

***Many Roads Converge on the Same Hilltop:***

***Children's Rights in Scotland***

***by Judy Furnivall, Andrew Hosie and Meg Lindsay***

Introduction

All children and young people have rights. It can be argued, however, that those in public care have historically been the most likely to have those rights denied. Ensuring that rights are respected, in deed as well as word, involves attention to minor detail as well and the imagination and courage to achieve major change. It can be argued that the group, which most needs those who care for them to portray these attributes, are children and young people who are looked after by local authorities, particularly those living in residential care. Enquiry after enquiry has demonstrated the vulnerability of this group - separated from families, frightened to speak out about abuse and maltreatment they have experienced, seldom listened to or believed if they do bring themselves to do so. (Levy and Kahan, 1991; Waterhouse, 2000; Marshall, 1999)

Children and young people who are looked after in residential care therefore have been the focus of much attention in recent years as to how best to protect their rights. The two major reviews of the safety of children in residential care (Kent, 1997; Utting, 1997) as well as the inquiry occasioned by the abuse of children in North Wales (Waterhouse, 2000) have stressed the need to develop techniques for protecting these children's rights, particularly the right of protection from abuse, whereas the Children Act 1989 and the Children (Scotland) Act 1995 have both highlighted the rights of these children among others to have a strong voice in decisions about their own lives. Consideration of developments in relation to this group, therefore, are of especial interest.

Looking at how this has been handled in the context of one small country enables a consideration of how the issue is seen on a local, national and international basis. This chapter will therefore explore how Scotland has developed ways of protecting the rights of children living in residential care.

Research by ChildLine (Morris, 1994) into the calls they received from all over the UK from children and young people in the care system revealed that the Scottish group differed from their peers in two distinctive ways - they were more aware of why they were in care, and of what their rights were. The most likely explanation of this discrepancy relates to two factors which differ between Scotland and the rest of the United Kingdom. The first of these is the existence in Scotland of that distinctive system for dealing with child care decision making - the Children's Hearing system. The second relates to the development over some 25 years of an organisation - Who Cares? Scotland - run by and for children and young people who are looked after by local authorities. In common with others, the Children's Rights movement has also developed over the last decade, but it interacts with both the Children's Hearing system and with Who Cares? Scotland, therefore giving the opportunity for a more co-ordinated approach. These areas of difference are therefore worthy of in-depth study.

This chapter will therefore describe the Scottish situation, in particular in relation to the development of the Hearing System, Who Cares? Scotland and Children's Rights Officers, and will then look at international research which showed how children in residential care in Scotland viewed the protection of their rights compared to those in Finland, Ireland and Spain.

## Scotland

Scotland is a small country with a distinctive approach to child care. It could be argued that this derives from a cultural background in which community and family have historically formed the core of social organisation. The Gaelic word 'clan' means 'children'. The concept of 'clan' reflects the family relationship between the Highland chief and his people, and the significance of community in all social organisation. With the reformation and the development of the Presbyterian Church, this localised, community based approach to the care of people in need and including children, was sustained. Children who could not continue to be supported in their own families were

placed in other families in the community, by decision of the Kirk Session (the ruling court of each local church, which was made up of elected members of the local congregation). By the nineteenth century, this meant that 'foster' care had developed in Scotland rather than residential care as a way of supporting children in need.

However, children's rights as an issue of social policy and practice, does not have a lengthy history in Scotland any more than in other parts of the world. The creation of courts to deal with children's issues came into being in the late 19th century with the first one being established in Norway in 1896, in Cook County in the USA in 1899 and in Scotland in 1932.

The Second World War brought in its wake a desire to establish human rights and the fledgling United Nations devised a Declaration of Human Rights in 1948, which was followed by the European Convention of Human Rights, devised by the Council of Europe and signed by the British Government on 3 September 1953. Despite that progress, it took until the 1980s and the creation of Who Cares? Scotland, and the UN Convention on the Rights of the Child (signed in 1991), for the whole issue of rights and children to move 'centre stage' in Scotland. For children and young people looked after by care agencies, the issue was advanced by the publication of the 1992 report Another Kind of Home (Skinner, 1992). It is interesting to set out the UN Convention and the Skinner principles together:

UN Convention	Another Kind of Home
Protection from discrimination	Individuality and development
Protection of privacy	
Action taken on the best interests of the child	Child centred collaboration
Right to freedom of expression and thought	Rights and responsibilities
Right to express an opinion	
Protection of children without families	Partnership with parents

Appropriate care for children with special needs

Access to health care

Health

A decent standard of living

Good basic care

Access to education

Education

Right to cultural identity

Access to play and leisure provision

Protection from exploitation

A feeling of safety

Protection from torture and deprivation of liberty

Protection from abuse and neglect

The two are not and were never meant to be either comparative or in conflict. The Skinner principles are entirely to do with children looked after in public care. These principles measure well, however, when set against the UN Convention. To get a fuller picture of the rights of children and young people looked after and accommodated in Scotland, one would need to add the principles on safeguarding from the Kent Report (Kent, 1997), together with the thinking behind Valuing Diversity (Social Work Services Inspectorate, 1998).

#### The Children's Hearing System

This distinctive approach to child care has perhaps its most obvious manifestation of recent years in the shape of the Children's Hearing system, introduced in the Social Work (Scotland) Act 1968.

The core principle underpinning the system is 'needs not deeds' - in other words, decisions about children's welfare should be made on the basis of their best interests - their 'needs', and not on what they have done - their 'deeds'.(Kilbrandon, 1964) Hence the system replaced the concept of difference between, for example, children who commit offences and those who have been abused. The issue was not what had been done, but

whether the child was 'in need of compulsory measures of care'. In viewing all dealings with children and young people in this way, Scotland moved away from the juvenile justice/child care divide which typifies nearly all other countries. Not only was the system revolutionary in philosophy, it was also innovative - indeed years ahead of its time - in terms of method. The Panel is made up of three volunteer representatives of the local community, selected and trained for their role. Guided by an individual, the Reporter, whose role is to oversee the process and advise the Panel on legal and procedural aspects, the Panel Hearing convenes with the child, parents and any other representative they wish to bring, along with the social worker. This group sit around a table and discuss the situation together for around forty-five minutes, after which the Panel take a decision based on the welfare of the child. They then explain this decision to the child and family, allowing them to give their views and advising them of what will happen next. In using this format, and stressing the centrality of the child, as part of their family, in this process, the system foreshadowed by around two decades, some of the work currently being developed in the UK on Family Group Conferencing.

Thus, as early as 1968, Scotland had developed a system which ensured that the child's views were recognised as a significant part of the decision making process about their future, allowing time for a full discussion with parents and child of the circumstances surrounding the family and child's difficulties, and listening to their perspectives before drawing conclusions. It also attempted to ensure that decisions were made not solely by professionals distant from the actual situation, but by members of the local community. This was in some ways reflective of the cultural approach of the country over the preceding centuries, in involving the community along with the family in decision-making about the child's welfare. It was also predictive of the increasing emphasis on the child's rights, which would develop in the following decades.

In order to achieve such a centrality of the needs and welfare of the child, a conscious choice was made to compromise some principles, in deference to the welfare of the child, for example, relaxation of the laws of evidence in the acceptance of a lesser standard of

proof in care and protection cases, and in the general informality of the Hearing system. Recently, this has caused debate in terms of the European Convention on Human Rights, in respect of Articles 6 (right to a fair trial) and 8 (right to family life). These issues are being debated currently, and certain modifications will be made to update the system to take account of these issues. However, it appears that radical change to the system will not be necessary as, in essence, it is in harmony with the principles of human rights embodied in the European Convention, given its welfare approach, and the emphasis placed on the importance of hearing the voice of the child and family.

Considering the research by ChildLine, mentioned at the beginning of this chapter (Morris, 1994), it is possible to see why the Children's Hearing system may have resulted in young people looked after by local authorities being more clear about why these decisions have been taken, and what their rights are. By being included in the decision-making process, and having their views sought, in a setting intended to be less threatening than a courtroom, the young people themselves are much more likely to understand what is going on. Almost as significantly, over the 30 years since the implementation of this system, the adults concerned have been forced to recognise that young people have views and should be consulted concerning the decisions being taken about their lives.

