

# Permanently Progressing?

Building secure futures for children in Scotland

## Decision making for children

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## Acknowledgements

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Thank you also to Professor Brigid Daniel, Dr Andressa Gadda, and Dr Sarah Wilson who were part of the research team. Brigid was principal investigator 2014-17 and played an important role in establishing the study. Andressa conducted interviews and focus groups with Reporters to the Children's Hearing and members of Children's Hearings, while Sarah read and gave feedback on an early draft.

The report draws on interviews and focus groups with 160 individuals who are involved in decision making about children across Scotland. They include social workers, team managers, service managers, and members of adoption panels, independent reviewing officers, Reporters to Children's Hearings and members of Children's Hearings, a sheriff, and independent practitioners/consultants. In arranging focus groups and interviews we were dependent on the help and goodwill of key people in each area, and we are grateful to them for ensuring that we had people to talk to, rooms, and refreshments. We would also like to thank everyone who participated.

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<sup>1</sup> See Appendix 1 for details about the authors.

<sup>2</sup> See Appendix 2 for a list of the Steering Group members.

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# 1. Introduction

This report has been completed as one part of the study *Permanently Progressing? Building secure futures for children in Scotland*. The study is the first in Scotland to investigate decision making, permanence, progress, outcomes and belonging for children who became 'looked after' at home, or were placed away from their parents (with kinship carers, foster carers or prospective adopters) when they were aged five and under. Phase One of the research ran from 2014-18 and is designed to be the first phase in a longitudinal study following a large cohort of young children in to adolescence and beyond. The research was funded by a legacy and was undertaken by a team from the universities of Stirling, York, and Lancaster in conjunction with Adoption and Fostering Alliance (AFA) Scotland. The *Decision making for children* report is one strand of the *Permanently Progressing?* study. The study has five strands:

## **Pathways to permanence for children who become looked after in Scotland (the *Pathways* strand)**

This analysed data from Children Looked After Statistics (CLAS) provided to the Scottish Government by all 32 local authorities on children who became looked after in during the year 1 August 2012 - 31 July 2013 when they were aged five and under (n=1,836).<sup>3</sup> Of the 1,836 children, 481 children were looked after at home and 1,355 children were looked after away from home. This strand of the study investigated children's pathways into and through the looked after system over four years from 2012-16, including the route and timescales to permanence.

## **Children looked after away from home aged five and under in Scotland: experiences, pathways and outcomes (the *Outcomes* strand)**

Questionnaires were sent to the kinship carers/foster carers/adoptive parents and social workers of a sample of 643 children from 19 participating local authorities who became looked after away from home in 2012-13 and remained (or were again) looked after away from home a year later. Questionnaires were returned by 433 social workers and 166 carer or adoptive parents, providing information on the children's histories, circumstances, relationships, health and educational progress.

## **Linking two administrative datasets about looked after children: testing feasibility and enhancing understanding (the *Linkage* strand)**

Information about children who are looked after is collected from all 32 local authorities by the Scottish Government (CLAS data). Data is also collected by the Scottish Children's Reporter Administration (SCRA) on all children who have contact with the Children's Hearings System. For the first time, these two data sets have been linked through the Administrative Data Research Network (ADRN). Within the ADRN's safe haven we were able to safely and successfully link SCRA and CLAS data on 1,000 children. As well as testing the feasibility of linkage this enabled a more complete picture of the experiences of children.

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<sup>3</sup> Permission was given to access anonymized CLAS data from the Scottish Government on the total cohort of children in all 32 Scottish local authorities who:  
a) were age five or under on 31 July 2013 (i.e. born 1 August 2007 - 31 July 2013) and  
b) started to be looked after (at home or away from home) between 1 August 2012 and 31 July 2013.  
Using this sampling procedure, there was a total cohort of 1,836 children in Scotland age five years or under who became looked after during a single year (2012-13).

### **Decision making for children (the *Decision making* strand)**

During 2015-17, 160 decision makers were interviewed across Scotland mainly in groups, but some individually. These included social workers and allied professionals, members of Children's Hearings, Reporters to the Children's Hearings, independent consultants, members of permanence panels, and a sheriff. This enabled us to identify from a range of perspectives the factors which influence decision making for children.

This report details this strand.

### **Perspectives on kinship care, foster care and adoption: the voices of children, carers and adoptive parents (the *Children and carers* strand)**

Although the children in our cohort are young, we wanted to hear about their experiences. Play and talk sessions took place with a sample of 10 children aged between three and eight years, and 20 kinship carers, foster carers, and adoptive parents were interviewed. The focus was what helped children feel secure, and what carers/adoptive parents said they needed to enable them to meet children's needs.

### **Links**

Final reports for all five strands of the *Permanently Progressing?* study and summaries are now available:

<https://www.stir.ac.uk/about/faculties-and-services/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>

<https://afascotland.com/learning-zone/2-static-content/124-permanently-progressing>

<https://www.york.ac.uk/spsw/research/researchproject-permanentlyprogressing/> .

<https://www.cfj-lancaster.org.uk/projects/permanently-progressing>

## 2. Routes to permanence

Many children who become looked after away from home will return to their parents, but for some the decision is taken to permanently place them with kinship carers, long-term foster carers or adoptive parents. These decisions have far-reaching consequences for children and their families, and it is important to understand what factors influence decision making processes, children's pathways, and outcomes. This strand explored the following questions from the perspectives of decision makers across Scotland:

- How are decisions about permanence made and implemented?
- What are the main factors that influence decision making?
- What influences the choice of permanent placement and the route taken?

This strand explored these questions from the perspectives of decision makers across Scotland.

For the purposes of this report we will draw on the Scottish Government definition of 'permanence' which is:

*"Providing children with a stable, secure, nurturing relationship and home, where possible within a family setting which continues in to adulthood"*

(Scottish Government, 2015).

The Scottish Government (2015) defines four routes<sup>4</sup> to permanence:

- "Returning or remaining at home with or after support, where family functioning has stabilised and the parent(s) can provide a safe, sustainable home which supports the wellbeing of the child. This may require on-going support for the family.
- Permanence through a Permanence Order.
- A Section 11 order (for parental responsibilities and rights, residence or guardianship) under the Children (Scotland) Act 1995. From April 2016, where kinship carers have such an order it will be known as a kinship care order under Children and Young People (Scotland) Act 2014.
- Adoption, where the child has the potential to become a full member of another family."

Of these four routes to permanence, the *Permanently Progressing?* study is focusing primarily on the progress, outcomes and factors that support security for children who are unable to remain with or return to the care of their birth parents (i.e. children with a Permanence Order, or a Section 11/Kinship Care Order, or children who are adopted).

Although not one of the four routes defined by the Scottish Government, some children achieve stability and relational security, if not legal permanence, by remaining long term with consistent carers while on Compulsory Supervision Orders or under Section 25 of the Children (Scotland) Act 1995.

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<sup>4</sup> Appendix 3 outlines the routes to permanence with associated legislation.

## 3. Methodology

The study involves mixed methods, including the analysis of administrative data, the linkage of two national data sets, and analysis of questionnaires. It also included analysis of qualitative data from 'play and talk' sessions with children, and interviews with kinship carers, foster carers and adoptive parents. This report is based on qualitative data from interviews and focus groups with decision makers.

### Sampling and recruitment

This report draws on the views of 160 people involved in making decisions on behalf of children who participated in semi-structured interviews and focus groups across Scotland. This section gives a brief outline of how participants were recruited, and how their contributions were analysed.

Our aim had been to recruit participants to this strand of the study from the 19 local authorities in Scotland who were participating in the *Outcomes* strand. The initial plan had been to hold focus groups and key informant interviews across eight local authorities. However, due to the high level of interest we eventually included nine local authorities.

Information about the research was sent to key individuals within the nine local authorities, and they then circulated this within their organisations.<sup>5</sup> In addition to sending out initial information, and subsequent reminders about the research, key representatives within the nine local authorities also facilitated interviews and focus groups by arranging and booking rooms and refreshments. At our request, they generally sent the research team their local guidance on permanence to read before the focus groups and interviews.

With their help we recruited 134 participants across nine local authorities, in 15 focus groups and 21 interviews. Participants were comprised of social workers in children and families teams, in permanence or fostering and adoption teams, in specialist teams, reviewing officers and practice leads. Participants also included educational psychologists, independent consultants and a sheriff, who were recruited by members of the research team, or who had heard about the study from colleagues and contacted us.

As the role of Children's Hearings emerged as a theme in the focus groups, ethical approval was gained from the General University Ethics Panel and the Scottish Children's Reporters Administration (SCRA) to interview members of the Children's Hearings and Children's Reporters. Information about the research was circulated to the research team within the Scottish Children's Reporters Administration (SCRA) and the Children's Hearing Scotland (CHS) research team. SCRA and CHS then circulated information about the study and facilitated interviews. We held focus groups with 21 members of Children's Hearings<sup>6</sup>, and interviews and a focus group with five Reporters to the Children's Hearings. Although participants came from across Scotland, certain key decision makers (sheriffs and Reporters in

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<sup>5</sup> At the time information was circulated to the local authorities, the British Association for Adoption and Fostering (BAAF) was in existence and the Scottish team were collaborating in the research. The two universities involved at that point were University of Stirling and University of York. Subsequently, BAAF went into administration and Adoption and Fostering Alliance (Scotland) (AFA) is its successor organisation in Scotland. Later information sheets therefore include the AFA logo. In 2017, one member of the research team moved from the University of York to Lancaster University, and documents produced since then, including this and all final reports, reflect this change.

<sup>6</sup> For clarity, and to distinguish them from local authority adoption and permanence panel members, members of Children's Hearings panels are referred to as 'CHS panel members' throughout this report.

particular) were less well represented than others (social work practitioners, managers, members of the Children's Hearing), and this limitation needs to be borne in mind.

Participants all opted in and signed their consent – to participate and be digitally recorded.

Birth parents were not part of Phase One of the study. We have drawn on existing research with parents about their experiences of processes. However, their direct perspectives on the support available, the manner in which support was offered and experienced, and of decision making processes in which they and their family were involved are absent from this report. We want to ensure that parents with a range of experiences of permanence processes, including parents whose children have been reunified are part of Phase Two.

The views of children, carers and adoptive parents, and the extent to which they understand decision making processes, are covered separately in a separate report<sup>7</sup> based on play and talk sessions with children and interviews with adults carried out in a different strand of the study.

## Data collection and analysis

Interviews and focus groups were conducted across Scotland between spring 2015 and summer 2017, and aside from one (where the digital recorder failed) all were recorded and then transcribed verbatim. In the instance where the recorder failed notes were made as soon as possible after the group. One member of the Children's Hearing who could not come to a focus group sent comments in writing.

Transcriptions from interviews and focus groups were analysed thematically (Braun and Clarke, 2006) to draw out the findings for this report. Initially this was completed manually by reading and re-reading transcriptions; however, given the mass of data we had, and the richness of the data, NVivo was also used to help the team organise our analysis. Four members of the research team contributed to the process of analysis, including one person who had not been involved in any interviews or focus groups. Taking this approach helped to maintain a questioning approach in relation to emerging themes.

An early draft of this report was read by Robin Duncan (AFA) and Dr Duncan Helm (University of Stirling) whose research and teaching interest and experience include professional decision making, both of whom provided feedback. A draft was also read by members of the team who had not been involved in interviews, analysis or writing the report. A draft of the final report was read by the Steering Group and was anonymously peer reviewed.

Participants all opted in, and thus there are the following caveats: those who participated may have different perspectives to those who could have done, but chose not to, or who did not receive information about the study. Participants expressed views about permanence based on their particular experience, and on their understanding of legislation and research. In some instances their experiences were not replicated in other areas of Scotland, and at times their knowledge of legislation and/or existing research was not completely accurate.

## Ethical issues

Ethical approval for the full study was provided by the General University Ethics Panel, University of Stirling.

Written information about the study was sent by the research team to participating local authorities and then to SCRA and Children's Hearings Scotland to pass on to possible participants. This information was revisited at the beginning of each individual/group interview, and there was an opportunity to ask any questions. All participants opted in to interviews,

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<sup>7</sup> The *Children and carers* report is available on the website.

giving their consent to be interviewed and digitally recorded. The interviews were conducted from the position of contingent confidentiality (Dominelli and Holloway, 2008) where it was made explicit that if participants said or did anything that led to concerns about the safety of a child or professional practice, we would pass this information on to the appropriate manager in the organisation.

All data was anonymized and securely stored, consistent with national guidelines on data protection.

Extracts from interview transcripts are included throughout the report. These indicate the interviewee's role (for example local authority manager, member of the Children's Hearing), but give no additional information to maintain anonymity.

## 4. Background to the study: the research context

The concept of permanence for children was developed in the 1970s when researchers in the USA and UK highlighted concerns about children 'drifting in care' with no effective planning to provide them with long-term stability and continuity of relationships with caregivers (Rowe and Lambert, 1973; Fanshel and Shinn, 1978). Informed by this research, the permanency planning movement emerged across the UK, identifying the need for active planning to ensure children were provided with stability within a timescale that met their needs. This was preferably to be achieved through reunification with birth families, but where this was not possible, in permanent substitute families.

In their review of fostering and adoption practice, policy, and research between 1980 and 2010, Maclean and Hudson (2010) identify that many of the trends and developments in Scotland mirrored those across the UK. They point to the advent of the Scottish parliament as heralding a period where there has been "much greater focus on the needs and outcomes of looked after children than was previously the case" (Maclean and Hudson, 2010, p.22). For Clapton and Hoggan (2012) the Adoption Policy Review in 2001 led to a level of divergence and a "specifically Scottish adoption and fostering service" (2012, p.2). This was underpinned by the Adoption and Children (Scotland) Act 2007, and included changes in the regulation and guidance for looked after children. As this report will outline, Scotland has its own particular legislative and policy frameworks that influence practice and processes, including permanence planning. This includes, but is not limited to, the place of Children's Hearings in decision making for children. However, there are also similarities in the experiences of children, parents, carers and practitioners with those in other jurisdictions, thus the findings of this study have resonance beyond Scotland.

Over the last 20 years or so, a number of studies of permanence for children in care have been undertaken across the UK. These include ongoing cohort studies in Northern Ireland (see McSherry et al, 2008; 2018) and in Wales (Anthony et al, 2016; Meakings et al, 2017). Wade et al (2011) used case file audit and interviews to interrogate what influenced the 'effective decision' to reunify children with parents or seek alternative permanent care. They found that the decision making for, and the pathways of 149 children and their families in seven local authorities was associated "less with the characteristics of the children and families concerned than with the policies and procedures of local authorities and of social work teams operating within them" (Wade et al, 2011, p.81).

The period from 2000 onwards saw a range of initiatives across the UK, with an expressed focus on prevention, early engagement, and permanence. This involved legislative change, including the Adoption and Children Act (2002), and the Adoption and Children (Scotland) Act 2007. A research programme consisting of seven studies was commissioned to examine how the 2002 Act had translated into policy, practice, and improved outcomes for children. Thomas (2013) distilled the key findings from the studies and concluded that while practitioners have had "a greater focus on planning for permanence ... the adoption process can still take too long for children" (2013, p.88). Subsequently, the coalition government introduced the Children and Families Act (2014) which included a 26-week time limit on care proceeding in England (see Broadhurst et al 2018; Featherstone et al 2018). There has also been an increasing emphasis in legislation, policy and practice on the role of kinship care, and there is a growing body of research on the benefits and complexities of kinship care (including Kroll, 2007; Farmer, 2010; 2018), and Special Guardianship (Wade et al, 2014; Harwin et al, 2015; 2019).

In Scotland, there have been a number of relevant studies on different forms of alternative permanent care (including Triseliotis, 2002; 2010; Hill, 1999; O'Hara and Hoggan, 1988). There have also been studies on the education of children looked after away from home (Maclean and

Connolly, 2005; McClung and Gayle, 2010) and the attachment difficulties of adopted and looked after children (Phillips, 2007). More recently, Critchley (2018) focused on pre-birth assessments to consider that stage of decision making, while Jones and Henderson (2017) found that for the fifty children in their study, decisions had been made which meant that 68% of children were living apart from at least one of their brothers and sisters.

