OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Thursday 20 February 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
7th Meeting 2020, Session 5

CONVENER

Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sheriff Fiona Tait
The Hon Lady Wise

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Justice Committee

Thursday 20 February 2020

[The Deputy Convener opened the meeting at 09:00]

Children (Scotland) Bill: Stage 1

The Deputy Convener (Rona Mackay): Good morning, and welcome to the seventh meeting in 2020 of the Justice Committee. We have apologies from Margaret Mitchell and Fulton MacGregor. On behalf of the committee, I thank Jenny Gilruth for all her work on the committee and put on record our best wishes to her in her new role as a minister.

Agenda item 1 is consideration of the Children (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome our witnesses for this morning's evidence session, who are the Honourable Lady Wise, Sheriff Tait and Andrew Campbell, legal secretary to the Lord President, who is here as a supporting official. We have around 50 minutes for the evidence session, so I remind members to keep their questions brief and I ask witnesses to keep their answers succinct wherever possible.

John Finnie (Highlands and Islands) (Green): Taking heed of your suggestion, convener, I will roll a few questions together.

I want to ask about children's participation in decisions that affect them and, in particular, about removing the presumption that only children aged 12-plus can be asked for their views. What would be the practical consequences of that? Perhaps you could roll into that your thoughts on the possible new presumption that all children should have the right to express their views. The Children and Young People's Commissioner Scotland believes that all children have the capacity to form a view, and Scottish Women's Aid believes that there should be a right for all children to express their views. What would be the implications of that?

The Hon Lady Wise: I thank the committee for inviting us to give evidence. I am sure that the committee appreciates that, for constitutional reasons and due to practical and programming problems, it is quite difficult for sitting members of the judiciary to appear before a committee in this role. I am grateful to our administrations for releasing us to do this. Given the importance of the bill, we have made an exception on this occasion, as we would like to assist you as much as we can.

John Finnie: It is much appreciated.

Lady Wise: My answers will obviously be limited to my experiences as an individual judge, although I am familiar with and supportive of the written submission that the committee received from the senators of the College of Justice.

I am supportive of the removal of the legal presumption in relation to children aged 12 and over. The response of the senators was supportive of that, too.

On a practical level, we already elicit views from children who are younger than 12 and, sometimes, from those who are as young as seven, eight or nine. The concern about the presumption in relation to age and maturity at the age of 12 is that it could be interpreted as a disincentive to elicit views from children who are younger than 12. We have not had a practical problem with that, but we welcome the removal of the presumption, in that it would clarify that a case-by-case approach should be taken. Every child case is different, as is every child, because their circumstances and level of maturity are different.

We already take a case-by-case approach, and we intimate cases to all children unless we consider that they are too young or immature to understand or that they lack legal capacity. Removing the existing presumption would not have much of a practical effect, as far as the Court of Session is concerned—I will let Sheriff Tait speak about the practice in the sheriff court—so, for us, the practical implications would be few.

Changing to a positive presumption might be considered a matter of drafting, in which the judiciary should not be involved. There are various ways of expressing such things. A provision could say that, unless a child is insufficiently mature or lacks capacity, they should have the opportunity to express a view. Alternatively, it could be expressed as a positive presumption. Concerns have been raised about the difficulty of having such a presumption, because it would encompass all children—from babies onwards—unless they were made exempt. I will let Sheriff Tait speak to this in more detail but, if all children were to be encompassed by a positive presumption, there is a view—others might have already expressed it to the committee—that there would then need to be some form of capacity examination in every case, rather than simply leaving that to the discretion of the court, as happens in the current situation.

Sheriff Fiona Tait: I echo what Lady Wise has said. The existing presumption was put in place when the Children (Scotland) Act 1995 came into force, and since then we have moved on by some way. Sheriffs are now much more mindful of the

ability of children who are younger than 12 to express their views. The committee might be aware that, recently, a lot of work has been done on the use of form F9. The whole purpose of that, and the message from the training provided by the Judicial Institute for Scotland at the time, was to remind sheriffs that much younger children can express their views, and can do so in different ways. That has raised awareness of the ability of younger children to give views.

