

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

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4 Abstract

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

18 Keywords

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

20 Subject Categories

21 Looked After Children

22 Introduction

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

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

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

38 The children’s hearings system

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

46 decision-making for children under the age of 18 referred either due to welfare concerns or on
47 grounds of offending.

48 Children who are deemed by Hearings to require compulsory intervention in their lives are (most
49 commonly) placed on a Compulsory Supervision Order (CSO). These must be reviewed at least every
50 12 months, and Hearings have a duty to consider including a contact direction in the Order. Contact
51 directions are provisions that regulate contact between the child in question and a specified
52 individual or group of individuals (s.29(A) and s.82(3)(g) Children's Hearings (Scotland) Act, 2011).
53 Contact directions are not limited to parents or family members, and may incorporate partners,
54 friends of the family, or others. Each Panel Member in the Hearing must state their decisions and
55 reasons in relation to the contact direction. The Hearing Chair must then confirm and explain the
56 decision to those in attendance (which will generally include the child and their parents), and state
57 the reasons for that decision (s.61(2)(d), and s.61(3)(i) and (ii), Children's Hearings (Scotland) Act
58 2011 (Rules of Procedure in Children's Hearings)).

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

65 Accordingly, the views of the children seen by the Children's Hearings are of great importance in
66 establishing if contact should take place with a certain person, for what duration, and under what
67 conditions (e.g. supervised or unsupervised, at home or in a contact centre). The views of children
68 will not be the sole source of information used in decision-making relating to contact. Information
69 from the social work report(s), other reports presented to the Hearing, and the views, wishes and
70 opinions of others in the Hearing will all be considered. Indeed, the views of children may not be

71 reflected in the decision made, or the reasons for this decision. However their contribution to the
72 discussion and decision-making process is of great importance.

73 The importance of children's views

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

80 Contact is of huge importance to children involved in welfare proceedings. Indeed, Winter (2011)
81 went so far as to say that '[w]ithin a rights-based approach, it is not possible to come to a decision
82 about a child's best interests without consulting the child' (p. 401). Children in out of home care
83 remain concerned about families and spend a lot of time thinking and worrying about them
84 (Masson, 1997; Moyers *et al.*, 2006; Sen and Broadhurst, 2011; Schofield *et al.*, 2012). Indeed,
85 Larkins *et al.* found that contact was 'a major preoccupation for looked after children and young
86 people and for their parents' (Larkins *et al.*, 2015, p. 310), also noting that

87 '[a]chieving satisfaction with contact involves a delicate balance that does not
88 counter pose children's rights to participation or contact against rights to safety
89 or stability, but which recognises that children's, young people's and parents'
90 involvement in decision making can lead to safety and stability over time'
91 (Larkins *et al.*, 2015, p. 310).

92 Challenges in contact decision-making

93 Decisions around contact are important and difficult for a variety of reasons. Firstly, contact
94 decisions have the potential for significant impact on the lives of the children to whom they apply,
95 and their families and carers. Contact decisions are recognised as potentially impacting on Article 9

96 of the UNCRC, which states a child's right 'to maintain personal relations and direct contact with
97 both parents on a regular basis' (UNCRC, 1990, Art. 9(3)), and Article 8 of the European Convention
98 on Human Rights (ECHR), which states an individual's right to private and family life (ECHR, 1953,
99 Art. 8). Indeed, this latter right was the subject of the Lady Wise decision in *ABC v Court Reporter* in
100 2018, which ruled that a sibling of a child subject to a CSO could have their Article 8 rights infringed
101 by a contact provision (*ABC v Principal Reporter*, 2018). Secondly, establishing what level of contact
102 is in the best interests of the child is a significant challenge.