In Scotland, the Children's Hearings System is integral to different stages of decision making about children. In recent years, different aspects of the system have been investigated. These include the place of Safeguarders, the role that solicitors now play at Hearings, and how decisions about contact are made (Gadda et al, 2015; Hill et al, 2017; Porter et al, 2016; Porter, 2017). The Scottish Children's Reporters Administration (SCRA) has published findings on decision making and timescales for children looked after away from home (Henderson et al, 2011; Henderson et al, 2015a; 2015b). The data held by SCRA was used to compare two cohorts, 110 children from 2003, and 117 children from 2013, who had been placed on Compulsory Supervision Orders on or before their first birthday (see Woods and Henderson, 2018). They found that the timescales for permanence had reduced between the two periods.

The findings of Phase One of *Permanently Progressing?* come at a time when policy makers and practitioners are questioning how best to meet the needs of children and their families. Some routes to permanence are more contested than others, and as this report will outline, decision making about permanence takes place in an environment which is legally and emotionally complex. In this context, it is vital that policy and practice is informed by robust research, and this study provides valuable information.

## 5. Legal and procedural context in which decisions are made

The legislation and policy underpinning permanence vary across the United Kingdom, and the context in which decisions about permanence in Scotland takes place is complex. Children who become looked after in Scotland are served by a tri-partite system which includes the local authority, the Children's Hearing System and the judicial system (Sheriff Court). Depending on their circumstances, children may come into contact with the local authority alone, or with the local authority and one or both of the other two systems. As with other areas of the UK, the day to day assessment, intervention, and decision making by social workers and allied professionals takes place in a range of locations including homes, cars, offices, schools (see Ferguson, including 2010 and 2016). The intention of this section is to lay out the formal settings where decisions about permanence are made with links to relevant legislation<sup>8</sup> and policy, including changes introduced during the study period (2014-2018). It is not intended to be a comprehensive exploration of current legislation and policy, but to familiarise the reader with the broad context as relevant to the study and to situate the experiences of the 160 participants.

Key legislation which is relevant to the children in our study, to parents/carers and to professionals:

- Children (Scotland) Act 1995
- Adoption and Children (Scotland) Act 2007
- Children's Hearings (Scotland) Act 2011
- Children and Young People (Scotland) Act 2014

### The local authority

Local authorities have a range of powers and duties in relation to children in their area, and while it is beyond our scope to outline all of these, for the purposes of understanding this report, it is important to highlight their different duties.

Under Section 22 of the Children (Scotland) Act 1995, the local authority is obliged to 'promote the welfare' of children in need. Part of this duty may involve providing accommodation, and the basis for this is set out in Section 25 of the Children (Scotland) Act 1995. Section 25 of the Children (Scotland) Act 1995 enables the local authority to 'provide accommodation' for any child within their area who 'appears to them to require such provision because (a) no-one has parental responsibility for him; (b) he is lost or abandoned; or (c) the person who has been caring for him is prevented, whether or not permanently and for whatever reason, from providing him with suitable accommodation or care' and does not object (although it is known as 'voluntary' accommodation). Where children are accommodated under Section 25 they become 'looked after away from home'. Where children are looked after, Section 17 of Children (Scotland) Act 1995 sets out the local authority's duties to safeguard and promote the child's welfare, including in relation to contact.

If a child is looked after away from home under Section 25 for less than six (continuous) months a parent can remove their child at any point, but thereafter parents must give two weeks' notice of their intention. Depending on the circumstances there may be grounds for the local authority to refer the child to the Reporter to the Children's Hearing. In this instance if the

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<sup>8</sup> Appendix 3 details the legal routes to permanence.

Reporter organises a Hearing, then the Section 25 may be replaced by a Compulsory Supervision Order (under Section 83 Children's Hearings (Scotland) Act 2011.<sup>9</sup>

For all children who are looked after at home or away from home, the Looked After Children (Scotland) Regulations 2009 stipulate that the local authority must carry out an assessment of the child's needs, and prepare a plan to meet those needs, known as 'The Child's Plan'. The 2009 Regulations set out timescales for reviews (Looked After Child Reviews) for children who are looked after. The guidance states that where a child been looked after away from home for six months and "she/he has not returned home by this stage or if significant progress towards that has not been achieved, then the review should consider whether a plan for permanence away from birth parents is required" (Scottish Government, 2011, p.130). This does not preclude earlier decision making, but means the decision should be taken by the third review (this takes place six months after the second review, so between ten and eleven months of the child becoming looked after away from home).<sup>10</sup> This review should also set out the steps and timescales to achieve permanence for the child. If a child's Looked After and Accommodated review concludes that they cannot safely return to their parents, an assessment of the child's needs will be considered by the local authority's Permanence Panel.

The Adoption and Children (Scotland) Act 2007 outlines the manner in which local authorities should establish permanence panels with linked guidance. The Adoption Agencies (Scotland) Regulations (Scottish Government 2009) state that each local authority or adoption agency must appoint an adoption panel (or appoint one jointly with another authority/agency). In most areas, the panel is formed as an Adoption and Permanence panel, so can consider the full range of permanence routes. The panel has a crucial role in decision making about whether a child who cannot remain or return to birth parents should be placed for permanence away from home, and what legal route (Section 11/Kinship Care Order, Permanence Order (PO), Permanence Order with Authority to Adopt (POA), Adoption by Direct Petition) might best secure this. After considering the child's needs and circumstances the Permanence Panel make a recommendation to the Agency Decision Maker<sup>11</sup> for each child, based on reports provided by social work, legal and medical professionals and discussion at the panel with professionals, carers, and sometimes birth parents and child.

Child Protection Case Conferences, reviews and core groups are held for children who have a child protection plan, and whose names are on the local authority Child Protection Register. During the period when the study started the National Guidance for Child Protection in Scotland (Scottish Government 2014) had recently been updated. Although the Child Protection Register is a non-statutory measure designed to protect children by putting child protection plans in place, the guidance is clear that case conferences should discuss the need for compulsory measures of supervision, thus linking child protection measures to the Children's Hearing System.

Core to practice with children and their families in Scotland, and to the Child's Plan, is 'Getting it Right For Every Child' (GIRFEC) This is a national approach to improve outcomes for all children within Scotland, including those children who are looked after at home or away from home. It includes the National Practice Model for assessment and intervention, which centres on eight

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<sup>9</sup> The Children's Hearings (Scotland) Act 2011 was implemented in June 2013, just before the end of the study's baseline year, replacing some of the legal orders which formerly applied under the Children (Scotland) Act 1995.

<sup>10</sup> Local authorities implementing the Permanence and Care Excellence (PACE) programme are using a range of strategies including, in some areas, holding the first looked after review two weeks after the child becomes looked after away from home. For information see [www.celcis.org.uk](http://www.celcis.org.uk).

<sup>11</sup> The Agency Decision Maker is senior member of staff within the local authority who receives the permanence panel recommendation (and minute) and makes the decision.

‘wellbeing indicators’: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (often known by the acronym SHANARRI) (Scottish Government, 2012). There was an intention that GIRFEC was to be enacted legislatively through the Children and Young People (Scotland) Act 2014; however, this has not been fully implemented.<sup>12</sup>

## The Children’s Hearing System

One of the distinguishing features of the Scottish system is the role Children’s Hearings play. The Children’s Hearing System was established in 1971 following the recommendations of the Kilbrandon Committee, and the Social Work (Scotland Act) 1968. Children’s Hearings took over from the courts most of the responsibility for dealing with children and young people under 16, and in some cases under 18, who commit offences or who are in need of care and protection. The system was designed to be a welfare-based system based on ‘needs not deeds’. This stemmed from the principle that children who commit offences have the same problems (or needs) as children who lack adequate care and protection and it is these needs that are to be addressed by a Children’s Hearing. In June 2013 the Children’s Hearings (Scotland) Act 2011 came into force, replacing some aspects of Children (Scotland) Act 1995. The Children’s Hearings System may be involved in decision making for a child at different stages, and as a consequence we have referred to Children’s Hearings throughout this report, rather than in a discrete section.

Where there are concerns about a child s/he may be referred to the Children’s Reporter. Anyone may make a referral to the Reporter, and some professionals (police and social work) have a statutory responsibility to make a referral where they believe that a child may be in need of compulsory measures of intervention. The ‘Grounds for Referral’ are set out in the Children’s Hearings (Scotland) Act 2011.<sup>13</sup>

On the basis of the information s/he is given, the Reporter decides<sup>14</sup> whether there is sufficient evidence and an apparent need for compulsory measures of supervision and if so arranges a Children’s Hearing. There are three underlying principles set out in the Children’s Hearings (Scotland) Act 2011:

- The minimum intervention principle (an order should only be in place if it would be of more benefit to the child than if there were no order).
- The paramountcy principle - safeguarding and promoting the welfare of the child is ‘the paramount consideration’.
- The child has a right to express a view in decisions relating to himself/herself (taking account of the child’s age and maturity), and for these views to be taken into account by the Hearing or sheriff.

Children and young people may come in to the Children’s Hearing system after a referral, or following emergency child protection measures, the most common of which is a Child Protection Order (CPO) which has been granted by a sheriff following an application by (usually) the local authority under the Children’s Hearings (Scotland) Act 2011. The CPO authorises certain actions including the removal or retention of a child in a place of safety.

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<sup>12</sup> Some aspects of the 2014 Act have been subject to legal challenge.

<sup>13</sup> The 2011 Act replaced and amended some aspects of the Children (Scotland) Act 1995 including amending and expanding the Grounds for Referral.

<sup>14</sup> Reporters take into account the extent of concern, the nature of the incident (if a single incident) and the level of co-operation and impact of current or prior interventions. They are guided by the principle that all intervention needs to be proportionate and assisted by the Framework for Decision Making by Reporters (SCRA, 2015).

A Children's Hearing is comprised of three volunteer panel members who come to a decision based on written reports from professionals involved in the child and family's life (including social work, education and health) and discussion of the child's circumstances involving the child and his/her family/carers and professionals. Children's Hearings can address a range of matters but here we concentrate on those most relevant to this study.

Children's Hearings make a decision on whether a child requires to be on a statutory order including an Interim Compulsory Supervision Order (ICSO) or a Compulsory Supervision Order (CSO), and whether the ICSO/CSO is either a) home-based, in which case the child becomes 'looked after at home', or b) away from the child's home, in which case s/he becomes 'looked after away from home'. In addition to deciding whether statutory measures are necessary, where children are subject to ICSO/CSO Hearings also make decisions about whether it is necessary to regulate contact, and if any other measures need to be attached to the statutory order (for example the child should attend a particular resource). Children's Hearings have to consider whether it is necessary for them to appoint a Safeguarder for the child in order to make a decision. The Safeguarder's role is to prepare a report setting out anything which is relevant, and will help the Hearing make a decision which will safeguard and promote the child's welfare (see Hill et al 2011 and Gadda et al 2015 on the role of Safeguarders).

CSOs must be reviewed by a Children's Hearing within a year of the date of making the order. An earlier review can take place if requested by the child or parent after three months, by the Local Authority at any time, or where the Hearing has specified an earlier date for review.

## The Sheriff Courts

The Children's Hearings System interfaces with the court at different stages:

- If a 'Relevant Person'<sup>15</sup> or child does not accept or is too young to understand the Grounds for Referral, these will be sent to the sheriff to establish whether the facts laid out can be proven. On the basis of the information, the sheriff may uphold some or all of the Grounds for Referral and the child's case will return to the Children's Hearing.
- A child/Relevant Person can appeal a decision made by a Children's Hearing and this appeal is heard by the sheriff.
- Where a child is subject to an emergency order, granted by a sheriff (e.g. CPO), the Principal Reporter to the Children's Hearing must be informed and s/he arranges a Children's Hearing on the second working day after the child has been taken to a place of safety.
- Where a child is subject to a CSO and the Agency Decision Maker for the local authority has decided, following a Permanence Panel, that a Permanence Order or adoption is required and an application is to be made to court, the Children's Reporter must be notified. The Reporter will arrange for a Children's Hearing to take place for the purpose of providing advice to the sheriff about the local authority's plan for the child.

Where the local authority has applied to the Court for a PO/POA and the application is in process, a child can only be made subject to a CSO, or the CSO varied with the permission of the court. The Children's Reporter will arrange for a Hearing for the CSO to be varied/made and

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<sup>15</sup> The following people are automatically considered to be a Relevant Person: Any parent (whether or not they have parental responsibilities or rights) and any other person who has parental responsibilities and rights (obtained through the courts). Foster carers and kinship carers are not automatically considered to be Relevant Persons, however, they can be deemed to be a Relevant Person. This decision is made by a Pre Hearing Panel or a Children's Hearing. For more information see SCRA website [www.scra.gov.uk](http://www.scra.gov.uk).

once the Hearing has decided what the best decision is for the child, a report will be prepared for the court. Once the sheriff has considered the report, s/he will decide whether to make or vary the CSO and remit it back to the Hearing for the decision to be made. This happens typically where a reduction in contact or move to permanent carers is part of the plan for the child. This process was introduced under the Adoption and Children (Scotland) Act 2007 Section 95.

The Sheriff Court also makes decisions in relation to parental responsibilities and rights. Part 1 of the Children (Scotland) Act 1995, sets out parental responsibilities and rights and Section 11 details the conditions in which a court can deprive adult(s) of parental responsibilities and rights and transfer some or all of those responsibilities and rights to another adult, or decide they should be shared with another adult. This is known as a Section 11 Order. Where the applicant is a family member, the order granted by the Court is referred to as a Kinship Care Order, a term introduced under the Children and Young People (Scotland) Act 2014. This was enacted in August 2016 when our study was half-way through.

The Sheriff Court can make a Permanence Order, or a Permanence Order with Authority to Adopt, or an Adoption Order transferring the parental responsibilities and parental rights in relation to a child to the adoptive parent(s). An adoption order may contain such terms and conditions as the court thinks fit, including in relation to post-adoption contact. The court cannot make an order unless it considers that that it would be better for the child that the order be made than not.

## Relevant developments

There have been significant developments designed to improve the lives of children who are looked after at home or away from home including (but not limited to) the Permanence and Care Excellence Project (PACE)<sup>16</sup>, the Children's Hearings Improvement Plan (CHiP)<sup>17</sup>, the Child Protection Improvement Programme<sup>18</sup>, and the Independent Care Review.<sup>19</sup> Consequently, there is a significant degree of activity intended to improve the experiences of children who are looked after, and their outcomes. In Phase Two of the study we will be able to start to measure the impact of these activities for our cohort of 1836 children.

There have been a number of relevant legislative changes. These include:

- The Adoption and Children (Scotland) Act 2007 introduced a number of changes to adoption practice, including the provision that same sex couples could adopt, and the requirement for an assessment for adoption support. It introduced Permanence Orders (PO) and Permanence Orders with Authority (POA) to Adopt, replacing what had previously been in place.
- In June 2013, the Children's Hearings (Scotland) Act 2011 was enacted, and replaced some, but not all, sections of the Children (Scotland) Act 1995.

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<sup>16</sup> The Scottish Government commissioned the Centre for Excellence for looked After Children in Scotland (CELCIS) to develop a programme for whole systems change, the Permanence and Care Excellence (PACE) programme. This supports multi-agency partners to improve systems, processes and practices. Some of the local authorities who participated in this strand were part of PACE.

<sup>17</sup> For information please see <https://www.chip-partnership.co.uk/about-us/>

<sup>18</sup> In February 2016, the Scottish Government announced a Child Protection Improvement Programme (CPIP). The report was published in 2017 and set out 35 actions.

<sup>19</sup> In October 2016, Scotland's First Minister Nicola Sturgeon announced a 'root and branch review' of the care system. This is being chaired by Fiona Duncan. For details see: <https://www.carereview.scot/about-us/>

- In August 2016, aspects of the Children and Young People (Scotland) Act 2014 came into force. Most significantly in relation to this study, the 2014 Act introduced the term Kinship Care Orders. It also placed a duty on agencies to refer children to Scotland's Adoption Register.