I have no difficulty with removal of the existing presumption, but having one to the effect that all children are able to give their views would not necessarily be of benefit. Because of the statutory test, sheriffs are mindful always to give consideration to children's views being taken where that is practicable.

John Finnie: I would like to follow up on one aspect. I do not mean this in any pejorative way but, for those on the bench, what training is provided on engaging with children whose views they are to elicit? The suggestion is that a one-to-one approach should be taken with such children, many of whom might have suffered adverse childhood experiences or might find the whole process traumatic. Sheriff Tait has mentioned the training associated with the use of form F9, but could, or should, more be done in that regard?

Sheriff Tait: In my experience, it happens fairly infrequently that sheriffs meet children to take their views. On training more widely, I point out that the Judicial Institute for Scotland runs a regular programme on aspects of child law, a key feature of which is consideration of various ways in which children's views can be taken.

Would the committee like me to expand on the difficulties involved in sheriffs meeting children to take their views, compared with other methods of eliciting those views? There might be questions on that process later.

John Finnie: Perhaps you could do so briefly. You have rightly identified that children are all individuals with their own circumstances and set-ups.

Sheriff Tait: The important point is that each case is looked at individually. Quite a lot of information is available to the court from the written pleadings and the submissions of parties' representatives. Also, the parties themselves are often present at hearings when we explore how such views should be taken. Therefore quite a lot of information is available about any individual child.

The concern about sheriffs or judges meeting children is not necessarily limited to the aspect of training. If the judge is to meet the child and take their views, there might be a tension because, ultimately, it is the judge who has to make the decision, and that is based on a number of views—the child's views are not the sole factor and not necessarily determinative.

There could also be an issue in relation to transparency, because it is important that the child's views are available to parties so that submissions relating to those views can be made. There is always the possibility of a challenge to the judge's representation of the child's views, which could result in a difficult position.

Lady Wise: I will add to that, although we might be straying into questions that you have on child welfare reporters.

John Finnie: Yes—there will be questions on child welfare reporters.

Lady Wise: We can deal with those later. The important message is that, in our experience, it is very much for the individual judge to decide the method for seeking the child's views, in conjunction with the representatives who make submissions about that.

In the Court of Session, we deal with a number of types of child cases. We have international child abduction cases in which children have allegedly been removed from their country of habitual residence and might have a convention-relevant objection to return to the other country. We deal with cases in which a parent wishes to move across the world—to Australia, for example—and the children's views on that are elicited. We also have domestic cases in which there might be allegations of abuse and in which the children have to be questioned carefully.

In every individual case, our experience is that what works best is for the judge who is presiding over the case to decide whether someone with expertise in speaking to children, such as a child psychologist, requires to be instructed; whether a member of the bar is best placed to elicit the views because of the acrimonious nature of the dispute; or—this happens extremely rarely and is not something that we tend to do in the Court of Session—whether they should speak to the child themselves.

There are different ways in which to elicit children's views, but we can come back to that when we talk about child welfare reporters, the use of whom is one of the most common methods to elicit the views of children, as well as to look at other matters. The important point is that there should not be a one-size-fits-all approach; we have to have the discretion to choose how best to elicit those views.

The Deputy Convener: Section 15 of the bill is about explaining decisions to children. How would that work in practice? We received a submission from the Sheriffs Association, which said that the

duty could be "unduly onerous". What is your opinion on that?

Sheriff Tait: It is important to think about how it would work from the child's perspective. A number of decisions in relation to a child are made in the course of an action. Rarely—although it is possible—some of those might be pre-service; for example, emergency orders might be made before the action has been served. Orders might be made on an interim basis at an early child welfare hearing while further information is obtained. A number of decisions might be taken, so there could well be a concern about a child's ability to cope with the regular meetings that would be necessary for those decisions to be explained. You will appreciate that children are not typically present at those hearings, so there would necessarily be a time delay before a decision could be explained to a child, and it is likely that, before that, the child would meet a parent who would indicate what was going to happen.