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

113 Aside from professional assessments, the other clear sources of information available to determine
114 the benefit or detriment of contact are reports from carers, parents, and children themselves.
115 Unfortunately, as noted by Bullen *et al.* (2015), carer reports of children's reactions to contact are
116 not necessarily accurate, as 'the interpretation of these reactions is complex: children may be
117 distressed at separation from the parents they wish to spend more time with, or they may be
118 distressed about seeing them' (Bullen *et al.*, 2015, p. 12). Of course, this interpretive challenge also
119 applies to family members just as much as foster or residential carers (Morrison *et al.*, 2011).

120 Therefore, the one source of information that may accurately reflect the costs and benefits of
121 contact experienced by the child, is the child themselves.

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

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

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

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

141 The Study

142 This paper reports on findings from research looking at contact decisions by Children’s Hearings in
143 Scotland. Contact directions are one of the more contentious areas of Children’s Hearings decision-

144 making (Porter *et al.*, 2016; 2019), but there has been little research into the substance of the
145 contact decisions made. Research conducted for the Scottish Children’s Reporter Administration
146 (SCRA) (Henderson *et al.*, 2015) noted that concern was raised by social workers in relation to
147 permanence processes, where contact decisions were thought to introduce drift and delay into
148 permanence journeys for children. This phenomenon is also reported to be exacerbated by the
149 involvement of legal representation on behalf of parents (Porter *et al.*, 2016).

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

154 Methodology

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

159 Sampling

160 The sample of 160 children was drawn equally from four of the 32 local authority areas in Scotland.
161 These four localities were selected to reflect rural and urban areas and were geographically spread
162 around Scotland to ensure greater representation. Cases were selected within each of these four
163 areas by identifying all children who had had a Hearing in 2016/17 and removing those who were
164 listed as being in secure accommodation. This group was excluded due to the very low numbers of
165 children in secure care (<1% of looked after children in Scotland) (SCRA, 2018) and to ensure
166 anonymity. The remaining cases were then randomised, and the files of each child were accessed in
167 sequence, noting whether they had a substantive contact direction made, amended, continued, or
168 removed in the period 2016/17. Once 30 cases had been identified in each locality, their paperwork

169 was analysed as described below. Once all 120 cases had been coded, the age and sex profiles of the
 170 sample were compared to the national looked after population profile for these attributes. The same
 171 procedure was then used to gather an additional 10 cases from each locality, with additional
 172 purposeful sampling to ensure that the sample reflected the national profile. Table 1 shows the
 173 number of cases included and excluded (due to lack of a contact direction in 2016/17, or because
 174 they did not have the desired age or sex in the purposeful sampling process).

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

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

176
 177 The sample
 178 Figure 1 shows the sex split for the sample overall and the national looked after population, Figure 2
 179 shows the age range of the sample compared to the national looked after population, while Figure 3
 180 shows the residential status of children/young people in the sample compared to the national
 181 looked after profile. The sex split is similar between the sample and national population, with the
 182 sample being over-representative of females (49%) compared to the national average (45%). The age
 183 profile of the sample and the national population is also very similar, with a slight over-
 184 representation of 0-4 year olds (3.8% higher incidence) in the sample compared to the national
 185 population, and corresponding under-representation (4% lower incidence) of 10-14 year olds.

186 As can be seen in Figure 3, the proportion of the sample and population in residential and foster care
187 settings is very similar, however there is a large over-representation of those in kinship care,
188 compared to those residing at home (SCRA, 2018).

189 Data collection and analysis

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

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

199 'Clear': Text that presented the child's views in relation to contact either in specific frequencies and
200 durations, or as desiring an increase, decrease or no change from previous contact arrangements.

201 The following texts would all be classified as 'Clear': 'Jane would like to see her father more often';
202 'Amir says that contact is about right at the moment'; 'I don't want to have to go to my mum's house
203 every weekend'.

204 'Unclear': Text that referenced the child's views but did not indicate a desired increase, decrease or
205 no change in the frequency or duration of contact. The following texts would all be classified as

206 'Unclear': 'Donald says he enjoys contact with his aunt'; 'Siobhan says that it would be better if her
207 grandmother could take her out of the house during contact'; 'I like contact with uncle John, but it
208 would be better if my sister was there'.