Most of the interviews and focus groups for this strand of the study took place over 2015, with some additional ones with members of the Children's Hearing and Reporters to the Children's Hearing in spring 2017. This means that those who participated in focus groups/interviews were doing so at a time when the legislation had recently changed or was changing, and we were aware that their expressed knowledge and the basis on which they indicated they made decisions was not always aligned to the wording within legislation.

The preceding section has contextualized the study. The sections which follow present and discuss findings. These are based on interview and focus group responses from decision makers including those in local authority (LA) social work teams and the Children's Hearings System (CHS).<sup>20</sup> They offer perspectives on how decisions are currently made across Scotland – including, notably, from areas which tend to seek permanent placements for children via different legal routes, as will be discussed. At the end of each section, key themes are highlighted which are particularly relevant for policy makers and decision makers.

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<sup>20</sup> To avoid repetition, where possible we will use LA for Local Authority, and CHS for Children's Hearings System.

## 6. Findings

### 6.1 Becoming looked after away from home

#### Assessment of a child's needs and parenting capacity

At the point (before or after a child's birth) when practitioners become involved because of concerns (about a child and/or parenting capacity), an assessment of parenting capacity and the child's needs is undertaken. Practitioners across groups indicated that assessments included the particular needs of the child; the parent's potential or actual care; what strengths can be built on; what needs to change and in what timescale; what support can be provided; whether parents can make use of the supports. Other research has helped inform models of assessment, including the C-Change manual (for Scottish version see Platt, Riches and Helm, 2017) which is specifically focused on parental capacity to change, and designed to be used alongside existing assessment frameworks such as the national practice model GIRFEC (Scottish Government, 2012), the National Risk Framework (Calder et al, 2012), and Getting Our Priorities Right (Scottish Government, 2013).

Some participants described using parenting capacity assessments, which include a focus on parental potential for and motivation to change. In some areas these are conducted by specialist teams, particularly where parental substance misuse is a factor and children are very young. The assessments provided by Glasgow City Council's 'Family Assessment and Contact Service' (FACS), NSPCC 'Glasgow Infant & Family Team' (GIFT)<sup>21</sup>, and Perth and Kinross Council's 'Change is a Must' project were described by some interviewees as comprehensive.

In general, participants felt that evidence about the care of and risks for the child should be gathered as early as possible, and collated from all agencies involved. The place of good quality chronologies in assessment and intervention is well established (Munro, 2008), with guidance issued (Scottish Government, 2012). Most participants talked about using information from chronologies to analyse patterns of care and the impact of previous interventions. Participants said they took into account parents' own experience of being parented, and any patterns which indicated parents' ability to 'stick with' or maintain improvements in their care giving.

*Can they change? And can they sustain it? Can they reflect on what went wrong?  
Can they reflect on what they might need to do differently?*

Local authority focus group participant

One dilemma highlighted was that family circumstances are dynamic and levels of acceptable care can fluctuate over time; however, this can result in delayed decision making. The need for social workers to avoid completely 'starting again' (Brandon et al, 2008) with new assessments was noted, although this was balanced with the need to assess each child's needs and parents' capacity to meet them.

We were told that supports are put in place both to prevent the need for the child to be looked after away from home and to promote reunification, including parenting programmes and family support interventions by third sector agencies. It is clear from other strands of the study, including our linkage of CLAS and SCRA data that support at home, either under Section 22 of the Children (Scotland) Act 1995, or on Compulsory Supervision Orders at home was common. In the *Outcomes* strand detailed questionnaires were completed by 433 social workers across 19 local authorities, and they indicated that a range of supports were put in place. These included advice in relation housing problems and finances, relationship difficulties, domestic violence, parenting programmes, and input from drug and alcohol services to help parents

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<sup>21</sup> For evaluation of GIFT see Turner-Halliday et al, 2016.

manage substance use. Several participants highlighted that a range of different agencies including health, education, and social work might be involved in providing support to parents and children as summarised below:

*So very early on you've got a multi-agency decision making forum that we would hope initially is just looking at right what supports can we all put in, what can we do to make this better?*

Local authority focus group participant

Social work professionals indicated that decisions about whether to accommodate a child, and subsequent decisions about the route to permanence were made on the basis of the best interests of the child. This followed a multi-agency assessment of whether the care being provided by their parents, was 'good enough', or with support could be 'good enough', and of the nature of the risks and protective factors.

*I think from the minute you walk in the door you're observing and listening and then getting background information and is it good enough with support?*

Local authority focus group participant

Here, it is important to remind readers that parents were not interviewed as part of Phase One. Their sense of the supports provided to them to enable them to maintain/resume care of their child, and the manner in which practitioners engage with them may well vary from the views of professionals. Parents who have spoken to researchers have stressed that they can "feel 'done to' rather than 'worked with' and at times experience social work interventions as unpleasant and unhelpful" (Care Crisis Review, 2018, p.16). Two themes are repeated across a number of studies: a range of personalised supports are required to enable parents to retain or resume care of their children; and practitioners do not always treat them with respect, empathy, or compassion (Buckley et al, 2011; Broadhurst et al, 2015; Cossar and Neil, 2015; Featherstone et al, 2018).

In their research in a local authority in England, Biehal et al (2018) found that the strongest predictor of admission to out of home care was the severity and extent of maltreatment children experienced. For most participants in this strand, the driver they identified for children becoming looked after away from home was that parenting was assessed as being inadequate and the child was neglected and/or unsafe to the extent that the level of risk was unacceptable. We heard that in some cases one-off specific incidents and events in a family where children were neglected could act as a catalyst for the child being looked after away from home, again echoing the findings of other research (Dickens, 2007; Daniel et al, 2011; Turney et al, 2012). In common with others (Cleaver et al, 2011; Wilkinson and Bowyer, 2017) participants highlighted a range of factors including significant parental neglect associated with substance misuse, mental health and domestic violence, which led to decisions for children to be placed away from home, and subsequent plans for them to remain away from home.<sup>22</sup>

Bywaters et al (2015; 2018) have demonstrated a clear link between areas which are socially and economically disadvantaged and the differential rates at which children become looked after across the UK, and this was borne out in the *Pathways* strand. Morris et al argue that while poverty is central to the lives of children and parents, its impact is marginalised within social work assessment and it is "too big to tackle and too familiar to notice" (2018, p.7). While many of the participants in this strand of the study mentioned poverty, this was not foregrounded in relation to their decision making about parenting capacity and the child's needs. Rather it was

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<sup>22</sup> Chapter 3 of the *Outcomes* report provided details about the severity and types of maltreatment children in that samples experienced.

seen as one part of the lives of the majority of the children who become looked after. As Elliot and Scourfield (2017, p.29) highlight “it has become rather taken for granted that the work of children’s social services takes place largely in the poorest communities”. The analogy drawn by Morris et al (2018) is that poverty is the ‘wallpaper’ in children’s lives and therefore unremarked upon by practitioners. McGhee and Waterhouse (2007) found that many children face a ‘double jeopardy’ of both personal adversity and economic disadvantage. They suggested that within the Children’s Hearing System, “a focus on the legal test of the need for compulsion may narrow attention to specific factors in decision making in a socially and economically disadvantaged populations” (McGhee and Waterhouse, 2007, p.154).

### **Parental substance misuse**

We were interested in what impact, if any, parental substance and/or alcohol misuse had on decision making. The role parental substance/alcohol misuse played in the lives of children was a common theme, as would be expected given the numbers of children in Scotland who experience of some kind of parental substance misuse (Scottish Government, 2008a; 2013) Although the potential impact of in-utero alcohol and/or substance misuse on development has been documented (Hamilton et al, 2010; Mather, 2015) most social work professionals reported that it was the effects of substance use on parents’ capacity to care for their child post-birth that was the prime consideration. Consistent with existing research (Forrester and Harwin, 2011; O’Connor et al, 2014), some indicated that substance misuse was often part of a broader picture of family deprivation and other factors affecting the family, including poverty, domestic violence, mental ill-health, and the effects of trauma on parents’ lives.

*I think that permanence decisions and the risk factors that are important are ... diminished capacity through substance misuse and I would include alcohol within that. Mental health issues around homelessness, issues around um ... neglect, neglect in not being able to keep the children away from dangerous adults.*

Local authority senior manager

CH panel members also identified parental substance misuse as a factor for many of the children where they had a role in decision making. Echoing practitioners, some commented that in their experience, parental substance misuse was often accompanied by parental mental ill-health, domestic violence and poverty.

Professionals reported that parents are required to reduce or recover from substance use to a level where their care of their child is ‘good enough’ within a timescale appropriate for the child and that, if it becomes evident that this will not be achieved, actions to secure the child in a stable permanent alternative placement should take place. The significant role health professionals can play has been identified elsewhere (Ferguson, 2009; Daniel et al, 2011; Powell, 2016) and several participants observed that the potential or actual effects of parental substance misuse are often picked up by health professionals during pregnancy or in the early months of a child’s life, with pregnancy being a possible opportunity for mothers to desist from, or reduce substance use (Ward and Davies, 2012).

### **Moving towards permanence**

When children become looked after, a ‘Child’s Plan’ is completed, generally by the child’s social worker. This plan should include the child’s needs, what supports are in place, or being put in place, and timescales for review. The legislation in Scotland, as in the rest of the UK, is based on the assumption that unless it is unsafe, children will remain or return to their parents, and participants in this strand of the study told us this was their preferred route to permanence. Our analysis of the CLAS data on the 1,836 children in the *Pathways* strand also confirmed that by 2016 the most common destination for children was to return home. For those children who

were reunified with parents, the average time they were looked after away from home was nine months.

For those children looked after away from home, a driver of planning for permanence away from parents highlighted by many social work professionals was a lack of evidence of clear progress with the child's plan. This included the quality and regularity of parents' contact with the child, and their acceptance of support with parenting skills to enable them to resume care safely. The extent of parents' willingness to 'accept' social workers' assessments and their 'motivation and capacity to change aspects of their parenting' were seen as having a key influence on decisions about permanence. The latter links to concepts of 'readiness', and this is not simple to demonstrate or assess (Leigh, 2018). The complexity of assessment was a common theme and practitioners indicated that tangible improvements in the parent's care of the child were required for a child to return home. It was also noted that a child who has experienced moves in and out of foster care is likely to have additional anxieties and needs which their parent(s) will need particular skills and supports to manage. Similarly, Farmer and Wijedasa (2013) and Farmer (2018) identify that stable and safe reunification is more likely where there has been change, and when the return home is carefully planned and well supported by services. Some practitioners highlighted the risk for the child associated with over-optimistic attempts to return children home because parenting apparently improves in their absence, and the damaging impermanence this can cause for the child (see also Wade et al, 2011; Biehal et al, 2015; Farmer, 2018).

*I suppose we would always like to hope that children can return to their birth families but we've probably all seen situations where children have been accommodated, parents have managed better because the kids aren't there so they've been returned and then it's all gone wrong again, and sometimes the children go through that process 3 or 4 times.*

Local authority focus group participant

A number of participants highlighted that assessing parenting capacity in relation to each child may include repeated attempts to reunify a child with birth parents. While some held the view that even where it was clear that rehabilitation was unlikely to be successful, it was necessary to gain sufficient evidence to justify permanent removal in decision making forums including Children's Hearings and courts, others viewed this process as traumatic and damaging for the child. Frustration was expressed by some participants that at times rehabilitation was attempted even where this was very unlikely to be sustained and may be traumatic for the child. The impression of others was that fewer children are now moved back and forth between home and care than previously. This latter view is not entirely borne out by research (Henderson et al, 2015b) and in the *Pathways* strand, 17% of the children looked after away from home had multiple admissions and exits as efforts were made to return them to parents.<sup>23</sup> One independent consultant held the view that some social workers and managers thought they needed higher than necessary levels of evidence before permanence away from home was decided. Some participants indicated that it could be hard to judge what constituted sufficient evidence and legal advice was crucial.

Several participants said that 'braver' (their term) decisions are made if previous children have been removed from the family, with subsequent children being placed in alternative permanent homes with less delay and potential damage to child. Where previous children have been removed the permanence process may start at an early stage, including pre-birth.

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<sup>23</sup> The report of the *Pathways* strand can be found on the website.

*A big factor that I'm aware of for our younger children is history. We seem ... we do, we start earlier in the process when there have been other children looked after, or accommodated or definitely adopted. We start the process in those cases generally at a pre-birth stage and often ... often through the child protection processes but not always, we generally have a meeting a child protection case conference or a child need meeting pre-birth to ... to start the permanency planning and make the initial decision about whether or not the child needs to be um ... accommodated at birth.*

Local authority senior manager

This is similar to Jones and Henderson's findings (2017) that birth order is relevant and younger siblings became looked after away from home in a shorter time frame than their older brothers or sisters. They identify that older children in the family may be exposed to risk at home over a longer period and this has long-term consequences for children's development and outcomes. From another perspective, 'braver' may be experienced by parents as practitioners having made assumptions and not being open to re-appraising their position and/or not being given sufficient time or support to effect change. Broadhurst et al's (2015) study with women who have experienced recurrent care proceedings found that the time between care proceedings for first and subsequent children becomes shorter. They highlight that sensitive services have the potential to help women manage loss and delay future pregnancies until they are in a position to care safely for a child.<sup>24</sup> One of the service managers we interviewed mentioned that a specialist counsellor specifically for birth mothers had recently been employed in the area s/he manages. Their remit included providing practical support and counselling in relation to past and current trauma.

It appeared evident from practitioners' accounts that making decisions in timescales which meet both the needs of the child and his/her parents can be difficult to achieve. In their BASW report, Featherstone et al (2018) expressed a view that restricted timescales in England may have led to adoption being progressed hastily. This did not emerge as a concern from the 160 decision makers we interviewed. From our analysis of the Children Looked After Statistics on 1,836 children in the *Pathways* strand, there is also no indication that adoption is pursued precipitously in Scotland. The CLAS data shows rather the opposite. For those children in our cohort for whom, by 2016, adoption was the route to permanence, it took two to three years. This is similar to an earlier Scottish study of the Children's Hearings System, when for 91% of the 200 children reviewed it took over two years from their first contact with services for a permanence order to be made (Henderson et al, 2015a). The authors concluded that for some children who had been identified at risk at an early stage, at or before birth "services were not making decisions or acting fast enough in the long-term interests of those children" (Henderson et al, 2015b, p.14). Although pre-dating the 2014 Children and Families Act, which introduced the 26-week time limit on care proceedings in England, Ward and Brown's (2014) conclusions were similar to those of Henderson et al. They found that for the children in their studies timescales for decision making were 'out of kilter' with children's developmental needs.

When discussing what influences decisions about permanence, professional judgement was considered to be a key factor by participants across the groups, some of whom also highlighted the impact personal feelings and emotions can have on professional judgement. Participants across groups expressed the opinion that the feelings of social workers who work closely with

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<sup>24</sup> In Edinburgh, Scottish Adoption provide a service (Chance4Change) for birth mothers whose child has been adopted or who are in the process of their child being adopted

families can in some cases delay decision making. Some described the complex and ambivalent emotions they experienced having worked hard to support and enable the family to retain and/or resume care of their child to then recommend a decision for permanence away from home. From the focus groups with members of the Children's Hearings and other interviews it was evident that complex emotions are central to decision making about permanence, and we will return to the theme of emotions throughout this report.

### Summary

- The main determinant of whether a child became looked after away from home was that his/her needs were assessed as not being met by parents. The early experiences of most children who became looked after away from home included neglect and abuse.
- Reunification was the primary aim, with practitioners looking for tangible change to enable children to return to parents.
- The key driver for planning permanence away from parents was a lack of progress in relation to the child's plan.
- Assessing risk, need and change is a complex process, and completing this in timescales which meets the needs of a child and his/her parents is difficult.
- Decisions about permanence are intellectually and emotionally demanding, and are made in a context which is complex and contested.
- There is no evidence that in Scotland adoption is pursued precipitously, or that this decision is taken hastily, rather the opposite.

