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Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 14 April 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
10th Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
Aileen Campbell (South of Scotland) (SNP)
Ken Macintosh (Eastwood) (Lab)
*Christina McKelvie (Central Scotland) (SNP)
*Elizabeth Smith (Mid Scotland and Fife) (Con)
*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)
*Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Tam Baillie (Scotland's Commissioner for Children and Young People)
Morag Driscoll (Scottish Child Law Centre)
Paula Evans (Convention of Scottish Local Authorities)
Heather Gray (Who Cares? Scotland)
SallyAnn Kelly (Barnardo's Scotland)
Carol Kirk (Association of Directors of Education in Scotland)
Fred McBride (Association of Directors of Social Work)
Louise Warde Hunter (Action for Children Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 5

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 14 April 2010

[The Convener *opened the meeting at 10:05*]

Children's Hearings (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I open the 10th meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones, BlackBerrys and any other electronic devices should be switched off for the duration of this morning's committee meeting.

I have apologies from Aileen Campbell, who is unable to join the committee today due to illness. She has been replaced by Dave Thompson. We also have apologies from Ken Macintosh, who is unable to join us today because he is on paternity leave. His wife gave birth to their sixth baby on Saturday—baby Ruth Elizabeth has joined the Macintosh clan. I am sure that we all wish Ken Macintosh and the baby well.

Our first and only item on the agenda today is the committee's continued consideration of oral evidence on the Children's Hearings (Scotland) Bill. I am pleased to welcome the first of two panels of witnesses this morning. We have been joined by Tam Baillie, Scotland's Commissioner for Children and Young People; Morag Driscoll, director of the Scottish Child Law Centre; Louise Warde Hunter, strategic director of children's services at Action for Children Scotland; SallyAnn Kelly, head of children's services operations at Barnardo's Scotland; and, last but not least, Heather Gray, chief executive of Who Cares? Scotland. Thank you all for your attendance this morning and your written submissions in advance of the meeting.

We will move straight to questions. I start by asking for your general views on the bill, whether its proposals will enhance or detract from children's rights and whether any areas could be considered further, to enhance the rights of children who appear at children's hearings.

Tam Baillie (Scotland's Commissioner for Children and Young People): I welcome the bill, which has been many years in gestation. Committee members will be aware that the review process that started back in 2004 has been through many twists and turns as well as two separate Administrations and that it has taken numerous different turns recently. I welcome the fact that we are now discussing the Children's Hearings (Scotland) Bill. I also welcome the general direction of travel and some of the major structural and process changes that are suggested in it. It is pretty complex—a series of tricky questions are being addressed and I am sure that I and other people will get a chance to discuss them. There are missed opportunities in some parts of the bill, such as the age of criminal responsibility and the extension of the hearings system to 16 and 17-year-olds. Some major things are addressed, but the bill will not address other matters. That is my general take on things: I very much welcome our being here today to discuss the bill and I welcome many of the proposals in it.

Louise Warde Hunter (Action for Children Scotland): Thank you for the opportunity to contribute to this discussion. In view of our recent work, including the reconvening of the Kilbrandon inquiry in 2003, I think that a number of Tam Baillie's points are well made. A key issue for us is the participation agenda, which must be not only put into action on the ground but enhanced and supported to ensure that it contributes towards a listening culture that truly involves young people. We need to move beyond a tokenistic notion of all that.

Secondly, again echoing Tam Baillie's comments, I believe that there is a very strong—indeed, unanswerable—case for extending the hearings system to 16 and 17-year-olds to deal with appropriate offences. After all, given the rates of reconviction, we all know the future for people in that age group who go through the normal criminal court.

Morag Driscoll (Scottish Child Law Centre): I echo those comments and add that the Scottish Child Law Centre has been particularly impressed with the receptiveness of the Government, and particularly the bill team, to the wide range of interests that have commented as the bill has been developed. We are very grateful for their willingness to listen. Indeed, based on my experience of working on many bills, I have found it unusual just how receptive people have been to the concerns that have been expressed about the hearings system.

However, although we welcome many things about the bill, we are particularly concerned that the reality of the child's voice has not been strengthened. The bill might have built in children's right to have a voice, but it has not addressed the practicalities of how the child—not, I point out, the elephant—in the room can have his or her say. We also strongly recommend that consideration be given to extending access to the hearings system to the vulnerable 17 and 18-year-olds who would benefit from it, leaving the sheriff courts and

higher courts to deal with more serious offences. I am sure that other issues will arise as we go on.

As I have said, we very much welcome a lot of the bill, but much of the devil will be in the regulation. Moreover, much of the bill simply rearranges the furniture instead of strengthening the system to get better outcomes for children.

SallyAnn Kelly (Barnardo's Scotland): Barnardo's Scotland welcomes the bill and is very pleased to be involved in the consultation. I certainly echo many of my colleagues' comments.

We are very interested in discussing further the real participation of children and their families in the hearings system, and I certainly think that, if we are seeking to modernise the system so that it lasts for the next couple of decades, we now have an opportunity to have the much broader discussion that we need on what it will look like for children and their families. We are also interested in having further discussions on how, if we are to make statutory bodies accountable, we can extend the multi-agency approach to protecting and supporting children beyond local authority boundaries. After all, in these modern times, much of what children rely on lies outwith the local authority area.

Heather Gray (Who Cares? Scotland): Who Cares? Scotland very much echoes colleagues' comments. Over the past 40 years, children's needs as well as the legislative and policy context have changed significantly and it is really good that the bill has started to reflect some of that.

We are also really pleased that the bill focuses on participation but I and Who Cares? Scotland share some of Morag Driscoll's concerns about how those rights will be enacted and how we will ensure that certain vulnerable children and young people can participate in the hearings system. We are particularly concerned about access to advocacy before, during and after involvement in the system and the support that children and young people receive to allow them to participate fully and their voices truly to be heard.

10:15

The Convener: Thank you for those comments, which take me nicely on to my next question, on the voice of children, which is an issue that you all flagged up. There are concerns that as the hearings system has developed and as an increasing number of people attend hearings, the voice of the children who attend is being drowned out and it has become almost impossible for children to be heard or even, sometimes, for it to be recognised that if a child says nothing they are telling you something by their silence. As organisations representing children, do you have a view on how we can ensure that the voices of children are more effectively heard by the hearings process?

Morag Driscoll: Yes. Our belief is that the process needs to be flexible. Children need to have the right to a choice. If they wish to take someone with them, it is their choice whether they take uncle Fred, grandpa, a lay advocate or their favourite teacher. It needs to be the right person for the child rather than a stand-alone advocacy service.

The other point, which I think was originally made by Maggie Mellon, and that people have agreed with, is that there should be a requirement for a stand-alone report to the hearing on the child's view. It does not have to be done by social work; it can be done by the person who knows the child best, whether it is granny, teacher or their key worker in an establishment.

Finally, we feel that children need more preparation time. There should be a duty on the panel chair—who I believe is now called the chairing member—to satisfy themselves that the child has had adequate opportunity to prepare and understands enough of what is going on. If that is not the case, the panel chair should delay the hearing, unless it is time sensitive. A stand-alone report might go a long way to satisfying the panel that the child has had adequate opportunity to prepare for the hearing. However, as it stands, if there are late reports, the child is just asked, "Are you happy to go ahead?" It would be a brave 10-year-old who said, "No."

Tam Baillie: We are asking a lot of the hearings process. Life-changing decisions are often being made and there are lots of people around the table. It is difficult for children to feel properly engaged in the process. I agree that there needs to be maximum focus on support for children and young people before they go into the hearings system. The best advocates for children are the team of people who should be working with the child or young person in the lead-up to that point. We already have policies in place in the getting it right for every child policy framework, which should have identified needs that are being met by a range of professional staff. The best support can be offered to children in the lead-up to the hearing.

There will, however, be cases in which no one can be identified to fulfil the advocacy role for a child or young person. For that reason, I am disappointed that the bill does not encompass a right to advocacy services. However, my overwhelming view is that children and young people's best advocates are those with whom they are familiar. I agree that time and energy needs to be put into that. I would hope that the combination of the reforms in getting it right for every child and the children's hearings will ensure that children are properly supported in the lead-up to a hearing.

The other tension is the speed with which a hearing is held. By ensuring that a child is properly prepared for the hearing, you do not want to create undue delay. It is important that the hearing happens as close to whatever prompted the referral as possible. Checks and balances need to be built in. I hope that due consideration will be given to other reforms, such as getting it right, to ensure that children receive support in the lead-up to what is essentially statutory intervention—as opposed to measures that can be implemented outwith the framework of the hearings system.

SallyAnn Kelly: Barnardo's Scotland would welcome the inclusion of advocacy for children in the children's hearings system. However, as with many other aspects of the bill, the devil is in the detail. We support the Scottish Child Law Centre's position that children should be spoken to and have their views taken about where that support best comes from. Tam Baillie is right to say that we need to be clear about the point in the process at which that kicks in. In putting in place appropriate support to allow children's voices to be heard and to help children truly to understand the process—children tell us that they simply do not understand the process; they receive letters out of the blue and do not know what they are about—we need to be careful that the protections for children complement the timescales for completing reports.

We might need to review time interval standards to ensure the proper participation of children. The better outcome is that children are fully involved in and understand the process, but that might squeeze some timescales that apply to report preparation. We know that delay in report preparation is another anxiety for children and their families, so we need to strike a balance.

Louise Warde Hunter: Action for Children surveyed a range of our service users and about 51 young people responded about their experience of the children's hearings system. It is important to let the committee hear a few of their key points about participation from their point of view.

One overwhelming view was that children who had a social worker or care worker who spoke up for them and who was on their side said that they liked that. Just under half wanted private time without a parent or carer; slightly fewer did not want that. I agree with Morag Driscoll that choice for the young person is incredibly important. Some young people said privately that they would feel anxiety about being away from their mum or other family member, but others felt that being able to choose was incredibly important.

Of the 78 per cent who had spoken up in their hearings, half thought that they were listened to. That is good news, but one in three—which is still far too many—felt that they were not listened to. Article 12 of the United Nations Convention on the Rights of the Child says that a young person has the right to be heard and to have their views taken into consideration on matters that affect them. It is not enough for the voice to be heard—the young person must understand how their views influence decision making in relation to them. That closes the loop.

I return to the heart of the issue about the language that is used. A high proportion of those surveyed felt that they understood what the panel said, but lots of references were made to jargon and difficult words that made it difficult for young people to understand proceedings. The young people who gave examples of what that felt like or what that meant had inferred that whatever messages the panel gave them were almost as equally threatening as they were positive.