209 'Not Recorded': When no text could be found which conveyed views relating to contact with the
210 specific contactee.

211 *Data Sources*

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

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

226 *Data analysis*

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

232 A further set of comparisons were also conducted within the sample using chi-square tests to
233 compare sub-groups on categorical variables. Where differences between groups were examined on

234 continuous variables, non-parametric (Mann-Whitney U) tests for paired comparisons were used to
235 reflect the non-normal distribution of the variables. These tests were conducted in order to probe
236 for differences between groupings. Where significant differences were found, effect sizes are cited
237 (Cramer's *V* for chi-square tests, and Cohen's *r* for Mann-Whitney U tests) (Howell, 2012).

238 Ethics

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

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

249 Limitations

250 It is important to note that about the analysis focused on *recorded* views. While there is a
251 requirement for the views of the child to be included in decision-making, it is not specified that this
252 must include their views relating to contact, nor that they must be recorded (Scottish Government,
253 2007). As a Hearing should take place in 'an atmosphere of full, free and unhurried discussion'
254 (Kilbrandon, 1964, p. 50) all parties should be invited to contribute and, in the course of this
255 discussion, information which is not contained in the Hearing paperwork may be presented. The
256 Hearing must give the child an opportunity to indicate whether they wish to express views and the
257 opportunity to express them. Thus, although there may be no *record* of the child's views in relation

258 to a contact direction, this does not mean that they were not asked for a view, nor that they did not
259 give one.

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

266 Findings

267 Recording of views overall

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

275 Contact directions were predominantly made in relation to people who were either parents, or
276 judged to have had a significant involvement in the upbringing of the child or young person. Such
277 individuals are termed 'relevant persons' in the context of the Children's Hearings (Children's
278 Hearings (Scotland) Act 2011). Whether views were not being recorded in relation to other
279 contactees who might have had a less significant connection to the child, was also examined. As
280 shown in Figure 5, there is a significant difference in the recording of children and young person's
281 wishes in Hearing paperwork dependent on whether the contactee is a relevant person or not, but
282 this has a very low effect size ($X^2=16.390$, $p<0.001$, Cramer's $V=0.090$).

283 Another reason for a difference in recording of children's wishes might be their presence or absence
284 in the Hearing itself (children were present in 60% of Hearings included in the sample). This is less
285 likely to affect social work reports, which need to be written prior to any excusal or otherwise of the
286 child, and should include the views of the child (Scottish Government, 2007). However, the presence
287 of the child may affect the recording of the views of the child in the reasons for decisions, while the
288 absence of the child might make it more likely that a 'Having your say' form (a child friendly form
289 often used to help children to present their views) or equivalent might be completed. When we look
290 at the recording in Hearing paperwork, we find that views and wishes are represented less
291 frequently when the child is absent from the Hearing ($X^2=70.118$, $p<0.001$, Cramer's $V=0.187$).

292 Recording of views by age

293 In many cases children may be unable to form or express views on contact directions. We should be
294 cautious in applying age cut-offs to determine a child's capacity to form or express views (Daly,
295 2018). However, given the lack of data available regarding a child's ability to form and express views,
296 age provides a reasonable proxy measure to examine whether the lack of recording of views is likely
297 to be due to considerations of the (in)ability of the child. As can be seen from Figure 6, there is a
298 clear effect of age with views being recorded by social workers or panel members in Hearing
299 paperwork more frequently and with greater clarity as the age of the child increases. Even at the
300 highest rates of recording, only about one in three children have clear views recorded in Hearing
301 paperwork. Further, at all ages, at least four in ten children have no views recorded in Hearing
302 paperwork at all.

