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Research Report

Contact Decisions in the Children's Hearings System

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Executive Summary & Action Points

Introduction

Contact, predominantly with parents, is widely understood to be of great importance in influencing the development of children and adolescents, yet there has been little research into the contact decisions made by Children's Hearings. In 2015 the Scottish Children's Reporter's Administration (SCRA) noted that concern was raised by social workers in relation to permanence processes, where contact decisions were thought to introduce drift and delay into permanence journeys for children. In order to investigate the extent to which these concerns are well founded, the Centre for Excellence for Looked After Children in Scotland (CELCIS) and SCRA entered a partnership to conduct research looking at the contact decisions in the Children's Hearings System.

This research had one primary, and three secondary, questions:

1. When and how, if at all, do decisions relating to contact by Children's Hearings differ from social work¹ report recommendations?
 - a. Are there systematic differences in contact decisions based on case type, location, participation of professionals, or residence of the child or young person?
 - b. To what extent do contact decisions accord with children and young people's, or relevant persons', stated wishes, where recorded?
 - c. How are reasons for social work recommendations or Hearings' decisions recorded in the paperwork?

Methodology

File review of the records contained on the SCRA Case Management System was undertaken in relation to 160 children and young people from four local authority areas, selected because they had a contact direction made, continued, or removed in the year 2015/16. In total, 1276 different Hearings were included, with 2008 contact directions being examined. Ethical approval for the study was obtained from the SCRA Ethics Committee.

Key Findings

Children and young people's views on contact are often not recorded in Hearings' documentation

Just over a third of children or young people had their views recorded to any extent in the documentation or decisions of Hearings. Where views are recorded, records are often unclear as to what decision the child or young person wishes to see in relation to contact. Just 12% of Hearings' records had an indication of whether a child or young person wished to have more, less, or the same level of contact with contactees. For children and young people aged over eight years, 22% of Hearings' records contained such an indication of the child or young person's wishes.

¹ Reports submitted to Hearings are often multi-agency reports, co-ordinated by the relevant social work department. For ease of reading, both of these report types are referred to throughout this report as simply 'social work reports', and their recommendations as 'social work recommendations'.

The majority of Hearings' contact decisions reflect social work recommendations

Whether the frequency of contacts, or the total hours of contact time are examined, the majority of Hearings' decisions (76% in relation to frequency of contact, 63% in relation to total hours of contact time) exactly match social work recommendations.

Hearing decisions and social work recommendations are justified using similar reasons

The single most common reason given for Hearings' decisions or social work recommendations is the risk of emotional harm to the child or young person (29% of Hearings' decisions, 38% of social work recommendations). Hearings' decisions are then most likely to cite the positive nature of the relationship (18%) or the child or young person's wishes (15%). Hearings' decisions rather than social work recommendations are twice as likely to cite the child or young person's wishes (15% of Hearings' decisions compared to 7% of social work recommendations). Hearings' decisions and social work recommendations are similarly likely to cite the best interests of the child or young person (8% and 7%, respectively).

Reasons for Hearings' decisions and social work recommendations are often not well recorded

Twenty nine percent of the recommendations made by social work, lacked clear recorded reasoning. In addition, there was no written social work recommendation in 41% of instances where the Hearing subsequently made a contact direction. Nine percent of Hearings' decisions gave no substantive reasons for reaching their decision. This does not mean that these decisions were made without good reasons, but that in some instances, the recording of those reasons could be improved.

Reasoning for both Hearings' decisions and social work recommendations is variable

The recorded reasoning for both Hearings' decisions and social work recommendations showed a lot of variation. Although conclusions cannot be drawn about the overall quality of reasoning, it is clear that there is a need for reasoning for both Hearing decisions and social work recommendations, in some cases, to be improved.

Action Points

Action Point 1: Panel chairs and members should be given clear guidelines on limiting numbers attending Hearings, and their powers to ask some individuals to attend only part of a Hearing.

Action Point 2: Recording of child or young person attendance at Hearings may highlight differences in practice between local areas. Such variation in practice between localities should be further investigated.

Action Point 3: The finding that Hearings' decisions predominantly reflect social work recommendations should be disseminated to social workers, to highlight the shared understanding between social workers and panel members

Action Point 4: Views and wishes of children and young people in relation to contact with all parents, siblings and other individuals should be routinely and consistently sought and recorded in social work reports. A specific 'Child/Young person's views on contact' section in social work reports may facilitate this

Action Point 5: More detailed guidance should be developed clarifying what records of reasons require by law, and what good practice looks like. Clear examples will help panel members and social workers clearly express reasoning in reports and decisions

Introduction and background

Children's Hearings are legal tribunals tasked with making decisions in the best interests of children and young people in Scotland (Norrie, 2013). If convinced that a child or young person requires compulsory measures of supervision², Hearings have a duty to consider including a contact direction in the order³. A contact direction is a provision that regulates contact between the child or young person in question and a specified individual or group of individuals⁴.

Decisions around contact directions are important and difficult for a variety of reasons. Firstly, contact directions have the potential to have significant impact on the lives of the children and young people to whom they apply, and to their families and carers. They are recognised as potentially impacting on Article 9 of the UN Convention on the Rights of the Child, which states a child's right '*to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests*',⁵ and Article 8 of the European Convention on Human Rights which states an individual's right to private and family life.⁶ In accordance with these conventions, and stated in the Children's Hearings (Scotland) Act 2011, each Panel Member in the Hearing must state their decisions and reasons in relation to the contact direction. The Chair must then confirm and explain the decision of the Children's Hearing, and state the reasons for that decision.⁷

Guidance from the United Nations Committee on the Rights of the Child supports these rules of procedure, emphasising the importance of providing feedback on how a child or young persons' views have influenced the decision.

Since the child enjoys the right that her or his views are given due weight, the decision-maker has to inform the child of the outcome of the process and explain how her or his views were considered. [This] feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously.⁸

The importance of the views of the child is seen in the s.27(3) of the 2011 Act, which states that a Hearing '...must, so far as is practicable and taking account of the age and maturity of the child, if the child wishes to do so, give the child an opportunity to express [their views]'.⁹ Additionally, guidance provided to panel members details that they are

² A Hearing may make a child subject to a Compulsory Supervision Order (CSO) which lasts a maximum of 12 months, an Interim Compulsory Supervision Order (ISCO) which lasts a maximum of 22 days, or they may continue a warrant or child protection order, the continuation of which will last a maximum of 22 days.

³ A recent case, Locality Reporter Manager v AM, No. [2017] SAC (Civ) 36 (Sheriff Appeal Court October 4, 2017)., clarifies that failing to record a consideration of contact will not be grounds for appeal where the is not of such seriousness that it 'damaging to proceedings'.

⁴ s.29(A) & s.82(3)(g) "Children's Hearings (Scotland) Act" (2011), http://www.legislation.gov.uk/asp/2011/1/pdfs/asp_20110001_en.pdf.

⁵ Article 9(3) "United Nations Convention on the Rights of the Child" (1990), <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>.

⁶ Article 8 "European Convention on Human Rights" (1953), http://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷ "The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules" (2013), http://www.legislation.gov.uk/sdsi/2013/9780111020326/pdfs/sdsi_9780111020326_en.pdf.

⁸ Committee on the Rights of the Child, "General Comment No. 12: The Right of the Child to Be Heard" (UNCRC, 2009), 11, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

⁹ The Scottish Executive, "Children's Hearings (Scotland) Act 2011" (2011) s.27(3)(b).

expected to confirm with the child if any views presented in reports are accurate.¹⁰ The child's right to express their views freely enshrined in Article 12 of the UNCRC, is stated repeatedly in this document.¹¹

Secondly, contact is widely understood to be of great importance in influencing the development of children and adolescents.¹² Contact directions are one of the more contentious areas of Children's Hearings decision-making¹³. Arguments in favour of contact are most frequently grounded in theories of attachment which emphasise the negative impact of separation and the importance of maintaining contact¹⁴, while Saini *et al.* highlight that contact plays a significant role in the assessment of parents' ability to care for their children¹⁵.

