OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 15 March 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 15 March 2017

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EDUCATION AND SKILLS COMMITTEE
8th Meeting 2017, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Johann Lamont (Glasgow) (Lab)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Ross Greer (West Scotland) (Green)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Richard Lochhead (Moray) (SNP)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Gillian Martin (Aberdeenshire East) (SNP)
Tavish Scott (Shetland Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)
*Ross Thomson (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Daljeet Dagon (Barnardo's Scotland)
Jennifer Davidson (Institute for Inspiring Children's Futures and Centre for Excellence for Looked After Children in Scotland)
Julia Donnelly (Clan Childlaw)
Boyd McAdam (Children's Hearings Scotland)
Jennifer Phillips
Kate Rocks (Social Work Scotland and East Renfrewshire Council)
Malcolm Schaffer (Scottish Children's Reporter Administration)

CLERK TO THE COMMITTEE

Roz Thomson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education and Skills Committee

Wednesday 15 March 2017

[The Convener opened the meeting at 10:01]

Decisions on Taking Business in Private

The Convener (James Dornan): Good morning. I welcome everyone to the Education and Skills Committee's eighth meeting in 2017 and I remind everyone who is present to turn their mobile phones and other devices to silent mode for the meeting. I have received apologies from Tavish Scott, who is unwell, and from Fulton MacGregor, who is running late but should join us shortly.

The first item of business is decisions on whether to take a number of items in private. Item 3 is consideration of the evidence that we will hear on the children's hearings system. Are members content to take that item in private?

Members *indicated agreement.*

The Convener: The committee plans to consider its work programme on 22 March. Are members content to consider our work programme in private on that date?

Members *indicated agreement.*

The Convener: We plan to hear from the Minister for Childcare and Early Years on 29 March. Are members content to review in private the evidence that we will hear from the minister on that date?

Members *indicated agreement.*

Children's Hearings (Reforms)

10:02

The Convener: Item 2 is a round-table discussion on the children's hearings system. Before we start, I thank everyone who has already contributed to the committee's work on the children's hearings system. We have had a number of round-table sessions recently; they are intended to promote a more conversational style of evidence gathering. That said, I remind everyone to indicate to me or the clerks if they would like to speak, and I will then call them.

I suggest that we briefly introduce ourselves. I am the committee's convener.

Johann Lamont (Glasgow) (Lab): I am the committee's deputy convener.

Jennifer Phillips: I am a children's panel member in Glasgow and a member of the area support team—I am the lead panel representative.

Julia Donnelly (Clan Childlaw): I am the head of representation at Clan Childlaw.

Ross Greer (West Scotland) (Green): I am a member for West Scotland.

Richard Lochhead (Moray) (SNP): I am the MSP for Moray.

Daljeet Dagon (Barnardo's Scotland): I am a children's service manager with Barnardo's Scotland.

Daniel Johnson (Edinburgh Southern) (Lab): I am the MSP for Edinburgh Southern.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am the MSP for Midlothian North and Musselburgh.

Kate Rocks (Social Work Scotland and East Renfrewshire Council): I am the chair of the children and families standing committee of Social Work Scotland. I am also the chief social work officer in East Renfrewshire Council.

Boyd McAdam (Children's Hearings Scotland): I am the national convener and chief executive officer of Children's Hearings Scotland.

Gillian Martin (Aberdeenshire East) (SNP): I am the MSP for Aberdeenshire East.

Ross Thomson (North East Scotland) (Con): I am an MSP for North East Scotland.

Malcolm Schaffer (Scottish Children's Reporter Administration): I am the head of practice and policy at the Scottish Children's Reporter Administration.

Jennifer Davidson (Institute for Inspiring Children's Futures and Centre for Excellence

for Looked After Children in Scotland): I am the executive director of a new institute called the institute for inspiring children's futures, which is a joint venture of CELCIS, the centre for youth and criminal justice and the University of Strathclyde.

Liz Smith (Mid Scotland and Fife) (Con): I am a Conservative member for Mid Scotland and Fife.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am the MSP for Coatbridge and Chryston.

The Convener: I intend to cover three areas of interest within our overall theme, which is how well—or otherwise—the reforms that have flowed from the Children's Hearings (Scotland) Act 2011 are bedding in. The three areas of interest are the feedback loop, advocacy and the provision of legal aid, but we will not be too rigid.

I will start with a general question. From the child's point of view, which reforms under the 2011 act have worked well and which have not worked so well? Is a child today better or worse off following the 2011 act's implementation? I have started with an easy question. Would anyone like to take it on?

Boyd McAdam: I will start. The child should be getting a better experience of a standard approach and quality. Through the 2011 act, we have created a system to guarantee better quality assurance around panel members and the training that they go through. They now attain a professional development award, which demonstrates that they have competences. We have introduced core training, which we require all panel members to undergo so as to refresh their skills.

The experience of young people should be better. As the evidence has shown, there are lots of areas where we can improve, and we are collectively working to address them through the children's hearings improvement partnership.

For volunteers, we have a system that works. There are 35,000 hearings going on across Scotland each year, and much of the focus in the discussion is on the role of solicitors and legal representatives in the system, but only about 10 per cent of all hearings involve legal representatives. Appeals account for about 3 per cent of hearings decisions, of which about 40 per cent are successful. It is right that we consider advocacy and how we enhance the experience of young people, but we must also recognise that there is a system that is operating daily, which is supported by volunteers.

The Convener: Is there any way to gauge whether the child feels that they are getting a better deal now compared with prior to the 2011 act?

Malcolm Schaffer: We do children and family surveys every two to three years, so we should be able to gauge the results over a period. We did one last year, which showed some improvement in children's perceptions of how they were treated at hearings, but it indicated that there was still some way to go. That is one method by which we can approach measurement.

As an outside agency, we support the improvement under the 2011 act of having national management of the children's panel and of safeguarders—that was another reform. Both those measures have introduced an element of consistency in practice and support, which was sorely needed.

The act has contributed to more thinking about encouraging the participation of children in hearings. That work goes on, and we are producing various pieces of work through the children's hearings improvement partnership to support that.

Other elements that have helped have been more technical. The modernisation of grounds of referral gives children and families better reasons for why they are being referred to a hearing. The use of interim orders has introduced greater flexibility in the system. In particular, children can be placed at home under an interim order, which could not be done before.

One significant area of improvement where reforms have not been fully implemented concerns the Rehabilitation of Offenders Act 1974 and in particular the rules on the disclosure of previous records of people who attended hearings as children. A recent Court of Session judgment on that indicated that substantial improvements are needed to ensure that, wherever possible, children do not carry the record of their attendance at hearings into future employment and there is an attempt at rehabilitation.

Another area that is still the subject of some debate is whether the definition of relevant persons has solved all the issues or created more difficulties, given the sheer number of people who sometimes have rights of attendance at hearings. That said, I do not have a more succinct definition.

The Convener: It would have been nice if you had.

Jennifer Davidson: I, too, would like to reflect on the question about children's experiences of the hearings system. I respectfully suggest that we should think about the children's experience more widely. If we understand the hearings system, and if people's experience of a hearing is positive, that does not necessarily mean that the views of children and young people have been well taken on board in advance of the hearing or that their

pre-hearing or post-hearing experience has been positive.

I propose thinking about the question in the context of the United Nations "Guidelines for the Alternative Care of Children", which give a much broader picture of the necessity principle and the suitability principle. The challenges in the hearings system exist because it functions as the gate-keeping mechanism between deciding whether a compulsory order is absolutely necessary for a child and deciding what the most suitable placement is for a child.

