Recording of Children and Young People’s Views in Contact Decision-making

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Abstract

Context: Children and young people have a right for their views to be heard and considered in decisions affecting their welfare. Fulfilment of this right may be evidenced through views being represented in documents related to the decision. Methods: This paper reports findings of a study which examined the records of 160 children who were looked after in Scotland from 2013-2017. This included 1,200 individual Hearings, which made a total of 2,003 contact decisions. Data on contact decisions, views, and recommendations were extracted and analysed. Results: Clear wishes of children are recorded in relation to just 12% of contact decisions, and there is no recording of views in 64% of contact decisions. Where the child is aged over 12, these figures rise to clear views being recorded in 22% of contact decisions, with no recording of views in 42% of contact decisions. Implications: These findings are concerning in relation to the value placed on the views of children and young people in decisions affecting their lives. There are implications for the information available to decision makers, social work practice, and for policy and research relating to engagement and participation of children and young people in decisions affecting their lives.

Keywords
Children’s Rights; Child Welfare; Decision-making; Looked after children; Human Rights

Subject Categories
Looked After Children
Introduction

Children and young people have a right to express their views and have them heard in decisions relating to their care. This right is expressed in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), which has been ratified by all but two countries worldwide (the United States and Somalia) (UNCRC, 1990). Accordingly, the vast majority of children and young people worldwide enjoy the rights enshrined within it. The right of children and young people to express views and have them heard is important whenever decisions are made about their lives, and limitations on the contact they may enjoy with family and friends carry particular weight (Sen and Broadhurst, 2011; Larkins et al., 2015).

Frequently, and increasingly, these decisions are taken outside of courtrooms, in settings that seek to be less formal and more discursive and collaborative (Sinden, 1999; Hadfield, 2004). This is true both within the UK (Tunnard et al., 2016; Broadhurst et al., 2018) and worldwide (Goldis, 2014; Thomson et al., 2017). The representation of children and young people’s views in these forums is critical to the protection of their rights under national and international law.

From this point on, the terms ‘child’ and ‘children’ are used to refer to children and young people under the age of 18.

The children’s hearings system

In Scotland, decisions regarding regulation of contact between looked after children (those with statutory intervention in their lives, whether resident at home or in alternative care provision) and others are largely made by Children’s Hearings. These Hearings are legal tribunals composed of volunteer panel members tasked with making decisions in the best interests of the children they see (Norrie, 2013). Established in 1971 by the Social Work (Scotland) Act 1968, following the recommendations of the 1964 Kilbrandon Report, the Children’s Hearings System focuses exclusively on the welfare needs of the child (McDiarmid, 2005). To this end, the Hearings System is tasked with
decision-making for children under the age of 18 referred either due to welfare concerns or on
grounds of offending.

Children who are deemed by Hearings to require compulsory intervention in their lives are (most
commonly) placed on a Compulsory Supervision Order (CSO). These must be reviewed at least every
12 months, and Hearings have a duty to consider including a contact direction in the Order. Contact
directions are provisions that regulate contact between the child in question and a specified
individual or group of individuals (s.29(A) and s.82(3)(g) Children’s Hearings (Scotland) Act, 2011).
Contact directions are not limited to parents or family members, and may incorporate partners,
friends of the family, or others. Each Panel Member in the Hearing must state their decisions and
reasons in relation to the contact direction. The Hearing Chair must then confirm and explain the
decision to those in attendance (which will generally include the child and their parents), and state
the reasons for that decision (s.61(2)(d), and s.61(3)(i) and (ii), Children’s Hearings (Scotland) Act

Guidance from the United Nations Committee on the Rights of the Child supports these rules of
procedure, emphasising the importance of providing feedback on how a child’s views or wishes have
influenced the decision. Since the child enjoys the right that her or his views are given due weight,
the decision maker has to inform the child of the outcome of the process and explain how her or his
views were considered. ‘[This] feedback is a guarantee that the views of the child are not only heard
as a formality, but are taken seriously’ (Committee on the Rights of the Child, 2009, p. 11).