There are a range of considerations in looking at the purpose of contact for a child. These include:

cultural considerations, the developmental stage of the child, the safety of the child and risk of further abuse, the impact upon children, carers and parents, the pre-existing nature of the relationship between parents and their children, and when age appropriate, children's views on contact¹⁶

However, it is generally accepted that frequency of contact does not influence the likelihood of a return home, rather it is a contributory factor in rehabilitation, along with a lack of significant abuse or neglect prior to introduction to care, a strong attachment between child and mother, and not being subject to legal orders.¹⁷

In contrast, others have found that the majority of contact with birth families was problematic for adolescents in foster care placements, and that it had a negative impact on their foster placements.¹⁸ Kiraly and Humphreys also noted that:

¹⁰ "Children's Hearings Scotland Practice and Procedure Manual" (Children's Hearings Scotland, 2015), 51, <http://www.chscotland.gov.uk/media/18967/practice-and-procedure-manual-colour-.pdf>.

¹¹ "Children's Hearings Scotland Practice and Procedure Manual," 7, 51.

¹² See, for example Sally Wassell, "Contact - A Review of the Research and Practice Literature" (Inverclyde CHCP, 2013); Cathy Humphreys and Meredith Kiraly, *Baby on Board: Report of the Infants in Care and Family Contact Research Project* (University of Melbourne, School of Social Work, 2009); Harriet Ward, Rebecca Brown, and David Westlake, *Safeguarding Babies and Very Young Children from Abuse and Neglect* (Jessica Kingsley Publishers, 2012).

¹³ Robert Porter, Vicki Welch, and Fiona Mitchell, "The Role of the Solicitor in the Children's Hearings System" (Glasgow: CELCIS, 2016), https://www.celcis.org/files/8514/7576/7298/CELCIS-The_role_of_the_solicitor_in_the_Childrens_Hearing_System_-_2016.pdf.

¹⁴ Tracey Bullen *et al.*, "Literature Review on Supervised Contact between Children in Out-of-Home Care and Their Parents Preferred Citation" (Melbourne, 2015), www.acu.edu.au/icps; Robin Sen and Karen Broadhurst, "Contact between Children in Out-of-Home Placements and Their Family and Friends Networks: A Research Review," *Child & Family Social Work* 16, no. 3 (August 2011): 298-309, <https://doi.org/10.1111/j.1365-2206.2010.00741.x>.

¹⁵ Michael Saini, Melissa Van Wert, and Jacob Gofman, "Parent-child Supervised Visitation within Child Welfare and Custody Dispute Contexts: An Exploratory Comparison of Two Distinct Models of Practice," *Children and Youth Services Review* 34, no. 1 (January 1, 2012): 163-68, <https://doi.org/10.1016/j.childyouth.2011.09.011>.

¹⁶ Bullen *et al.*, "Literature Review on Supervised Contact between Children in Out-of-Home Care and Their Parents Preferred Citation," 15.

¹⁷ Sen and Broadhurst, "Contact between Children in Out-of-Home Placements and Their Family and Friends Networks: A Research Review"; Jim Wade *et al.*, *Caring for Abused and Neglected Children: Making the Right Decisions for Reunification or Long-Term Care* (London: Jessica Kingsley Publishers, 2011).

¹⁸ Sue Moyers, Elaine Farmer, and Jo Lipscombe, "Contact with Family Members and Its Impact on Adolescents and Their Foster Placements," *British Journal of Social Work* 36, no. 4 (2006): 541-559.

[t]here are also circumstances in which parental contact is so traumatic that it should not take place. One of these circumstances may be when a child is vigorously opposed to it; their reasons are rarely insubstantial¹⁹

There has been little research into the contact decisions made by Children's Hearings, although research conducted by the Scottish Children's Reporter's Administration (SCRA) noted that concern was raised by social workers in relation to permanence processes, where contact decisions were thought to introduce drift and delay into permanence journeys for children²⁰. This phenomenon is also reported to be exacerbated by the involvement of legal representation on behalf of parents²¹.

In order to investigate the extent to which these concerns are well founded, the Centre for Excellence for Looked After Children in Scotland (CELCIS) and SCRA entered a partnership to conduct research looking at the contact decisions in the Children's Hearings System. This research had one primary, and three secondary, questions:

2. When and how, if at all, do decisions relating to contact by Children's Hearings differ from social work²² report recommendations?
 - a. Are there systematic differences in contact decisions based on case type, location, participation of professionals, or residence of the child or young person?
 - b. To what extent do contact decisions accord with children and young people's, or relevant persons', stated wishes, where recorded?
 - c. How are reasons for social work recommendations or Hearings' decisions recorded in the paperwork?

¹⁹ Meredith Kiraly and Cathy Humphreys, “‘It’s about the Whole Family’: Family Contact for Children in Kinship Care,” *Child & Family Social Work* 21, no. 2 (May 1, 2016): 237, <https://doi.org/10.1111/cfs.12140>.

²⁰ G. Henderson Hanson, L., Kurlus, I., Hunt, M, and Laing, A., “Permanence Planning and Decision-making for Looked After Children in Scotland :,” 2015, [http://www.scra.gov.uk/cms_resources/Permanence research - main report.pdf](http://www.scra.gov.uk/cms_resources/Permanence%20research%20-%20main%20report.pdf).

²¹ Ibid.

²² Reports submitted to Hearings are often multi-agency reports, co-ordinated by the relevant social work department. For ease of reading, both of these report types are referred to throughout this report as simply ‘social work reports’, and their recommendations as ‘social work recommendations’.

Methodology

The research used a predominantly quantitative approach, with a final brief qualitative evaluation of some written reasons provided for recommendations and decisions. Each selected child or young person was given a research case identifier. To collect the quantitative data, the selected children's files held on the SCRA case management system (CMS) were examined and data were manually entered into data extraction forms. The CMS contains scanned copies of all reports submitted to Children's Hearings, as well as a record of the Hearing, including all attendees, the decisions made, and the reasons given. The CMS records date back to the beginning of 2013. One data extraction form collected data relating to the child or young person in general (Form A), while another form was completed for each Hearing convened (Form B). Examples of both forms are available on request from the author.

Form A collected general information including; the age of the child or young person in years and months at January 1st 2016, the sex of the child or young person, the ethnicity of the child or young person, the sample area, the date of initial referral, and the dates of each Hearing with records on the CMS.

Form B collected information relating to a particular Hearing, including; all attendees (excluding the panel members and reporter); representation by solicitors; the current, desired and recommended residence of the child or young person; reports presented. In addition, information was collected in relation to every contactee about whom a decision was made, including: relation to the child or young person; representation by solicitors; the child or young person's wishes, the recommendation, contactees wishes, and the decision in relation to contact; the reasons for the recommendation; the reasons given the decision. Additional information relating to the status of the Compulsory Supervision Order or wider decision of the Hearings were also captured to provide further information where it was deemed necessary.

Reasons for the decision were entered into pre-determined categories. These categories had been established through consultation with individuals with experience of the reasoning in Hearings. These were then used in an initial piloting exercise with the first ten cases, and refined to ensure that the majority of reasons provided were given a code. Reasons that did not fit within a code were recorded as quotes in the additional information. All data extraction was carried out between March and November 2017.

Sampling

The sample was taken from four local authority areas. Two areas were on the east of Scotland, two on the west, this included one rural, one semi-rural, and two urban local authority areas. This strategy was established to ensure that a representative sample could be collected from each local area, while reflecting some of the variation between local authority areas. Children and young people were included, regardless of their residential status, including those living at home, in residential, foster, or kinship care. Only those children who were subject to secure care authorisation were not included in the sample, as they represent just 1% of the overall population and the sample would not be large enough to create meaningful findings for this group.

Within each area, children or young people who had at least one Hearing in the year 2015/16 were placed in a random order. Each record was then examined in turn to see if any contact decision (including the removal of a contact direction) had been made in the year 2015/16. The first 35 found within each area were then included in the sample. Following this, additional purposive sampling was conducted to ensure the sample reflected the national profile in terms of residence, age, and gender. Forty cases from each sample area were included, giving a total of 160 children or young people included in the analysis. As each case typically had a number of Hearing records, a total of 1276 different Hearings were included in the analysis.

The sample broadly reflected the national profile for gender, and age. However, there was a significantly larger number of children and young people looked after in kinship placements in the sample, and a corresponding reduction in the proportion of children looked after at home (Figure 1). This sampling bias is due to the fact that a large number of children and young people on CSOs at home do not have any contact directions in place.