From the child's perspective, there would be a concern about how exactly it would work. It is very much down to the individual child; some children might welcome it, but others might find the situation intimidating and possibly unwelcome.

The Deputy Convener: Who would be best placed to explain those decisions? You said that actions can be quite complicated and have different stages. You mentioned a parent, but what if the parent did not understand?

Sheriff Tait: If there is a concern that, because of the dispute, the parents are not able to safeguard the child, that is the type of situation in which a curator might already be appointed to the child.

09:15

The Deputy Convener: However, in principle, you agree that the child should know why the decision has been made and how it has been made.

Sheriff Tait: Yes, but I would have concerns about a situation in which a report is made to a child on a regular basis. It depends on the individual child. We must be careful not to pull the child too much into the proceedings. That could be a burden for the child.

We must also remember that not all the information that informs the court's decisions is apt to share with a child. For instance, there might be separate criminal proceedings or allegations, and we should carefully consider whether it is appropriate to share that information with the child.

Lady Wise: I echo that. The concern of the senators of the College of Justice is the mandatory nature of the provision as drafted. At present, if there is a concern that a decision of the court would be inappropriately conveyed to the child or that it would not be explained properly in the adversarial process, parties can bring that to the court's attention. Where there is a child welfare reporter, the reporter might highlight that and be instructed to convey the decision to the child. Only in the rarest of cases would a parent with on-going responsibility for a child not be in a position to convey the decision to the child. Parental responsibilities stretch to having to guide the child through difficult situations, such as the outcome of a court process. If the court was to take on that new responsibility, a number of practical problems and challenges would arise but, at the moment, we do not perceive problems that have to be addressed. We do not have reports of children not having decisions explained to them in a way that allows them to move on after a litigation.

Liam McArthur (Orkney Islands) (LD): I will stick with the sharing of information. The Scottish Government originally consulted on potential legal provisions for the sharing of confidential information where that was seen to be in the best interests of the child and where the child had an opportunity to express a view. Those provisions were not taken forward. We have heard concerns from some stakeholders that highly sensitive information that a child provided in the expectation that it would not go out of the room could now be brought into scope. How is that confidential information currently managed? Are there concerns that the bill does not go further to protect the confidentiality of sensitive interactions with adults in the system?

Sheriff Tait: In a case where there are sensitive issues, we anticipate that a child welfare reporter or curator would have been appointed. When a child welfare reporter is appointed, a detailed form F44 gives careful directions to the reporter. One section of the form deals with the issue, in the first instance, of whether the children's views should be reported separately to the court and therefore held as confidential. At the child welfare hearing, when that report is available and the views are separately available to the court, there will require to be a discussion in relation to the status of the views. Where appropriate, the views must be shared in a way that is in the best interests of the child and, in so far as possible, mindful of the issue of confidentiality. You will appreciate that the court is making a decision that is based on information, so it has to give some indication of the factors that have informed that decision.

Liam McArthur: One concern was about the proportionality of the information that is shared. Rather than handing over case files lock, stock and barrel, the information that is relevant to a particular case could be extracted and shared appropriately, but other sensitive information that

has no bearing on the case could remain confidential.

Sheriff Tait: That is going beyond simply the views of the child.

Liam McArthur: Yes.

Sheriff Tait: The recovery of documents would be by court order. There would be an application involving a specification of documents and the court would give careful consideration to the information that is being sought and how it would assist. Mechanisms for confidentiality are in place for document recovery for disclosure, and that is managed by the court.

