

PE1673/C

Maggie Mellon submission of 11 March 2018

I am a registered social worker, with over 40 years' experience of practice in Scotland and in London. I currently work independently supporting parents and children involved in child protection and care systems. I write about their experiences and about the need to change how we do things.

I gave evidence to the Petitions Committee in November 2017 in support of Mr. Mackie's petition calling for a review of the children protection and children's care system in Scotland. I now wish to offer the following comments on the points that the Government has made.

Child protection and care reviews

The Government refers to the Government Child Protection Improvement Programme (CHIP) and also to the independent 'root and branch' review of the care system that is currently being undertaken. The CHIP is about systems and not about practice and improving the experiences of children or their parents. A practice improvement programme would recognise the need for humane and respectful engagement with families and that families are i. I have engaged with the Care System Review, and have pointed to the rising numbers of children being removed from home as a major challenge. I believe that it is important that the Care Review looks at the reasons why children come into care. However, the Care Review was set up with the goal of transforming the care system and they may not see prevention of care as within their remit.

Successful prevention would entail provision of support services to achieve reductions in the numbers coming into care. However, there has been a decline in the provision of the kind of accessible and family-friendly services that are needed, and instead most child and family social work resources today are invested in child protection investigations and monitoring. There is evidence¹ of a growing trend for any family problems to come under investigation as child protection issues. If they are judged not to be child protection issues, then there is generally very little resource given to them. The work of Professor Andy Bilson which was presented to Committee evidences this. Support and preventive services are on the decline. In the process, we are making families nervous about contact with social work and other agencies which should be sources of help and support.²

The Supreme Courts and the Scottish Courts - Re EV [2017] and the Children and Young People (2014) Act

The government's submission points to the Supreme Court Judgement in the case of EV [2017]³ as setting out the proper tests for the permanent removal of children from their parents. However, this ruling came only last year, ten years after the relevant legislation, the Adoption (Scotland) Act of 2007, was passed. The case in

¹ Bilson, A., & Martin, K. E. (2016). Referrals and Child Protection in England: One in Five Children Referred to Children's Services and One in Nineteen Investigated before the Age of Five. *British Journal of Social Work*, bcw054. Devine, L. Parker, S. Child Protection and Assessment ESRC 2015

² Mellon, M., Child Protection Listening to and learning from parents Iriss Insight 39

³ <https://www.supremecourt.uk/cases/docs/uksc-2016-0220-judgment.pdf>

question [EV] had been knocked back at every level of court in Scotland before the Supreme Court upheld the mother's appeal.

The Supreme Court found that the Scottish courts *at every level* had erred by applying the test of "best interests of the child" *before* establishing whether the test of "significant detriment" had been met to justify the removal of the child at birth. Compulsory removal of children from their own parents and families can only be justified if the "significant detriment" test has been met. Otherwise, parents must be assumed to be the best people to bring up their own children.

By the time the Re EV appeal was allowed by the Supreme Court in 2017, the child in question had been in care away from her parents ever since her birth in 2013. By that time the child was a stranger to her mother, and presumably attached to her current carers. However, EV will probably have experienced at least two changes of carers within the system and already be suffering from the long-term damage of these losses.

The Scottish Government should be reviewing how many children were the victims of the error identified by the Supreme Court. Every court in Scotland up to and including senior judiciary had got the application of the basic test wrong over four years of hearings and appeals. How many other cases were lost in the lower courts and never made it to the Supreme Court over the years from 2007 to 2017? How many children have been subject to adoption orders using the mistaken approach adopted by the Scottish Courts? How many children remain separated from parents and family? The EV case is so recent that we don't yet know what the impact of the ruling has been on the number of children being removed, the number of children now stuck in limbo between birth and adoptive parents and in danger of being lost in care? The test applied by social workers and children's hearings may yet be much lower than the test set out by the Supreme Court in 2017. How many parents have the capacity to ensure that their children's cases are reheard?