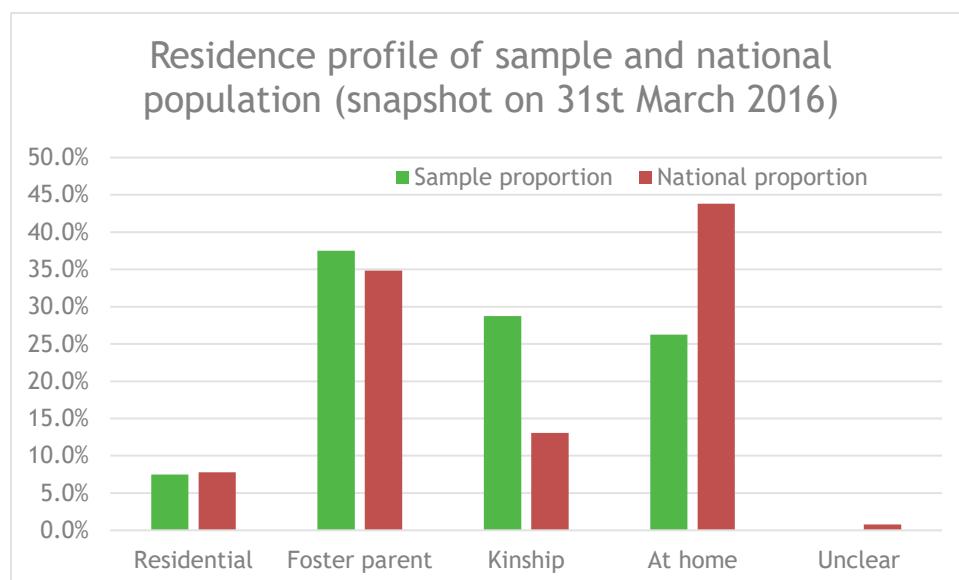


Figure 1: Residence profile of sample and national population (snapshot on 31st March 2016)

Ethics

The study was approved by the Scottish Children's Reporter Administration Ethics Committee for consideration in March 2017. Consistent with all access to the SCRA CMS, the researcher obtained enhanced PVG clearance before receiving access to information. In addition, all information was extracted from the CMS manually, and anonymised as it was transcribed. No names of individuals were extracted from the CMS, with individuals identified by their relationship to the child. Accordingly, no personal, or personally identifiable information was included in the analysis.

All physical data were kept in secure storage in SCRA head offices in Stirling. Electronic records were kept on secured drives on SCRA computers, with access only available to the researchers. Prior to exporting the data to conduct analysis, a further check was carried out to ensure that no personally identifiable information was included.

Analysis

The data were initially entered into an excel spreadsheet from the paper copies of the data extraction forms. The data were then sorted and coded where appropriate in the excel spreadsheet, in preparation for export to SPSS 23. Once the data were entered into SPSS 23 for analysis, proxy and computed variables were created to aid analysis. Non-parametric tests were used for quantitative analysis to account for non-normal distributions of variables.

A brief analysis was carried out looking at a selection of reasons provided for both social work recommendations and Hearing decisions. The researcher analysed each reason given to see to what extent they met the following four criteria, adapted from the Children's Hearings Scotland Practice and Procedure Manual for panel members:²³

Criteria 1: Reasons relate to the child or young person's welfare

Criteria 2: Reasons are relevant to the decision made

Criteria 3: Reasons explain why the contact direction is necessary

Criteria 4: Reasons explain why the frequency/duration has been set

Stronger explanations of reasons address a greater number of these criteria, weaker reasons fewer.

Limitations

This research was conducted on only the information contained in the SCRA CMS²⁴, and therefore information and conclusions drawn are not based on all the information presented at Hearings, as some of this is communicated in other ways. The sample of 160 children or young people (40 from each of four local authorities) is not sufficiently large to draw firm conclusions about the Hearings system in general, or these authorities in particular. Accordingly, whilst we have no reason to expect them to vary from the national picture, the findings from this research should be treated with caution and used primarily as the stimulus for discussion to improve the Hearings system.

²³ "Children's Hearings Scotland Practice and Procedure Manual," 101.

²⁴ Information included from the SCRA CMS database included: Hearings decisions and reasoning; Social work reports; Other reports submitted to the Hearing and distributed to the Panel Members (e.g. Children's Plans, residential reports, letters from solicitors or family members, contact assessments, safeguarder reports)

Results

For the 160 children that were included in the sample from 2013 to 2017, a total of 1276 Hearings were held. Figure 2 shows the number of Hearings held in each case between 2013-17. The average number of Hearings per child is just under 8 (7.98) for this time period. There are no differences between the areas sampled for number of Hearings per child or young person. When the different lengths of involvement in the Hearings System is taken into account, there is an average of 3.3 Hearings per year of involvement in the Children's Hearings System. The variation between different children and young people is large however, ranging from an average of just 1.4 Hearings per year, to a child who had nine Hearings in a 12 month period.

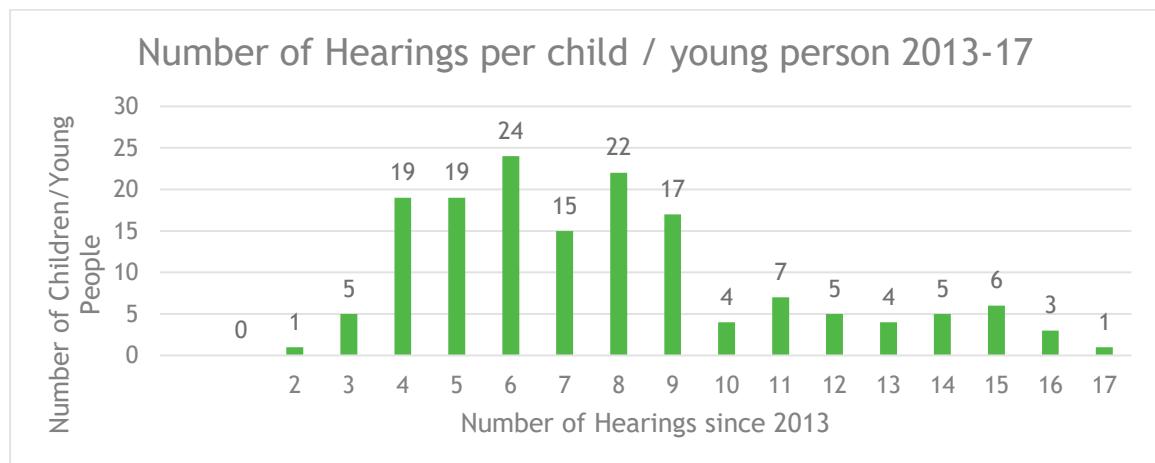


Figure 2: Number of Hearings since 2013

Attendance at these Hearings varied, from no additional attendees beyond the three Panel Members and Reporter, to 16 additional individuals (making a total of 20 people in the room). Figure 3 shows the distribution of Hearings by number of attendees, excluding the three Panel Members and the Reporter. Further analysis shows that there is no relationship between number of attendees and the presence of the child or young person (correcting for the child or young person being counted as an attendee). However the semi-rural area sampled, has a significantly higher average number of attendees (excluding Panel Members and the Reporter) at Hearings, compared to the other three areas (6.12 on average, compared to 5.04, 5.05 and 5.12 for the other three areas)²⁵. Overall, there were an average of 9.44 individuals present at each Hearing, including the three Panel Members and Reporter.

²⁵ Kruskal-Wallis Test, p<0.001, Area A significantly different from all other areas in pairwise comparisons (p<0.001), other pairwise comparisons non-significant.