Accordingly, the views of the children seen by the Children’s Hearings are of great importance in
establishing if contact should take place with a certain person, for what duration, and under what
conditions (e.g. supervised or unsupervised, at home or in a contact centre). The views of children
will not be the sole source of information used in decision-making relating to contact. Information
from the social work report(s), other reports presented to the Hearing, and the views, wishes and
opinions of others in the Hearing will all be considered. Indeed, the views of children may not be
reflected in the decision made, or the reasons for this decision. However their contribution to the discussion and decision-making process is of great importance.

The importance of children’s views

The importance of involving children and young people in the decision-making process is also reflected in research. Morrison et al. (2011) recognised an unmet need of children to be involved in decision-making about contact, while Fitzgerald and Graham (2011) noted that to engage in decision-making about contact, children require not only the opportunity to be listened to, but also the time and space to think through and discuss their options regarding contact. They found that children were often not afforded this opportunity in decision-making processes.

Contact is of huge importance to children involved in welfare proceedings. Indeed, Winter (2011) went so far as to say that ‘[w]ithin a rights-based approach, it is not possible to come to a decision about a child’s best interests without consulting the child’ (p. 401). Children in out of home care remain concerned about families and spend a lot of time thinking and worrying about them (Masson, 1997; Moyers et al., 2006; Sen and Broadhurst, 2011; Schofield et al., 2012). Indeed, Larkins et al. found that contact was ‘a major preoccupation for looked after children and young people and for their parents’ (Larkins et al., 2015, p. 310), also noting that ‘[a]chieving satisfaction with contact involves a delicate balance that does not counter pose children’s rights to participation or contact against rights to safety or stability, but which recognises that children’s, young people’s and parents’ involvement in decision making can lead to safety and stability over time’ (Larkins et al., 2015, p. 310).

Challenges in contact decision-making

Decisions around contact are important and difficult for a variety of reasons. Firstly, contact decisions have the potential for significant impact on the lives of the children to whom they apply, and their families and carers. Contact decisions are recognised as potentially impacting on Article 9
of the UNCRC, which states a child’s right ‘to maintain personal relations and direct contact with both parents on a regular basis’ (UNCRC, 1990, Art. 9(3)), and Article 8 of the European Convention on Human Rights (ECHR), which states an individual’s right to private and family life (ECHR, 1953, Art. 8). Indeed, this latter right was the subject of the Lady Wise decision in ABC v Court Reporter in 2018, which ruled that a sibling of a child subject to a CSO could have their Article 8 rights infringed by a contact provision (ABC v Principal Reporter, 2018). Secondly, establishing what level of contact is in the best interests of the child is a significant challenge.

It has often been noted that determining if contact overall is beneficial or harmful is a false challenge, and that rather we need to consider ‘for what children, in which circumstances and by which means, contact should be promoted or ended’ (Selwyn, 2004, p. 162). To this end it is important to recognise that professional assessments of contact are often challenging to conduct. As Treseliotis (2010) and Taplin and Mattick (2014) recognise, judgements of quality of contact lack clear and empirically based guidelines, or standardised tests, and that being observed in contact is itself an artificial situation, with little clarity around what is expected of any participant. Nonetheless, Saini et al. (2012) highlight that contact plays a significant role in the assessment of parents’ ability to care for their children and in the possible increase, reduction or cessation of contact.

Aside from professional assessments, the other clear sources of information available to determine the benefit or detriment of contact are reports from carers, parents, and children themselves. Unfortunately, as noted by Bullen et al. (2015), carer reports of children’s reactions to contact are not necessarily accurate, as ‘the interpretation of these reactions is complex: children may be distressed at separation from the parents they wish to spend more time with, or they may be distressed about seeing them’ (Bullen et al., 2015, p. 12). Of course, this interpretive challenge also applies to family members just as much as foster or residential carers (Morrison et al., 2011).
Therefore, the one source of information that may accurately reflect the costs and benefits of contact experienced by the child, is the child themselves.

Bullen et al. (2015) highlighted the range of considerations in looking at the purpose of contact for a child. These included

‘...cultural considerations, the developmental stage of the child, the safety of the child and risk of further abuse, the impact upon children, carers and parents, the pre-existing nature of the relationship between parents and their children, and when age appropriate, children’s views on contact’ (Bullen et al., 2015, p. 15).

