



**Complex Decision making for
complex children**

SCRA & CHIP

Research Seminar

December 17th 2018

www.chip-partnership.co.uk

www.scra.gov.uk

Introduction

Neil Hunter

SCRA - Principal Reporter



- **Complexity Research 2018 - Has child protection in Scotland become more complex over time, and if so, how?**
 - 1) the legal complexity
 - 2) the practical challenge.
- **Looked after children at home & family fragmentation and permanence**

The Legal Complexity

Nick Hobbs – CYPCS

and

Pauline Proudfoot - SCRA

The Legal Complexity

Definition of *complexity* in English:

complexity 



NOUN

[mass noun]

- 1 The state or quality of being intricate or complicated.

‘an issue of great complexity’

[+ More example sentences](#)

[+ Synonyms](#)

- 1.1 (usually **complexities**) *[count noun]* A factor involved in a complicated process or situation.

‘the complexities of family life’

[+ More example sentences](#)

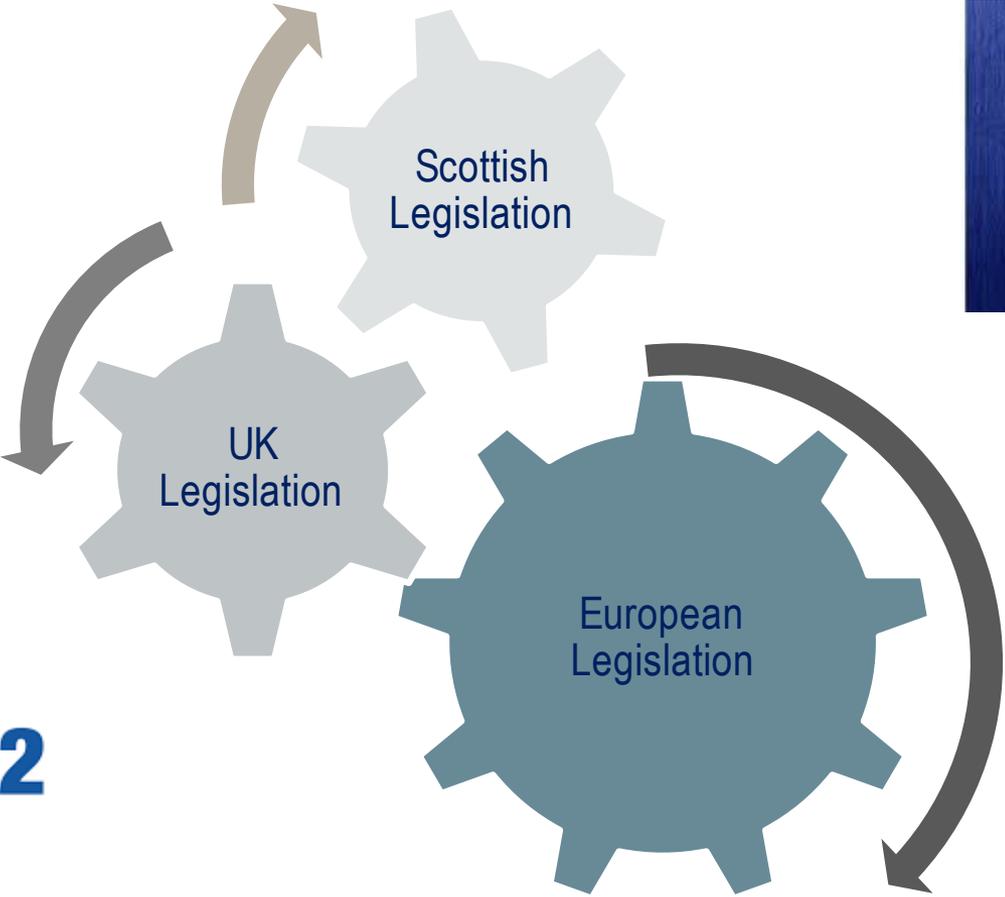
Pronunciation

complexity /kəmˈplɛksəti/ 

Case Study – Abigail Montgomery



The Legislative context



#Indyref2

The Legislative Context (2)

European	<ul style="list-style-type: none">• UNCRC• GDPR• Strasbourg jurisprudence
UK	<ul style="list-style-type: none">• Human Rights Act (1998)• Scotland Act (1998)• UK supreme court judgements

The Legislative Context (2)

Scotland

- Children (Scotland) Act 1995
- Adoption and Children (Scotland) Act 2007
- Children's Hearings (Scotland) Act 2011
- Children and Young People (Scotland) Act 2014
- Criminal justice legislation –
- Civil Evidence (Scotland) Act 1988
- Criminal Procedure (Scotland) Act 1995
- Criminal Law (Consolidation) (Scotland) Act 1995
- Anti social behaviour Act 2004
- Sexual Offences (Scotland) Act 2009
- Criminal Justice and Licensing (Scotland) Act 2010
- Community justice (Scotland) Act 2016
- Criminal Justice (Scotland) Act 2016