Attendance at Hearings

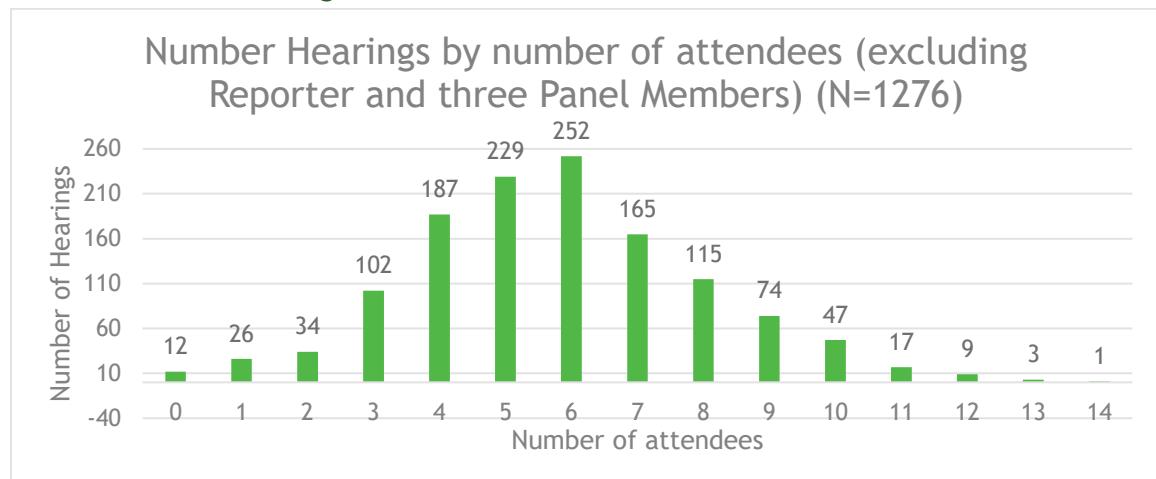


Figure 3: Number of attendees at Hearings

Child or young person attendance was overall more common than not (with attendance in 60% of Hearings), however, there were significant differences between areas, as shown in Figure 4.²⁶ The most striking outlier is Area C, an urban area, where the child or young person was present in only 33% of Hearings, compared to 63%, 66% and 77% for the other areas. While Area C has a lower average child or young person age at the Hearing, Figure 5 shows that the age distribution of children or young people at the time of the Hearing does not seem to account for this large difference in attendance.

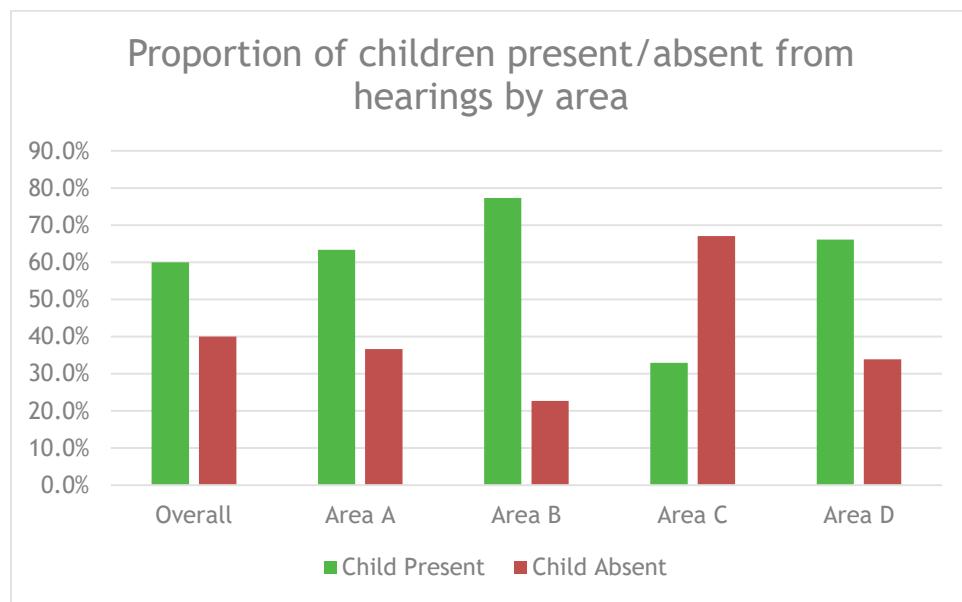


Figure 4: Child or young person attendance at Hearings

²⁶ Chi-square value = 148.733, $p < 0.001$. Areas A and D do not differ from each other, but are significantly different from both B and C, which are also significantly different to one another at the $p < 0.05$ level.

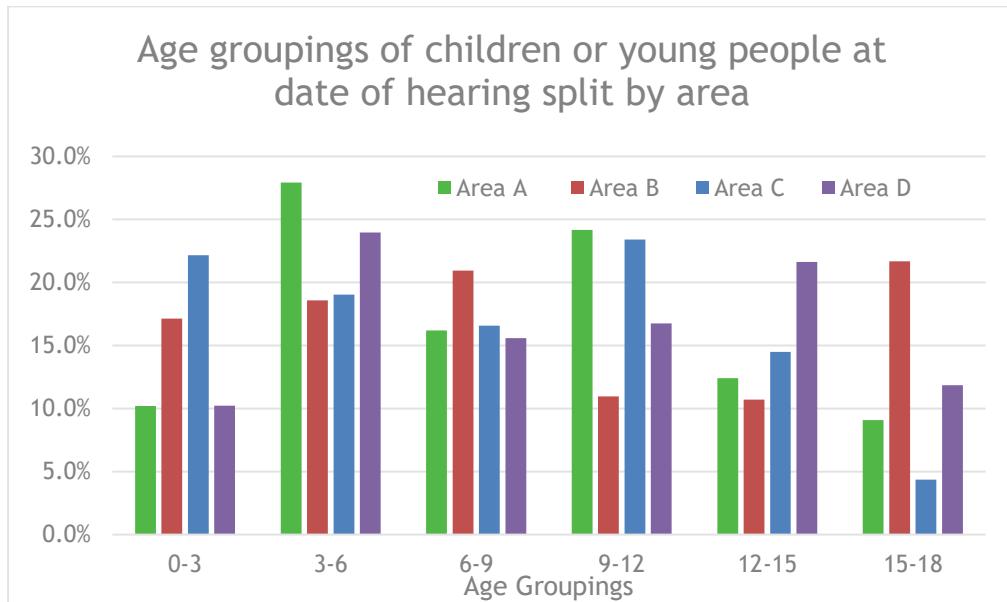


Figure 5: Age groupings of children or young people at date of Hearing split by area

Parental presence was also more common than not, with just 17% of Hearings having neither parent present. Forty two percent of Hearings had both parents present, while only the mother was present in 28.5% of Hearings, and only the father in 12.6% of Hearings (see Figure 6).

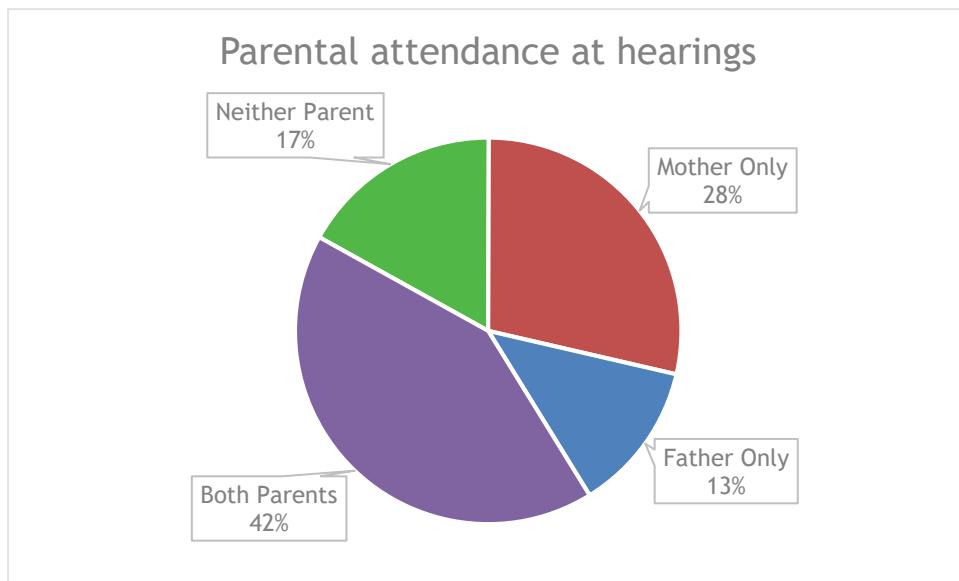


Figure 6: Parental attendance at Hearings

Figure 7 shows the relative frequency of attendance of all categories of attendee.