303 Written inputs from children

304 Just 171 of 1,786 contact decisions (10%) (in 43 (27%) children's case files) were made with a written
305 input to the Hearing by the child. This is a slightly higher rate than for the population overall (8%)
306 (SCRA, 2018). Even where such written input was provided, just 28% of contact directions had a clear
307 recorded view of the child. Thirty six percent of contact directions with a written input from the child

308 or young person had no associated view recorded at all, with a further 36% of contact directions
309 having unclear associated views of the child.

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

313 Wishes and Decisions

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

320 Discussion

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

324 'assure the child who is capable of forming his or her own views the right to
325 express those views freely in all matters affecting the child, the views of the child
326 being given due weight in accordance with the age and maturity of the child'
327 (UNCRC, 1990, Art. 12(1))

328 and

329 'For this purpose, the child shall in particular be provided the opportunity to be
330 heard in any judicial and administrative proceedings affecting the child, either

331 directly, or through a representative or an appropriate body' (UNCRC, 1990, Art.
332 12(2)).

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

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

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

344 The age of criminal responsibility in Scotland is twelve years (Age of Criminal Responsibility
345 (Scotland) Act 2019), and this age may be used (albeit cautiously) as a minimum age at which we
346 would expect (almost) all children to be able to form views and be assisted to express them
347 regarding contact. It is thus worrying to see that 42% of contact directions relating to children aged
348 12 or above have no child's view or opinion recorded in Hearing paperwork, and only 22% have a
349 clear view or opinion recorded. Research by Larkins *et al.* (2015) indicates that this is not due to a
350 lack of interest or concern regarding contact directions on the part of children. We can be confident
351 that these children do have views, but these are not being recorded within Hearing paperwork.

352 Daly (2018) notes that '[h]earing children can be a completely tokenistic exercise, as no matter what
353 children say, no matter what their reasons are, their wishes can be overridden with little, if any,
354 explanation' (Daly, 2018, p. 346). Failing to record the views of children can only serve to support the

355 conclusion that their views are not considered important enough to record, and that they do not
356 influence the decision or recommendation.

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

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

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

375 In many circumstances, there may be additional negative outcomes from this lack of reporting.
376 Decisions regarding the welfare of a child are often not taken at one point, typically being re-iterated
377 across a set of Children's Hearings, tribunals or court hearings. While this study only examines
378 Children's Hearings, failure to record the views of children deprives decision makers of an
379 understanding of the background and any (in)consistency of those views. It may be of significant

380 importance to a decision on contact whether a child has suddenly switched from wishing to have a
381 high level of contact with an individual to having none. Equally, a clear record of a child's consistent
382 wish on contact with an individual may support that outcome, or at least demonstrate that it
383 represents a consistent desire. Such information should be valued and sought out by decision
384 makers. Unfortunately, within the Scottish Children's Hearings System, it appears that having a clear
385 record of the views and wishes of a child in Hearing paperwork is the exception, rather than the
386 norm.

387 Implications

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

400 These findings also clearly demonstrate the gap that can and does exist between policy and
401 practice. While policy and legislation are clear on the need to have views and wishes represented,
402 there is little guidance on how this should be done, and few formal requirements for how wishes
403 should be prioritised in decision-making in children's lives. If Article 12 rights are to become a reality,
404 then greater support will need to be provided to practitioners, children, and families. More widely, it

405 is evidence that policy and legislation themselves do not effect change and further practical
406 guidance, monitoring, and efforts to change practice on the ground are still required when it comes
407 to promoting the rights of children.

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

413 Conclusion

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

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

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534

535 Figure Legend

536 Figure 1: Sex split of sample and national population

537 Figure 2: Age groupings of sample and national population

538 Figure 3: Residential status of sample and national population

539 Figure 4: Recording of children and contactees’ views on contact

540 Figure 5: Recording of children’s views by whether contactee is a relevant person

541 Figure 6: Recording of children’s views by age

542 Figure 7: Children's wishes compared to Hearings' decisions made