Members can imagine that young people feel anxious when they go into a hearing. One issue that relates to participation and is way further upstream is how the people who are involved in the hearings system are recruited, trained and developed to work with young people in that environment. One young person made a telling comment about what they did not like. They said that the hearing was about

"Normal people thinking they know what you've been through but they don't know about your lifestyle".

There is something in that about young people still feeling in front of a panel an absence of empathy in the room. In the construct of the welfare environment, surely that empathy should exist. Appropriate training and development of those who are involved will be key to enhancing that. That is the upstream bit to make participation a reality.

Heather Gray: Children and young people in the hearings system should have access to independent advocacy, and what independent advocacy can do and what it can support them with should be explained to them.

I agree with Morag Driscoll. It is important that the child has someone they can trust. Often, we are working with children whose trust in adults has been completely broken. They are apprehensive about sharing information and what will happen to it. It is really important that we ensure that structures are in place to provide support for such children and to allow them to express their views through the hearing.

I absolutely endorse what Louise Warde Hunter says about the training of panel members. Young people frequently tell us that they did not understand what panel members said, that panel members did not understand about their lives and that they did not know how to communicate with

them. Not only is panel training vital; it is vital that young people are involved in it.

Morag Driscoll: There is a lot of agreement around the table today.

We have advocated that a simple, one-sheet, A4-sized piece of paper be sent to the child or young person, saying what the hearing is about and what the recommendations are. Children and young people get for their hearings a stack of paper that would choke a goat. It would be intimidating for a literate adult, so how a nervous, damaged child is supposed to cope with it I do not know. Parents have a hard time getting through it.

My suspicion is that a simple report for the child would go a long way to help the family member or other untrained person to support them. It is also my suspicion that the families would all read that report and gain more from it than they do from a stack of papers written in formal language.

Karen Whitefield: Who would be responsible for preparing that report?

Morag Driscoll: If somebody prepares a report for the hearing, is there any reason why they should not prepare a child-friendly synopsis to go along with it?

Kenneth Gibson (Cunninghame North) (SNP): The Children (Scotland) Act 1995 sets out grounds for referral to a hearing. Those are being changed: some of the obsolete grounds are being removed—for example, glue sniffing and incest are being taken out—but domestic violence is being added. Are those the right grounds to be removed and added? What further changes could be made?

SallyAnn Kelly: Barnardo's supports a domestic violence ground being included in the bill. We work every day with children who live in situations of domestic violence. I was in a local authority for nearly 20 years and worked with the hearings system. When children went to hearings for cases in which domestic violence was a factor, it was always a tension for me that the mother—with whom we sat on many occasions—was presented with a ground of lack of parental care, which, in fact, related to domestic violence. The addition of domestic violence remedies a highly unfortunate aspect of the previous legislation.

Tam Baillie: Domestic abuse has been the main reason for increasing referrals, so it is appropriate that our grounds for referral reflect that fact. In fact, there were some attempts earlier to try to bring domestic abuse into them, so it is welcome.

I have some issue with the overlap with the Criminal Justice and Licensing (Scotland) Bill, which is currently going through the Justice Committee. That bill contains a proposal for the minimum age for prosecution to be raised to 12. I am entirely in agreement with that. However, I urge and am encouraging the Government and the Justice Committee to consider raising the age of criminal responsibility—that is, to raise to 12 the age at which a child can be referred to the children's hearings system on the offence ground—and I do not see any evidence that that crossover has been considered. It would be a significant move and a really helpful development in the operation of the children's hearings system.

One of my disappointments is that although specific grounds of referral have been considered, there has been no crossover with what could be a significant development through the Criminal Justice and Licensing (Scotland) Bill.

10:30

Morag Driscoll: We welcome the change with regard to domestic violence. It is an extra blow for a parent who is suffering domestic violence to be accused of failing to care for his or her children who have been suffering the same violence.

One issue that has not been addressed and which should be considered relates to forced marriages. You might just be able to shoehorn in a young person at risk of being forced into marriage but it will be difficult to find room for their siblings. It is a small but growing issue in Scotland and it should be included in the bill.

I am also not quite sure how you would fit in some of the old bad association and moral danger grounds for referral set out in section 52(2)(b) of the 1995 act, which were useful for children who were getting into gangs but were not actually offending. It is worth seeing whether another ground could be tweaked to allow that to be covered.

We would very much like children to be decriminalised, because criminalisation serves no useful function in helping the child to address his or her offending behaviour. Frankly, when it comes to bringing children before a hearing, we would like one simple ground: the behaviour of the child—rather than their offending, their getting into drugs or alcohol and so on. What is wrong with that?

We must also address the offence grounds for children who come to hearings showing up on disclosure certificates in later life. There is no reason why a 35-year-old's disclosure certificate should show the shoplifting offence that they might have committed when they were 12. We need to address a number of issues that are having an unwarranted effect in later life.

As for the rest, I will leave that to my colleagues.

Tam Baillie: I thought that it might come up later, but I want to add weight to comments about the rehabilitation of offenders and offences remaining on criminal records. For the time being, I support calls for the issue to be examined, because the reform must be implemented.

Kenneth Gibson: So, apart from the grounds for referral, the witnesses seem generally happy with the way in which the referral system works.

I find it difficult to ask this because each question opens up a can of worms that I am aware other colleagues will ask about, but do the witnesses have any other specific comments about referral?

Tam Baillie: The issue is what happens before the hearing. There are encouraging signs that consideration is being given to referrals prior to the hearing. As the vast increase in referrals has swamped the system, the introduction of administrative considerations before a referral is made to the hearings system will be helpful. Of course, such moves are part of the other reforms to children's services and are very welcome because, after all, referrals should be made to the children's hearings system because a child is in need, or is thought to be in need, of statutory measures rather than as a way of flagging up concerns. There should be other ways of flagging up concerns and I am encouraged by certain practice developments that will help the hearings system to focus on the children who most need statutory intervention.

Morag Driscoll: For some time now I have been banging on about another concern about offence grounds. If an adult who faces a series of alleged offences pitches up at the sheriff court without a solicitor, the sheriff will say, "I think I'd like you to see the duty solicitor." The duty solicitor will have a quick look at the summons and the evidence and advise that person whether they should plead guilty. Children who face offence grounds at a hearing do not have that privilege. That is especially the case with offences under the new Sexual Offences (Scotland) Act 2009, in respect of which the only evidence is likely to be what the children themselves have said—and we should remember that they will not have had a solicitor present when they were questioned by the police. The child's mum might say, "If ye did it, hen, you should say." There might not be sufficient evidence. If they accept the grounds, they accept that they committed an offence without ever having any legal advice. We would regard that as intolerable for adults. The only time the child will see a solicitor is if they deny the grounds for referral. If we are to criminalise children at all we should extend to them the same protections that we extend to adults who are accused of offences.

The Convener: That takes us on to more detailed questions about criminalising children.

Christina McKelvie (Central Scotland) (SNP): Morag Driscoll's comments are impeccably timed, because I am just about to ask about criminalising children.

In our first evidence-taking session, on 17 March, I quizzed the bill team on the impact of the Criminal Justice and Licensing (Scotland) Bill on the age of criminal responsibility and grounds for referral and on how that impacts on the Children's Hearings (Scotland) Bill. It was interesting to hear some of your comments on that, but I want to explore a wee bit more the issue with the retention of offence grounds and how we can remedy that, because it is vital.

I have a young constituent who wants to get into the police, but he did something when he was 14—something quite mild in the grand scheme of things—and the police will simply not accept him. I am concerned with that impact on a young person's life and how we deal with it. I would like to get the witnesses' thoughts on that before I go into more detail.

Morag Driscoll: It might be simple to change the offence ground to a ground that the child's behaviour was such that, if they were an adult, it would have been a criminal offence. The non-criminal grounds of referral do not show up. The only children who come to a hearing because they have offended are those who are in need of compulsory measures of care because the rest of their life is in a mess. The child who comes from a stable home and is getting good guidance but commits an offence will not come to a hearing; the reporter will take no action. That means that we are slamming vulnerable kids with a double whammy.

Perhaps we need to reconsider why we use offence grounds. When I was a reporter, I could use the ground, which is now available, that the child was out of the control of a relevant person. I certainly used that ground with children who offended under the age of eight if other things were going on, because I was looking at their needs, not their behaviour.

By continuing to use offence grounds, we are considering the behaviour, not the child. Perhaps we need to get our heads around the fact that just because a child is not accused of a criminal offence does not mean that we are patting them on the head and letting them off with it. We want to deal with the child in need. Their behaviour is the reason why they come to our attention. It is the child, not the offence, who comes to the hearing, unlike the adult who offends. Perhaps we need to get our heads around whether we need offence grounds to be offence grounds.

Tam Baillie: That is precisely the issue that I was getting at when I spoke about my disappointment with the bill's reach. Coincidentally, the Criminal Justice and Licensing (Scotland) Bill proposes to raise the minimum age of prosecution. I suggest that we go further and that the age of criminal responsibility should match the minimum age of prosecution. I would like it to go beyond that, but if it was to match the minimum age of prosecution for now, that would introduce some consistency. I agree that we should look way beyond that.

This is a highly contentious matter but, for me, it is important to how we view children and young people, criminalise them and value them. As a starting point, there is an opportunity—a missed opportunity, as it stands—in the bill to address that. If the committee's deliberations lead it to conclude that it would be sensible at least to match the minimum age of prosecution, I urge it to make representations to the Justice Committee to that effect. This committee is the lead on the Children's Hearings (Scotland) Bill.

The associated issue is the fact that, as the law stands, the Rehabilitation of Offenders Act 1974 has lifelong consequences for children as young as eight. That is another issue that the committee could consider. It could seek guidance from the Government on its detailed plans in regard to that act. That is one of the consequences of having such a young age of criminal responsibility—it has very long consequences for children and young people.

Christina McKelvie: In our previous evidence session, several members asked about that. My colleague Ken Macintosh asked a specific question about it. We have received feedback from the Government, which states that ministers are

"currently considering the Scottish Government's position regarding the retention of offence grounds, from children's hearings, on a criminal record certificate".

So the Government is considering that. What participation have you had in that consideration and how is it being done? How would you like it to pan out?

Tam Baillie: The committee will have the opportunity to ask the minister about the issue, and I urge members to do so, because it is significant and can have lifelong consequences for children and young people. You say that the Government has indicated that it is working on that, but it has taken a long while. As I said, the bill has been six years in gestation. If work is being done on the issue at Scottish Government level, it would be most helpful for the committee to know exactly what stage those deliberations are at and to get detailed answers, as the issue has an impact on all children and young people who go through the hearings system.