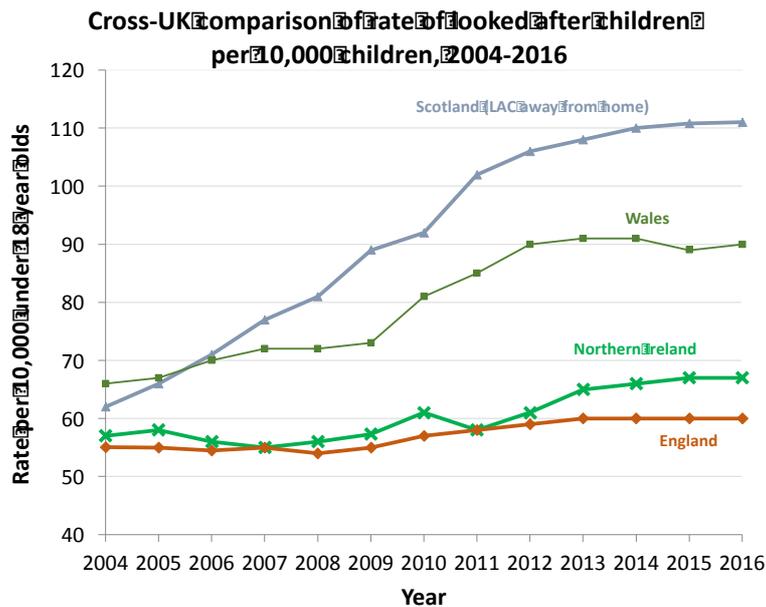
There has been another Supreme Court judgement on human rights, upholding the challenge to the Children and Young People (2014) Act's information sharing provisions⁴. Once again, the Scottish courts at every level failed to spot the breach of human rights that mandatory information sharing without consent represented. In enacting the legislation, the Scottish Parliament had ignored legal advice to this effect. During that time, many families' confidentiality was breached by the illegal recording and sharing of information about them.

Statistical evidence that Scotland has the highest rate of removal in UK

On page 2 the Government contests the assertion that Scotland has the highest ratio of children in care compared to other countries by cautioning that there are different definitions of categories across the UK. This is true. Scotland is the only country which counts children on home supervision orders as "looked after". However even allowing for this, the Scottish rate of removal from home at 162 per 10000 is higher than any other UK country.⁵

⁴ /www.supremecourt.uk/cases/uksc-2015-0216.html

⁵ See slide 3 PPT slide presentation prepared by Professor Andy Bilson and submitted to Petition



The Scottish government cites the figures for 2016-7 showing that the majority of children were placed with family members. However, the figures broken down for age, show that for children under 1 year old the number removed to out of family care more than doubled between 2006 and 2016/7. The number of adoptions of children under 4 years more than tripled in that time. From the figures showing a rise in total numbers accommodated, adoption is therefore not acting as an alternative happy ending for children who would otherwise languish in care, but as a separate pathway for infants and very young children. Many of these children seem to be identified as at risk of future harm, on what is argued as a preventive strategy. Sadly, girls and young women who have themselves been in care are often the victims of a policy of enforced and often repeated removal of their children.⁶ More than one young mother who has lost her child to care and adoption has told me that her own care experience was cited as a risk factor: “You have not had a good experience of family life and therefore you can’t offer your child a good experience”.

Getting It Right for Every Child – an unsuccessful approach to prevention

The government states that Scotland’s GIRFEC policy sets out an ambition to reduce the number of children being looked after. That is a good and legitimate aim, but ambitions do not alter the facts on the ground. The fact is that the number of children in care in Scotland has gone up since GIRFEC was introduced in 2007. That is not to say that GIRFEC has caused the increase, but it certainly can’t be argued to be working to prevent the increase.

⁶ Connecting events in time to identify a hidden population : birth mothers and their children in recurrent care proceedings in England. / Broadhurst, Karen; Alrouh, Bachar; Yeend, Emily; Harwin, Judith; Shaw, Mike; Pilling, Mark; Mason, Claire; Kershaw, Sophie.
In: British Journal of Social Work, Vol. 45, No. 8, 14.12.2015, p. 2241-2260.

On page 2 and into page 3 the Government response merely sets out the strategy and policy for providing preventive services, but does not acknowledge that this is clearly not working as numbers in care away from home have risen.

As public expenditure has been decreased over the last 10 years, cuts in child and family services have taken place in the non-statutory services which support families and keep children out of care. Non-statutory services have closed or been reduced - family centres, benefits and rights advice, family support and care at home support services, respite care, counselling and therapeutic services, family based holistic services etc. This has led to even greater demand for high-end expensive intervention and care services, and even less money for prevention.

Getting it Right for Every Child, despite its “preventive” intent, is not supported by the practical measures of family support that would fulfil its claimed ambitions. Instead, GIRFEC is predicated on the belief that child wellbeing can be secured by the monitoring of every child and family in the population by ‘named persons’ on the basis of assessment of a number of measures (SHANNARI indicators). Named Persons however do not have the resources to provide food, clothing, housing, welfare benefits, nor the power to compel any other agency to do so.