Lady Wise: Liam McArthur mentioned recovery of files and their being handed over lock, stock and barrel. That does not happen under the current system, because—unless the child is a party to the proceedings, which is very rare—documents are recovered for the process and are dealt with sensitively and appropriately by the representatives, the judge and everyone in the courtroom. We also anonymise children's cases. Therefore, when we reach the stage of a court decision or determination, there is nothing to identify the child, and sensitive or confidential information is treated in a way that means that there is no identification of the child.

Liam Kerr (North East Scotland) (Con): Good morning. If a court order has been disobeyed and the court is considering a finding of contempt or a variation of that order in response, section 16 of the bill imposes a new duty to investigate the circumstances behind the breach of the order. Some of the evidence that has been submitted to the committee has supported that duty and suggested that that does not currently happen in an investigation. On the other hand, the Faculty of Advocates has suggested that that investigation will happen anyway. We have received other evidence that suggests that such an investigation could prevent robust enforcement and encourage people to disobey the initial order. What is your view? Can you help the committee to understand what currently happens?

Lady Wise: We have recent experience of contempt of court orders that relate to children, whereby the courts have made orders and they have not been adhered to. If a child has not been handed over from one parent to the other or from one jurisdiction to the other, we would deal with that case in the Court of Session. Currently, in those proceedings, there is always an opportunity for the party who is said to be in breach of the order to respond. It is important that the defence that is typically stated is that the breach of the order was not wilful—that it had perhaps been too difficult to encourage, persuade or direct a 12-year-old child to go along with the order that the court had made. If the concern is that the current procedures do not take into account that there might be circumstances outwith a parent's control that mean that an order could not be obtempered or complied with, that consideration is already built into the current way that we look at alleged breaches of orders.

The provision, as currently drafted, could read as an invitation to a person who does not wish to comply with an order to raise the question of variation or discharge of that order as an answer to an allegation that they had breached it. I reassure the committee that cases in which it is said that someone has failed to obey an order or has breached an order are dealt with carefully. There is an opportunity for the person against whom the allegation has been made to be heard, to be represented and to address the allegation fully. The court would never impose any sort of punishment without being satisfied that it had conducted a fact-finding exercise.

Sheriff Tait: I echo that. It is clear that the court will make a decision in the best interests of the child, so it must be of concern if a parent is not prepared to observe that order. If a parent considers that the decision is not in the best interests of the child for whatever reason, they have the right to appeal the order. It is important that a proposed section of the bill does not confuse an appeal against a decision with the proceedings that look at the failure to obtemper.

Liam Kerr: I appreciate that you might not want to answer this question directly, but is it your view that section 16 might be unnecessary and that the committee should consider not agreeing to it?

Lady Wise: The view of the senators of the College of Justice, as expressed in their submission, was that the provision is unnecessary. That was for the reasons that I have explained.

Liam Kerr: I am grateful for that response.

In 2018, the Scottish Government consulted on alternative sanctions, but they do not appear in the bill. Do you have a view on the sanctions that are available and the process behind the sanctions? Could those problem-solving approaches have been in the bill?

Lady Wise: It follows from the answer that I have just given that our experience is that the current procedures, with the opportunity to be heard and the court's wide discretion to impose whatever sanction is appropriate, are adequate.

Sheriff Tait: Again, I echo what has Lady Wise has said.

Liam McArthur: Thank you very much.

Shona Robison (Dundee City East) (SNP): I return to the issue of child welfare reporters, which

we touched on earlier. I have a number of areas to explore, the first of which is the local or national lists. You will be aware of the discussion about them. There are concerns about the lack of consistency across the country and issues around training requirements, skills and experience, and the quality and costs of child welfare reports. Is there merit in changing the approach? If you think that management of the lists should remain local, how could those issues be addressed?

Sheriff Tait: Currently, we have a local system, and my experience of that system is that it works well. We have a number of experienced child welfare reporters, and the quality of reports that they produce is high. It is accepted that training would be of benefit, and the focus should be on training rather than on changing the type of person who is appointed. When we look at individual cases, it is helpful to know the local skills and who the reporters are, and to have the discretion and flexibility to appoint a reporter who has skills that would be of benefit in a particular case. The flexibility that we currently have is of value, but training is, of course, always to be welcomed.

