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Legal Representation in the Scottish Children's Hearings System

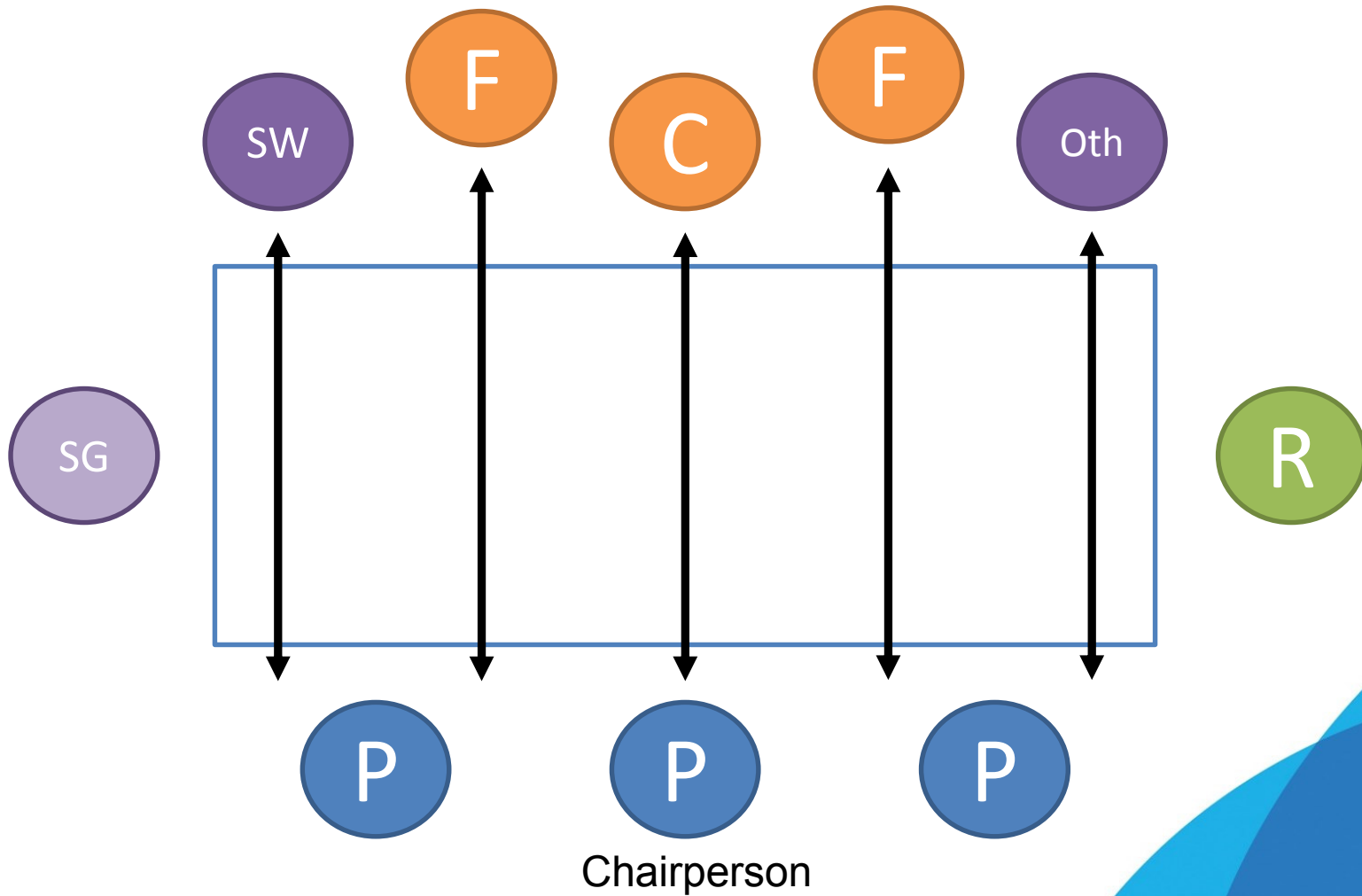
EUSARF 2016

Dr Robert Porter (presenting)
Dr Vicki Welch
Carol Wassell

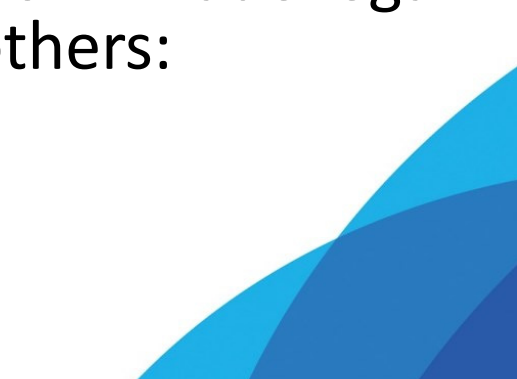
The Scottish Children's Hearings System (CHS)

- Began operation in 1971 following the Kilbrandon Report in 1968
 - Core principles include:
 - Centrality of the (best interests of the) child
 - Discursive forum
 - Focus on needs, not deeds
 - Community involvement (lay panels)
 - No-order principle
 - Deal with cases with both offence and 'non-offence grounds'
 - Disputed grounds are sent to the Sheriff (court) for adjudication
 - Age-limited up to 18
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The Children's Hearing Set-up




Solicitor involvement in the CHS

- Children and parents have always been entitled to legal representation
 - Prior to 2002 this was rarely exercised
 - 2002 ECHR ruling mandated that legal representation for the child must be considered where a restriction on liberty was being considered
 - The Children Hearings (Scotland) Act 2011 made legal aid available to parents and relevant others:
 - To ensure correct process
 - To provide advice
 - To facilitate participation in the hearing
 - Means-tested
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Aims