Morag Driscoll: I will give a little scenario. Somebody could be convicted or go through a hearing on offence grounds in relation to the new offence of consensual sexual activity between young people. Imagine the impact that that would have on them in later life if they wanted to be a nurse, teacher, nursery worker or child care worker, or if they wanted to help their daughter's brownie group. Talk about unintended consequences. We could be affecting the future of those already vulnerable kids who have a lot of strikes against them. Someone might pull themselves out of the mess that adults made of their childhood and want to make something of their life by joining the police or the armed forces or being a teacher, but that offence might show up on a disclosure certificate. Is that even close to being proportionate to the offence of having had consensual sexual activity when they were under 16?

Tam Baillie: DNA retention is another issue that is being considered as part of the Criminal Justice and Licensing (Scotland) Bill. I have serious concerns about the approach to the trigger offences for the retention of DNA, one of which is currently assault. The scenario that I have given in evidence on that bill is that, in theory, an eight-year-old could be charged with assault, and if that was a trigger offence, that eight-year-old would have their DNA retained. That concern relates to whatever system we set up for the children's hearings system. The committee is not considering that proposal—it is being considered by the Justice Committee. I have already made representations to that committee on that issue, which I think I shared with members of this committee. In considering the link between the Children's Hearings (Scotland) Bill and the Criminal Justice and Licensing (Scotland) Bill, if members share my concerns on that issue, I urge you to make representations to the Justice Committee.

Christina McKelvie: It is an issue on which the committee is clear. There is consensus that we will make progress on it. As an individual, I have been pushing for action on the issue for a while, particularly in relation to the United Nations Convention on the Rights of the Child and how we do things for kids in Scotland.

Tam Baillie: I would be happy to give you further detail on the issue if that would help you in your representations to the Justice Committee.

Christina McKelvie: Before I move on to the issue of safeguarders, I have a brief comment about the impact on kids in later life. Sometimes, they are the very people whom we want to work in the system, because they understand the issues.

Morag Driscoll read out a quote about "Normal people" not understanding others' lives. That is a vital issue.

To move on to safeguarders, people who have been through the system are the type of people who should be safeguarders. I have a clear understanding that a safeguarder should be someone who understands the circumstances rather than just the legalese. In their written submissions, many organisations express concern about how safeguarders will work and will impact on the system. What is your experience? What are your concerns? What are the answers and the remedies?

10:45

Morag Driscoll: Lord Gill's civil courts review is quite useful in this respect, because it looked at the role of curators and safeguarders in the civil courts and recommended that there be standards, monitoring and some sort of organisation to ensure that people who become safeguarders get sufficient training to do the job and, if they are rubbish at it, cease to do it. Why are we not extending that approach to children's hearings? Would it not be simple to scoop up children's hearings safeguarders and to place them in the same system? Safeguarders are often safeguarders at court as well as at children's hearings. It could be useful for safeguarders who are appointed by a court to continue into the children's hearings system and vice versa. Such an approach would provide consistency across Scotland and a guarantee that the right people were becoming safeguarders.

When I became a safeguarder, it took me three years to get through the paperwork with my local authority, which was crying out for female safeguarders. Perhaps we can get a system that is faster and more effective for kids, without being overly elaborate and expensive.

SallyAnn Kelly: My experience of working in the children's hearings system indicates that one key issue for the system is the consistency of safeguarders. I support the provision of better training and advice to safeguarders. Another issue is the accessibility of the safeguarder's report. In extremely complex cases, especially in relation to decisions about permanency for children, reports can be lengthy, but they are crucial to enable people to understand not only children in such situations but parents. We need to give due consideration to how we summarise in the children's hearings system safeguarders' views on children and their parents.

Christina McKelvie: What is the appropriate role for safeguarders? There is some concern about where they sit in the new system.

Morag Driscoll: They should be completely independent of the system. They should not be part of either of the new organisations, because the child and the family must be able to rely on the fact that the safeguarder is not controlled or influenced by anyone. Part of the problem with safeguarders is that their role is not properly understood by children and families. They are there to represent the interests of the child, not to represent the child. They can advocate exactly the opposite of what the child and family want, but that is not fully understood. I have had people phone me to say that they have told a child to speak to the safeguarder, because she is her special person, but that is completely wrong. If we are to continue with the safeguarder system, which works very well, we must ensure that safeguarders are completely independent. If an organisation for court safeguarders and curators is to be set up, it makes sense to slot children's hearings system safeguarders into the same place.

Heather Gray: I echo the view that consistency is needed in relation to safeguarders. In our experience, there is huge variation across Scotland. People have difficulty understanding the role of the safeguarder and how it differs from that of an advocate. Sometimes the role is described to children in a very confusing way, which creates difficulties for them. I echo the concerns that have been expressed about the need for us to ensure consistency.

The Convener: I seek clarification from Morag Driscoll on grounds for referral. Is it the Scottish Child Law Centre's view that no child should be referred to a hearing on grounds of criminality or merely that the age of criminal responsibility should be 12? Its position was not entirely clear to me.

Morag Driscoll: If we are going to criminalise children at all, the age of criminal responsibility must be raised from eight. Our age is the second youngest in the world: I believe that the age in South Carolina is six. At eight, we do not trust children to make decisions about which bus to get on, so we should not say that they have enough understanding to decide to commit a crime. We would like the age to be raised considerably. Twelve would still be among the younger ages of criminal responsibility in the world.

Our view is that we should not criminalise children at all. We have to bring the behaviour of children who need compulsory measures of care to a hearing. In saying, "You haven't committed an offence," we cannot say, "Your behaviour is acceptable." We have to deal with the behaviour, but do we have to say, "You have broken the criminal law and should therefore be treated as a baby criminal"? We need to address the behaviour and the reason for it rather than put a label on

somebody that young and say, "You are now a criminal." In effect, that is what we are doing. We do not believe that that is a reasonable or rational approach to dealing with the offending behaviour of vulnerable young citizens and we need to look for ways round it.

If we are going to bring children on offence grounds, it is right to require the criminal standard of proof. We need to look at the rehabilitation of offenders. However, if we want to get round that by saying, "Let's not criminalise children, but let's look at behaviour," we could change the grounds of referral so that they are about the behaviour of the child. We could consider that, if they were an adult, the offence would be criminal, or we could focus on behaving in a way that puts other people, property or themselves at risk, which is what offending behaviour does. There are other ways of writing that down and dealing with it, which are not what the popular press would call letting children off with crime.

Tam Baillie: The age is entirely arbitrary. It is sensible to set it at 12 now because that fits with other legislative proposals, but in the longer term we need to consider the value that we place on children and young people and the approach that we take to them, and I believe that we should consider progressively raising the age. There is a reasonable opportunity at present to raise the age to 12, and I urge the committee to consider that, but a better, more sensible approach to our children would be to consider progressively increasing the age.

Louise Warde Hunter: If we take that thinking and extrapolate it, it takes us back to a progressive approach to older young people and the reason why we would lobby for 16 to 18-year-olds who commit certain offences to be considered within the children's hearings system. I make it clear that I am not talking about the most serious offences.

There has to be a clearer recognition of the chaotic and difficult childhoods that many vulnerable young people have had. As Morag Driscoll said, we are all united around a vision of real outcomes for those young people, whereby they can go on to lead positive lives and be genuine contributors as young citizens and then as older, more mature citizens. Surely the evidence exists that, if someone is convicted of an offence before they are 18, they are hugely likely to be convicted again before their 22nd birthday. That happens in 80 per cent of cases. The system is not working. There is surely a chance to do something about it.

Margaret Smith (Edinburgh West) (LD): I will almost play devil's advocate for a moment. Christina McKelvie talked about representations that were made to her by a constituent on the fact that their life possibilities were to some extent blighted by something minor that they did in early life, when they were 14. An elderly gentleman constituent visited my surgery only last week—he has visited on many occasions in the past few years. He cannot get over something that was done to him by a child who was then dealt with by the children's hearings system.

We are very much focusing on the child, which is understandable and right, but the crimes that are perpetrated often are not victimless. Particularly at the 16, 17 and 18 end of the scale, we have to take into account the wider views of not just general society but the victims of crimes. How can we marry that with what you have said about making the system better for the child?

Tam Baillie: That is why I say that we need to take a progressive view. Public opinion is that we generally need to value our children more as children, which is why I would take the first step by raising the age of criminal responsibility to 12. There is a need to bring public opinion to bear on how much value we place on our children and how we treat them as children, right the way up to the age of 18. However, in our current political climate and in light of current public opinion, we should pitch the age of criminal responsibility at 12 because it fits with other legislative proposals that are being considered at the moment. Beyond that, it must be accompanied by a wider approach to the value that we place on children and young people.

Morag Driscoll: What is being proposed is not all that radical a change from what we already have. At present, someone who is already in the children's hearings system can stay in it until they are 18. If they commit an offence while on supervision when they are over 16, that offence is jointly reported to the fiscal and to the reporter, and they decide which is the more appropriate venue. A sheriff can still refer someone who is over 16 but is not on supervision to the hearings system for advice about which is the more appropriate venue. We already have that, and it is good that the young person has an input into which is the more suitable venue. Therefore, it is not that radical a change to say that all offences should be jointly reported. That would mean that the more serious offences would be more likely to be dealt with by the sheriff, but guess what? The High Court can already refer back to the hearings system for disposal someone who has been convicted of quite a serious offence.

The slightly separate issue for the poor gentleman who was the victim of a crime—and let us not minimise what it is like to be on the receiving end of some children's behaviour—is around what help is available to him. Also, are effective options available to either the courts or

the hearings system to address offending behaviour? Again, that can be very patchy. Some very good programmes deal with sexually offending children, such as the Lighthouse project, whose funding is in peril, and there are some very good programmes that deal with kids who commit road traffic offences. Some kids adore that stuff, and it leads to better outcomes. There is also victim awareness and restorative justice, where the gentleman could meet the offender face to face to tell him what effect his behaviour has had, and could realise that the young person is vulnerable and needs help, and that there are two victims to that crime.

The hearings system cannot fix things for the victims; it can only look at what we are doing for children. We need to take a rounded approach to dealing with youth offending and ask what the options are. Do we have enough resources to deal effectively with some children whose behaviour is extremely challenging and whose problems are very complex? It might take a lot of work and money to repair the damage that has been done to them, but it will be even more expensive to keep them in jail for a long time when they commit serious offences as adults. There is no cheap fix for any of this in a recession.

Louise Warde Hunter: I endorse what Morag Driscoll said. Allying the hearings system to the broad principles of restorative justice and victim impact assessment, and having that voice heard in mediation, is incredibly important.

To go back to Margaret Smith's elderly constituent, if any young person hurt or had an impact on my elderly parents—they would not like me to call them elderly—I would want to know whether that young person was likely to do that to anyone else. Surely you as politicians and we as civic leaders want to prevent such a young person's criminality from being confirmed by going through the criminal justice system, as happens at the moment. The restorative principle is important in dealing appropriately with less serious offences and it could be enhanced.