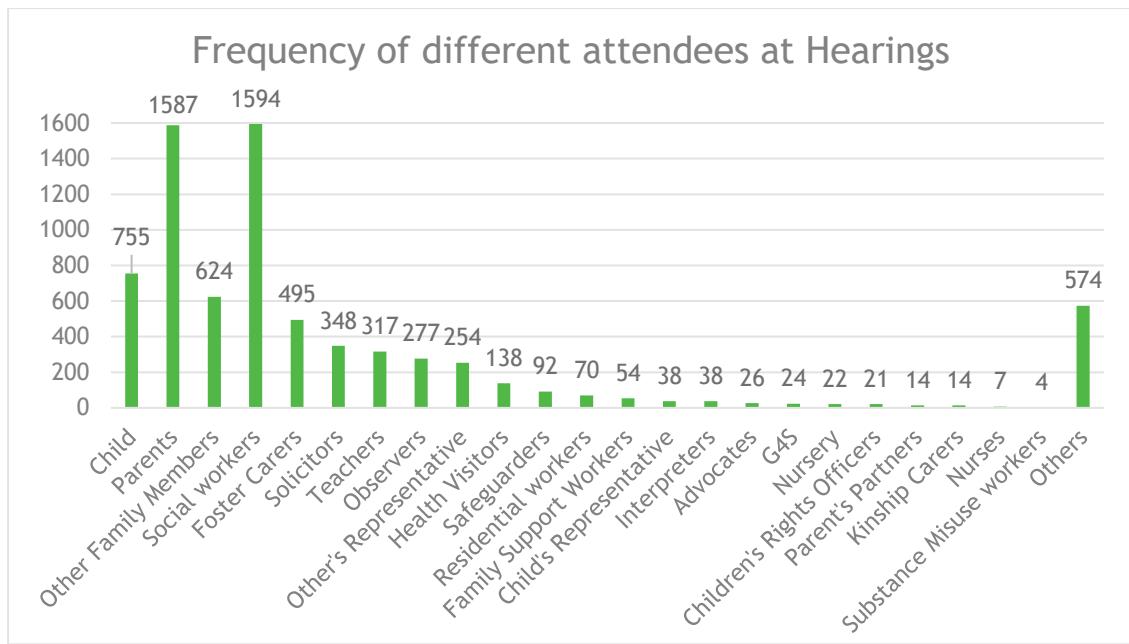


Figure 7: Frequency of attendees at Hearings (N=1276 Hearings)²⁷

No effect on Hearing decisions was found due to the presence or absence of children's chosen representatives, advocates, children's rights officers, or safeguarders in Hearings.²⁸ However, the presence of a solicitor (97% of whom represent parents or relevant persons in our sample) has a significant impact on the frequency of contact in Hearings' decisions. We find there is a significant impact of the presence of solicitors on the ratio between frequency of Hearings' contact decisions and social work recommendations. There is a mean ratio (decision:recommendation) of 1.19 in the absence of solicitors, and 1.22 in the presence of solicitors. This indicates that solicitor presence produces decisions for higher frequency of contact. This finding has a small effect size of 0.18, indicating that although we can be confident there is a difference, this does not represent a large real-world effect.²⁹

Contact decisions

In total, 2008 contact decisions were made in the 1276 Hearings included in the study, in relation to contact between the child or young person and a variety of other individuals. The majority of contact decisions relate to contact with birth parents of the child or young person (77%), while siblings account for 7% of contact decisions, and grandparents an additional 7%. Overall, contact decisions were highly correlated with social work recommendations. Both the social work recommendation and Hearing decision in relation to contacts per week, and hours of contact per week, were recorded where the information was available. There were strong correlations between recommendations and

²⁷ 'Other' category included, for example: Carer liaison workers, SureStart workers, Women's Aid staff, those marked as 'Other' on Hearing records, and a variety of acronyms which were not further defined in the Hearing paperwork (e.g. WHEC, EWO, CHAI, FACS).

²⁸ Mann-Whitney U tests were conducted with hearing decisions based on the presence or absence of the role in question. Where multiples of a role (e.g. two parents) were in attendance, this was included with single attendees as 'present'.

²⁹ Mann-Whitney U test between presence or absence of solicitors is significant $p<0.001$ in relation to number of contacts per week. Non-significant in relation to hours of contact per week ($p=0.067$). Mann-Whitney U test between presence or absence of solicitors is significant $p=0.037$ in relation to ratio of contacts per week in the decision:recommendation. Effect size calculated is Cohen's d .

decisions on both of these measures. There are differences between the recommendations and decisions of Hearings, as shown in

Table 1, however the effect size of these differences is very low, indicating that although we can be confident there is a difference, the difference does not represent an important real-world effect.

Table 1: Difference between contact social work recommendations and Hearing decisions

	Recommendation mean (No. of recommendations)	Decision Mean (No. of decisions)	Mean Difference Decision - Recommendation (No. matched pairs)	p-value	Effect Size ³⁰
Contacts per Week	0.593 (644)	0.650 (1115)	0.057 (489)	0.013	0.07
Hours of Contact per week	1.719 (223)	1.945 (532)	0.226 (132)	0.019	0.08

This strong link between social work recommendations and Hearings' decisions is displayed clearly in Figure 8. For the contact decisions by Hearings where there has been both an explicit contact frequency recommendation and decision recorded, 76% of Hearings' decisions specify exactly the same number of contacts as the social work recommendation, and where specific hours of contact have been both recommended and decided upon, 63% of decisions specify exactly the same number of hours contact as the recommendation.³¹

Eighteen percent of Hearings' decisions gave more contacts per week than recommended by social work, compared to 8% that gave fewer. In addition, 27% of decisions gave more hours contact per week, compared to 10% that gave fewer, than recommended by social work. More detail can be seen in Table 2.

³⁰ Effect size reported is Cohen's d. Values <0.1 represent a very low effect size.

³¹ 489 (25%) of contact decisions had a frequency of contact recorded in both the recommendation and the decision. 132 (7%) of contact decisions had the number of hours of contact specified in both the recommendation and the decision.

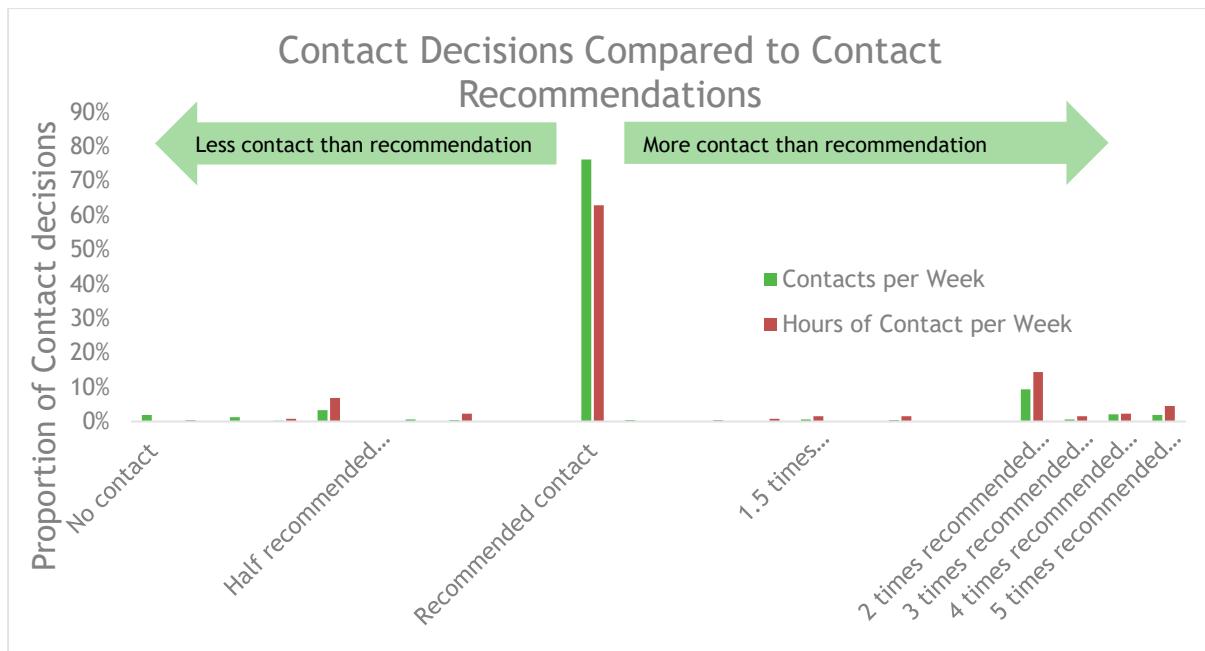


Figure 8: Contact Decisions by Hearings Compared to Contact Recommendations by social work

Table 2: Mean differences between Hearings' decisions and social work recommendations

	Proportion of decisions giving ... than the recommendation		
	More contact	Exactly the same contact	Less contact
Contacts per week (mean proportion of recommendation)	18% (mean = 2.1 x recommendation)	76% (1 x recommendation)	8% (mean = 0.4 x recommendation)
Hours of contact per week (mean proportion of recommendation)	27% (mean = 2.6 x recommendation)	63% (1 x recommendation)	10% (mean = 0.5 x recommendation)

Although very small significant differences were found when comparing Hearings' decisions split by area and by residential status (at home; kinship care; foster care; residential care; other) the effect sizes in all cases were <0.15, indicating a small effect.³² There was a significant difference in decisions based on whether the child or young person was in their expected permanent destination. Those children or young people who were not in their expected permanent destination, received on average significantly more frequent contact, compared to those who were (0.909 contacts per week compared to 0.477³³), and this has a medium effect size of 0.27. This indicates that Hearings award higher contact to children not in their expected permanent destination compared to those who are in their expected permanent destination.