However while Bullen et al. use the language of being ‘age appropriate’, interpretations of the ECHR and the UN CRC have focused more on the ability of children to engage in the process. The UN CRC refers to ‘the child who is capable of forming his or her own views’ (UNCRC, 1990, Art. 12), and references the ‘...evolving capacity of the child’ (UNCRC, 1990, Art. 14). This approach is taken further by Daly (2018), when she argues that the right to be heard should be replaced with an ‘autonomy principle’ for children. In accordance with this interpretation, there is no minimum ‘cut-off’ age for participation in a Children’s Hearing, it is the ability of the child to form a view and express it that is of importance.

Despite the importance of children’s views, there has been little research looking at the extent to which they are recorded and presented to decision makers when decisions are being made about the child’s life. Previous research has looked at children’s engagement within decision-making, but has generally not extended to looking at the reports presented to decision makers (Hallett and Murray, 1999; Murray and Hallett, 2000; Bilson and White, 2005; Emerson and Lloyd, 2014).

The Study

This paper reports on findings from research looking at contact decisions by Children’s Hearings in Scotland. Contact directions are one of the more contentious areas of Children’s Hearings decision-
making (Porter et al., 2016; 2019), but there has been little research into the substance of the contact decisions made. Research conducted for the Scottish Children's Reporter Administration (SCRA) (Henderson et al., 2015) noted that concern was raised by social workers in relation to permanence processes, where contact decisions were thought to introduce drift and delay into permanence journeys for children. This phenomenon is also reported to be exacerbated by the involvement of legal representation on behalf of parents (Porter et al., 2016).

In response to this need, and in partnership with the SCRA, this study explored contact decisions by Children’s Hearings. This research included an investigation into the extent of inclusion of children’s and contactee’s views relating to contact in the paperwork created prior to, and in the reporting of, Hearings.

Methodology

A descriptive research design was selected as the objective of the research was to describe the current practice, rather than test hypotheses. Primarily quantitative methods were used, although some qualitative methods were used in the assessment of the representation of views of children and young people.

Sampling

The sample of 160 children was drawn equally from four of the 32 local authority areas in Scotland. These four localities were selected to reflect rural and urban areas and were geographically spread around Scotland to ensure greater representation. Cases were selected within each of these four areas by identifying all children who had had a Hearing in 2016/17 and removing those who were listed as being in secure accommodation. This group was excluded due to the very low numbers of children in secure care (<1% of looked after children in Scotland) (SCRA, 2018) and to ensure anonymity. The remaining cases were then randomised, and the files of each child were accessed in sequence, noting whether they had a substantive contact direction made, amended, continued, or removed in the period 2016/17. Once 30 cases had been identified in each locality, their paperwork
was analysed as described below. Once all 120 cases had been coded, the age and sex profiles of the sample were compared to the national looked after population profile for these attributes. The same procedure was then used to gather an additional 10 cases from each locality, with additional purposeful sampling to ensure that the sample reflected the national profile. Table 1 shows the number of cases included and excluded (due to lack of a contact direction in 2016/17, or because they did not have the desired age or sex in the purposeful sampling process).

Table 1: Number of cases included and excluded in sample selection

<table>
<thead>
<tr>
<th></th>
<th>Area A</th>
<th>Area B</th>
<th>Area C</th>
<th>Area D</th>
<th>Overall</th>
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</thead>
<tbody>
<tr>
<td>Total cases considered for inclusion</td>
<td>145</td>
<td>120</td>
<td>113</td>
<td>109</td>
<td>487</td>
</tr>
<tr>
<td>Excluded (purposeful sampling)</td>
<td>59</td>
<td>67</td>
<td>37</td>
<td>40</td>
<td>203</td>
</tr>
<tr>
<td>Excluded (no contact direction)</td>
<td>46</td>
<td>13</td>
<td>36</td>
<td>29</td>
<td>124</td>
</tr>
<tr>
<td>Included</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>160</td>
</tr>
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</table>