11:00

Elizabeth Smith (Mid Scotland and Fife) (Con): I turn to the sensitive issue of the confidentiality of the child. As you know, confidentiality cannot currently be offered unless parents consent to it. Are you in favour of the bill's proposal to increase the level of confidentiality?

Morag Driscoll: Yes, but there is a huge technical problem with it. We tried to do the same thing in dealing with family matters in the sheriff courts, but it went to an appeal, which succeeded. Professor Norrie will know considerably more about that than I do.

I am not sure that it falls within legislative competence for the bill to say that we will give complete confidentiality. I foresee a lot of appeals, which will probably succeed. If a decision is made on the basis of what a child has said, and the parent or carer—the "relevant person"—cannot be told what that is, how do they know that the tribunal is free and impartial?

Such issues would apply in only a small number of cases, and panels can be creative in giving information without dropping the child in it. If Billy lives with his mum and wants to see his dad, but his mum is adamant that he cannot, and Billy says, "Yes, I want to see my dad," he will get it in the neck when he gets home.

I would love there to be a solution to that technical issue—it would be wonderful—but we come up against the European convention on human rights.

Tam Baillie: My answer is yes, but the proposal highlights a tricky area in which the bill is trying to achieve its objectives. The proposal is well intentioned, in that it wishes to free the child from any fear of repercussions from anything that they say, and to that extent it fits with the right under article 12—which we discussed earlier—for the child to have a view and for that view to be heard. However, careful guidance to panel members will be needed on the threshold, the information and how that information is fed back to parents, for the reasons—such as appeals—that have just been mentioned.

On balance, I am absolutely behind the proposal, but there could be some difficulties, and the implementation needs careful consideration. Someone has already mentioned that the devil is in the detail, and such a system will create some difficulties, but we should go with the intention because it fits with the article 12 issues that we discussed earlier.

SallyAnn Kelly: Barnardo's certainly supports the principal position with regard to hearing the information from the child. However, a lot of caution is required, and the situation could become more complex for the child if, as has been suggested, the definition of "relevant person" is broadened. It is difficult for the child to speak freely if a number of adults who are deemed to be relevant persons are at the hearing. That is a central consideration, and I would like to discuss further this morning the issues around that definition and how it might impact on different parts of the process.

Elizabeth Smith: Assuming that your answer is a qualified yes, and that you go with the general theme because it fits with the principles of what the bill seeks to achieve, who should have an input on whether it is in the child's best interests

for that confidentiality to be extended? Are you suggesting that the child might have an input? It is a difficult issue.

Morag Driscoll: Other legislation might give us a guide. For example, under the Data Protection Act 1998, a person can veto access to their records if it would cause them undue distress or have a disproportionate impact on them. It will be a decision for the panel, really, which will have to have clear guidance on the criteria for extending confidentiality. Like much else in hearings, it will depend on the skill of the panel in talking to the child or young person. It might also be the case that, if it looks like a child will want information to be withheld, they will need some form of professional advocacy to help them through that, whether a solicitor or a properly trained advocate. Granny might be a wonderful advocate in helping the child to remember what they want to say to the panel, but she is not likely to be able to deal with such technical questions. It will be a complex decision.

Tam Baillie: Remember that the hearing does not happen in isolation. I go back to what I said previously. Our legislation, regulations and guidance need to take account of the extreme positions, but the hearing is about trying to make the best decision for the child rather than being a place of disclosure, although there may be occasions on which the information that is produced has not been known to any other party. Paying sufficient attention and giving children sufficient support in the lead-up to the hearing is as important as what happens in the hearing. However, I accept that those are tricky matters.

Elizabeth Smith: There is an issue here. As Tam Baillie rightly pointed out earlier, not all children are in a position to make that judgment, because it is an important value judgment that could have life-changing consequences for them. We need to get the balance right. If we permit increased confidentiality, the question is, who should take the decision to extend confidentiality? It is a difficult question, but do the witnesses have any suggestions as to how we could get over that difficulty? It would be interesting to tease that out.

Louise Warde Hunter: To return to the first part of your question, there must be a core principle that the young person's voice must be heard and taken into account. You asked whether the young person should be asked whether confidentiality should be extended, and the answer is absolutely. What the panel does with the confidential information and how it balances it is, as Morag Driscoll and others have said, the art of the well-informed, well-trained and well-developed panel member in discussion, and acting in the child's best interests. However, the fundamental issue is whether the young person should be asked, and if the matter is about them the answer is absolutely.

Dave Thompson (Highlands and Islands) (SNP): Last September, the SCRA stopped reporters offering legal advice to hearings. The bill places that responsibility on the national convener. Is that proposal workable, and is it likely to be effective? If not, how can it be improved?

Morag Driscoll: I understand the concerns about reporters and panel members having cosy chats about cases before a hearing. If that was happening, it would be unacceptable. However, is it a problem if, in front of family and child in a hearing, the panel asks the reporter, "Heather, could you remind us of the criteria for secure accommodation"? I do not think that that would be a big issue for anybody because it would not be done in private. Such advice is transparent and purely factual—the answer is, "The statute says that the criteria are such and such." I do not have an issue with that scenario, and I do not think that any appeals are hidden anywhere in it. Panel members should have better training so that they feel confident enough about the technical matters to the extent that they do not have to ask those questions. However, if they want to ask a reporter openly and transparently in a hearing for purely technical legal information—not advice on how to proceed, but legal information—there is no issue for anyone to worry about.

Tam Baillie: In all honesty, that question is best asked of the people who operate the system, are internal to it and have experience of the new rules. I have not heard that those rules on legal advice cause undue problems, although I stated in my written submission that it would be helpful to have further details about how the Government expects the proposal to operate. It might be worth asking the Government about that, because many of the operational questions and issues should be examined. To be frank, it would be helpful to have more detail on them.

Morag Driscoll: It would be better to have a brief question answered than to have the hearing suspended while someone went out to make a phone call. Such a suspension could be very difficult for children and families. As Tam Baillie rightly said, there is not enough detail about what the proposal means.

SallyAnn Kelly: Certainly in my experience of the children's hearings system, the presence of a reporter who is clear about the reporter's role—as most reporters are—is a very helpful mechanism within the hearing for dealing with points of law. Members of what is a lay tribunal sometimes need to ask questions about fairly complex issues, especially warrants or supervision requirements. The presence of the reporter provides them with a mechanism at the time for answering clear legal

questions. The panel should certainly not be led to a decision by the reporter. In my experience, reporters do not do that. Reporters answer questions of fact about the legal process. In my experience of dealing with children's panels as a social worker and as a senior social worker, that was a very helpful part of the process.

Heather Gray: The issue comes back to the need for consistency of training for panel members and the confidence of panel members. The national picture is very mixed if we look at the confidence, skills and abilities of panels and the support that some panels need. We see huge differences. However, I absolutely agree with Morag Driscoll that there should be no difficulty with a reporter providing a point of clarification during the hearing if that is done transparently.

Morag Driscoll: A real plus is that the bill will do away with the multiplicity of confusing warrants. The interim compulsory supervision order is a very welcome innovation. It will be much more flexible, much more reasonable for children and their parents and much easier to understand. From the point of view of panel members, many of the more irritating complexities will disappear. However, there will be an interim period during which extra support will be required, especially for experienced panel members as they try to get their heads round the new system. The reporter might need to say, "This is equivalent to the old ground of such-and-such", or, "We would previously have used a warrant, but now we use this order." I do not think that it would be prejudicial or influential for a reporter to provide the panel with simple, factual advice.

Margaret Smith: My question is about secure accommodation. As I understand it, ECHR concerns have been raised about the current process because the decisions are not made by an independent tribunal. The bill will introduce an appeal to the sheriff as a way of trying to satisfy those ECHR requirements. Will the proposed changes to secure accommodation authorisation be better than the existing rules? Will they be consistent with the convention? What concerns have there been about how the present system has worked?

Morag Driscoll: It has always been possible to appeal a decision. When someone is placed in secure accommodation, anyone can seek another hearing to ask that the decision be suspended pending the appeal. We have always had that. A child facing either a movement restriction order or secure accommodation has always had the right to a legal representative. I have not noticed any huge problems with that to date.

My biggest problem with the bill is the proposal that the local authority should be able to move a young person out of secure accommodation without going back to a hearing. Our centre has received a number of calls about young people in that position. Sometimes—unfortunately, this is not all that rare—they are moved first and a hearing is then requested. The concern has been that they do not feel ready to be moved or that they do not feel that where they are to be moved to is the right placement for them. If, as is the case at present, it is necessary to return to a hearing to obtain permission for that, at least the young person can put their view and appeal the decision to move them, whereas under what is proposed in the bill they could not—they would be moved willy-nilly.

11:15

Tam Baillie: As I said in my submission, secure accommodation authorisation is an another area in which it would be helpful to have the detail of the regulations, because they will govern the operation of the bill in that regard. In my submission, I asked for further detail on that to be published as soon as possible so that we know how the relevant part of the bill will operate.

Margaret Smith: From the silence of the other witnesses, I take it that they share that view.

Heather Gray: Yes.

SallyAnn Kelly: Yes.

Margaret Smith: I hear what Morag Driscoll says, but there appear to have been some ECHR concerns about the fact that, at present, such decisions are not taken by what would be referred to as an independent tribunal. Can you explain why those concerns have arisen if, as you say, an appeal process is already built in?

Morag Driscoll: No.

Tam Baillie: That is a question for the Government, I think.

Margaret Smith: Okay. That is fine.

Claire Baker (Mid Scotland and Fife) (Lab): I have a couple of questions about the enforcement of panel decisions against local authorities. Although taking a local authority to court remains the ultimate sanction, the process whereby a panel can action that will be different. The bill will allow a hearing to require the national convener to take the local authority to court, whereas at the moment the principal reporter can exercise discretion about whether to do that. What is your response to those proposals? The Convention of Scottish Local Authorities has expressed concern that they will remove flexibility from the system. How do the witnesses feel about them?

SallyAnn Kelly: Barnardo's Scotland urges the Parliament to be cautious about proceeding to implement the proposals as they stand. There are

certainly concerns about the national convener not having flexibility when it comes to compelling local authorities to take action. A wider issue relates to the multi-agency nature of the support that children receive in 2010, which is possibly quite different from the support that has been provided historically.

If we are to go down the road of compelling authorities to do things, we need to look at the scope of that compulsion and where it should be directed. We should consider, for example, whether agencies such as health services should also be referred to in the legislation. If we go down that route, a bigger question arises, given that the provision of services within localities varies. We need to be clear that if any agency is compelled to take action, it can practically implement that action. We would need to be clear that the person who ultimately took a view on that would have the necessary breadth of local knowledge.