09:30

Shona Robison: Could those without a legal background—a psychologist, for example—have that set of skills, as long as there was training?

Sheriff Tait: Yes. Currently, the court considers who is the most suitable person. In more complex cases or in light of the needs of a specific child, that might be a child psychologist. We have that flexibility. In some—although relatively few—circumstances, a report might be sought from the social work department. We do not appoint only solicitors as child welfare reporters; other parties can be appointed in appropriate cases.

Shona Robison: Issues have been raised about the scope of the reports that courts request. Could a court routinely ask a child welfare reporter to consider a child's relationship with other family members, such as siblings or grandparents? Such issues have been raised in the evidence that we have heard.

Sheriff Tait: When a decision is made to appoint a child welfare reporter, the pleadings for both sides are available to the court, which also hears oral submissions. The court will be aware what the issues are before the hearing. It would know if there was an issue to do with maintaining contact with the wider family and whether that would benefit the child. If that is a specific issue, the court can direct the child welfare reporter to interview the relevant parties and report on that. In my experience, reporters look holistically at the child's situation, so we tend to know about the significant roles of other family members.

Shona Robison: The bill's policy memorandum suggests that fee rates for child welfare reports

"could be set in a variety of ways such as by using an hourly rate; by report ... or by page".

Do you have a view on the setting of fees?

Sheriff Tait: I do not think that it would be appropriate for me to comment on that. I am not involved in the fees.

Shona Robison: You said earlier that, in your experience, the system works reasonably well. Do you accept that that is not necessarily the case elsewhere? In the evidence that we have heard, concerns have been raised about consistency, training and quality. Although your experience has been different from that, do you accept that that is not the case elsewhere?

Sheriff Tait: Again, it is difficult to comment on that. I have sat in a number of sheriff courts in Scotland, and I have not found a problem with the quality of the reports.

Lady Wise: A number of issues arise from the proposals on child welfare reporters. A child welfare reporter will normally be instructed or appointed at a relatively early stage in a case, before the court has conducted the ultimate fact-finding exercise. In my experience, the purpose of the child welfare reporter is to assist the court with an interim situation, pending final resolution of the case.

It might seem curious to some people that we send lawyers out to speak to children and to investigate the circumstances in which they live, but the lawyers in the case understand the backdrop to the dispute and that they have to deal in a particular way with allegations that have been made but which are, as yet, untested. They also understand that they cannot usurp the function of the court. It is not for them to tell the court what to do or even, in most cases, to recommend what the court should do; they provide information that the court cannot get for itself. It is for that reason that the current system, in which there is in the court a list of those who are willing and able to carry out that function and have the necessary protecting vulnerable groups certification, is a helpful method of being able to regulate whom we send out for a particular exercise.

I will not repeat what I said earlier about the very different types of case for which we might have to do that. It is, of course, helpful that there is a variety of people on the list, whether or not they are solicitors—or advocates, as they usually are in the Court of Session—and it is helpful that the court maintains the list, because there would be practical difficulties if that were not within the court's remit. That works well at the moment.

The judiciary has repeatedly raised the training issue. It is important that all those who are sent out to examine the circumstances in which children live, whether or not they also elicit the views of the child, are properly trained. In the Court of Session, we have the benefit of the very active Advocates Family Law Association, which has provided training for its members—I understand that it is willing to continue to do so. There is a good relationship between bench and bar, such that the court is satisfied that those who are currently on the list are suitable and appropriate. I am not quite sure how that would work if the list was not maintained and regulated by the court.

I absolutely agree with Sheriff Tait that the judiciary cannot comment on financial matters or their implications. However, in the Court of Session in particular, it is less likely that the parties will qualify for legal aid. In our system, the default position in our court rules is that one party or the other bears the burden of the cost of a child welfare reporter in the first instance, and the court then has the power to regulate that later on in dealing with the expenses of the case.