In the wider context, we recognise that a range of tensions play out in the hearings system in relation to things such as using compulsory orders only when needed but respecting the urgency of children's developmental timescales. The compulsion is placed on the young person, and yet the family are key to ensuring that things turn around so that the family can continue to care well for the child. There are also tensions in understanding what is in the child's best interest; sometimes, that can be at odds with the young person's view. Significant judgments are required in such decisions.

The question was about whether there has been progress as a result of the 2011 act. We are definitely on the right track. Our experience at CELCIS is that the principles are still the right ones—they are based on the Kilbrandon principles that the hearings system was established to deliver.

I will describe the three biggest concerns that remain for us. The first is that the changes that the 2011 act brought in have increased the disaggregation of power across the panel. As a result of the act, additional solicitors have come in, which is essential to respect the rights of parents, and the reporter's role has changed. That raises questions about the ways in which power is dispersed in the hearing and whether there is sufficient leadership to take things forward in the way that is needed in the hearing.

We have undertaken research in which we have interviewed safeguarders, social workers and panel members, as well as solicitors, that has shown that they continue to misunderstand each other's roles. Interestingly, each set of professionals felt misunderstood by others; the issue is not so much that people feel that they do not understand other people's roles but that they feel misunderstood. In the context of people around the table feeling misunderstood, it is a bigger challenge for us to ensure that the children's views and their welfare are paramount in the hearings. Who is responsible for understanding what is happening for the child if there is a risk of the power being dispersed?

If we are not confident that the child is the focus of the decisions, we need to look at how we can improve that further. As I said, I think that we are moving in the right direction. A huge amount has been achieved. Next, we need to look at how to ensure that the quality of the evidence that goes to the panel allows the members to make really good decisions and that it comes not just from social work but from a range of professionals. The CHIP is already looking at that.

We rely on the skills of panel members, so it is great that the education of panel members is increasing and that there is more consistency in that. I suggest that the next stage is to look at how panel members can be supported even more in relation to their confidence about taking really difficult decisions in what is a much more complex arena than it was when the Kilbrandon approach was first established.

The Convener: Before I bring in one of my colleagues, do other guests have anything to add?

Daljeet Dagon: I concur with what Jennifer Davidson said. We have significant experience of attending children's hearings across the west of Scotland in particular, and I do not think that any of our staff has been to a hearing where legal representation has not been present. That has become part and parcel of everyday life in children's hearings. The environment is not conducive for children—it is hostile and adversarial and is not in the child's best interest. I understand that it is important to respect and support parents' rights, but what we are often missing is what is in the child's best interest.

My perspective is that there are regularly 10 or 12 people present in a children's hearing, and that is because the agency representatives feel so passionate about the issues and concerns that they feel that have to be physically present, because the multi-agency assessment has not been respected. The social worker who is present is also often scapegoated.

We have experience of requests for police escorts during hearings because the leadership is not present. I understand and respect the fact that panel members are all volunteers; they are not supported by the reporter in any shape or form with regard to hostility in hearings.

We have to be clear about behaviour in hearings, particularly when children are present. Such behaviour is probably prevalent in sheriff courts but, if children were due to be present there, there would be special measures to exempt them, whereas our hearings expect children to be present. We need to consider that issue.

10:15

The Convener: When you refer to behaviour, do you mean that of the legal representatives?

Daljeet Dagon: Yes.

The Convener: They behave as if a hearing is a court trial.

Daljeet Dagon: Yes—and that often masks their lack of understanding of child development and attachment, family functioning and trauma. Solicitors have actively encouraged parents not to work with our service, which is about supporting parents to be in a better position to support their children and keep them at home. Parents have informed us that their solicitor has instructed them not to work with our service. The service is commissioned, but it is also a voluntary service that is about keeping families together. I find that very concerning.

Kate Rocks: My starting point is that Social Work Scotland supports the children's hearings system, which is fundamentally the right way to safeguard children's welfare. The point of the system is welfare.

The system has become adversarial. If we reflect on and understand the journey into the new system under the 2011 act, none of us was prepared for having other people in the hearing rooms. We agree that it is right and proper for solicitors to be in the children's hearings system, but the necessary conditions were not around to ensure that that was seamless. For example, solicitors who were used to working in a sheriff court and with criminal law were suddenly expected to come in and manage things differently.

It is curious that the act allows for children to have legal representation. Very few children have that, which I suggest is because the vast majority of children in the hearings system now are not 12 to 16-year-olds but very young children who cannot instruct a solicitor. In some respects, our members—social workers across Scotland—are struggling with the concept of whether the system is child centred or parent centred. A fundamental discussion is needed about where the rights of the child are in the system.

Daljeet Dagon's point is right—children sit for hours on end through hearings where the behaviour is such that, if it was experienced at home, we would probably go in and remove children. Such situations are allowed to be played out in the hearings system. We have reports from social workers who have been threatened at hearings by parents. That is not unusual, as the conditions of the hearings system are pretty fraught and everyone is making decisions in quite stressful situations.

However, the act and its flexibility on orders—particularly interim orders, to pick up Malcolm Schaffer's point—have been really helpful. The act removed the issue of warrants and gave more flexible options, so that we can place a child at home with some measures that require the child to engage. That can be a bit of an oxymoron at times, given that we require the parent to engage. There have been positive elements of the system.

I am a member of the children's hearings improvement partnership, which works on various issues and now has the opportunity to look at what the legislation has brought. Issues have arisen about relevant persons, and the committee will have seen in our submission reference to the role of foster carers and issues about their care. The experience of social workers at the moment is not positive. The issue of permanency—particularly the Scottish Government's desire to get positive and permanent destinations for children—adds another dimension, which I suspect that the committee will want to ask questions about later. I just wanted to pick up on issues from the social work profession's viewpoint.

The Convener: I have a question for Boyd McAdam. Two witnesses have said that the legal representation aspect of the legislation has been quite challenging and seems to be all-encompassing. Correct me if I am wrong, but did you not say that only 10 per cent of cases involve legal representation?

Boyd McAdam: We understand from the Scottish Legal Aid Board's decisions to support legal aid that around 10 per cent of hearings have legal representation. However, we also know from research that there are many examples of lawyers being supportive and working with the grain of a hearing. I am sure that Jennifer Phillips can provide such examples, although she will have had experience of difficult hearings—I think that she had one last Friday.

There are many examples of where lawyers help parents to understand what their rights are and help the environment of the discussion. The 2011 act brought changes, but prior to the act there was always the challenge for panel members to create an environment to allow the child to express their view. Having more people around the table has complicated that task, so one of the challenges for us is to give panel members, particularly the chair, the confidence to manage what is often a fraught environment where tensions are high.

Jennifer Phillips: I can recognise many experiences and hearings from much of what has been said here. However, I echo what Boyd McAdam said. Things have moved on from the point where we were hit with solicitors coming in in greater numbers than they did previously, but

there were some real difficulties in the beginning. It is fair to say, though, that solicitors being present is a bonus and a benefit in many cases now because they are quite good at calming things down and, for example, asking their clients not to shout but to put their points across in a reasonable way. So, the solicitors can be very helpful, but there are occasions when they are not.

I have seen something recently that worries me a bit, although it is on a small scale, which is that because solicitors attend hearings, children are being excused from attending them as being there would cause them too much stress. I talked to a social worker recently about some children who were stressed just because they knew that a hearing was coming along, irrespective of whether they were going to attend, and were concerned about what would be decided and whether they would be put back into a situation that they did not want to be in in the first place.