CELCIS was commissioned by the Scottish Legal Aid Board (SLAB) to carry out a piece of research on 5 topics relating to solicitors in the CHS:


- The ethos of the CHS
 - The role and impact of solicitors in the modernised CHS
 - Monitoring of solicitors in the CHS
 - Gathering feedback on solicitors
 - Training necessary for solicitors
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Methodology


Mixed methods were used, utilising qualitative and quantitative approaches:

- Survey of the four main groups involved (panel members, solicitors, reporters & social workers)
- Focus groups with 4 main groups
- Key informant interviews
- Interviews with children

All data collection took place July-November 2015

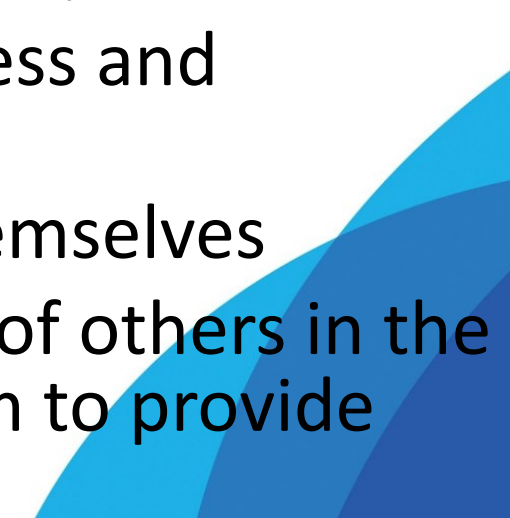


Findings

- Challenges:
 - the introduction of an adversarial style
 - a change in emphasis away from the best interests of the child and towards the rights of the parent(s)
 - the introduction of delay into proceedings
 - a lack of solicitor understanding of child development, communication and attachment
 - disruption of social workers' relationships with the family.
 - Widely acknowledged that these problems were presented by a minority of solicitors
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Findings (cont.)

Benefits:

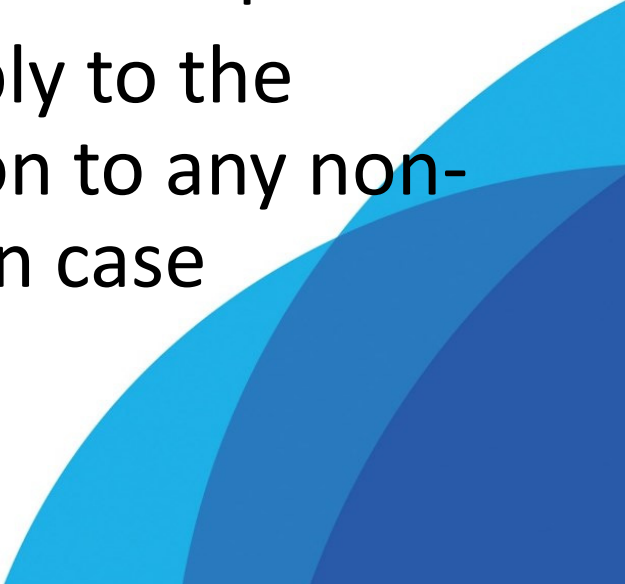
- Putting forward their clients' views and desired outcomes,
 - Calming clients when they were feeling highly emotional,
 - Managing their clients' expectations,
 - Describing and clarifying the process and procedures for their clients,
 - Supporting clients to speak for themselves
 - Positive changes in the behaviour of others in the hearing (such as encouraging them to provide greater clarity).
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Discussion

Overall, there were some themed concerns that ran throughout the responses given:

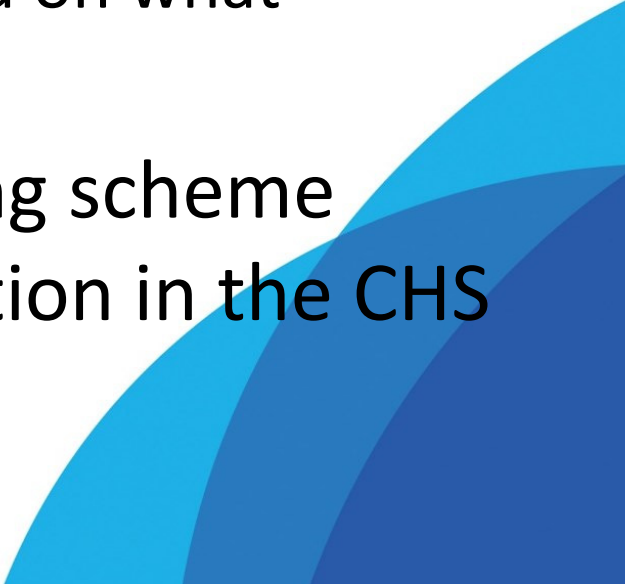
- Reduction in child-centredness of the hearings
- Introduction of adversarial behaviour
- Delay and disruption to children's care plans

These are concerns that could apply to the introduction of legal representation to any non-court tribunal (e.g. child protection case conferences)



Conclusions I

To address these issues, a number of recommendations were made:

- Clarity in the solicitor role in relation to best interests of the child
 - How should they judge this, based on what information?
 - Creation of a compulsory training scheme prior to provision of representation in the CHS
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Conclusions II

- Provision of Continuing Professional Development opportunities for solicitors related to the CHS
- Joint training between all organisations working in the CHS
 - Improve understanding of roles and responsibilities
- Quality Assurance Measures

These are measures that can assist in facilitating the introduction of solicitors to such an forum as the CHS.

Thank You

Questions or comments are welcomed to:

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The full report will be made fully available at:

www.celcis.org

