The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 21 April 2010

Session 3

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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CONTENTS

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
11th 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:

Judith Bell (University of St Andrews)
David Forsyth (Joint Central Children's Panel Advisory Committee)
Alistair Hamilton (Children's Panel Chairs Group)
Ian Hart (Children's Panel Chairs Group)
Netta Maciver (Scottish Children's Reporter Administration)
Iain Montgomery (Children's Panel Advisory Committee Glasgow)
Barbara Reid (University of Glasgow)
Malcolm Schaffer (Scottish Children's Reporter Administration)
Alison Wright (Scottish Children's Reporter Administration)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 21 April 2010

[The Convener *opened the meeting at 10:00*]

Children's Hearings (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I open the 11th meeting of the Education, Lifelong Learning and Culture Committee this year. I remind everyone present that mobile phones, BlackBerrys and any other electronic devices should be switched off for the duration of the meeting.

The first item on the agenda is the committee's continuing consideration of the Children's Hearings (Scotland) Bill. I am pleased to welcome the first of two panels of witnesses. We are joined by Judith Bell from the University of St Andrews and Barbara Reid from the University of Glasgow. Both of them are children's hearings training officers. We are also joined by Ian Hart and Alistair Hamilton, chairman and depute chairman of the children's panel chairs group. We also have David Forsyth, the chair of the joint central children's panel advisory committee, and Iain Montgomery, the clerk to the children's panel advisory committee in Glasgow. Thank you for joining us today.

We will move straight to questions, and I will start by asking you about the proposed new structures. The bill advocates the creation of a national body, children's hearings Scotland, the purpose of which is to standardise the appointment, training and monitoring of panel members. What are your views about the standardisation that might be achieved by the new body? Is it appropriate? Do we need a national body of that sort to achieve standardisation across children's panels throughout Scotland?

Judith Bell (University of St Andrews): I can start from the perspective of training. We would welcome a national approach to the children's hearings system, as there are inconsistencies across the country that affect the work of different panel members. They affect all parts of the system, particularly when it comes to equality of access to training.

Ian Hart (Children's Panel Chairs Group): Panel chairs have been seeking, and would support, a national body and a national convener. It is a matter of consistency for panel members—we would appreciate consistency in training and support. As far as the rest of the bill is concerned, we have considerable reservations about the structure.

David Forsyth (Joint Central Children's Panel Advisory Committee): The children's panel advisory committee also supports the idea of a national convener but, like my colleague, we are concerned about the powers that would lie with such a convener.

We strongly support standardisation. One of the weaknesses of the current system is that, despite the CPACs' involvement in trying to establish standards throughout Scotland, there is no power to implement those standards in all regions. We see the national convener being able to do that.

The Convener: We will come to the specifics of the role of the convener a little later. I am keen for us to concentrate on the structures at the moment.

When Judith Bell responded to my question, she was clear that the key issue is effective training. That is true: it is about ensuring that there is effective training for all panel members. As a lay person looking at how the children's panel system operates, I wonder about having a national body to deliver that training, as it will not necessarily guarantee standardisation or an improvement in quality. It is a question of getting the right training and ensuring that people take it up. What guarantees can there be that the national body will ensure that there are those standards?

Barbara Reid (University of Glasgow): First, standards will actually be set. At the moment, the training that is offered follows the competence framework, but no one has examined the effectiveness of that framework or how effectively the units are delivering. For a number of years now, we training officers have been asking for an external inspectorate that would examine whether our work is fit for purpose.

Once training has been delivered, the question is whether it has been effective. However, without any standardisation in monitoring, you will never get that kind of feedback. After all, by that time, panel members will be putting it into practice in hearings. Someone has to take control of the system and ensure that standards are set, maintained and inspected.

Judith Bell: Another issue is, as I said earlier, access to training. A panel member in, say, Dumfries and Galloway should have the same access to training as a panel member in Highland, but at the moment there is differentiation in the training that is available to panel members. All of them get core induction training, but after that the level of in-service training that is offered varies. I am very lucky: in the area that I work with, the local authorities buy into all the in-service training

that panel members expect to receive. In other areas, that is just not the case.

