



SACRO's response to *Getting it right – for every child* Review of the Children's Hearing System

INTRODUCTION

SACRO is committed to retaining and strengthening the Children's Hearing System in Scotland.

SACRO welcomes the Minister's comments supporting the fundamental principles underlying the Hearings System. SACRO is committed to retaining and strengthening the Hearings System and would agree with the sentiment of the *Where's Kilbrandon now?*¹ report that the Hearings System may only now be "poised to realise its full potential" and that many of the problems that arise in the Hearings system are due to a lack of resources and not a failing in the system. SACRO feels that the single system should undertake reform rather than changing to two separate systems (one dealing with children who offend, the other with children in need of care and protection). This reform should be such as to ensure that it better meets the needs of children and moves from being seen as entirely 'welfarist' to a system to one that takes a wider view of all the issues. A stronger restorative justice element embedded in the system would help to achieve this.

The existing 'panel' format of the hearing could be developed, drawing on the Family Group Conference² (FGC) style format. This would address communication issues between the parents/guardian, the young person and the panel members. It would also encourage communication and 'empowerment' of the people involved to come to a joint decision about what will help the young person to 'thrive' in their community. What is required is a system which impacts on both offending **and** care and protection issues more effectively.

Access to restorative justice should therefore be fully available at a number of points in the process, preferably by completely integrating it in the system through legislation.

Key points

- **Increased resources are required.**
- **Increased use of restorative justice practice within the process is required.**
- **The recommendations of the NCH Enquiry report *Where's Kilbrandon Now?* should be supported.**
- **New National Standards for 'supervision' are required.**
- **Public opinion needs to be addressed by better informing the public about the system; this could be partially addressed through restorative practice and the adoption of Family Group Conferencing elements in the Hearings.**
- **A public information and education campaign is required.**

¹ *Where's Kilbrandon Now?* NCH, 2004

² Appendix 1

- **Whilst reform is required across the whole system, dealing with care and protection issues and dealing with offences, it is the latter area in which SACRO has significant expertise and on which it will focus its comments.**
- **There is anecdotal evidence of instances where young people are referred to a Hearing on offence grounds in order for them to access welfare services. This is not always an appropriate use of the system particularly if the ‘offence’ could be dealt with more effectively through diversion to a restorative justice service. These are now established in all local authorities in Scotland. This would free up resources in the Hearings System to deal with the increasing number of care and protection cases.**
- **Reform in line with the English system is opposed, as this has been shown to lead to a significant increase in the imprisonment of young people³.**
- **Where young people do require residential education, then the placement should be adequately resourced to allow the young person who wishes to, to stay for the appropriate length of time to optimise their opportunities to engage in programmes to address the needs and risks that can lead to re-offending as well as welfare, care and protection concerns.**

There now follows a response to the main Issues and Questions raised in Section 2 of the Review.

The Objectives of the Children’s Hearing System

- 1 Do you agree with all of these objectives?
- 2 If not, which ones do you disagree with and why?
- 3 Are there any other objectives you would like to see added?

SACRO considers that a specific objective relating to restorative justice should be added to ensure that restorative justice is made available to all children who have offended.

Whilst SACRO agrees with the majority of objectives listed, in relation to bullet point 1 – *Delivers effective outcomes for children, brothers and sisters, families and communities,*

Agencies and organisations such as local authorities and health boards have roles, responsibilities and duties to deliver services to meet the needs of children. **The Hearings System cannot itself deliver the outcomes listed in the indented bullet points.** The Children’s Hearing System is there to facilitate the delivery of services to properly targeted children and young people. This point is important because it will determine how the system is evaluated

In relation to bullet point 10 – *Is efficient and as quick as possible,*

SACRO considers that whilst the process needs to be quick, this should not be at the expense of the quality of reporting, assessment or service provided. Therefore SACRO would suggest looking at ‘realistic’ time scales.