The consequences and symptoms of poverty on child and family welfare are increasingly misconstrued or misunderstood as parental rather than societal failures.

Legal representation

The Government response sets out the number of approved solicitors, and the number of approvals of grant over four years between 2013 and 2017 and asserts that these approvals included representation at 2 working day hearings and at child protection order applications. I suspect that the vast majority of legal aid is claimed for representing parents in opposing adoption applications. These representations are mostly unsuccessful. Adoption applications take place several years after removal and usually after children have been settled with adoptive applicants and after contact with birth parents has been terminated. The problem that Mr. Mackie’s petition drew attention to was the difficulty in getting legal representation to challenge removal of children at an early enough stage. Many children are as a result plunged into the care system for many months, and experience multiple changes of carer, and other arrangements. Child Protection orders are often sought ex-parte without parents being aware of the application. Parents can find themselves without proper legal advice or representation before and after the removal of children. In many parts of northern, rural and island Scotland there are no solicitors willing to take on legally aided child and family work. The quality of legal advice is in any case highly variable. Representation by lawyers at hearings is often restricted to procedural aspects and not to addressing the evidence or lack of evidence for a child’s removal as this can only be proved in court. In the meantime, hearings take life changing decisions about children which effectively end their relationship to their siblings and parents.

Independent review of children’s hearings

The Government claims that the children’s hearings have been independently reviewed and are subject to an improvement plan. However, the reviews that have taken place were about process and not about purpose or success. The most basic questions about the hearings were never asked. Prime among these questions

should have been “what do we know about the long-term outcomes of hearings’ decisions for children and their families?”

The Edinburgh Youth Crime and Transitions study⁷ found that the outcomes for children taken to hearings on offence grounds was generally worse than the outcomes for children who had experienced voluntary support or no intervention at all. They also found that entry to residential care was associated with increased likelihood of involvement with the police, in being charged with offences, and of being in prison before the age of 24 years. Is this also the case for children who are taken to hearings on welfare grounds? We don’t know. The reviews did not ask. Worryingly, the Edinburgh study and previous studies over the years found that many children taken to hearings on welfare grounds went on to be referred on offence grounds, indicating that involvement in the hearings system and in compulsory contact with agencies may actually increase the likelihood of involvement in criminal justice system, and of other poor outcomes.

The most serious decisions that hearings can make are about removal of children from home and about contact with their families. However, there has never been any systematic monitoring of outcomes for either of these two decisions since the inception of the hearings. Panel members simply do not know the outcomes of the decisions they make about contact or about removal.

As Mr. Mackie pointed out, outcomes of being in public care are known to be poor in relation to almost every measurement of health and welfare. Homelessness, lack of education, worklessness, likelihood of involvement in criminal justice system, relationship breakdowns, loss of own children to care are all known to be significantly higher for care experienced young people and adults. And yet, there is no systematic recording of the outcomes of hearings for individual children whose lives have been fundamentally changed as a result of hearing decisions.

Listening to and taking account of children’s views is a legal requirement under the Children Act 1995 which incorporated UNCRC principles in this and other regards. The hearings system claims that taking account of children’s views is a central value and principle. Despite this claim, the Hearings system is not able to tell us how many children agree with panel decisions about their lives, nor about how panels are accountable to children and young people for their decisions.

Many of the children about whom hearings make decisions are infants and too young to express a view. So, another important question which was not asked by the reviews is whether the hearing system is appropriate for life changing decisions about care and contact for children? What knowledge can they bring to bear on these decisions?

Why did the reviews of the hearings not ask the most basic questions about outcomes? or about the state of knowledge in the hearings about genuinely engaging with parents and children? And how can the limited reviews that took place be held as proof of the system working well?

⁷ <http://www.esytc.ed.ac.uk/findings/published>

Removals based on opinion or supposition

The government denies that children are removed and remain removed from their parents on the basis of unchallenged opinion or supposition, and asserts that “prior to the Reporter making a referral to a children’s hearings the case is thoroughly investigated”. I challenge this and do not believe that it is the case. In the case of the 2 and 8 working day hearings which have to be held after a Child Protection Order has been secured, there is no time to investigate the case. Interim orders are usually made at these hearings, based entirely on the case which has been made to sheriffs for emergency removals. The case made is not taken as sworn evidence, and the accuracy or truth of the case is often either not tested for months and may never be tested.