³² Comparing across areas using a Kruskal-Wallis test produced a p=0.008, and p<0.001 for contacts per week and hours of contact per week respectively, and effect sizes of 0.01 and 0.06 respectively. Comparing between residential status using a Kruskal-Wallis test produces p<0.001 for both comparisons, and effect sizes of 0.03 for contacts per week, and 0.13 for hours of contact per week.

³³ A Mann-Whitney U test was conducted with a z-score of 7.282, p<0.001 when looking at frequency of contact.

Hearings' decisions, social work recommendations, and wishes for contact

Children and young people's wishes in relation to contact were represented to some extent in the Hearings' paperwork³⁴ for 36% of contact decisions (721 of 2008 decisions). Records of more specific wishes (indicating that they desired an increase, decrease or no change in contact) were recorded in the Hearings' paperwork in relation to 12% of contact decisions. Records for children or young people aged eight or above at the time of the Hearing were examined further (1006 contact decisions) as older children might be expected to be more capable of providing views and wishes, it was found that 22% have specific wishes, and 58% have some representation of their wishes. Contactee wishes were recorded in Hearings' paperwork in relation to 45% of contact decisions, while more specific wishes were recorded in relation to 21% of contact decisions.

When the wishes of children or young people and contactees are compared to the decisions made, there are strong correlations between both of these variables and the Hearings' decisions that are ultimately made (correlation of 0.559 and 0.651 respectively, $p<0.001$ in each case). Social work recommendations also have a strong correlation to decisions made (correlation of 0.809, $p<0.001$). Two ordinal regressions were carried out, entering the child or contactee's wishes, along with the recommendation as predictors, and the decision as outcome (low numbers made entering all three predictors in one regression impossible). These both indicated that recommendations were significant predictors of the decision ($p<0.001$), while child or young person and contactee wishes were not ($p=0.503$ and $p=0.244$ respectively). This indicates that social work recommendations are more influential of Hearings' decisions than either children or young people's wishes, or the wishes of contactees.

Social work reports commonly contained recommendations for contact provisions. In 59% of contact decisions, some indication of a recommendation was given, while in 29% of decisions there had been a clear recommendation from social work. In 41% of contact decisions made, there was no written recommendation at all from the social work report.

Reasoning

Where a recommendation or decision is made, the reasons for this recommendation or decision are key to the decision-making process. In the case of social work recommendations, they provide the information on which the appropriateness of the recommendation is based, while in the case of Hearing contact decisions, they are additionally a legal requirement.³⁵ In 28% of contact recommendations (302 of 1089), there were no clear reasons given for the recommendation. Hearings failed to give written reasons for their decision in relation to contact in 9% of cases (119 of 1404 decisions). In addition, 41% of contact decisions (689 of 1685) were made with no recorded social work recommendation.

³⁴ See footnote 11 for information on what was included in the analysis

³⁵ Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) s.61(2)(d)

Figure 9 demonstrates the most commonly given reasons for Hearing contact decisions and social work recommendations.

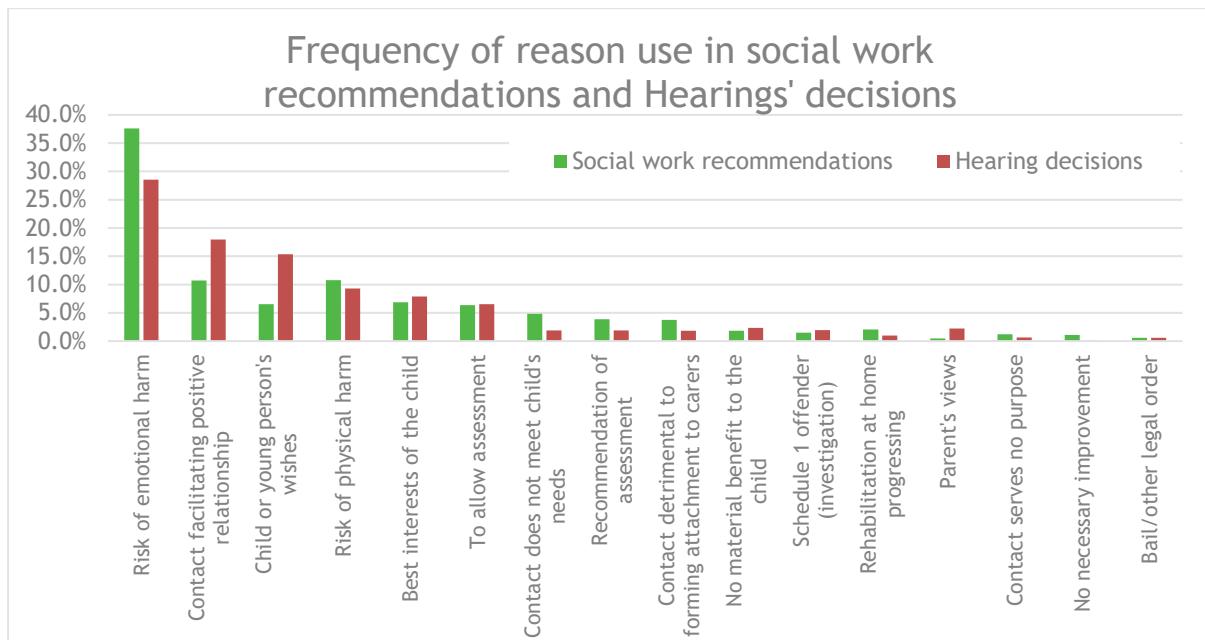


Figure 9: Frequency of reason use in recommendations/decisions

In order to look at the variation in reasoning given, a subset of 24 Hearings were selected, and their reasoning looked at in more detail. Selection was based on gathering decisions and recommendations that reflected a range of reasons used, and number of reasons given. Both the reasons provided in social work reports for recommendations and those written by the panel in support of decisions in these Hearings were looked at. Tables 3 and 4 provide some examples of the reasons, for Hearings' decisions and social work recommendations respectively. These reasons were selected to demonstrate the variability in the number of criteria that are met in the judgement of the researcher (see Methodology, p9). The criteria used are:

Criteria 1: Reasons relate to the child or young person's welfare

Criteria 2: Reasons are relevant to the decision made

Criteria 3: Reasons explain why the contact direction is necessary

Criteria 4: Reasons explain why the frequency/duration has been set

Table 3: Examples of Hearings' reasoning

Decision	Reasoning	Criteria Met?			
		1	2	3	4
Mother's Partner: No contact	"[MOTHER'S PARTNER] poses a risk to [CHILD] due to his potential for violent behaviour and drug misuse. He also has no positive role in [CHILD]'s life."	✓	✓	✓	✓
Father: Supervised contact	"[FATHER] has disengaged with both [CHILD] and SW since June 2013. [CHILD] would still like contact with her father and this would allow contact to be re-instated whilst ensuring [CHILD]'s safety"	✓	✓	✓	✓
Father: Contact for two hours every six weeks	"The panel heard from the safeguarder that [CHILD] had requested her contact with her dad be reduced to once every 6 weeks for 2 hours. Contact with dad has upset [CHILD] in the past, as he focusses on his new family and the panel heard that when [CHILD] returned from this contact, her behaviour changed and she suffered from not getting to sleep."	✓	✓	✓	✓
Father: Minimum of one contact every 8 weeks	"The panel took the view that it would still be beneficial to [CHILD] to have contact with her father, but had concerns regarding [FATHER]'s erratic lifestyle and recent aggressive behaviour. For this reason they decided that any contact should be supervised and take place a minimum of once every eight weeks"	✓	✓	✓	
Mother: Contact at social work discretion, supervised.	"All parties agreed that contact with mother was beneficial for [CHILD] as she misses her mother. However, as social work has not been able to address their concerns about the risks posed to [CHILD] by [MOTHER's PARTNER] it was agreed that contact should be supervised to ensure it is safe and appropriate for [CHILD]. It was agreed that contact should be under the direction of social work but could be overseen by [GRANDFATHER] or other family members"	✓	✓	✓	
Mother: Contact once a week, unsupervised	"As contact is going well we did not see any reason to change this condition"		✓		
Father: Contact once a week, unsupervised	"As contact is going well we did not see any reason to change this condition"		✓		
Father: Contact once a fortnight, supervised	"While [FATHER] had previously indicated that he did not wish to have contact without [MOTHER] being present, he stated today that he now wished to have contact with the children on his own. In order to facilitate this and to establish his rights as a father this level of contact was agreed"		✓		
Mother: Contact once per week, supervised	"Contact has been and is to remain at once a week with Mum and to be supervised."				
Father: Contact once per three weeks	"Contact is to be supervised and be at once every three weeks with Dad."				

