the standards of procedural fairness required not only by natural justice but by international obligation – in particular art. 6 of the European Convention on Human Rights." In addition the principles of fair notice, fair opportunity for those affected to give their views, or be assisted if required to do so also remain.

The key principles of the Children's Hearing System remain as they are enacted:

a) Welfare of the child - is the paramount consideration (2011 Act, s25 unless to protect public from serious harm when welfare is a primary consideration, 2011 Act s26).

b) Views of the child - 2011 Act, s27 (3)The children's hearing, pre-hearing panel or the sheriff must, so far as practicable and taking account of the age and maturity of the child—

(a)give the child an opportunity to indicate whether the child wishes to express the child's views,

(b) if the child wishes to do so, give the child an opportunity to express them, and

(c) have regard to any views expressed by the child.

(4) Without prejudice to the generality of subsection (3), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.

c) Minimum intervention – 2011 Act, s28 (2) The children's hearing may make, vary or continue the order or interim variation or grant the warrant, only if the children's hearing considers that it would be better for the child if the order, interim variation or warrant were in force than not.

The system has developed so that its processes allow for the principles to be maintained. The exigency implementation of Virtual Hearings in the beginning were focused primarily on a) welfare of the child and c) minimum intervention through maintaining the status quo.

This focus was essential in order to continue to provide essential legal protection – but was time limited and has been revised in the new Top Level National Guidance for Virtual Hearings. Access to the papers for the Children's Hearing is a cornerstone of this Guidance as is co-ordinating access to the Virtual Hearing. This emphasises the principle (b) that the views of the child are central to decision making and also that the Virtual Hearing supports the:

d) Child's duty to attend Children's Hearing 2011 Act s73.

e) Relevant persons duty to attend Children's Hearing 2011 Act s74.

f) 2013 Procedural rules in relation to notification of Children's Hearings (Rule 22 & 23), provision of papers for Children's Hearings (Rule 26), representation of child and relevant persons (Rule 11)

The Virtual Hearing can be a 'properly constituted' Children's Hearing, where participants have been duly notified under Rule 22; have been provided with information in the form of papers under Rule 26 and who also 'attend' the Hearing. Although the Coronavirus (Scotland) Act 2020 removes the duty on attendance as a result of movement restrictions and social distancing emanating from the Covid-19 response, children and relevant persons can attend the Hearing through the use of technology, as specified in the 2013 rules, Rule 19 (2).

A properly constituted and attended Children's Hearing can proceed to fulfil the additional Hearing duties:

d) Duty to consider contact direction – 2011 Act s29 duty on the Children's Hearing and on Court.

e) Duty to consider appointing a safeguarder – 2011 Act s30 duty on the Children's Hearing.

Within the caveats of the pressures on other services as a direct result of movement restriction and social distancing, this has a particular impact on face to face assessment and support and has negatively impacted the ability of local authorities in their service provision, for example, to make home visits and to facilitate and supervise regulated contact between children and adults.

Both the Home Office Select Committee and the Scottish Government's Equality & Human Rights Committee have announced they will conduct inquiries into the impact of Covid-19 and coronavirus on equalities and human rights due to the way some of those with protected characteristics are being unduly affected by the virus and by the exigency measures which have developed to combat viral spread through the population.

The Public Sector Equality Duty	
<p>Contribute to eliminating discrimination, harassment and victimisation? E.g.</p> <ul style="list-style-type: none"> • Raise awareness of our SCRA's vision and values for equality, diversity and inclusion. • Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity 	<p>POSITIVE: It will contribute to eliminating discrimination, harassment, victimisation <input type="checkbox"/></p>
	<p>NO EFFECT: It will have no effect on discrimination, harassment and victimisation <input type="checkbox"/></p>
	<p>NEGATIVE: It will make discrimination, harassment and victimisation worse <input checked="" type="checkbox"/></p>
<p>Advance equality of opportunity between those who share a protected characteristic and those who do not? E.g.</p> <ul style="list-style-type: none"> • Remove or minimise disadvantage • Meet the needs of equality groups that are different from the needs of others participation in public life 	<p>POSITIVE: It will advance equality of opportunity <input type="checkbox"/></p>
	<p>NO EFFECT: It will have no effect on equality of opportunity <input type="checkbox"/></p>
	<p>NEGATIVE: It will reduce equality of opportunity <input checked="" type="checkbox"/></p>
<p>Foster good relations between those who share a protected characteristic and those who do not? E.g.</p> <ul style="list-style-type: none"> • Tackle prejudice • Promote understanding 	<p>POSITIVE: It will foster good relations <input type="checkbox"/></p>
	<p>NO EFFECT: It will have no effect on good relations <input type="checkbox"/></p>
	<p>NEGATIVE: It will cause good relations to deteriorate <input checked="" type="checkbox"/></p>

It will breach human rights articles. Possible art 6; art 8; art 14 breaches and possible breach of access to information to which parties have a right.

Please select which group(s) will be affected by the positive impact, and provide details below each category:

Age (e.g. older people or younger people):

Children & young people continue to receive statutory support through the protective intervention of the Children's Hearing System.

Race (e.g. people from minority ethnic groups):

Translation and interpretation will continue to be arranged where it is necessary for a fair hearing.

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

The Virtual Hearing has been developed to enable participation by those with a right to attend; and for those with rights to information to receive that information. Participation and information will be facilitated through electronic means. Those able to access electronic papers will receive them earlier than through the standard postal service.

Please select which group(s) will be affected by the negative impact, and provide details of the negative impact and how you will mitigate against it below each category:

Age (e.g. older people or younger people):

Access to the Children's Hearing for children and young people at the moment is difficult. Direct communication (other than statutory written communications in the form of letters or court documentation) between a public body and the child / young person is in the main indirect and occurs through a 3rd party adult. At the moment as a result of movement restriction and social distancing children are remaining within homes and the adult conduit for information is their parent / carer.

