Key Points

- Some progress has been made since the introduction of the Children’s Hearings Scotland (Act) 2011 and through the Children’s Hearings Improvement Partnership (CHIP), but further reform is needed to ensure the child’s best interests remain paramount in the Hearings system at all times.

- The Children’s Hearings system was set up to separate the court function of ‘establishing facts’ and the community function of providing measures to meet children’s needs. Since 2011 the boundaries between these two functions have become increasingly blurred and challenged. Hearings have become more complex and involve an increasing number of public service and legal professionals.

- Where panel members were previously able to focus purely on children’s needs, they now face the challenge of having to carefully balance the rights of adult parents and carers with children’s rights while continuing to hold the child’s needs at the centre of the decision-making process. This demands an increased level of skills and capacity on behalf of the panel and has led to debate about whether panel members and/or Chairs should remain as lay people. Children 1st would urge the Committee to explore this particular issue in greater depth, as part of their inquiry.

- Additional reforms, some of which are already at an early stage, need to be accompanied by leadership, an enabling culture and additional resources if they are to deliver a truly child-centred decision-making process. In particular, Children 1st would draw the Committee’s attention to the importance of:
  
  - introducing consistent national Standards, including clarity of roles, for all professionals and panel members involved in Hearings;
  
  - supporting Reporters to fully exercise a lead role in ensuring the best outcome and experience for children throughout the child’s journey through proceedings;
  
  - equipping all professionals and panel members with a better understanding of:
    
    1) how to balance the rights of the different parties while keeping the child’s best interests paramount;
    
    2) the impact of relationships and trauma on child development;
    
    3) how to support children and young people to participate meaningfully in the hearings process.

- Children 1st believe that the current legal framework which requires children and young people to attend hearings should be revised to enable children and young people to engage in the process and have their views heard in accordance with their individual needs and circumstances.
Have the reforms in the Children’s Hearings (Scotland) Act 2011 produced the desired outcomes?

1. The ongoing work of the Child Hearings Improvement Programme and development of a National Safeguarders’ Panel demonstrate the continued commitment to reform the Children’s Hearings System so that it: “has the child’s best interests as it’s paramount consideration.” Progress has been made around some aspects of the system, for example introducing consistent standards to the role of safeguarders, but other aspects of reform have unintentionally detracted from and conflicted with the child’s best interests when put into practice, in particular:

   - reforms to reflect Scotland’s commitment to the UN Convention on the Rights of the Child;
   - reforms to ensure the system is robust against future legal challenge.

Consistent standards for Safeguarders

2. Safeguarders have been part of the Children’s Hearings System for over thirty years. Appointed by Scottish Ministers, safeguarders are asked to provide Children’s Hearings or courts with an independent assessment of what is in the child’s best interests. Part 4 of The Children’s Hearings (Scotland) Act 2011 placed a duty on Scottish Ministers to establish and maintain a panel of safeguarders (the Safeguarders Panel) for hearings and sheriffs to appoint from in individual cases. Since Children 1st were contracted to develop and manage the Safeguarders Panel on behalf of Scottish Ministers in 2012 we have worked with Ministers and others to develop and introduce a transparent and accountable process for recruitment, selection and training of safeguarders and to manage safeguarder allocations, complaints, fees and expenses. Most recently Children 1st’s Safeguarder Panel Team has worked with safeguarders and Scottish Ministers to create a set of minimum Standards for safeguarders and a Framework for their support and monitoring against these Standards. Safeguarders are now assessed for reappointment. In combination these changes have created a national Safeguarder Panel with increased transparency and accountability for the children and stakeholders it serves.

Reflecting human rights in the Children’s Hearing System

3. Human rights are the bedrock which underpins our systems as a society, our public services and our legal framework. Embedding human rights in Scotland’s Children’s Hearing System is an absolute imperative. It is also extremely complex. In making decisions about/for an individual the Children’s Hearing System needs to take into account the interplay between a range of provisions in the European Convention on Human Rights (ECHR) including: Article 5 (right to liberty and security), Article 6 (right to a fair hearing by an independent and impartial tribunal in the determination of civil rights) and Article 8 (right to respect for private and family life).

4. Through our experiences of supporting vulnerable children who are subjects of Hearings and managing the national Safeguarders Panel, Children 1st has seen Hearings strain to reconcile these different human rights while keeping the best interests of the child paramount. Inadvertently Hearings have become more confrontational and traumatic for the children involved as an increasing number of people, including legal representatives, family members, carers and public service professionals (for example education and health, as well as social work) attend children’s hearings in a bid to ensure that all aspects of the case are fully heard. This can detract from the necessary focus on the child at this critical point and Hearings may become more focused on parents’ rights to family life, or avoiding the risk of legal challenge, rather than on what is in the best interests of a child’s safety and wellbeing.