As with any system, as the years have gone by, much has been learned about how the system works, and most importantly, how it is experienced by those involved, in particular the young people themselves. What has become clear is that young people still can find these settings intimidating and as a result have difficulty in becoming genuinely involved in the decision-making process, for all the good intentions of the system and those operating it. This is a significant point. Even if systems and structures are designed to be child-friendly, more work is still necessary to ensure that the young people concerned can really experience them in this way. To be successful, this is best done by working directly with the young people themselves to understand what is causing the difficulty, and what can be done to improve the system, so that it can meet its original aims.

One of the ways forward in enhancing the young people's experience of the Hearing system has been the development of the role of the Children's Rights Officers. The experience of this in Scotland will now be described.

### Children's Rights Officers

The first council to introduce a Children's Rights Officer (CRO) in Scotland was the then Tayside Regional Council, who appointed a CRO in 1991. This post was originally designed to focus on the needs of young people leaving care in two of the council's residential units. Work centred on ensuring that they had access to the benefits to which they were entitled, and to developing a representative role on their behalf, in particular in relation to the Children's Hearings.

The lead set by Tayside was shortly followed by the then Strathclyde Regional Council. In response to the high profile abuse enquiries such as the 'Pindown' report (Levy and Kahan, 1991), Strathclyde's approach to children's rights was comprehensive in intention and had four main strands.

Firstly, funding was directed to ChildLine in order to develop a ChildLine for Children in Care. This was in recognition of the particular risks faced by these children, and the need to give them ready access to the telephone helpline, given that the main lines were often busy.

Secondly, funding was directed to the Scottish Child Law Centre, which supplied legal advice and consultation facilities for children and young people, and those working with them.

Thirdly, two posts were funded at Who Cares? Scotland, the young people's organisation. Fourthly, a Children's Rights Officer was appointed.

This latter was a vast task, given that there was initially only one Officer in an area which stretched from remote islands to inner city areas, and contained nearly half the population of Scotland (2.5 million people), including several of its most deprived areas. The most

important statistic at that time was that the number of children physically in the care of the local authority was 2500. It took the newly appointed officer an entire year to conduct a visit to every children's home; and work with children in foster care was simply not possible. Inevitably, the work was reactive, involving response to young people calling on a telephone helpline, and general educative work about children's rights. As many Children's Rights Officers have found, in those early days, work was often met with hostility and suspicion by residential workers, and even managers, and moving to a more positive agenda was a key objective.

Both the numbers and the role of the CROs have altered in the intervening decade. In contrast to the one officer for the whole vastness of Strathclyde Region with its 2,500 children physically 'in care', the now reorganised council of South Lanarkshire has three officers for a 'looked after' population of 250. This has enabled the work to become less reactive, and more proactive. Workers aim to know all of the young people by name, and are able to anticipate issues and become involved early. There is much less use of the phone as the first point of contact, and the response of the staff to the involvement of the CRO is no longer defensive. As their role has developed, they have become perceived as helpful, and referrals to the CROs are now often suggested and encouraged by residential workers.

This change and development of the role of CROs has also enabled better interaction in this Council between the rights of the young people themselves and the improvement of direct practice. This can be seen best in work done recently in South Lanarkshire on the use of physical restraint in children's homes. Recording of the detail of this, and the young people's views of such incidents, has enabled a central collation of information, copies of which are sent to the CROs. Thus, with the involvement of the CROs, external managers have become equipped to discuss individual incidents with Children's Homes from an informed perspective, and changes in practice have resulted, which have been welcomed by all concerned. In this local authority also, four weekly meetings between the CROs and the Director ensure that he is given independent information about the

performance of his children's services which includes the young people's perspective. Thus again the role of the CRO has expanded in this council from the provision of a reactive advocacy and representation service to a full-blown information, representation and education service, which creates conduits for young people's views and experience to be directly fed to managers and policy makers in a consistent fashion.

The representative role has also developed, and this can be seen in connection with the Children's Panel system, where CROs now work closely with young people as their Hearings come up, ensuring that reports from the young person are included with those from the social worker and others, and going with the young person and their family to the Hearing, if wished. In this way, the forum offered by the Hearing system can be accessed by young people who are appropriately supported, so that they can ensure that their views are heard and understood, and taken account of in the decisions that will be made about their future. A key element in this development has been the partnership between the Children's Rights service and the young people's organisation, Who Cares? Scotland.