In relation to bullet point 12 – *Operates effectively with other services (e.g. courts and child protection),*

³ Youth Justice Board Report, 2004

SACRO considers that this objective is not met at present. There needs to be better co-operation among a wider range of agencies, including restorative justice services. Again this could be at least partially addressed if Family Group Conferencing techniques were used in connection with the Hearings. This would ensure that all relevant agencies could meet at the Hearing, helping to ensure multi-agency working.

The Principles of the Children’s Hearing System

- 4 Do you agree with all of these principles?
- 5 If not, which ones do you disagree with and why?
- 6 Are there others you would add?

In relation to bullet point 3 – *That unacceptable behaviour and offending is addressed first and foremost through the Hearings system,*

SACRO considers it important that the Hearings System ensures that children realise the seriousness and resulting consequences of their actions.

There is currently no mention of the person affected by crime or community in the principles. This should be addressed in phase two of the review process.

SACRO considers that this bullet point be altered to read ‘that unacceptable behaviour and offending is addressed first and foremost through the Hearings system *using a restorative justice process* and that children should only be dealt with through the criminal justice system in exceptional circumstances *as currently defined in the Lord Advocate’s direction*⁴. Such children should always be referred back to the Hearings for disposal’.

In relation to the final bullet point – *That where the facts cannot be agreed, the Sheriff Court resolves these points, and not the Hearing,*

This can result in problems. Where all parties agree on grounds, but the child is unable to, i.e. if the child is a baby, then the case has to go to proof. **It is suggested that this bullet point be amended to include ‘when all responsible persons agree and the child is too young to participate, the Hearing should continue to deal with the case at their discretion’.**

Improving Outcomes

- 7 What should be the outcomes for children from the Children’s Hearing System? Should the same outcomes apply to all other relevant organisations?

As highlighted at question 1, the system on its own cannot deliver the outcomes sought. In light of this, SACRO considers that the following point should be made –

Performance indicators should reflect how well the system performs in terms of the quality of the process. The performance indicators should also reflect the system’s efficiency in terms of decision-making and how well it works with all the other agencies involved. Outcomes are about the quality of the decision made, i.e. what disposal and what services are engaged. The effectiveness of services, and the responsibility for delivery and outcomes, lie largely with the local authority as defined by statute. Health authorities, police etc. will also have responsibilities.

⁴ Criminal Procedure (Scotland) Act, 1995, section 41 (1).

In light of this, the Hearing must be measured primarily on its ability to make the right decision about whether compulsory measures of care are required for the child.

The following outcomes should therefore be included –

- **that in instances where a report has been received concerning an offence and there are no other grounds for concern, the child should be diverted to a restorative justice ‘scheme’;**
- **that when a Hearing is necessary, the child and family fully understand why they are there and what has happened to result in a Hearing being called;**
- **that the decision of the Hearing initiates action which, if effectively carried out by the relevant agencies, will enable the child to reduce offending, and address care and protection issues as appropriate;**
- **that decisions, properly implemented by others, result in less offending behaviour and a significant improvement in the lives of children in need of care and protection;**
- **that all those involved receive increased preparation for, and therefore have a better understanding of, the Hearing.**

Single System

- 8 Is it still right that one generalist system should look at all types of cases?
- 9 If one system is to continue, would the service to the child and family benefit from some Panels or some Panel members being specialised in certain issues? Or should all Children’s Panel members continue to be able to deal with any child before them?
- 10 How should child protection procedures and the statutory Children’s Hearings system work together?
- 11 Do you think there is a lead role for the Children’s Hearings system in co-ordinating action across all interventions to ensure that decisions are taken consistently? If not, who might have this role?

The Hearings should continue to deal with both offending behaviour and care and protection issues. Panel Members should continue to deal with all types of cases. However, it is recognised that there might be cases, for example where there has been sexual abuse, when specialist advice may be required. It is suggested that whilst existing Panel Members could receive increased relevant training, the opportunity to draw on the experience of specialist advisors in relevant fields should also be available to them. This would avoid the potential issue of ‘divisiveness’ of specialised training for some panel members.