The sample

Figure 1 shows the sex split for the sample overall and the national looked after population, Figure 2 shows the age range of the sample compared to the national looked after population, while Figure 3 shows the residential status of children/young people in the sample compared to the national looked after profile. The sex split is similar between the sample and national population, with the sample being over-representative of females (49%) compared to the national average (45%). The age profile of the sample and the national population is also very similar, with a slight over-representation of 0-4 year olds (3.8% higher incidence) in the sample compared to the national population, and corresponding under-representation (4% lower incidence) of 10-14 year olds.
As can be seen in Figure 3, the proportion of the sample and population in residential and foster care settings is very similar, however there is a large over-representation of those in kinship care, compared to those residing at home (SCRA, 2018).

Data collection and analysis

Once a case was selected for inclusion in the study, a ‘Form A’ was completed which gathered the sex and ethnicity of the child (if recorded), the age of the child at 1st January 2016 (in years and months), as well as the sampling area and dates of all the Hearings with records in the SCRA Case Management System (CMS). Once this was completed, a ‘Form B’ was completed for each individual Hearing, which collected detailed information on each hearing including the attendees, residential status, views and wishes, recommendations made, and decisions made.

Views were coded as either ‘Clear’, ‘Unclear’ or ‘Not Recorded’ as follows (all example texts and names are exemplars created by the author from experience; they are not quotes or summaries from case files).

‘Clear’: Text that presented the child’s views in relation to contact either in specific frequencies and durations, or as desiring an increase, decrease or no change from previous contact arrangements. The following texts would all be classified as ‘Clear’: ‘Jane would like to see her father more often’; ‘Amir says that contact is about right at the moment’; ‘I don’t want to have to go to my mum’s house every weekend’.

‘Unclear’: Text that referenced the child’s views but did not indicate a desired increase, decrease or no change in the frequency or duration of contact. The following texts would all be classified as ‘Unclear’: ‘Donald says he enjoys contact with his aunt’; ‘Siobhan says that it would be better if her grandmother could take her out of the house during contact’; ‘I like contact with uncle John, but it would be better if my sister was there’.
‘Not Recorded’: When no text could be found which conveyed views relating to contact with the specific contactee.

Data Sources

Data were extracted from all forms, reports, letters, or other records held on the SCRA CMS. This includes all social work and multi-agency reports prepared for the Hearings, all reports compiled by safeguarders, health workers, teachers, or other professionals and submitted to the Hearing, as well as any ‘Having your say’ forms or other submissions from children. It also includes the ‘Report of Proceedings’, which is completed by the Panel and records the decision(s) taken and the reasons for making those decisions. This collection of sources represents all the information that is made available to a panel member prior to the Hearing. The term ‘Hearing paperwork’ is used to refer collectively to these records contained within the SCRA CMS.

All data were copied manually onto paper versions of the coding sheets from the digital records contained on the SCRA CMS. This was due to an inbuilt restriction on copying text directly from the CMS. Care was taken that no personally identifiable information was extracted. These data were then entered into an excel file on SCRA computers and premises, and a final check was conducted to ensure that there was no personally identifiable information included in the spreadsheets. These excel files were then securely transferred to secure University of Strathclyde servers.

Data analysis

Once on secure University of Strathclyde servers, the data were imported into SPSS 24 for analysis. Prior to analysis the data were cleaned and checked, and a number of proxy variables created to aid analysis. This paper reports primarily on descriptive statistics, which were used to summarise the sample demographics and show frequencies of a variety of phenomena of interest, such as the representation of views in paperwork, or the attendance of the child at Hearings.

A further set of comparisons were also conducted within the sample using chi-square tests to compare sub-groups on categorical variables. Where differences between groups were examined on
continuous variables, non-parametric (Mann-Whitney U) tests for paired comparisons were used to
reflect the non-normal distribution of the variables. These tests were conducted in order to probe
for differences between groupings. Where significant differences were found, effect sizes are cited
(Cramer’s V for chi-square tests, and Cohen’s r for Mann-Whitney U tests) (Howell, 2012).

