



BRIEFING NOTE

VICTORIA QUAY COMPLEXITY SEMINAR - DECEMBER 17th 2018

This CHIP 'Briefing note' follows the Complexity event held at Victoria Quay on 17th December 2018. It summarises the content of the table discussions on complexity which occurred on the day – both for information and for practitioners and policy makers to consider.

5 themes were discussed on the day:

Children who are victims of crime

Permanence & care

Equally safe & domestic abuse

Rights & representation

Family Law

Working with offending & the age of criminal responsibility

A number of additional 'themes' have emerged from the separate table discussions – these common themes will be summarised at the end of this briefing.

1) What is legally complex?

Children who are victims of crime - There are 2 groups of children this applies to:

- 1) children where the whole CHS kicks in to support the child- **the referred children who are victims of:** a) adults or b) child(ren).
- 2) children who receive very limited information & very limited support- **the victims of referred (j) children.**

- For child sexual exploitation the system can be used to keep children safe - and can be really successful. That's not typical though. Often children are moved out of their local areas - either by those who are exploiting them OR by the system trying to keep them safe.
- Panel Member's decisions require good information from SW. Reframing reports can make the content more relevant and accessible, particularly for children.
- Parent perpetrators - can affect the management of the hearing.
- More legal representation for RP's means that we need more child support in hearings. Hearings do not want to re-traumatise the child. Legal representatives & advocates increase the number of people in the Children's Hearing - and is contrary to what children want.



Permanence & care - there are many more complex areas in these decisions:

- Siblings
- The assumption that permanence means **no contact**.
- Little **indirect contact**.
- The drive to make decisions quickly - sometimes too quickly - to meet the time frames.
- The Courts and Children's Hearings System can be challenging - practitioners not mentioning permanence.
- Permanence of destinations - ie: going home - ok with parents but not with Children's Hearing?
- Key questions - like 'If contact is purposeful why would it be reduced'?
- Who drives contact - is it for the parents or for the children?
- Solicitors in hearings are encouraging parents to challenge everything.

Equally safe & domestic abuse - A number of areas of practice need consideration here:

- Sufficient proof and corroboration.
- The rights of the child in contact arrangements.
- Legal representation - too limited for children.
- New arrangements for advocacy support for children & young people - how will this work? Will the Hearing Chair have to inform child/young person that they can have an advocate/ Will the hearing need to defer if one is not available?
- Balance of rights - accused vs victim vs child/young person
- Relevant person status - bringing them back into the picture (when little/no involvement with child/young person)
- Non Disclosure - When to make a Non-Disclosure Order and the evidence that is needed for this to happen; the minefield that can occur when it goes wrong; the administrative burden of non-disclosure; non-disclosure adds complexity - people are more likely to make a mistake.

Rights & representation - (these considerations cross most of the themes)

- Relevant Persons - absent parents with rights to be involved - eg: domestic abuse; Parental Rights & Responsibilities; named on birth certificate.
- Sibling contact - definition / level of access / representation - is being a Relevant Person proportionate? Child has a right to privacy AND a right to challenge the information being given to Relevant People. There is also a right to be protected (through adult practice).
- Voice of child 'drowned' by adults?
- Adversarial approach limits the participation of children & young people?
- Information rights ie: RP status for adults & children & young people.
- children & young people's understanding - eg of grounds - informed participation.
- Can parents represent children & young people or is separate representation needed?

Family Law

- The transient nature of families. Multiple groups of people / different partners.
- Complex relationships & controlling elements.



- Extended family members - rights & responsibilities; child's 'lost voice'; what do rights mean - its not just that people should have a lawyer.
- There should be a focus on responsibilities rather than rights but how do we make this shift whilst maintain our protection of rights and enabling professionals to do the work they need to do.

Working with offending & the age of criminal responsibility

Lack of understanding in two main areas:

- 1) Disclosure & the impact of the effects of this; the risk for rights v protection of child's needs
- 2) Needs of different groups of children

2) What are the consequences of this legal complexity?

<ul style="list-style-type: none"> • The resistance of children & young people. • Need for Social Work to be strong in Children's Hearings. 	<ul style="list-style-type: none"> • Increased appeals • Where is the representation for really young children? • Involvement of criminal lawyers. • Delay - especially for very young children • Impact on practice.
<ul style="list-style-type: none"> • Impact on appeals of Hearings decisions - with number of people involved in Hearing/case • Slows down process - all different/multiple elements - substantive decisions suspended, possibly placing children & young people more at risk • How do you keep case fresh in people's minds when complexity rumbles on 	<p>The expectations children & young people have of professionals - eg Social Workers.</p>
<ul style="list-style-type: none"> • More people at CH • More time at CH • The courts have longer - and have a staged process. This doesn't happen in CH. • The need to get Genogram's done quickly • Assessment re: relationships is crucial • Co-operation of all at the time can be difficult to get 	<p>Age of Criminal Responsibility fall out - linked to the Bulger case and wider perceptions of youth justice</p>



3) How has legal complexity affected the following:

The Children's Hearings System

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| <ul style="list-style-type: none"> • Better hearings - regulating the no's of participants in CH at a time. • Flexibility of obtaining child's view. • Not having to ID perpetrator of assaults. • Lower standard of proof in CH. • Time lag between CH & CJS "proof" in an offence against a child. | <ul style="list-style-type: none"> • Delay - especially for young children • Less family friendly • Fewer children attending hearings |
| <ul style="list-style-type: none"> • Legislation doesn't allow nuances in terms of reports or evidence. • Report writing - real issue - getting the balance right - dilemma on what to include - balance evidence against impact on young person from seeing the information. • Need to be mindful that young person, victim and perpetrator will read the report. • Level of proof - there are cases that should come into the Hearings System but don't because of level of evidence needed. • Making decisions in relation to contact and being able to evidence recommendations around contact. • Social media - hearing can say no contact but can you enforce. | <ul style="list-style-type: none"> • Dynamics when speaking to child or young person alone. • Navigating rights. |
| <ul style="list-style-type: none"> • Numbers increased due to bigger numbers of RP's • Panel lost around solicitors • Change in hierarchy • Evade responsibility • Age at PHP & how that affects involvement & decision making | <ul style="list-style-type: none"> • Thinking of consequences • Referring for proof |



Practitioners

<ul style="list-style-type: none"> • If child who perpetrates a sexual offence has themselves been the victim of abuse. • Need to protect child from information - this increase in complexity can protect a child. • Accessibility of information in reports that children don't want. • Timing of circumstances. 	<ul style="list-style-type: none"> • How long should parenting capacity assessment last? • Adversarial - Team Leader attending CH with SW to provide support has an impact on capacity within the CH.
<ul style="list-style-type: none"> • Differences in practice - police approach to domestic abuse can vary. Element of judgement by police officers - don't always report/police concern report when child/young person involved. Role for Police Scotland to improve consistency of practice. • Changing attitudes to the effect of domestic abuse on children - emerging evidence of the effect of children/young people witnessing domestic abuse • Social workers have less time to spend with child & family - more time on admin/ management 	<ul style="list-style-type: none"> • Interactions • Knowledge of roles • Shared responsibility • Understanding system & ethos • Silo working - eg: education • Legal context of decision making needs better understanding / authority for decision making / evidence for decision making • Other pressures - eg: anxiety of foster carers re: privacy & disclosure
<ul style="list-style-type: none"> • Hierarchy affects ability for social work to be confident • Social worker can be up against 4 solicitors • Work on capacity of child to give a view • Support child to give a view • Social work to identify & communicate who is important to a child 	<ul style="list-style-type: none"> • Managing offences not taken forward • Direct impact



Decision makers	
Harder for panel members	Knowledge of legal tests applied, eg: need evidence & thresholds from SW
Who identifies who is important to the child? Panel chairing is crucial - skill is needed.	Implications for proof

Children and families	
<ul style="list-style-type: none"> Less understanding of what is expected of them? 	<ul style="list-style-type: none"> Roles & understanding of authority Adult system - needs work to be fully child centred - in relation to language / legal nature / conflicts.
<ul style="list-style-type: none"> Co-ersion/control element. Police looking at perpetrator rather than victim. Need to focus more on mother. Onus should be on non-abusing parent in protecting child. Degree of blaming victim (usually mothers). Benefits being capped - poverty 	<ul style="list-style-type: none"> Impact on future understanding
<ul style="list-style-type: none"> Identifying who is important to the child Dispute between the parties - child might not want to see someone & adults may not agree (can work both ways). 	



4) What do we now need to consider in planning for a legally complex future?
1. Role of police practice - greater consistency of practice re. domestic abuse - role for Police Scotland
2. Prepare children & young people in advance to help them understand rights & options. Who should have this discussion? It is everyone's job - but we need to break down barriers between professionals involved for children & young people. Better circulation of available info - but ability to understand information may be limited. Join up practice. Understand neglect & ACE's.
3. Continuity of panel members. The need to agree areas of dispute in advance, and to focus on planning around how these areas are going to be addressed and to avoid conflict within the Children's Hearing.
4. Join up systems and look at the implications for all parties across the board.

Common Themes across the discussion groups:

REPORTS – What they are for? What they should include? What register they should be in? How recommendations should be evidenced? How can reports be presented? How can people be prepared?

NUMBERS OF PROFESSIONALS PEOPLE / ADULTS

NUMBERS OF INVOLVED / INTERESTED / ABSENT FAMILY MEMBERS

VOICE OF THE CHILD

'LOST VOICE' OF THE CHILD

ADVERSARIAL APPROACH & ROLE OF SOLICITOR

EFFECTIVE PARTICIPATION

ROLES, RESPONSIBILITIES, SKILLS & TRAINING

If you would like more information about this event - or about the work of the Children's Hearings Improvement Partnership please contact Melissa Hunt, SCRA Policy & Public Affairs Manager (Melissa.Hunt@scra.gsi.gov.uk) or Elaine Adams, CHIP Learning & Development Lead (elaine.adams@strath.ac.uk). More events are planned for 2019 - please keep looking at the CHIP website for information about these.

If you have ideas about work we could do - please get in touch.