Julia Donnelly: Speaking as a solicitor who attends hearings, I should say that we largely represent children in hearings. In our view, one of the big improvements from the 2011 act has been the availability of legal aid so that children can have legal representation. We think that it has a lot of benefits for the children in terms of getting their views across and making sure that their rights are protected. It is sometimes about making sure that their views are heard equally with those of other people who are represented in the hearing—it is an equality of arms issue.

The situation with regard to the rehabilitation of offenders is complicated and we do not have time to get into the law around it, but it would be helpful if there was more representation for children in that area.

If the situations that are being discussed involve offending grounds or statements of facts that could be construed as offending, there are potentially very serious consequences for the children; they could carry a conviction, which could end up being disclosed and impacting on their employment prospects. That is an area where legal representation for children could be extended so that children in situations that involve offending at least get the benefit of advice before they get into grounds for referral.

More generally, on the issue of the number of children who are represented, we find that children are rarely aware that they can have legal representation. It might assist if, at an early stage, they are not just told that they can get a lawyer but are given information that helps them to find a lawyer. It has to be independent information, obviously, so it cannot be too directive, but often if you say to a child, "You can get your own lawyer," they do not know how to go about doing that. If we gave that information, it might increase the number of children and young people who are represented.

I cannot really speak for solicitors who represent parents but I agree with Jennifer Phillips that there are a lot of instances where parents being represented can be helpful in managing behaviour. I do not doubt that there are instances of unacceptable behaviour and I would also agree with what CELCIS is saying. It would be helpful if the rules were understood and, in particular, if it was understood that there is a duty on solicitors to ensure that the hearing is focused on the best interests of the child—the best interests of the child are paramount. That does not have to conflict with the solicitor's need to enable their client to participate effectively. Possibly, there needs to be training on that and all the professionals need to have a greater understanding of it because it feels a bit as though the adversarial approach—the idea that everybody is on different sides—is becoming a bit entrenched.

Multi-agency training, specifically on everybody's roles, would be helpful with that. If solicitors understood other professionals' roles and other professionals understood how solicitors work and why they do what they do, that might go a long way towards smoothing things out.

The Convener: Thank you for that. Daljeet Dagon wanted to come back in.

Daljeet Dagon: The only point that I want to make is that the 2011 act was about enabling much more effective participation by children in particular, which we welcome. My concern is that, often, children are asked whether they want to see the panel members on their own, but solicitors who are representing the parents insist on being present during that time, which is not in the best interests of the child. It goes back to Jennifer Phillips' point about how anxiety provoking the whole hearing process is for children—prior to attending the hearing, during and after it—because they have been told about all kinds of possibilities and consequences.

It is not acceptable for solicitors who do not have a relationship with a young person—who have actually never met them until the hearing—to insist upon sitting there while the panel members speak to the young person. That has to change. We need to support our panel members much better so that they feel stronger and more confident when it comes to managing the hearing, what the hearing is about, and why we are all there in the first place.

The Convener: I will bring in Kate Rocks in a minute but I will bring in a couple of my committee colleagues first.

Liz Smith: From the committee perspective, I think that successive education committees have

looked at this issue four times during the past 10 years. Although there has been some progress—I think that that has been corroborated this morning—it seems, from the evidence that we have taken, that there has clearly not been nearly enough progress to satisfy everybody.

Six years on, does the 2011 act need to be amended in any way or can we make greater progress by simply amending the guidance? It is my view that we are slightly going round in circles over the 10-year period. The issues that have already been raised this morning, which coincide with what a lot of the evidence says, suggest that we are not doing our best to try to improve either the legislation or the guidance or perhaps both. I am interested in our witnesses' views on that, because our role as a committee is to try to make those improvements.

10:30

Colin Beattie: Malcolm Schaffer talked in passing about safeguarders. I have had some experience of dealing with safeguarders, and three questions come out of that. First, how are safeguarders chosen? Secondly, do they receive any training? Thirdly, does the system work?

The Convener: Can we come back to those questions? That is quite a chunk of debate on its own.

Kate Rocks: I want to pick up Daljeet Dagon's point. The statistics show that 60 per cent of children in the hearings system are aged between zero and 11, and the instruction of solicitors is a huge issue for us, especially given that 20 per cent of the children are aged between zero and three. From a legal perspective, the ability to hear the child's views is much reduced.

Johann Lamont: The whole balance of the children's panel does not feel right to me now. I was involved 20 years ago, and the idea was that the panel members spoke in the interests of the child. That was utterly their focus. The safeguarders also provided a protective role. I am very concerned because I am picking up, anecdotally, that the pressure on social work is affecting the quality of the reports that social workers provide. In the past, those reports gave a good steer to the panel members about what the key issues were, following separate conversations with the young person and the parents, and that gave them a focus. Is that focus being lost?

I will give an anecdotal example. If the school provides an attendance printout that shows that the child has been at school for 20 per cent of the time but a solicitor is able to identify one time when the child was in school at a time when the sheet says that they were not, the whole thing collapses despite the fact that the pattern of behaviour suggests that the child is not being sent to school. Is the role of a solicitor really to demolish a picture that is emerging through the panel of what is happening to the child?

Kate Rocks: What I hear, in speaking to my fellow chief social work officers across Scotland as well as to my own staff in East Renfrewshire and panel members, is that—this goes back to my original point—none of us was prepared for solicitors coming into the children's hearings system. I fundamentally agree that that is right in many respects, but it has changed the dynamic of the system—there is no getting away from that. Social workers will tell you that the process is less focused on the reports and more focused on what is happening in the hearing at that given point in time.

When I first qualified, there would be maybe three or four people, at the most, at a hearing. Now, there can be up to 18 or 19 people there. My social workers told me about a recent hearing that lasted for three-and-a-half hours and in which there were behaviours that were not in keeping with managing the hearing. That is not a reflection on the children's hearings system; it is just a different dynamic.

The issue about reports is important. The best reports involve preparation and engagement of the child and the family before we get to a hearing, but that is what has been lost. Now, it is all about the decision making at the hearing, although the start of the journey is engagement with the child and their family, which has a multi-agency element to it. The Scottish Government needs to consider that when it reviews the blueprint. It is the most important bit of the journey, because it is about the child feeling that they are being listened to and that they are being heard. The report is fundamental to that.

Johann Lamont: Not long ago, I observed a panel session at which the attendance of solicitors made the parents more passive—they were not being engaged with. I have seen how sessions can work when someone is encouraged to say what their concerns are. Is there a danger that a parent will be reluctant to be absolutely honest about some of the challenges that they face with the young person because that would become evidence? With the parent's passivity at the panel, maybe the core issues will not be dealt with.

I have looked at the figures for who refers children and young people to children's hearings. I remember advising a parent that they might want to think about referring the young person themselves, as a hearing was a safe place to go to. There was the opportunity to look at resources and think through with expert people the young person's problems and whether they could be worked with. That would never be suggested now.

Has that been lost in the hearings system? It seems to me like a mini court now rather than what it was supposed to be. The legal bit could be taken out and people could be allowed the space to be honest about the good, bad and difficult stuff so that the young person can be supported.

Kate Rocks: I agree. We have lost the good conversations that we had with parents and the ability to ensure that we collectively make the right decisions for children. The 2011 act gives us loads of opportunities to do that, but we have a long way to go.

The relationships in the hearing room and continuing to have open relationships are part of the issue. An unintended consequence of Boyd McAdam's role—we welcome his role—is that the ability to engage locally with the lead children's hearing person has gone. Things have become a bit more fragmented, and there has not been as much involvement in the local and strategic planning for children. Boyd McAdam has tried to address that, and we are trying to revisit that through the CHIP. There was an engagement event in Glasgow that tried to bring all the partners together to have that level of discussion.

