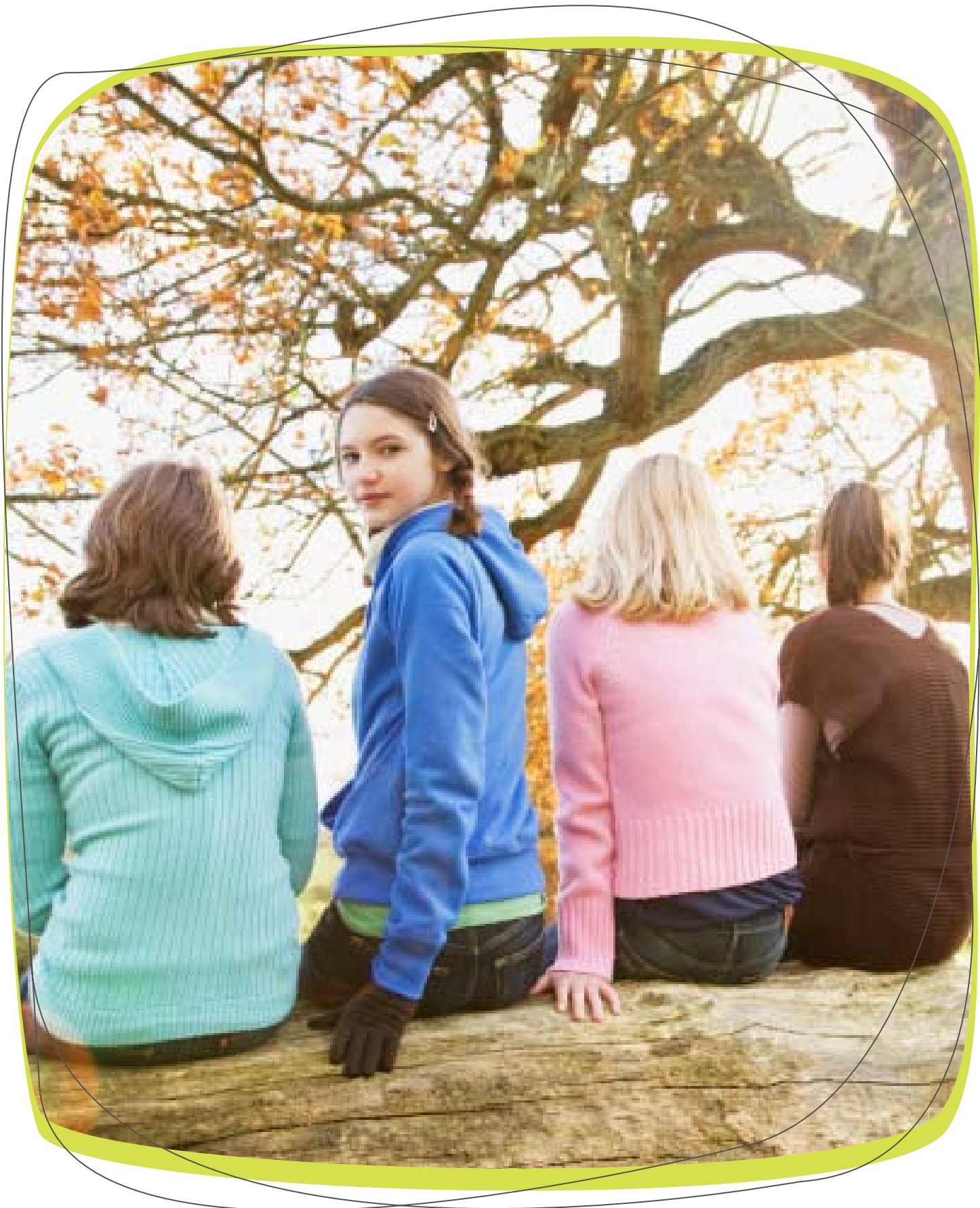


Where's Kilbrandon Now?