5. What is in the best interests of each child who comes before a Children’s Hearing will be as unique and individual as they are. Children 1st therefore believe there is an urgent
need for greater training and awareness raising to better equip all those involved in Hearings decisions to balance the rights of the different parties while keeping the child’s best interests paramount.

**Ensuring against future legal challenge**

6. A strong, safe and secure relationship with a carer is vital for children’s brain development, long term health and wellbeing, especially in their early years, so ensuring that well-informed decisions about a child’s care and protection are robust against future legal challenge is in the best interests of a child. Appeals to children’s Hearings decisions and reviews called to meet the needs of parents or carers can cause additional distress, confusion and instability for, already vulnerable, children as their care and needs and life situations are threatened and destabilised, they are moved between temporary placements, or are reintroduced to traumatic contact or home situations as their needs and best interests are diluted or at worst lost in the fray of a Children’s Hearing. Children 1st are aware of cases where children have been moved between uncertain temporary placements for up to two or three years because of appeals and reviews called by parents, who are meeting their own needs to assume some control over the process and their situation.

7. We are however concerned that some of the practices and processes that have developed to ensure decisions are robust may hinder the ability of panels to make informed decisions focused on the best interests of a child. Panel members are being given increasingly detailed reports, which they need to digest while also managing the complex dynamics within the hearing unfolding before them, all in a short space of time. It requires an exceptional level of skill to manage all of this while holding the child’s needs front and centre.

8. Children 1st would urge the Committee to explore in greater depth the debate about how this can be sustained in the long-term. We would encourage the Committee to consider whether panel members or Chairs should become professional in order to guarantee the system has the capacity to hold the needs of the most vulnerable children in mind and keep children’s best interests at its heart.

9. The Children’s Reporter is key to this process and has the potential to play a lead role in ensuring the child’s experience of the Hearing and decision reached is the best it can be for the child. Highly skilled Reporters could more fully own and manage each child’s individual journey through the entire proceedings, assuming a greater responsibility to ensure the best possible outcome and experience for the child, while ensuring the process and decision are robust to legal challenge. The Reporter could do this by:

- aligning more with Getting it Right For Every Child (GIRFEC) and working purposefully with the Lead Professional during the prehearings process;
- deciding purposefully who needs to be present at the hearing (and just as importantly who doesn’t);
- quality checking reports to ensure the panel receives concise, meaningful information to enable them to conduct the hearing in a way that enables them to reach an informed decision while ensuring the best possible experience for the child;
- ensuring the entire journey is child focused at all times;
- ensuring children and parents can participate in a way that is both appropriate and meaningful.

**Are current strands of policy work across children’s services sufficiently co-ordinated and complementary?**
10. No. By the time a child is referred to the Children's Hearing they should already have a Child’s Plan and a Lead Professional in line with the (GIRFEC) approach, but at present, all professionals involved with the child are likely to attend the Hearing and produce an integrated report for Panel members to consider. There is an opportunity for greater synergy between the Child’s Plan, which has already been developed through multi-agency collaboration, and the information that is presented to the Hearing, in order to better inform the decisions of panels.

11. The Lead Professional and the Reporter could be enabled to work more closely together to prepare for a more effective, more child-centred journey through proceedings and Hearings. Given the Reporter’s role in leading proceedings neutrally, this could be challenging, but introducing clear standards, roles and responsibilities for all those involved in the hearing could help ensure this process is fair and transparent. Significant trust would also be required for the Reporter and Lead Professional to lead this essential preparatory work. Preparation would need to be rigorous in preparing parties and the process to be the best it can be for the child whilst being fair and respectful to parents and carers. Safeguarders, who may be appointed at the pre-hearing panel, could also play a role in providing an independent analysis and overview to better assist the preparation for a hearing.

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?

12. Children 1st welcome the ethos driving children’s increased participation in Hearings but believe all aspects of the Hearings system need a greater understanding of what is required to make this participation meaningful to avoid vulnerable children suffering further anxiety and trauma during the process.

13. The vast majority of children and young people (89%) referred to the Reporter in 2015/16 were referred for care and protection (non-offence) grounds. Yet Section 73 of the Children’s Hearings Act (Scotland) 2011 requires a child to attend their Hearing, apart from in very limited circumstances. The large body of scientific evidence about the impact of poor relationships, neglect and trauma on children’s brain development indicates that for many of the children and young people referred to hearings on care and protection grounds, attendance at the hearing would place their physical and mental welfare at risk. Being surrounded by a large number of adults, including parents with whom a child may feel unsafe, who are making complex and often confrontational arguments about your long term future is stressful and distressing for children and young people. Children 1st are aware of occasions when children have locked themselves in bathrooms to try and avoid attending a Hearing. In practice however it appears to be the norm for children’s attendance at a hearing to be equated with participation and respect for their voice.