It is about relationships. Fundamentally, the difference between our system and the English system is that ours is a relationship-based system, not a legal-based one. There is a danger that we will blur the boundaries on that.

The Convener: I would like to clarify something. It sounds as if every child's hearing here is a court case. Is that the case?

Boyd McAdam: I will let Malcolm Schaffer respond to that if I can come back on a couple of points.

Malcolm Schaffer: I go back to something that Boyd McAdam said earlier. There is legal representation in hearings in only a minority of cases.

The Convener: As long as we are not getting the wrong impression of the children's hearings system here.

Malcolm Schaffer: I absolutely agree that, in some of the more critical cases, lawyers descend and there is acrimony, particularly where there are moves towards permanence. If you were a parent who was involved, would you not want a lawyer with you?

I draw the committee's attention to work that was done for the Scottish Legal Aid Board with support from CELCIS. A research report was produced on the findings on legal representation. That is worth a read because it is a balanced report; to be honest, it is more balanced than what is coming across this morning. In particular, that might be squinted by the fact that about half of the 4,400 appointments in hearings last year were in the west, particularly in Glasgow. Therefore, there is a particular focus there, and there are particular issues in hearings in that part of the country for whatever reason.

I do not want to get away from all the positives of legal representation or from the fact that the majority of hearings proceed without legal representation.

The Convener: Do not get me wrong. I think that it is really important that we get the difficulties across. They are part of what we want to look at, but I was a bit concerned that all that we were hearing about was the negatives.

Johann Lamont: What are the positives of legal representation? I am not clear about that.

The Convener: We heard about them from Jennifer Phillips.

Johann Lamont: If it is to get people to behave, empowered panel members can do that. I was hugely impressed by the panel members on the panels that I observed. If they have authority that is perceived as such, why would a lawyer need to come in? I presume that there has been poor behaviour in hearings over time, but I would not have thought that they have required the legal profession to go in and police them.

Malcolm Schaffer: A lawyer is appointed when parents cannot effectively participate in the hearing. It is done to help to bring out parents' views. As part of that, lawyers can support parents if they get emotional and upset in a hearing. Quite often, a good lawyer will say almost nothing in a hearing; they will be there in the background.

Jennifer Phillips: There needs to be perspective. Glasgow, where I am a panel member, is probably one of the places where it is most likely that there will be lawyers in the hearing room. I can only talk about personal experience and what I hear panel members in Glasgow saying. Although there are difficulties in some cases, many hearings proceed without any legal representation and are not a lot different from how they proceeded in the past.

A number of issues arise out of having solicitors present. The number of people in the room, which was touched on, can be a problem. Lengthy hearings were spoken about a minute or two ago. If solicitors are there, there is a correlation between the number of people present, and how long the hearing takes and how contentious it is. There is no doubt that that can be difficult for panel members to manage.

However, I return to what I said before: there is good and there is bad. I do not think that the only thing that lawyers can do is calm behaviour. They are there genuinely to see that parents' rights are

being respected. As Malcolm Schaffer said, often they do that without making a lot of noise about it. There needs to be balance in the system.

I know that different ways of improving children's participation are being looked at. For me as a panel member, that is important. As I said, there has been an increase in excusing children from attending and getting their views by other means, and solicitors are challenging those views because they are not coming directly from children. We need to look seriously at how we improve children's participation in a way that is not threatening to them.

The Convener: I will bring in my colleague Richard Lochhead in a minute.

The norm for solicitors who work in the children's hearings system is the courtroom. Do they have any training about the different way in which they should deal with cases in the children's hearings system?

Julia Donnelly: Solicitors who do legal aid work in children's hearings, which will be most cases, have to be entered on a register that is maintained by the Scottish Legal Aid Board. That means that they have to conform to a code of practice that sets out standards of professional conduct. A big part of the code is that it specifies that, when conducting proceedings before a children's hearing, although the solicitor has to fulfil their professional duties to their client, they also have to respect the ethos of the children's hearings system. As well as promoting the effective participation of all parties, they have to acknowledge that the best interests of the child are paramount.

The Convener: Will you say a little more about what that means?

Julia Donnelly: To get on the register, they must demonstrate competence in a variety of things, but the ethos of the children's hearings system is the first one, I think. I will look at the list that I have here. They demonstrate competence in the ethos of the children's hearings system by doing things such as attending relevant courses. There is an element of that. The question is whether that is sufficient, or whether multi-agency training might assist with increasing awareness of the ethos of the children's hearings system.

At the moment, a solicitor has to demonstrate competence to get on the register. They can be deregistered if they do not continue to demonstrate competence. The CELCIS report on the role of the solicitor in the children's hearings system talked about maybe having more compulsory training and continuing professional development, and maybe not just for solicitors. If legal representation is here to stay, how do we make it work within the ethos of the children's hearings system and differently from how it works in the court? There is an acknowledgement in the code of practice that a solicitor should be working in a different way from how they work in the court. That is known; the question is whether it is happening and what can be done to make it happen more.

10:45

Jennifer Davidson: We have talked about the research a couple of times. I clarify that the research that was done in 2016 indicated that the majority of solicitors who were working in the hearings system were constructive and were offering valuable input. A minority were not following that ethos and, as Julia Donnelly said, there was an important recommendation about compulsory training for those solicitors. Another thought for you to hold is that the Children's Hearings Improvement Partnership has now established a learning and development post to address the multi-agency training needs, and we hope that there will be some training for those solicitors in particular.

I would like to go back to Jennifer Phillips's point about the tensions in hearings being rooted in the number of people rather than in badly behaved solicitors, if I may say that. That also relates to what we heard from Liz Smith about whether this is ultimately about legislation, guidance or implementation. I suggest that a great deal of implementation has been going on, with efforts being made to implement the 2011 act and ensure that children are held at the centre.

My earlier remark about concerns about the number of people present and the disaggregation of power around the room brings me to suggest that we might want to look at how we ensure that the chairs of the panels are well equipped. We have a fantastic one at the table today, in Jennifer Phillips. When chairs are effective, strong and skilled and they have the confidence to manage the room, it is an effective process for children and it ensures that panels make good decisions for them. Where the chair lacks confidence, it becomes a much more risky situation for the decision making. That is not so much about legislation or—

Liz Smith: It is about guidance.

Jennifer Davidson: It is perhaps about guidance, but it is really about supporting chairs to be the best that they can be. There is evidence in other problem-solving justice arenas that having a consistent chair with a particular family delivers better outcomes, but we have never tested that in the children's hearings system. Perhaps a time is coming when we can do that in small areas to see whether it is helpful.

Again, however, it comes back to a tension between the fantastic value of the committed volunteers who are the workforce of the panel and the realities of scheduling, managing the logistics and being able to get, for example, someone who will be a consistent chair. I recognise that what I am suggesting would not be simple or straightforward, but it may be something for the next phase, which is about implementing the ethos of what we are trying to achieve.

Richard Lochhead: I wanted to come in earlier during the discussion about the legalisation of the process. I find it startling that an eight or nine-year-old could be in a hearing with 18 or 19 people, including solicitors. First, what impact does that environment have on the children? Anxiety was mentioned, but are there any other comments or evidence about the impact? Secondly, there has been a lot of talk about the perceived problem, but what is the solution?

Kate Rocks: There is a danger here today that we all bring our own perspectives about the hearings system and children's experiences within it, but you are absolutely right. Should we ask an eight-year-old to go into a room with people they do not know and tell them a story about their life in order for decisions to be made? It would provoke anxiety for any child to be in that situation. The difficulty that we have is that our children who are in that situation have experienced a high level of conflict and trauma in their lives, and they might present as, or look as if they are, more able to manage it because of what they have had to experience. We know that that is sometimes the case for these children.

