



Centre for excellence
for looked after children in Scotland

The Role of the Solicitor in the Children's Hearings System: Executive Summary

A study commissioned by the Scottish Legal Aid Board

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CEL CIS

Improving care experiences

Acknowledgments

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Accessing the Full Report

You can access the full report on both the CELCIS (www.celcis.org) and SLAB (www.slab.org.uk) websites. Alternatively, please contact CELCIS directly to request a copy.

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1) Introduction

In 2015, the Scottish Legal Aid Board (SLAB) commissioned the Centre for Excellence for Looked After Children in Scotland (CELCIS) to carry out a research study looking at the role of solicitors in the children's hearings system. This research took place between July and December 2015, and was designed to address the following five topics:

- Defining the ethos of the children's hearings system and applying this to solicitors
- The role and impact of solicitors in the modernised children's hearings system
- How to achieve a fair and consistent approach to monitoring compliance
- How best to get feedback from professional and non-professional stakeholders
- Training of solicitors on children's hearings

The role of solicitors in the children's hearings system has taken on greater importance over the last five years, as the number of solicitors attending hearings proceedings is perceived to have increased since Part 19 of the Children's Hearings (Scotland) Act 2011 enabled the provision of legal aid to both children and other relevant people.

The study included nationwide surveys conducted with solicitors, social workers, reporters, and panel members, followed by focus groups with these groups. In addition, the study included key informant interviews with various professional stakeholders and interviews with three young people with experience of solicitors in the children's hearing system.

2) Key findings

All respondent groups felt that most solicitors attending children's hearings acted in ways that can be constructive and valuable. All groups of participants welcomed solicitor involvement in cases where they were representing children or young people. However, 90% of legal aid work in hearings during 2013/14 was conducted on behalf of parents and other relevant people (as had been anticipated from changes implemented from the 2011 Act). Most participants also identified that the presence of solicitors could sometimes present challenges, usually in relation to solicitors' representation of parents and other relevant people.

Perceived advantages associated with the involvement of solicitors included:

- their ability to put forward their clients' views and desired outcomes,
- solicitors calmed clients when they were feeling highly emotional,

- solicitors managed their clients' expectations,
- solicitors described and clarified the process and procedures for their clients,
- solicitors supported clients to speak for themselves, and
- the presence of solicitors sometimes resulted in positive changes in the behaviour of others in the hearing (such as encouraging them to provide greater clarity).

The perceived challenges associated with the involvement of solicitors included:

- a minority of solicitors who acted in problematic ways, such as portraying an adversarial, formal, intimidating, or disrespectful style said to be out of keeping with the ethos and approach of the children's hearings system,
- some solicitors who lacked the requisite knowledge to take part effectively in hearings (said typically to be in relation to child development, attachment, and contact),
- some solicitors who provided what others saw as unrealistic advice to their clients regarding possible outcomes of hearings or appeals, or who gave what others saw as 'inappropriate' guidance on working with social workers,
- a sense that others present in hearings sometimes felt less confident and more on-edge when a solicitor was present, and
- a widespread perception (held within all groups) that solicitors are exempt from the requirement to be focused on the best interests of the child.

3) Recommendations and discussion

3.a) Recommendations

We base the following recommendations around the original remit for this study as defined by the SLAB. However, we also feel that the findings in this report will be of interest to other stakeholders concerned with improving children's hearings, and we hope these findings will inform positive developments or further study in different areas of work. We make six recommendations based on the findings, our suggestions are that there is a need for SLAB, together with other relevant agencies to:

1. Seek to establish an agreed 'ethos' for children's hearings that applies to all professions and participants in the system.
2. Clarify the role of solicitors in the hearings system for all stakeholders. In particular, clarifying the manner in which their actions should protect the best interests of the child while

representing the wishes of their client, and clarifying the information on which they should base judgements of the best interests of the child.