Tam Baillie: We are not talking about a new power. The change relates to where such action is initiated. The opening question was about whether the bill would improve the rights of children and young people. In my view, the measure under discussion could be one of the most significant in the bill. I say that because I think that if a hearing decision is made, there should be an expectation that that decision will be followed through.

I know that the proposal is based on anecdotal information about the non-implementation of supervision orders. For me, it is not the case that the information is anecdotal; I think that there is evidence. In 2002, there was evidence of the non-implementation of hearing decisions. More recently, the Social Work Inspection Agency has regularly reported on whether cases are allocated within social work departments. The problem is not universal, but there are areas where children are not allocated, including on occasion looked-after and accommodated children and young people. There the non-implementation of hearing decisions is a significant issue.

On the shift from “may” to “should”, notice is still given and representations can be made to the courts, which means that there is plenty of time to consider whether to make a hearing decision a reality. That is absolutely fundamental in terms of children’s rights. If our system identifies children who have needs and who have a right to have those needs satisfied and we take them to the stage at which we say that statutory intervention is required, that is what should happen. That is fundamental not only to the operation of the system but to its credibility. I accept that that will create pressure in terms of the priority that is given to children and young people in our local areas, but why should it not? We should value what happens to our children and young people, particularly those who have been identified as the most vulnerable.

I welcome the mention of health and other agencies, and think that it would be worth amending section 175, which concerns the assistance obligation, because although it is true that the local authority should be the lead authority, it cannot provide for all the needs of our children, and health is one of the most significant factors that can contribute to better outcomes from hearing decisions.

I support the proposal, but recognise that it might have a wider scope in terms of the range of organisations that can and should be providing for our children and young people.

Louise Warde Hunter: Action for Children recognises that local authorities must make available sufficient resources to ensure that supervision and support measures that are ordered by a hearing are implemented. However, like other organisations, we have long been pushing the issue of early intervention. That is part and parcel of the joined-up thinking that is needed on the part of local authorities and others about investing early in young people to prevent them from getting involved in crime, and supporting families that are experiencing difficulty to care for their children at an early stage.

I appreciate the precise experience of the individual child going through the hearings system, but there is a broader context, of which local authorities will be well aware, which is that early intervention saves money and saves lives.

Morag Driscoll: The SCRA is the body that has the experience of going to local authorities and saying, “The panel wants us to consider this issue.” It will be able to give the committee much clearer information about the issue.

It is entirely appropriate that consideration be given to the suggestion that the new national convener should deal with these matters, although the question whether they will have the necessary resources to do so is another devil lurking among the detail.

Further, although the proposal is great theoretically, it could result in local authorities having to go to court more often, spending money that might be better spent on children. Timescales might need to be put in place to ensure that there is a certain amount of time before the court action is lodged.

One other series of decisions that are often not implemented and for which there is not really provision involves contact. We get a number of calls from children and young people or from people calling on their behalf about situations in which contact has been made a condition in the

supervision requirement but is not taking place or is not taking place to the degree that was recommended by the panel.

Children and their relevant persons cannot ask for a new hearing until three months have passed, but if you are seven and are not able to see your mum, three months is a long time to wait. We have therefore suggested that consideration be given to some specific exemptions to that three-month period. For example, someone who is not seeing the person whom they are supposed to see should be able to ask the reporter to ask for a new hearing after one month. That should not be the case in relation to every issue, but it could perhaps be considered in relation to something as simple as contact.

The reporter would therefore have the discretion to ask for another hearing. For example, if you are supposed to see your mum every week and have seen her only once in a month, the reporter could ask for a hearing to have the social work department explain why contact is not happening. The answer may be that the department does not have anyone available.

What looks like a small-scale decision not being implemented is probably more important to the child than a medical appointment or a psychological assessment.

Heather Gray: One of the top issues about which children and young people come to Who Cares? for support is non-implementation of recommendations from hearings. Sometimes the services that are recommended do not even exist. That takes us back to the skills, expertise and local knowledge of panels: it is very important that what is recommended for children is available and accessible. That is a big issue for children and young people.

Tam Baillie: The power to take local authorities to court should be used judiciously, but we should take seriously the hearing decisions, which should be implemented.

I can give another example. There is a statutory responsibility to provide pathway plans for children who leave care. Our latest information tells us that 57 per cent of such children have a pathway co-ordinator, which means 43 per cent of them do not. We should be attending to such issues and ensuring that we are living up to our statutory responsibilities. I am happy for a wide perspective to be taken on which agencies do the work and how we ensure that those agencies provide for children and young people, but the power to take an authority to court is useful because children and young people should be higher up the agenda.

Claire Baker: Those answers lead on to my second question. The bill talks about referring cases to the courts. We have received evidence that, in previous cases, amicable solutions have been reached before the issue got to court. The question is how we deal with the smaller panel decisions—the ones that Morag Driscoll and Tam Baillie referred to—that would not lead to court action but which are not carried out effectively, perhaps because not enough information goes back to the panel or because information is not shared among all the agencies that are involved.

Morag Driscoll referred to one solution—that we could reduce the three-month waiting period for some young people and children—but what other solutions are there? The bill talks about an information loop. I do not know whether that could address the problem more effectively; it seems largely about information gathering and high-level stats rather than individual children.

Tam Baillie: I have asked for more details on how the information loop will operate—it should certainly be more than just a statistical exercise.

There should be some way of finding out whether hearing decisions have been implemented and, when they have not been implemented, flagging up to the panel concerns about that and the reasons for it. There should be the opportunity for that feedback loop on hearing decisions to be real. The details have not been published yet on the frequency and level of detail of the feedback loop, so I would appreciate more information on that.

On the question whether to go to court, I said that we should be measured in the use of the power because we would certainly not want a situation in which a lot of time was being spent on taking local authorities to court. Issues have often been satisfactorily resolved because there has been enough time after the flagging up of an intention to invoke the power for the authority to act so that a court appearance did not result.

There is an issue about panel decisions being taken seriously, of which we have considered lots of examples today. An authority would not go back to the court to say that it did not enforce a particular order because it did not have the resources—that would result in consequences from the court.

11:30

Morag Driscoll: There is a huge issue about the timeous provision of reports for hearings and, in some areas, the provision of reports at all. That can be particularly unhelpful if a child is coming to a hearing because of lack of school attendance. Reports frequently pitch up on the day of the hearing—how can a child and their family be prepared for that? The regulations should say that there is an expectation that reports will be

provided in time for the panel to consider them. If a report was not provided to a sheriff when they requested it, the sheriff would not say, "Oh well, we'll just move the hearing." It is just as important to produce a report for a hearing as it is to produce a report for a court.

The Convener: That concludes the committee's questions to you this morning. Thank you for your attendance and for sharing your views with us. I am sure that the committee will return to the issues, and it was good to end by discussing issues relating to local authorities, as they are represented on our next panel.

Tam Baillie: And health.

The Convener: Yes, and health—thank you for that reminder, Mr Baillie.

I suspend the meeting to allow our witnesses to leave. We will take a short comfort break.

11:31

Meeting suspended.

11:39

On resuming—

The Convener: We move to our second panel of witnesses. We are joined by Paula Evans, who is a policy manager in COSLA's community resourcing and children and young people teams; Carol Kirk, who is the corporate director of education services with North Ayrshire Council and who is representing the Association of Directors of Education in Scotland; and Fred McBride, who is the convener of the Association of Directors of Social Work's children and families standing committee. I thank our witnesses for joining us. They were here bright and early, so they heard the previous panel's evidence. I am sure that they will have their own views on some of the points that have been raised.

One real strength of the children's hearings system in Scotland has always been that local people are involved in the service, taking an interest in their community and working with vulnerable young people from their communities. However, under the bill, panel members will for the first time be able to come from outwith the local area. How important is the local connection? How important is the involvement of local authorities in the provision of the local panels?

Paula Evans (Convention of Scottish Local Authorities): That is a starter for 10. A fundamental principle of the Kilbrandon report is that the decisions are made locally by local people in the interests of their local community. So, the short answer to the question is that the local connection is very important. However, the system must be flexible enough to provide the right people at the right time for the children who are involved. We therefore support the flexibility of allowing panel members to come from other local authority areas, perhaps neighbouring communities. The discussion is about what "local" means. There is no easy answer to that, as it can mean a neighbourhood or a region. We need flexibility, but the system must be kept as local as possible. Ultimately, the issue is about the system working in the best interests of the child.

On local authority involvement, the short answer is that that involvement is crucial to the success of panel decisions and the hearings system more broadly. In one respect, local authority involvement is a way of ensuring community involvement and of ensuring that decisions are made as locally as possible in the community and are in the child's best interests. That is facilitated through a demand for better partnership working at the local level.

Our concern about the structures that are being developed is that they would take away that local connection through the work of the local authority. Having a national body would be a barrier to local involvement and would be a more central approach that did not facilitate buy-in or partnership. That would be a shame for the system as a whole.

Carol Kirk (Association of Directors of Education in Scotland): That is absolutely right. We want flexibility to ensure that we have the right people at the right time and to ensure that there is a gender balance on panels, which is an issue in several authorities. It is important that there is flexibility to support that. However, the local connection is extremely important, because panel members know what services are available for the young people and have an understanding of the context for young people. Sometimes, that comes down to knowing where gang boundaries are, which can have a serious impact on young people. Local knowledge can be extremely helpful in understanding the child's context and the local authority context.

I do not have a particular issue with moving some training away from local authorities. We need a high level of consistency of training for panel members and the knowledge that there is a sort of national agreement on the level of training and expertise that we seek for panel members. However, it is important that we maintain the local connection in the decisions that are made about children.

11:45

Fred McBride (Association of Directors of Social Work): I agree with what colleagues have said. It is important that the hearings system and the function of panel members are tied into local

community planning. We need to remember that the hearings system is a part of the system, rather than the whole system. If panel members represent or are involved in community planning groups, that gives them an understanding of local priorities. We need to look beyond the needs of individual children—which are important—and consider the needs of whole communities and groups of children. The connection with community planning is crucial, and we should be wary of anything that undermines that.

I agree with Carol Kirk's point. We have no difficulty with—and would in fact support—a mechanism to achieve greater consistency in standards and decision making among, and better training for, panel members. If a national body is the best way of achieving that, so be it. However, it is important that we retain the links to community planning and processes.

Paula Evans: The important question is whether the bill enhances or facilitates the local connection and the role of the local authority. COSLA believes that it does not, and that it might actually make things worse.