## 6.2 Permanence away from home: what influences the route?

Permanence is a complex concept but Wade et al identify that it combines "the psychosocial features associated with family life, the physical environment called 'home' and the legal framework that identifies who can exercise parental responsibility for the child" (2014, p.17). For those children where returning or remaining at home safely in timescales which will meet their needs is not a viable option, there are different routes to permanence away from home. As set out earlier the Scottish Government identifies three options which 'legally' secure a child: a Section 11/ Kinship Care Order; a Permanence Order; Adoption, either by Adoption by Direct Petition or a Permanence Order with Authority to Adopt.

There are other routes where a child may 'feel' secure, where the placement feels like 'home', and where s/he has the opportunity to develop long-term loving relationships with adult carers, but where s/he is not 'legally secure'.

- Some children are in placements (including with kinship carers and foster carers<sup>25</sup>) which are described as 'long term' and where the intention is that they will remain until adulthood, however they remain on Section 25 of the Children (Scotland) Act 1995 for a lengthy period. This is unusual but it was described to us as pertaining to limited numbers of children.

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<sup>25</sup> Given the age range of the children in our study, practitioners did not generally identify residential care as their preferred route to permanence.

- Some children in placements which are intended to be permanent, or which over time become permanent, may be the subject of a Compulsory Supervision Order, with annual (at least) reviews by the Children's Hearings to renew and/or vary the CSO.
- Some children will be with kinship carers in an 'informal' arrangement not secured through Section 11 of the Children (Scotland) Act 1995, or Kinship Care Orders, and the child and his/her carer are not in contact with social work professionals. These children are not 'looked after' and so do not appear in the CLAS data, nor are they currently known to the professionals who participated in this strand of the study. With some exceptions (Selwyn et al, 2013) informal kin carers also tend to be less represented in research. In terms of numbers, Dryburgh's study (2011) estimated that 'informal' arrangements constitute at least 26% of children with kin in Scotland.

In general, participants considered that the decisions about placement type and legal route were based on the circumstances and needs of the individual child and the promotion of their best interests. However, they also alluded to local 'custom and practice' which varied across different geographical areas, rather than the needs or best interests of a particular child. Similar local variations have previously been identified in research in England (Baker et al, 2007; Dickens et al, 2007) and Northern Ireland (McSherry et al, 2008). Participants in our study also made reference to national drivers, including PACE<sup>26</sup>, to tackle unacceptable delays for children, and of the push for increased use of kinship care, including through legislative change (Children and Young People (Scotland) Act 2014). A number of participants expressed the concern that sometimes generic drivers, including policy or legislative developments, even where positive, might take precedence over the specific needs of an individual child, and the area where this concern was most often expressed was in relation to kinship care.

### Kinship care

The Children and Young People (Scotland) Act 2014 introduced Kinship Care Orders, which were enacted from April 2016. Most of our interviews and focus groups were in 2015 and pre-dated this, and thus Kinship Care Orders were not referred to by participants as a legal route to permanence. However, participants across focus groups in all areas indicated that kinship care is usually explored as the first option for children who cannot remain with or return to parents, if possible at an early stage of planning. They told us that children could initially be placed with kinship carers using Section 25 of the Children (Scotland) Act 1995, a Child Protection Order, or a Compulsory Supervision Order. Children remained with kin on the basis of Section 25, CSO, Section 11, PO, and in some instances an Adoption Order.

*I think at the start that kinship would definitely be the first port of call.*

Local authority focus group participant

Participants saw many potentially positive benefits in kinship care as a permanent option for children, primarily the retention of their family identity and links with family members, including brothers and sisters. The kinship carers' previous relationship with and knowledge of the child and their history were thought to be advantageous in most, but not all cases, as was the avoidance of a further move for some children. Some thought that adoption by kinship carers is increasing as younger children are placed in kinship care. Other legal options, for example,

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<sup>26</sup> The Scottish Government has invested in permanence processes and a number of local authorities, including many in our study, have taken part in the Permanence and Care Excellence Project (PACE) supported by the Centre for Excellence for Looked After Children in Scotland (CELCIS)  
<http://www.gov.scot/Topics/People/Young-People/protecting/lac/pace> .

Permanence Orders, or orders under Section 11 of the Children (Scotland) Act 1995, are used for kinship placements, and this was generally presented as positive as it takes children out of the Children's Hearings System.

Participants across groups identified barriers to the Section 11 route, including but not limited to costs to the carer. They were also aware that some kinship carers worry that they will lose social work support, including financial help.<sup>27</sup> Similar findings have been identified in research in England with unrelated foster carers, who cited worries about losing support as a consideration in deciding whether to adopt a particular child, or continue to care for her/him on a long-term fostering basis (Biehal et al, 2010). For kin carers, family conflicts or difficult dynamics could also be a deterrent. For social workers, we heard that anxiety about the loss of the formal oversight of the child's needs provided by a Compulsory Supervision Order from the Children's Hearings System might prevent them from going down this route. Indeed, for some children a form of permanence is achieved by the long-term use of a CSO although it has some disadvantages, not least the uncertainty and possible insecurity for the child associated with annual reviews at a Children's Hearing.

*I think everyone is a little bit wary of kind of achieving permanence on a supervision order because it's really ... they can be recalled at any point by the family after three months, and you get different Children's Panel members, panel members can make quite ... unpredictable decisions.*

Local authority focus group participant

Within the context of kinship care being seen positively for many children, some participants had experiences of grandparent kinship carers masking poor childcare by parents before children were removed from home. Several practitioners mentioned instances where family relationships were conflictual and highlighted the negative impact on the child if adults were not able to manage this. Some practitioners expressed reservations about the quality of parenting grandparents had provided to their own children, and were anxious that those patterns should not be repeated. Several participants presented parental substance and alcohol misuse as complex for kinship carers to manage (see Kroll, 2007; Farmer, 2010), and commented that assessments of kinship carers must include their role in protecting the child from the impact of parents' substance misuse. When parental substance misuse is a significant factor, some social workers said they would be less likely to place a child in kinship care.

Different approaches to kinship care within and across local authorities appeared to be linked to team and management cultures and beliefs, rather than always being driven by a child's specific needs. In one area, participants told us about language and culture issues for children who had been born abroad but brought up in Scotland and for whom placement with kinship carers in their country of origin was being considered, despite the fact that in some instances children had explicitly stated their preference for remaining in Scotland. In another local authority, a model described as 'extreme kinship' was outlined, in which an extensive national and international search is undertaken for relatives, including even distant relatives with whom the child has had no previous contact. There were mixed views about this, with some expressing reservations about what this might mean for the child. The assumption underpinning 'extreme

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<sup>27</sup> The Children and Young People (Scotland) Act 2014 which introduced kinship care orders also aims to address financial disincentives.

kinship' appears to us to be that kin, where unknown, 'trumps' unrelated carers who may be known to the child, and an evaluation of this approach would be helpful.<sup>28</sup>

Most participants recognised the complexities of the task many kinship carers are undertaking which includes managing children's traumas and their resulting challenging behaviour, and the divided loyalty many feel towards the child's parent. Some highlighted that complex family dynamics sometimes became impossible for kinship carers to manage, and practitioners gave examples of kinship carers taking a unilateral decision to send a child back to their parents or to other kin. For some practitioners this underpinned their reluctance to lose the protection and oversight offered by Compulsory Supervision Orders. Longer term, the issue of the health of older kinship carers was also raised:

*One of the problems with that is – because you've got another generation, if you're looking at the grandparents as the long-term kinship carer then the grandparents can start getting problems. This is not uncommon. We get ... where a grandparent becomes ill, or a grandparent has died, the whole thing has broken down. There's nobody else to go to in the family, or something else has cropped up.*

Children's Hearings focus group participant

A number of broader reservations were expressed about the drive to kinship care by a range of respondents, including CH panel members. Three themes were dominant:

- Although the rationale for an increasing emphasis on kinship care is framed as being driven by children's needs, several participants expressed worries where this was perceived as a 'blanket strategy' and suggested it is motivated by a desire to reduce costs.
- If there was not a robust assessment of the needs of the child and the kinship carer's capacity to meet these over the long term, this was associated with a risk of the placement breaking down. Linked to this, some expressed the view that different standards appeared to apply to kinship carers and unrelated foster carers (see also Farmer's research 2010). Some social workers reported that CH panel members were, in some cases, reluctant to move children from an emergency kinship placement despite the social work recommendation for a different longer-term placement.
- A number expressed their worry that placing some babies and small children in kinship care as a first choice could effectively deny them the opportunity for a potentially more secure adoption placement with a stranger.

The extract below incorporates several of these concerns, and highlights the importance of making considered decisions in the first place, based on a thorough assessment of whether kinship carers have the capacity to provide good enough parenting for the child for the rest of their childhood:

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<sup>28</sup> It is important to differentiate between 'extreme' kinship where even unknown relatives are sought as carers for the child, and the practice of one local authority where there are intense efforts to promote and build connections between the child and their kin, but where there is no expectation that these connections will lead to adults assuming caring responsibilities for the child.

*Once they're placed with their granny it's really hard to then remove them from their granny so they might end up having this huge kinship placement that ... all the time you're thinking this is not going to last, this is not going to last, but because they're there and it's good enough it's really hard to justify removing them from that so maybe it takes three years to breakdown and they've missed that window for adoption.*

Local authority focus group participant

The Children and Young People (Scotland) Act 2014 introduced Kinship Care Orders. These have been operational since 2016 and are likely to increase the proportion of children in kinship care rather than with unrelated foster carers. Research in England (Wellard et al, 2017) has highlighted that kinship care offers real benefits for children; however, the concerns raised by participants in our study underline the importance of longitudinal research on outcomes for children in kinship care in Scotland.

### **Long-term fostering**

Several participants commented on long term fostering as one route to permanence, and for some children long term foster care will offer permanence and stability (Schofield, 2000; Schofield and Beek, 2014; Biehal et al, 2010). In some LAs, participants said the recruitment of permanent foster carers was important, as there were many children who were assessed as requiring that type of permanent placement. Some carers were recruited in what was described as a 'staged' way, as respite carers who might move on to full-time fostering or provide permanent care for a child, perhaps for whom they cared initially on a temporary basis.

*It's really important to be creative about um ... what permanence might mean for different children isn't it? Because I think we often say especially for the slightly older children sometimes that's the best way that everything sort of grows together really.*

Local authority focus group participant

As our study was focusing on the needs and decision making in relation to young children, long-term fostering where the child remained on a Compulsory Supervision Order was not generally presented as the preferred option to secure children over their childhoods and into adulthood. This was partly due to the uncertainty for the child and carers associated with remaining in the Children's Hearings System where there are (at a minimum) annual reviews, and partly due to anxieties that as children entered adolescence, without more robust legal safeguards in place, these placements may become more fragile. Consequently, where children are settled and secure with carers who can provide long-term care, practitioners indicated they would ideally support carers to formalise this arrangement to provide both legal as well as emotional security for the child.

Whilst adoption by existing carers was described as a preferred legal route for children in settled foster placements the option of a Permanence Order (PO) was also generally viewed positively and was presented as an advantage of the Adoption and Children (Scotland) Act 2007. Where a child's current foster carers offered to care for them on a permanent basis via a PO, several participants identified benefits for the child, especially if this was what one person referred to as a 'positive claiming decision' rather than one which occurred by default because of lengthy delays in moving the child.

*One of your main routes to permanence, to achieving permanence is foster carers claiming children who have been with them for X amount of time. And a lot of the time it works because they know them and they know exactly what they're coming with and the children have already settled.*

Local authority focus group participant

Although Permanence Orders were viewed positively, and their use is increasing (Scottish Government, 2018, p.4) our analysis of the Children Looked After Statistics for the *Pathways* strand indicates that this option is used relatively infrequently for younger children. Of the 1,355 children in our cohort who became looked after away from home in 2012/2013 this was the route for only 28 children by the end of year four in 2016.

Foster carers can also apply for the child to remain with them under Section 11 of the Children (Scotland) Act 1995, and a few participants mentioned this as a possible route. As with kinship carers, some participants mentioned that in some instances unrelated foster carers were reluctant to formalise a permanence arrangement because of concerns about losing social work support and financial support. Support was not the only consideration though, it was also acknowledged that legal permanence is a significant psychological and emotional commitment for carers:

*I think permanence as a word is often quite scary for foster carers who see it meaning sometimes this means I'm going to have this child forever and regardless of what happens um ... nobody is ever going to break that. That's going to be it forever and ever amen! And if all sorts of awful things happen then we're going to be left with this child and that's very, very difficult.*

Local authority focus group participant

## Adoption

For children who can neither return home safely, nor live permanently with kin, participants viewed adoption as the preferred option, particularly (but not exclusively) for younger children. Although they did not name any specific research, or highlight distinctions in the studies, some attributed this to research showing positive outcomes and feelings of increased security for adopted children. In fact, the existing research identifies important nuances. Triseliotis' (2002) review of the literature found that adoption usually offers children greater emotional security and belonging than foster care. However, Biehal et al (2010) and McSherry and Fargas Malat (2018) found positive outcomes, and 'relational permanence' associated with both adoption and foster care when the latter provides long-term, stable care for children.

Whether adoption was the preferred route also appeared to be linked to how 'place-able' the child was judged to be by professionals. Factors which were mentioned as influencing 'place-ability' were the age of the child; whether a sibling placement was required; the regularity of the child's contact with brothers and sisters and other members of their family; the length of time they had been away from home; and the extent and complexity of the child's emotional and physical needs, including where there was medical uncertainty.

In relation to age of child, the 2011 guidance is explicit that "Adoption is no longer exclusively a service for the placement of infants ... adoption has a role to play alongside other routes to permanence for a broad range of children" (Scottish Government, 2011, p.141). Whilst most areas do not have an official age 'cut-off', some participants felt an unwritten upper limit was in operation, and that it is harder to find adoptive placements for children of school age or who were approaching school age, the age-range of many children in our study. Focus group participants in a study in England described a similar situation (Biehal et al, 2010). The exception to this unwritten upper limit was older children who were considered for adoptive

placement alongside their younger siblings, where adoption would not necessarily have been otherwise considered.

*I think there's still a view out there that um ... children over seven can't be placed for adoption. We would try I think, we've quite recently placed a 10-year-old and five-year-old sibling group for adoption. Um ... and some older children 9-10 years of age being placed for adoption*

Local authority senior manager

More generally, meeting the needs of brothers and sisters of different ages was seen as a difficult balancing act, with that balance including the needs of each child, and available resources. Jones and Henderson (2017) found that early decisions made about who was placed together, and who was separated had far-reaching consequences including for future placements and lifelong relationships between brothers and sisters. What tended to happen was that early decisions set the pattern for the future. Despite an expressed desire by many of our participants to keep siblings together where this met their needs, in their research Jones and Henderson (2017) found that the majority of children were placed separately from at least one sibling.

The ongoing impact of adverse early experiences was highlighted by a number of participants in relation to the affect this could have on different aspects of a child's development, including his/her relationship with adoptive parents. Some participants also highlighted that placement moves within foster care could further compound children's experiences of instability and insecurity, and that the combination of 'really huge issues' might make an adoptive placement more difficult to achieve:

*We're asking adopters as we are with foster carers, asking them to increasingly care for children with really huge issues caused by neglect and whatever else, all of the things that go along with that trauma.*

Local authority focus group participant

Some social work professionals expressed the view that adoption might not be the best option for older children who have ongoing direct contact with their birth family. This approach was questioned by an independent consultant who queried why social workers did not instead seek to reduce contact where this was unsettling and de-stabilising for the child. In her view, this was an example of how decisions about the route to permanence were not always led by the needs of the child.