The evidence and procedure review is looking at the role of children's evidence in court; I understand that Lady Dorrian is looking at that. There are parallels between the court processes and how we participate, engage and allow the child's views to be heard in the hearings system. Traditionally, we have had to dispense with the children—I hate the word "dispense" with a passion—in the hearings system, and that is part of the business that goes on before we get there. The 2011 act has been much more helpful in allowing that discussion and debate to happen because, prior to that, children felt that they were almost compelled to turn up. However, there is a fundamentally different way of getting children's views, and that is what we need to be looking at. If adults are going to behave badly, irrespective of whether they are solicitors or parents, why does it need to be done in front of children? That is our starting point and that is what we need to look at.

The Convener: That is interesting. Is there some way of holding pre-hearings before the child is present? I do not know whether that is done, or whether it is feasible.

Jennifer Phillips: We use a number of means to get round some of those difficulties, and I am not always convinced that what we are doing works. We try to offer the child the opportunity to speak to the panel on their own but, as you have heard, it is increasingly the case that there are solicitors for the family who want to be there, although a strong chair would deny them access if they could see that it was going to get in the way. The strength of the chair, and of the other members of the panel, can be important.

The Convener: The same is true here.

Jennifer Phillips: The whole business of how children give us their views is vital, and I am starting to wonder whether, in some cases, we should be seeing children separately from the hearing, but I do not know whether that is the answer.

Malcolm Schaffer: We are embarking on a three-year digital strategy for the hearings system. As part of that, we will be looking at whether there are other means by which children can participate in hearings without physically being in the hearing room. Are there electronic means? Is videoconferencing appropriate? Are there other mechanisms by which we can ensure that the child's views are properly submitted to a hearing in advance? The traditional way to have your say is to submit a written form, but we need to get beyond that and consider whether more advanced technology can be used.

We need to think about those means and we also need to consider whether the child should be present throughout the hearing, whether they are physically there, or whether more use could be made of arrangements to ensure that children need to be there only for a minimum period of time and can be excused from parts of the process. I saw a hearing that Jennifer Phillips chaired in Glasgow, where the child was not present at the hearing but was in the hearing centre, and she saw the child separately. I accept that, if a child is seen separately, they should be seen on their own, without legal representation bearing down.

We are working on that with a number of people, and not least with young people themselves. We have modern apprentices and we are developing a young people's board, and we need to work with them to get their advice on how we can ensure that their views are heard at the hearing. We must not lose sight of the fact that the child has to be at the centre. The worry is that you get lots of adults there and that the child's attendance is completely dispensed with and, before you know it, you have forgotten that the child is supposed to be at the centre of the proceedings. All our thinking is about ensuring that the child continues to be at the centre, but we try

to use some imagination in deciding how that can be done.

Daljeet Dagon: In our advocacy services we have been using avatars. We have iPads for young people to use, so that they do not have to be physically present at the hearing, but their voices can be heard and they can communicate directly with the panel. Our staff take iPads and mini-projectors in so that everyone can see the young person, rather than all of them trying to gather round a wee iPad. The situation varies across different local authorities, but one of the challenges that we have faced is that, because the panel papers have to be with the participants seven days in advance, the young person's views are sometimes not heard because they are being presented on the day, so cognisance is not taken of that under the seven-day rule. There are variations, but there are definitely ways in which we can involve young people.

The Convener: Before we move on to the next subject, do any of the members or witnesses have further questions to ask or points to make about solicitors or about the number of people present at children's hearings?

Daniel Johnson: There are two critical issues that we have not quite bottomed out in this session; they relate to questions that the convener asked.

First, are lawyers present in a majority or a minority of situations? I am not clear on that, and I would like to hear more from Daljeet Dagon and Jennifer Davidson in particular. Does the problem lie with particular categories of cases? A figure of 10 per cent was mentioned, but that is at the macro level—if you subdivided it, would you see that lawyers were present much more often in some situations than in others?

I have still not heard a clear articulation of what benefit there is from the presence of solicitors. All that I have heard is that they can provide support and act as a calming influence. Forgive me if this sounds flippant, but my solicitor would be the last person to whom I would go if I wanted to be calmed down. What is the benefit? I assume that it is in providing information about the process. Is legal representation the best way of providing legal advice? If that is a useful distinction, do we need to look at introducing new boundaries to define where solicitors can and cannot participate in the process? Does that need to be hardened up, or can we simply leave the matter to be dealt with in guidance and by upskilling panel members? From what I am hearing, it seems that we need to be a bit harder than that.

Jennifer Davidson: I will clarify the point. Our research did not indicate the percentage of hearings in which solicitors were present. We simply asked about people's experiences where solicitors had been present in hearings. We found that, in the majority of those cases, the presence of solicitors was seen as a supportive and effective way to protect parents' rights in the hearing and ensure that their views would be understood. Among that majority, it was perceived that the solicitors understood, despite their role in supporting the parents, how to protect the best interests of the child in the context of the hearing. It was only in the minority of cases that solicitors were seen as not being able to maintain that ethos.

I think that it was Boyd McAdam who said that only 10 per cent of cases involve legal representation—

Daniel Johnson: Do you or Daljeet Dagon recognise that 10 per cent figure?

Daljeet Dagon: The service that we provide is an intensive family service that is about trying to keep families together. Inevitably, however, it is also about preventing children from being accommodated in situations in which things might not be as they seem. To go back to Johann Lamont's point, we have found that if parents admit that they have deficits, that is seen as evidence that other agencies can use. That is why solicitors encourage parents not to admit to those deficits and not to accept support.

We are often asked to assess parents' capacity and ability to look after their children—all their children. We work with children between the ages of five and 18, but increasingly—as Kate Rocks described—we are working primarily with, and representing in hearings, children who are aged between five and 12. We are finding, in the Glasgow and East Dunbartonshire local authority areas, that solicitors are present at nearly every single hearing that we attend.

There may be variations across the country, but in our experience there is one particular solicitors' agency involved. It is no coincidence that legal aid was reformed when the 2011 act came into force. For us, the situation is not new—we have been raising these issues for the past three years, and the situation in terms of representation has got worse and worse.

To echo a point that was made earlier, I do not think that any of our staff have ever been at a hearing where solicitors were representing the views of children—the solicitors are there to represent parents.

Malcolm Schaffer: There have been lawyers in hearings since 1971—

Daljeet Dagon: Yes—absolutely.

Malcolm Schaffer: To begin with, solicitors came to hearings only in cases in which parents

could afford to pay. In 2001, a Court of Session judgment indicated that we were falling short of human rights law by not allowing representation to ensure that parents would be able to participate effectively in hearings. Those words are the core issue. It is about parents being unable to completely articulate their views or completely understand all the issues that are in the reports. At that time, an emergency legal representative scheme was introduced, whereby the local authority would appoint certain lawyers to the panel and they would be assigned to the families.

11:00

The 2011 act changed that. Again there was concern about human rights implications; it had to be ensured that families had a choice of legal representation and that it was covered by the Scottish Legal Aid Board. Julia Donnelly has talked about the sorts of checks that there are. If lawyers fall short of that code of practice, there is a complaints scheme to enable issues to be looked at. I do not think that it is being very much used and that might be something that we need to take forward.

At its best, the current system is about ensuring that when parents are struggling to communicate with panel members, somebody is there to represent their views or to help and support them to put forward their views. If we want to be human rights compliant in the system, I do not see that there is any going back from that.

