

Believe in children



Barnardo's Scotland

13/03/2017

Barnardo's Scotland response to the Education and Skills Committee call for evidence on the Children's Hearing System – Taking Stock of Reforms

Key points

- **The way in which Hearings are run can make it difficult for children to engage and meaningfully participate.**
- **The involvement of solicitors in particular has changed the atmosphere in Hearings, which can at times be intimidating for both children and professionals.**
- **A more consistent approach to independent advocacy for children and young people is required.**

Barnardo's is the UK's largest children's charity, in Scotland we work with over 26,500 children, young people and their families every year. Our services frequently work with children and families who are in contact with or who have had contact with the Children's Hearing System across Scotland. We also provide advocacy services which support young people in the Hearing System in several local authority areas.

We fully support the principles of the Children's Hearing System, which place the needs and rights of children at the centre. We have concerns, however, about how these principles are playing out in practice, and the subsequent impact on children and young people's rights and wellbeing. In particular, we are concerned that the presence of solicitors in the Hearing System can change the atmosphere and behaviour of the Hearings, making them less accessible for children and young people.

We believe in the Hearing System. We support the children and young people that we work with to engage as constructively and safely as possible with the Hearings, where vital decisions are being taken about their lives. We offer our suggestions below on some of the structural factors which have made this more difficult in the last few years.

What is your view on the involvement of solicitors in the Children's Hearing system?

The involvement of solicitors has been raised by our staff as one of their key concerns. Whilst we believe it is only right that parents should have access to legal support for their rights within the Hearing System, we would like to highlight several areas of concern from a children's rights perspective. There is a feeling amongst our staff that the role of solicitors may have tipped the balance away from children's rights.

- It is increasingly common for multiple solicitors to be present at Hearings, many of whom won't be known to the child or young person as they are representing their parents. This can contribute to Hearings feeling overcrowded and intimidating for children and young people.
- Solicitors can often behave in an adversarial and intimidating way which is contrary to the ethos of the Hearing System, which was set up to be consensual and not adversarial.
- We have direct experience of solicitors seeking to undermine our workers' credibility as professionals. This is an issue which was also raised by Social Workers in the Scottish Legal Aid Board commissioned report by CELCIS in 2016.¹
- Panel members are lay people who will not generally have a legal knowledge; they can also be intimidated by solicitors and may not feel confident in questioning or challenging their behaviour or assertions.
- Solicitors are often present to represent the rights of parents, and this can lead to the rights of the child being undermined. The best interests of the child should always be at the centre but we have witnessed actions and behaviours being encouraged by solicitors which are not in the child's best interests, for example encouraging families not to engage with support services for fear of how this might be perceived by the Panel, or encouraging unnecessarily delays.
- Solicitors often lack experience in areas like attachment and child development which we see as key to placing children and young people at the centre of the process. This is something solicitors themselves acknowledged in the 2016 CELCIS report.

Do we have appropriate standards in place for the operation of Children's Hearings and guidelines for the functioning of a Hearing, and are they consistently applied? If not, what improvements need to be made?

As noted above, the presence of solicitors in the Hearing System has had an impact on the tone and behaviour displayed in Hearings. We believe that it would be useful to review the standards for operation of the Children's Hearing System, and to have clarity about who is responsible within an individual session for ensuring that these standards are upheld. In particular it would be useful to have clarity on whether the

¹ [https://www.celcis.org/files/8514/7576/7298/CELCIS-The role of the solicitor in the Childrens Hearing System - 2016.pdf](https://www.celcis.org/files/8514/7576/7298/CELCIS-The%20role%20of%20the%20solicitor%20in%20the%20Childrens%20Hearing%20System%20-%202016.pdf)

Reporter can or should intervene and step in when there is behaviour which is deemed to be unacceptable.

In our experience, solicitors can often behave in a manner which we wouldn't expect within a Hearing but there is often no redress and other professionals can be left feeling intimidated or unable to voice their professional opinions. Reporters tend not to challenge solicitors who behave badly, or who make claims which are not based in facts. We believe that, if solicitors are to be involved in Hearings, there needs to be absolute clarity over who runs the Hearing and who has the authority and ability to question or stop any professional who behaves inappropriately.

We have also noted an increasing tendency for police to be asked to attend Hearings in volatile situations, where the Reporter feels there is a risk of someone reacting angrily or violently. While this consideration of participants' safety is important, this is another example of the way in which Hearings have moved away from the consensual, child-centred environment which they are intended to create. Further, where police are unable to attend, we believe that it should be for the Reporter to decide whether or not to proceed with the Hearing. We have been in situations where the Reporter has asked our staff whether they are happy to proceed, which places a huge weight of responsibility on staff who want timely decisions to be made for the benefit of the young person but may also have concerns about the safety of the Hearing going ahead. These decisions should lie with the Reporter.

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

In our experience, we have seen some improvements over the last ten years which have enabled children and young people to participate more effectively, although these improvements are not consistently evidenced across the Hearing System. The Children's Hearing System was designed to be non-adversarial in nature and place children and their families at the centre of the decision making process. The increasingly adversarial nature of Hearings, and their complexity, has seen these foundations eroded over the years.

Our advocacy work shows that what works best for children and young people in terms of their participation is a consistent relationship with a professional they can trust. It is important that children are able to form relationships with those supporting them, and in our experience the system is not always designed to allow this to happen.

The children and young people we work with tell us that they feel reassured and supported knowing their advocate will be with them every step of the way. Advocates can help children understand the language and terminology used in Hearings which is not always child friendly; this helps with participation if children and young people have a better understanding of what is going on, however not all children are able to access independent advocacy services.

When supporting children to attend Hearings we are finding that Hearings are increasingly 2-3 hours long, and the number and indeed nature of people attending has increased, resulting in an atmosphere which is increasingly adversarial and intimidating for children. Children are often reluctant to attend and can be fearful in

this confrontational environment: for some of the children and young people we work with, being forced into a situation in which they do not feel comfortable could exacerbate the trauma they have already experienced.

We would like to see more flexibility in the way Hearings operate and more regard paid to the environment children are being asked to come into. We are aware of one case where the Panel went out to visit a child in their home, however these instances are rare and more often than not children are expected to adapt to the situation of the Hearing rather than have the process adapt to what best suits their needs. The lack of facilities and available space at Children's Hearing Centres is also of concern, with many centres having inappropriate waiting areas which do not allow for privacy or confidentiality, many centres lack the space for children and young people to go if they become upset during a Hearing.

We would also like to see more creativity from Panels with how they engage children, for example through our advocacy work we have been looking at the use of Avatars for young people as a way of expressing their feelings without having to be physically present.

We also support children to prepare views that are more personalised and inclusive i.e. through voice recordings, videos, photos, art work, digital storyboards and text to name a few. This can aid panel members to get a better sense of the child as a whole which is particularly beneficial when children do not attend Hearings. However, there is also a lack of consistency in approach with how Panels handle children's pre-prepared views, for example if they are viewed as reports they may not be allowed to be presented on the day, but other times this is not a problem.

We would be happy to follow up on any of these points further with Committee members.

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