14. The varying dynamics that come into play at Hearings combined with the inherent power imbalance between the child and the adults attending the Hearing will negatively impact on a child’s ability to engage meaningfully in the current process and have their views heard. As the quotes in the Children’s Hearings Improvement Partnership, The Next Steps to Better Hearings Report illustrate children and young people often find the environment difficult and feel unheard:

I was at hearings from the age of 7 and refused to go to any more because I found the environment horrible and invasive.” (young person, Who Cares? Scotland, 2014)

"Why is it that, when you’re going through panels or the courts, or anything where decisions are getting made about you, your life, you’re never listened to..." (young person; Cook, 2015).
15. **Children and young people need highly skilled support and intensive preparation in order to meaningfully engage and participate within the current Hearings process.** This requires increasing investment, at a time when public bodies are experiencing financial constraints. Depending on their individual circumstances there may be better ways to enable children and young people to engage in the decision-making process and have their views heard, than being physically present at the hearing. We welcome the ongoing work by the Scottish Children’s Reporters Administration and Children’s Hearings Scotland to explore more child-friendly approaches. We would encourage the Committee to consider whether the current legal framework which requires children to attend hearings should be revised to encompass alternative approaches to enable children’s views to be heard.

**Do social work departments provide the optimum support to children and young people who are part of the Children’s Hearings system and have sufficient resources? If not, what improvements need to be made?**

16. **The primary aim for social work and other key agencies should be to ensure that all reasonable steps are taken to prevent a child requiring compulsory measures via a Children’s Hearing. Resources must be directed towards preventative and early intervention support services, provided collaboratively, including by the third sector, so that where possible more intrusive, costly, long term statutory interventions can be avoided.**

17. **Where children are referred to Hearings, social work professionals need to be suitably skilled and resourced, with appropriate capacity and support to deliver a child-centred approach. This will be particularly important in creating the trust required to play the role proposed above for Lead Professionals in additional prehearing activity. Social work professionals need an investment in skills, training and capacity to ensure that children and families are supported to participate meaningfully and that panel members have appropriate and proportionate information on which to base decisions. Investment in supporting preparation for and participation at Hearings has the potential to result in better outcomes for children and future savings to society and public finances by avoiding delays, ensuring decisions are robust to legal challenge and giving a child the best chance of fulfilling their potential.**

18. **In the current economic climate, it is even more important to invest in equipping all those involved in Hearings with the skills, knowledge and resources required to ensure that Hearings make the right decisions in the best long-term interests of the child and not on the basis of short-term financial constraints.**

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

19. **It is important that parents’ views and rights are defended, but this should not detract from the primary focus on a child's needs or risk the child’s wellbeing or safety. The Hearings system is founded on the ideal that communities should decide on the measures required to meet the needs of their children. Solicitors and other professionals need to present the views of those they represent for consideration by the Hearing in a way that is commensurate with these ideals.**

20. **Developing standards for all professionals that place the child’s best interests front and centre while maintaining a fair and respectful process for all who are affected by Hearing decisions would better ensure that the principles the system was founded on are realised for every child.**

**What is your view on the interaction between Children’s Hearings and the courts? Can improvements be made in how they work together?**
21. The Scottish Courts and Tribunal Service Evidence and Procedure Review documents the current levels of drift and delay that can occur in court proceedings for children. This can result in children being left in temporary and unsettled situations, relating to critical areas of their lives including accommodation, contact with parents and schooling - for long periods of time. As described above, delays and drift can impact on a child’s medium and long term health, wellbeing and development. We welcome the work that is being done via the review and broader court reforms to speed up procedures in the courts.

22. We would also highlight the considerable inconsistencies between the way in which parents and children are treated in the Hearings system and the way in which they are treated in the criminal justice system. The introduction of standard special measures to protect vulnerable victims and witnesses in criminal cases, for example of domestic abuse, do not apply in children’s Hearings. Women and children who may have been able to give evidence via video-link in the criminal court to avoid contact with a perpetrator, may find themselves sitting in the same room during the hearings process.

For more information about this submission please contact Harriet Hall, Policy Manager: harriet.hall@children1st.org.uk

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iii Section 73 of the Children’s Hearing (Scotland) Act 2011 states that a child can only be excused from a hearing if it relates to a sexual offence committed against them or by somebody close to them; attendance at the hearing would place the child’s physical, mental or moral welfare at risk, or a child would not be capable of understanding what happens at the hearing.