Shona Robison: For absolute clarity, you talked about trying to match the appropriate person to the case. Are you saying that they do not necessarily need to have a legal background, as long as they have the skill levels and qualifications and checks are in place?

Lady Wise: Yes. We find that having legally qualified child welfare reporters works well for the reasons that I have explained—their understanding of the backdrop, and the nature of untested allegations and the adversarial process. They will be lawyers who already conduct cases in the Court of Session, but they would be independent for that role. Like Sheriff Tait, I have no difficulty in principle with somebody who is not legally qualified in a suitable case. I gave the example of appointing child psychologists in appropriate cases. There have been situations in which that particular expertise has been of great assistance to the court.

Shona Robison: Okay. Thank you.

The Deputy Convener: I remind members and witnesses that we are up against the clock, so we should keep our questions and answers succinct.

Liam McArthur has a supplementary question.

Liam McArthur: Panel members might have seen additional evidence that has come from Dr Sue Whitcombe, through the British Psychological Society. She said:

"The Law Society of Scotland **Standards of Conduct Rule B1.10** ... clearly states that"

solicitors

"must only act in those matters where they are competent to do so.

For many years, solicitors have been drawing conclusions and making recommendations on matters of child welfare when they do not have the appropriate professional skills, nor competence, to do so."

Although the understanding of the legal process and the backdrop is very much the preserve of solicitors, the point that is being made is that their strengths do not necessarily lie in matters of welfare and getting to the understanding of such issues as attachment, and that may call into question their competence to do it. I would welcome any comments from the panel on those statements.

Sheriff Tait: It is my experience that, in more complex cases, for instance involving issues of attachment or psychological issues, child welfare reporters do not seek to reach a conclusion that is outwith their competence but signpost to further investigation. That goes back to the issue of a child welfare reporter normally being appointed at a very early stage. There might be certain factual disputes that a court needs further information about. In providing that further information, the child welfare reporter might take the position that there should be the instruction of a child psychologist or another form of therapist, or family therapy. In my experience, that is often reported back to the court. If a reporter were to seek to reach a conclusion that was outwith their competence, the court would be aware of that and concerned about it.

Lady Wise: It is not the role of the child welfare reporter to make recommendations about what should happen in the case overall. It is very much for the court to decide, through applying the legal test, what is in the best interests of the child. All that matters in child cases is what is best for the child. The child's welfare is the paramount consideration for the court. The purpose of any reporter—whether they are a trained child psychologist or a member of the bar—is to assist the court in having all relevant material and information before it so that it can make a decision. It is primarily an information-gathering exercise.

The Deputy Convener: I want to ask about contact centres, which are covered in section 9. In evidence to the committee, domestic abuse organisations and several children's organisations have questioned whether the courts should authorise contact between a parent and child that would, without professional supervision, be unsafe. Why are people referred to contact centres, particularly for supervised contact?

Sheriff Tait: I cannot imagine a situation in which a court would consider that it was in the

child's best interests to order contact if there was concern about risk to the safety of the child, so—

The Deputy Convener: I am sorry to interrupt, but do you accept that that happens? Supervised contact is regularly ordered at contact centres.

Sheriff Tait: I am sorry, but I am not certain about the circumstances that you are referring to, so it is difficult for me to answer that question. Contact centres are used regularly. Members will be aware that there are two forms of contact: supported contact and supervised contact. It is difficult to envisage that a court would order contact if it considered that that was not safe for the child.

The Deputy Convener: Okay. I want to ask about the regulation of contact centres. The submission from the Summary Sheriffs Association says that contact centres

"should not be disadvantaged by regulation",

but the Sheriffs Association says in its submission that

"Regulation of contact centres is welcomed in principle",

so there seems to be a bit of a disconnect there. We have heard some concerning evidence about contact centres from children who have experienced them and from women's and children's organisations. In the evidence that we have received, there is the almost unanimous view that there should be some sort of regulation of contact centres. Are you prepared to comment on that?