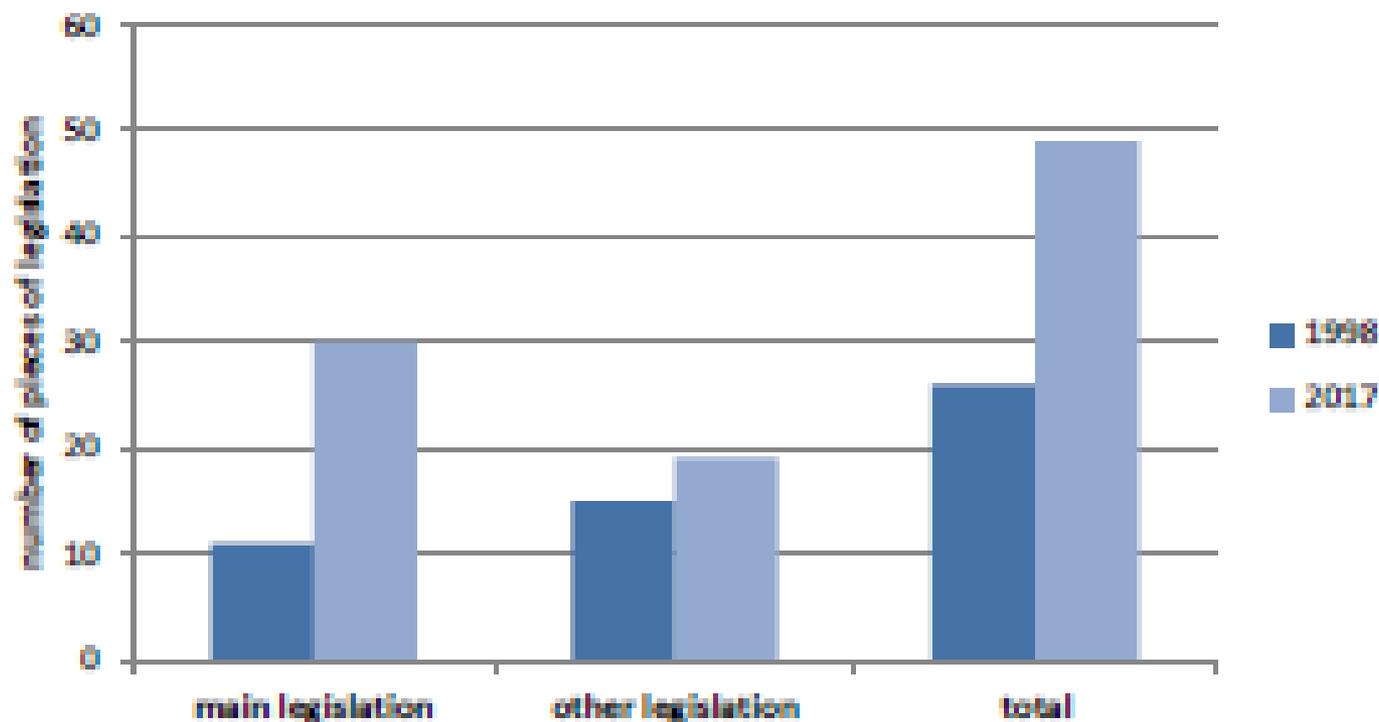
Selecting relevant legislation

“We looked at the ‘legislation’ list on the practice section on Connect (SCRA intranet) at the time - taking the view that the most relevant legislation would be identified by the Practice Team and included for reference by Reporters.”

Research Team

The Legislative Landscape

Figure 2. Summary of legislation in place in 1998 and 2017 relevant to SCRA's work



The Acts

Children (Scotland) Act 1995

- 78 sections (16 – 93) and two relevant schedules
- Seven sets of related Rules including 84 Rules/Regulations in total
- SCRA - 41 Practice Instruction Notes

Children's Hearings (Scotland) Act 2011

- 206 sections and six schedules
- Fifteen sets of related Rules including 286 Rules/Regulations in total
- SCRA - 29 New Practice Directions
- 45 Practice Directions & Notes (including 16 1995 Act which continue to be relevant eg: victims of youth crime / death of a child known to the Reporter / sexual offending)