as long as it takes



The Panel

Richard Holloway: is a Scottish writer and broadcaster and was formerly Bishop of Edinburgh in the Scottish Episcopal Church. Holloway was educated at Kelham Theological College, Edinburgh Theological College and the Union Theological Seminary, New York City. Between 1959 and 1986 he was a curate, vicar and rector at various parishes in England, Scotland and the United States. He was Bishop of Edinburgh from 1986 and was elected Primus of the Scottish Episcopal Church in 1992. A Fellow of the Royal Society of Edinburgh, Holloway was Professor of Divinity at Gresham College in the City of London. From 1990 to 1997, he was a member of the Human Fertilisation and Embryology Authority and held the position of chair of the BMA Steering Group on Ethics and Genetics. He was also a member of the Broadcasting Standards Commission and is currently chair of the Scottish Arts Council. Holloway has been a reviewer and writer for the broadsheet press for several years, including The Times, The Guardian, The Independent, Sunday Herald and The Scotsman. He is also a frequent presenter on radio and television. Richard chaired the 2003 Kilbrandon Now inquiry for Action for Children.

Ruth Wishart: writer and broadcaster. Ruth Wishart is a journalist and broadcaster who writes a weekly column for the Herald and presents programmes on contemporary ethics for the BBC. She has been an assistant editor of the Sunday Mail, Scotsman and Sunday Standard. She is a trustee of the National Galleries of Scotland, and of Columba 1400, and chair of the Dewar Arts Awards. Previously she also served as chair of the Centre for Contemporary Arts in Glasgow and was a Governor of the Glasgow School of Art. An experienced conference chair and facilitator, her interests include the arts, sport and politics, especially social policy and she is a sought after speaker and chair. Ruth was Chair of Glasgow Common Purpose and was a member of the 2003 Kilbrandon Now inquiry.

as long as it takes

Professor Tom Devine,

OBE, BA, PhD, DLitt, HonD Univ (Strathclyde, 2006), Hon DLitt (Queen's, Belfast, 2001), Hon DLitt (Abertay, Dundee, 2001), FRHistS, FRSE, Hon MRIA, FBA. Currently Sir William Fraser Professor of Scottish History and Palaeography, Director of the Scottish Centre of Diaspora Studies and Head of School. He has held a range of public appointments. He is a graduate of Strathclyde University and holds honorary doctorates from Strathclyde, The Queen's University, Belfast and the University of Abertay, Dundee. He joined Edinburgh University in January, 2006. In addition to these appointments in the UK, he holds Honorary Professorships at North Carolina (USA) and Guelph (Canada). He is a Fellow of the Royal Society of Edinburgh, and of the British Academy.

Baroness Veronica

Linklater: Member of the House of Lords, former magistrate in England and former panel member in Scotland. Chaired UK-wide Esmée Fairbairn 'Rethinking Crime and Punishment' initiative which backed and part-funded the Kilbrandon Now inquiry. Veronica replaced Kaliani Lyle from the original 2003 inquiry as Kaliani is out of the country on the 12 November.

Simon Di Rollo QC:

one of Scotland's leading QCs. Member of the working party and principal author of the Guidance on the Examination of Children in Court (2003 - Scottish Executive). He has conducted numerous cases on behalf of the Crown in the Court of Appeal. He has appeared in all of the major courts including the House of Lords and the Judicial Committee of the Privy Council. He has prosecuted before the General Medical Council and represented professional persons before disciplinary tribunals. He has also represented interested parties at numerous Fatal Accident Inquiries. Professional appointments have been: Advocate Depute 1997 to 2000; Member of Sheriff Court Rules Council 2002 to date; Member of the Reference Group for the Review of Legal Aid 2004; Member of the working party and principal author of the Guidance on the Examination of Children in Court (2003 - Scottish Executive). Simon acted as advocate for the 2003 Inquiry.

Action for Children is very grateful to Richard Holloway and his fellow panel members for their time, their continuing commitment to the best interests of children and their contribution to helping identify the strengths and the weaknesses of the Scottish Children's Hearing system. We believe that their contribution to the development of the hearings has been and will continue to be invaluable.