Sheriff Tait: I am afraid that I do not have direct experience of those concerns, so I do not think that I can assist further with that question. I am sorry.

Lady Wise: I do not have direct experience of contact centres, but I understand that they are a valued resource. In the sheriff courts in particular, orders will be made for contact to take place at contact centres. I suppose that the only concern about regulation would be about whether it would reduce the number of available contact centres. However, I do not have experience of them.

The Deputy Convener: Relationships Scotland, which provides the service in contact centres, as you know, said that there are sometimes gaps in the information that the contact centre gets from the court and the contact centre does not get as full a picture as it would wish of the family concerned. Do you agree that there is a gap there that should be addressed? Are you aware of any issues there?

09:45

Sheriff Tait: Again, that has not been fed back to us. I had one case where the contact centre reported a concern—before the contact started, at the point of the intake appointments—that it may not be suitable. That information was fed back and there were further inquiries. By that point, there had been some developments with the social work department and the contact took place under its supervision. That was a dynamic situation and the position had changed from the point when the court made the order.

That has been my only experience where a concern has been relayed from a centre, and it was relayed appropriately. It was not because of anything that happened there, as the contact did not start in the centre. There was a development and there was social work involvement after the order was made. The concerns that the centre raised were taken on board and alternative arrangements were made.

The Deputy Convener: I think that the concern is that, without regulation, there is no framework for standards throughout the country, so they can be different. People in one area will have one experience and people in another area can have a different experience. Given that we have heard some concerning evidence on the matter, do you think that the courts should have access to specialist risk assessments before they refer to a contact centre? Relationships Scotland has suggested that that might help.

Sheriff Tait: There are cases where risk assessments are undertaken. They are not undertaken routinely, but they can be undertaken where the facts in the case indicate that that would be appropriate.

Lady Wise: I do not have anything to add.

The Deputy Convener: Thank you.

James Kelly (Glasgow) (Lab): I have some questions on sections 4 to 7, which deal with support for vulnerable witnesses, and their practical impact on court time. Sections 4 to 6 concentrate in particular on the proof in cases and section 7 concentrates more on child welfare in family cases. Obviously, it is a concern if there are delays in court cases. Do you think that sufficient resources and infrastructure will be in place to provide the additional assistance without causing additional delays?

Sheriff Tait: We are used to a similar provision operating in the criminal courts, and it seems to operate without too much difficulty. The provision in relation to representation so that, where there are allegations of domestic abuse, a party is not questioned by the alleged perpetrator are certainly to be welcomed. Issues might arise in relation to child welfare hearings, which are important hearings before the court can come to a proof.

At present, when the court, normally though court staff, is made aware that there may be difficulties with parties being in the same room because of bail conditions or other factors, we can make arrangements for there to be separate waiting areas, for the parties to arrive at the hearing at different times or, perhaps, for there to be a shuttle hearing. Thus far, requests for such things have been made relatively infrequently, but we have been able to accommodate them.

James Kelly: Section 7 is about special measures that could be introduced. There has been a suggestion that the measures could affect problem solving. Can the measures be progressed without there being delays to the timescale for the resolution of cases?

Sheriff Tait: Witness support services will be important, so their availability will be an issue. The special measures will become an integral part of timetabling and the conduct of proofs, in the same way that they are an integral part of the conduct of criminal trials. They should not occasion delays.

Lady Wise: In family actions in the Court of Session, I have recent experience of using the provisions of the Vulnerable Witnesses (Scotland) Act 2004 to adopt the same sorts of special measures that we routinely use in the High Court—such as the use of screens, the presence of a supporter and evidence being given through a live link. We already look at those considerations. The prohibition on questioning by a party if there are allegations of the type that is mentioned in the bill is a useful addition to that.

James Kelly: Section 21 looks at child welfare when there are delays in court cases. Is that a helpful provision?