In general, participants initially indicated that parental substance misuse had no direct influence on decision making about which permanence route should be pursued. However, on further probing, participants suggested that the effects of parental substance misuse in-utero, or post birth, may affect the child's 'place-ability', for example where there may be uncertainty about longer term effects on health, or if the child had remained at home for a long period and suffered detrimental effects as a result. Some participants told us that prospective adopters are more willing to adopt children affected by parental drug use than alcohol use, presumably due to an increased awareness among professionals and prospective adopters of foetal alcohol spectrum disorder (Phillips, 2004; Brown and Mather, 2014), although some birth parents are likely to have misused alcohol as well as drugs and the specific effects of each may not be clear cut (Hamilton et al, 2010).

*It may make them harder to place with adopters. It's the unknown isn't it? I think prospective carers or adopters ... if they're faced with perhaps a child that's got a certain disability and it's quantified, and you know what that means that's a totally different ball game to this child has been exposed in-utero to every substance known to man and we don't know what that means.*

Local authority focus group participant

### **Parallel and concurrent planning**

As part of a commitment to 'early engagement and early permanence', the Scottish Government stated "we want to secure early permanence for as many as possible of those who do become looked after" (2015, p.3). Previously, the Scottish Government advised Local Authorities that if permanence was to be achieved in timescales that met children's needs, they "should not think or plan sequentially, but consider a variety of options in tandem" (Scottish Government, 2008a, p.74). One option is 'parallel planning'. Rather than planning consecutively (rehabilitation home then if this fails consider other options) work is done with parents to support and assess a stable and safe return home at the same time as other routes to achieve permanence are considered. In a similar way, early identification of kinship care options and parallel assessments of potential kinship carers, if more than one family member steps forward to claim the child, also helps to avoid decision making delays.

Another option is 'concurrent planning', which is defined as being "twin plans for reunification and a permanent placement. Reunification is the primary aim. The secondary plan is for a permanent placement and adoption, with the carers" (Wassell, 2012, p.2). This involves early placement of the child with carers who have the potential to offer permanent care for the child while testing rehabilitation home with parents. The majority of agencies already approve prospective adopters as foster carers to enable a child to be placed while s/he is under a CSO; however, this is intrinsically different to concurrent care. Here, carers are asked to care for the child while work continues to return the child home, and only if that proves impossible, will the plan become that the child remains with them and is adopted. This necessarily involves uncertainty for carers, but it can reduce delays in decision making, avoid unnecessary moves for the child, and enable the early development of attachment relationships by placing the child in what may become their permanent home (Laws et al, 2014).

In some areas, according to social work professionals, concurrent planning is increasing, but in others despite the Scottish Government guidance (Scottish Government, 2008a; 2015), we were told it is discouraged because there is a belief amongst practitioners that some CH panel members see it as pre-empting their decision making. In their analysis of permanence planning, Henderson et al (2011; 2015a) found there was no indication that Children's Hearings viewed concurrent planning negatively; however, it was clear that for some participants the fear (grounded or not) that they might do so influenced social work decision making.

### **Custom and culture: geographical differences in legal route to adoption**

Where children cannot remain with or return to parents and adoption is the preferred route to achieve permanence, the guidance (Scottish Government, 2011) sets out the factors local authorities should consider when deciding whether the route should be via an Adoption Order (by Direct Petition) or a Permanence Order with Authority to Adopt. Although most participants indicated that decisions were focused on the needs of the particular child, a consistent theme across groups was that there were custom and practice differences across different local authorities in Scotland, including the route to adoption, which meant decisions were influenced by factors other than a child's needs. This mirrors findings in England that local policies and procedures influenced decision making and pathways for children (Wade et al, 2011).

Before the Adoption and Children (Scotland) Act 2007, there was what is known colloquially as the 'East/West split' because of a historic tendency in the West of Scotland to lodge a direct petition with the Sheriff Court for an Adoption Order, and in the East of Scotland to use Freeing for Adoption (akin to the POA within 2007 Act) followed by an Adoption Order at a later stage. Participants stated that geographical differences remain in the use of either an Adoption Order by direct petition (Adoption and Children (Scotland) Act 2007 Section 29 or 30 Adoption Order) or a Permanence Order with Authority to Adopt (POA) (Adoption and Children (Scotland) Act 2007 Section 83). Benefits and disadvantages of both routes were described by participants.

### *Direct petition or Permanence Order with Authority to Adopt*

Direct petition was considered by those who favoured this route to be quicker because it is one stage and can be part of the process of adoptive parents claiming a child. Conversely, others thought this places more pressure on prospective adopters as they are the petitioners rather than the local authority. A further drawback highlighted was the possibility that prospective adopters may feel that they have no option but to agree with post-adoption contact negotiated at the adoption Hearing by solicitors acting for the birth family (see also MacDonald, 2017), whereas the primary determinant of contact should be the individual needs of the child (Neil et al, 2013).<sup>29</sup> Where a family had not been identified there was a dilemma about whether to delay lodging the petition until a family was found and the child moved, initially on a fostering basis.

*Certainly when I'm looking for permanence for one of mine it's a thin line, do you manage to get a family and get in there before the POA is lodged and if we have just the perfect match that's great but are we almost taking second best because we want to get in there because I know that it could be a year sitting in foster placement. Would I have picked that family if I did have another two months to sit and wait? I worry about that.*

Local authority focus group participant

For adoption by direct petition, the child remains on a CSO until the sheriff decides whether to grant the Adoption Order. The lack of legal certainty throughout this process can be difficult for prospective adopters, although this was considered preferential by those who used this route to the disadvantages for the child of delaying the move.

*We are managing to get children into placements earlier but I think the cost of that is to the adoptive family because we're asking them to take a lot of the anxiety and a lot of the risk on board for themselves - we're not placing children with families at a point where we can say now you can settle down and do all that attachment building stuff- focus on that, that's where your energy needs to be. We're saying do all that but we're also saying oh by the way there are all these other legal processes and there's contact, and there's a Hearing, and there's, and there's, and there's... And don't call yourselves mum and dad...and don't change the child's name, don't even think about it because ...what is their status as adopters?*

Local authority focus group participant

The POA route was presented as being helpful in cases where the adoption is contested by birth parents. However, others considered that there was more scope for delay. In particular, we heard that children could become 'stuck' in a temporary foster placement because of difficulties in moving children to a permanent placement once the POA was lodged at court. In some places, as a result, the use of direct petition was increasing.

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<sup>29</sup> Contact was a theme in the *Outcomes* strand, and also in interviews with carers and adoptive parents.

*If the child's on a Supervision Order with a particular place of residence and then you're wanting to move to place the child with the adopters, it's the timescales of it. So, if you actually manage to do it and the Hearing can change the place of residence, then well and good but if not then you're stuck and the Children's Hearing can't make any decisions once it's lodged in court and then you know... you're stuck! You know, so unless you kind of try and circumvent in some way and don't decide a legal route, do you know so that you can then do all the bits on a Supervision Order, get the child in placement, and then you can lodge the stuff in court and things and it's... it's been a wee bit difficult at times.*

Local authority senior manager

What emerged from interviews, including with a sheriff, is that each route can bring benefits as well as challenges and complexity, and that within either route there is scope for delay. The *Pathways* strand tracked 1,836 children's progress over four years from 2012-16 using CLAS data. It found that for children where adoption was identified as the best means of securing their future, the mean time of 26 months for the direct petition route was slightly less than for the POA route (30 months). However, caution needs to be applied as the time taken will vary according to the child, and this finding does not mean that direct petition should necessarily be the preferred route to adoption. Where delays occur and why they occur will vary as a consequence of a range of factors, including but not limited to the particularities of the legal route. Moreover, there may be a range of reasons why a direct petition would not be the best option for a child. As with all research, this finding needs to be applied critically to each child's specific circumstances.

Regulations introduced in 2016, following the Children and Young People (Scotland) Act 2014, place a duty on agencies to refer children to Scotland's Adoption Register within three months of the Permanence Panel identifying adoption as the option for the child, although children may also be referred earlier. This increases the likelihood that children may be placed across Scotland, and may lead to changes in the east/west split. The existing published research evidence that is available on geographical differences in legal routes across Scotland pre-dates these changes. Research published by SCRA in 2015 found "striking differences between local authorities in the legal routes used. Those in the west of Scotland virtually never made applications for POAs and favoured direct adoptions, whilst the opposite was true of those in the east with very few direct adoptions" (Henderson et al, 2015a, p.95). Henderson et al came to the conclusion that this implied local authorities were "not considering and applying the guidance and legislation to the circumstances and interests of individual children" (Henderson et al, *ibid*), and thus decisions were not always needs led. The data used in their analysis related to children whose supervision requirements (now CSOs) were terminated in 2013/2014. Participants in our study commented that although the east/west difference remains they believed it was becoming less marked. This perception may reflect a shift that is not yet documented in statistics, including in the CLAS data we interrogated as part of the *Pathways* strand of the study which relates to 2012-16. Further analysis post-2016 is required to assess the impact of the Adoption Register on the route to adoption and the different cultures of practice across Scotland.

### **Adoption and Children (Scotland) Act 2007**

In line with one of the aims of the study, we explored what changes, if any, participants attributed to the Adoption and Children (Scotland) Act 2007. Several commented that it had widened the pool of potential adopters, including same-sex couples, and built in provision for adoption support plans for families. The 2007 Act formalised adoption support, and some participants said this reflected what they were already doing. However, others said the

requirement within the 2007 Act for an assessment of adoption support made it more likely to be provided, although there were anxieties about budget restraints.

*I think with the 2007 Act that's probably been something we've been pushed to be a bit clearer about what we're offering in terms of post adoption support because I think we have to be clearer now that it's in the legislation – so that's been a good thing that it has pushed us to be very clear on what we do offer adopters, which is quite a lot I think.*

Local authority focus group participant

Selwyn et al's study (2015) in England found that the needs of children and adoptive parents vary over time, and some parents who do not initially want post-adoption services may revisit this. In their study of Welsh adopters, Meakings et al (2018) report that adoptive parents and their families would have valued more support and advice early on after the child was placed for adoption. Several participants in our study considered that while some adoptive parents want social workers and other professionals to 'withdraw from their family life' after adoption, the inclusion in the Adoption and Children (Scotland) Act 2007 of support planning and provision may help adoptive parents and professionals recognise that support might become necessary and welcome in the future particularly when it includes therapeutic help for children and their families.

Another finding of Selwyn et al was that while some adoptive families experienced support as helpful, the "majority of the parents were dissatisfied with the overall response from support agencies" (2015, p.195). In our study, while several professionals expressed an opinion that the 2007 Act formalised support already being provided, their perception of the level and quality of support offered did not always accord with the experiences of some parents and carers who were interviewed (n=20), or who completed questionnaires (n=166) as part of other strands of the study. Some adoptive parents we interviewed identified gaps in support, as did some of those who completed questionnaires. For example, 22% of adoptive parents in the *Outcomes* survey felt social workers had not provided enough information about the child's support needs at the point of placement.

The 2007 Act introduced Permanence Orders. While participants were generally positive about their introduction, and their overall use is increasing (Scottish Government, 2018), the *Pathways* strand showed that they were rarely used for younger children.

In order to consider whether the introduction of the 2007 Act had affected timescales for children, Hanson et al (2018) compared a cohort of 100 children who progressed to permanence away from birth parents under the Adoption (Scotland) Act 1978, and 200 children who progressed under the Adoption and Children (Scotland) Act 2007. They found that the change in legislation in "had not made any significant impact on reducing the time taken to complete the permanence process for children" (Hanson et al, 2018, p.7), and this is noteworthy.

### Summary

- Where a child cannot remain with or return to their parents the child's needs should determine the route. Decisions were also shaped by other factors, including local policies and processes, and were not always needs-led.
- Kinship care is the first option considered. While the benefits were highlighted, there were concerns when this was a 'blanket' strategy.
- The term 'place-ability' was used as shorthand to cover a range of factors which influenced decisions about route and timing. These included the age of child, whether s/he had brothers and sisters, the degree of trauma s/he had experienced, the degree of medical uncertainty, and the level of contact.
- In some areas 'unwritten' rules influenced decision making.
- Where adoption is the route, geographical differences remain as to whether this is achieved via a Direct Petition, or via a Permanence Order with Authority to Adopt.

## 6.3. Children's and parents' involvement in decision making

### Children's involvement in decision making

The legislation underpinning social work practice, including permanence, is clear that children should be enabled to express a view in decision making which involves them (dependent on age and understanding). Both the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Act 2011 are based on a presumption that children over 12 should be involved in decisions; however, there is no assumption in either that it should not happen earlier, indeed the latter expects children to attend Hearings unless excused. Section 1(4)(d) of the Adoption and Children (Scotland) Act 2007 states children must be provided with information, while Section 32(1) of the Act seeks consent for adoption, and Section 84 seeks consent for a Permanence Order from a child aged 12 or over.

Participants said formal processes endeavoured to seek children's views, including at Looked After Child reviews and Children's Hearings, but that this is not always achieved, particularly for younger children (see also Whincup, 2011; Winter, 2011; Bruce, 2014; Porter, 2017). While there are evident dangers in making assumptions about what children's behaviour might mean where this is based on limited observation (Triseliotis, 2010; Wassell, 2013; Gow 2019), social workers said very young children's behaviour may be interpreted over time by those working with and caring for them. Participants recognised it can be difficult for children to verbally articulate their feelings about a new permanent home, whether this is with kin, unrelated foster carers, or prospective adopters, as many have a strong feeling of loyalty to their birth parents and may feel worried and ambivalent.

*With children who can't verbally express it, it's about behaviour but you will see that children that come from some of the most ... come from abusive situations remain extremely loyal to the family and will sit in front of the [Children's Hearing] and say I want to go back. So, in a sense we have to talk for the child.*

Local authority focus group participant

In some local authorities, children attend part of the Permanence Panel if this is considered to be in their interest. Social workers talked about including older children and that when this is meaningfully and sensitively achieved, it can have a bearing on the pace at which decisions are made and about the route to permanence:

*He swayed it an awful lot at court because the curator spoke to him ... Very vocal young person. Able to voice their views and opinions and say that he wanted a separate place from his siblings, he had been the main carer, young carer when he was in the house. Very, very vocal and he still is. Actually he's really good that way he can tell you his views and opinions.'*

Local authority focus group participant

Some participants expressed concern that attending decision making forums including Children's Hearings may cause distress to the child, and some members of Children's Hearings indicated they were inhibited by the child's presence, particularly if the child is visibly upset. Others felt that the Children's Hearing is an opportunity to seek the child's views about contact with their birth parent, although there was acknowledgement that it may be difficult in such circumstances for a child to express their views, not least where they are very young.

*The other thing ... is actually interaction within the Hearing room. You could have the parents and young children there, with young children who simply do not connect – who is this person? I think that's going to influence the panel whereas if a child rushes over and flings its arms around the parent, obviously that's going to influence as well.*

Children's Hearing focus group participant

Although the children in our cohort are young, we wanted to hear about their experiences, including of decision making processes. We were able to have 'play and talk' sessions with 10 children aged three to eight years as part of the *Children and carers* strand. The findings are detailed in that report. Although one of the children mentioned talking to 'someone from the court' about whether he wanted to have contact with his birth parents, this was the exception and most children we spoke to did not describe being involved in decision making processes.

### **Parents' involvement in decision making**

Phase One did not interview birth parents, and this and previous sections explore parental involvement in decision making as described to us by others, and so are necessarily partial. Although participants referred to 'birth parents', many of their comments reflected a focus on mothers, and far less on fathers. This focus on mothers, rather than also fathers has been explored in relation to permanence (see Clapton and Clifton, 2016), and within child protection processes more widely (including Scourfield et al, 2015; Brandon et al, 2017). Participants stressed the relational nature of social work and the need to involve parents thoughtfully and meaningfully. However, the findings of existing research with parents on their experiences of social work processes highlights that there may be a disjuncture between how practitioners think and feel they have involved parents, and the manner in which practitioners and processes are experienced by parents (Buckley et al, 2011; Ghaffar et al, 2012; Broadhurst and Mason, 2017; Featherstone et al, 2018). While practitioners need to ensure that the child's needs are central, this should not mean that parents experience professionals or processes as disempowering and damaging. Rather it is possible to engage with a child and their parents in a way which recognises differing needs, and is also empathic and sensitive.