Action for Children also wishes to thank Netta Mciver, Principal Reporter and Chief Executive, SCRA, Kit Wyeth and Stuart Robb, of the Scottish Government, for their advice and assistance in preparing the hearing day on the 16 November, and also to all of the witnesses, to Adam Ingram MSP the Minister for Children and Young People for his attendance and support.

Where's Kilbrandon Now?

The report of a November 2009 reconvened inquiry day to consider proposals for reform of the Children's Hearing System

1964–2009

The original Kilbrandon Report in 1964 of an official inquiry¹ recommended a radical new approach to delinquency and truancy in Scotland. Noting that children and young people coming before the courts for offending and truancy were from poor and troubled backgrounds, Lord Kilbrandon and his expert committee recommended a welfare based system that would treat offending as symptomatic of a failure of social education. This recommendation was central to the Social Work Scotland Act of 1968², which established social work departments with a responsibility for community welfare and at the same time the unique Scottish Children's Hearing system. Juvenile courts were abolished, and lay tribunals were established to make decisions in cases where compulsory measures of care were judged necessary. These lay panels do not make findings of guilt or innocence. If the 'grounds of the referral' to the Hearing System were not accepted the facts are determined by a sheriff in a proof hearing at which children and their parents have the right of representation supported by legal aid.

1. 'The Kilbrandon Report Children and Young Persons Scotland January 1964 (republished in Children in Society Series 1995

www.childrens-hearings.co.uk/pdf/krcy.pdf)

2. Social Work (Scotland) Act 1968 (HMSO 1968)

Kilbrandon Now 2003 Independent Inquiry

The 'Kilbrandon Now' Inquiry in 2003 was organised by Action for Children (then NCH)³. The context in post-devolution Scotland was one of increasing punitiveness towards children and young people. The welfare principles which formed the basis of the Scottish Children's hearing system since its inception in the Social Work (Scotland) Act 1968⁴ were questioned by Scottish government ministers. The benefits of a more punitive approach based on the adult criminal justice system were argued as a better basis for dealing with youth crime and disorder.

In this the Scottish Labour/Liberal Democrat coalition government was following youth justice policy in England and Wales where juvenile courts were increasingly being preferred to lower level approaches such as police warnings. The use of imprisonment for children aged 10 and over had increased sharply in England and Wales.

The use of anti social behaviour orders (ASBOS) with criminal conviction for non-compliance were proposed for Scotland, despite lack of evidence of effectiveness – rather the opposite – in England and Wales.

Action for Children (then NCH Scotland) convened a panel of independent and respected Scottish intellectuals and civic leaders to consider research and other evidence, including the views of children, young people, parents and communities, and panel members and professionals working in the system. The inquiry, supported by a reference group of academic and professional advisors, gathered a substantial body of evidence, and held a day of Inquiry in Stirling. The panel report and recommendations were published in 2004⁵, endorsing the welfare basis of the hearings but calling for a number of measures to strengthen the operation of the system, and of the resources to implement and support decisions.

Context for reconvening – 2009

The panel agreed to reconvene in November 2009 to consider changes proposed in a draft Children's Hearing Bill. However, the policy context was different in that the minority SNP government committed to the Children's Hearings system and indicated that they wanted the proposed legislation to strengthen the existing system. Nevertheless some aspects of the draft bill rang warning bells.

In 2009 the panel considered that the recommendations made in their 2004 report remained valid and were reflected in some of the proposals.

But they wished to examine any other measures flagged up by professionals and interested parties which were relevant, and to consider current practices.

3. 'Where's Kilbrandon Now: report and recommendations from the inquiry' (NCH 2004)'

4. Social Work (Scotland) Act 1968 (HMSO 1968)

5. 'Where's Kilbrandon Now?' (NCH 2004)

Overall conclusion of our 2003 inquiry

The main conclusion of the initial inquiry in 2003 was that:

‘While we recognise current social anxiety about youth crime, we do not believe that an increasingly punitive response to the problem is right or effective. The internationally lauded children’s hearings system has demonstrated its potential and worth over the past 30 years. Its structure is basically sound, but now needs to be strengthened to cope with the new and greater demands that are being placed on it and to fulfil its original remit. We found that failings in the system reflect not its design, but some of the aspects of the operation.’