Lady Wise: A body of case law already directs us that any delay or protraction in proceedings relating to children is likely to be detrimental to their welfare. Therefore, the courts and the judiciary are already aware of that.

James Kelly: Is section 21 helpful in that regard, or is it not required?

Lady Wise: From my perspective, as a judge who hears such cases, I would not regard it as a necessary provision. It does not add anything to the existing position, which is that we are all well aware that delay can be disadvantageous to children. Children are at the centre of what we do in the courts. I do not know whether it would assist in resourcing, if it was felt that there were not enough courts or judges available. That might be more important in the sheriff court than in the Court of Session, where we have two dedicated family law judges, which works well. Unless there is a feeling that delays are being caused because there are insufficient judicial resources, I would say that at the moment this is a factor that is uppermost in our minds when we deal with child cases.

James Kelly: Is there a case for prioritising parenting dispute cases over criminal and civil cases?

Lady Wise: In the High Court and the Court of Session, criminal matters generally take precedence over civil matters. In the Court of Session, we are fortunate to have good administrative arrangements, and the keeper—the person who allocates the cases—always gives priority to a child's case. Other types of family cases are also given reasonable priority but not so much priority if they do not involve children. To avoid the delays that might have happened in the past, we already give priority to children's cases.

James Kelly: Thank you.

The Deputy Convener: In the few minutes that we have left, I will go back to the question of judicial training. Do you agree with several stakeholders who suggested that there needs to be greater judicial training on topics such as domestic abuse, child development and effective communication with children? What is your view on specialist family sheriffs or the creation of specialist family courts? Would that be helpful to address some of the issues with regard to delays that the courts are facing?

Sheriff Tait: Again, judicial training is managed by the Judicial Institute for Scotland. I am not certain whether it has given evidence in the current consultation, but I can say that it holds annual child and family law training sessions. In addition, in the past 18 months or so, all members of the judiciary—at every level—have undergone specific training on domestic abuse. I think that that training programme is now complete.

I am aware that the sheriffs principal and the Lord President have responded on the issue of specialist courts. The organisation of business is clearly within the remit—

The Deputy Convener: I am sorry to interrupt, but I want to clarify a point. Is the training that you mentioned mandatory or voluntary?

Sheriff Tait: The training on domestic abuse was mandatory and was undertaken by all members of the judiciary. It was a one-day course that was run with considerable input from Scottish Women's Aid and various other organisations. We attended in person and carried out various exercises, and there was also around five hours of distance learning in advance of that day.

Lady Wise: I go back to the issue of specialisation and having dedicated family courts and family judges. As I have already mentioned, in the Court of Session we have two specialist family judges, of whom I am one. In large sheriff courts—

such as Edinburgh, where Sheriff Tait sits—there is a similar regime.

In rural courts and those with fewer sitting sheriffs, it is more difficult to have absolute rules about specialisation. However, sheriffs are, of course, trained to deal with a wide range of civil and criminal matters. As Sheriff Tait has mentioned, additional training is carried out through the Judicial Institute for Scotland, on behalf of the Lord President, which works well.

The Deputy Convener: Thank you very much. That concludes our evidence session, which has been very helpful for the committee.

I suspend the meeting briefly, to allow our witnesses to leave.

09:57

Meeting suspended.

09:58

On resuming—

Justice Sub-Committee on Policing (Report Back)

The Deputy Convener: Agenda item 2 is hearing feedback from the Justice Sub-Committee on Policing on its meetings of 30 January and 6 February. As we are short of time, if members so agree, paper 3, which is the sub-committee's convener's report, will stand as the feedback from those meetings.

Members *indicated agreement.*

The Deputy Convener: That concludes our seventh meeting of 2020. Our next meeting will be on Tuesday 25 February, when we will hold our final evidence session on the Children (Scotland) Bill and will hear from the Minister for Community Safety.

Meeting closed at 09:58.

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