Ethics

Ethical approval for the study was obtained from the SCRA Ethics Committee in March 2017.
Consistent with all access to the SCRA CMS, the researcher was checked under the Protection of
Vulnerable Groups Scheme as being suitable to carry out work with vulnerable groups before
receiving access to information ("The Protecting Vulnerable Groups (PVG) scheme", 2018). All
information was anonymised as it was extracted from the CMS. No names were extracted, with
individuals identified by their relationship to the child. Accordingly, no personal or personally
identifiable information was included in the analysis.

All physical data were kept in secure storage in SCRA head offices in Stirling. Electronic records were
kept on secured drives on SCRA computers, with access only available to the researchers, prior to
transfer to University servers.

Limitations

It is important to note that about the analysis focused on recorded views. While there is a
requirement for the views of the child to be included in decision-making, it is not specified that this
must include their views relating to contact, nor that they must be recorded (Scottish Government,
2007). As a Hearing should take place in ‘an atmosphere of full, free and unhurried discussion’
(Kilbrandon, 1964, p. 50) all parties should be invited to contribute and, in the course of this
discussion, information which is not contained in the Hearing paperwork may be presented. The
Hearing must give the child an opportunity to indicate whether they wish to express views and the
opportunity to express them. Thus, although there may be no record of the child’s views in relation
to a contact direction, this does not mean that they were not asked for a view, nor that they did not give one.

The study is further limited by the depth of qualitative analysis that was possible. Text excerpts were not extracted from the case files, and so further qualitative analysis of the content, style, or tone of references to children’s views and wishes was not possible. Practical considerations regarding the time taken for data extraction meant that other relevant details, such as any records of how children and young people were engaged or the number of contacts between the report writer and child, were not recorded.

Findings

Recording of views overall

Overall, the views of children in relation to contact directions were poorly recorded in the paperwork of Hearings. As can be seen in Figure 4, the child’s views were not recorded at all in relation to 64% of contact directions, while in an additional 24% the recorded views were unclear, leaving just 12% of contact directions with the child or young person’s views clearly recorded in Hearing paperwork. Contactees have the same proportion of views recorded unclearly, but have their views clearly recorded more frequently (21%), and their views are not recorded correspondingly less frequently (55%) in Hearing paperwork.

Contact directions were predominantly made in relation to people who were either parents, or judged to have had a significant involvement in the upbringing of the child or young person. Such individuals are termed ‘relevant persons’ in the context of the Children’s Hearings (Children’s Hearings (Scotland) Act 2011). Whether views were not being recorded in relation to other contactees who might have had a less significant connection to the child, was also examined. As shown in Figure 5, there is a significant difference in the recording of children and young person’s wishes in Hearing paperwork dependent on whether the contactee is a relevant person or not, but this has a very low effect size ($\chi^2=16.390, p<0.001, \text{Cramer’s } V=0.090$).
Another reason for a difference in recording of children’s wishes might be their presence or absence in the Hearing itself (children were present in 60% of Hearings included in the sample). This is less likely to affect social work reports, which need to be written prior to any excusal or otherwise of the child, and should include the views of the child (Scottish Government, 2007). However, the presence of the child may affect the recording of the views of the child in the reasons for decisions, while the absence of the child might make it more likely that a ‘Having your say’ form (a child friendly form often used to help children to present their views) or equivalent might be completed. When we look at the recording in Hearing paperwork, we find that views and wishes are represented less frequently when the child is absent from the Hearing ($X^2=70.118, p<0.001, \text{Cramer's } V=0.187$).

Recording of views by age

In many cases children may be unable to form or express views on contact directions. We should be cautious in applying age cut-offs to determine a child’s capacity to form or express views (Daly, 2018). However, given the lack of data available regarding a child’s ability to form and express views, age provides a reasonable proxy measure to examine whether the lack of recording of views is likely to be due to considerations of the (in)ability of the child. As can be seen from Figure 6, there is a clear effect of age with views being recorded by social workers or panel members in Hearing paperwork more frequently and with greater clarity as the age of the child increases. Even at the highest rates of recording, only about one in three children have clear views recorded in Hearing paperwork. Further, at all ages, at least four in ten children have no views recorded in Hearing paperwork at all.