The panel remains committed to this view in the light of the fresh evidence taken in 2009. We believe that reforms should focus mainly on operation and not disturb the basic design which we believe is sound, compliant with human rights and children’s rights legislation, and can function as a template to reform less effective, more punitive systems.

We have reviewed our previous findings and made comments and further recommendations as follows:

On the Role and purpose of the hearings

In 2003 we determined that the hearings system and not the courts must remain the forum for making decisions about the compulsory care and supervision of children and young people in Scotland.

In 2009 this remains emphatically our view. We are concerned that some of the proposed changes to the hearings which are motivated by the need to comply with ECHR requirements would interfere unnecessarily with the design. The Children's Hearing system seems to us to be fully compatible with human rights and within these of children's rights. Children and their parents have the full protection of the courts in challenging the grounds of referral, and in appealing decisions made by the hearings. There is no need to introduce adversarial principles and roles into the hearings themselves. The reporter is the defender of the hearing system's integrity as a welfare based system operating within a strong legal framework.

In 2003 we determined that the hearings should not be used as a route to services for children in need.

In 2009 we understand that the Getting it right for every child (GIRFEC)⁶ policy adopted by government was designed to tackle the unnecessary use of the hearings to access services. The aim is to ensure that help is provided when it is needed. We were informed that the evaluation of the Highland pilot of GIRFEC provides some evidence that this has cut the numbers of unnecessary referrals.

6. Getting it right for every child (Scottish Executive 2005)

On the Wider context

In 2003 we recommended that Community mediation should be extended throughout Scotland to give people from disadvantaged areas and those from minority groups a stronger voice.

In 2009 we heard that this has not been addressed. The need for a community approach was highlighted at our one-day hearing by a young man who spoke of the violence in some areas, and the adult neglect and indifference that leads to young people going about armed with knives. That parents and other adults in the community are not willing or not able to offer adequate care and control is a matter of concern. This is a matter of wider policy than the children's hearing system can be asked to address.

In 2003 we recommended that the serious gaps that exist in mainstream and preventive services must be addressed urgently, and children's right to a full-time place in education and to necessary health services should be enforced before any resort to compulsion.


In 2009 the panel remains concerned that it may still be the case that the most needy children and young people are often those who receive the poorest service from mainstream health and education provision. It may still be the case that they are referred to hearings without having been offered effective help from mainstream services. Hearings should only be used where compulsory measures are necessary. Panel members should not be put in the position of having to make an order to secure support, where there has been a failure to provide preventive support services at an earlier stage.

In 2003 we recommended that there should be a shift of resources from institutional care of children to care with their wider families and communities. Options include a new home care service and greater use and availability of family support and advice centres.

In 2009 this issue was the cause of some debate and discussion both during and after the hearing day. The need to provide residential and alternative family care for children and young people who cannot or should not be looked after within their own families is undeniable. The panel agrees that where this is the case, care services need to be of the best quality possible. However we believe that the question is not 'Do we take enough children into care?' but rather 'Do we make the right decisions at the right time?'. What training, support and resources do social workers need to make the right decisions? and 'Are our preventive and residential and foster care services good enough and in the right places?'

There is very little research on the longer term outcomes of residential care, as the young person moves on into adult life. We know that children who have been in care are many times more likely than their peers to be homeless, suffer poor mental and physical health, be unemployed and without qualifications, to become parents early. This may be associated with earlier difficulties, but it does indicate that being 'taken into care' is often not a 'happy ever after' story.

It remains our view that families in difficulty should be able to access effective services to support their efforts to care for their children. Only where care within the family or the wider family network is not an option, should alternative out of family placement be ordered. We understand that budgets of social work departments are distorted by the high costs of residential and secure care at the expense of preventive services. Preventive services are often the first to suffer at a time of cutbacks in spending. However the failure of prevention results in continuing distortion of service provision. We call again for investment in prevention.