Table 4: Examples of social work recommendation reasoning

Decision	Reasoning	Criteria Met?			
		1	2	3	4
Mother: Contact three times per week, unsupervised Father: Contact three times per week, supervised	"In relation to contact, the writer is of the view that the children require stability and structure. Current conditions of contact highlight that [FATHER] has a minimum of three contacts with the children per week which is supervised by [GRANDPARENTS]. [MOTHER] also has a minimum of three non-residential contacts per week with an addition of three overnights per week. [MOTHER]'s contact is unsupervised. It is of the writer's view that the children require routine and structure resulting in the noted 'minimum' being of concern. Writer would request that this stipulation be removed resulting in an exact contact structure for the children. Due to established grounds relating to physical assault perpetrated by [FATHER], it is recommended that any contact between [FATHER] and his children be supervised by [GRANDFATHER] and/or [GRANDMOTHER] and/or social work services."	✓	✓	✓	✓
Mother: No contact Mother's Partner: No contact	"[CHILD] to be moved to a long term care placement. A CSO with a condition of residence with [FOSTER CARERS] will secure the placement. I would also recommend that the non-disclosure continues due to the fact that there is evidence to suggest that [MOTHER] has made repeated attempts to contact [CHILD] and [CHILD] needs time to adjust in her placement. Therefore, she needs to be ensured that this placement cannot be sabotaged in any way. Contact - I would recommend no direct contact with [MOTHER] due to the serious concerns around her drug use, lack of insight into the children's needs, negative messages being passed to the children, her chaotic lifestyle and lack of engagement with any services. I would further recommend no contact with [MOTHER'S PARTNER] due to the same concerns."	✓	✓	✓	✓
Mother: Contact once per week, supervised Father: Contact for one hour every three weeks, supervised	"[MOTHER] Continues to misuse alcohol which is a concern and [FATHER] has been unable to date to address his behaviour. The writer would recommend the following conditions remain in place for [CHILD] and [SIBLING]'s welfare and protection; Non-disclosure of placement address to [FATHER] Children to reside at place of safety away from home [MOTHER] will have supervised contact once a week for one hour [FATHER] will have supervised contact once every three weeks for one hour."	✓	✓	✓	
Mother & Father: No contact	"Neither [CHILD] nor [SIBLING] has had contact with either parent since 8 th August 2013. The children are settled and making significant progress in their development. Both children have made secure attachments to the foster carer and are happy and content within the home. There are conditions attached to the supervision order to ensure the children's safety and protection. This includes no contact with parents and permission to access relevant medical services the children require to ensure their optimum health."	✓	✓		
Mother & Father: No contact	"It is recommended that there is a measure of no contact between [CHILD] and his parents [MOTHER] and [FATHER]. [CHILD] is registered as a child in need of permanent, substitute care should be underpinned by a permanence order with authority to adopt. Therefore, the local authority would	✓			

	respectfully request the advice of the Children's Hearing to support this plan”			
Mother: Contact, unsupervised Mother's Partner: No contact	“It is the opinion of the writer that [MOTHER] should have unsupervised contact with [CHILD]. [CHILD] should remain on a compulsory supervision order away from home with a condition of residence with [FOSTER CARER]. There should remain a condition of no contact with [MOTHER'S PARTNER] and for no condition of contact to be made regarding [SIBLING]” <u>[NOTE: In each case, the name of the child in the report was actually that of a sibling]</u>			
Mother & Father: Contact four times a week	“It is my recommendation that [CHILD] remain in the care of [FOSTER CARERS] through a further Place of Safety Warrant/Supervision Requirement. I recommend that a condition of contact four times weekly is made”			

Discussion

The sample presented in this report represents approximately 1.5% of the 10,379 children and young people subject to CSOs on the 31st March 2016³⁶. It is not possible to determine the proportion of children and young people who were subject to a contact direction the sample represents, as whether a child is subject to one (or more) contact direction(s) is not systematically recorded on the SCRA case management system. Although the sample was selected for the presence of a contact direction in the year 2016/17, it also provides some information that is of interest in relation to the entire population of children and young people involved in the Children's Hearings System on the attendance of individuals at Hearings.

General findings

An average of 3.3 Hearings were held per year in relation to each child or young person, with an average of over nine individuals present in each Hearing. As was highlighted by the Better Hearings paper in 2016, children and young people feel that there are generally too many individuals involved in Hearings, and this can make it difficult for them to express their views.³⁷ Given the wishes of children and young people that only those who can take action and help them should be at the Hearings³⁸, it is important that attendance is limited to only those other individuals who need to be there. Closer investigation finds that there are an average of 3.5 non-family members attending each Hearing, in addition to the reporter and panel members, with 15% of Hearings having at least five additional non-family members present.

The guidance to panel members states that other than those with a right to be attend '[t]he chairing member must take all reasonable steps to ensure that the number of persons present at the Hearing is kept to a minimum', and those allowed to attend 'should be necessary for the proper consideration of the matter before the Hearing'.³⁹ Combined with the learning from the Better Hearings research, it is of concern that in a large proportion of Hearings there are in total more than ten individuals in the Hearing room, potentially restricting the participation of children and young people.

Action Point 1: Panel chairs and members should be given clear guidelines on limiting numbers attending Hearings, and their powers to ask some individuals to attend only part of a Hearing.

The presence of children and young people at the Hearings is another area that is given some clarity through this research. Overall, children and young people were present in their Hearings 60% of the time. However, in one area children and young people were attending their Hearings only 33% of the time. When we look in more detail at the

³⁶ SCRA, "SCRA Online Statistical Dashboard," 2018, <http://www.scra.gov.uk/stats/>.

³⁷ I Kurlus, G Henderson, and G Brechin, "The Next Steps Towards Better Hearings" (Edinburgh: Scottish Children's Reporter Administration, 2016), <http://www.chip-partnership.co.uk/wp-content/uploads/2016/10/Better-Hearings-Research-Report-2016.pdf>.

³⁸ Ibid. p20

³⁹ "Children's Hearings Scotland Practice and Procedure Manual," 49.

attendance rates in different age groups, we find that only for young people over the age of 12 are Hearings attended more than 50% of the time in Area C, compared to all age groups having an attendance over 50% for the other three areas.

In comparison to the relative consistency of the attendance rate across the other three areas, this discrepancy seems likely to be due to a systematic local difference in requests for, and granting of, excusal of children and young people to attend their Hearings. Although we do not have the information available to examine this here, such variation in practice between localities should be further investigated to determine both the causes and the merits of the difference in practice.

Action Point 2: Recording of child or young person attendance at Hearings may highlight differences in practice between local areas. Such variation in practice between localities should be further investigated.

The presence of at least one parent was recorded in 83% of Hearings, indicating that one or more individuals with parental rights and responsibilities are present at a majority of Hearings, but this leaves 17% of Hearings with no parental representation. In those Hearings with no parental attendance, the child is present 50% of the time. Where the child or young person attends the Hearing but there is no parental presence, 95% of the children and young people are resident away from home, as might be expected, with 22% in kinship care, 65% in Foster care, and 10% in residential care.

Contact specific findings

Decisions and recommendations

The high correlation between social work recommendations and decisions in relation to both frequency of contact and total hours of contact, reflects findings from previous research.⁴⁰ This correlation is expected to be due to the joint focus of both the social work recommendation and the Hearing decision on the best interests of the child. While differences in interpretation of these best interests can be seen in the remaining variation between recommendations and decisions, the high level of agreement indicates that social workers and panel members have a largely shared understanding about the needs and best interests of the children and young people in relation to contact directions.