There is currently a model used in Falkirk, Stirling & Clackmannanshire where a multi-agency referral group meets weekly to discuss what could be put in place to assist particular children. This could be adapted to a Family Group Conferencing approach, where the child, their family and anyone likely to offer support would also attend the Hearing.

SACRO considers that the preferred model should be a development of the Hearings System, drawing on the Family Group Conferencing model. This model includes not only the child, but also the wider family and other community members who could provide a positive contribution to the child's life and support network, as well as representatives from relevant agencies. It would potentially enable specialist advice to be gained from within the group. Such a conference could prepare the ground more effectively for the Hearing.

Panel Members should continue to have the statutory power to make decisions and ensure that agencies co-operate and deliver effectively. Panel Members should be fully trained in restorative justice principles. Having all agencies present would enable a realistic solution to be developed in preparation for the Hearing. This would then be agreed as an action plan by all present. This would encourage ‘ownership’ of the action plan, by the child and their family. Hearings, which follow a Family Group Conference format, might also require an independent facilitator to carry out the increased preparation and planning of *all* participants in the Hearing.

- 12 Do you agree that there should be better evaluation of the impact of interventions on each child who is, or has been, in the Children’s Hearing System?
- 13 Should the new children’s services inspection system also look at the work done by Reporters and how effectively Hearings are operating?

SACRO considers that there should be better evaluation, with guidance, and that the new children’s services inspection team should also look at the work done.

The Hearings System and Parents

- 14 Do you think that the current system, plus the proposed parenting orders under the Antisocial Behaviour (Scotland) Bill provide sufficient powers to influence parents’ behaviour and actions?
- 15 Should there be further consideration of giving Children’s Hearing’s a direct influence over parents, and if so, do you have any suggestions on the form that influence should take?

As many parents are, or have been, victims themselves, there is more need to support them than to use punitive measures. SACRO would strongly recommend a restorative approach to this question. To give parenting orders to a parent whose life may be in chaos potentially sets them up to fail. This in turn increases the likelihood that the family members will become ‘criminalized’ and so be even less likely to be able to support or encourage their child.

In *For Scotland’s Children*⁵, the need for social workers to work with both children and parents was highlighted. As opposed to social workers with limited resources only dealing with priority cases, they should be able to work along side the family, supporting them through the entire period of the difficulties until they are resolved.

SACRO considers that a Family Group Conferencing approach would enable the increased involvement of parents, with appropriate support ‘packages’ being agreed to. A contract could also be drawn up amongst wider family members committing them to action. The contract would be a ‘good will’ contract and not a legally binding order with all its implications⁶.

⁵ *For Scotland’s Children- Better integrated children’s services* report, Scottish Executive, 2001

⁶ This point would need clarification when protocols and procedures are developed (see Appendix 1), to ensure continuity of panel members and clear understanding of roles and statutory responsibilities for issues e.g. Child protection.

- 16 Should further consideration be given to adapting the current system to allow the Hearing to balance the rights of all family members alongside the interests of the child?
- 17 If the current system was adapted in this way, should the welfare of the child be the main focus, or should the interests of the family be the main concern?

In a Family Group Conferencing approach, the above issues would be addressed. SACRO considers that the welfare of the child should remain the main focus of the Hearing.

Hearings and the Community

- 18 How can we improve the links between communities and the Children's Hearings system?
- 19 What information do you think should be available about what the Hearing System is doing

SACRO considers that there is a need to increase public awareness and understanding of the Hearings System. The Family Group Conferencing approach would result in more involvement of the local community and public awareness would in turn be raised.

Communication Officers could also be appointed to the Hearings System to aid communication between the panel and the wider community.

