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Scotland's unique system of juvenile justice began on 15 April 1971. It has proved to be capable of meeting changed circumstances and challenges. The system is centred on the welfare of the child. A fundamental principle is that the needs of a child should be the key test and that children who offend and children who are in need of care and protection should be dealt with in the same system. The rights of parents and children are protected by the legal framework which provides for decisions relating to the child's welfare to be decided by a panel of lay people, the Children's Hearing, while disputed facts and appeals are dealt with by courts.

One of the strengths of the Hearings system is that it has been able to adapt to changing social and political climates. The fundamental principles on which it is based have been maintained while account has been taken of international conventions on rights. These include the specific rights for children contained in the United Nations Convention on the Rights of the Child and the general human rights contained in the European Convention on Human Rights.

History: The Kilbrandon Committee

In May 1961, a committee was set up by the Secretary of State for Scotland under the chairmanship of Lord Kilbrandon. The remit of the committee was:

'to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles, and to report.'

The Committee's report was presented to Parliament by the Secretary of State for Scotland in April 1964.

At the time the Kilbrandon Committee was considering the way forward, juvenile delinquency was a much greater problem than cases in which children were the victims of cruelty or neglect.

The Kilbrandon Committee concluded that:

- despite distinguishing circumstances, there was a basic similarity in the underlying situation of children who appeared before the courts. This was their common need for special measures of education and training as 'the normal upbringing processes', for whatever reason, had failed or fallen short. The treatment measures operating at the time of their deliberations were based on an educational principle which recognised and aimed to strengthen and build on natural influences which through education and training would assist the child to develop into a mature and useful member of society

- the most powerful and direct of these influences lay within the home and any measures to treat children had to involve, as far as possible, working closely with parents. However, the Committee rejected any suggestions that parents should be subject to direct sanctions, such as supervision, restitution or fines, as it believed these measures were incompatible with the educational principle
- a process of social education was required which, on the basis of persuasion, sought to strengthen, support and build on natural family instincts by engaging the co-operation of parents. A special agency – a social education department – should be established as a division of the education authority to undertake this work
- the arrangements for dealing with children appeared to have developed in response to particular local situations, rather than on the basis of conscious principles. There was an underlying conflict and incompatibility between the principle of establishing guilt and innocence and appropriate punishment and introducing future preventative measures. The balance between these concepts was particularly acute in relation to juveniles. The common law recognised that the element of youth might be a mitigating factor. Statute law placed increasing emphasis on the need to have regard to the child's future welfare and to provide measures of education and training in the child's best interests
- if juvenile courts were expected to take into account circumstances outside of the actual offence, then treatment measures might appear to the child and parents to be out of proportion to the nature of the offence. This might affect the successful application of measures identified as necessary on an educational principle. The matter was complicated further by the fact that juvenile courts were also dealing with situations where children required care and protection and where a different standard of proof was required. The conviction of parents for criminal neglect or situations of serious moral danger (actual or potential) to the child, were commonly recognised as being possible precipitating factors towards future delinquent behaviour.

In taking all these factors into account, the Committee reached one of its most important and far-reaching conclusions:

- the overriding and paramount principle was that the needs of an individual child were required to be assessed so that appropriate treatment could be applied. This could only be achieved by objective examination of all surrounding facts and circumstances. It was inappropriate to expect a single agency to determine disputed facts and establish what an individual child's needs were in the light of the fullest information about the child's personal and family circumstances.

The proposals for Juvenile panels

The Kilbrandon Committee recommended that entirely new arrangements were required to deal with all children in need and that a special panel was necessary, which would be neither a court of law nor a local authority committee. The panel would be essentially a lay body, comprising persons who either by knowledge or experience were considered to be specially qualified to consider

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children's problems. What distinguished panels from the juvenile courts then in existence was the manner in which their powers would be exercised. The criterion for action would be the child's need for special measures of education and training. The panel's jurisdiction would be founded on grounds where the basic facts were agreed or accepted, with disputed matters being referred to a sheriff for adjudication.

Appointment of panels

It was recommended that panel members would be volunteers from the community who would receive appropriate instruction and training.

Premises

The premises used for sittings of the panels should be apart from, and entirely unconnected with, the criminal courts and police stations.

Referrals to panels: the role of the reporter

Referrals to the panel would be from an independent official to be known as the reporter, the gatekeeper to the system. They would have a legal qualification, as well as a period of administrative experience relating to child welfare and educational service.

Fundamental Principles of the Children's Hearings system

The children's hearings system was, from its start, underpinned by principles set out in the Kilbrandon Report. These brought together the law, expertise in providing child care and informed lay judgement in order to reach decisions on what care was needed in the best interests of individual children. The key principles are:

- children who offend and children against whom offences are committed should normally be dealt with in the same system – but children who commit very serious offences may be dealt with by the courts
- the system is based on a concern for the welfare of the child not punishment
- while the child's needs are normally the test for intervention this does not mean ignoring deeds
- the gatekeeper to the system, the reporter, gathers evidence to support specified reasons for referral and also applies the test of the need for compulsory intervention
- hearings are conducted in private but are open to prescribed public scrutiny
- decisions in hearings are made by trained lay people, representing a cross-section of the community
- children and parents have the right to accept or deny the grounds for referral and disputed facts are dealt with by a sheriff

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- hearings consider the whole child – that is the child in the context of his or her life
- the style and setting of hearings is relatively informal to encourage full and frank discussion while legal procedures are observed
- hearings should attempt to engage the co-operation of families in resolving problems
- parents are usually the best people to bring up their own children and should be encouraged and enabled to do so whenever possible
- hearings must seek, listen to and take account of the views of children and their parents in reaching decisions
- compulsory measures should be beneficial with decisions taken by children's hearings being in the best interests of the individual child
- compulsory measures encompass protection, treatment, guidance and control
- children should remain in their own community wherever possible and service provision should be integrated
- other rights, such as the right to appeal and to review of compulsory measures, are built into the system.

Once the first group of newly trained reporters and panel members began to put the pioneering legislation into practice throughout the country in 1971, the Kilbrandon vision of a welfare-based system of juvenile justice became a reality.