A close-up photograph of a person's hand holding a silver pen, poised to write on a document. The hand is wearing a silver ring with a dark, patterned design. The background is blurred, showing a blue sleeve and a white cuff. A white speech bubble with a black outline is positioned in the upper left, containing red text. To the right of the speech bubble, there are three colored circles (yellow, red, yellow) connected by a thin black line. A small white oval with a black outline is located on the left side of the image, with a small black arrow pointing towards it.

A proposal was made during our meeting that the children's hearings should be able to commission services directly – or have a stronger role to play in the commissioning and development of services locally and nationally. If this was done on the basis of good information about costs and of the real longer term outcomes of expensive crisis measures this could provide much needed levers for moving resources to effective results. This may be worth piloting alongside implementation of GIRFEC

Democratic Mandate

In 2003 we recommended an independent research, monitoring and performance review system should be built into the hearings process.

Professor Fred Stone, a member of the original Kilbrandon Committee who gave evidence at our 2003 event, told us that if he could make one change to the system that they designed it would be to build-in an ongoing review function of its working and its decisions.

We also recommended that the results and relative costs of the decisions made about children should be made publicly available, along with information about the circumstances of children who are referred. This would gain and increase the very necessary public confidence in the operation of the system, while also informing policy decisions.

In 2009 the need for good review and evaluation, and public dissemination of the results is apparent from the manifest lack of agreement about the outcomes of the system. We need to focus on results of interventions not just in the short term but in the longer term and also on the relative costs of interventions.

In 2003 one of our most important recommendations was for a single, independent professional association responsible for the recruitment, retention and training of panel members to be established, bringing together the work of existing local and national groups. This would aid both profile and credibility.

In 2003 our other recommendations included a national campaign to advertise the hearings and to recruit members and increase diversity, and that fees to panel members should be considered, to increase participation from those not in paid work or with no access to paid absence.

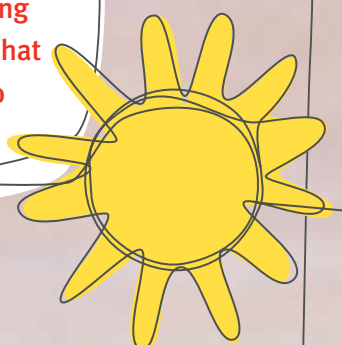
In 2009 we are heartened to understand that the new Children's Hearing body which is proposed will have the dual roles of recruitment, training and representation of panel members and of publicly championing the hearing system, and therefore increasing public understanding and support.

We believe that there is still a case for considering the payment of a fee. While current panel members have told us that they don't want fees, this still leaves the problem of the exclusion of those in low paid work whose employers won't or can't pay them to attend.

We believe that the proposed new Children's Panel organisation should have a public voice and also be able to commission research on outcomes and their costs.



The Edinburgh Study of Youth Transitions and Crime⁷ is a large scale longitudinal study of a full year group of all children entering secondary school in Edinburgh in 1998. The study offers a huge amount of information and analyses on the lives and fortunes of these children and the connections between socio-economic circumstances, parenting, interventions, school exclusions and crime. This should be of immense interest and use to government, councils and panels in shaping the services needed and avoiding the mistakes of the past. Funding is however unreliably patchy. We believe that assured longer term funding would ensure a steady stream of information to inform policy and work with children, young people and their families



The hearing process: two-way accountability

In 2003 in relation to young people who were brought before the hearings for offending, we recommended the hearings must place a greater emphasis on personal responsibility and accountability, as must the available supervision programmes.

We also called for a recognition that any increased accountability and responsibility by young people for their actions must be matched equally by the accountability of the hearings for the decisions and their immediate and longer term outcomes.

We urged that there should be a greater emphasis on the contribution of police officers with responsibility for juvenile liaison, in relation to persistent or serious offenders who are most at risk of progressing to adult courts. This was to address the failure of the hearing system to help young people avoid continued offending and entry into the adult system at a young age.

