CELCIS

Centre for excellence
for looked after children in Scotland

The Role of the Solicitor in the Children's Hearings System

A study commissioned by the Scottish Legal Aid Board

2016

CELCIS

Improving care experiences

Acknowlegments

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1) Executive Summary

1.a) 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.

1.b) 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.

1.c) Recommendations and discussion

1.c.i) 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. We suggest that there is a need for relevant stakeholders, 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 which solicitor training items would have most impact on improving children's hearings. Explore the impact of making some training items compulsory.
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. In due course, this training might usefully become part of any compulsory training that is developed, 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.

1.c.ii) 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 (see section 4.b).

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, along with coaching, or mentoring, may be useful within the context of CPD, particularly when solicitors first undertake work in hearings. 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.

2) 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 study took place between July and December 2015, and aimed to address the following five topics:

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The presence of solicitors should assist the effective participation of the child or relevant person in the proceedings; this should assist panel members in decision making, by providing information that they may not otherwise have received, or assisting in the clear presentation of that information.

Children, parents and other relevant people have always been entitled to legal representation in children's hearings, however, prior to 2002 it was rare for a solicitor to attend children's hearings. In 2002, following an European Court of Human Rights ruling, new rules were introduced clarifying that legal representation must be considered if a child is likely to lose their liberty, and that a legal representative may be appointed where it is necessary to help a child participate effectively in the hearing (Kearney, 2000 ; Norrie, 2013). None the less, until recently, it remained relatively rare for a solicitor to attend a children's hearing.

Since the implementation of the legal aid aspects of the Children's Hearings (Scotland) Act 2011 (henceforth the 2011 Act) came into effect in June 2013, more solicitors have been present at children's hearings. The Act enabled the provision of legal aid to both children and parents or other relevant people. The policy objectives of the 2011 Act included plans to protect the Kilbrandon principles at the same time as modernising and strengthening the system to make it robust against future legal challenge by introducing a permanent, sustainable national scheme for the provision of state-funded legal representation in children's hearings and associated court proceedings.

Over the last few years, there has been a general perception that the number of solicitors attending hearings proceedings has increased markedly, but detailed evidence is not available from the children's hearings system to describe how often solicitors represent children or other

relevant people in individual hearings. However, information is available from the SLAB about the grants of legal assistance made to children or relevant people, in Appendix 5 of the 2013/14 SLAB Annual Report.

Background to the hearings system

The children's hearings system came into being as a result of the Social Work (Scotland) Act 1968, which followed the Kilbrandon Report into how young offenders were handled. One of the key recommendations of the Kilbrandon Report was that:

> *... juvenile panels should have power, on the grounds set out in paragraph 138, to assume jurisdiction over juveniles under 16 and to order special measures of education and training according to the needs of the juvenile concerned (Recommendation 19(1)(b)).*

The principle of giving priority to the needs of the child or young person has been one of the most enduring characteristics of the children's hearing system, and remains prominent in descriptions of the ethos of the children's hearings system. The Children's Hearings Scotland (CHS) national standards contain the following points:

1. Children and young people are at the centre of everything we do
2. Panel members are well equipped and supported to undertake their role
3. Panel member practice is consistent across Scotland
4. Every children's hearing is managed fairly and effectively
5. Every children's hearing makes decisions based on sound reasons in the best interests of the child or young person
6. Area Support Team members are well equipped and supported to undertake their role
7. Communication and information sharing across the Children's Panel, ASTs and CHS is clear, appropriate and purposeful
8. Functions, roles and responsibilities are clearly defined and understood within the system

(Children's Hearings Scotland, 2012)

The 2011 Act introduced wide-ranging changes to the hearings system. They were designed to protect the Kilbrandon principles while modernising the panel system. The changes included legal aid provisions for the children's hearings system. These provisions enabled children, parents, and other relevant people to apply for legal aid to obtain assistance for a children's hearing (whether this be at a children's panel or before a Sheriff) (The Scottish Government, 2011). Previously, representation by solicitors in children's panels had been relatively rare, although legal representatives could be appointed where it is necessary to help a child participate effectively

(Kearney, 2000 ; Norrie, 2013). With the 2011 Act, the presence of solicitors in children's hearings appears (unsurprisingly) to have become more prevalent, although still occurring only in a minority of cases.

The provision of representation at children's hearings is through Assistance By Way Of Representation (ABWOR), granted only if the applicant meets the financial eligibility criteria established by the Scottish Parliament. The tests applied by SLAB, take into account issues such as the complexity of the case, the legal issues involved, and the ability of the applicant to participate in the hearing without the assistance of a solicitor, as well as the financial eligibility of the applicant. Further, appointed solicitors must register with SLAB and agree to a code of practice that sets out standards and competencies. In turn, SLAB has a duty to monitor solicitors and firms' compliance with the code, and, when necessary, may remove solicitors and firms from the register.

Previous research work on the role of solicitors in the children's hearings system is minimal; it seems that this has been particularly rare in respect of representation of parents, carers, or significant people. One study addressed the representation of children in hearings via legally trained safeguarders or curators ad litem funded through the Grant System (Ormston & Marryat, 2009). The study identified four dimensions of this role: to ensure correct process, to provide advice to the child, to facilitate the child to express their view and to argue for the child's views to influence decisions. The study showed that these different aspects were contested, and different actors in hearings felt some to be more important than others. Ormston and Marryat (2009) also found different opinions as to the impact of these representatives, and their effect on the hearing process. Similarly, another study explored attitudes to solicitors in hearings and found anxieties around the legal representation or advice that was being given to hearing participants (Brabender, Best, & Wassell, 2013). Similar concerns exist in other jurisdictions and commentators have problematised the role of solicitors in a range of children's legal processes (Duquette & Darwall, 2012; Mooney & Lockyer, 2012; Thomson, McArthur, & Camilleri, 2015).

3) Methodology

The purpose of this research was to gather opinions and experiences of the role of solicitors, to explore solicitor behaviour, and consider approaches to the monitoring and evaluation of solicitors' practice in the hearings system. These aims lend themselves to a mixed methodology, utilising both qualitative and quantitative methods. The quantitative elements primarily incorporated survey questionnaires to gather opinions and experiences of all professional and volunteer participants in the hearings system, namely solicitors, social workers, reporters, and panel members. The qualitative elements included a range of follow-up focus groups and interviews with key informants.

3.a) Methods

The study included two surveys in order to gather information from both solicitors and from non-solicitor (professional or voluntary) workers in the children's hearings system (i.e. social workers, reporters, and panel members). We created both of these surveys specifically for this study. We designed them to mirror each other to as large an extent as possible, to ensure that the responses were comparable between solicitor and non-solicitor groups. Relevant professional or volunteer bodies assisted the study by distributing the questionnaires to all pertinent solicitors, social workers, reporters, and panel members. All participants had at least two weeks in which they were able to complete the survey in July and August 2015. Parents and young people were not included in the survey stages of this study due to various constraints and challenges.

The surveys were administered online using the survey platform, Qualtrics. This enables individuals to complete the questionnaire anonymously in a secure online environment while enabling only one response from each IP address, thus helping to protect the research from multiple responses from individuals.

In addition to the surveys, we conducted a number of focus groups and interviews to gather data for qualitative analysis. This included separate focus groups with representative solicitors, social workers, reporters, and panel members. Each focus group contained three to eight participants from one of the relevant groups, from a pre-determined geographical region. We selected different areas to ensure some variability in the regions. Table 1 shows the number of focus groups, attendees and the area type covered for each respondent group.

Table 1: Focus group details

Respondent Group	No. of Focus Groups	Total No. Attendees	Area outline
Panel Members	2	9	Two areas (one urban one rural)
Reporters	3	28	Two areas (one urban, one rural) and a national meeting
Social Workers	2	10	Two areas (one urban one rural)
Solicitors	2	7	Two areas (one urban one rural)

In addition to the focus groups, we conducted individual interviews with three young people. Similarly, we attempted to conduct interviews with parents who had experience of being represented by solicitors; however, it was not possible to gain access to potential parental participants within the timescales of this research. Children 1st and Who Cares? Scotland assisted in the recruitment of young people. Additionally, we interviewed nine key informants from positions that provided a unique perspective of the children's hearings system. The focus groups and interviews took place in October and November 2015.

3.a.i) Data analysis

We audio recorded the focus groups and key informant interviews and analysed the data using NVivo. Our approach to analysis was deductive based on the specific queries set as part of the study and inductive based on insights we developed from our understanding of the data.

We download the survey data from Qualtrics into SPSS used to conduct all numerical analyses. When calculating significance of statistics, we used non-parametric tests: Mann-Whitney U tests for non-paired comparisons and Wilcoxon Signed Rank test for paired data. In all cases, exact p-values are given (to 3 decimal places, or $p<0.001$) along with effect sizes. Effect sizes given were calculated using Cohen's r (Fritz, Morris, & Richler, 2012). Interpretation is guided by Cohen (1998 in Fritz et al., 2012, p. 12), who outlines that an effect size of 0.5 (or -0.5) or more may be considered large, a medium effect size may be 0.3 (or -0.3), and a small effect size 0.1 (or -0.1) or less. However, we note that in social science research, any effect size may potentially represent an important difference.

In order to increase the statistical power of our analyses of survey responses, readers will see that we often compare the response from solicitors to the aggregated response from 'non-solicitors', ie social workers plus reporters plus panel members. There are some systematic differences between these three groups, with social workers generally having a somewhat more negative view than panel members or reporters, see Fig 6 for examples. Where the differences between these

three groups would skew findings to an unacceptable extent (such as altering the direction or significance of differences), we have reported separate analyses.

3.b) The samples

We describe the individual samples below; we constructed these pragmatically, depending on what was possible within the timescale and resource available. Where possible we have aimed to maximise variation and ensure that we include different types of area (e.g. urban, semi-rural, and rural) and address the main relevant perspectives. Our sample sizes are not sufficient to allow us to explore whether there are any systematic differences between different types of solicitors, social workers, panel members, or reporters, for example by comparing rural and urban subgroups.

3.b.i) Solicitors

We recruited solicitors for the survey from the population of 892 solicitors registered with the Scottish Legal Aid Board (SLAB) to carry out work in the children's hearings system as of the 1st July 2015. The SLAB provided contact details for these solicitors, with the exception of 14 solicitors for whom they did not have an email address on file. We invited all of these individuals to take part in the survey by a direct email invitation. This invitation was also publicised in a SLAB news correspondence to solicitors, and posted as a standing news item on their website. As registration is compulsory for solicitors funded by legal aid, this strategy ensured we invited participation from all solicitors whose performance is subject to SLAB governance. This population does not necessarily encompass all of the solicitors who have acted or are acting in the children's hearing system, as any solicitor can represent a privately funded client in the hearing with no additional registration.

Of the overall population of 892 solicitors registered with SLAB to undertake children's legal aid, we received 80 responses to the survey, giving a response rate of 8.9%.

For the focus groups, we selected solicitors from pre-determined geographical regions. Initially, we planned three focus groups, and identified one large city, one predominantly rural area, and one mixed area as suitable sites. We invited solicitors by direct emails to individual email addresses. In addition to the overall registration of solicitors to act in the children's hearings system under the legal aid regime, the SLAB also maintains a duty register of solicitor firms who provide emergency cover in each area. In order to ensure that we heard from solicitors with a range of experiences, we invited those solicitors who were on the SLAB duty register for these regions, if they had experience of representing children within the last six months. We invited all

other solicitors registered to carry out work in the children's hearings with the SLAB (but not on the duty register) in that region if they had experience of representing anybody in a hearing in the last six months. Due to a low response rate for the mixed area region and difficulty in engaging solicitors with the focus groups in general, we decided to reduce the number of solicitor focus groups to two.

3.b.ii) Social workers

We recruited social workers for the survey from the population of social workers working in children and families teams in Scotland. Social Work Scotland helped us by sending an invitation to all relevant team leaders, with a request to forward the invitation to workers. The most recent data on children's services social workers (Scottish Social Services Council, 2014) shows 950 social workers working in fostering services, 400 in adoption services, 390 in child care agencies and 5780 children's fieldwork, giving a total relevant population of 7520 social workers. Unfortunately, there is no way of checking whether the invitation reached all, or most of these workers. We received 145 responses from social workers, giving a response rate around 1.9%. The actual response rate is likely to be higher, as we believe that not all team leaders forwarded the invitation to all workers.

We recruited social workers from specific localities to take part in the focus groups. The localities selected were one primarily rural area and one urban-rural mixed area. In these two areas, social workers' team leaders forwarded our invitations. We scheduled focus groups for those times when most social workers who expressed interest in participating could attend.

3.b.iii) Reporters

We recruited Reporters through the Scottish Children's Reporters Administration (SCRA), the professional body for children's reporters. An invitation appeared on the SCRA intranet, and following a very low uptake, SCRA sent an email to all reporters directly inviting them to take part in the survey. In 2014/15 the SCRA employed an average of 416 individual staff members (Scottish Children's Reporters Administration, 2015) with the following breakdown of full time equivalent employees (FTEs); 115.74 Reporters, 23 Locality Reporter Managers, 24.54 Assistant Reporters, and 15.1 Senior Practitioners, giving a total of 178.38 FTEs.

We received 44 survey responses from reporters, giving an apparent response rate of 10.6%. However, the number of individuals who make up these FTEs was not available, and not all staff employed by SCRA are practicing, so this response rate is only indicative.

We initially planned two focus groups with reporters in different localities: one primarily urban area and one primarily rural area, where SCRA advised it may be feasible to recruit reporters. Locality managers contacted reporters in their area, and we arranged focus groups for those times when most who expressed an interest could attend. In addition to the two planned focus groups, we held a third focus group with senior practitioners, in response to an opportunity to attend a national meeting.

3.b.iv) Panel members

We recruited Panel members through Children's Hearings Scotland (CHS), who are responsible for the recruitment, training, and management of panel members. CHS report that there were 2,373 active panel members on 31st March 2015 (Children's Hearings Scotland, 2015). We invited panel members to take part in the survey through an item in a regular newsletter sent by CHS to all panel members, and through invitations sent via area support teams, who we asked to forward to their panel members.

We received 64 responses to the survey from panel members, giving a response rate of 2.7%.

We planned two focus groups with panel members from two different areas: one primarily urban area and one primarily rural area. We recruited panel members by contact with their area support teams, who distributed information on the focus group to all participants, who we then asked to contact us directly. Unfortunately, only one panel member from the first rural area came forward to take part, and so we decided to recruit in a second rural region. We held both focus groups at times when the largest number of panel members could attend.

3.b.v) Level of hearings experience among participants

We asked participants in the surveys to indicate how many years they had been involved in hearings. The graph below shows that for all groups, it was rare for individuals to have less than five years' experience.