#### The Role of Who Cares? Scotland

One of the key forces behind the advance of children's rights agenda for children and young people looked after and accommodated has been the rise over the last two decades of Who Cares? Scotland. Who Cares? Scotland is an independent organisation, managed and staffed largely by young people with experience of the care system. For the first ten years of its life, Who Cares? Scotland operated on a totally voluntary basis, working as a collective advocacy service for young people living in residential care. Assisted by a cohort of adults willing to support but not to control, these young people began to work to influence the structures and power systems of Scottish social work, to ensure that the young people's voice was heard and their perspective taken into account. Initially, the organisation worked with groups of young people, increasing their understanding of their rights, and campaigning for changes in policy and practice to protect these rights. Gradually, their work paid off, and they became more and more influential at all levels in

the Scottish child care system. Their approach in 'translating' documents out of official language into language accessible to young people then enabled them to obtain young people's views about the most complex issues, and then feed these responses back into the system at high level. The fact that this work was largely carried out by young people themselves gave the organisation immense credibility with young people in the care system, and also with politicians, policy-makers, and professionals. The effectiveness of their approach was amply demonstrated in their impact on the Children (Scotland) Act 1995 as it went through the various stages of the legislative process. The process of developing political impact was seen dramatically in the role Who Cares? Scotland took in the process through Westminster of what is now the Children Scotland Act 1995. There was much joint work between voluntary agencies, in which Who Cares? took an active part. As documents appeared relating to the Bills etc. as the process progressed, these were 'translated' by Who Cares? staff into more accessible language, and consultation processes with young people set in motion. Thus Who Cares? developed its position on the various aspects of the new Act, and lobbied, including travelling to London to communicate their views to the relevant people. Life has become that much easier now that a trip to Edinburgh can achieve the same or more significant impact. A recent debate in the Scottish Parliament about children in the care system, and in particular about changes to the supports available to young people on leaving care, was attended by a large cohort of young people from Who Cares? Scotland, and regular reference was made to them, and to the importance of listening thoroughly to their views, on the floor of the Chamber. Before the debate, much work had gone into briefing the MSP's of the various parties on the Who Cares? position on the matter under debate. It is worth noting that in this case, it was the MSP's who sought them out, rather than they who had to find ways to lobby.

This organisation has developed, in size, role and political significance, such that between 1998 and 2001, the number of the staff at Who Cares? Scotland has increased from 13 to 28 - a dramatic expansion over a very short period. Of these 28, 23 are direct workers,

visiting residential units on a regular basis, and a majority are young people who have had experience of the care system.

The organisation is funded from a mixture of sources, including central and local government. The recent expansion has resulted largely from the Children's Safeguards Review (Kent, 1997), which advised that increased representation for young people was essential if their rights are to be protected while they are living within the care system. One of the ways local authorities have found of doing this has been to fund workers at Who Cares? Scotland who will work with their peers providing advocacy and representation, as well as promoting their rights via education and campaigning. By January 2001, 29 of Scotland's 32 councils were directly funding such posts in Who Cares? Scotland to provide advocacy and representation to the young people within their care, and certain independent organisations were also part-funding posts to provide the same service to the young people placed with them.

Who Cares? Scotland is managed by a Board of Directors, at least 50% of whom are young people with experience of the care system. A National Forum, meeting twice per year, ensures that the Board reflects the current issues and views of young people, as do bi-monthly meetings in local areas and an annual conference. A magazine and a website also contribute to informing young people of their rights and of the role of Who Cares? Scotland. The organisation also conducts regular consultations with young people on issues of importance, and the information so generated is fed back to local and national government. Different techniques are used to enable young people's voice to be heard, including younger children under 12. Experience has shown that the best information and empowerment of young people comes not from using direct discussion-based, committee type structures. Use of drama, music, and art, alongside the skill of workers experienced in Who Cares? Scotland's philosophies, has resulted over the years to a very powerful lobbying system which has affected policies on issues from major ones to minor ones. The newly formed Scottish Institute for Residential Child Care, which has been established to transform the training and qualifications for residential workers, has been

created with a linked post in Who Cares? Scotland to ensure that all training materials are designed with the young people's views at their heart. Who Cares? Scotland is also represented as one of the five managing partners of the Institute, and a Young People's Forum is being developed to advise on all aspects of the Institute's work. [this is worth a little elaboration not only from an advocacy point of view but also as indicative of how the participatory process is developing in Scotland. It is only a matter of perhaps drawing all the examples of how young people more closely together and emphasising how the overall emphasis is on effectively enabling young people to be more self-determining – the top stage of Hart's ladder of participation. ]