3. Work to identify, define, and develop compulsory training items that solicitors must complete prior to registering to provide representation in children's hearings.
4. Promote a framework of continuing professional development (CPD) that is available for solicitors on an on-going basis and that links to wider frameworks of learning for others involved in the hearing system. Specifically, solicitors are likely to benefit from CPD focused on the children's hearings system, covering issues relevant to the child's wellbeing, such as child development, communicating with children, family functioning, and attachment, as well as the current competencies set out in the SLAB code of practice.
5. Work to establish and promote high quality, well-managed, inter-professional training. Such training should ensure that there is mutual understanding of roles and responsibilities in the children's hearings system, and that there is an emphasis on the collaborative, child-centred ethos of the hearing process. This training should foster a culture of mutual respect for all parties. This training would ideally form part of the compulsory training, as well as being available on an on-going basis.
6. Work to establish an on-going feedback mechanism to assist in the monitoring of solicitors in the children's hearing process.

3.b) Discussion of recommendations

Recommendation 1: Findings throughout this study show general agreement on many of the features of hearing ethos. However, there is not universal agreement and nuances exist in the way different actors understand, and act upon key features. This situation means that there may sometimes be a possibility of ineffective communication, loss of efficiency or even conflict. The CHIP has already identified the need to develop a shared definition of the ethos and we would support their efforts to achieve this. A valuable starting point would be a consideration of the hearings ethos as Children's Hearings Scotland have already outlined it.

Recommendation 2: The 2011 Act establishes the presence of solicitors to act for children and relevant persons in order to ensure their effective participation and rights under the EHRC.

Guidance for solicitors from SLAB makes it clear that they should ensure that the interests of the child remain central to the hearing. Despite this, participants from across all stakeholder groups erroneously felt that solicitors were not bound in any way to promote or take account of the best interests of the child.

The view that solicitors are duty-bound to act on the instructions and in the interests of their client, and, that this may complicate any requirement to act in the best interests of the child is

somewhat simplistic, and should be explored and clarified. Even so, this idea has become the source of significant challenges for the hearings system, and some participants in hearings feel it results in disruption to the care of children via the introduction of damaging delay.

Better clarity around the role of the solicitor is therefore important for the improved functioning of the hearings process. Clarity over their role will help solicitors and other stakeholders involved in the hearings process to respond appropriately and further enhance the contribution that solicitors make.

More widely, further dialogue and greater clarity about the responsibilities of all the key stakeholders involved in a hearing would assist everyone to understand the role they play and to develop respect for all the other parts of the system.

Recommendation 3: All participant groups addressed the idea of compulsory training and the majority endorsed this. They expected that such training would address a number of issues in relation to the depth of understanding of solicitors. It was suggested such training should address; the structure and ethos of the hearings system (as clarified through Recommendation 1); the role and approach of the solicitor in the children's hearing system; child development; child and parental attachment; effects of contact; and communicating with children. We feel that all of these areas are suitable for consideration, along with a focus on the roles of others involved in the hearings. Readers should consider this in tandem with Recommendation 4, and the need for inter-professional training.

Completion of such training would bring solicitors into line with training provided to other core participants of the hearings system, increasing their understanding of the perspectives of other participants, and providing a greater knowledge of the impact that issues such as contact, and attachment can have on children. It is expected that this will contribute to their understanding of the best interests of the child enabling them to better prepare their clients for hearings.

Recommendation 4: Solicitors in the focus groups reported that they found it challenging to find CPD that was relevant to the children's hearings system, but not solely based on issues of the law. Some had to arrange their own courses. Given the training needs recognised in this study, and the SLAB requirements that solicitors ensure they continue to meet competencies through ongoing CPD, the availability of appropriate CPD seems a key component of ensuring that high standards of practice are maintained in the hearings system.

We feel that CPD should cover similar topics to those detailed for registration, with a focus on both sharing experiences between solicitors to aid the spread of good practice, and working in collaboration with other stakeholder organisations to ensure that the role and practice of solicitors in the children's hearing process develops in concert with other stakeholders.

Peer observation, as well as coaching or mentoring may be useful within the context of CPD, particularly in the early practice of solicitors, to ensure standards are established from the outset. This might include stand-alone observation and feedback or specific observation related to a particular training opportunity.