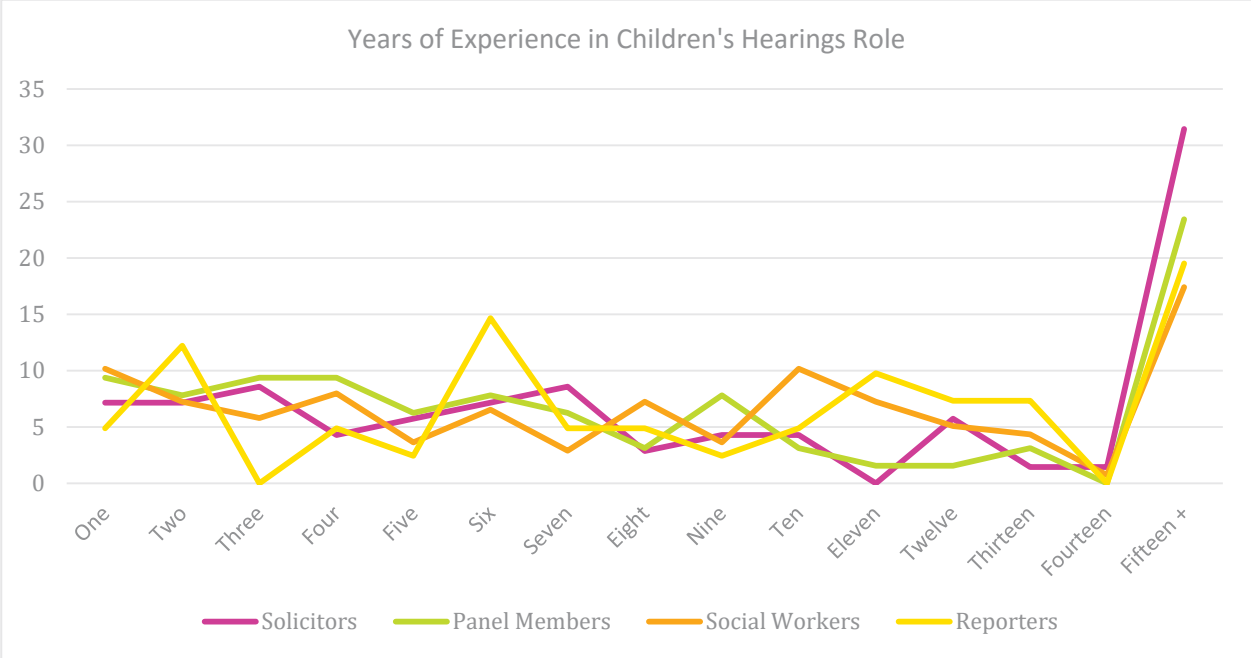

Figure 1: Respondents' years of experience in the children's hearing system (percentages)

3.b.vi) Children

We sought to recruit both young people and parents by working in partnership with Children 1st. They identified no potential participants within their direct contacts so, with their assistance, we adapted our approach to include Who Cares? Scotland. Through these approaches, we succeeded in interviewing three young people, but no parents. Among the three young people, two had recent experience of solicitor representation in their own right at a children's hearing and the third had extensive experience of children's hearings and of being represented by solicitors in court. We included the latter interview because the young person had some valuable insight into the functioning of the panel and the practice of solicitors. We abstain from giving any further information about young people in order to help protect their anonymity.

4) Main findings

Due to the inter-related nature of many of the findings relating to the research questions posed by the SLAB, and in order to avoid repetition, we do not address all questions in their own section; however, we do present findings for all the research questions in this chapter.

4.a) The ethos of the children's hearing system in relation to solicitors

We asked participants in focus groups and key informant interviews how they understood the ethos of the children's hearings. The definitions and descriptions of the ethos were generally short, but contained many common elements. In some focus groups, participants found it difficult to verbalise a simple description of the ethos, when this occurred, they were prompted with the eight national standards for the Children's Panel, as laid out in the Children's Hearings Scotland Practice and Procedure Manual (2012, p. 11), and asked about their agreement with these. Where participants were not able to produce their own clear definitions, they universally agreed with the standards presented.

The definitions provided by participants contained the following points:

4.a.i) A child-centred approach

The most commonly cited element of the ethos of the children's hearings was that it was a child-centred hearing. Most panel members and many social workers, reporters, and solicitors mentioned this element. Key informants also frequently reported this as an element of the ethos of the children's hearings:

> *That the child is central, that's the ethos. (Solicitor, Focus Group 5)*

Child-centredness was the area where some participants felt that solicitors (particularly when representing a parent or significant other) could have a detrimental impact. In contrast, when representing the child, some participants suggested that solicitors promoted a focus on the child:

> *I think they're more aligned, aren't they, if they are representing the child, they're on the same agenda as the rest of the room. (Panel Member, Focus Group 3)*

This was also a clear view held by the young people we interviewed; they reported that they were not always listened to in hearings, and felt the presence of a solicitor to represent them, helped to ensure the panel heard their voice:

> *Children are supposed to be the most important person there, but they're not, you're not important, they don't listen to you. It's not just me, everyone here [at placement] says the same, and they just don't listen to you. You need an advocacy worker or a lawyer to speak up for you. (Young Person, interview)*

The sense among some social workers, panel members, and reporters that the presence of solicitors can detract from the child-centred focus of hearings, seems to be a generalisation, linked to the relative frequency with which solicitors represent parents and other relevant people rather than children. Between June 2013 and August 2014 only 9% of legal aid applications were for the representation of children (Scottish Legal Aid Board, 2014, Appendix 5):

> *...I would say the majority of the times I meet a solicitor, they're there for the parent or another family member, not for the child. And it's when they're acting in someone else's interests, putting up contrary pleas...that's when it gets more difficult and these behaviours become more challenging. (Panel Member, Focus Group 8)*

We did not ask participants to consider that prior to the 2011 Act, the system may not have supported parents and others in exercising their EHRC rights, and so do not know how they would reconcile adults' and children's interests within the child-centred ambition of hearings.

4.a.ii) Best interests of the child

Alongside being child-centred, many participants highlighted that hearings were concerned with determining what was in the best interests of the child:

> *...there's a lot of emphasis on 'we're here for the child' from hearing members and from solicitors as well. (Solicitor, Focus Group 5)*

There were some reports of solicitors contributing to the best interests, of the child, and helping to ensure that the best interests remained central:

> *Sometimes they [solicitors acting for children] actually do make comments that are in the child's best interests, not simply trying to get their child, get them off as it were, they understand the whole significance of this decision, and they try, and usually make comments that are in the child's best interests. (Panel Member, Focus group 3)*

As already indicated, we noted that participants throughout the focus groups, often, albeit mistakenly, considered that the solicitors' role was outside the requirement to act in the best interests of the child. Participants from across the groups repeatedly stated their opinion that solicitors' role was to promote the views or wishes of their clients *not* to promote the best interests of the child. Participants acknowledged that these views and wishes could sometimes

appear to be in direct opposition to the best interests of the child, but even so, many participants considered that a solicitor *should* exclusively focus on representing their client. More occasionally, a participant thought that solicitors should have 'consideration' for the best interests of the child.

One particular aspect of social workers' concern focused on perceived delays to the process for the child. They felt that solicitors often caused delays by calling for proofs, appeals, or additional assessments or reports that they described as 'unnecessary'. In addition, they felt that on occasions solicitors delayed the process by asking for deferrals because they had not studied paperwork or been able to consult with their client. However, clients may lead chaotic lives that challenge any professional seeking to work with them, especially if their involvement is sought at a relatively late stage. As such, it may be difficult for the solicitor to meet with their client outwith the hearing. Social workers indicated that sometimes, solicitors requested time at the start of a hearing to speak with their client (a circumstance that the SLAB code of practice details should be avoided where possible) (SLAB, 2013a, p. 8). Social workers and some reporters described this as 'poor practice' as other people who were ready to go ahead were potentially kept waiting. It may be that scheduling changes, and the availability of facilities to allow consultations to take place ahead of hearings, may also be helpful in this respect. Social workers felt that delays and deferrals had serious implications for the child's life, as they were unable to move towards permanency and stability, whether with their birth family or elsewhere:

> *… that [Solicitor impact] delayed the children's situation, until at least the next hearing, but that was a number of weeks or maybe a couple of months later…and we were trying to pursue a level of settlement, permanence, for this child, and we weren't getting that opportunity.(Social Worker, Focus Group 7)*

Social workers also raised concerns that delays affected parents negatively, particularly when, in the view of the social worker, the solicitor had given the parent 'unrealistic' expectations or 'false hopes' about their case.

Finally, in order to promote the best interests of the child, solicitors need to be able and willing to understand what this might be. Some social workers believed that on occasions, solicitors avoided knowing information about clients or circumstances that may be relevant to the child's best interests, in order that they would be able to represent their client without compromising themselves:

> *I think it is about the kind of moral and ethical practices among solicitors […] they don't want to know, as then their morals and values are impacted upon. So it's almost as if they say, 'Well, I'm going to just represent your view, because I don't really want to buy in to whether this is in the best interests of the child or not'. (Social worker, focus group 7)*

We need to consider these criticisms carefully, alongside the fact that panel members need all parties to the hearing (including parents and other relevant people) to be able to effectively present information and views. This enables the panel to arrive at a well-rounded view of the situation, and ultimately, to make informed decisions.

4.a.iii) A non-adversarial and collaborative approach

When considering the ethos of the hearings system, many participants highlighted the importance of a non-adversarial approach, suggesting that all actors in the hearing should work together in a mutually supportive way for a common purpose:

> *It's non-adversarial, that's the first thing. There's none of that 'for and against'. (Panel Member, Focus Group 3)*

> *The intention of the panel is that it should be a more informal and encouraging environment for both parents and children. (Solicitor, Focus Group 5)*

Participants across the focus groups and key informant interviews expressed concern that solicitors could sometimes bring an adversarial style to the hearings. They exemplified this by solicitor actions such as interrupting others, being blunt or critical, being dogmatic or inflexible, not being collaborative, or being overly confrontational when challenging the panel in their decisions and actions:

> *They do sometimes forget that it is an informal chat, they try to interject quite often, and they do not like being talked over. (Panel Member, Focus Group 3)*

> *I've had solicitors say 'that's not admissible, that's hearsay', in a children's hearing, and quite a lot of what I would say was court language, legalistic language, that is beyond the capacity sometimes of the children to understand. (Panel Member, Focus Group 8)*

> *...conduct that is more akin to the courtroom, adversarial conduct, trying to lead evidence, trying to lead points of law in the hearing room. (Key Informant 1)*

This perception may reflect the fact that solicitors seek to ensure points of law are considered in relevant decision-making, as well as ensuring their clients' effective participation in the process.

In the survey element of the research; solicitors gave a variety of responses to the question 'How, if at all, does your practice vary when acting for a client in related court proceedings compared to when in a children's hearing?'. Most recognised that hearings were different to court, and some described modifications to their approach by, for example, not wearing a suit, or using less legal jargon:

…my practice varies as it is a very different environment, so requires different skills to be able to communicate your client's message. (Solicitor, survey response)

…the language used and tone is different in a panel. (Solicitor, survey response)

Around a quarter of solicitors who responded to this question reported that there was little or no difference in their practice in court or in a hearing:

[it differs] Very little. As a solicitor bound by law society rules and regulations, my role is to act in the best interests of my client. (Solicitor, survey response)

Often in my experience, the colleagues I've worked with in various ways, don't understand, particularly the role of the local authority or the social worker and become quite adversarial there. (Solicitor, Focus group 5)

We should also consider that in some cases, this 'not much change' response, may be because the approach these solicitors use in court is also suitable for hearings, or because they were referring to other aspects of their practice, such as consulting with clients or the general quality of practice, which did not differ between the two scenarios.

Some solicitors took a view that, in enacting what they interpreted to be a collaborative and non-adversarial approach at hearings, some panel members seemed to place too much importance on achieving a compromise that everyone would agree to. They felt, not only that this was sometimes not in the child's best interest, but also was very difficult to achieve, often requiring the panel to convince one of the parties:

…in situations where a child has represented their view…the panel are sometimes trying to encourage them or convince them to change their view to something that is in their best interest, rather than saying 'ok that is in your view, but we're making the decision that unfortunately conflicts with your view because we don't think that's in your best interest. (Solicitor, Focus Group 5)

Other participants gave examples of the success they attributed to the collaborative and discursive nature of some hearings. They suggested this allowed the hearing to proceed with an understanding of all perspectives, and with access to the best information available. Participants in the focus groups were concerned that solicitors, who tended to expect 'evidence' to underpin decisions, could undermine the aspects of hearings that relied on the panel building a consensus.

When we asked young people about the ethos of the hearings, they generally described feeling comfortable at the hearing, and were clear that there was a difference between hearings and courts:

Being in court is different to children's panel. In the panel they speak to you like you are a child. In court, you are spoken to like a criminal. (Young Person)

4.a.iv) The importance of ethos

Survey participants were asked three questions relating to the ethos of the children's hearing system. The first of these asked them to rate solicitors' understanding of the ethos, the second asked them to rate the importance of an understanding the hearing ethos for solicitor training, and the third the importance of adherence to the ethos for quality assurance. Each of these questions was based on a five-point Likert scale with 1 being low and 5 being high. Table 2 summarises the response to these questions from solicitors and non-solicitors:

Table 2: Survey responses relating to the ethos of the children's hearing system

Question	Solicitor mean (SD) [Range]	Other Professional mean (SD) [Range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Solicitor understanding of the ethos	4.22 (0.808) [2-5]	2.50 (1.025) [1-5]	1.72	p<0.001 (0.59)
Importance of Understanding of ethos of the children's hearing system for Solicitors training	3.83 (0.994) [1-5]	4.62 (0.714) [1-5]	- 0.79	p<0.001 (-0.39)
Importance of Adherence to ethos for Quality Assurance	4.00 (0.947) [2-5]	4.60 (0.621) [2-5]	- 0.60	p<0.001 (-0.32)

The largest divergence between the two groups relates to perceptions of solicitors' understanding of the hearing ethos (as understood by each participant). Solicitors consider themselves to have a good, to very good understanding of the ethos, while other professionals consider them to have lower levels of understanding. There were also marked differences between the two groups for the other two questions; non-solicitors placed greater importance than did solicitors on the inclusion of ethos-related issues in training and in quality assurance.

Across the study, much of the discussion relating to the role of solicitors in the hearings concerned their impact on the ethos of the hearings. Many participants were concerned that the increased presence of solicitors resulting from the 2011 Act, had a tendency to create or extend processes in ways they felt were not in the best interests of the child.

Recommendation1 of this report is to clarify the role of solicitors in the hearings system, and the manner in which solicitor actions can protect the best interests of the child whilst representing the wishes of their client. Although the 'ethos' of the hearings system is still a matter of some debate, the 'child at the centre' is commonly agreed; the 2011 Act did not excuse solicitors from observance of this. However, the judgement of what is in the best interests of the child may not

always be clear or uncontested, particularly until all involved have been able to put forward their views. If a parent or other person believes their position is in the best interests of the child, they should communicate this to the panel, with legal assistance if necessary. The panel have the role of accepting or rejecting this view, when put alongside other information.

4.b) The role of solicitors; perceived & ideal

In this section, we examine various views about the role of solicitors in hearings. This includes solicitors' beliefs about and experiences of their own role and others' experiences and views.

In the survey, we primarily addressed the role of solicitors through questions asking participants to rate the importance of different aspects of solicitor performance for quality assurance. These elements were taken from the standards of professional service in the SLAB code of practice for children's legal assistance for solicitors (SLAB, 2013b, p. 9). Participants' ratings provide an indication of the relative importance they place on different elements of the solicitor role.

Figure 2 shows the responses of solicitors and the other groups surveyed. This shows that there is a high degree of similarity between the groups on these questions, indicating that both solicitors and the others in the children's hearings system consider the same things to be important in ensuring that solicitors are doing a good job. The largest differences in opinion appear in responses around the best interests of the child.