Participants across the groups agreed it was crucial that parents understood and were involved in each stage of decision making processes, from the rationale for professional involvement and the initial assessment onwards. This included parents being provided with clear explanations as to what was being decided, and why, and opportunities to have an input into decisions for their child, although at times this may be difficult and painful, and require considerable support and clarity in communication.

*If you're a parent and someone's discussing something with you in language that you don't really understand what actually they're saying that then can impact on the decision making processes and delays.*

Local authority focus group participant

It was reported that, in addition to their day-to-day interactions with individual practitioners, parents' views are heard at child protection case conferences, core groups, Looked After Child Reviews, Children's Hearings, and in some LAs they attend Permanence Panels and are supported to do so. In one LA there is a pre-Permanence Panel meeting – the 'Birth Parent Meeting' – which aims to enable parents to share their views in a less formal environment.

*It's fair that in any forum where decisions are being made about your child you would want the opportunity to meet with that body of people and you know state your case but it can feel tokenistic because we're so far down the line by that time. But having said that, there have been occasions where the Permanence Panel have put it on hold, or have said no we don't think there's enough to persuade us that your plan is the right plan and that's come from the birth parents being there.*

Local authority focus group participant

Participants said that skilful social work to 'take parents along with the plan, if at all possible' can support early and co-operative decision making. It was also suggested that professionals need to recognise if a parent is signalling their realisation that they are not able to care for their child, as this can avoid delay. However, this does need to be differentiated from a parent who is acquiescing to professional planning.

*The mother did want to have her baby but by the end of the parenting capacity assessment and when we'd explained our thinking to her she ... seemed to accept ... well she did accept, she seemed to almost agree with us. And she certainly accepted um ... that we were going to be recommending that the child didn't come home ... And she was also part of the decision of which parents we went for because we had two couples that both seemed really good.*

Local authority focus group participant

Some CH panel members talked about the importance they placed on parents' presentation at the Children's Hearing and the insight they felt this gave them about how the child and parent related to one another. Several said this helped them to make decisions about the plan for the child. However, significant concerns were expressed by social workers about the influence on some CH panel members of the snapshot children and parents' interactions within Hearings offers, with some worrying this can be an inaccurate or superficial picture of very complex relationships. Several members of Children's Hearings indicated they were unaware of processes within local authorities and the opportunities a parent has to express their views within decision making forums (including core groups and formal reviews), and this appeared to influence their view of their role.

Some existing research suggests that in the Children's Hearing System, parents' views and emotions may be given precedence over children's experiences (Walker et al, 2013). The respondents from Children's Hearings in our study said that, whilst it was important to listen to the views of parents and 'give them their place', they were not necessarily swayed by what they heard.

### Summary

- Phase One of the study did not include birth parents and their direct views on decision making are absent. Existing research with parents indicates that while some parents experience practitioners as enabling, fair, and supportive, others experience professionals and systems as harsh, insensitive, and rigid.
- Authoritative decision making within timescales which meet the needs of a child *and* his/her parents may not always be possible. However, it is possible for practitioners and processes to meet the needs of the child, while also engaging with his/her parents in a manner which is empathic, enabling, and demonstrates respect.
- A tenet of legislation and policy is that children can express their views, and these should be taken into account. This is not always achieved, and children's presence in decision making forums does not mean they are meaningfully involved.

## 6.4 Decision making: Children's Hearings and other systems

A number of factors associated with the Children's Hearings System more generally, and how it interfaces with other systems (including court and local authority) were reported by participants as contributing to delays and/or complexities in decision making at different points for the child. The factors they identified included the process of establishing the grounds for referral, the role of parents' solicitors within Hearings, the appointment of Safeguarders, and decisions about contact.

Local authority and CH panel member participants highlighted that delays occur if the grounds for referral to Children's Hearings require to be established by the sheriff, which given the age range of the children involved in this study is likely. Sometimes grounds were described as being 'watered down' in order that they are agreed by parents, and thereby avoid the need to go before the sheriff for a proof hearing.

*It goes to ... the Children's Hearing, for the grounds ... the parents contest the grounds so it goes to Proof. Then it will come back – that's if their lawyers go to court when the Proof Hearing is heard ... then it gets delayed so we get called up to the court, it gets delayed, eventually it goes through. It comes back to the Children's Hearing, the parents turn up, no lawyer, the Children's Panel are deferring the Hearing and then we have to go back. I mean we had that and it was the third time before ... sorry the fourth time by the time you include the proof that we actually got it through.*

Local authority focus group participant

Following implementation of legal aid aspects of Children's Hearings (Scotland) Act 2011, more solicitors have been present at Hearings, generally representing parents (Porter et al, 2016). Although Woods et al (2018) identify that there are geographical variations as to whether solicitors are present at Hearings; the role of solicitors at Children's Hearings was a recurring theme across interviews and focus groups. The majority of participants observed that the increased involvement of solicitors representing parents had resulted in Hearings becoming more adversarial. In some instances there was a view that this undermined the paramountcy principle because of a shift in focus from the child to parent and an emphasis on parental rights rather than responsibilities. Some solicitors were reported to take an intimidating stance towards panel members and social workers, to denigrate social workers' assessments and

research evidence, and request additional assessments. There was a view expressed that the latter was sometimes used tactically by solicitors to delay proceedings.

*I think it's difficult for panel members and social workers when there are solicitors present in the room. I think that they are practised in intimidating the opposition and that's what they see us and social workers are and that's what they do. They don't have to tell the truth they have to represent their clients and they don't tell the truth. Yeah I just don't think they're helpful and I think they do affect decisions, I think they affect decisions not because all panel members say 'oh the solicitor said that so I must do it'. But because it's very difficult to look a solicitor who sounds as though he knows what he's doing in the eye and say you are wrong because he will argue with you and he'll tell you he's not wrong and that I know the law ... We're not a court of law, we're trying to find out the truth and we're trying to find out what is in the best interests of the child.*

Children's Hearing focus group participant

Others indicated that some CH panel members are confident in challenging solicitors and some chairpersons ensure that parents are offered opportunities to speak for themselves when solicitors speak on their behalf.

In one local authority, participants expressed a view that parents were told by solicitors not to co-operate with social workers, which was considered to influence family engagement with services. It was believed that in some cases solicitors are giving parents 'false hope' that they will be able to retain or resume the care of their child. There were concerns that this did not ease the path for birth parents to meet with prospective adopters, or enable birth parents to give the child psychological 'permission' to move to their new family, nor did it enable social workers to support birth parents post adoption.

*Parents have been given hope and been given encouragement, and therefore they haven't ... they haven't helped with life story stuff, they haven't helped with giving the medical background so that child is then off to a new family, whichever route without the information. And also that parent has got a really bad experience of this, a worse experience than they could otherwise have had if they'd been helped.*

Local authority senior manager

There was disquiet expressed by a number of practitioners that when Children's Hearings become particularly adversarial it may preclude parents from engaging in planning processes, and make future engagement more difficult. Parents have a right to representation and this was not challenged. There were, however, concerns if the manner in which this is enacted then militates against parents being able to make use of the support which is enshrined in the Adoption and Children (Scotland) Act 2007. Some also highlighted that in an adversarial context it may become less possible for practitioners to acknowledge parental strengths. This is troubling, given the consequences for parents and subsequent children, when processes focus only on deficits, and are experienced as stigmatising and lacking in compassion (see Broadhurst and Mason, 2017).

Our focus groups were drawn from social work professionals and members of the Children's Hearings, and therefore the anxieties expressed to us about the role that solicitors play in Hearings and unease about the advice some may give to parents is necessarily based on a particular perspective. Seven solicitors were, however, involved in the research conducted by Porter et al (2016) about the role of solicitors in Children's Hearings. They found that "there was a clear difference in opinion between solicitors and other professionals about the influence solicitors have in Hearings. In each case, solicitors mostly feel that their influence is positive, while

other stakeholders (social workers, Reporters, and panel members) consider their overall influence to be negative” (Porter et al, 2016, p.33). Porter et al went on to make a number of recommendations, including for joint training of solicitors and social workers.

The sheriff who participated was of the view that panel members were not unduly influenced by solicitors representing parents or by a favourable ‘snapshot’. In their research, Henderson et al (2015a) found that in 99% of the examples they looked at the Hearing agreed with the recommendation from social workers for permanence (2015a, p.87).

The Children’s Hearings (Scotland Act) 2011 states in Section 30, that a Hearing “must consider whether to appoint a person to safeguard the interests of the child to whom the Children’s Hearing relates (a ‘Safeguarder’)”. Where a Safeguarder is appointed, their role is to make an independent assessment of what plans are in the child’s best interest, and submit a written report to the Hearing within 35 days. When permanence away from home is being discussed, there is likely to be conflict between parental wishes and social work recommendations. Existing research reported that in such instances an independent assessment is generally seen as helpful by the Hearing, if not always by social workers who expressed concern that this additional assessment might lead to delays for the child (Gadda et al, 2015; Hill et al, 2017), and this finding was replicated in our study. Some social workers expressed the view that in certain areas, Safeguarders were appointed as ‘a matter of course’ and this led to delays. Conversely, some CH panel members indicated they would be much less inclined to appoint a Safeguarder and request additional assessments if social work reports were clear and provided the level of information and analysis required. Hill et al (2017) made the point that where panel members doubt the expertise of the social worker, or it is unclear how far the assessment is informed by other professionals involved with the child, they are more likely to seek additional input, and this includes appointing a Safeguarder.

*We don't get information from Looked After Child Reviews, or Permanency Panels we don't get any of that info. The template needs to change and they need to start putting in this is what the last LAC Review said, this is what everybody is thinking so that's an independent reviewing officer here, that's what they're saying. You wouldn't need to have the Safeguarders you've got if you got the information from the local authority in the first place.*

Children’s Hearing focus group participant

More widely, the variable quality and level of analysis present in social work reports to decision making forums (including Children’s Hearings) was a thread running through a number of individual interviews and across the groups. One independent consultant commented that social workers need to be very skilled in the way in which they present their case for permanence away from parents to Children’s Hearings. CH panel members need clear articulation in writing of what has been put in place to support the family to enable the child to live at home and why this is not possible; information about how the permanence decision has been reached; and the processes involved. Panel members said they are assisted in giving advice to the sheriff if social workers’ reports contain information about the impact of parental care (or lack of it) on the child and analysis of what this means for that particular child in terms of short- and longer-term risks. Although subsequent to the period when we conducted interviews and focus groups, the judgement of the Supreme Court in relation to EV (March 2017)<sup>30</sup> is relevant. Within the judgement, there is the statement “Social workers are the detectives. They amass a great deal of information about a child and his family. They assess risk factors. They devise plans. They put

<sup>30</sup> In the matter of EV (A Child) (Scotland) [2017] UKSC 15 UKSC 2016/0220, In the matter of EV (A Child) (No 2) (Scotland) [2017] UKSC 15 UKSC 2016/0222.

the evidence which they have assembled before a court and ask for an order” (2017, para.21). A theme from across the focus groups, but particularly within Children’s Hearings was that clear analysis of risk was sometimes lacking in social workers’ written assessments. Some CH panel members said that at times social workers’ reports to Hearings were descriptive and that the impact on the child of factors which compromised parenting capacity including substance or alcohol misuse, chronic mental health difficulties and domestic violence, required more analysis.

An interesting finding from the panel members was that most said they had a very limited understanding of the process of permanence planning within the local authority and how decisions had been reached prior to them giving advice to the sheriff. While they had heard of Looked After Child Reviews and Permanence Panels, they were unclear who sat on them and whether decision making was robust. As a consequence, some CH panel members were of the view that they were the first to scrutinise the plan for the child. Several commented that having a better understanding of social work processes would enable them to feel more confident about social work assessments and recommendations to children’s panels. In relation to social work reports, this means that it is important for social workers to communicate explicitly in writing how recommendations to Children’s Hearings have been subject to scrutiny within the authority, and the manner in which parents and children have been involved.

A number of CH panel members said they would value additional training. Some reported that while aspects of their training had been useful, not all issues were adequately covered and they described varying levels of understanding of the legal routes to permanence. Most Children’s Hearings members said they knew very little about the Adoption and Children (Scotland) Act 2007, although the issue of varying a condition of residence once a POA had been lodged was familiar to them. A small number felt they had a good grasp of the permanence options but most said more training on all the legal options available and clearer advice from the Children’s Reporter would help them in their advice-giving role. In their research on complexity in the lives of looked after children in Scotland, Woods et al (2018) highlight that the volume of legislation and guidance relevant to the operation of the Children’s Hearings System has increased exponentially, and that this has implications for “Children’s Panel members and professionals and their decision making to protect vulnerable children” (2018, p.34).

## **Contact**

When making, varying, or continuing a Compulsory Supervision Order, Children’s Hearings have a duty to consider contact. Depending on the needs of the child, contact can mean different things for different children moving along a continuum from no contact to regular face-to-face contact which may or may not be supervised by professional or adults who care for the child. Contact with birth family is a complex and contested area (see Triseliotis, 2010; Schofield and Simmonds, 2011; Wassell, 2013) and emerged as a key theme in relation to the interface between the Children’s Hearings System and social workers at different points in the process, but particularly where permanence away from home is being progressed. All groups discussed decisions made within Children’s Hearings about contact although most focused on contact with parents, rather than siblings or extended family.

The principle outlined by Section 25 of the Children’s Hearings (Scotland) Act 2011 is that decisions should ‘safeguard and promote’ the welfare of the child. However, there was some uncertainty about the basis on which contact between child and parents could be varied at a Children’s Hearing. Several social workers mentioned ‘compromise’ positions reached at panels over reduction of contact between child and parent in order to ameliorate parents’ distress, and cited examples where Hearings retained contact even when the child had explicitly stated they wanted it to cease. Some social workers considered that in relation to contact decisions, the paramountcy of the child’s best interests had at times been lost, describing specific examples where they viewed contact as re-traumatising a child. Porter (2017) completed a file review of

SCRA records relating to 160 children and young people from four local authority areas, who had a contact direction made, continued, or removed in the year 2015/16. He found that across 1,276 different Hearings and 2,008 contact directions, in relation to frequency of contact 76% of Hearing decisions matched social work recommendations, and in relation to total hours of contact time it was 63% (Porter, 2017, p.4).

Some social workers thought that not reducing or terminating the child's contact with birth parent(s) can delay a permanent placement and influence the feasibility of adoption. Some also expressed concern that where extensive direct contact with parents was taking place, there was potential detriment to the child, including travelling to contact for very young babies and children, and increased stress on the permanent placement. There was recognition by social workers that in instances where the level and type of contact was detrimental to the child, they need to be clearer about this in their reports to ensure that, where possible, decisions about contact are made with regard to the wider context of the child's long-term care plan.

*I think there are some very good Children's Hearings and I think there are some who make absolutely dreadful decisions and it's about unravelling that. I think when workers come back and say oh contact wasn't reduced and we're going for adoption and they're still every fortnight you wonder why, and you think well actually was your report clear, was your evidence there and so we've been doing a bit of work on report writing and we've got AFA coming up at the end of this month to do a bit on report writing.*

Local authority senior manager

A theme from many local authority participants was that contact needed to be at a level that was manageable and helpful for the child and congruent with their needs. Some social workers thought panel members worried that taking a decision to reduce the child's contact with their birth family, could be pre-empting the sheriff's decision.

*You will go to an Advice Hearing<sup>31</sup> and the Panel will say 'yes - definitely this is permanence, but we're going to keep having twice a week contact for the foreseeable' because they won't make...they won't pre-empt a sheriff basically! So they're saying yes this is definitely going to be detrimental in the longer term, this child cannot return home now, cannot return home in the future but we will not stop contact.*

Local authority focus group participant

In turn some CH panel members voiced a reluctance to reduce contact unless a clear timetable is in place. Some had experience of permanence plans taking a long time to be progressed, with delays in finding suitable placements. They also talked about children returning to the CHS after permanent placements had broken down and the impact disruption had on subsequent permanence plans for the child. In contrast to the research about low disruption rates for young children (Biehal et al, 2009; Selwyn et al, 2015), one panel member commented that 'nothing is permanent for a lot of these children anyway'.