- 20 Do you think that recruiting local people is still the best way to involve the community in the system
- 21 What other ways would help make the system feel more local?

SACRO considers that a broader recruitment process is required; together with increased communication to ensure a wider range of people apply.

It was highlighted in research carried out by NCH⁷, that children felt that panel members who were not from their background or community could not understand them.

The Family Group Conferencing approach would increase the likelihood of children's needs in this aspect being met. As well as Panel Members, the inclusion of 'support' people and other family or community members would make the experience more meaningful and effective for all those involved.

- 22 How might young people contribute to or be involved in the Hearings system in a meaningful way? Which young people might be involved in this way?

Young people's involvement in the process would be increased through using a Family Group Conferencing approach. A schools education campaign would also be beneficial.

- 23 Are there any other issues, which have not been concerned, in earlier questions or in this list but which you think should be considered during Phase 2 of the Review?

The involvement of people affected by crime (victims) in the process should be considered in phase two.

⁷ Where's Kilbrandon Now, NCH, 2004

Appendix 1

Integration of family group conferencing into the Children's Hearings system could take the following form:

Family Group Conferencing (FGC) Style Hearings

Research

It is suggested that this proposal be adopted in the first instance as a pilot study in at least 2 or 3 local authorities. The pilot should use an experimental research process which randomly assigns cases to an FGC style hearing or a traditional style hearing. The study would thus aim to compare the effectiveness of each procedure for certain kinds of cases.

Development of Protocols

It is suggested that the protocols for an FGC style hearing be drawn up initially by a multi-agency group. This should consist of FGC experts and practitioners, representatives from SCRA, the Panel and other relevant agencies.

Aims and Principles

The general aims of an FGC style hearing would be:

- To agree on safe and appropriate plans;
- To encourage family members to participate actively in creating and deciding upon their own action plan;
- To explore options within the family, the community and the professional networks for the necessary support and programmes;
- To encourage and facilitate partnership between families and professionals;
- To empower family members by enabling them to produce action plans which meet their needs;
- To help the young person to repair or strengthen their relationships with family or significant others.

The principles of an FGC style hearing:

- Families are experts on their strengths, needs, and resources.
- Families, when properly informed and supported, can make safe, responsible and rational decisions.
- Decisions that affect families are more likely to be successful if they are created and overseen by the family themselves.
- Parents have a duty to take responsibility for the care of their children in whatever way is open to them with support as necessary.
- Families have a right to contribute to important decisions that affect their lives.
- Effective partnership work between professionals and families is beneficial for all concerned.
- The views and perspectives of families should be respected.
- The safety of all involved is of paramount concern.

Basic Protocols

The following basic protocols are intended as an initial attempt to embody the aims and principles above within the context of existing legislation for Hearings:

- 1 A trained conference co-ordinator, preferably from an independent, non-statutory organisation, would facilitate the entire process.
- 2 Children and families would be prepared in advance of a Hearing by the coordinator, to ensure that they fully understood and felt safe about the Hearing process and their role in that process.
- 3 The conference format would be an open-circle format, without a table, with the aim of creating, symbolically, a 'community' within the circle.
- 4 Professionals (social work, voluntary agencies, education, etc.) who are or may be working with the child and/or family would (a) meet as a multi-agency group prior to the Hearing to discuss the needs of the child and family and the resources available to meet those needs, and then (b) provide information to the family and the panel in the first 'Information Stage' of the Hearing.
- 5 The child and family would be given the opportunity to consider the information they had received in 'Private Family Time', and come up with an action plan, which would meet the needs of the child.
- 6 The action plan would then be discussed with the professionals and the panel members to ensure that it is achievable and meets the needs of the child and family. The responsibility of the panel members at this point would be to ratify the decision, if it did not pose a risk to the health and safety of the child and met all legislative requirements.
- 7 'Review Hearings' or family review meetings facilitated by the co-ordinator out with the Hearing context would also be made available, where necessary.