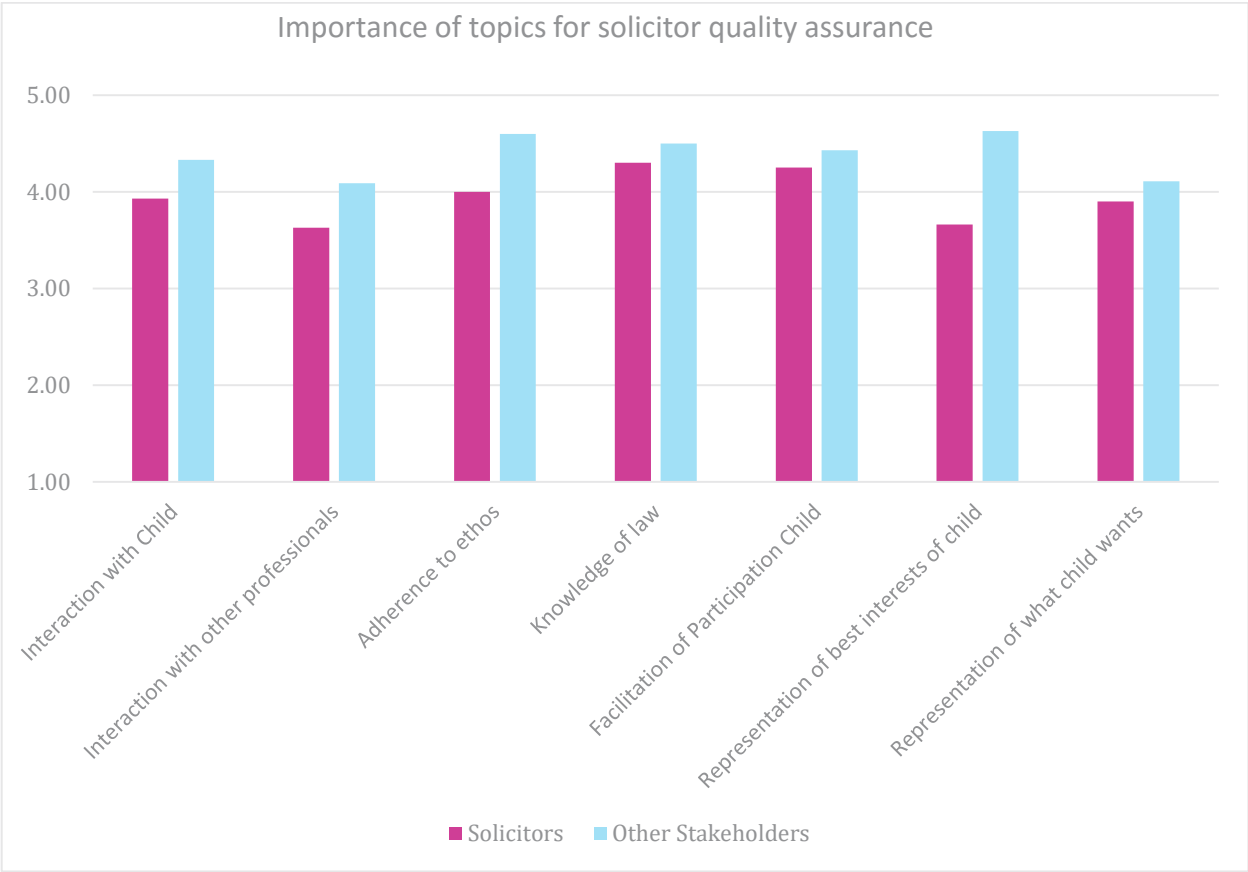

Figure 2: Importance of topics for solicitor quality assurance

Table 3 shows that other stakeholders consider this more important for the quality assurance of solicitors than solicitors themselves do. This is a statistically significant difference with a moderate effect size r of 0.43. Similarly, there was a significant difference in responses related to adherence to the ethos (which other stakeholders also considered more important than did solicitors) demonstrating an effect size r of just over 0.32. We also found statistically significant differences between solicitors and stakeholders' views on three of the other topics with smaller effect sizes. Table 3 provides these data in full.

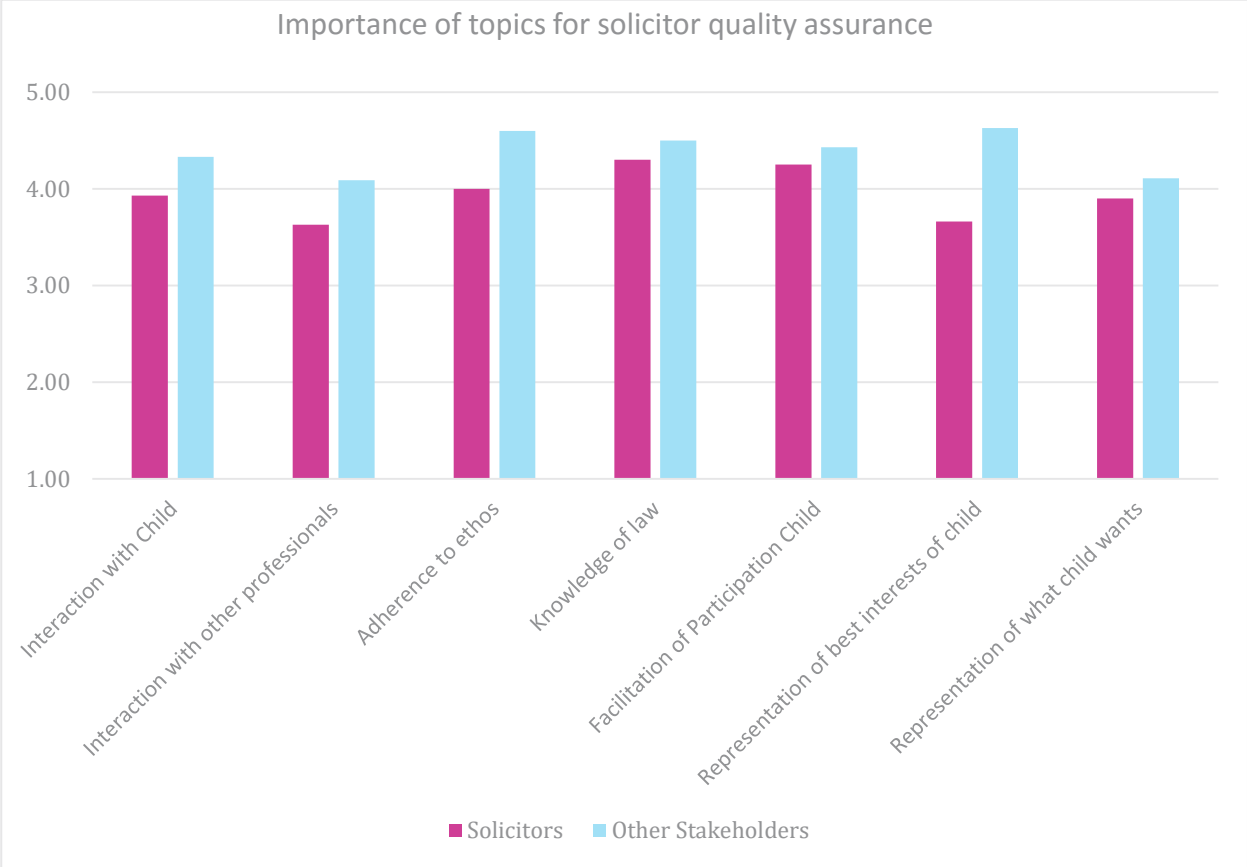

Figure 2: Importance of topics for solicitor quality assurance

Table 3: Importance of topics for solicitor quality assurance

Question	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Interaction with the child	3.93 (0.848) [1-5]	4.33 (0.782) [1-5]	- 0.40	p<0.001 (-0.21)
Interaction with other professionals	3.63 (0.908) [1-5]	4.09 (0.763) [1-5]	- 0.46	p<0.001 (-0.22)
Adherence to the ethos	4.00 (0.947) [1-5]	4.60 (0.621) [2-5]	- 0.60	p<0.001 (-0.32)
Knowledge of the law	4.30 (0.696) [2-5]	4.50 (0.615) [2-5]	- 0.20	p=0.042 (-0.12)
Facilitation of participation of the child	4.25 (0.728) [2-5]	4.43 (0.708) [1-5]	- 0.19	p=0.055
Representation of best interests of the child	3.66 (1.193) [1-5]	4.63 (0.705) [1-5]	- 0.97	p<0.001 (-0.43)
Representation of what the child wants	3.90 (0.781) [2-5]	4.22 (0.770) [1-5]	- 0.32	p=0.052

When we asked young people about what made good solicitor practice, they were clear that a solicitor's capacity to build rapport with a young person was key. Young people valued solicitors

who demonstrated interest in the welfare of the young person, and in helping them to understand the process they were involved in:

> *He is helpful, and I can be myself with him. He gets me, and understands what I want. He's about 60 but acts about 30-40; he understands where I'm coming from. (Young Person)*

> *He would explain things straight – not using all that professional stuff, with words I don't know how long. (Young Person)*

> *He always asks what I want to do, he doesn't tell me what to do. (Young Person)*

The young people interviewed felt that having a solicitor in a children's hearing helped them be heard, although some also considered that an advocacy worker could do this:

> *Yeah, I think it is helpful for young people to have a solicitor in a hearing, to make recommendations an' that, and speak up for you. (Young Person)*

One young person noted that having a solicitor in a hearing is useful because the solicitor can challenge the accuracy of reports and that the panel members are more likely to pay attention to solicitors:

> *A solicitor can work through [the] report and say what is not true. The panel will listen because the solicitor is more professional, they are going to listen to someone who has a higher authority than them. (Young person)*

However, young people also mentioned that being represented by a solicitor might also have some negative connotations as this might lead panel members to perceive young people to be involved in crime.

Young people's perceptions of the quality of solicitor practice also appeared connected to whether or not prior meetings between young person and solicitor had occurred. Young people described feeling informed when meetings had happened in advance of actual panel meetings or court appearances. In some cases, solicitors provided follow-up contact with young people, either by telephone or with letters outlining what had been discussed and next steps. In other cases, it appears there was minimal contact from solicitors and a lack of responsiveness to requests from young people for information.

Finally, young people also found it positive and helpful where they had prior knowledge of the solicitors' practice (eg through representing a parent). Two young people had experienced a solicitor known to, and selected by, the family in addition a duty solicitor. Both identified the former as more useful and accessible to them; both described a lack of communication on the part

of the duty solicitor. This accorded with the experience of the third young person who had experienced being allocated a duty solicitor.

In the focus groups, we asked all participants about what they considered the role of the solicitor to be. The results broadly reflect the findings of the survey questions described above, confirming general agreement amongst all the stakeholders that the role of the solicitors is to represent their client:

> *…to represent their client, whereas everybody else wants to listen to everybody, to get their impression. (Panel Member, Focus Group 3)*
>
> *…not to safeguard the interests of the child, which is the ethos of the act, their role is to verbalise their client's position, whether they personally believe that or not, their role is there to represent their client. (Reporter, Focus Group 2)*
>
> *…they are there to represent clients. They are not there for the children, not there for the best interest of family, they are there to represent clients and make money. (Social Worker, Focus Group 9)*
>
> *…ensure that my client's voice is properly heard, and ensure that their legal rights are respected. (Solicitor, Focus Group 5)*

As demonstrated in both the reporter and social worker quotes above, it is interesting to note that, not only was promotion of the best interests of the child absent from most participants' descriptions of the role, many participants also asserted this *was not* part of the solicitor role.

SLAB guidance requires solicitors to:

> *…distinguish between their role acting for a client in a Children's Hearing court proceedings and when taking part in a Children's Hearing and act accordingly. This will include for example having:-*
>
> 1. *a duty to promote and facilitate the effective participation of a child in Children's Hearings and ensure that the child's best interests remain central to proceedings. (SLAB, 2013b, p. 9)*

Most solicitors in hearings are acting for a parent or other relevant person. In this case, the solicitor is expected to ensure the best interest of the child are central, by supporting their client to provide the information that the panel needs to reach a decision in the best interest of the child.

In SLAB guidance, it is clear that solicitors have a duty to ensure that the child's best interests remain central; however, the guidance does little to clarify the manner in which the solicitor is

required to do this. When asked about this directly, solicitors were quite clear that there was not a conflict between promoting the ability of clients to express their views, and maintaining the centrality of the child's best interests. In other words, they felt the act of ensuring panel members heard and understood their client's view, did not preclude acts that ensured the hearing process remained centred on the child's best interest:

> *…you are routinely dealing with the misconception that a child's rights and a parent's rights are exclusive. That, for instance, a solicitor is only advancing the parent's rights and that's nothing to do with the children's rights, what a parent wants has nothing to do with the child's rights or interests. There's a lot of overlap there. (Solicitor, Focus Group 6)*

> *Clearly in certain situations the interests of a child and one or other of their parents may conflict. But nevertheless, the parent still has responsibilities and rights in relation to their child and their perspective needs to be understood, even if it isn't agreed with. (Solicitor, Focus Group 5)*

> *…if a parent or whoever is expressing a view that panel members think doesn't best reflect the child's interests, that's actually quite important that the panel know that. Of course there is a tension… it's not for solicitors to decide ultimately what's the best interests of the child. (Solicitor, Focus Group 5)*

Whilst this was the view of solicitors, many other participants felt that when a solicitor helped their client to participate effectively, the hearings' focus shifted, and was less firmly on the best interests of the child.

There were instances throughout the focus groups where participants discussed good practices they had seen, and positive contributions they had seen solicitors make. In many cases, focus groups also described practices that they considered would be desirable for solicitors to do more frequently.

To summarise points raised, the following list aggregates these discussions to give an idealised description of the role of solicitors from the perspective of panel members, social workers, reporters, solicitors and children. We include some representative quotes to help contextualise the factors.

- Putting forward their clients' views and desired outcomes
- Calming highly emotional clients: 'to say listen, calm down, they [the client] can then relax knowing somebody else is representing them'. (Social Worker, Focus Group 7)
- Managing their client's expectations: 'they need to manage the expectations of their clients'. (Panel member, Focus Group 8)

- Providing realistic and constructive advice to their clients: 'they need to give their clients good advice about positions they might take that are unreasonable'. (Key Informant 1)
- Describing and clarifying the process and procedures: '…aiding the parent to understand the process'. (Social Worker, Focus Group 7)
- Supporting clients to speak for themselves
- Liaising with other professionals: 'to be aware of all factors that are going on, perhaps to have communicated with all of the agencies who are working with that child'. (Key Informant 2)
- Negotiating between parents in conflict: 'Some of their job is to say…'here's what's reasonable, you might need to take a few steps towards the centre here, and we'll talk to the other solicitor and have your wife try and come closer to the centre'. (Panel Member, Focus Group 3)
- Taking into consideration the best interests of the child: '…solicitors, even though they are representing the views of their client, they should also take into consideration the best interests of the child, same as everyone else in the room'. (Panel Member, Focus Group 3)

4.c) The impact of solicitors in the children's hearing system

Respondents in focus groups from all groups felt that it was important that children and parents or other relevant people were able to take part in children's hearings. All groups suggested that assistance for the participation of these groups was to be welcomed and could be completed in accordance with the existing ethos of the hearings system. However, some respondents felt that the behaviour or presence of solicitors in hearings sometimes had a negative impact on the ethos.

All participants were asked a range of questions investigating the impact of solicitors on the children's hearing system in the surveys. Firstly, we asked them about the impact of solicitors on the three key aspects: children and young people being at the centre of everything; decisions being based on sound reasons in the best interests of the child; and, that functions, roles, and responsibilities were defined and understood. We asked participants to indicate solicitors' impact on these areas against a five point Likert scale from 'very negative' to 'very positive'. Figure 3 shows the difference in response patterns from these groups, while Table 4 shows tests of statistical significance and effect sizes of these differences in opinions.

Table 4: Survey responses relating to the impact of solicitors on the children's hearing system

Question	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Children/Young People at the centre of everything	3.65 (0.821) [1-5]	1.98 (0.804) [1-5]	1.67	p<0.001 (0.62)
Decisions based on sound reasons in best interest	3.90 (0.817) [2-5]	2.15 (0.958) [1-5]	1.75	p<0.001 (0.60)
Functions, roles and responsibilities are defined and understood	3.69 (0.889) [2-5]	2.53 (0.974) [1-5]	1.16	p<0.001 (0.45)

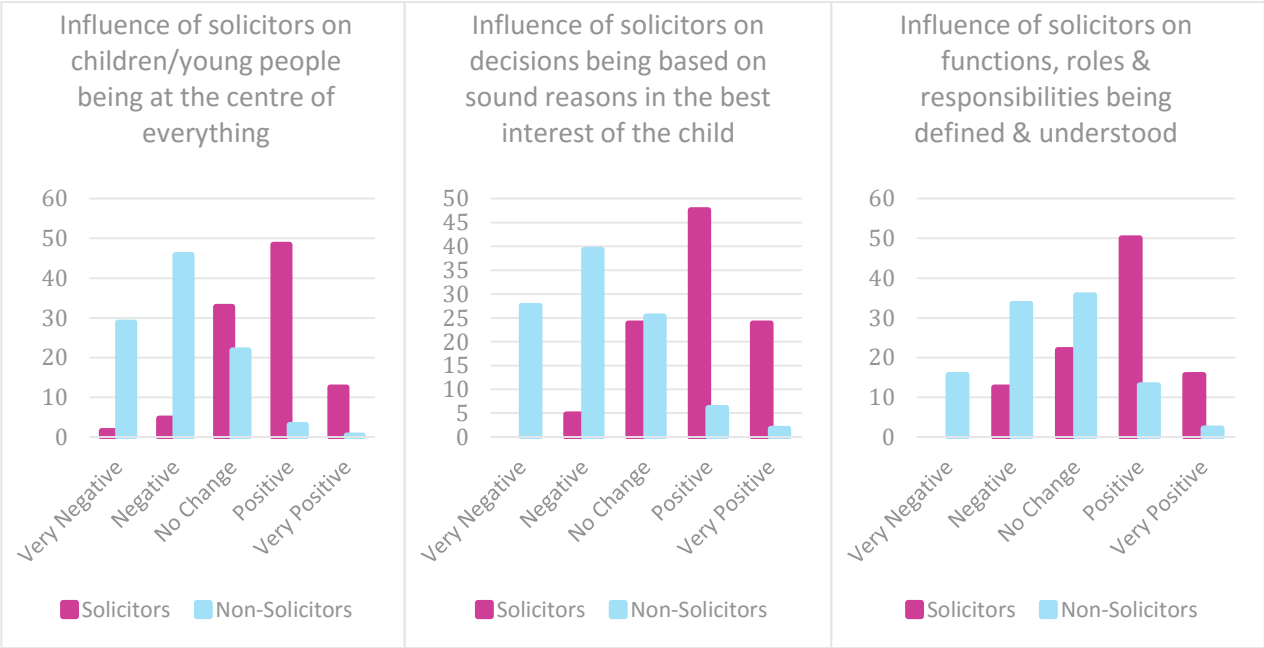

Figure 3: Perceptions of solicitor influence on three aspects of the children's hearing system

Table 4 shows there is a difference in opinion between solicitors and other professionals when it comes to the influence that solicitors have in hearings. In each case, solicitors mostly feel that their influence is positive, while other stakeholders (ie aggregated social workers, reporters, and panel members) consider their overall influence to be negative. The statistical analyses show a high degree of certainty and effect sizes that we consider are large or moderate, indicating that these differences represent real and marked differences in views. However, we caution that there might be similar differences between any professions' view of itself and the perspectives of others.