It is important that CPD present an opportunity for solicitors working in the children's hearings system to gather the skills and knowledge that are of benefit to working in the children's hearings system, but are not currently available from traditional legal training providers. Not surprisingly, these relate almost exclusively to the development of children, and the impacts that care and protection decisions can have upon them. Access to training on the understanding of child development, attachment, the impact of contact, and communication with children, similar to that expected of children's panel members should be available to solicitors as professionals working within the children's hearings system.

Many related CPD activities are available to panel members, reporters and social workers, and there is likely to be an opportunity for solicitors to engage with these activities, via collaboration between relevant institutions along with the SLAB and the Law Society of Scotland. All participants are likely to welcome further engagement of solicitors in multi-disciplinary training events.

Recommendation 5: All respondent groups indicated the need for inter-professional training. Participants expected that such training would facilitate mutual understanding of roles and ways of working, and clarify expectations from other professionals. Inter-professional training has been a part of many different training plans in relation to the hearings process, and this will continue in the future. Indeed inter-professional training is currently one focus of the Children's Hearings Improvement Partnership (CHIP) 'Learning and Development in the Hearings System' workstream. We recommended that plans for this training include early opportunities for solicitors.

In the context of our findings about the challenges of working within the hearings, it is important that the efficacy of training to both solicitors and others involved in the children's hearings system is maximised by ensuring that hearing rooms across Scotland provide an environment in which they can apply their learning. We would see this inter-professional training as additional to the continuous CPD training in which solicitors might engage in alongside others in the children's hearings system. This training would focus instead on an understanding of roles and challenges within hearings, and on incorporating collaborative learning and development in order to foster a culture where the drivers of effective implementation are reinforced.

We need to sound a note of caution however, that providers of inter-professional training must facilitate it in a manner that ensures positive experiences and outcomes for all participants. In the context of solicitors in the hearings, this is no simple matter. As this report demonstrates, there

are strong feelings relating to the presence and role of solicitors in the hearings system, any joint training between professional groups needs to ensure that interactions are constructive and respectful and that learning outcomes are appropriate to all. Failure to achieve this may harm working relationships. Sloper (2004) found that facilitators of good multi-agency working included having clear aims, roles, and responsibilities, and a commitment at all levels of the organisations involved, and Glennie (2007) supports the use of these as the aims of inter-professional training.

Recommendation 6: Although uncommon in other legal contexts, formal monitoring of, and feedback on, the performance of solicitors in the hearing environment is worthy of consideration because the approach, and working methods of the children's hearing system differ markedly from other legal settings. This report shows there are significant concerns among other stakeholders in the hearings system regarding the conduct of a minority of solicitors. Participants across the different stakeholder groups voiced the opinion that some form of monitoring would be appropriate and welcome, and expressed a desire for parity in the monitoring between all stakeholders in the hearings system. They noted that panel members, social workers, reporters, and safeguarders were all subject to observations of their practice by employers, supervisors, or their governing bodies. Although solicitors were concerned about observation, other stakeholders considered observation an appropriate measure, as many of their concerns related to behaviours in the hearings.

Unsurprisingly, each stakeholder group reported that they did not feel that *they* were an appropriate group to monitor individual solicitors, but most welcomed the possibility of providing generalised feedback.

The two organisations with the clearest lines of accountability (beyond employing firms and senior partners) are the SLAB and the Law Society of Scotland. The SLAB have the duty to ensure that solicitors who provide representation under the children's legal assistance regime comply with the code of practice in relation to children's legal assistance cases and, with the Law Society of Scotland, that peer review quality assurance is being implemented. The development of feedback mechanisms to contribute to the framework of monitoring of solicitors' compliance with the Code of Practice is therefore most appropriately taken forward by these bodies.

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About CELCIS

CELCIS is the Centre for Excellence for Looked After Children in Scotland. Together with partners, we are working to improve the lives of all looked after children in Scotland. We do so by providing a focal point for the sharing of knowledge and the development of best practice, by providing a wide range of services to improve the skills of those working with looked after children, and by placing the interests of children at the heart of our work.

For more information

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