There is some confusion in the bill around the role of the local authority. For example, the bill says that support services will be centralised and will become the responsibility of the non-departmental public body, but the policy and financial memoranda state that local authorities will still deliver services and support services. That confusion does not facilitate better partnership working.

We need to reinforce the role of the local authority and make it more accountable and responsible for the quality of the support services that enhance the delivery of the hearings system in the context of national standards. We do not believe that the NDPB will do that any better than a local authority could, and it will cost more.

The Convener: In that case, does COSLA believe that the Government's drive for a national system is unnecessary? Could improvements be made to the existing system to achieve exactly what the Government wants in terms of consistency of training, access to advice and ensuring that all hearings are held in buildings that provide safe, accessible and pleasant environments? Some of those things could be done without having to change the existing structures.

Paula Evans: I will go further and say that all those things could be done without changing the existing structures. We accept the need for change: we need greater consistency, higher standards and accountability in varying degrees, and we can do that only through change. The change that the Scottish Government proposes, however, is not proportionate to the problems that exist.

National standards and greater accountability are the key, and they can be achieved through the role of the local authority, which is a key element in the system. We believe that that role is welcomed by most who participate in the children's hearings system, and we would like to buoy it up rather than put in an artificial structure that can be described, at best, as confused in the bill. There are serious questions around accountability, the ability to deliver and the business case that is attached to the change.

The Convener: From my reading of the bill, it appears that the Government proposes to replace children's panel advisory committees with the new area support teams. It is a little unclear whether those teams will mirror the existing CPACs, or whether they will be slightly larger; the bill does not contain that level of detail. In my area, for example, that might mean bringing together North Lanarkshire and South Lanarkshire. Does COSLA have a view on how the area support teams should function, or does it believe that the area support teams will not actually operate differently from the CPACs? Is the proposal perhaps more about changing names to meet other manifesto commitments, such as to reduce the number of quangos, than about driving up standards?

Paula Evans: I think that I will sidestep the quango question and leave that for the minister.

What added value the area support teams will provide is an important question. The policy memorandum suggests that there will be a structure whereby the national convener of children's hearings Scotland will somehow deliver support through the area support teams, with local sub-committees utilising local authorities when they need actually to deliver anything. If delivery is to remain within the local authority, the bill will simply create a very complex bureaucratic structure to deliver much the same service as is provided at present. Any improvements will be dependent upon the national standards—which we accept are needed anyway—so the cost seems disproportionate. The expenditure involved would be better reinvested in the quality of the support services that are delivered.

If the area support teams proposal results in responsibility and accountability for the CPAC support structures being reconnected to local authorities, there might be a drive towards more efficient ways of working that could lead to shared services. However, that should be driven from the bottom up rather than from the top down. Where that works, it should promote best value and best practice and follow on from an outcome-driven business case. That is certainly not the case with the proposals in the bill.

Carol Kirk: I echo some of those points. There is a worrying lack of clarity about what the area groupings will look like. In a world where local authorities are seeking to work with partners in other local authorities in commissioning and delivering services, it would be uncomfortable to have a grouping that was not coterminous with those arrangements. That would raise significant issues for local authorities.

Paula Evans: A number of colleagues in the previous evidence session mentioned that there is a lack of detail about the proposals and that we need to know more. Nowhere is that more true than in the proposals on the new structures. There is a lack of detail about how the proposals will work and, I would say, a lack of clarity and confusion. For me, that is echoed in the financial memorandum. If we are to go down the route of setting up a national body, a significant concern is with the financial proposals being put in place for local support. We think that the proposals are inadequate and underdeveloped and could cause more problems than they would solve for local authorities.

The Convener: Perhaps one issue is that there might be no audit trail of the financial cost to the local authority of providing support to its CPAC, but local authorities are currently more than happy to provide that support. Most panel chairs across the country would say that their local authority supports them very well and is always responsive and helpful whenever they need something. However, if a new bureaucracy is to be introduced that will be driven at a national level, local authorities will suddenly start wanting to know the cost of delivering all that support and they will want to be confident that their costs will be fully recompensed by the centre. Does the bill provide any certainty or guarantee that local authorities will have sufficient money to resource the service?

Paula Evans: No is the short answer. The financial memorandum seems to project costs for 2014 on the basis of costs in 2007. Those costs are assumed to be the same across the piece for those seven years. What is being costed is the status quo—where we are at just now—rather than the system as it will appear in the future. I think that there are a number of inaccuracies in the document, but what is really worrying is the lack of change.

The suggestion is that the new system will drive efficiencies, but there is no evidence of where those efficiencies will come from and where the savings will go. There is no evidence of the line of responsibility between the national body and the local authorities on decision making and support delivery. Those confusions will complicate the system of management and make it much less simple or comprehensible for everyone involved, not just the local authority. Who will be responsible for what? What happens if something is not delivered? Where is the accountability? There will be an NDPB and one individual who can be identified, but we do not think that that will provide accountability and improve the service that is delivered on the ground.

The costings on things such as in-kind costs are underestimations. There is no information on the assumptions on which the costings are based, so we cannot even give the committee a judgment on whether they are feasible. However, from our understanding of in-kind costs, the figures in the financial memorandum are underestimations. That is a worry when we are going into tighter financial environments.

Christina McKelvie: I want to get information about safeguarders and your feelings on the issue. Our briefing states that the

"relationship has always been structurally awkward since local authorities have no role in monitoring performance, removing safeguarders, or dealing with complaints against them".

One of the witnesses in the earlier session said that if a safeguarder is rubbish, we should be able to get rid of them. That has always been a bit of a problem. What improvements could be brought to the system by replacing local authority panels of safeguarders with a national body?

Carol Kirk: That is another issue on which improvements could be made by having national standards. Whether we need a national body to deliver that is another question. Those are separate issues. There has probably been a change in the way in which safeguarders are used over the years, and they have moved away slightly from their prime purpose. In my area, we have noticed that the likelihood of a safeguarder being involved has increased, but that is sometimes almost in the role of an advocate for the young person. We need to go back to the first principles of safeguarding. Any set of standards, whether they are delivered by a national body or locally, must include a provision that the safeguarder should have the appropriate skills to listen to, interpret and get on with children. That has not always been the case in the past.

Fred McBride: The ADSW has argued that, if there is a case for creating a national body, it would be for safeguarders. From experience, the way in which local authorities operate in relation to safeguarders has perhaps been a bit lax. To be perfectly honest, safeguarders are appointed and thereafter become pretty autonomous. I do not know of many examples of safeguarders being held to account and wheeched off a list because they are no longer functioning well. That seldom happens, if ever. We need a way of increasing accountability and improving standards of decision

making with regard to safeguarders. A national body would be the way forward and could create greater accountability and consistency. As we heard earlier, it would perhaps enable panel members who are not suitable for the task to be removed more easily. Local authorities are not undertaking that role particularly robustly at present.

Paula Evans: There is a wider principle. Unlike support services, safeguarders are a component of the decision making of a hearing, so there is a potential conflict in having those individuals managed by another component of the system. We need to take that principle seriously. It is being applied to support services, but it is more appropriate to apply it to safeguarders.

12:00

Christina McKelvie: In the earlier evidence session, it was suggested that the role of the safeguarders in the hearings system could be included in Lord Gill's review of civil court structures. That was a new thing for me. Do you have any opinion on that?

Carol Kirk: That seems a very sensible way forward.

Christina McKelvie: If there is to be no national body of safeguarders, as the Government has accepted in the bill, what can local authorities contribute to the system of safeguarders? Given that we have all agreed on the need for consistency, for the right people to be appointed and for closer monitoring of the system, what role should local authorities have if there is to be no national body?

Fred McBride: As the system operates at the moment, I do not think that it is sufficiently robust. I am not entirely sure why that is. Responsibility for the recruitment, retention and support of safeguarders rests with the corporate governance parts of local authorities—with legal and admin, or whatever—so there is perhaps an issue with the resources that are available for doing that job properly. For example, safeguarders should be subject to regular reviews, monitoring of performance and checks to ensure that there are no conflicts of interest. We have had examples of safeguarders who, frankly, appeared to be advocating on behalf of parents rather than children. How are those issues picked up, identified and confronted? How do we appoint the right kind of people who can apply the right kind of approach to the job in hand? I suspect that we need much more robust processes to be able to do that within local authorities, but that might come with a resource implication.

Paula Evans: I think that local authorities struggle currently with their role in relation to safeguarders, so it is tricky to say what role they should have if we do not resolve the issue. Ultimately, safeguarders provide an advisory component for the panel, so the national convener should have a role—we need to consider what added value this would bring—in facilitating the work of the safeguarders, in ensuring that standards are applied and in providing support as well as accountability and monitoring. That seems fairly sensible, particularly given that safeguarders provide support to panel members who take the decisions. I cannot see how local authorities on their own can tackle some of the problems that have been identified with the current system.

Elizabeth Smith: As the bill stands, a hearing may impose obligations only on the child and on the local authority, as is the case under the Children (Scotland) Act 1995. However, it is being argued quite strongly that hearings should be able to impose obligations on other bodies such as—to give one example that has been flagged up—national health service boards. Is that accurate? If we went down that road, would any problems emerge from that?

Fred McBride: There are two separate bits to this. First, the ADSW certainly does not support an alteration to the enforcement powers that are available under antisocial behaviour legislation. Indeed, we probably opposed those powers at the time. We think that discretion should be retained. Often, by the time that decisions on enforcement are made, the child's circumstances have changed. It would not make sense to follow through with enforcement just because there was no discretion if the child's circumstances had changed to the extent that the enforcement that had been deemed necessary was no longer required. We should not remove that flexibility.

As we are not particularly supportive of the enforcement principle, I do not think that we can particularly argue that the enforcement powers should be extended to include other bodies. However, we support the more general point that the language in the bill should reflect, much more than it does, the multi-agency nature of responsibilities in delivering services to children. It is not within the local authority's gift to provide or even commission services to cover some of the gaps in service. In some cases, the gaps are very much the responsibility of other agencies. Health colleagues have been mentioned. I am not speaking behind anyone's back when I say that we all know that there are significant gaps in child and adolescent mental health services, for example. It is not within the local authority's gift to provide those services and yet, sometimes, they are critical to the needs of children and the decisions that hearings might make.

We do not support the enforcement principle in general and therefore cannot support an extension of it. However, the bill provides an opportunity to reflect much more the multi-agency nature of responsibility and the different agencies that serve the children's hearings system.

Elizabeth Smith: Could that principle be obtained through GIRFEC, or do we need to put it in legislation as well?

Fred McBride: It can be achieved through GIRFEC. Pieces of legislation such as the bill tend to read as if the children's hearings system is the whole system, but it is not. It is an important bit of the system, of course, but it is far from being the whole system.