In addition to asking about the influence of solicitors on these aspects of the hearings system, we asked all participants whether the presence of solicitors had an impact on the preparation and behaviour of other professionals and on the outcomes of panel hearings. Figure 4 shows the range of responses, and Table 5 shows the statistical differences between the response of solicitors and other professionals.

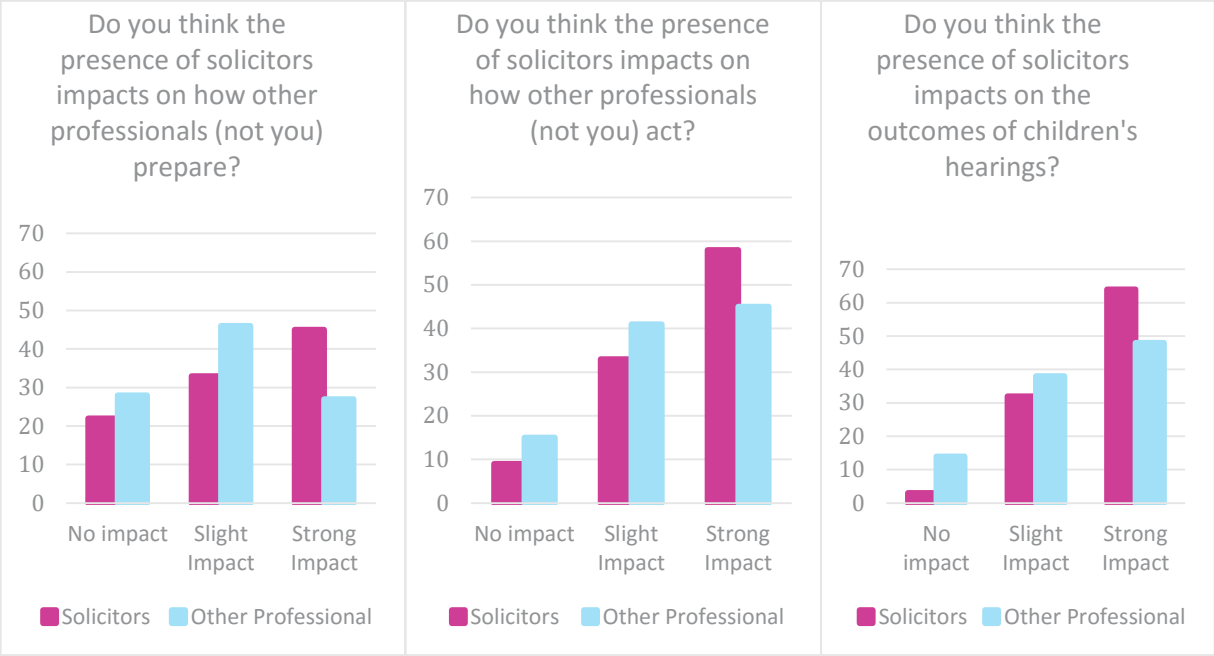

Figure 4: Perceived impact of the presence of solicitors

Participants overall agreed that the presence of a solicitor has some impact on how professionals prepare and act, as well as affecting the outcomes of hearings.

Table 5: Details of responses on impact of soliciotrs on other professsionals

Question	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Does the presence of solicitors affect how others prepare	2.22 (0.798) [1-3]	1.98 (0.733) [1-3]	0.24	*p*=0.046 (0.14)
Does the presence of solicitors affect how others act	2.49 (0.663) [1-3]	2.31 (0.699) [1-3]	0.18	*p*=0.072
Does the presence of solicitors affect outcomes?	2.61 (0.558) [1-3]	2.34 (0.718) [1-3]	0.27	*p*=0.011 (0.16)

When we look at how other professionals consider the presence of solicitors to affect their own preparation and action in hearings, we find that participants do not feel that they are affected by the presence of solicitors to the same extent as they feel others may be; this is true across the

different groups represented (Table 6). Indeed, as can be seen, all respondent groups felt that solicitors had a greater impact on other peoples' preparation and actions than on their own.

Table 6: Perceived impact of solicitors on preparation and actions of other professionals

Respondent Group	Impact of solicitors on…	Self mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Self – Other Professional)	Significance (effect size)
Panel Members	**Preparation**	1.25 (0.567) [1 to 3]	1.75 (0.67) [1 to 3]	-0.50	p=0.001 (0.53)
	Action	1.61 (0.69) [1 to 3]	2 (0.748) [1 to 3]	-0.39	p=0.003 (0.43)
Reporters	**Preparation**	1.24 (0.495) [1 to 3]	2 (0.739) [1 to 3]	-0.76	p=0.001 (0.73)
	Action	1.41 (0.644) [1 to 3]	2.39 (0.659) [1 to 3]	-0.98	p<0.001 (0.80)
Social Workers	**Preparation**	1.81 (0.812) [1 to 3]	2.08 (0.743) [1 to 3]	-0.27	p=0.002 (0.37)
	Action	1.76 (0.75) [1 to 3]	2.43 (0.641) [1 to 3]	-0.67	p<0.001 (0.66)

Our data do not allow us to test the accuracy of participants' estimate of the impact of solicitors on their own and others' behaviours, but data from focus groups and interviews would support the view that the presence of solicitors has an impact on the behaviour of others in the hearing. Throughout the focus groups and interviews, participants discussed the impact that solicitors had on the children's hearings system as a whole. Participants reported that the majority of solicitors were constructive and positive in their dealings with the panels, and were an asset to the system:

> *You get some solicitors who are very, very good, they've been taught about the panel and they know what the panel is. (Panel Member, Focus Group 3)*

> *My experience of solicitors is I would say predominantly positive. (Panel Member, Focus Group 8)*

At face value there appears to be a discrepancy between the positive contribution of the majority of solicitors as reported in the focus groups, and the overall negative influences reported in the survey (

Figure 3). We cannot be sure why this is. One obvious interpretation is that, whilst participants experience the majority of their contacts with solicitors as positive, a small number of bad experiences may exert a strong influence on their general opinions. Indeed, when asked about this in focus groups, all groups of participants indicated that a small proportion of solicitors practiced in ways that cause problems at hearings.

Those participants who considered the presence of solicitors to have a negative effect on the hearings, identified a variety of challenges, these are summarised under the following categories:

- Changes to the atmosphere of hearings

The increased prevalence of hearings that include one or more solicitors was a concern for some participants. Whilst participants knew parents or other relevant people had a right to be represented, they felt there were unintended consequences and an undermining of the ethos of hearings. As previously detailed in section 4.a), some participants thought that some solicitors introduced an inappropriately adversarial approach to the hearings system. Participants across all respondent groups except solicitors expressed this view. Social workers suggested that greater shouting, challenging and heated arguments as well as unguarded language and personal comments marked this change of atmosphere. They felt this atmosphere was increasingly unfriendly for children and as a result, reported that they more often asked the panel to excuse the child from attendance. They also perceived that young people recently seemed more likely to ask not to attend or refuse to come along.

In part, social workers felt hearings were less child-friendly because of the inclusion of additional adults, many of whom would be unknown to the child. Reporters also indicated that the presence of multiple solicitors detracted from the child-centred nature of the process, while panel members indicated that the presence of solicitors led to a greater focus on the needs and wishes of parents and other relevant persons, and away from the child:

> *If the solicitor is there for the parents, they seem to pull something out of the bag…it's almost giving the panel this get out of jail card to make a substantive decision, and they [the panel] go for defer or they may appoint a safeguarder. (Panel Member, Focus Group 8)*

> *I think where we are going needs to be halted, doesn't it, and pulled back. (Social Worker, Focus Group 9)*

- Lack of respect for the hearings system and other participants

Some participants reported that some solicitors could exhibit practice that shows a lack of respect for the hearings system and participants within it. This includes behaviours such as looking at their phone or iPad and responding to messages on it, visibly rolling eyes or making other signs of incredulity, failing to adequately prepare, and in some cases leaving the hearing mid-way in order to attend to other business:

> *One of the major criticisms I would make of the legal profession is that they do not meet with their client before the hearing. (Panel Member, Focus Group 8)*

That happens on a fairly regular basis [referring to solicitors in general] 'I need to go because I need to be in court'…that is absolutely inappropriate. (Panel Member, Focus Group 8)

It's massively disrespectful if you have to have a hearing where you have to reschedule for 8 weeks, 2 months. (Panel Member, Focus Group 3)

A particular concern for social workers was what they saw as an extreme lack of respect that solicitors showed for the profession of social work and for the credentials, knowledge, and skills of individual social workers:

I think they can use courtroom tactics, if you like, to delay, and to put you down, and make you feel like you are not, your profession, isn't valid… (Social worker, focus group 1)

Examples provided included repeated interruptions when the social worker was speaking, overly robust questioning of the social workers' recommendations and assessment findings, and by asking for further evidence or opinions from people with 'greater expertise'. Sometimes solicitors were said to show disrespect in highly personal or mocking ways such as loudly suggesting that their client was likely to need tissues to hand because of the presence of a certain social worker, refusing to sit in the same waiting room as the social worker, or loudly exclaiming that the social worker's informal pre-hearing conversation was 'drivel'.

Social workers thought that solicitors used these behaviours in an intentional or calculated way to further their aims:

Participant A: That is why they do it, you know, they are master debaters, that is their skill.

Participant B: The number 1 thing they want to achieve is to discredit you, that's it, if they can tick off the list, that's what they are going to try to do.

Participant A: I think that's what gets me most, it's the disrespect they have for social work, is the absolute, abject, disrespect for social work. And that is across the board. You know. And they are quite happy to say that. You know, 'We can't stand social work.', or 'If I hear you say "thrive" one more time. I've actually got a chart and every time someone says, "thrive" I mark it down on it'. Honestly, that's the kind of conversations [we have]. They just have no respect for the social work profession…

(Social workers, focus group 2)

Reporters and panel members also reported instances in which solicitors acted disrespectfully towards social workers. In some cases, they noted that the behaviour was so aggressive towards

the social worker, that panel members tried to 'defend' them, which led to greater confusion of roles:

> *...the unfortunate situation is sometimes with the younger ones [social workers], or maybe the less experienced ones, either they're not given the opportunity or they're struggling to respond, then the panel start trying to defend the social work's position or the recommendations, or give the reasons, and it starts getting completely skewed. (Reporter, Focus Group 1)*

> *Being overbearing in their attitude and dismissive of things, and perhaps being fairly insulting towards the social worker. (Reporter, Focus Group 1)*

The solicitors who participated in this study did not recognise these behaviours and indicated that they always acted with respect towards the hearing:

> *The same level of respect is given the panel members as it is to a Sheriff. (Solicitor, survey response)*

Conversely, there were repeated concerns expressed by solicitors about the ability of the panel members to handle the legal requirements presented by hearings:

> *As panel members often appear to have a limited knowledge of legal frameworks, you spend more time labouring points in respect of the legislation and the principles of the children's hearing. (Solicitor, survey response)*

> *...if there is a patent legal issue in a particular case, then the presence of a solicitor makes it much more likely that that's going to be addressed at any rate... (Solicitor, Focus Group 5)*

> *Sometimes as a solicitor, if you've a panel which isn't particularly doing that [providing a basis for their decision], then you're the one who is in effect challenging or pointing out you need to ask about this... (Solicitor, Focus Group 5)*

> *...very often you find [the panel are] very confused, about what they're meant to be doing. (Solicitor, Focus Group 6)*

Similarly, while solicitors reported that they had respect for the job that social workers do, some felt that social work reports and the expertise that went into them was not always of a sufficient quality. In this situation, they felt that their role was rightly to question the reports:

> *... routinely with matters that go to proof at court, social workers are being criticised for the evidence that they have given, for the way they are carrying out their job... I'm under no illusions that they'll be overworked, and underpaid, and understaffed, and*

everything else, and I accept that, but it doesn't mean you can do a shoddy job and try and cover it up. (Solicitor, Focus Group 6)

- Tactical behaviour or intimidation

Whilst non-solicitors generally felt the majority of solicitors contribute positively to hearings, panel members suggested that some solicitors employed deliberate tactics to steer discussions away from topics that they do not want to discuss, or to gain psychological advantage:

> *They either try to control the discussions completely…or they use this legalistic courtroom language as a tactic to put people on edge. (Panel Member, Focus Group 8)*

> *They digress onto something completely different…if we're talking about one thing, then they say 'what about the contact?'… and it's a deliberate ploy to move it on. (Panel Member, Focus Group 8)*

Some participants felt that the behaviour of some solicitors went beyond a simply adversarial approach, or tactical behaviour, into intimidation or bullying in order to gain advantage:

> *It's almost like bullying, and I use that quite seriously…they do not behave in a manner that is appropriate to a children's hearing. (Panel Member, Focus Group 8)*

> *…solicitors can be much more aggressive and confrontational when representing parents' views in relation to contact decisions. (Key Informant 1)*

Only one solicitor directly mentioned intimidation, however, solicitors did see a key element of their role as challenging reports presented and assumptions made in the hearings, which some acknowledge may be seen as intimidating in some cases:

> *Scrutinising the allegedly factual basis for what's going on…I find that quite a significant element of the role, if there is any factual disagreement is saying 'you can't just accept what that person says to you, you actually need to do something'. (Solicitor, Focus Group 5)*

> *I accept that the presence of a solicitor can be intimidating, some professionals compensate by being super organised, others possibly fear that their views will be cross examined and find that difficult. (Solicitor, Survey response)*

Solicitors felt that they were often perceived as 'troublemakers', that panels were often set against them from the start, and that their contributions were not valued:

> *…the impression that you get is that they think you are there to be quite difficult. So you can see that they are quite anxious. (Solicitor, focus group 5)*

> *… you have to be really careful, because if a panel think that you are being too legalistic, they will jump on you and they will be hostile right from the off. (Solicitor, Focus Group 6)*

I have had a panel member ask me how they would know that a lawyer is accurately representing their client's views. (Solicitor, Focus group 5)

There is sometimes the suggestion that you are putting words in your client's mouth…making a case your client wouldn't make. (Solicitor, Focus group 5)

- Perceptions of representation or advice

There were some participants, particularly social workers, who were concerned about the advice and representation that solicitors gave to clients, typically, they expressed concerns around advice given to parents by some solicitors. These views centred on two themes; generating unrealistic expectations among their clients, and, leading their client to adopt positions that were contrary to the best interests of the child. We note that this element reflects the negative perception of the minority of solicitors, and that participants also cited one of the advantages of solicitor engagement being expectation management for their clients.