Race (e.g. people from minority ethnic groups):

People who are represented will still be able to give their views to the Virtual Hearing, even if they are not able to be fully involved themselves. People who are not represented may still be able to have translation / interpretation support for the Virtual Hearing but there will be some people who are not able to participate as a result of a lack of understanding of the process and a lack of professional support to really understand people's circumstances and abilities to engage. This will be particularly true for new cases coming into the Children's Hearing on an emergency basis where there is no prior relationship with the family or child (so for a Child Protection Order or an Emergency Transfer to Secure Accommodation).

Gender (e.g. women or men):

The House of Commons Select Committee has already identified women as being currently at increased risk of domestic abuse, particularly if there is a history of coercive or physical control within a relationship. The complexity of technical access to a Virtual Hearing alongside the equipment required to facilitate this may mean that the Virtual Hearing for domestic abuse cases where victim and perpetrator are within the same home may require additional risk assessment.

Disability (e.g. people with visible or non-visible disabilities, physical impairments):

As described above there is already a known link between internet non-use and disability for adults – which will impact on the ability of vulnerable parents with a diagnosed or non-diagnosed disability to engage with the technical solution of the Virtual Hearing.

Socio-economic groups:

Access to technology – to devices as well as to the technical infrastructure to operate devices successfully (whether through wifi or through data) is more limited to those in poverty or on lower incomes. In addition, in the current situation access to public wifi, which may be used by those who have the devices which could give them access to electronic paperwork etc is curtailed as a result of movement restriction. So families can't use wifi in a library to access their papers, for example.

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

The Virtual Hearing has been developed to enable participation by those with a right to attend; and for those with rights to information to receive that information. Participation and information will be facilitated through electronic means. This means that for a section of the children and families who require statutory support the Virtual Hearing will not be accessible and that they will not be able to engage with or be supported within the Children's Hearing decision making process. The impact may be such that papers will then require to be posted which might delay receipt due to postal delays during Covid-19 and will cause delays in the whole process.

Recommended course of action	
Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.	<input type="checkbox"/>
Outcome 2: Proceed with adjustments to remove barriers identified for discrimination, advancement of equality of opportunity and fostering good relations or breach of human rights articles.	<input type="checkbox"/>
Outcome 3: Continue despite having identified some potential for adverse impact or missed opportunity to advance equality and human rights (justification to be clearly set out).	<input checked="" type="checkbox"/>
Outcome 4: Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.	<input type="checkbox"/>

The Equality Review Group remain concerned about the negative impacts of Virtual Hearings on equalities and human rights. However, we acknowledge the unprecedented and emergency nature of the situation SCRA – and the wider Children's Hearings System – has found itself in. Nevertheless, the ERG has agreed that whilst this approach can proceed in its current form, this must only be for **essential Hearings** (either due to legislative timescale or a significant detriment to the child if the Hearing does not proceed) and **cannot be indefinite**. Therefore, the ERG agree that the following mitigating actions must be implemented in full prior to the expansion/upscaling of Hearings using the current model of Virtual Hearings and the approach cannot continue unchecked beyond 15/07/2020 (at which point the ERG would require a review of the EHRIA to ensure the mitigating actions have been implemented).

Mitigating actions required:

- 1) A graded or staged approach to scaling up Hearings takes place as outlined in the document linked to this assessment.
- 2) Publicity and awareness raising about the Hearing process must continue. SCRA has continually updated the website, social media and engaged with partners (e.g. [Young Scot Website](#)), and issued joint statements with CHS. We have also produced a range of information materials for children, young people, and relevant persons. These must be adapted as SCRA's approach changes and the number of Hearings increases.
- 3) More work needs to be done on publicity and awareness raising about alternatives to receiving papers electronically, e.g. paper copies / Stamped Addresses Envelopes
- 4) The use of schools as a safe place where children & families can be supported to use technology is actively explored.
- 5) A separate risk assessment for Domestic Abuse cases where mum/dad/children are in lock down together and whether this is safe to come to a Virtual Hearing must be carried out.
- 6) Further work on whether there are specific additional circumstances where children and relevant people should not be involved in a Virtual Children's Hearing – including further discussion around intermediaries and specific supports in relation to communication and communication preferences for children and relevant persons.
- 7) Dialogue to take place with 3rd sector advocacy and Safeguarders about their involvement, and needs to continue to develop.
- 8) SCRA will move as quick as we safely can to opening Hearing Centres so that families can have that option of attending their Hearing, as part of recovery plans.
- 9) Arrangements are made to gather regular feedback from all stakeholders to ensure continuous improvement and inform any blended/hybrid approach adopted in future.
- 10) Research required to capture the views of those involved to capture learning from Virtual Hearings in terms of SCRA's Corporate Parenting responsibilities and commitment to the implementation of Better Hearings.

Should a new approach to Hearings be introduced prior to 15/07/2020 the ERG will require the aforementioned mitigating actions to be resolved and included in the EHRIA for any blended/hybrid Hearing approach. As detailed above, if a blended/hybrid model has not been implemented prior to 15/07/2020 a review of the EHRIA would be required for Virtual Hearings with the expectation that all mitigating actions have been implemented in full and a detailed plan for upscaling Hearings with timescales for blended/hybrid Hearings provided.

The ERG recommends that the EHRIA for any hybrid model is submitted as soon as possible prior to the introduction of any changes to the current approach to ensure that all equalities and human rights impacts have been considered and mitigated as far as possible in the current circumstances with COVID-19.