It is hardly possible to overestimate the significance of Who Cares? Scotland in protecting and promoting the rights of children and young people living within the care system. That such a powerful and effective advocacy organisation has been able to sustain such a rapid expansion begs questions as to why this has not happened in other countries, particularly those within the United Kingdom and the Republic of Ireland. Certainly, the small size of the country - population five and a half million - has contributed to this, but this is offset to some extent by the difficulties of remoteness of some of the centres of population. Although Scotland has only around one tenth of the population of the United Kingdom, it has almost one third of the land mass. Further, Wales and Northern Ireland are more compact geographically and have smaller populations yet neither have young people's advocacy organisations which have developed this degree of influence. The same applies to the Republic of Ireland, also a compact country with a relatively small population.

A key factor that has crucially helped Who Cares? Scotland's development has been the degree of support and commitment it has consistently received from government. The former Scottish Office and present Scottish Executive have been committed to the development of a powerful young people's organisation, and have shown this commitment by both funding and using Who Cares? Scotland to influence policy development and implementation.

Additionally, one might surmise that the climate created by the Children's Hearing system has allowed the realisation to dawn amongst adults, including social work professionals, that young people are willing and able to become involved in planning their own futures, and that enabling them to do so more easily will be positive for all concerned.

Whatever the reasons, Who Cares? Scotland is almost unique world-wide in terms of its power and effectiveness. It is easy to believe that such a significant organisation, devoted to representing for young people's rights would have increased the young people's understanding of their position and enabled them to become more fully empowered, thus adding another explanation for the ChildLine findings (Morris, 1994) noted at the start of this chapter. Further evidence in support of the fact that Scottish young people living within the care system have a better understanding of their rights and reasons for being 'in care' was supplied by European research conducted in 1998, and described in the report Care to Listen? (EUROARRCC, 1998).

#### The Young People's Voice

The consideration of the rights of children has seldom included researching how children themselves understand this concept. As well as showing, although on a small scale, some element of international difference in how children and young people in residential care understood and recognised their rights, Care to Listen? (EUROARRCC, 1998), also gave food for thought on how the issue of rights is perceived by young people in general, and allows some partial comparison of children and young people of different nationalities, and living within different systems. The table below shows the results given in response to the question 'How well are your opinions listened to?' Clearly, Scottish children were much more confident that this was the case, although of course the sample is small.

	Finland	Ireland	Scotland	Spain	Total
Very satisfied - listened to all the time	4	3	12	2	21
Satisfied - listened to most of the time	11	3	2	5	21
Neutral - listened to some of the time	2	1	3	7	13
Dissatisfied - not listened to most of the time	1	5	1	1	8
Very dissatisfied - never listened to	1	2	1	2	6

There is much emphasis on ensuring that young people know what to do if their rights are infringed, and an increasingly heated debate about whether or not rights should be balanced and against matching responsibilities. But all of this will be affected by how children define the concept of a 'right'. Defining a 'right' is no easy matter. It tends to be dealt with by listing those things which are considered to be 'rights', which is a somewhat circular approach. What is clear is that if adults struggle to understand clearly what it is to have 'rights' - what this actually means - then it is not surprising that children will find it at least as difficult. It is also reasonable to assume that culture may make a difference, not only to what is defined as a 'right', but also to how the concept of a 'right' is in fact defined. This is important, as it affects how staff are to be trained, what issues are regarded as legitimate for complaints about infringement of rights, and so forth.

An opportunity to look at these issues was provided in 1998, when EUROARRCC (the European Association for Research into Residential Child Care) conducted a major comparative study of residential child care in Finland, Ireland, Scotland and Spain. This involved the creation of a picture of residential child care in the four countries, including history and statistics. Direct information about the young people was obtained via 200

Child Behavioural Checklists (Achenbach, 1991), 78 interviews with the young people (20 in each country), and individual and group interviews with around 80 managers, policy makers and staff. The resultant report, *Care to Listen? A Report on Residential Child Care in Four European Countries* (EUROARRCC, 1998), ended with recommendations to the European Union for further progress.