Solicitors often highlighted that they went to great lengths to ensure that the advice and representation they provided to their clients was realistic. They indicated that it was not in their best interest to over-promise to clients who would then only be disappointed with the outcome:

…working with your client to try and get them to understand, to present their perspective but to understand other's perspectives, and to look for possibilities of compromise. (Solicitor, Focus Group 5)

…we are distinct from just simply an advocacy worker, in that we're able to advise a client more at the beginning what is this hearing for, what realistically can you get out of it, and what do you want us to put forward on your behalf. (Solicitor, Focus Group 6)

Other participants agreed that solicitors could provide a valuable contribution to the hearing process when they helped their clients understand what a realistic or likely outcome from the hearing might be:

…you have been able to speak to the solicitor and say this is where we are, this is where we want to be, and this is what your client really needs to be doing in between, and they've got a good grasp of that…they won't make crazy suggestions like a lot of solicitors will, or ask for things which they really shouldn't be asking for. (Social Worker, Focus Group 9)

You'll quite often find that solicitors will work with the family and come to a compromise before it actually goes to the Sheriff, so therefore the actual grounds are accepted as a matter of compromise. (Panel Member, Focus Group 3)

A minority of participants expressed the view that some solicitors were over-promising to clients on what the outcome of the solicitors' involvement might be. They typically reported that solicitors told parents this could consist of greater contact with, or reunification with, the child even when, in the opinion of these participants, these outcomes were extremely unlikely. This over-promising was felt to be damaging, both to clients, who would only be disappointed with the outcomes achieved, and to the hearing process, where the dogged adoption of untenable standpoints created conflict and took away from the child-centred nature of the hearings:

> *...they [the parent]'re saying 'Well no, because my solicitor tells me if we fight this I'm going to get them back, so I don't need to work with you, or listen to you' and it's really counterproductive...in terms of being child centred...it's really taking that focus away. (Social Worker, Focus group 9)*

> *You've got a solicitor coming in with a mum and saying 'Don't worry, you'll get your child back next week because we're going to appeal it' and you're saying, well actually no, because if you look at all the evidence we have, that would never happen. (Social Worker, Focus Group 9)*

The second criticism links to the first, in that they considered that solicitors were often adopting or advocating positions that were in conflict with what they considered the best interests of the child:

> *...[an individual who works as both a solicitor and a safeguarder] said 'when I've got my legal rep hat on, remember I'm only talking for what my client wants. Don't take any notice of it; think what's best for the child'. (Panel Member, Focus group 3)*

> *...the solicitor was obviously representing their client, primarily, but the question mark was whether [they were] actually representing what was in the best interests of the young person as opposed to their client. (Key Informant 2)*

Our data cannot tell us the actual best interests of the children discussed by our participants; ultimately, panel members make this decision based on all that they have heard.

- Negative impact on families

Social workers were the main group to highlight this potential issue, but did so on several occasions. One particular concern focused on perceived delays to the process for the child, it was felt that solicitors often caused delays by calling for proofs, appeals, or additional assessments or reports that the social worker felt were 'unnecessary'. In addition, they suggested that solicitors delayed the process by asking for deferrals because they had not studied paperwork or been able to consult with their client. Social workers felt that these delays had serious implications for the

child's life, as they were unable to move towards permanency (with their birth family or elsewhere).

Some participants also felt that the practice of a minority of solicitors affected parents negatively:

> *… I would go as far to say they are potentially exploiting these people […] both parents, when I asked them on a number of occasions why this was being appealed, and why is it taking so long, they could not tell me. […], I have had numerous clients that came to me and went 'I don't know why this has been appealed'. (Social worker, focus group 2)*

> *And then to run a proof for two days while the client's sitting there crying, yeah, only to settle (after a witness has gone on for two days) at a Sheriff's instigation, […] that's not in the interests of that poor wee mother who has to deal with it, and the evidence is absolutely overwhelming [… a] small minority really spoil it for other people (Reporter, focus group 4)*

- Lack of child-related knowledge

Social workers and some participants in other groups felt that the majority of solicitors did not have the requisite knowledge or skills to address children's needs. They reported that solicitors failed to understand issues that were often central to the hearing, including attachment, child development, family dynamics, and addiction, etc.; or when they did understand these, they disregarded them in favour of representing their clients views and wishes. These participants felt that solicitors would often strongly deny the family's problems in the hearing, even when they were personally aware of these and prepared to acknowledge these in private.

The findings show that social workers also felt that solicitor behaviour could cause harm in other ways, for example by damaging the relationship that they had formed with the family, such that effective intervention became impossible, considerably more difficult, or delayed. Some social workers provided examples of families where they had initially been able to work with a family, where the solicitor's involvement had 'led to' the family withdrawing from social work or denying there was a problem. Similarly, social workers noted parents that reported their solicitor had told them that they 'did not need to work with social work', as they would appeal, and secure the return of their children.

These are strong views, but relate to a minority of solicitors; readers should view them in the light of the generally positive view of contributions made by the majority of solicitors.

4.d) Solicitor competencies

We asked all participants in the surveys to complete a block of questions relating to how well solicitors achieved a range of competencies. Figure 5, shows this information. There is a marked discrepancy between the opinions of the different groups of participants. Social workers consistently give the solicitors the lowest ratings, followed by the rating given by panel members and then reporters. Solicitors consistently gave themselves higher ratings than did other stakeholders.

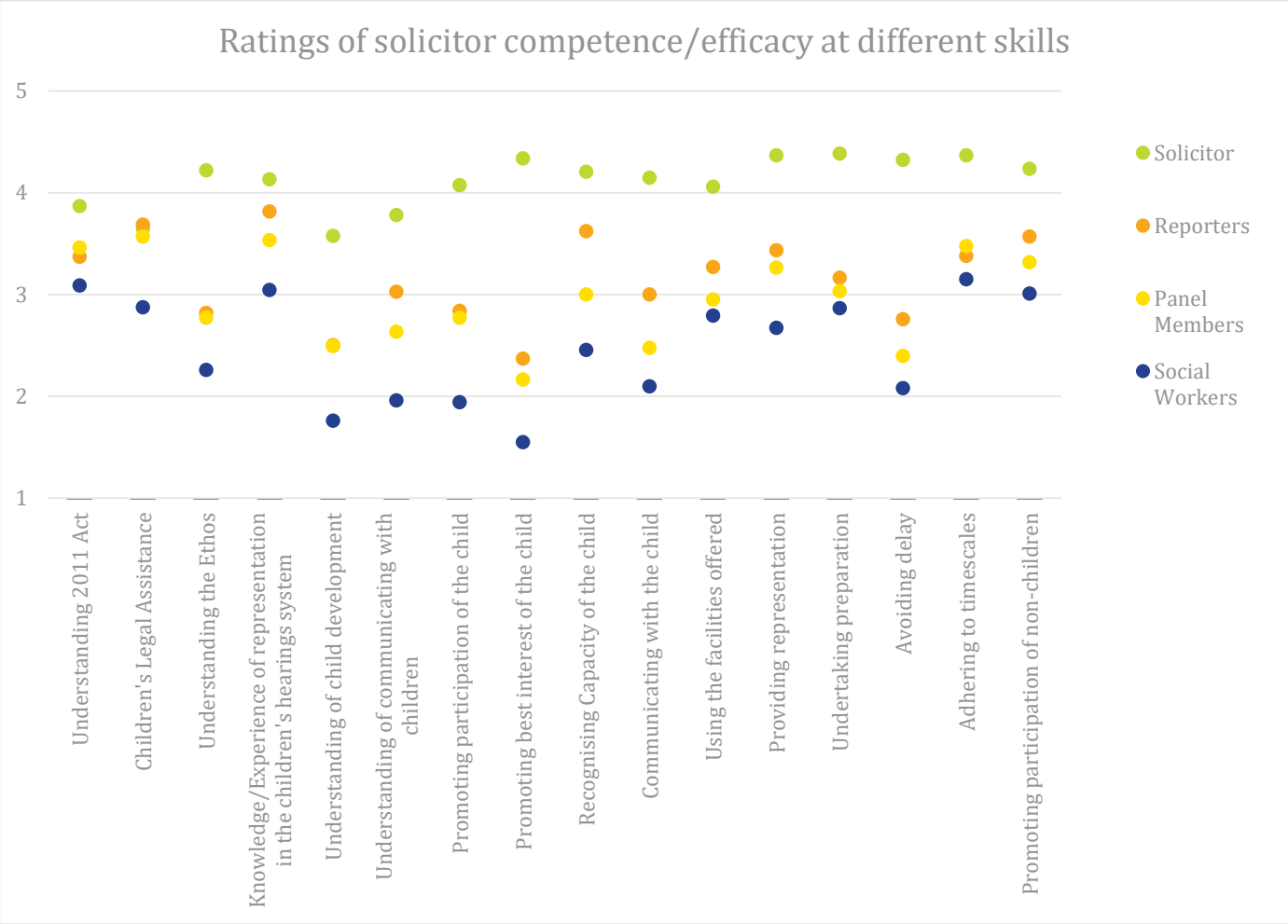

Figure 5: Different groups' ratings of solicitor competence

Table 7 gives details of the differences between solicitors and other professionals' ratings of solicitor performance on these measures.

Table 7: Details on responses to solicitor competencies

Question	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Understanding the 2011 Act	3.87 (0.862) [2 to 5]	3.24 (0.902) [1 to 5]	0.63	p<0.001 (0.28)
Children's Legal Assistance	3.65 (0.943) [2 to 5]	3.22 (0.978) [1 to 5]	0.43	p=0.003 (0.18)
Understanding the Ethos	4.22 (0.808) [2 to 5]	2.5 (1.025) [1 to 5]	1.72	p<0.001 (0.59)
Knowledge/Experience of representation in children's hearings system	4.13 (0.879) [2 to 5]	3.32 (0.92) [1 to 5]	0.81	p<0.001 (0.36)
Understanding of child development	3.57 (0.834) [2 to 5]	2.09 (0.825) [1 to 5]	1.48	p<0.001 (0.59)
Understanding of communicating with children	3.78 (0.861) [2 to 5]	2.33 (0.896) [1 to 5]	1.45	p<0.001 (0.55)
Promoting participation of the child	4.07 (0.816) [2 to 5]	2.33 (1.029) [1 to 5]	1.74	p<0.001 (0.59)
Promoting best interests of the child	4.34 (0.745) [2 to 5]	1.87 (1.017) [1 to 5]	2.47	p<0.001 (0.69)
Recognising capacity of the child	4.21 (0.636) [2 to 5]	2.82 (0.966) [1 to 5]	1.39	p<0.001 (0.58)
Communicating with the child	4.15 (0.653) [2 to 5]	2.36 (0.953) [1 to 4]	1.79	p<0.001 (0.65)
Using the facilities offered	4.06 (0.751) [2 to 5]	2.92 (0.877) [1 to 5]	1.14	p<0.001 (0.51)
Providing representation	4.37 (0.667) [2 to 5]	2.97 (0.981) [1 to 5]	1.40	p<0.001 (0.56)
Undertaking preparation	4.38 (0.692) [2 to 5]	2.96 (1.045) [1 to 5]	1.42	p<0.001 (0.55)
Avoiding delay	4.32 (0.722) [2 to 5]	2.29 (1.029) [1 to 5]	2.03	p<0.001 (0.65)
Adhering to timescales	4.37 (0.644) [2 to 5]	3.28 (0.932) [1 to 5]	1.09	p<0.001 (0.50)
Promoting participation of non-child clients	4.24 (0.715) [2 to 5]	3.19 (1.033) [1 to 5]	1.05	p<0.001 (0.43)

The fact that there are differences in these ratings is not a great surprise; we would expect individuals to regard their own performance highly. However, the size of these differences is interesting. Twelve of the 16 competencies asked about the effect sizes were greater than 0.5 indicating a large effect. In many cases, other stakeholders rated solicitors negatively (performing poorly with a score < 3) while solicitors rated themselves very positively. Readers will recall our earlier comments about the potential effects of aggregating all non-solicitor views (see page 15); Figure 6 acts as a useful visual guide to the relative alignments of the views of social workers, reporters, panel members, and solicitors in each specific area.

The largest single difference is between the ratings of solicitors and others in relation to promoting the best interests of the child. As discussed before, it is interesting to consider this in the light of the stated opinion of all stakeholders that solicitors' role in the hearings is to represent their clients' views and wishes. Solicitors give an average rating of 4.34 out of 5 (representing 'very good'), while other stakeholders give them a score of 1.87 out of 5 (representing 'very poor'). This is the fourth highest score that solicitors rated themselves in respect of any of the competencies, while for other stakeholders this is the lowest score given to any of the competencies. Indeed when we look at the scores given by the different stakeholders, we can see that social workers, panel members and reporters all give solicitors their lowest score on this particular measure. This finding would appear to be a good indicator of the source of some of the evident tensions between the different groups of actors in the children's hearings.

In relation to other competencies, 'avoiding delay', and 'communicating with children', were rated differently by solicitors and other stakeholders with effect sizes above 0.6, while differences in ratings of solicitor performance in terms of 'understanding the ethos', and 'understanding child development', and 'promoting the participation of the child' also had large effect sizes of 0.59.

The qualitative evidence also suggests that other stakeholders are concerned about the presence, role, competence, and behaviour of some solicitors in the children's hearings system. Indeed, when presented with the five competencies as laid out in the SLAB Code of Practice for Solicitors (SLAB, 2013b), there was general agreement amongst other stakeholders of a low level of solicitor fulfilment for most competencies, although alternate views were also present.

Competence 1 – An understanding and detailed knowledge of the provisions of the Children's Hearings (Scotland) Act 2011 and all associated Rules and Regulations:

> *No. (Reporter, Focus Group 1)*

> *I think they've probably got a knowledge of it, and an understanding of it, but their profession dictates that they are working on behalf of their client, therefore the parts of the new act that kind of go about the best interests of the child and the no order principle and all that, don't really matter if they are just following orders from their client. (Social Worker, Focus Group 7)*

Competence 2 – An understanding and detailed knowledge of the children's legal assistance regime that is laid down in Part 19 of the Children's Hearings (Scotland) Act and the associated Children's Legal Assistance (Scotland) (Amendment) Regulations 2013:

> *If that applies to like, obtaining [funding] around cases to attend hearings, they probably know that. (Reporter, Focus Group 1)*

Competence 3 – An understanding of the ethos of the children's hearing system:

> *No (Reporters, Focus Group 1)*
>
> *I think they have it in theory, but little practice. (Social Worker, Focus Group 7)*
>
> *That's where I think a few of them fall down, not all of them. (Panel Member, Focus Group 8)*

Competence 4 – Detailed knowledge or experience of representing clients at children's hearings and related court proceedings:

> *One or two I think's, built up a bit of experience, I think, and you see them involved in a number of cases, but other ones are just parachuted in. (Social Worker, Focus Group 7)*
>
> *I see the same ones over and over again, so by definition they are experienced. (Panel Member, Focus Group 8)*

Competence 5 – If representing child clients, a general understanding of child development, and the principles of communicating with children.

> *No, there is no guarantee. (Reporters, Focus Group 1)*
>
> *No, although I suppose there is a couple…where they have done that well. (Social Worker, Focus Group 9)*

From the responses to the survey and in the focus groups, there is a clear difference in opinion on the competence of solicitors in the hearings system. Solicitors consider themselves to be upholding high standards of professionalism and to have a good understanding of all aspects of the hearings, while other stakeholders see deficits in critical knowledge and abilities that solicitors are expected to hold.

This finding has particular importance in relation to SLAB's role in defining the competencies expected of solicitors and its responsibility for monitoring the practice of solicitors operating under the children's legal aid scheme. It also underlines the need for all stakeholders in the hearings system to work together to increase mutual understanding of roles (see recommendations 1 and 4 in this report).

We asked solicitors in the survey how easy they found it to maintain the professional standards (using a sliding scale of 0-100). Table 8 shows the spread of responses as well as the mean scores for each standard. From this we can see that overall solicitors do not report finding it difficult to maintain the professional standards laid down by the SLAB (SLAB, 2013a), the exception being 'taking part in group learning' which was considered a little more difficult.