Action Point 3: The finding that Hearings' decisions predominantly reflect social work recommendations should be disseminated to social workers, to highlight the shared understanding between social workers and panel members

The presence of solicitors was found to have a small but statistically significant impact on the contact decisions made by Hearings, with a small effect size. Given that the large

⁴⁰ Henderson, "Permanence Planning and Decision-making for Looked After Children in Scotland :"

majority of solicitors in our sample were representing parents⁴¹ who will normally be seeking increases in contact, this effect may be interpreted as solicitors successfully performing their role. Although very large changes might be a cause for concern, the increase found here may be interpreted as a reflection of solicitor's clients being better able to put forward their views and wishes effectively.

Views and wishes of children and young people, and contactees

There is a requirement that the views and wishes of children and young people are taken into account in decision-making.⁴² The finding presented here that views and wishes in relation to contact are not represented in Hearings' paperwork for more than 60% of children and young people is concerning. While it is likely that the views and wishes of children and young people are sought directly from those who are present at Hearings, it is important that these wishes are recorded and reflected in social work reports and Hearings' decisions and reasons. Having a record of such wishes will both help to demonstrate how they influenced (or not) the decision made, enable a picture to be built up of the consistency of views and wishes over time, and assist potential future panels to understand the history and development behind each Hearing.

A lack of a clear view on contact from children or young people might be understandable where they are young. However, that only 1 in 5 young people aged eight or above at the time of the Hearing have clear expressed wishes recorded in the Hearings' paperwork (and only half have any general wishes in relation to contact recorded in Hearings' paperwork), indicates that this is not solely a product of the age of children and young people at the time of Hearings.

Further, a large number of children and young people will receive copies of the paperwork prior to Hearings, and if these do not contain any reflection of their views in relation to a topic as important as contact, it risks leaving the impression that their views were not, and are not, important to the process. This may have implications for both their understanding and acceptance of decisions made.⁴³ Accordingly it is important that both social work reports, and panel decisions and reasons address this lack of representation of children and young people's views.

Action Point 4: Views and wishes of children and young people in relation to contact with all parents, siblings and other individuals should be routinely and consistently sought and recorded in social work reports. A specific 'Child/Young person's views on contact' section in social work reports may facilitate this

It is notable that the views and wishes of the contactees, 93% of whom were adults, were more frequently recorded in Hearings' paperwork than those of the children and young people, with 45% of Hearings having a record of contactees views. While there are fewer

⁴¹ Of the 350 solicitors recorded as attending Hearings in this study, 58% (203) represented mothers, 29% (101) represented fathers, 11% (37) represented other relevant persons, and just 3% (nine) represented children or young people.

⁴² The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules.

⁴³ Tom R Tyler and Y J Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (New York: Russell Sage, 2002).

explicit requirements that the views and wishes of contactees are included, the same issues relating to understanding the history of decision-making, and demonstrating that views and wishes have been heard and taken into account apply to contactees as they do to children and young people. It is therefore also important that a greater emphasis is placed on the recording of the views and wishes in relation to (potential) contact directions of both children and young people, and contactees.

Reasoning for recommendations and decisions

The reasons given for decisions are reflected in the reasoning provided for the recommendation. Where there are differences, it is interesting to see that Hearings are more likely to cite positive reasons for their decisions compared to the reasons for recommendations. Hearings were more likely than social work recommendations to report that contact was supporting a positive relationship, or that it reflected the wishes of the child or young person, in their reasoning. In contrast, social work recommendations were more likely to cite the risk of emotional harm as a supporting reason. These variations may reflect differences in perspective on cases, with social work professionals acting in a defensive or risk averse manner, while panel members focus more on the positive benefits for the best interests of the child.⁴⁴ While it is difficult to make a judgement regarding the appropriateness or value of either of these approaches, it may be of use for social work professionals making recommendations to understand the reasons that are likely to be valued by Hearings.

A sub-section of Hearings' decisions were examined, with a view to looking at how reasons for decisions and recommendations were put forward. That there is a wide range in the sufficiency of reasoning put forward by both Hearings for decisions, and by social work reports for recommendations. While this is an area that could be improved, it does not mean that recommendations and decisions were made without good reasons, simply that the reasons recorded could in some cases be improved. While it is not possible to extrapolate from this small sample to quantify the proportion of reasons that do or do not meet the assessment criteria, all parties to the Hearings' benefit from clear, comprehensive reasons for both decisions and recommendations. Accordingly further work to improve the quality and consistency of both Hearings' decisions and social work recommendations would likely be of use.

In order to facilitate such improvement, it would be beneficial for both social workers and panel members to have greater clarity about the expectations and requirements of reasoning. While there is guidance contained in the Practice and Procedure Manual⁴⁵, further information relating to what is required by law and what good practice looks like, combined with clear examples of how reasons might be phrased, might help panel members and social workers to more clearly express the reasoning behind their decisions and recommendations.

⁴⁴ Tony Stanley and Rob Mills, “‘Signs of Safety’ Practice at the Health and Children’s Social Care Interface,” *Practice* 26, no. 1 (January 1, 2014): 23–36, <https://doi.org/10.1080/09503153.2013.867942>.

⁴⁵ “Children’s Hearings Scotland Practice and Procedure Manual.”

Action Point 5: More detailed guidance should be developed clarifying what records of reasons require by law, and what good practice looks like. Clear examples will help panel members and social workers clearly express reasoning in reports and decisions

Key Findings

The majority of Hearings' contact decisions reflect social work recommendations

When we look across all contact decisions, it is clear that in the majority of instances, the Hearing contact decision(s) reflect to a high degree the recommendation made by social work. Seventy six percent of Hearing contact decisions directly match the social work recommendation made in terms of number of contacts to take place, while 63% of those decisions reflect precisely the number of hours recommended in the social work report.

Some variation is to be expected, as it is the role of the Hearing to determine what is in the best interests of the child or young person and make appropriate directions. Social work recommendations are highly valuable information that are used to inform these decisions. Indeed, this research indicates that social work recommendations significantly predict Hearing contact decisions, which is not the case for the views and wishes of children and young people, nor those of contactees. It seems likely therefore that panel members are more influenced by the social work recommendation than by the opinion of children or contactees.

Children and young people's views are rarely recorded

The rate of recording of the wishes of children and young people is low. With just 36% of children's wishes related to contact being recorded in Hearing paperwork, and just 12% having an indication of a specific desire for what contact they wanted. Although these proportions increased for those children and young people who were older, and therefore we assume are more likely to be able to provide a view, only 19% of over-eights had specific views recorded, with 52% of over-eights having some wishes represented.

Many children may not have specific wishes in relation to contact directions, and some may not want to articulate these wishes due to a risk of upsetting others. However, it is important that expressed wishes are represented in social work reports and decisions in order that both children and young people feel that their views and wishes are being listened to and taken into account, and also so that future Hearings for the child or young person might have the benefit of seeing the consistency or otherwise of the child or young person's views.

Hearing decisions and social work recommendations are justified using similar reasons

The most common reason provided for both Hearing decisions and social work recommendations was a risk of emotional harm to the child or young person (29% of Hearing decision, and 38% of social work recommendations). The distribution of reasons overall is very similar. Only two reasons had a difference in frequency of use between Hearing decisions and social work recommendations of more than 3%. These two reasons were: that contact is facilitating a positive relationship, and the child's wishes. Hearing decisions are much more likely to cite both of these reasons than social work recommendations (18% and 11% respectively for citing contact facilitating a positive relationship, and 15% and 7% respectively for citing the child or young person's wishes).

Reasons for Hearings' decisions and social work recommendations are often not well recorded

There were no reasons recorded in the Hearing paperwork for 9% of Hearing decisions, while 28% of social work recommendations lacked clear recorded reasoning. This does not

mean that these decisions and recommendations were made without good reasons; Hearings must also give their reasons verbally to those present at the Hearing, while social work recommendations are based on the contents of their reports. However, if the specific reasons for a Hearing decision or a social work recommendation are not clearly recorded, it makes decisions vulnerable to appeal, and means that recommendations can appear independent from the evidence presented that supports them.

While providing clear reasoning is a legal obligation for Hearings, for social work recommendations, it is a matter of good practice to provide all attendees at a Hearing with a recommendation that can be easily seen to be supported by sound reasons.

Reasoning for both Hearings' decisions and social work recommendations is variable

Although the number of reasons that were studied qualitatively is small, they demonstrate the variability of the recorded reasoning that is provided both for Hearing decisions and for social work recommendations. Although conclusions cannot be drawn about the overall quality of reasoning, it is clear that there is a need for reasoning for both Hearing decisions and social work recommendations, in some cases, to be improved.

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