Legal Representation in the Scottish Children’s Hearings System

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The Scottish Children’s Hearings System (CHS)

• Began operation in 1971 following the Kilbrandon Report in 1968
• Core principles include:
  – Centrality of the (best interests of the) child
  – Discursive forum
  – Focus on needs, not deeds
  – Community involvement (lay panels)
  – No-order principle
• Deal with cases with both offence and ‘non-offence grounds
  – Disputed grounds are sent to the Sheriff (court) for adjudication
• Age-limited up to 18
The Children’s Hearing Set-up

Chairperson
Solicitor involvement in the CHS

- Children and parents have always been entitled to legal representation
  - Prior to 2002 this was rarely exercised
- 2002 ECHR ruling mandated that legal representation for the child must be considered where a restriction on liberty was being considered
- The Children Hearings (Scotland) Act 2011 made legal aid available to parents and relevant others:
  - To ensure correct process
  - To provide advice
  - To facilitate participation in the hearing
  - Means-tested
Aims

CELCIS was commissioned by the Scottish Legal Aid Board (SLAB) to carry out a piece of research on 5 topics relating to solicitors in the CHS:

– The ethos of the CHS
– The role and impact of solicitors in the modernised CHS
– Monitoring of solicitors in the CHS
– Gathering feedback on solicitors
– Training necessary for solicitors
Methodology

Mixed methods were used, utilising qualitative and quantitative approaches:

- Survey of the four main groups involved (panel members, solicitors, reporters & social workers)
- Focus groups with 4 main groups
- Key informant interviews
- Interviews with children

All data collection took place July-November 2015
Findings

• Challenges:
  – the introduction of an adversarial style
  – a change in emphasis away from the best interests of the child and towards the rights of the parent(s)
  – the introduction of delay into proceedings
  – a lack of solicitor understanding of child development, communication and attachment
  – disruption of social workers’ relationships with the family.

• Widely acknowledged that these problems were presented by a minority of solicitors
Findings (cont.)

Benefits:
• Putting forward their clients’ views and desired outcomes,
• Calming clients when they were feeling highly emotional,
• Managing their clients’ expectations,
• Describing and clarifying the process and procedures for their clients,
• Supporting clients to speak for themselves
• Positive changes in the behaviour of others in the hearing (such as encouraging them to provide greater clarity).
Discussion

Overall, there were some themed concerns that ran throughout the responses given:

• Reduction in child-centredness of the hearings
• Introduction of adversarial behaviour
• Delay and disruption to children’s care plans

These are concerns that could apply to the introduction of legal representation to any non-court tribunal (e.g. child protection case conferences)
Conclusions I

To address these issues, a number of recommendations were made:

• Clarity in the solicitor role in relation to best interests of the child
  – How should they judge this, based on what information?

• Creation of a compulsory training scheme prior to provision of representation in the CHS
Conclusions II

• Provision of Continuing Professional Development opportunities for solicitors related to the CHS
• Joint training between all organisations working in the CHS
  – Improve understanding of roles and responsibilities
• Quality Assurance Measures
  These are measures that can assist in facilitating the introduction of solicitors to such an forum as the CHS.
Thank You

Questions or comments are welcomed to:

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The full report will be made fully available at:

www.celcis.org