Table 8: Ease of Maintenance of Professional Standards for Solicitors

Professional Standard	Response Range	Mean Score
Respecting the ethos of the children's hearing system	30-100	83.5
Attending or conducting one or more courses relevant to the provision of children's legal assistance	0-100	69.8
Partaking in group, collaborative or online distance learning and/or communication with relevant professional bodies	0-100	56.2
Conducting/observing children's hearing(s) and/or associated court proceedings.	0-100	74.0
Retaining a working knowledge of and familiarity with all key documents related to the children's hearing system	20-100	77.6
Attending further courses and/or training after registration on the Children's Legal Assistance Register	0-100	68.3
Finding appropriate resources within your firm or office, including administrative and technical support.	10-100	74.6
Consulting with clients prior to hearings in appropriate locations and circumstances conducive to the client being able to give proper instruction	0-100	69.6

Solicitors in the focus groups indicated that there were challenges associated with maintaining professional competencies, and sourcing training appropriate to the children's hearings system. They pointed out that training in child development, attachment issues, and contact were difficult to find, and generally not provided by continuing professional development (CPD) providers for solicitors. This meant that solicitors had to go to some lengths to source appropriate training:

> *Because it's such a big part of our practice, we'll organise CPD for ourselves where we'll have a child psychologist come round, and other people come round, social workers come round. (Solicitor, Focus Group 5)*

> *I've looked at it, to do within work, but you can't because any training it's through the Open University, and they're like ten until twelve on a Tuesday morning, which you just can't do. (Solicitor, Focus Group 6)*

> *...you get numerous updates and things sent through about family law... all it is, is about the law developments...we would benefit from I think a better understanding of child development. (Solicitor, Focus Group 6)*

This finding highlights the lack of supply of CPD training for solicitors to address needs, identified by themselves and other stakeholders, in order to operate effectively and productively in the hearings setting.

4.e) Training and registration

In the surveys, focus groups and key informant interviews, we asked participants about the training needs and the registration of solicitors in the children's hearings system. In most respects,

the responses were consistent across respondent groups. Participants highlighted similar training needs, they expressed similar concerns about the registration process, and many raised the possibility of some form of compulsory pre-registration training.

4.e.i) Training

We asked participants in the surveys to indicate (on a five-point Likert scale) the importance of various topics for preparing solicitors for their work in the children's hearings system. Participants felt all topics to be important to a greater or lesser extent. Figure 6 shows there are some differences between ratings given by solicitors and other stakeholders, whilst Table 9 shows that these differences vary in size. Other stakeholders found all of the topics to be important to solicitor training. Only one topic 'evidence and putting forward arguments' received a rating below 4 out of 5. Solicitors' responses follow a similar pattern to those of other stakeholders but they rate each of the topics slightly lower.

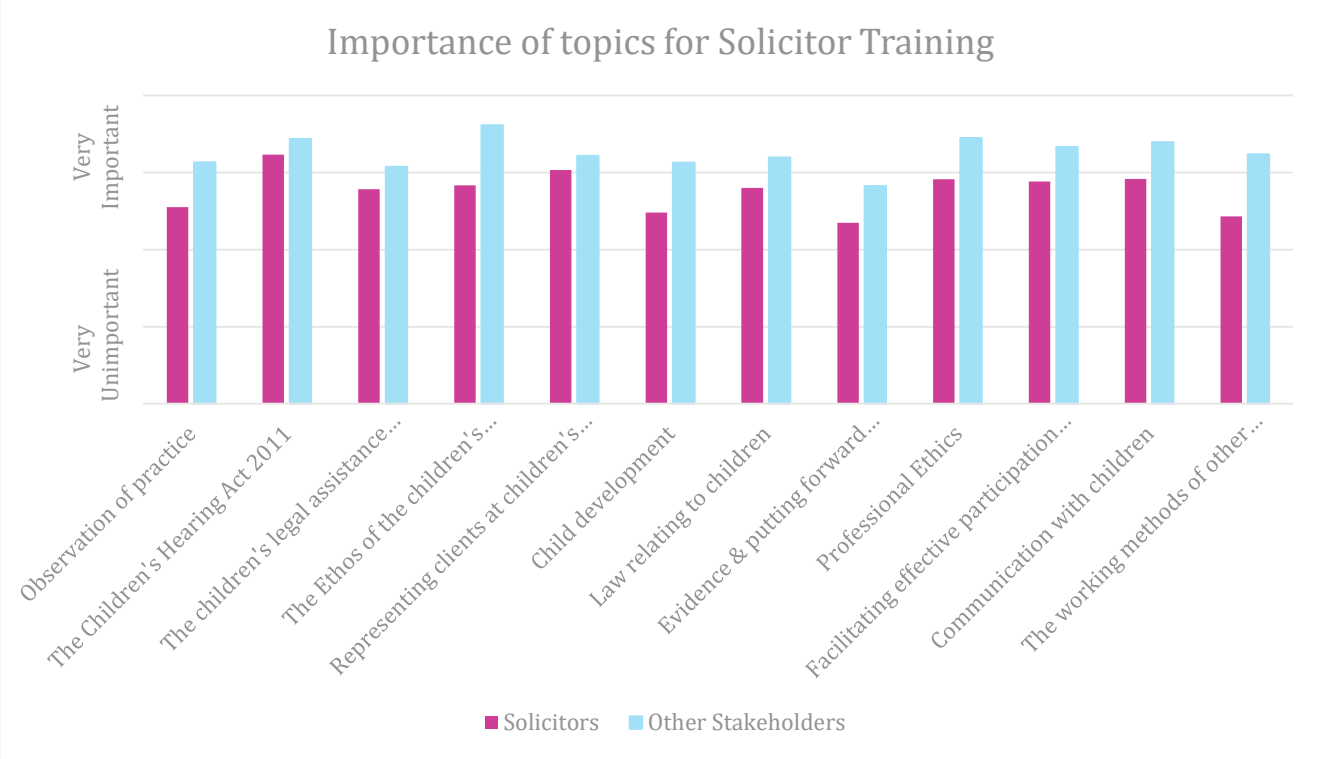

Figure 6: Importance of topics for solicitor training

Table 9: Details of responses on importance of topics for solicitor training

Training topic	Solicitor Mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Observation of practice in the children's hearing system	3.55 (1.064) [1 to 5]	4.13 (0.895) [1 to 5]	-0.58	P<0.001 (-0.24)
Understanding & Knowledge of Children's Hearing Act 2011	4.23 (0.871) [1 to 5]	4.44 (0.74) [2 to 5]	-0.21	p=0.098
Understanding & Knowledge of children's legal assistance regime	3.78 (0.885) [1 to 5]	4.08 (0.849) [2 to 5]	-0.30	p=0.027 (-0.14)
Understanding of ethos of the children's hearing system	3.83 (0.994) [1 to 5]	4.62 (0.714) [1 to 5]	-0.79	p<0.001 (-0.39)
Knowledge of representing clients at children's hearings & court proceedings	4.03 (0.843) [1 to 5]	4.21 (0.789) [2 to 5]	-0.18	p=0.141
A general understanding of child development	3.48 (0.873) [1 to 5]	4.13 (0.934) [1 to 5]	-0.65	p<0.001 (-0.30)
Law relating to children in general	3.8 (0.879) [1 to 5]	4.19 (0.819) [2 to 5]	-0.39	p=0.002 (-0.20)
Evidence & putting forward arguments	3.35 (0.988) [1 to 5]	3.83 (0.969) [1 to 5]	-0.48	p=0.001 (-0.20)
Professional Ethics	3.92 (1.055) [1 to 5]	4.45 (0.788) [2 to 5]	-0.53	p<0.001 (-0.24)
Facilitating effective participation of children	3.88 (0.922) [1 to 5]	4.33 (0.787) [1 to 5]	-0.45	p<0.001 (-0.22)
Communication with children	3.92 (0.944) [1 to 5]	4.39 (0.722) [2 to 5]	-0.47	p<0.001 (-0.23)
The working methods of other professionals involved	3.43 (0.927) [1 to 5]	4.24 (0.872) [1 to 5]	-0.81	p<0.001 (-0.37)

We asked participants in focus groups about the training needed for solicitors; the responses were similar, although there was a more mixed response from solicitors to receiving training on child development, and attachment, etc.:

> *I think we're touching on something that is really quite missing, you don't really get any training on it [child development], it's something that you kind of have to pick up as you go along. (Solicitor, Focus Group 5)*

> *Solicitors who work within the hearings system generally do that for a reason, and the reason is often that they have a particular interest that has lead them to acquire particular experience, or training that fits them for this role. (Solicitor, Focus Group 5)*

> *...that is something where we are weaker on, and we would benefit perhaps maybe from social work training on child development ,or training from a child psychologist...those services, they're better at that, we're better at laws. (Solicitor, Focus Group 6)*

Social workers, panel members, reporters, and key informants were also clear that there was a significant need for solicitor training in child development, communication, attachment and the effects of family contact. Reflecting the responses seen in section 4.d) in relation to the solicitor competencies, participants felt this was a key shortfall in their knowledge and understanding for working in the children's hearings system. Many participants suggested that this training could help improve solicitor practice and made positive suggestions in this regard:

> *...solicitors should be doing the same training [as panel members], they should be listening to what these young people are saying, their experiences of being in a hearing, so that they can understand the impact...what a young person is having to deal with...that would help them focus a little more on the child. (Panel Member, Focus Group 8)*

> *..training in that respect of child development and that might help them decide what cases they can support, or what parts of cases they can support. (Social Worker, Focus Group 7)*

> *They need to understand something about communicating with young people for a start, and the children and young people who come here, most of them have had some sort of learning difficulty, and complex needs...they need to have some understanding of that. (Reporter, Focus Group 1)*

> *Not dissimilar to most other people in the hearing system, child development and attachment, training specifically in relation to child development and contact, and child development and adversity, particularly in relation to chronic neglect. (Key Informant 1)*

We also asked participants in the surveys about the suitability of different training methods for solicitors, and Figure 7 shows the responses received. There are similarities between the pattern of responses from solicitors and other stakeholders to these questions. Other stakeholders consistently rated all of the training methods as more important than did solicitors; however, there were few differences between solicitors and other stakeholders, as shown in Table 10. Only the opinions on inter-professional training and knowledge exams showed statistically significant differences with an effect size over 0.25. In both cases, other stakeholders considered these learning methods to be more appropriate than did solicitors.

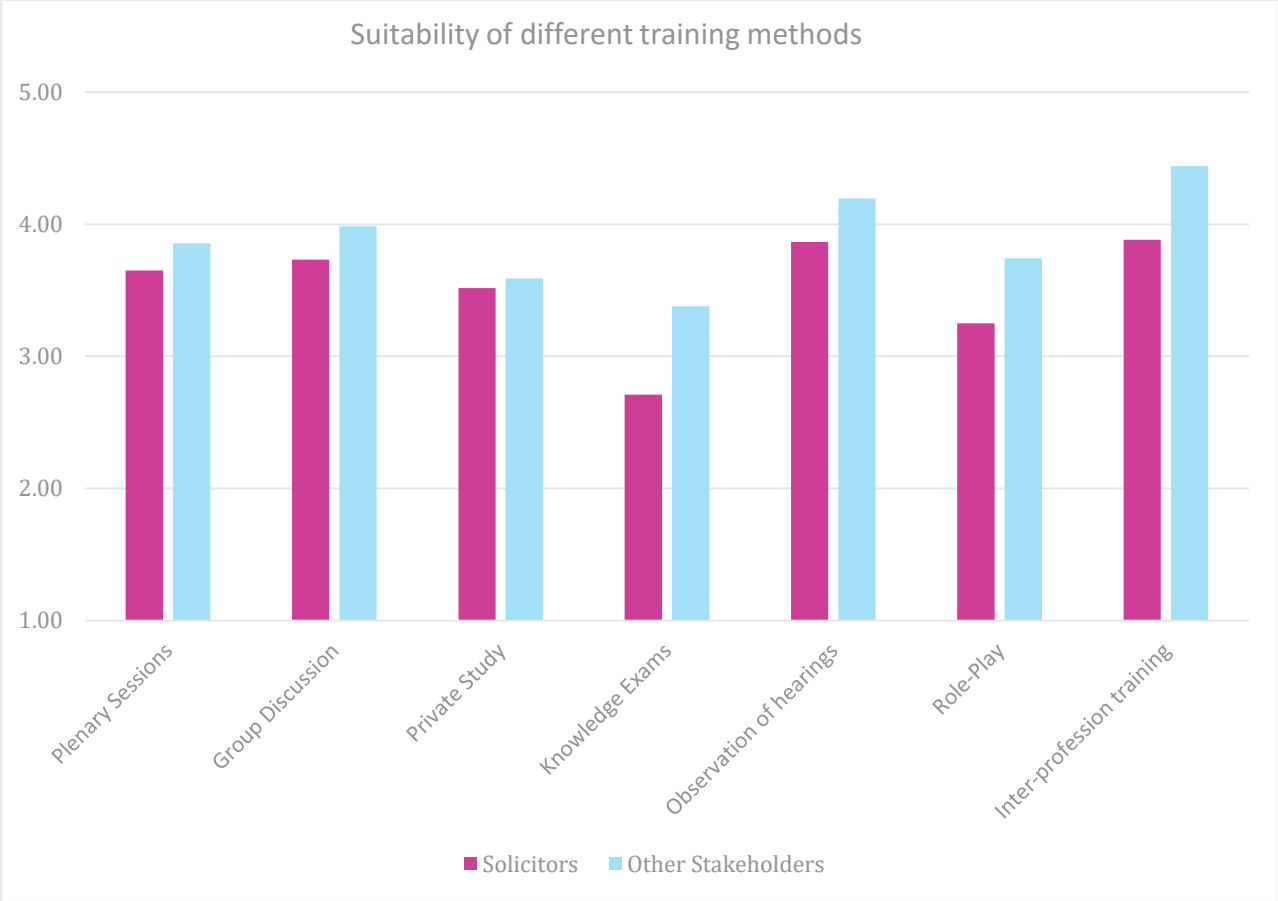

Figure 7: Suitability of different training methods

Table 10: Details of responses on suitability of different training methods

Training method	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Plenary Sessions	3.65 (0.777) [1 to 5]	3.86 (0.732) [1 to 5]	-0.21	p=0.156
Group Discussion	3.73 (0.800) [1 to 5]	3.98 (0.734) [2 to 5]	-0.25	p=0.043 (-0.13)
Private Study	3.52 (0.911) [1 to 5]	3.59 (0.815) [1 to 5]	-0.07	p=0.988
Knowledge Exams	2.71 (0.966) [1 to 5]	3.38 (0.911) [1 to 5]	-0.67	p<0.001 (-0.29)
Observation of Hearings	3.87 (1.033) [1 to 5]	4.19 (0.851) [1 to 5]	-0.32	p=0.023 (-0.14)
Role-Play	3.25 (0.950) [1 to 5]	3.74 (0.875) [1 to 5]	-0.49	p<0.001 (-0.23)
Inter-profession Training	3.88 (0.993) [1 to 5]	4.44 (0.752) [1 to 5]	-0.56	p<0.001 (-0.028)

As Figure 7 and Table 10 show, both solicitors and other stakeholders rated inter-professional training as the most appropriate training methods. The value of joint training of this type was a message that came out from nearly every participant in the focus groups and key informant interviews. The strength of this idea appears to lay in the fact that it is not only solicitors who would benefit from these opportunities; all groups in the system needed to have a greater mutual understanding of roles, this type of training would be invaluable in breaking down some of the tensions between the different groups:

> *I think generally what's lacking is that we do need to come together with panel members and things like that, to work out what way forward for the children's hearing system. (Solicitor, Focus Group 6)*
>
> *…it would be good if there was some sort of interaction, with the lawyers, but at this point in time there doesn't seem to be, it's very much a 'them and us'. (Panel Member, Focus Group 3)*
>
> *…even if they had an understanding of what the panel member training was, or what that included, or what our role is. (Reporter, Focus Group 1)*
>
> *…there has to be a mutual understanding of each other's roles, that's a critical part of the hearings system, there's 5 or 6 key relationships that are interdependent in the hearings system and everyone needs to understand a lot more of each other's role, purpose, limitations, etc. (Key Informant 1)*
>
> *…perhaps networking events and certainly joint training… (Key Informant 2)*
>
> *…I think it helps if you can bring people into a room. I think panel members and solicitors would be the obvious link to make, and social workers. (Key Informant 3)*
>
> *…I'm a great believer in joint training, just getting people in the room face to face, especially people that are going to be working together locally…and I think that would go some way to making things better…so yes, I think that [joint training]'s a great idea, and I would fully support that. (Key Informant 4)*
>
> *…I think that [joint training] sounds an eminently sensible idea. (Key Informant 5)*
>
> *…what I think would really help is bringing them into the fold and including them in the multi-disciplinary groups that inform children's hearings and contribute to the decision-making and care planning for them. (Key Informant 7)*
>
> *…that I think is where having a practice model that allows multi-disciplinary training is something that we are certainly very supportive of. (Key Informant 8)*

We would add a small note of caution, whilst inter-professional training can be very successful, research in a variety of spheres has highlighted that educators must carefully plan these

opportunities and ensure that they are of a high quality (Reeves et al., 2010; Robinson & Cottrell, 2005). Unsuitable inter-professional training may increase Interprofessional divides, and further fracture working relationships (Clark, 2011; Lorente, Hogg, & Ker, 2006).