Boyd McAdam: A word that has been running around in my head ever since I came into this area is “respect”. There is an inherent tension within the hearing, because the panel members have to decide whether compulsory measures are required, with the welfare of the child being paramount. However, those decisions affect family life. That is where the lawyers come in—to ensure that people’s rights are respected. As Malcolm Schaffer says, we cannot get away with not having that.

I think that Liz Smith asked whether we need to change the guidance. There are small technical things that we can do, but the fundamental thing that we need to do is to change that culture and understanding. There have been lots of references to the system and to multi-agency training.

Liz Smith also asked about changes to the 2011 act. Neil Hunter, the principal reporter, and I are looking at those issues in co-operation with the children’s hearings improvement partnership, which is a multi-agency forum. We are beginning to develop multi-agency training to help that understanding. That is going to take time.

The digital agenda, if we can make it work, promises an awful lot in terms of participation—that will be in the lead-up to and during the hearings, as well as supporting youngsters afterwards.

In the interim, we are very dependent on volunteers to be panel members and to chair panels. Chairing is a critical role in the system and we provide management of hearings training for new panel members. Part of the core training is managing conflict within hearings. Even if a panel member is not in the chair role, they are there to support the chair and they have to have the confidence to manage the difficult behaviours that occasionally arise in hearings, as well as an understanding that the role of a panel member is to move forward and take a decision.

We have to understand that appeals, challenges and making use of processes inject huge delays into the system that defer the decisions that are needed in respect of the child. That is something about the culture that we need to change and inform.

Gillian Martin: I have taken lots of notes. Talking about the role and behaviour of solicitors in the hearing room, is there a case for licensing solicitors so that they have to have had training and got a licence in order to take on and participate in cases that involve children’s hearings?

Julia Donnelly: As I said before, there is a code of practice. Solicitors also have to comply with regulation by the Law Society of Scotland. When they are in court, they have to comply with certain behaviours to be an officer of the court. Therefore, a lot of things are already in place that mean that solicitors have to behave—

Gillian Martin: What about a specific licence and training that comes along with it that means that a solicitor can practise in a children’s hearing situation? That is what I am getting at.

Julia Donnelly: What is currently in place is that they have to be registered—they do not have to have a licence, but they have to be registered. To be registered, solicitors have to comply with those competencies and continue to demonstrate that they meet the competencies. As Malcolm Schaffer said, there is a complaints procedure so that, if people observe that a solicitor does not demonstrate those competencies in hearings, there is a mechanism through which they can complain. As far as I know, the effect of that would be to deregister a solicitor, which would mean that they could not get legal aid to go to a children’s hearing, although they could presumably still go if they were privately employed to do so.

There might be scope to do what we were talking about earlier, with elements of compulsory continuing professional development—

Gillian Martin: Yes, that is what I meant.

Julia Donnelly: With that, they would have to fulfil a certain amount, or type, of training. The register could be made more stringent and more people could be made aware of it. That is a valid point, too, as it would be helpful if more people understood the rules that solicitors are meant, and are compelled, to abide by. I do not think that you need to bring in anything separate, but it might be beneficial to look at raising awareness of the current system and put more in place around it.

Jennifer Davidson: I will return to Daniel Johnson's point in relation to children appearing at hearings and I will point out an interesting, if not a rather bitter, irony. We have talked about children not being in the hearing for very good reasons. However, we are quite concerned about 16 and 17-year-olds who could be in the hearing, but are instead seen before an adult court. I call it a bitter irony because, as we all know, the hearings system was established for offence grounds, predominantly, although now it has moved to care proceedings. The very reason why we had the hearings system in the first place was to hear offences, yet they now go to the courts, so the interface between hearings and the courts is an interesting element for us to explore. A greater engagement with the judiciary on that would be very welcome.

Johann Lamont: I get the fact that parents should be supported to participate, but why do they need legal representation to do that? There is an advocacy role to support young people. Could that not equally apply for adults? In the past, it was part of social workers' reports to, if not advocate, then explain and describe the family and the parental situation.

Is there not sometimes a conflict between the interests of the parent and the interests of the child? The role of the panel and the hearings system is to support the child, so there should not be an equivalence. The hearings system identifies and has to deal with big issues, and, if there is somebody in the room whose only role is to say whatever needs to be said on behalf of the adult, I am not sure whether the hearing is challenging enough, as it is supposed to challenge some of the behaviours of adults.

I accept that only a small proportion of people have legal representation but, presumably, the idea of the hearings system was to take cases out of the court system and to try to describe a family situation—not to ascribe blame, but to find solutions. It feels like a family court, but not quite as aggressive as you might find. Should we not just be honest and say that some bits of the system should go into the court system? The hearings system could apply in situations where people are of a like mind, or are willing to come together. It feels to me as if we are trying to get a mix.

I also want to know whether there is an issue of resources for social work that affects the ability to do that work beforehand. In terms of advocacy, can you find a different system from the one that we have now?

Boyd McAdam: It comes back to the word "respect". Would legal representatives behave in front of a sheriff in the way that they do in a hearing? There is something about respect for the authority of the children's panel members who are taking the decisions. We have to elevate that, somehow, so that people understand that the hearing is a tribunal—a legal process that impacts on rights. At times, the behaviours in the room can be disruptive and adverse for the child, which is what we are trying to avoid.

Nevertheless, I think that the ethos of the system is right. The challenge for the 2,500 volunteers who are part of the national panel is to create a forum in which to have the dialogue, to manage that environment and to move forward. We could do a lot more to support those volunteers. We place a huge demand on them, as they undertake, on average, 14 three-hour sessions a year. They also have to prepare papers and undergo training, and there is the volunteer management of the system, which Jennifer Philips can perhaps talk about. The volunteer element, which is drawn from the community, is a critical part of our system, and we tap into Scottish society by having those volunteers.

Johann Lamont: But they are up against somebody whose mindset and day job are about not what is right and what is wrong but what they can win. Why should the parents' representative not be someone in an advocacy role? My recollection of hearings is that we got the opportunity to ask, "Why did you do that?" or, "What do you think about this?" Nowadays, the lawyer can say, "Don't answer that," and the parent becomes passive in those circumstances. That is not active engagement.

How can we strip it back to the original idea? People were treated with respect when they came to the hearing, and we were prepared to recognise all the dilemmas and challenges that they faced. I would have thought that a lawyer placing their hand on a parent's arm and saying, "I don't think it's a good idea to answer that question" would not produce solutions to problems. The danger is that the parents become passive and retreat from what might be solutions for their family.

Boyd McAdam: Malcolm Schaffer and others are far better placed to comment on the criteria for legal aid to support lawyers, but it is provided when the parent is not considered able to

participate. Even if the lawyers are not there, parents are still part of the forum and the discussion, whether or not they are supported by social workers or others in the system. I return to the statement that I made at the start of the session. We must recognise that lawyers are not there in 90 per cent of hearings, but the discussion that is integral to the system is taking place.

You asked a question about social work resources, and I am sure that I know Kate Rocks's answer to that.

Kate Rocks: Where do I start? It is curious that you have asked that question, Johann. Let me reflect on where social work is. Social work in Scotland is under a significant amount of pressure. In many respects, it is the most targeted service for children in Scotland, but it has not had the benefit of a McCrone review, which the teaching profession has had, or the benefit that the nursing profession has had in terms of the use of health visitors. It is also not necessarily protected from the efficiencies that result from budget rationalisation. Nevertheless, the focus on looked-after children and achieving the best outcomes for them is at the heart of what social workers do best. Those are our most disadvantaged children, and having the ability to go in and make a difference is important.