In terms of post-adoption contact (direct and indirect), there is evidence that if arrangements are well managed, well supported, and are individualised, some form of contact which maintains

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<sup>31</sup> Where a child is subject to a CSO and the Agency Decision Maker for the local authority has decided, following a Permanence Panel, that a Permanence Order or adoption is required, the Children's Reporter must be notified. The Reporter will arrange for a Children's Hearing to take place to provide advice to the sheriff about the local authority's plan for the child.

significant relationships can be positive for some adopted children (Neil et al, 2013; MacDonald 2017). An important factor is that contact arrangements with those people who are important to the child are driven by sensitive, attuned, decision making, and are flexible, given children's needs may change over time.

### Summary

- The legislative, policy and practice context for permanence decisions in Scotland is complex, and involves different systems. Participants' expressed knowledge of key legislation, research, and processes relevant to those systems was not always accurate.
- Children's Hearings are increasingly experienced as adversarial. There was unease that this could compromise the 'paramountcy' principle, and make positive working relationships between parents and social workers less likely.
- Social workers and panel members wanted to make 'good decisions' for the child, however the interface between the Children's Hearings System and local authority system could also be adversarial.

## 6.5 Child-centred timescales?

Once children are looked after away from home, progress in the parent's capacity to meet the child's needs and the supports required are discussed at the six week Looked After Child review, and at the second review three months later. As noted earlier, where a child been looked after away from home for six months and "she/he has not returned home by this stage or if significant progress towards that has not been achieved, then the review should consider whether a plan for permanence away from birth parents is required" (Scottish Government, 2011, p.130). This means the decision should be taken by the third review (this takes place six months after the second review, so between ten and eleven months of the child becoming looked after away from home). This review should also set out the steps and timescales to achieve permanence for the child.

Some participants reported that when they are consistent Reviewing Officers can monitor drift in care planning and can have a quality audit role, collating information about all children to provide an overview of delays in permanence planning across an authority

*The key driver is that there's recognition that time is of the essence, and that when a need has been identified we need to have a decision making process that arrives at a conclusion as quickly as possible. And that's why we have the achieving permanence guidelines which are very clear about the triggers for each stage of decision making.*

Local authority senior manager

In recognition that for some children there had been avoidable delays in achieving permanence the Scottish Government identified the need for early identification, and prompt planning for permanence (Scottish Government, 2015). Local authorities provide practitioners with local guidance including timescales to promote timely decision making, and several practitioners shared their guidance with the interviewers. Although there is evidence that delays in permanence remain (Henderson et al, 2015b; Mitchell and Porter, 2016; Hanson et al, 2018), participants told us they believed decision making about the child's need for permanence away from home is timelier than it used to be.

*We're very keen to tackle delays in terms of drift in relation to permanence and again I think that's a common theme across Scotland now because children wait far too long. Even children accommodated at birth can wait two-three years before they're finally placed for adoption.*

Local authority senior manager

The *Pathways* strand of the study tracked 1,836 children's progress over four years from 2012-16 using CLAS data. It found that by 2016, of the 1,355 children who became looked after away from home in 2012/2013, where children were reunified with parents, the average time for a return home was nine months. However, timescales for other permanence routes were much longer. For children where the route was a Section 11, the average time from first becoming looked after away from home to the Section 11 being granted was 22 months. For those 28 children where the route was a Permanence Order, the average time from first becoming looked after away from home to a Permanence Order being granted was 17 months. The senior manager above referred to two to three years as a timeframe for children for whom adoption is the route. His subjective experience is borne out by the CLAS data we analysed. By 2016, of the 1,355 children, 212 children had been adopted and 80 children were on an 'adoption pathways', including POA or CSO with prospective adoptive parents. Where children were adopted, it took an average of 28 months from becoming looked after away from home. This is a long time in a child's life.

One aspiration behind Getting it Right for Every Child (Scottish Government, 2012) was that a shared language of wellbeing would mean that services provided to children and families would be 'seamless' and this would help decision making and timeframes for the child. Some participants felt that assessment, planning and intervention through GIRFEC processes, including Multi-Agency Action Planning meetings and Team Around the Child meetings, have made a difference to permanence decision making. They also highlighted that involvement of professionals working with parents, for example in Adult Mental, Criminal Justice or Community Drug and Alcohol Teams, could aid decision making.

*We've had an experience recently of the assessment – obviously it started pre-birth and it was a really good tight core group with the Adult Services worker as well and although she was advocating very strongly for the mum she could see that the impact on the child was great so I think out of anybody, her job was more difficult than anybody else's because she was balancing the ... almost the needs of the mum with the actual needs of the child and um ... we were able to make a permanency decision very, very quickly in that respect because it was a really good tight core group.*

Local authority focus group participant

Conversely, others reported that colleagues working in adult services can appear over-optimistic about parents' capacity to make changes, including in relation to substance abuse, and this might delay decision making for the child.

### Resource issues

Several participants mentioned the impact of poverty and austerity on children and their families. However, the impact of poverty on children and their parents was not necessarily foregrounded (see Morris et al, 2018). In terms of service provision for birth families, while practitioners commented on austerity and limited resources, they tended to focus on what supports they were able to provide, rather than on unmet needs. Social work is relational, and when thinking about the effects of austerity, Hingley-Jones and Ruch use the phrase 'relational austerity' to consider the impact on day-to-day practice, and that interactions between practitioners and parents risk being "combative rather than compassionate" (2016, p.237).

There is existing evidence that parents experience intervention as relationally austere, and this may be compounded if decision making processes, including Hearings, become increasingly adversarial. Participants also highlighted that austerity and limited resources had an impact on decision making and timescales. Two particular areas of resourcing were discussed: the capacity and skills of social workers and other professionals involved in the process, and the availability of sufficient numbers of good carers.

For children who cannot remain with or return to their parents, the extent to which timely and appropriate matching decisions can be made is influenced by the availability of carers and adoptive parents both locally and nationally (in Scotland and the rest of the UK). We heard from social work professionals that effective recruitment, careful assessment and preparation of a pool of foster carers and adoptive parents should enable good matching decisions to be taken at different stages in the process, from when a child first becomes looked after to the point when a permanent alternative placement is sought.

Practitioners in fostering and adoption teams said they tried to ensure that adoptive parents' and carers' expectations of children are realistic by providing anonymised case studies of real children, and 'counsel out' prospective foster carers and adoptive parents who are unrealistic about the needs of children and the challenges of caring for them. Participants in some areas told us that family placement team social workers were increasingly looking outside their local authority for permanent placements. This, along with Adoption Exchange Days<sup>32</sup>, was described as potentially offering more opportunities for children. In one area, participants said that children with disabilities were more likely to be placed for adoption in England where there is a wider pool of prospective adopters. However, they identified practical and financial implications of placing children at a distance, including different levels of and systems for distributing Adoption Allowances.<sup>33</sup>

In relation to social work resources, some participants reported that delays in progressing children's plans were associated with staffing issues, including high case loads, low social worker retention rates, and sickness absence.

*If someone was to ask me what was the biggest barrier that prevented you progressing to permanence I'd say it was about lack of retention of workers and staff sickness, I can think of a number of examples where a baby, an infant was accommodated from hospital and five social workers down the line we are trying to progress that adoption plan despite everybody's best intentions and best efforts. So there's something about the children and families social work environment that central government, local authorities, need to recognise is incredibly stressful, an incredibly pressurised environment and that they need to consider how we support, how we protect and how we retain people.*

Local authority focus group participant

Bowyer and Roe (2015) explored the 'push' and 'pull' factors which influence social work recruitment and retention, and indicated that there is a "correlation between children achieving permanence and turnover rates" (2015, p.3). For our participants, social work staff turnover was

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<sup>32</sup> This is an event where prospective adopters can meet and hear directly from foster carers and social workers about children who need adoptive families. The events are organised by Scotland's Adoption Register. For details: email [sar@adoptionregister.scot](mailto:sar@adoptionregister.scot).

<sup>33</sup> Section 71(2) of the Adoption and Children (Scotland) Act 2007 allows the local authority to pay allowances to any person who has adopted or intends to adopt a child where arrangements for the adoption were made or are to be made by the agency.

estimated by some to add as much as a year's delay. A new worker usually spends time getting to know the family and may 'start again' with a reassessment.

*It may well be that a change of social worker has been an important factor in a six-months delay ... while the new social worker gets their head around the past social worker's planning*

Local authority focus group participant

Permanence reports<sup>34</sup> are a major piece of written work, which take time to complete, in the context of competing demands and priorities. Some described the format as overly-lengthy and repetitive, particularly if required for multiple siblings. There was a move in some LAs to use extended versions of the Child's Plan rather than the revised version of the Form E, called the Child's Adoption and Permanence Report (CAPR) form (designed by BAAF, now CoramBAAF).

Others highlighted the immediate and long-term implications of providing reduced information for prospective carers, adopters and for children accessing their records in the future. As Maclean (2016) notes 'full and fully explained' information is necessary to help carers make appropriate decisions about whether, and how, they can provide care for a particular child. Similarly, for care leavers and adopted adults, information about their early lives is important for understanding their personal histories, and the decisions made, and may influence their later choices about whether to seek or maintain contact with birth family members or other people from their childhoods. However, completing reports is time-consuming and can be emotionally and practically onerous for practitioners. One manager remarked, half-jokingly, 'if you want to get rid of someone, give them a Form E to do'. This sense was reiterated by other participants who indicated that permanence forms sometimes overwhelmed those trying to complete them.

*A lot of people [social work managers] have retired or left and those who've come through don't have the experience and so ... the workers don't have the confidence so they delay writing the Form E, they delay doing it because they don't have the confidence of the analysis. And it's amazing when you do training with people when we're thinking about what evidence they've got, when they get good guidance most people can ... go for it, but there's a real loss of skill in that ... at that level.*

Independent consultant interviewee

Effective decision making has to be supported at all levels in the organisation and individual practitioners require the skills, knowledge, confidence and support to balance competing demands. There is no doubt that working towards permanence away from parents is daunting and complex for those involved.

*You have to take into account the sheer scale of the work involved when you're going for permanence – you've got a child to see in placement, you've got partners to negotiate with, you've got other family members coming out at various points wanting assessed, wanting contact. You've got contact to arrange, it's a humongous huge thing for people to do. You've got life story work to do, you've got appeals to hear, you've got plans to update for appeals for Child Plan meetings. It's a massive piece of work*

Local authority focus group participant

Permanence planning for children was described by several participants as a 'management priority' and some of the local authorities were involved in PACE. Strategies to try to avoid delay

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<sup>34</sup> These detail a child's experiences and needs, and are colloquially known as 'Form E' reports.

were highlighted, including audits of permanence plans for children and monitoring and tracking children's progress.

*We monitor the decision from the Looked After Child Review to move for permanence and then when the Form E is done, when it gets to the Permanence Panel, there's the whole process and the legal route, so we're monitoring it at every stage and trying to cut down drift and try to get things moving as quickly as possible, and that's monitoring for kinship care as well.*

Local authority senior manager

Other strategies include the use of a Case Review Forum (involving a meeting of the practitioner, manager and an internal or external colleague who is not familiar with the child), to help progress permanence plans for children which had become 'stuck'; the use of external consultants to advise on how to proceed with individual families; and a 'Permanency Consultation Group' or 'Permanence Forum' where social workers can go for advice. In some local authorities there is an extra stage, in that a 'Permanence Review' or 'Permanence Planning Meeting' is held between the Looked After Child Review when the permanence decision is made and the formal Permanence Panel.

In relation to individual skills and knowledge, several social work participants suggested that social work degrees do not fully equip them for the different strands involved in permanence planning. Social workers valued training and mentoring opportunities aimed at enhancing their confidence and skills including in report writing and in analysis of evidence to support a permanence decision. In some areas training in observing, assessing, and analysing contact is provided to help social workers, with the aim that contact decisions are in children's interest. Some reported that they had 'in house' training in the knowledge and skills required to respond to solicitors in the CHS setting. Others mentioned mentoring schemes for permanence work, including completion of permanence reports and opportunities to shadow other social workers. In one authority we heard that a clinical psychologist provided training for social workers on report writing. In some areas social workers are given additional time and space for the completion of reports. Some participants said that good supervision from team managers, peer support, and weighted caseloads helped their practice.

Although supporting and enabling individual practitioners emerged as a theme, decision making in permanence and family placement work is not an individual pursuit. It involves social workers and other professionals at different levels who work within teams, and within organisations. Those organisations intersect with others as part of a broader system with social workers, medical advisors, independent consultants, and sheriffs being just some of those who may be involved as part of the decision making process for a child.

Once the decision has been made that permanence away from parents is in a child's best interests at a Looked After Child Review, and the requisite processes have been completed, most local authority participants<sup>35</sup> considered that Permanence Panels were scheduled promptly and that they generally worked well. The role of legal and medical advisors was highlighted by social work participants across areas. For instance, the Medical Advisor to the Permanence Panel was considered crucial in giving advice to prospective adopters about health and developmental uncertainty for the child, perhaps as a consequence of parental substance/alcohol misuse, either in-utero or in the child's early years. In some areas, the Medical Advisor met with prospective carers to discuss the child and their potential needs, so that informed decisions could be made. Some participants reported that there was insufficient

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<sup>35</sup> Participants from CHS did not generally comment on Permanence panels, other than to indicate they were unsure of what they did and who attended.

background medical information in reports about the child and their birth family. Two main implications were noted: this may have an effect on decisions made, but also on the information available to the child and their family in the future. In one area we heard about delays in panels because of the numbers of children requiring registration and insufficient medical staff to undertake developmental medicals.

In addition to the significant role medical advisors can play, social workers in one authority reported that local authority solicitors' advice on report content for court helped. An independent consultant noted that fuller discussions and appropriate questioning of witnesses and solicitors takes place when sheriffs have a strong knowledge base.

*I think it is helpful when they know what you're talking about when you talk about attachment, when you talk about the importance of permanence, when you talk about the impact of neglect. It's so helpful when there's a knowledge base in your judiciary.*

Independent consultant interviewee

Timely Children's Hearings and court processes are crucial, and participants' experiences varied. Some said they had been straightforward and not subject to delay. We were advised that in areas involved with PACE some sheriffs had been included as part of the 'whole system' approach.

*When we went through the data what we found was that drift and delay wasn't being caused by the court, the courts were actually processing the majority of applications for PO, POAs quickly within three months. And I think that that's pretty good.*

Local authority senior manager

On the other hand, some participants described lengthy waits for a court hearing, which they thought was exacerbated by the loss of local sheriff courts. CH panel members in one area thought that high numbers of cases contributed to court scheduling delays. Once a court date is scheduled, adjournments can occur where parents fail to attend, appeals were raised, or where further assessment by a Safeguarder or expert witness is requested. One interviewee described the extent of the delay for some children at court as 'grotesque'.

### **Decision making: values, attitudes and emotions**

This strand of our study explored decision making in relation to permanence, including, but not limited to adoption. For the 160 participants the complexity of the decisions in which they were involved emerged as a consistent theme, and participants were acutely aware of the far-reaching impact on children and adults. The significant nature of the decisions and the emotions they evoked was evident across all focus groups and interviews. The influence of emotions has been considered elsewhere (Ingram, 2015) and was apparent in a range of ways.

A number of participants told us that they believed that the underlying attitude and values of the social worker and his/her team manager to rehabilitation and permanence away from home affects decisions about individual children. Some social workers were described as being 'tied into' permanence planning timescales without flexibility, while others were presented as offering parents 'too many chances' with circumstances which are detrimental to the child being 'propped up' by external supports. Several indicated that an individual's feelings could affect decisions, for example when a social worker is emotionally invested in a parent's expressed wish to improve, even where that wish has not translated in to tangible change. Across the social work groups, participants highlighted the need for effective supervision to acknowledge and 'contain' (Ruch, 2008) the painful feelings that can be engendered. Of course, managers also have a range of beliefs and attitudes, so in turn will need access to good supervision.