Written inputs from children

Just 171 of 1,786 contact decisions (10%) (in 43 (27%) children’s case files) were made with a written input to the Hearing by the child. This is a slightly higher rate than for the population overall (8%) (SCRA, 2018). Even where such written input was provided, just 28% of contact directions had a clear recorded view of the child. Thirty six percent of contact directions with a written input from the child
or young person had no associated view recorded at all, with a further 36% of contact directions having unclear associated views of the child.

As might be expected, given the written nature of the input, just 2% of these forms came from children aged five or under. Children aged six to 11 contributed 75% of the written inputs from children and young people, with 24% coming from those aged 12 or above.

Wishes and Decisions

Looking at the decisions that are made where a child has a clear wish recorded in Hearing paperwork (N=123), we find that the majority of decisions accord at least to some extent with the child’s wishes, as can be seen in Figure 7. Unfortunately, of the 1,786 contact directions examined in this study, just 123 (6%) of the directions had sufficiently detailed wishes and decisions recorded in Hearing paperwork to enable the comparison to be made. This reflects the overall paucity of accurate records of children’s wishes in Hearing paperwork.

Discussion

There is no ambiguity regarding the importance of soliciting, hearing, and considering the views of children in decisions about their lives. The UNCRC clearly articulates these duties in Article 12, stating that states must

‘assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child’

(UNCRC, 1990, Art. 12(1))

and

‘For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either
directly, or through a representative or an appropriate body’ (UNCRC, 1990, Art. 12(2)).

While there are limitations on the weight to be afforded to children’s views, depending on their age and maturity, this does not impact on their right to express their views, nor for those views to be heard.

The recording of the views of children remains of great importance in demonstrating compliance with national and international law, and ensuring that future readers understand the views of the child or young person concerned. Further, including information regarding the views of children is desired by children (Kurlus et al., 2016) and likely to indicate to them that such views have been adequately acknowledged and considered in the decision-making process (Tyler, 1984; 2006).

Accordingly, while the absence of recorded views does not de facto mean that those views were not adequately considered, it is important that every effort be made to ensure that any views expressed (including a desire not to express a view) are adequately recorded in Hearing paperwork.

The age of criminal responsibility in Scotland is twelve years (Age of Criminal Responsibility (Scotland) Act 2019), and this age may be used (albeit cautiously) as a minimum age at which we would expect (almost) all children to be able to form views and be assisted to express them regarding contact. It is thus worrying to see that 42% of contact directions relating to children aged 12 or above have no child’s view or opinion recorded in Hearing paperwork, and only 22% have a clear view or opinion recorded. Research by Larkins et al. (2015) indicates that this is not due to a lack of interest or concern regarding contact directions on the part of children. We can be confident that these children do have views, but these are not being recorded within Hearing paperwork.

Daly (2018) notes that ‘[h]earing children can be a completely tokenistic exercise, as no matter what children say, no matter what their reasons are, their wishes can be overridden with little, if any, explanation’ (Daly, 2018, p. 346). Failing to record the views of children can only serve to support the
conclusion that their views are not considered important enough to record, and that they do not influence the decision or recommendation.

Clearly the age of the child may have some impact on their ability to form and express views about contact directions. From Figure 6, we can see that there is a clear increase in recording of children’s views with an increase in age, with particular acceleration between the ages of four and ten years of age. However, this increase appears to have a ‘ceiling’ which is met around the age of 11, after which there is no consistent increase in the incidence of clear and unclear recording of views. This ceiling is at 60% of contact directions having any recording of views of children.

While older children may well be more able to represent their views to decision makers independently, and might accordingly be more expected to do so, their views should still be included as a critical element in the reasoning behind recommendations and decisions. As such, the formal recording of views should be standard practice. Indeed, the lack of recording leaves those who have compiled the reports and made the decisions open to the charge of ignoring or failing to consider the views of children.