I revisit what I said at the beginning of the session: the conditions that make a good hearing start before we get the child in the hearing room. However, time is the greatest and most precious commodity for a social worker, and social workers are sometimes stretched to find sufficient time for that because they have to deal with a whole load of different priorities—they could have a child protection investigation in the morning and have to be in a meeting in the afternoon. Those are the fundamental dilemmas that social workers have to deal with.

Sometimes, it is about having the ability to engage. Part of preparing a report is engaging the parent in the report, and for the vast majority of children who are aged under 12—those aged between zero and three make up 25 per cent of the children in the hearings system—that is key. It is a matter of having the time to have that engagement and to develop it.

11:15

The most important aspect is to share the plan. There is the child's plan. There is the implementation of getting it right for every child. Social work was not given any additional resources for the implementation of GIRFEC, which is focused on a much earlier intervention approach—a universal service approach. Nevertheless, we have embraced GIRFEC, because we see the possibilities in having only one plan for a child. To have a really good, robust assessment, social workers need to talk to their partners, mainly in education and in health, in order to develop that plan for the child, and that takes time.

The situation across Scotland is variable when it comes to social work resources.

The Convener: Can I clarify that? Is that because the funding for social work comes from local authorities, and it depends on what priority the local authorities put on social work?

Kate Rocks: Not necessarily. The funding comes from different places. Historically, we have had moneys from sure start and from different funding streams.

The Convener: The core funding for social work is from the local authority.

Kate Rocks: The core funding for social work, yes—but additional funding has gone in, which has been mainstreamed over the years. As with anything, it is a moveable feast: we cannot compare one bit of Scotland with another bit of Scotland. Irrespective of that, we have only the one national budget and the national priorities need to be considered in that light. There needs to be a broader debate about where social work sits in that context.

Sometimes the best thing about social workers is their creativity and how they engage with children. Time is of the essence to ensure that we achieve that level of quality.

Fulton MacGregor: I will pick up on a point that Johann Lamont made. Having been a practising social worker before I became an MSP, I would like there to be no lawyers at children's hearings, because that goes against the ethos of the hearings. However, having been in the decision-making process many times, I know that we are sometimes talking about the most difficult decisions that can ever be made for people.

It happens only a small number of times, but—I think that Kate Rocks would acknowledge this—we sometimes get things wrong in the recommendations that we make as local authorities and organisations. If we are saying that parents are not entitled to legal representation, that is a difficult road to go down, and there perhaps needs to be a discussion about where legal representation should come in. However, I agree with the general consensus today that it should not be in the context of the hearing.

I declare an interest in that I am still a member of the Scottish Social Services Council. I worked in children and families social work for eight years, between 2004 and 2012, and the new act was just being implemented as I was leaving for a new role

that involved limited contact with the hearings system. Lawyers have always been present at some hearings, although probably at a rate of only 10 per cent, and there have been the numbers in the room that we have discussed today not just post 2011—I was at hearings with 20 folk in the room in 2006 or 2007. I do not know whether Kate Rocks agrees, but, if I remember rightly, when the new act appeared there was hope that it would change a lot of things. It is, therefore, disappointing—as Liz Smith said—that we are still hearing the same things. I would like to put matters in that context. For me, some of what we are hearing about today is not a result of the 2011 act. The question is whether the 2011 act has done anything to change the situation.

I realise that, despite my experience, I am not here to give evidence.

The Convener: Please remember that.

Fulton MacGregor: I apologise, convener.

What do the panel members think about where hearings are held? We need to make the hearings more child friendly. The situation might be different in different parts of the country, but the hearings that I attended in Lanarkshire, Glasgow and elsewhere were in rooms with tables that were set out in a very formal way. Why not think out of the box and have hearings in schools and people's homes? Why not have a key person there whom the child trusts? It may not always be a social worker; it may be a teacher or somebody else in their life who is there with them. There is sometimes provision for that, but it is not always the case.

What are the panel's views on thinking outside the box about where to hold hearings? I have my "Committed to Play" badge on, and, like me, Daniel Johnson spoke in yesterday's members' business debate about Play Scotland's play charter. If a kid is aged four, why not have loads of toys around them? I am being serious. There is no need for them to sit there and feel that, if they move, a parent or panel member will tell them to sit down and not run about. Let them run about—panel members will get more from that than from anything else.

Malcolm Schaffer: We are involved in a programme of redesigning our hearing rooms, having taken advice from young people. In particular, following their advice, we have removed the big table and have provided rather more comforting soft furnishings and colours. Perth, Inverness, Glasgow and Irvine have examples of that, and we hope to take that approach in more centres. If committee members would like to visit any of those hearing rooms, they should feel free to do so. I have observed hearings in those rooms, and they really make a difference.

Other changes that are being looked at include the provision of toys and play areas for young people; different waiting rooms for different types of young people, such as older and younger ones; and interview rooms where people can speak to children and young people before and after the hearings. We are putting quite a lot of effort into those changes, and we believe that the early results demonstrate exactly what you said—that a more comfortable environment for the holding of hearings helps to reduce tension and formality.

Boyd McAdam: The important issues are the preparation and the young people's right to bring a representative with them to the hearing. Jennifer Phillips can comment on disruptive—or active—children in hearings.

Colin Beattie asked about safeguarders. None of the panel has specific responsibility for them, but there is a national panel of safeguarders. They undergo a programme of training—

The Convener: We will come to that in a minute.

Boyd McAdam: Jennifer Phillips might comment on how the arrangement works.

Jennifer Phillips: We have one of the redesigned rooms. Its redesign had input from young people who had been in the system, whose views were taken into account, and, as Malcolm Schaffer said, we have seen a big difference. Two more redesigned rooms will come on stream shortly. In order to make it manageable, because it is so big, Glasgow is divided into three areas, and we will now have one of those rooms for each area.

The redesign seems to remove some of the tensions in the room, which is a real bonus. Children playing with toys in the room is an issue if there is a lot of noise, but that is minor compared to the noise that some parents make. It is not a huge issue—certainly not for panel members operating in the room.

The Convener: Maybe we should get some toys for the parents as well. [*Laughter*.]

Ross Greer: It sounds like a terrible cliché to say that we have had a child-centred discussion, on the whole, but that is important. In other areas of the committee's work, we have discovered the value of getting direct input from children and young people on their direct experiences. How would the panel members expect the committee to engage directly with children and young people—in particular, those who have gone through the hearings process?

Kate Rocks: The root-and-branch care review has been announced—the chair will be Fiona Duncan—and that issue may come out. Jennifer

Davidson will know more about that than me, as CELCIS is providing the secretariat.

Ross Greer makes a good point. We can talk as agencies, but, fundamentally, the voices of the children and young people are key, and there are various engagement strategies across the board. Who Cares? Scotland does fantastic work with our looked-after children, and it is fantastic that the SCRA and CHS have set up their own board with young people. Champions boards have also now been developed nationally. However, the question is how we ensure that the approach is not fragmented but is truly a national approach. Perhaps the answer is in the root-and-branch review.

The Convener: Is it too early to say, Jennifer?

Jennifer Davidson: It is too early to say how that experience would be brought in, but it is a really important question. I suggest that bringing young people here would be a different experience from going to them and that you would get different information. Therefore, my suggestion is that the committee engage with organisations that work directly with them, such as Barnardo's, and ask to meet them in a nice, friendly, colourful place with toys.

Daljeet Dagon: We have already had a direct request from the committee for engagement with young people. They have been asked to come here but it is important that the committee goes to them. Because it would be a school day and they would need to travel, they would miss a whole day. If the committee went to them, in school settings or at some of the projects with which they are comfortable, they would be better engaged.