If the getting it right for every child policy framework starts to work well, it should keep more children out of the hearings system. Whether we like it or not, the children's hearings system is a formal tribunal no matter how informal we might try to make it. In my view, and that of the Association of Directors of Social Work, children do not, by and large, respond well to formal tribunals. If we listen to what children and young people say, we find that the hearings system's track record of engaging meaningfully with children is not particularly good.

There is scope for the Kilbrandon principles—which are about children's circumstances being heard and dealt with by people in their communities, such as friends, relatives and neighbours—to be retained through joint action teams and pre-referral screening mechanisms in which a range of agencies get together to examine children's circumstances. Such meetings and groups could include parents, neighbours and members of the community so that the Kilbrandon principles were retained without the child having to go through what is essentially a bureaucratic and formal process.

We should consider ways of keeping children out of formal processes as far as we possibly can, so that the children's hearings system truly deals only with those children who require or may require compulsory measures of care.

Carol Kirk: I support everything that Fred McBride just said. The need for an enforcement order would not really exist if there was an expectation that the assessment that is made and the information that is given to the panel under section 58 was carried out on a multi-agency basis and that the child's views were incorporated into it. It would be of more help in making good decisions for children if there was an expectation that panel members should have high-quality, multi-agency information before making their decisions.

Elizabeth Smith: Mr McBride, you rightly pointed out that the matter concerns not only local authority provision; many other agencies are involved. Do you foresee a problem in linking all that together? Do we need a lead body to direct affairs on that or not?

Fred McBride: Under the GIRFEC principles, as you may know, there is the concept of the lead professional. That concept is about multi-agency decision making, with someone taking a co-ordinating role for the multi-agency plan, and the single plan for the child, although there are different models. There is a perhaps slightly separate model under which the child might identify a special person to speak for them. That person might have the same kind of co-ordinating role, or their role might be slightly different and more to do with personal advocacy.

There is provision within the GIRFEC policy framework for exactly what you suggest to happen.

Elizabeth Smith: Would it cause you any concern if that lead officer was outwith the local authority services?

Fred McBride: Not at all. In some areas, practice is developing so that the lead professional is already outwith the local authority; that person may be a health professional, or perhaps there is a member of a voluntary organisation, who has a more intense involvement with the child, and it is appropriate for them to be the lead.

Elizabeth Smith: Ms Evans mentioned overall financial concerns. Is there a serious underestimation of the possible finance that will be needed under the bill?

Paula Evans: Yes; we have submitted evidence on that to the Finance Committee. The financial proposals before us are in part a reflection of the lack of development of, or confusion around, some aspects of the bill, which makes it difficult to get an accurate financial projection. In some areas, however, the figures seem to conflict, and in other areas they do not follow a logical progression with the envisaged policies.

One of our specific concerns is about the information duty, and the suggestion in the financial memorandum that the transfer of payment of expenses to the new body would leave sufficient money to pay for the added burden of the new duty. However, there is no suggestion that that duty has been costed, so I do not know how that conclusion has been reached and how it can be financially robust. That is one of the smaller examples. We have significant concern about the figures that have been proposed and whether we would be able to improve quality and standards, and increase expenses rates to harmonise them across the piece. The same concern might arise about payment of safeguarders' costs, which do

not seem to be reflected in the financial memorandum.

Elizabeth Smith: To be clear, you have two concerns—one is about the size of the extra costs, and the second is about the identification of relevant costs.

Paula Evans: Yes.

Margaret Smith: I want to pick up on something that Carol Kirk said about the decision-making process for the panel and the information that it has about the different agencies involved and the services that might be available. Earlier, Heather Gray from Who Cares? Scotland said that she believes that, in their decisions, panels sometimes recommend services that do not exist. What level of information do you think panels have about the services that are available? Put to one side the financial implications, because I am sure that other colleagues will come on to talk about those. Is there any understanding of the services that are available and of how the multi-agency approaches that we are talking about work? What is your experience of how that is working for panel members at the moment? Is the training that is available to panel members adequate in that regard?

Carol Kirk: To be fair, I think that the position is variable across Scotland and that we would not find consistency across the 32 local authorities. Where integrated children's service planning is strong and involves panel chairs and reporters, the information is gathered and shared. When the local authority is seriously involved in panel training, a lot of information is often shared with panel members to bring them up to speed with what services are available and what their outcomes are. It is also important to base decisions on research.

The training and the information that are available to panel members are variable, but perhaps that is an area in which there should be consistency of standards across the board rather than a national body. I have been involved in the area for a number of years and I know that services change regularly. Keeping up to date is crucial for integrated children's services planning. The hearings system is part of that planning and its involvement would highlight a lack of resources for particular groups of children that it sees, which would feed back into planning. People must be kept in the loop, so that services are developed according to local needs.

The concern is about what might be an unintended consequence of the bill: that providers lobby panel members for a resource when it does not exist. At the moment, such proposals go through service level agreements in local authorities or joint commissioning with health services or with other local authorities to achieve best value. If a panel could identify in recommendations a service that we do not have or commission, an unintended consequence might be that panel members are lobbied about such services.

12:15

Fred McBride: The situation is fraught with difficulties. The issue is not just about panel members and reporters being made aware of services that local authorities provide or commission but about services that are out there in communities. We must consider how we think about services and how we include some of our more vulnerable or difficult youngsters in universal provision—in community provision, universal youth groups, church groups and sports clubs such as football clubs. That range of services is not necessarily in the remit of local authorities or other statutory partners, but it is out there in communities. It is perhaps sad that some such groups and sports clubs exclude some of the young people whom we deal with. A job must be done to focus on how we make them more inclusive, as we do with care groups other than children.

Carol Kirk made a point about potential conflicts of interest—about providers lobbying for the development of services that do not exist, which might present dangers. A more fundamental point for the ADSW is that, once panel members get into directing types of services for children, the danger is that they will stray into care planning. Panel members' job is to decide whether compulsory measures of care are required and whether any reasonable conditions should be attached. We can argue about what a reasonable condition is, but to dictate in detail the services that are required for children is to do the job of the social worker and others. There is a danger that that line could be crossed in the bill.

Margaret Smith: Rather than just considering the structure in the bill, we can consider the flip-side. If the chair of a panel who takes their role seriously and is involved in integrated children's services planning and in working with local authorities and others brings to the table what they see as a gap in service that has been identified many times—I have no doubt that it would have to have been noted several times before they approached the local authority—and says that that is a failing and that the panel would find it useful to have such a service in the range of options available to it, surely you would have to take cognisance of that, given the panel's independence and its role in the care of children.

Fred McBride: That is a useful point. There are ways of doing that without using the

circumstances of individual children's cases. As Carol Kirk says, we want panel members, perhaps through their chair, to be involved in community planning, and the various community planning fora. It is through those for a that they can make those points. They can write to the director of social work or the chief executive and say, "We're repeatedly coming across this type of problem and there appears to be a gap in the services to deal with it." It is useful if panel members can do that, but that is quite different from dictating specific services to be applied in an individual child's case.

Margaret Smith: On the integrated children's services planning throughout all 32 local authorities in the country, would it be possible in every single one of those structures and local authorities for the local chair of the children's panel to play a part? It is not down to the individual concerned within the panels to decide whether that is something that they will do. Is that something that every single local authority is engaged with?

Fred McBride: I would hesitate to say whether it is the case in every single authority. That is the case in the last three authorities for which I have worked and in most of the authorities to which I speak through the ADSW. Panel chairs and authority reporters are on the various strategic planning mechanisms that contribute to the integrated children's services plan.

Paula Evans: One of the things that we are worried about is the purpose behind the sharing of information duty. You have highlighted an important role for sharing information, which is to provide better understanding locally about the services that are available in any particular locality to deliver for the children who are coming forward to the hearings system. That is better facilitated at the local level. I am not sure whether there is added value in having a central resource to do that, and what the evidence is for that.

The other issue that comes to mind in relation to sharing information is what some partners might deem desirable, which is that the duty will facilitate more of a monitoring, analysis or regulatory role in relation to the services that are available for children and how effective those services are. We could have a debate about whether that is necessary or desirable, but if you did think that it was desirable, our view is that it is better placed in an inspectorate or within the wider children's services inspection and monitoring system. It relates back to Fred McBride's point that the children's hearings system is a component of wider services for children and should not be seen in isolation.

Margaret Smith: A colleague will come back to that issue in more detail.

Fred McBride: Before we leave that issue, we have not yet mentioned resources. When we talk about services that do not currently exist or that are not currently commissioned, we are talking about new areas of service development. As a director of social work, I do not have delegated authority from my elected members to spend more than they give me. I may have some flexibility about how I spend what they give me and what I allocate to particular services, but if we are going to increase the range of services for children, it will be at the expense of services for older people, adults, mental health and so on. I am not sure that I would get political support to rob Peter to pay Paul.

Claire Baker: I have a few questions about the enforcement mechanism. You will have heard the discussion with the previous panel. The evidence that we received from COSLA and others raised concerns about the loss of the element of discretion that is currently in the system. Do you have any further comments on that? If the bill goes ahead as proposed, a panel will be able to instruct the national convener to take a local authority to court. How could that process be improved? For example, could the local authority have a right of audience at the hearing that considers whether to direct the national convener to take enforcement proceedings?

Fred McBride: I have perhaps already said this, but the ADSW would want to retain the discretion that currently exists. We believe that enforcement is often not followed through because a child's circumstances change or we are able to improve the situation in the interim period. It would seem nonsensical to follow through with an enforcement that is no longer required. I hope that I am making myself clear.

I take on board as a practical suggestion the idea that we might have a right of audience at the hearing, although I am not quite sure who you envisage the representation being. Would it be the director of social work, coming along to a hearing to justify their position? Would it be the chief social work officer? I do not know, but it might be impractical for senior managers, directors and chief social work officers to have a right of audience at a hearing.

We would much rather that we implemented hearing decisions, which we do in the vast majority of cases. There is a slightly different agenda around secure care, which you will no doubt come to, but there is no question but that we implement straightforward supervision requirements, if I can call them that.

There are some questions about whether cases lie unallocated. My experience is that they do not and that, if a case is not allocated to a case-holding social worker, a senior social worker or

team manager takes responsibility for it. On occasions when other agencies are working with the child, sometimes quite intensively—two, three or even four times a week—they are often commissioned by the local authority and give effect to the supervision requirement, albeit that there is no named social worker, other than the team manager, looking after the case.

I guess that the question is what is meant by implementing and giving effect to decisions, but my experience is that we almost always, in one form or another, give effect to the decisions on compulsory measures of care that are made by the hearings. I have no experience of ignoring them, which seems to be the idea behind what is in the bill.