4.e.ii) Registration

Alongside the topic of solicitor training, participants also frequently raised the registration process for solicitors funded to work in hearings. In particular, other stakeholders were sceptical of whether the registration process was capable of ensuring that solicitors had the requisite skills and abilities to practice effectively in the hearings system. Similarly, some solicitors considered that declaring competencies was a 'tick box exercise':

> *I don't think you should just be able to sign up for legal aid for representing children's hearing matters. I think you should have some sort of acknowledgement of the competencies, or meet the test or something…safeguarders have training, maybe there should be some sort of training. (Reporter, Focus Group 1)*

> *…solicitors are picked because of…there's obviously a criteria there, but who judges that criteria? (Panel Member, Focus Group 8)*

> *…a number of us were quite disappointed that the legal aid board set all these sort of key competencies, and it became more of a tick-box exercise, I don't know of any solicitor who applied and didn't get it. (Solicitor, Focus Group 6)*

Many participants in the focus groups and key informants suggested that mandatory pre-registration training might be a better way of improving the practice and behaviour of solicitors in the hearings:

> *Great idea, great idea, [mandatory multidisciplinary training] yes, and I think, compulsorily family lawyers only (Panel Member. Focus Group 3)*

> *…one of the things might be introducing a qualification, or some kind of competency…where they have to pass exams, it's not just that you turn up and attend. (Key Informant 4)*

> *…I think anybody who comes into the system of children's hearings requires bespoke training before they can actually appear in a hearing, and I'm quite clear that the profession ought to welcome that given that, as this is a different type of tribunal from everything else. (Key Informant 8)*

4.f) Monitoring compliance with requirements

One of the key questions presented to all focus group participants and key informants related to the monitoring of solicitors. The SLAB has a duty to monitor solicitors acting under the legal aid scheme, and to ensure that they are practicing in accordance with the requirements.

4.f.i) Topics suitable for monitoring

We asked participants in the survey to indicate the importance of different topics for quality assurance (again using a five-point scale). Table 11 shows the differences in responses between solicitors and other stakeholders. There are statistically significant differences with small to medium effect sizes. Figure 8 shows the relative importance of the different topics from the perspective of all participants.

Table 11: Importance of topics for quality assurance

Question	Solicitor mean (SD) [range]	Other Professional mean (SD) [range]	Difference (Solicitor – Other Professional)	Significance (effect size)
Interaction with the child	**3.93 (0.848) [1-5]**	4.33 (0.782) [1-5]	- 0.40	p<0.001 (-0.21)
Interaction with other professionals	**3.63 (0.908) [1-5]**	4.09 (0.763) [1-5]	- 0.46	p<0.001 (-0.22)
Adherence to the ethos	**4.00 (0.947) [1-5]**	4.60 (0.621) [2-5]	- 0.60	p<0.001 (-0.32)
Knowledge of the law	**4.30 (0.696) [2-5]**	4.50 (0.615) [2-5]	- 0.20	p=0.042 (-0.12)
Facilitating participation of the child	**4.25 (0.728) [2-5]**	4.43 (0.708) [1-5]	- 0.19	p=0.055
Representation of best interests of the child	**3.66 (1.193) [1-5]**	4.63 (0.705) [1-5]	- 0.97	p<0.001 (-0.43)
Representation of what the child wants	**3.90 (0.781) [2-5]**	4.22 (0.770) [1-5]	- 0.32	p=0.052

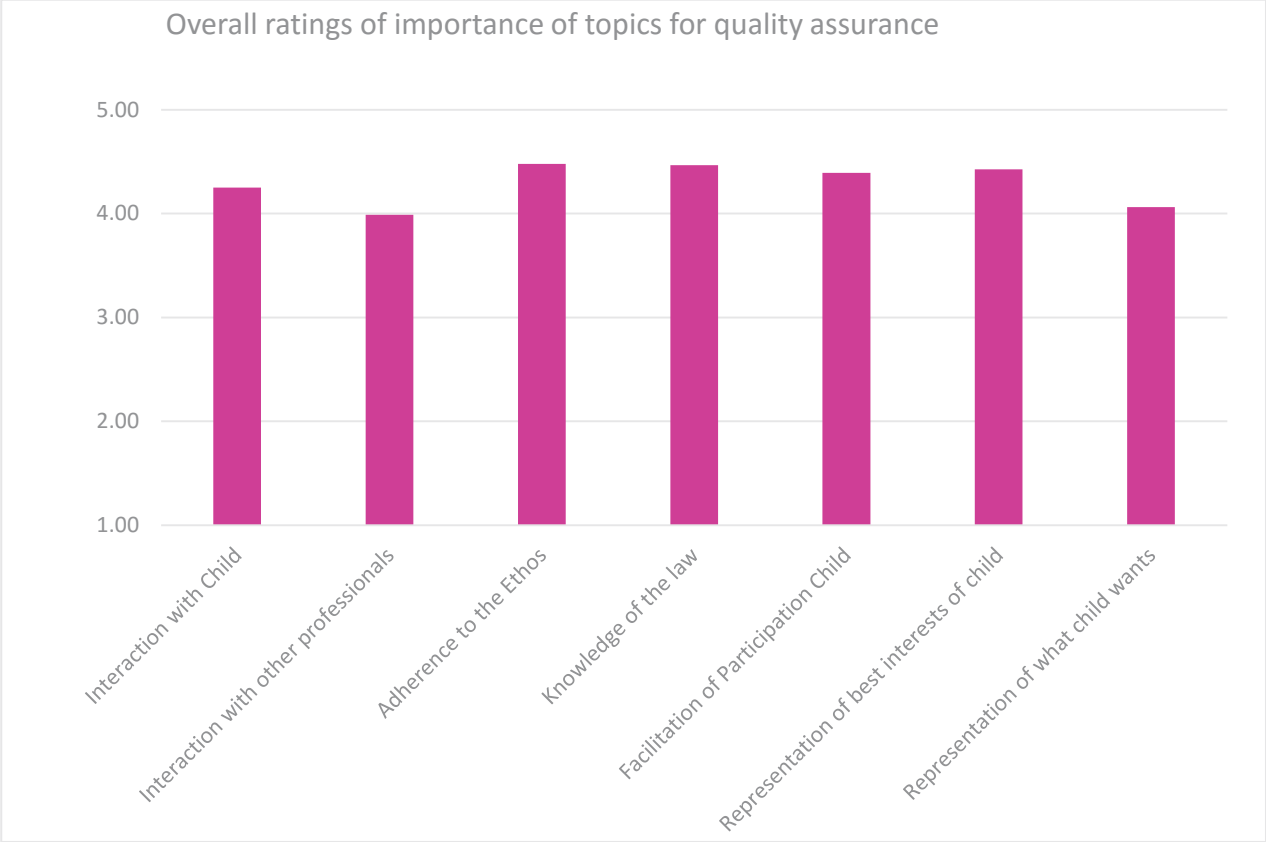

Figure 8: Overall ratings of importance of topics for quality assurance

The participants see all of these topics as important, with all mean scores at 4 or above. However, we note some variability; 'adherence to the ethos of the hearings', and 'knowledge of the law' being ranked as the most important elements for monitoring, while 'representation of the child's best interests', and 'facilitation of participation of the child,' also rank highly. Despite this variability, it is clear that participants generally considered all of these elements to be important in monitoring the performance of solicitors in the hearings process.

We also gave participants the opportunity to add topics that they felt were important to the quality assurance process. Thirty-seven of the 358 participants took this opportunity. Among the suggested additions to monitoring topics, the most common was the impact of hearings or decisions on the child. While some participants clearly saw this as, in part related to solicitor performance, there are many other variables involved and we consider that measuring the impact of solicitors in this regard would be difficult.

What came across clearly in focus groups and interviews was that there was a need for a robust monitoring process that would ensure that solicitors were practicing in a way that was constructive to the hearings process.

4.f.ii) Sources of Feedback

We asked all participants to identify stakeholder groups who they thought should provide feedback on solicitors' performance. As shown in Figure 9, participants felt that most stakeholders might be useful sources of feedback. However, it is notable that fewer than 50% of solicitors considered social workers to be useful sources of feedback, and only 60% considered children to be useful sources. In contrast, more than 75% of others considered each of the sources as potentially useful.

Figure 9: Sources of feedback

When we asked solicitors in focus groups about who might be useful, they expressed reservations about the value of information provided by social workers in particular, but also by panel members and reporters. Some were concerned that feedback would be biased:

> *I don't think getting the feedback from other professionals would be helpful because from their perspective maybe the solicitor wasn't helpful because they were disagreeing with what they wanted to say. (Solicitor, Focus Group 5)*

> *I don't think to be perfectly frank, panel members should be the source of information, because very often panel members take a negative view of solicitors who challenge them and things, so very often there'll be a correlation between the solicitors they don't mind being there because they don't say anything or do anything. (Solicitor, Focus Group 6)*

Solicitors were also clear that it was important to clarify the purpose of the feedback, and identify what criteria would indicate good practice:

> *What would be the criteria for judging the effectiveness, because in many of these cases if you are representing a parent who's at odds with the local authority, then it's important for that parent to have effective representation and legal support, but the right outcome for the child may still be that the local authority's decision-making prevails. Then is your representation a failure? (Solicitor, Focus Group 5)*

Solicitors noted that the SLAB already carried out file reviews (although not yet in relation to children's legal aid), required reports on cases, and in some cases attended court to see the conduct of the solicitor. There was acknowledgement that observation of hearings might be one way to monitor solicitors; however, there was caution about the limitations of observation as a method:

> *Sticking someone into a hearing is not necessarily going to tell you much, unless something is hugely wrong. In peer review, at least they look at your file…I think they would be taking it out of context. (Solicitor, Focus Group 5)*

> *…are they looking at quality assuring the representation of a client at a hearing, because your representation of your client is not just at that hearing, your involvement with the client is wider than going to a hearing. (Solicitor, Focus Group 5)*

All solicitors felt that feedback from clients was important, for example, on how well they felt the solicitor had represented them. Many solicitors felt that this would demonstrate their value more fairly than the views of the other stakeholders in the hearings process:

> *…whoever, should perhaps be approaching our clients and saying to them 'what is it that your solicitor does right and why is it that you need a solicitor?' and that is where the feedback should come from. (Solicitor, Focus Group 6)*

> *I have no difficulty with anyone speaking to my clients and I would encourage the legal aid board to monitor that, and also to monitor our success rate in terms of appeals, and in terms of the results we're getting for the no doubt thousands of pounds that the grounds of referral cases sometimes amount to. (Solicitor, Focus Group 6)*

Solicitors, panel members, and social workers were all quite positive in relation to gathering feedback from reporters. They saw reporters as being in a good position to carry out this role, although some stakeholders expressed concern that existing relationships between solicitors and reporters might influence their perception:

> *I think the reporter is the right person to go to…a reporter understands I think the functions, they understand the panel members quite well, understand their own role,*

many of them are ex-social workers who come from social work backgrounds so they understand that role, because they have to go to court so they understand the legal aspect of things, they seem to have a fairly good grasp of things…and again there's a trust there. (Solicitor, Focus Group 6)

…it could be done by the reporter, they're there to observe, they know the legalities. (Panel Member)

…surely that role would be given to the reporter. I know they are supposed to be impartial and they are there just to provide essentially just an administrative role, but could their role not be expanded to make sure that people behaved appropriately in a hearing? (Social Worker, Focus Group 9)

However, reporters themselves did not agree. They felt that reporters could not, and should not be involved in routine monitoring of solicitors, partly because not all reporters are legally qualified. Reporters felt that they only had a role when there was a significant problem, in which case they said they would raise these issues through the hierarchy of Scottish Children's Reporter Administration, and expect managers to take it forward with SLAB or the Law Society of Scotland. Reporters also did not mention social workers or panel members as sources of useful information.

Feedback would be ok, but I wouldn't want to think I was there to monitor. (Reporter, Focus Group 1)

As long as we're not asked to provide feedback on how good they are at their job, because we're not solicitors. (Reporter, Focus Group 1)

It has to be the law society surely. (Reporter, Focus Group 1)

Other stakeholders saw a greater role for social workers and panel members, in particular the chair of the panel, in addition to reporters for providing feedback to solicitors:

It might be quite interesting to get their [panel members'] views though, because they maybe don't express their views openly, but they're experiencing hearing after hearing after hearing…so their experience of that and how they come to decisions…that could be quite interesting actually. (Social Worker, Focus Group 9)

Figure 10 shows the considerable agreement found in the survey among solicitors and other professionals on how feedback from any of these groups should be collected. Participants considered written feedback to be the most appropriate method for all potential sources except parents and children, where they felt the most appropriate source would be through interviews.

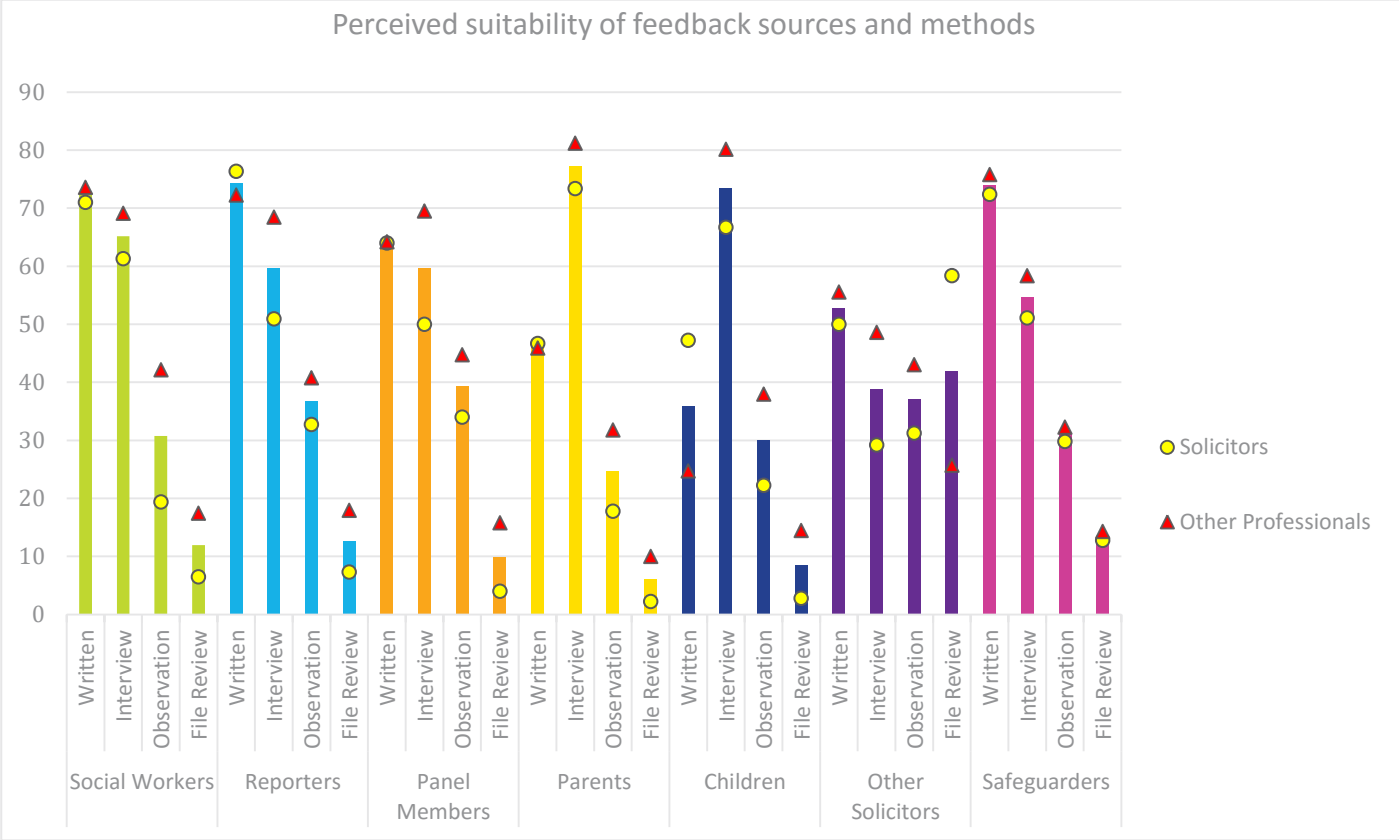

Figure 10: Appropriate methods of feedback

In the focus groups and interviews, participants showed a strong preference for two methods of collecting feedback on solicitors' performance: 'observation' and 'written feedback sheets'. In part, this was because they saw observation as an established mechanism in the hearings system, with almost all other actors in the hearings being subject to some kind of observation.