The complex emotions involved in decision making were not confined to social workers. The impact on CH panel members of being involved in life changing decisions was highlighted by members of Children's Hearings and by social workers. There were instances where CH panel members felt that of all the people involved, they were best placed to make a decision about a child because they had an understanding about this child's history that others did not. Some appeared to hold the view that only CH panel members had the best interests of the child at heart.

*The thing is, we haven't got to really consider very much other than what is the best for that child, and all other agencies, all the other professionals have to consider maybe the bigger picture you know, parents, and legal side, we're actually just there with the history of the family, the history of the child and we are there to protect that child and try and for the best outcome that we can for that child.*

Children's Hearings focus group participant

There was a widely-held view expressed by social work professionals that the emotional impact of witnessing visibly distressed parents at Children's Hearings influenced panel members more than the information provided in reports, and some social workers speculated that at those times the parent's needs seemed be paramount.

*If there's an emotional response from parents at Hearings then that often has an impact on the decision when actually the evidence is there and social work are very clear about what the evidence is and there's been a reluctance to take that on board.*

Local authority focus group participant

Between Children's Hearings panel members and social workers, there appeared to be some evidence of attributional bias (Milner and O'Byrne, 2002). Where decisions were made in a timely fashion for the child, this was attributed to self; when there were delays which impacted on the child, this was attributed to others. Some social workers thought that CH panel members considered rehabilitation even if very limited improvement in parenting is demonstrated, and doubted whether all panel members had a good grasp of parental capacity issues, or of the importance of secure attachments. By the same token, several CH panel members thought that sometimes social workers gave parents too many chances to resume care of their child or that rehabilitation at home lasted too long. Each thought the other avoided making decisions about permanence away from home where there was a temporary reduction or recovery from substance/alcohol misuse even where there was evidence to conclude this would not be maintained, and where ongoing neglect was significant as the next two extracts highlight:

*And the Children's Hearing want to know well, when did you last fail a drugs test? What they're missing is they're not parenting these children and haven't ever parented these children and that's why we have such a challenging little girl with huge deficits in her development because they have not looked after her and what we're doing is masking it by focusing on the substance misuse.*

Local authority focus group participant

*It is often being used as an argument to halt the permanence process - whether it's the mother arguing 'don't take my baby off me, don't go to permanence. I have changed, I am better' or whether its social work saying that the mother has sustained changes. The case that I had today um ... she's a nine-year-old and she's been back with her mother three times and they're taking her away again ... yeah it's not sustained.*

Children's Hearings focus group participant

If decisions made at Hearings are contentious, they can be discussed at liaison meetings between social work managers, Children's Hearings chairpersons and Children's Reporters. In some LAs we heard of initiatives to try to improve communication and feedback between social workers and CH panel members, including joint training, and CH panel members shadowing social workers and attending Permanence Panels. However, at an individual level many social workers reported tense relationships with members of Children's Hearings, with some suggesting social workers are perceived as 'anti-family' by panel members. It was evident from focus groups across Scotland that the relationship between social workers and members of Children's Hearings was variable, and there were instances where members of each 'group' voiced disdain for the other, and at times appeared to question the capability of the other to make permanence decisions about a child (see Hill et al, 2017).

It was not unusual for social workers to question the knowledge base that underpins Children's Hearings decisions and there were examples where Children's Hearings underestimated or misunderstood the processes involved. This was attributed (mainly, but not only by panel members) to social workers not being explicit in reports about processes, and each 'group' highlighted the need for training.

Some participants (from social work and Children's Hearings) expressed the view that Children's Hearings should not have a role in giving advice to the court about permanence. Several highlighted that all other decisions made by Children's Hearings last for a maximum of a year and some CH panel members questioned what they can contribute when they cannot see the process through. The legal complexities coupled with lack of experience were seen to make it difficult to offer advice, although others suggested that Children's Hearings offer an additional safeguard, especially in contested situations.

Listening to participants, the complexity and emotional impact of making decisions which will have lifelong implications for children and their parents was evident to us. It was also evident that the interface between social work and Children's Hearings is experienced as increasingly adversarial. One possible explanation for tensions at the interface between social work decision making processes and Children's Hearings is that the emotions and tensions involved are not fully recognised, explored, and contained (Ruch 2008). In those circumstances, one of the ways in which individuals within one system appear to manage the subjective nature of emotionally complex decision making is by 'othering' whereby the other is "characterised by an otherness which resists or exceeds whatever narrative we bring to bear on him or her" (Zahavi, 2014, p.189). One of the ways in which this was expressed is by one 'group' questioning the role of the other in a way which is not always constructive. Consequently, while both social work professionals and members of the Children's Hearings identified the need for training, this will need to include a focus on the emotional impact of decision making, not just the legislative context and should ideally be joint training.

The findings in this report clearly identify the demanding nature of the work involved in making decisions about permanence, not least in navigating the complexity of social work, Children's Hearings and court systems. However, as well as identifying the problems, several interviewees and focus group participants also highlighted efforts to enhance skills in permanence work. Many of the approaches to enhancing permanence work aimed to bring together individuals within and across disciplines in order to share learning and experience. This included instances where an external consultant or experienced practitioner who has not been working with the child and their family help provide a reflective space for the 'case' responsible practitioner.

### Summary

- Timescales for permanence are not always needs led, and are influenced by resources and by complex processes and systems.
- Timescales are also linked to the life changing nature of decisions.
- Ambivalence about particular routes to permanence may delay authoritative decision making
- Participants generally attributed timely decision making to self, and delays to others.
- Decision making is contested and emotionally demanding. For supervision and training to be effective they need to explicitly engage with the emotions involved.
- Despite legislative change (Adoption and Children (Scotland) Act 2007) and local and national strategies (including PACE), for children where adoption is the route to permanence, this is taking over two years.

## 7. Conclusions and recommendations

A strength of the *Permanently Progressing?* research is that it is a mixed method study, drawing on data from a range of sources. It analysed administrative data on 1,836 children over four years and questionnaires from 433 social workers and 166 foster or kinship carers/adoptive parents. It also involved in depth interviews with 20 carers/adoptive parents and play and talk sessions with 10 children. The purpose of this strand of the study was, through interviews and focus groups with 160 decision makers, to answer the following questions:

- How are decisions about permanence made and implemented?
- What are the main factors that influence decision making?
- What influences the choice of permanent placement and the route taken?

From other strands of the study, we found that although there are common themes, the experiences of each child are unique to him or her. This bears emphasising given that one of the findings from this strand was that decision making is, at times, driven by processes and policies, rather than the child's specific needs.

Despite the focus on early permanence (Scottish Government, 2015), progressing the child's plan to ensure that s/he experiences enduring stability, security, and positive nurturing relationships with birth parents, and where this is not possible with family members, permanent foster carers, or adoptive families, is not always achieved within child centred timescales.<sup>36</sup>

Decisions about permanence, including the route, are made and implemented across three systems - local authorities, Children's Hearings, and the courts. Capacity issues across all three including time, resources, and the skills and knowledge of those completing assessments and making decisions influenced the decisions made and the timing. The interface between the three systems can be difficult. This means that despite the expressed commitment of individuals and organisation to be child centred, there can be delays and the focus can shift from the child to the dynamics between systems and individuals. The Independent Care Review is currently completing a 'root and branch' review of the care system with a completion date of summer 2020. The findings of Phase One of the Permanently Progressing study will be shared with the review team.

The legislative, policy, and practice context for permanence decisions in Scotland is complex and has been subject to a number of changes in recent years. This offers flexibility to tailor decisions to an individual child's needs. However, the drawback is the resulting, potentially overwhelming, range of possible pathways to permanence. It is perhaps not surprising, given the multifaceted terrain, that at times there was a lack of detailed knowledge about these pathways. These gaps in knowledge and misinterpretations of legislation, processes, or research, influence how decisions are made and implemented. Any legislative or policy changes which further complicate existing systems are likely to compound this.

In addition, the way legislation is used across Scotland varies, and differences in local custom and practice make the picture even more complex. For instance, when adoption is the route to permanence, whether this is achieved via Direct Petition or a POA varies geographically. This led us to conclude that decisions about the choice of placement and the route are not always needs-led but are influenced by local systems, cultures, and processes. Activities that encourage local authorities to share practice experiences and learn from each other, such as the PACE

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<sup>36</sup> This was confirmed by the *Pathways* strand. It found that where the child was reunified this took on average nine months, but where adoption was the route to permanence this took between two to three years.

programme, are one way forward. As part of quality assurance, we recommend that local authorities explicitly question how far custom and culture contributes to decision making for individual children.

One development over the course of the study was the Children and Young People (Scotland) Act 2014. This introduced Kinship Care Orders, and formalised financial provisions for kinship carers. The positives associated with kinship care are clear, but kinship care cannot meet the needs of all children and may exclude some children from other forms of permanence. An analysis of the impact of this change and the longer-term outcomes for children in kinship is recommended.

For those making decisions, the process is influenced by emotions. Those emotions include hope, and a commitment to children, as well as fears. In some instances, participants' fears were not borne out by other research. For example, in the interface between social workers and members of the Children's Hearing, decisions about contact were described as contentious. However, Porter (2017) found that most Hearings agreed with social worker's recommendations about contact. Some participants thought that appeals slowed down the process, and took this into account in their decision making. The linkage of SCRA/CLAS data<sup>37</sup> showed that, for the linked children at least, whilst one in five experienced appeals, the majority (80%) did not. It may be that particular beliefs are based on memorable and emotionally resonant encounters, which then become a part of a decision making narrative, and influence the choices made, even where the example may not be 'the rule', and in some instances may be the exception to the rule.

The current systems are difficult to navigate. Part of the difficulty goes beyond the complexity of the systems, and rests with the emotionally challenging nature of making decisions, which are not simple, but are the 'best possible' for that child. These decisions have lifelong implications for the child, for his or her parents, siblings and wider family, and if he or she is looked after away from home, for carers, adoptive parents, and their families. Participants identified that improved supervision and joint training (for social workers and members of Children's Hearings), would aid decision making and we agree. However, if supervision and training is limited to processes, policy, legislation and research, and does not also address the emotional content and context of decision making, it is unlikely to be effective. Our recommendation is that joint or individual training and supervision on decision making and permanence needs to explicitly acknowledge emotions, including ambivalence, and the subjective nature of the process.

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<sup>37</sup> The *Linkage* report provides more details and can be accessed <https://www.stir.ac.uk/about/faculties-and-services/social-sciences/our-research/research-areas/centre-for-child-wellbeing-and-protection/research/permanently-progressing/>

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## Appendix 1: About the authors:

### **Dr Helen Whincup (Principal Investigator and lead author)**

Helen is a Senior Lecturer at University of Stirling, teaching primarily on the post-qualifying Masters in Applied Professional Studies (Child Welfare and Protection) and the Professional Supervision module. She is a qualified social worker with a practice background in children and families work, and practice and personal experience of adoption. Helen was involved in focus groups and interviews.

### **Dr Maggie Grant (Research Fellow and second author)**

Maggie has worked in adoption and fostering research for 10 years. She is a Research Associate and Co-Founder at Adoption and Fostering Alliance Scotland, and was seconded to University of Stirling as part of the Permanently Progressing research team.

### **Cheryl Burgess (Research Fellow and co-author)**

Cheryl was full time Research Fellow with the research team until her retirement from University of Stirling at the beginning of 2017. Cheryl is a qualified social worker with a practice background in adoption and fostering. Cheryl recently co-authored the book *Effective Family Support: Responding to what parents tell us* (Dunedin Press). Cheryl was involved in focus groups and interviews.

### **Professor Nina Biehal (Co Principal Investigator and co-author)**

Nina is a Professor of Social Work Research at the Department of Social Policy and Social Work, University of York, and was formerly a social worker. She has led a number of studies of outcomes for children who are fostered, adopted, in residential care or reunified with their parents. She has also completed studies of child protection, including research on abuse in foster and residential care and a comparative study of child protection systems in three countries.

## Appendix 2: Steering Group

### **Paul Bradshaw**

Paul is Head of ScotCen Social Research, the Scottish arm of NatCen Social Research, one of the UK's largest independent social research agencies and a not for profit, charitable trust. In a research career spanning 20 years, Paul has led on wide range of projects including Growing Up in Scotland, a large-scale longitudinal study tracking the lives of multiple cohorts of children living in Scotland.

### **Chris Creegan (Chair)**

Chris Creegan is an adopted person with a background in social research, including senior roles at the National Centre for Social Research. He was Chair of Scottish Adoption from 2008-15 and has served on permanency panels in Scotland and England.

### **Robin Duncan (Co-ordinates and minutes steering group)**

Robin has been the director of Adoption and Fostering Alliance (AFA) Scotland since October 2016 and divides his time between AFA and managing Scotland's Adoption Register. Robin acts as coordinator for the steering group.

### **Fiona Lettice**

Fiona is a Development Manager for Scottish Attachment in Action and was previously Development Manager for Adoption UK in Scotland. Fiona is an adoptive parent of two young adults. Fiona inputs into Strathclyde University Post Graduate Course on 'Securing Children's Futures' run by AFA. She is a member of the BeST Services Trial User-Professional Group, and the Trial Steering Committee Group at Glasgow University.

### **Kirstie Maclean**

Kirstie is a retired social work manager and consultant who specialised in delivering, managing, reviewing and inspecting fostering and adoption services for most of her working career. She was Director of the Scottish Institute for Residential Care for three years. She is currently a trustee for Scottish Adoption and for the Dean and Cauvin Young People's Trust.

### **Fiona Spencer**

Fiona worked in research and policy in the public and voluntary sectors. When working in government research her responsibilities included research in Scotland on children, young people, families and social work. Formerly a Visiting Professor at Strathclyde University, she is now retired and remains active in MS Society policy and research networks

### **Caroline Thomas**

Caroline is an independent research consultant, with an Honorary Senior Research Fellowship at the University of Stirling. She has 30 years' experience of conducting, commissioning and managing child-welfare research.

### **Vivien Thomson**

Vivien Thomson is a social work service manager with Falkirk Council. She has over 35 years' experience in the fields of adoption, fostering and kinship care. She is currently chair of the Social Work Scotland Corporate Parenting Sub Group and Fostering and the Adoption Practice Network, and represents SWS on the Permanently Progressing Steering Group.

Each member of the Steering Group brought a wealth of professional and/or personal experience to their role, and the study and the research team benefited from their insights.

## Appendix 3: Legal routes to permanence

Placement type	Legal routes
Permanence at home	No Order; Children's Hearings (Scotland) Act 2011 Section 83 Compulsory Supervision Order.
Kinship Care	No Order; Children (Scotland) Act 1995 Section 25; Children's Hearings (Scotland) Act 2011 Section 83 Compulsory Supervision Order;  Children (Scotland) Act 1995 Section 11 Parental Responsibilities and Rights (including Kinship Care Order as introduced by Children and Young People (Scotland) Act 2014);  Adoption and Children (Scotland) Act 2007 Section 80 Permanence Order; Adoption (as below).
Adoption	Adoption and Children (Scotland) Act 2007 Section 83 Permanence Order with Authority to Adopt (with the option of a Permanence Order being taken first) followed by Adoption and Children (Scotland) Act 2007 Section 28 Adoption Order;  Adoption and Children (Scotland) Act 2007 Section 28 Adoption Order (lodged as a direct adoption petition by the adoptive parents).
Permanent placement with current foster carers or other permanent foster carers	Children (Scotland) Act 1995 Section 25; Children's Hearings (Scotland) Act 2011 Section 83 Compulsory Supervision Order;  Children (Scotland) Act 1995 Section 11 Parental Responsibilities and Rights; Adoption and Children (Scotland) Act 2007 Section 80 Permanence Order;  Adoption and Children (Scotland) Act 2007 Section 83 Permanence Order with Authority to Adopt.

All the relevant legislation can be accessed at <http://www.legislation.gov.uk/>

## Decision making for children

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