In 2009 we believe there is an unanswerable case for extending the use of the hearings to 17 and 18 year olds. The use of adult criminal courts for immature and usually poorly supported and educated children, many of whom have been looked after at some time in their lives, has very serious consequences for them, and for the rate of offending, and the steadily growing prison population. We believe that the use of adult criminal courts for this age group is manifestly not working for them or for the wider society.

The reconviction rate for children who have been imprisoned before the age of 18 years is 80% by their 22 birthday. The rate of re-imprisonment before that age is 70%. Additionally, for those with convictions by age 18 but who were NOT imprisoned, 43% were reconvicted by age 22, still significantly high⁸.

In 2003 we advised separate time at every hearing should be allocated for young people to speak to the panel in private and also that young people must have a greater involvement in the hearings, in panel member training as peer mentors or advocates, and when their own cases are under consideration.

In 2009 we support the proposal made at our reconvened hearing on 12 November that there should be a mandatory report of the child's views and wishes presented to the hearing. This would ensure that the child is supported to form and express a view. In the main we do not believe that there is a need for a separate 'army' of advocates to undertake this work, but rather that the use of a mandatory requirement, plus accredited training, would ensure better practice would develop.

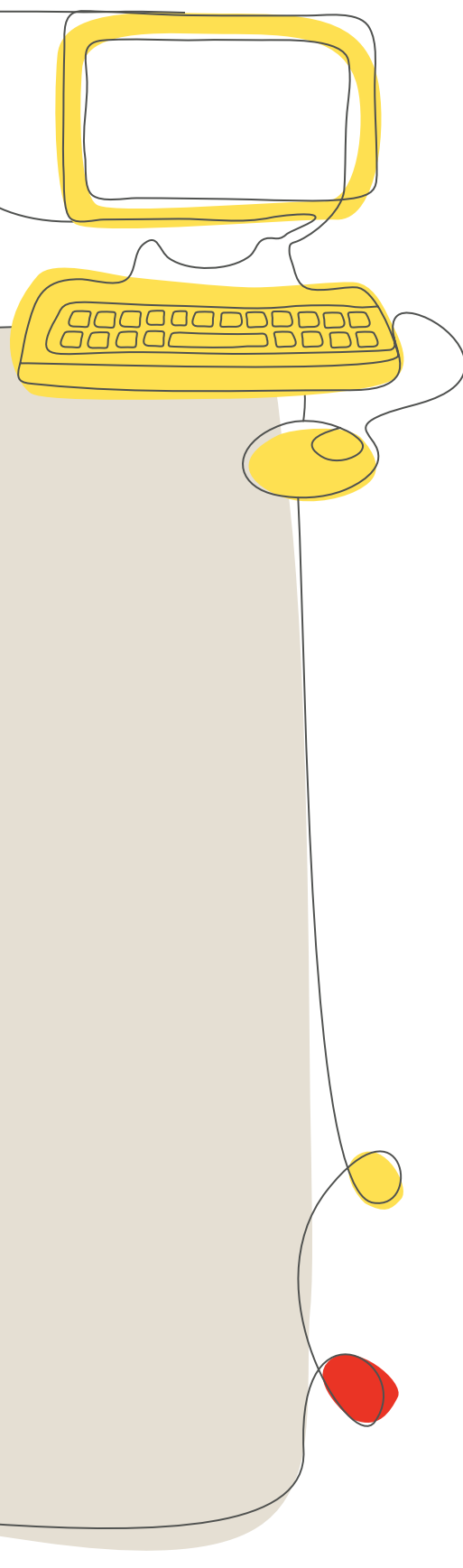
Additionally, we would not want to see children's involvement understood as a 'one off' in relation to individual hearings, but as a way of ensuring that the system as a whole is responsive to the views and involvement of children. We should welcome the involvement of young adults with experience of the hearing system when children to give us the benefit of their views retrospectively rather than rely only on those currently in the system. We have been impressed by the ability of some of these young people who have spoken to us to get to the heart of matter and believe that their insights should be captured and valued.