SCRA Practice

Non-Disclosure

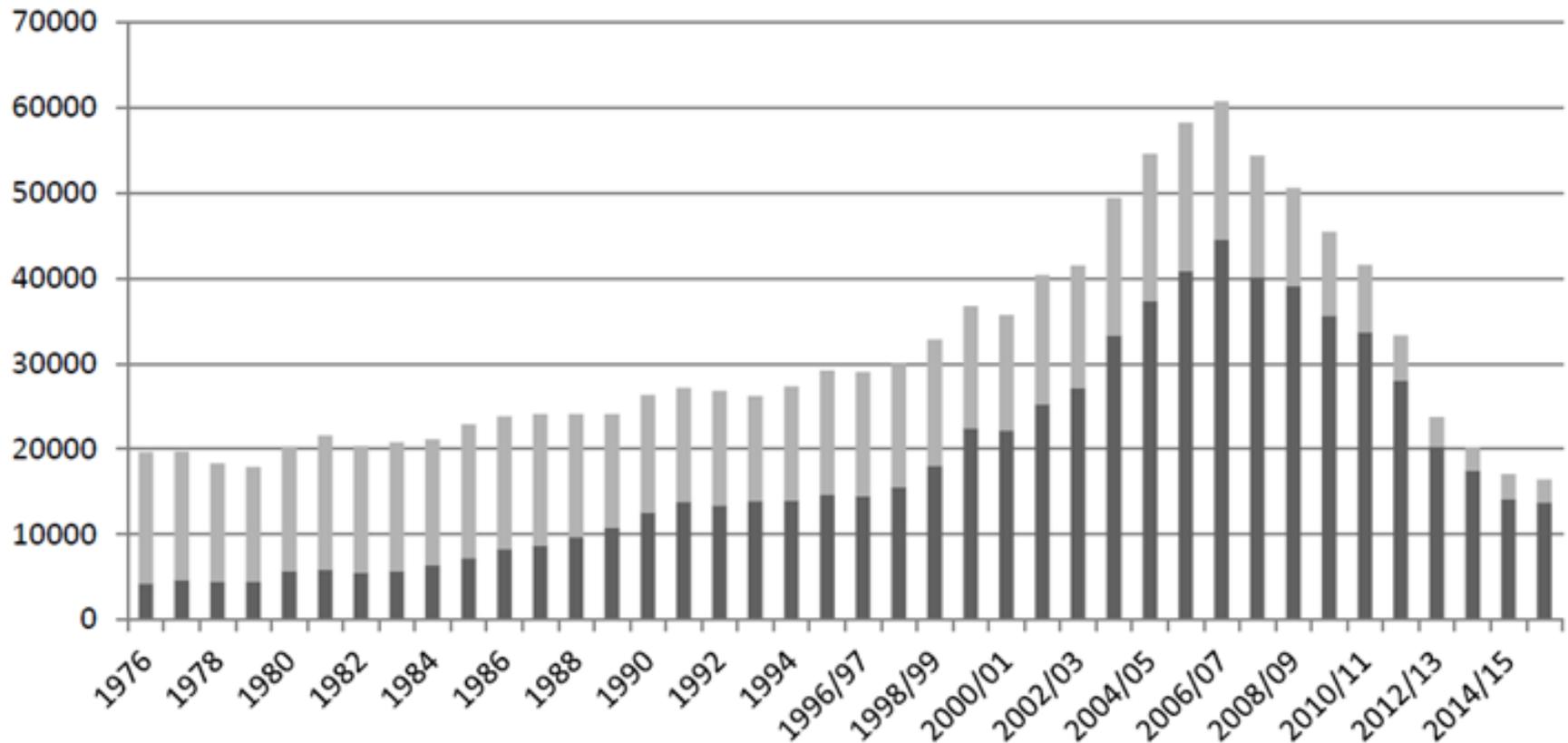
- 1998 **NO** Practice Instruction.
- January 2009 Practice Instruction on Non-Disclosure introduced at **9,331 words**.
- 2017, Practice Direction on Non-Disclosure at **16,408 words**

Hearings

- 1995 Act - **18** purposes for Hearings with **42** sub-categories.
- Recording decisions in a Hearing - **52** with **97** sub-categories
- 2017 - **50** purposes for Hearings with **52** sub-categories
Recording decisions in a Hearing - **107** with **152** sub-categories

Referrals to SCRA

Figure 3. Children referred to the Reporter on offence and non-offence grounds, 1976 to 2015-16



The Children's Hearing

Pre Hearing Panels	
Hearings	
Total No. of children with a CSO	
Children with a CSO made	
Children with a CPO	
Non Disclosure Orders	
Interim Compulsory Supervision Orders	
Appeals	

Case Study - Abigail Montgomery



Consequences & unintended consequences

- Papers for children (2003)
- Voice of child in decision making (2011)
- Legal representation (2011)

- System involvement
- Rights
- Participation and representation
- Understanding and consent

Conclusions.....

- **Legislative complexity can have unintended consequences**
- **Legislative complexity has increased substantially in recent years & looks like it will continue**
- **We may need to identify and plan for these unintended consequences**

Table Discussions

Your tables all have a named theme in the middle. Please answer the following questions in relation to your theme. Each table has a facilitator – who will take a note of what you say.

- 1) What is legally complex in relation to your theme?
- 2) What are the consequences of this legal complexity in relation to your theme?
- 3) How has legal complexity in relation to your theme affected the following:
 - The Children’s Hearings System
 - Practitioners
 - Decision makers
 - Children and families
- 4) What do we now need to consider in planning for a legally complex future?

Feedback from Table Discussions

Neil Hunter – SCRA

We intend to collate what has been discussed on legal complexity, circulating it as a briefing note by email and on the CHIP website following this event.