The Convener: I should make it clear that we do that regularly.

Daljeet Dagon: I know that you do.

The Convener: That request was about giving young people a chance to speak to the committee in a formal setting to get their points across. However, if that is not suitable for the young children, it will not happen.

Daljeet Dagon: The vast majority of children who go to hearings are between the ages of five and 12, so an environment such as this can be quite intimidating.

The Convener: We would not do anything like that.

Daljeet Dagon: I know. It can be a mix of both. I know that you come out to engage with them, because you have done that before.

Boyd McAdam: Kate Rocks said that we had set up a young persons board. We are in the process of doing that and it may not be a board, but it is a way of enabling young people with care experience to feed into the SCRA, CHS and the hearings system more generally. However, we do not want to duplicate the work of the care council that Who Cares? Scotland supports. Other organisations exist, but we have engagement with Who Cares? Scotland, which takes part in the pre-service training of panel members.

We engage quite a bit. The work on better hearings that was mentioned in some of the evidence is taking on what young people said at, I think, the Kilbrandon report's 50th anniversary lecture a few years ago. They said that they had been saying the same things for years but were waiting for action, and the better hearings work is an important way in which we can respond to their concerns.

The Convener: I invite Colin Beattie to ask the questions that he asked earlier.

Colin Beattie: Given the experiences that I have had with safeguarders, I would be interested in learning a little bit more about how they are chosen, what training they receive and whether the system of safeguarders works. Is it effective? I do not know whether any of the witnesses has the answers to those questions.

Malcolm Schaffer: The 2011 act gave the management of safeguarders to the Scottish Government and it has tendered it to Children 1st, which has standardised the selection and training of safeguarders. That is an important issue. Previously, there were haphazard systems in some authorities, but there is now unquestionably a greater standardisation, a greater openness and a good dialogue with agencies because there is one national representation.

Your core question was about whether the system works. The Scottish Government has commissioned research on that from the University of Strathclyde. I think that it is due to report fairly soon, and I hope that it will give us some further clues on that. I can speak to the individual contributions of safeguarders having been immensely important in forming a child's future direction by presenting an independent overview. There are people with good skills, but I hope that we will get further clues about the overall pattern from the research that is being done.

Colin Beattie: How is the decision made to appoint a safeguarder? Does the hearing decide that a safeguarder is needed? Is there a pool from which the hearing decides to take someone? Does the hearing determine that the person has certain skills or is it just the next person in the pool who is appointed as the safeguarder?

Malcolm Schaffer: A safeguarder can be appointed by a pre-hearing panel, a children's hearing or a court. One of the important changes

that was made by the 2011 act is that, once the safeguarder is appointed, they sit in on all the proceedings until the end of the process. In the past, different safeguarders sometimes appeared in the court and in the hearing.

For their appointment, Children 1st operates more or less a taxi rank, and the person is appointed because they are the next one in the queue rather than because they have been specifically identified. The intention is to ensure that all safeguarders have the same breadth of skills, knowledge and experience.

11:30

Colin Beattie: However, at this point, the jury is a little bit out as to whether they actually do the job.

Malcolm Schaffer: It would be interesting to see what the research says.

Kate Rocks: From a local authority social work perspective, we welcome the standardisation and consistency that Children 1st has brought to safeguarding under the 2011 act. Children 1st has inherited a historical position. When safeguarders were commissioned, the standards were not on the table. Safeguarders were managed corporately within local authorities and sat outside social work services. There were lots of obvious reasons for that—for example, they needed a level of independence. A lot of hard work is going on to change the culture, but there remains confusion in Social Work Scotland about the role of safeguarders and we need to work through that.

When there is a point of conflict in the hearing room, it is more likely that a solicitor or safeguarder will be brought in, which can delay a decision for the child. It has become an issue around permanence planning when the default position is to ask a safeguarder. Social workers really struggle with that, because it is almost as though the report that they have presented is not robust enough to allow a decision to be made. I have read the reports of cases in which that has happened and have been surprised that we asked for a safeguarder. I think that it is a result of confusion and adversarial situations.

Although the 2011 act has been great, social workers do not get access to safeguarders' reports. Sometimes, the first time that we see them is at the hearing. The safeguarder may have consulted us through the report phase, but we work on the presumption that they will let us know their recommendation and the outcome, and that does not happen consistently nationally.

At the start of the trail, the social worker acts on behalf of the children's hearings system to produce a report but they are not necessarily kept up to date with any decisions that are made, although it is the social worker who often has to manage the dynamics within the family. For example, the parents might say, "The safeguarder says this," and that might be the first time that the social worker has heard it. There is a need for more clarity on the role of safeguarders.

Jennifer Davidson: That echoes the concerns that I raised at the beginning of this session—which have been repeated around the room—about the misunderstanding of roles. Our research on safeguarders revealed the specific issue that Kate Rocks mentioned about panels choosing to request a safeguarder when there is conflict in a hearing. Panel members can misunderstand the role of social workers, but social workers can also misunderstand the role of safeguarders and panel members.

One of the recommendations of our research was that we look at ways in which panel members' confidence in the decision-making process can be strengthened, and that is part of a range of approaches that are being taken at the moment. Panel members recognise that the request for a safeguarder may be made when a decision feels too difficult to make at the time, not necessarily because the report is not of sufficient quality.

The Convener: My final question is for Boyd McAdam and is about the feedback loop. How is it working in practice and how valuable is it in ensuring that compulsory supervision orders create good outcomes for children?

Boyd McAdam: I have to apologise to the committee for landing 220 pages on it two days before this round-table meeting. However, we were in the process of preparing the first report and we thought that it was better to get it out so that the committee could see it.

It has been a major challenge just to identify what information is captured within local authority systems. We have had support from the SCRA and local authorities in pulling the report together but, as it highlights, we do not have routine oversight of how hearings decisions are implemented. From the data that has been presented to us, we have been able to capture information about only 1 per cent of compulsory supervision orders. There is, therefore, a programme of understanding how we can better capture that information routinely. That is not to say that social workers and line managers are not working with the children, but the management information just does not seem to be there and there is an awfully long lead-in time.

I think that local authorities have started to work on that information and have established a baseline that shows that there are areas for improvement. The 2011 act gives me the authority

to stipulate what information should be provided, but I need to understand what information is meaningful and what impact providing the information will have on local authority staff. Things are not working yet, but we have started a process. However, because we have no data, we are dependent on other organisations.

The Convener: The process is pointless at this stage if you have information on only 1 per cent of the supervision orders.

Boyd McAdam: The report has highlighted that there are issues even in the 1 per cent of cases involving secure care authorisations and that we need to understand better what is happening in practice. We are working with the data collectors to move towards the provision of information on all compulsory supervision orders, but we have quite a way to go. Having gone through the process for the first time, we think that the next report will be produced in June and that there will be another report next year, which will be based on the data that we can capture at the moment. It is a lengthy process, and I do not think that the feedback loop is working as Parliament originally intended, but we are making a start on it.

The Convener: Thank you for that. If anybody wants to read that 220-page document, it was laid in the Scottish Parliament information centre on Monday.

I thank everybody for their attendance this morning at another useful evidence session. The Minister for Childcare and Early Years, Mark McDonald, will appear before the committee in a fortnight, and we will raise with him some of the issues that have come up in the meeting today. I say to Daljeet Dagon that, depending on the response of some young children, we might well speak to them next week, when we will also speak with some teachers who have dealt with the system. Again, I thank everybody for their attendance and their evidence.

11:37

Meeting continued in private until 11:59.

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