7. Edinburgh Study of Youth Transitions and Crime (the Edinburgh Study).

8. Edinburgh Study of Youth Transitions and Crime (the Edinburgh Study) See www.law.ed.ac.uk/cls/esytcr/ for details of findings and publications

Future developments

Policy development must reflect what works, and we underline the importance of policy and services being evidence led rather than reliant on belief and tradition. This implies good longitudinal information on outcomes of interventions to evaluate our current patterns of support. We repeat our call in 2003 for ongoing review and evaluation of our processes and our services, and for the publication of information to support an informed response to children in need and in trouble.



Support evidence

The Edinburgh Study of Youth Transitions and Crime

This is a longitudinal study of all young people entering secondary school in Edinburgh in 1998. As such it provides substantial information about the circumstances of the young people and the connections between their socio-economic circumstances, the interventions and support they receive, and among other things, whether they resort to, persist in or desist from crime in the longer term. (the young people are now 21-23 years old)

Some relevant findings:

Four key facts about youth crime and justice are strongly supportive of the original Kilbrandon ethos.

Fact 1: Persistent serious offending is associated with victimisation and social adversity

Study findings are strongly supportive of the original Kilbrandon model of juvenile justice and in particular the links made between needs and deeds. Importantly, those involved in violent offending were the most vulnerable and victimised young people in the cohort.

Fact 2: Early identification of at-risk children is not a proven way to reduce future crime

The research suggests that there could be major problems for agencies in identifying from an early age those specific individuals who will turn out to be chronic serious offenders in the teenage years. Furthermore there is a danger that early targeting of children and families may serve to label and stigmatise these individuals and thereby create a self-fulfilling prophecy.

Fact 3: Critical moments in the early teenage years are key to pathways out of offending

Rather than directing the gaze of criminal justice at the early preschool years, Edinburgh Study findings strongly suggest that policymakers should focus more firmly on critical moments in the early to mid teenage years. The evidence is that exclusion from school has the most important negative impact on future offending.

Fact 4: Diversionary strategies facilitate the desistence process

Edinburgh Study findings suggest that the Kilbrandon objectives of minimal intervention and avoidance of stigmatisation and criminalisation have been systematically undermined by the working cultures of both the police and the reporter to the children's hearing system. This has resulted in a group of youngsters, who might readily be called the usual suspects, who become sucked into a repeat cycle of contact with the system.

Witnesses

Andrew Lockyer

St Kentigern Professor of Citizenship and Social Theory Glasgow

Alastair Hamilton

Depute Chair Panel Chairs group

Ann Lee

Chair of Children's Panel Association

Alan Finlayson

retired sheriff and ex principal and formerly (first) reporter to the Childrens Hearings reporter in Lothian

Netta Maciver

Principal Reporter/Chief Executive of SCRA and formerly CEO of Turning Point Scotland

Morag Driscoll

Director Child Law Centre and former Reporter, Chair Law Society Family Law committee

Tam Baillie

Scottish Commissioner for Children and Young People

Professor Jane Aldgate

Professor of Social Work The Open University and also GIRFEC Advisor to Scottish Government

Harriet Dempster

President of Association of Directors of Social Work and Director of Social Work Highland Council

Robert Nichol

Team Manager COSLA

Lesley McAra

Professor of Penology, School of Law University of Edinburgh

Paul Carberry

Operational Director Action for Children

Lyn Ross

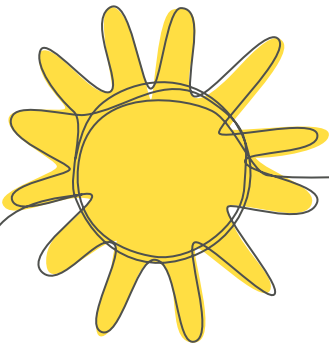
Professional Advisor Care and Justice, Offender Management Programme Scottish Government

Jim Hunter

Chief Officer, North Strathclyde Community Justice Authority

Young People's Panel:

three young people from Action for Children projects attended and participated



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