The interviews with the young people contained questions relating to rights, and as such, provides an interesting slant on the issues being discussed in this chapter. The young people were all living in residential settings, and were aged between 12 and 18. The interviews were conducted using a semi-structured format, with a questionnaire which had been designed in Scotland by a young person who herself had experience of residential care. Questions ranged over the eight quality principles identified in *Another Kind of Home* (Skinner, 1992) –

individuality and development	education
rights	child centred collaboration
good basic care	partnership with parents
health	a feeling of safety

The young people's responses concerning rights were particularly interesting. Most of them - 50 out of the 78 interviewed - had access to some document which told them about rights and responsibilities. Most seemed confident that they knew what a 'right' and a 'responsibility' were. 63 (81%) felt that they knew what a right was, and even more - 71 (91%) - that they knew what a responsibility was. However, their definitions varied, and this seemed to be partly a factor of their country, or perhaps of the documents available to them.

Various concepts of 'rights' were given, including 'things you are allowed to do', and 'freedom of speech and thought' -

‘The ability of a person to do what they want to do, and how they want to do it’(Irish girl),

‘You can say what you want to say. You have a right to an opinion’ (Scottish boy)

In general, Finnish and Irish young people described rights in terms of the former, whereas Scottish young people tended to define them in terms of the latter. Spanish young people seemed on the whole less clear –

‘Something that belongs to you’ (Spanish girl.).

‘Responsibility’ was also interpreted differently by the children from the four countries. Irish young people, in particular, saw responsibility in terms of care for others, whereas Spanish and Finnish young people emphasised the actions one was expected to carry out, and the Scots stressed taking responsibility for one’s own actions;

‘To take care of your little brother, or to keep the house tidy’ (Spanish boy);

‘If I do something wrong, it’s my problem’ (Irish boy);

‘What must be done, what I am expected to do’ (Finnish boy);

‘Everything is on your shoulders’ (Scottish boy).

These are important findings. If children understand the concept of rights in a particular way, that will define what they regard as an infringement, and determine how they use any system which is devised to protect their rights.

The majority of the young people (42 - 54%) did not feel their rights were being denied, but a sizeable minority (29 - 37%) felt otherwise. The reasons given by young people who did feel their rights were being denied were mainly in terms of loss of freedom. If the young people felt their rights were being denied, they stated that they would be most likely to tell residential staff - 49 (63%) of the young people would use this route. The significance of the role of residential staff in both defining and protecting young people’s

rights is thus seen as crucial. It may be assumed that staff will also tend to define the concept of rights in terms of their cultural background. Therefore it is important to ensure that staff are well trained, and enabled to think through the issue.

It is thus important to ensure clarity of thinking about what a 'right' actually is, and to give young people space to explore the concept itself before moving to issues of protection of rights or definitions of the content of rights documents.

### Conclusion

The development of the children's rights agenda in any country will depend on a range of factors, including cultural backdrop, governmental commitment, co-operation between existing institutions, and an environment that allows for the development of new organisations. Some of these factors have been present in Scotland, as we have demonstrated above. A cultural backdrop, which has elements of a community approach developed in 1968 into significant legislation which forced a concentration on seeing children's needs in a more holistic light, and which stressed the need to hear the child's view, and to involve them along with their families and communities, in the decision making about their own futures. Existing institutions, in the shape of local authorities, then took the situation forward through the development of the role of the Children's Rights Officer. Meanwhile, the young people themselves began to obtain and use power to make their own voice heard through a powerful self and collective advocacy organisation – Who Cares' Scotland? This would not have been possible, however, if the adults in government, both national and local, had not generally welcomed and encouraged this development. Hence research, both via ChildLine and via EUROARRCC demonstrates some small but discernible difference between the experiences of young people in care in Scotland and those in other countries.

There is much still to be done, and individual children and young people in residential care still find their rights poorly understood and even less recognised by those who care for them. None the less, we are beginning to find ways of genuinely including young

people in the power structures within many of the organisations most concerned with their lives.

Taken together, this have contributed towards the development of a climate that has enabled children and young people who live in state care to be centrally involved, not only in protecting and enhancing their own rights to, for example, participate in decision-making which effects them individually, but also in significantly progressing the agenda for many other children and young people in similar circumstances, living in Scotland and elsewhere.

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