When parents or children deny the grounds of referral, the case then has to be sent to the sheriff court to be proved. These proof hearings take at the very least two months after removal and therefore provide little protection from over-zealous or mistaken interventions. In a recent case I have knowledge of, there was a 10-month gap between removal and proof during which time neither child was seen or heard by any hearing. If the proof hearing is not held or completed in two months, sheriffs and not the hearings make interim orders until a proof hearing can be held. Parents at interim order hearings before the sheriff are not able to contest the original case made for the removal of the children. The grounds when finally put at a proof hearing may be quite different to the original emergency given as the reason for removal. The proven grounds are often very different to the reasons originally given for the children having to be removed by police and social workers in the middle of the night. Mr. Mackie’s experience of a late-night removal of children from their beds without good cause is far from unique.

Assumed parental guilt and definitions and proof of significant detriment

The government submission quotes from the child protection guidance which emphasise that abuse and neglect are forms of maltreatment and set out the test for whether significant harm has or is likely to have occurred. In *Re EV* [2007] Lady Hale is quoted as saying that findings of significant harm, including the likelihood of significant harm, must be made on the basis of evidence and not just of assertion and that it is courts which must make that final determination. Child protection conferences and children’s hearings are not courts and are not set up to properly challenge or test assertions as evidence.

SCRA reports in a recent evaluation of permanence planning for children in the hearings⁸ that the majority of panels were found to agree with social work recommendations for permanent removal of children. While panels may initially resist terminating contact with parents, it is usual that contact with parents is terminated by panels in order to facilitate permanent settlement out of family.

Lady Hale also cautioned that, just like the prosecution in criminal cases, those bringing children and family cases should expect to lose some of those cases. However, the SCRA evaluation found that social workers expected that panels would and should agree with them and not with parents, and it seems that social workers

⁸ <http://www.scra.gov.uk/2016/03/new-research-permanenceplanning-for-looked-after-children-in-scotland>

believed that a hearings failure to agree with social work and vacillating in the face of lawyers' representations is a weakness and not a strength in the hearings.

The government submission refers to "failure to prevent harm" as a ground for child protection action. Mr. Mackie's petition points to the fact that many mothers, particularly those who are young, single, poor, are regarded as posing a risk of future harm without being offered an opportunity to test their ability to parent the actual child in question. Mothers who have suffered violence or abuse by a partner are often accused of having exposed their child to harm, particularly where they may have failed to separate from or have returned to the partner. This is often used to forecast a likelihood of future emotional harm, and to justify the case for the removal of an unborn child at birth or for the removal of contact and then of parental rights from a parent. Lady Hale made it clear that the likelihood of future harm should be a judgement based on evidence given and not on supposition or professional 'guesstimate'.

We know from Re EV that the "best interests of the child" has been widely misinterpreted as being as important as the test of significant detriment or harm. Panel members at hearings are often asked to decide on what is in a child's best interests and not on the test of necessity (i.e. significant detriment). In practice, the social worker's or other professional's views on what is in a child's best interests are assumed to be more objective and reliable than those of the parent's or of the child. If the parents or the child disagree with 'the experts', their views are not given the same weight or respect.

Contact with children who have been removed is a very important example of this. The law says that it is the duty of local authorities to promote direct contact between parents and children in care. However subjective judgements about the child's best interest being damaged in some unspecified way by contact are made by hearings on the recommendation of social workers with no qualifications or knowledge in child development or child psychology. If children are upset by contact and cry on separation or are angry and hit the parent this may be offered and accepted as a good enough reason to restrict or terminate contact. However, conversely, if children appear indifferent then this may be offered as a good enough reason. Parents and children are often offered contact in cramped and ugly rooms or in cold public parks supervised by unqualified staff, whose decisions and assessments have to be unquestioningly accepted on pain of termination of contact.

Misplaced confidence in care

There is considerable and continuing evidence about the poor outcomes of care, about abuse and neglect in care, multiple placements, loss of relationship with family and siblings. If the outcomes of any medical procedure were as poor and uncertain as the outcomes from care, any such treatment would only be proposed as a last resort, after considering and trying all reasonable alternatives. The risks and costs of care rarely feature in children's hearings' considerations. There is however no balanced risk assessment for care versus family support.

I hope that the information and reflections above are of assistance to the Committee in considering the case for a complete review of the child protection system.