The fact that views are less frequently recorded when the child is absent from the Hearing is likely because children excused from attendance tend to be much younger than those who attend (mean age when present = 10.0 years, when absent = 6.4 years). However, it is also possible that this reflects increased attention paid to views and wishes when the child is present in the Hearing, and given the increased tendency for children to be excused from Hearings (SCRA, 2018), this may represent a concern.

In many circumstances, there may be additional negative outcomes from this lack of reporting. Decisions regarding the welfare of a child are often not taken at one point, typically being re-iterated across a set of Children’s Hearings, tribunals or court hearings. While this study only examines Children’s Hearings, failure to record the views of children deprives decision makers of an understanding of the background and any (in)consistency of those views. It may be of significant
importance to a decision on contact whether a child has suddenly switched from wishing to have a
high level of contact with an individual to having none. Equally, a clear record of a child’s consistent
wish on contact with an individual may support that outcome, or at least demonstrate that it
represents a consistent desire. Such information should be valued and sought out by decision
makers. Unfortunately, within the Scottish Children’s Hearings System, it appears that having a clear
record of the views and wishes of a child in Hearing paperwork is the exception, rather than the
norm.

Implications

The implications of these findings are significant for a range of individuals and organisations involved
in contact decision-making, and welfare decision-making more generally. There is a clear implication
for the report writing of social workers. Training may be necessary in order to ensure that children’s
views and wishes are given appropriate priority in case files, as well as being clearly and coherently
 referenced in relation to recommendations made to decision makers. Such an improvement in social
worker reporting also needs to be complemented by a change in the practice of panel members. For
children’s views and wishes to be seen to be central to decision-making, panel members need to
consistently reference those views and wishes when making decisions, clearly articulating why they
have agreed or disagreed with the expressed wishes. This may require changes to the way in which
reasons are phrased, and may support the presentation of the child’s wishes first, before detailing
how the decision deviates or not from those wishes. Further, if the child is not present, extra efforts
may be required to ensure their views and wishes are still represented and heard in the Hearing.

These findings also clearly demonstrate the gap that can and does exists between policy and
practice. While policy and legislation are clear on the need to have views and wishes represented,
there is little guidance on how this should be done, and few formal requirements for how wishes
should be prioritised in decision-making in children’s lives. If Article 12 rights are to become a reality,
then greater support will need to be provided to practitioners, children, and families. More widely, it
is evidence that policy and legislation themselves do not effect change and further practical

guidance, monitoring, and efforts to change practice on the ground are still required when it comes
to promoting the rights of children.

Finally, this study highlights the need for research looking at the engagement of children, young
people and families, and how decisions are made in the Hearings System specifically, and welfare
decision-making bodies more generally. In particular, studies observing practice within Hearings
themselves, will be crucial in examining the extent to which the views and wishes of children are
heard, acknowledged and used to inform decision-making.

Conclusion

The recording of views and wishes in reports and decisions relating to children is one of the ways in
which it is possible to demonstrate the value placed on these views. It was found that children’s
views are not well recorded in the reports presented to, or decisions made by, Children’s Hearings.
Failing to record these views sends a message that they are not valued and have not been taken into
consideration in reaching decisions.

While this has implications for the legality and perceived fairness of these decisions, it also removes
an important source of information for future decision makers, as they are unable to judge the
consistency of the views of children that they hear. There is no shortage of guidance and legislation
indicating that the views of children should be ‘heard, respected and given due weight in
proceedings’ (James and Lane, 2018, p. 121), however this does not seem to have resulted in
consistent recording of children’s views. Despite extensive highlighting of the importance of
children’s views (Aubrey and Dahl, 2006; Bell and Wilson, 2006; Anderson, 2011) recording of these
views is at a low level. Failure to record the views of children risks a perception that they were not
sought, not heard, or not considered important.
References

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Social Work (Scotland) Act 1968


**Figure Legend**

- Figure 1: Sex split of sample and national population
- Figure 2: Age groupings of sample and national population
- Figure 3: Residential status of sample and national population
- Figure 4: Recording of children and contactees’ views on contact
- Figure 5: Recording of children’s views by whether contactee is a relevant person
- Figure 6: Recording of children’s views by age
Figure 7: Children’s wishes compared to Hearings’ decisions made