



## **UNDER THREAT: Scotland's unique welfare-based forum.**

Modern threats to the children's hearing system in Scotland

Speaker: Alison Cleland, University of Strathclyde, UK



## Children's Hearing System: features

- **Children involved in offending behaviour kept out of court;**
- **Reporter takes decisions based on needs of individual child;**
- **Welfare of the child is paramount for hearing decision;**
- **UNCROC compliant**



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the children's hearing



PART 1



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PART 2



## Primacy of the children's hearing

- **Court role limited to disputed facts, short-term protection measures and appeals;**
- **Advice hearings provide welfare “check” on court approach to children;**
- **Reporter is independent, final arbiter of steps in child's case**



## New ground of referral

- **“is a child to whom subsection (2A) below applies”. Subsection (2A) applies where –**
- **a requirement is made of the Principal Reporter under s12(1) of the Antisocial Behaviour (Scotland) Act 2004 (asp 8) (power of the sheriff to require Principal Reporter to refer case to children's hearing) in respect of the child's case; and**
- **the child is not subject to a supervision requirement.**



## New advice role

- When giving advice in relation to ASBOs, the hearing role is to consider:
- **“whether an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by [the child]”**



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New power: electronic “tagging”

- **That the child is likely to abscond and..it is likely that his physical, mental or moral welfare may be at risk; OR**
- **That the child is likely to injure himself or some other person**



## Antisocial Behaviour Act: effects

- **Court primary forum for some children;**
- **Hearing advice need not be child-focused;**
- **Reporter's independence undermined;**
- **Breach of UNCROC Art. 3**



## Children's Hearing Review

- **Executive proposal: family hearing balancing child's interests with family and community**
- **Response: majority against proposal**



## Children's Hearing Review

- ***“The vast majority of respondents felt strongly that the Children’s Hearing system should remain focused on meeting the needs of the individual children rather than balancing these with the needs of family members and the wider community”.***



## Fast Track Hearings

- **Differential approach applied to specific group of children;**
- **Resources to have cases dealt with more quickly and effectively**



## Youth Court Pilot

- **16 and 17 year olds and some 15 year olds;**
- **“persistent offending” or “contextual criteria”;**
- **Prosecutors giving community safety priority**



## Preliminary Conclusions

- **Development of fragmented approach;**
- **Decreasing confidence in the “welfare” approach;**
- **Marginalisation of hearing in offending cases**