For example, panel members observe hearings as a part of their training prior to accreditation as a panel member (CHS, 2013b); and, once they are sitting, panel practice advisors conduct regular observations to assess their performance against competencies related to the eight national standards of the children's hearings (CHS, 2013a). Panel members then receive verbal and written feedback on their performance. Reporters are also observed in their initial practice following a period of induction and observation of the role (SCRA, 2015), while social workers are observed both as a part of any joint inspection of services to protect children and young people (Scottish Government, 2006), and as part of more routine case observation by line managers. These observations ensure that minimum standards are maintained, and can be used to provide tailored individual feedback on how to improve in the relevant role.

There was widespread agreement from all the participant groups that observation was as applicable to solicitors as to other professionals:

> *...we have PPAs [Panel Practice Advisors] to be critical of the way we perform, it would be good if we had somebody making a crit[ique] of a solicitor's performance. (Panel Member, Focus Group)*

> *Some observed practice, we're seeing that increasingly among panel members, and chairs, and reporters, and to a lesser degree social workers. So having a little bit of observation of practice; perhaps unannounced observations. (Key Informant 1)*

Most participants suggested the importance of on-going communication amongst all stakeholders. Some suggested these feedback loops would facilitate good practice and provide some monitoring value:

> *...if a solicitor handed us as panel members a wee slip 'please evaluate my performance today' that would be really good. (Panel Member, Focus Group 3)*

> *I think it would be good if we could build into the system a feedback loop from panel members to the legal profession about what kind of impact, positive, negative or otherwise, have you had on the hearing... The only time we ever pass comment would be through an issue sheet where actually there's been a real problem, and if we could get it on a more balanced footing, on a regular basis I think that would be helpful. (Panel Member, Focus Group 8)*

> *...at the end of every hearing, I think the panel ought to score each of the individuals who were in the panel on an informal basis about how they were, and attempt to give informal feedback. (Key Informant 8)*

> *There could easily be feedback templates present in children's hearings centres, to be completed by anyone who attends, or the chair to fill something in about the contribution of the legal rep in contributing to the decision for the child. (Key Informant 7)*

Many participants indicated the importance of feedback not being limited to negative aspects of practice; they felt that positive feedback could be used to promote good practice and encourage positive behaviours.

There was an acceptance that although individual level information would be useful, it would be more difficult to gather or use than aggregate impressions. Participants in some focus groups seemed particularly wary of providing feedback on individual solicitor's performance, while solicitors were concerned that lack of perspective or a conflict between roles may mean that any feedback might be flawed or biased.

Participants generally welcomed the idea of aggregate thematic feedback. They saw it as having a value in determining how solicitors were contributing to hearings in general, highlighting topics that could be the focus of CPD events, or providing the basis on which more in-depth investigations might be carried out if a pattern of concerning practice was observed:

> *I think CHS would be able to get general views from panel members about topics of concern, or topics to discuss, I don't think we would be able to do it in relation to individual solicitors. (Key Informant 5)*

> *...the individual needs to be accountable, and the funder of that needs to be accountable, so I don't think you can avoid individual accountability for the responsibilities and for demonstrating that. But, I also think thematic feedback is also useful in terms of identifying particular discrepancies in practice, or particular trends in practice behaviours, in relation to children's hearings areas or in relation to particular firms. (Key Informant 7)*

> *...where one saw patterns emerging, where a particular solicitor, or particular firm of solicitors, or particular group of solicitors, was coming up more frequently than others as having fallen below a standard, that a consistent number of different panels was saying they had, the legal aid board then decides that it would perhaps want to monitor the activity of that solicitor. (Key Informant 8)*

5) Other findings

5.a) Appeals and process

Many panel members, social workers, and reporters indicated that there was a significant problem relating to the frequency with which solicitors, in particular a small number of very active solicitors, appealed decisions and their motivation to do this. However, this does not seem to be supported by the available data; following a request to the SCRA, we were provided with a 12-year analysis of appeals, part of which is shown in Figure 11[1]. This shows that there is a general upward trend in both the number of appeals and success rate, although the rise in numbers has slowed in recent years. There has not been a noticeable increase in either appeal rates or appeal success rates since the introduction of the 2011 Act. The overall appeal rate for children's hearings in 2014/15 was 2.8%.

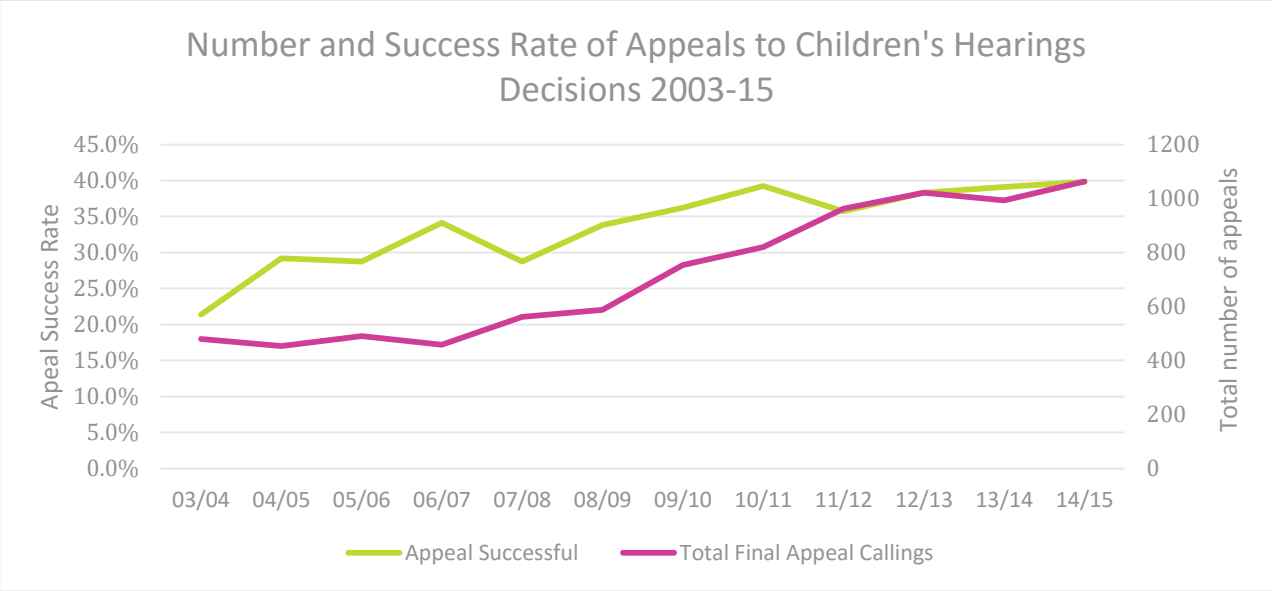

Figure 11: Number and Success Rate of Appeals to Children's Hearing Decisions 2003-2015

[1] These data come from live records, so may change, and may not match published annual data. These numbers relate to specific children/young people involved, and so multiple outcomes of the same kind for one child or young person will only count once. We are grateful to the Scottish Children's Reporters Administration for their assistance in providing this information.

The SLAB are currently exploring appeals pre and post the 2011 Act; their analysis confirms the SCRA data in suggesting that there has been a very slight rise in numbers of appeals. In Glasgow Sheriff Court legal aid was granted to lodge an appeal in 293 cases during 2014/15, this is only slightly higher than the annual average between April 2010 and March 2013, across this time the average was 283 appeals. The similarity of these figures is perhaps surprising, considering that the 2011 Act extended the right to appeal from children and relevant persons to include non-deemed relevant persons and (for one category of appeal) individuals.

Despite the evidence that appeal rates have not changed, participants, other than solicitors, expressed clear concern that frequent appeals introduce drift and delay to the care plan for children and young people, which had negative consequences for both the young people and their families:

> *…that's actually a conflict isn't it, because people actually want peaceful solutions…they know that if they can span that out for an extra couple of months in a case like this, in a children's panel case…[that's an] extra piece of business. (Panel Member, Focus Group 3)*

> *…that's been said actually sometimes before you even sit down in a panel, 'this will be appealed', regardless of the outcome, 'this will be appealed' before the decision's even been made. (Social Worker, Focus Group 9)*

Some solicitors also recognised that there might seem to be a large number of appeals, but noted that the majority of appeals were successful. Some suggested that this reflected issues related to procedural quality of some hearings including the sufficiency of the reasons given for decisions. Above all, they were clear that the panel had significant legal powers and should be accountable:

> *I think at a really basic level, I don't know how many times I've had to remind a panel there is no permanence order in place at the moment…some panels almost take it as a given. (Solicitor, Focus group 6)*

> *…we appeal about 50% of decisions at least, and we are successful with I think at least 80% of them, maybe more[2]. Quite often, we find things wrong with panel decisions. That*

[2] It has not been possible to establish how accurate or representative this example is. It would be necessary to establish the appeal (success) rates for hearings where a solicitor was present. This information was not available at the time of writing.

cannot be a good system, if that amount of times it's being challenged. (Solicitor, Focus Group 6)

Some participants described a small number of examples of appeals or requests for further hearings that they felt solicitors had lodged without obvious instruction from a client. One social worker also expressed some concern about one hearing where a solicitor had attended in the absence of their client.

It is not possible from our findings to determine whether or not 'unnecessary' appeals occur, or even to identify what 'unnecessary' might be in these circumstances, this is likely to be different for different people. However, our findings suggest that the issue of appeals is contentious, despite the fact that there seems to have been no recent rise in rates. Further information about rates of appeal and appeal successes (nationally and regionally) may help to address some of these issues; these would need consideration alongside other relevant background information.

5.b) Solicitor motivation

Some participants across all groups suggested that the availability of public funding was an important motivator for some solicitors to engage with work in the hearings system. In a small number of cases, participants expressed a view that payment systems created a perverse incentive for solicitors to prolong the process for as long as possible to maximise earnings. However, this study was not set up to establish whether payments were driving changes in behaviour, or whether payment processes were causing problems for the hearings system. Further investigation would be required to explore this.

5.c) Reporting instances of localised poor practice

There was some suggestion there may be pockets of poor solicitor practice that others at the hearing tend to take note of. It is useful to consider how a monitoring system might be able to identify practice trends within a local area.

Throughout the focus groups, we asked other stakeholders how they responded when they saw instances of poor practice from a solicitor. In general, the response was to pass the information on to more senior members of their hierarchy, or to the reporter:

We have raised complaints, we've taken them to senior management, and they've obviously taken that on board and dealt with it, I'm not quite sure how. (Social Worker, Focus Group 9)

Participants did not report finding out the outcome or impact of the issues they had raised. There was little knowledge of complaint mechanisms to any formal body, and key informants suggested that even where professionals understood these procedures, submitting a complaint could be a resource-intensive process that was unlikely to yield any results:

> *[complaint procedures are] also not well known, amongst the professionals, but even when people get to know about it, there is time involved in making a complaint…there's my time, there's managers time, because it goes to managers…so there's a whole range of people's time who get sucked into it. (Key Informant 4)*

> *…getting a complaint to the law society is a bit like getting 'a camel through the eye of a needle', getting one out the other end of it is even tougher. (Key Informant 8)*

These examples seem to suggest that all those in the hearings system need to be empowered to resolve local issues and develop better working relationships, as well as receive greater clarity about how to raise concerns or address problems when required.

5.d) Panel members

Many of the focus group participants mentioned the importance of the panel chairperson, to both manage the opportunities that solicitors and others had to present their cases, and to 'pull-up' anyone exhibiting inappropriate behaviours. Participants felt that this could be challenging, suggesting that many panel members feel intimidated by solicitors, and can become apprehensive or defensive:

> *I do think that panel members are often quite anxious about solicitors being present and sometimes that can modify their approach and they can become more formal than they would otherwise be, because you are present. (Solicitor, Focus Group 5)*

> *I think they then have at the back of their mind this fear of being an appeal of their decision and reasons…when you ask them to give their reasons, they find it very hard to repeat something that is a very solid reason, but has been challenged in a very aggressive way. (Panel Member, Focus Group 8)*

> *… they've been trained within the ethos of the child welfare type children's hearing, not trained to have to come in and manage adversarial behaviour from solicitors and having to deal with almost like a court type situation. (Social Worker, Focus Group 9)*

Panel members' responses to the survey seem to support this view:

> *More mindful of possible appeal points. (Panel Member, Survey Response)*

> *More careful of how I respond. (Panel Member, Survey Response)*

A number of participants suggested that some panel members found certain demands of the hearings systems to be challenging:

> *...very often you find that they're very confused about what they are meant to be doing. (Solicitor, Focus Group 6)*

> *... the complexity and seriousness of some of the cases that come before lay panel members, they can struggle with. (Solicitor, Focus Group 5)*

> *...it's when you've got cases where there are real decisions being made about permanency and contact, that it is falling down, and they are simply not equipped, the panel members are not equipped, and it's unfair to ask them to make decisions about that. As professionals, many of whom have many years of experience in this line of work, who are highly qualified, still struggle with these decisions...So if professionals like that struggle with it, no disrespect to panel members at all, but they're not equipped, they don't have the experience and the knowledge to be making a decision like that. (Key Informant 4)*

It is not possible from this study to say to what extent these perceptions reflect a current or problematic situation, or to say with any certainty what might ameliorate these issues. However, this finding does suggest there may be a further support or training need for panel members and that there is a need for further research.

5.e) Social workers

Similarly, there was a general opinion among various groups that the presence of solicitors was challenging to social workers; we present examples throughout the report.

Some participants suggested that further training focused on legal issues or provision of more legal support for social workers may be helpful. It is likely that a combination of responses will be required to improve the situation. Some things may focus on social workers, such as additional training in legal issues or presentation of reports. Some responses may focus on solicitors, such as further education about roles within the hearings system, or additional registration, or monitoring requirements. Other remedies could have a particular focus on the solicitors-social worker relationship, such as joint involvement in inter-professional training and events.

5.f) Reporters

Reporters suggested that the introduction of solicitors had not changed their role beyond changes that were already on-going. Some reporters indicated that they felt distanced from the hearing, and operated a 'hands off' approach to their role. However, they suggested that they would

intervene under certain circumstances, for example, to ensure that everybody at the hearing had a voice, if things were going badly, or if key procedures were not followed. They also indicated that they did not feel that it was their role to intervene in the panel beyond what was necessary, and that it was not their place to give legal advice or opinion:

> *We have quite a limited role in hearings…we very much have a watching brief…I don't think we can offer any strong legal opinions. (Reporter, Focus Group 2)*

> *I don't think it makes a difference, because our role had been refined and defined a bit more just before solicitors coming on board like that…I felt we were in a different sort of role at that point. (Reporter, Focus Group 1)*

> *Generally, there is less of a need for me to intervene to state a view if a decision may be made which would be successfully appealed. Also, there is less need for me to intervene when child/parent is upset, and/or storms out of the hearing. (Reporter, survey response to how solicitor presence affects how they act)*

> *More legalistic and stiffer in approach. (Reporter survey response to how solicitor presence affects how they act)*

As above, it is not possible from this study to determine whether these reporter's feelings about their role are representative of a wider view, or are problematic in any way. Further investigation would be needed to ascertain this.

6) Recommendations and discussion

6.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. We suggest that there is a need for relevant stakeholders, 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 which solicitor training items would have most impact on improving children's hearings. Explore the impact of making some training items compulsory.
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. In due course, this training might usefully become part of any compulsory training that is developed, 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.

6.a.i) 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 (see section 4.b).

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, along with coaching, or mentoring, may be useful within the context of CPD, particularly when solicitors first undertake work in hearings. 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.

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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.

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