Paula Evans: There is a bigger question about what type of system we want to create. Do we want a system of partners or sides? For us, there is a danger that some of the proposals in the bill, in trying to resolve problems, will make things worse by creating an adversarial environment by default. We would be very nervous about that.

We recognise that there is almost a healthy tension between the decisions that panel members sometimes have to take with regard to individual children and the resources that are available in the local authority. Nobody is saying that panel members' decisions should be determined by financial considerations; we are just asking for balance, for decisions to be made within the context of current financial reality, and, within that, for it to be recognised that we are partners trying to make our resource work in the best way possible for the children who are in need. That is a difficult job, and if we create a system of sides, it will become more litigious and adversarial and more about who wins and less about problem solving. That would be a shame.

Claire Baker: Under the system proposed in the bill, even though it moves the responsibility to the national convener to take the authority to court at the direction of the children's hearings panel, the ultimate sanction will be the same as the one that currently exists. In COSLA's submission, it said that, when such cases have arisen in the past, amicable solutions have been reached without enforcement being necessary. I am not sure how the new proposals create a relationship of sides rather than partners. The ultimate sanction is the same. Under the current system, resolution has been reached before matters have gone to court. How do the proposals change the system or make a resolution more difficult to achieve?

12:30

Paula Evans: This is where we come to the point about discretion. By transferring and reinforcing the power, we create a different environment around it. The power is transferred to a different body with a different role in a different context within the system. Therefore, the environment around the power will be different. We cannot say what the application of the power would be. The danger in having a power without discretion is that the only route to resolution could be to dispute a decision that has been made. That leads to a system of sides rather than partners. It is the same power, but applied differently—and that matters to the culture.

Claire Baker: If the proposals go ahead or if there is a change such that the national convener has discretion—similar to the discretion in the system currently—would you be satisfied with that? How could situations be resolved if a panel feels that its decision has not been implemented as it wished? I refer to our discussion with the previous panel around the decisions that a panel makes that are less complex but which are still on things that affect the lives of young people and children. Could greater use be made of the information loop, as has been suggested? How else can understanding be enhanced as to how a decision has been carried out?

Paula Evans: No one part of the bill can solve some of the problems that exist. It must be a sum of parts. Putting in provisions on discretion would be a minimum for us when it comes to the enforcement duty. As my colleague has mentioned, we would wish to avoid situations where there is a dispute. That can be achieved through better partnership working locally, reinforced by mutual trust and better sharing of information. The place for that to happen is within local partnerships. We would have preferred it if the bill had explicitly reinforced and driven that multi-agency partnership approach, with information being shared and feedback going directly to the panel rather than indirectly, through a national body. That is how to facilitate better decision making and relationships. Taken together, those measures might lead to an environment where more is done in the interests of the child.

Claire Baker: Do you accept that there might on occasion be a need for the ultimate sanction of taking the local authority to court?

Paula Evans: The political position in COSLA is not to object to that, but social work has a different view.

Fred McBride: As I have said, we argued against that in the first instance, when the policy was introduced through the antisocial behaviour legislation, and our position has not changed. However, we are where we are, and we are now arguing that we wish to retain some discretion within the present situation. If panel members or

representatives are firmly tied into the community planning process, they form part of local decision making about the priorities not just for individual children but for communities of children. That is very important.

SallyAnn Kelly: Claire Baker was speaking about the implementation of lower-level decisions and concerns about contact over smaller issues. There is usually a loop in place through which the panel chair may write to or raise concerns with local authority managers about why things are not happening. We always seek to take such issues seriously and to make a direct response, having investigated the matter. There are checks and balances in the system.

Fred McBride: The hearings may now set reviews, through which they can keep an eye on things. I can give an example to do with contact, which has been mentioned. It might be a perfectly reasonable condition for a hearing to determine that wee Billy should have weekly or twice-weekly contact with his mum, for instance. In some cases, however, panel members might request that such contact should take place every day, including Saturdays and Sundays. We have had experience of that. They might request that it happens in X family centre, and that X social worker does it. That is not reasonable, because it is not doable. We do not believe that it is reasonable to be faced with the prospect of enforcement when such types of conditions are set.

The Convener: You said that the ADSW does not believe that there is any evidence that social work departments are ignoring panels' decisions. However, earlier this morning, Scotland's Commissioner for Children and Young People, Tam Baillie, told us that SWIA reports that the level of unallocated cases is unacceptably high in some, although not all, local authorities. If that is the case, how does that square with your view that you are implementing panels' decisions? Although you might implement them in most cases, it seems that that is not always the case and that some local authorities are not doing as well as they could.

Fred McBride: That is helpful. What I was trying to say was that it depends on how you interpret giving effect to a supervision requirement. For example, in my authority we count as unallocated those cases in which we do not have a named case-holding social worker. However, the reality is that either the team manager works those cases or, as in many cases, our family support teams are involved. I would argue that, although they might not be qualified social workers and are therefore not allocated the case, they are nevertheless giving effect to the supervision requirement. They are working with those children and their families, sometimes on a very intensive basis two, three or four times a week.

It depends on how we interpret "unallocated". I know that some authorities measure it in a straightforward way—there is no named social worker, so the case is unallocated. I am saying that, in many such cases, that does not mean that the case is not being worked by someone else in the social work service or by a voluntary organisation or other body. To draw the distinction, saying that cases are unallocated is not the same as saying that people are not getting some kind of service.

The Convener: It draws the distinction, but it raises some other questions about what the purpose is of SWIA measuring the number of unallocated cases if that can mean different things in different local authorities. However, perhaps that is not a question for you to answer.

Fred McBride: You would have to ask SWIA about that.

Kenneth Gibson: We have already touched on information flows and partnership models. I note a lot of similarity in some of the things that you say in your submissions.

Paragraph 20 of the COSLA submission talks about the sharing of information with panel members, which is dealt with in section 173 of the bill. COSLA says:

> "we need to build an intimate, trusting, understanding and mutually supportive relationship between different parts of the system".

It goes on to say:

> "The proposal in the Bill will do nothing to facilitate this relationship where it is needed".

You made similar comments in that direction already today. How can the bill be improved to encourage a better partnership model between the children's hearings system, the national convener and the local authorities?

Paula Evans: The recognition that improvements are needed in training is important because training is the first instance where there is sharing of information about the types of services available in any local area. Those training opportunities are crucial to building relationships between the various partners. National standards for training will improve the situation.

It is not that we do not need to enhance the requirements for the sharing of information or the expectation of feedback to a panel directly in relation to decisions taken or not, or a change of circumstances around those decisions. The question is whether doing that indirectly through a feedback loop that is held nationally is the best mechanism. For us, that almost takes the

relationship away from the local level and removes the need for a local connection between individual partners. We want to enhance that connection. Trust and understanding are developed and people are able to make better joint decisions only through that connection and such involvement.

Carol Kirk: A clear way of improving partnership working is through joint self-evaluation of the service that is being provided for young people. There has been a start on that. There has been a lot of self-evaluation of integrated children's service planning and child protection partnerships, but perhaps more explicit partnership working and more explicit standards of partnership working around children's hearings system work are needed. The evidence shows that joint self-evaluation against a set of agreed standards drives improvements, but it is perhaps not as explicit about the children's hearings service as it is about other parts of the system.

Fred McBride: I agree with my colleagues. The key word is "trust". To be honest, being a partner of someone who can take you to court does not feel too comfortable—it feels a bit like there is a marriage dispute. People should trust the local authority to get on and implement hearing decisions. As Carol Kirk said, checks and balances, through review systems and panel chairs being able to speak to directors and heads of service, for example, are in place to ensure that that happens.

I refer to the point that I made earlier. The local authority, not the social work department, has the obligation to implement or give effect to a supervision requirement. That ties into the point about unallocated cases. A case may well be unallocated to a social worker, but other bits of the authority may give effect to it. In a GIRFEC world, with the scope for different lead professionals, perhaps that point becomes a bit redundant—not entirely, but members know what I mean.

Kenneth Gibson: There seem to be clear concerns about the role of the national convener. For example, COSLA says in paragraph 6 of its submission:

"It is unclear to local authorities, how one individual could fulfil all of the functions of a National Convener adequately and effectively without any conflict of interest arising between those roles."

I ask Carol Kirk to wear her North Ayrshire hat. In paragraph 9 of its submission, North Ayrshire Council says:

"It remains questionable as to how impartial such a figurehead can be when they have specific responsibilities to only one of many of the component parts of that system."

Do members of the panel not believe that the role of the national convener can be successful? Does that role have to be radically transformed in the bill?

Carol Kirk: It probably has to be transformed if that is the way ahead. A number of contradictory roles would be invested in one person. The person would have the role of developing the service and the training that pertains to it and a regulatory role, and it appears that they would have the quality assurance role. I do not think that those three roles can sit together in one person; there is a contradiction in there. Perhaps the way ahead would be explicitly to remove the quality assurance role and sit it with Her Majesty's Inspectorate of Education, as the rest of the integrated children's service inspection role sits quite comfortably there. It would make sense for considering quality and advising on improvements to be part of that. Under the bill at the moment, quality assurance would sit with the national convener, who would also advise on how to improve the service. Therefore, there are contradictions in the role.

12:45

Paula Evans: We have quite fundamental concerns about how the role of the national convener will relate to children's hearings Scotland. Your comments about transformation are right. If the committee were to take our concerns on board, some parts of the bill would have to be amended to such an extent that they would effectively be rewritten.

COSLA does not disagree with the proposal for a national body or question the validity of some of the national convener's roles; our concerns lie with the body's all-encompassing nature and whether it is right to assign all those roles to one body. You will have to talk to panel members and panel chairs directly about this issue, but we certainly see a logic to the national convener being an advocate for panel members and, for example, setting standards or leading the joint setting of standards in relation to support and training for, provision of advice to and recruitment of panel members. Indeed, there would be harmony in setting safeguarders in that context. However, if monitoring, information gathering, analysing outcomes of that information, providing independent legal advice and so on are added in, the convener's role becomes quite all-encompassing, and I do not know how you would find a single individual who could do all that work. Even if you could, we would still argue whether all those roles should be taken on by one body.

Kenneth Gibson: Is that also because of concerns about democratic accountability?

Paula Evans: An element of our concern relates to the NDPB's democratic accountability.

As I said earlier, in this system there might well be an individual who could be identified as responsible, but does that make them accountable? Our local politicians have a different understanding of accountability and value their role in the hearings system and in being locally accountable for some of the support measures that are provided locally. We would prefer that approach to be improved and enhanced. Putting all that under the NDPB does not resolve some of the existing accountability issues.

Fred McBride: I have nothing to add.

The Convener: That concludes the committee's questions. I thank the witnesses very much for their attendance.

Meeting closed at 12:47.

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