Barbara Reid: I know that, in the west, not every local authority offers a range of training to every panel member, sometimes for very good reasons that might be related to budgets, for example. In one authority, every panel member who comes up for reappointment might be offered reappointment training; in another, panel members might have to wait 20 years for that. That is not fair.

Alistair Hamilton (Children's Panel Chairs Group): We support the point about the need for consistency in training and acknowledge that training might have to be delivered in slightly different ways, depending on the area. For example, the training that is delivered in Highland, the Western Isles and Shetland, where I come from, might be delivered differently in Glasgow, but it is important that the curriculum is consistent.

The Convener: You do not believe that you get any feedback on the effectiveness of training. Do we need a national body for that or do we simply need to ensure that our existing structures allow panels to give feedback and let you know whether their training needs are being met? Will the matter be dealt with more effectively by the new area support teams that are supposedly going to replace our CPACs?

Judith Bell: It is difficult to answer that question, given that we do not know much about the set-up of the area support teams. That aspect of the bill perhaps lacks clarity.

David Forsyth: One area that is relevant to training is the feedback loop, which involves monitoring by the CPACs. At the moment, the loops are very local, with feedback being made through members' own CPAC and dialogue with the training group that is responsible for their area. One benefit of a national standardised system is that there will be much more of an opportunity to establish best practice and to ensure that it feeds into all areas. As I say, only very small loops are operating, and no one inside them really knows what other areas are doing, how well they are performing and what lessons can be learned.

Barbara Reid: Although there is guidance on training committees, not every local authority has such a committee or meets training officers. There is no consistent way of getting feedback or, indeed, of knowing that the loop exists.

Ian Hart: I agree with the point about the bill's vagueness on area support teams. That is very much a matter of concern, because as a panel we believe that situations are best handled locally. You might call us a tribunal, but our work, which involves repairing the lives of children who have been damaged by circumstances, is very specific and different to that of any other tribunal.

We have had huge support from local authorities, which have worked well with us. We believe that the local authority is still the best venue and the best source to deliver the services that we require. We are not sure about what is happening with the area support teams, therefore I advocate that we look closely at local authorities. Could the matter have been dealt with without the bill? Yes, I think that the changes could have been made.

The Convener: Last week, the committee heard from the Convention of Scottish Local Authorities, which is clearly of the view that there should be a role for local authorities in supporting children's panels in their areas. It believes that there are important issues around local access to and local accountability for the children's hearings system. Mr Hart thinks that there is a need for local authorities to be involved in supporting the delivery of the tribunal service. Do other panel members have a view on the role that local authorities should play?

David Forsyth: It is clear to the CPAC that the current arrangements, working in tandem with local authorities, work extremely well and we do not want that to be lost. In fact, we are concerned that the bill does not put sufficient statutory requirements on local authorities to support children's panels. We believe that the current system should require the local interest to be kept in mind. Having said that, we still think that area support teams could be larger than the 30 units that currently work in Scotland, but subdivide to produce the required local supports. In my area, because we are the joint central CPAC, we cover three councils and that model works well for us, although that is not to say that the same model would be adequate or appropriate for the whole of Scotland. There is the possibility of undertaking some merging but still meeting local needs.

Ken Macintosh (Eastwood) (Lab): Is training not already provided nationally by four training centres?

Judith Bell: Let us be clear about what is meant by training. There are two types of training: the core training that is provided by the four training units, which works to the competence framework, and local training that is provided by local authorities or local areas, which is variable in what it consists of and in what panel members are expected to attend. As we say in our written submission, in some areas, panel members are expected to attend nine sessions in a year, whereas in others they are expected to attend two out of four. Some local areas do not offer any local training. There is inconsistency in that as well.

Ken Macintosh: How would the bill change that?

Judith Bell: There must be some standards for training. A national approach would bring consistency throughout the country in what panel members were expected to attend.

The Convener: Do you accept that there is nothing in the bill, as currently drafted, that would guarantee that? You believe that the new national body would deliver such an approach, but there is nothing in the bill to require that. Is that not the case?

Barbara Reid: Perhaps there is not, but we do not yet know the remit of the national convener, and doing nothing would also not guarantee that things would change. Since 1996, we have worked with the current system. I have worked for 13 local authorities and there is no common denominator in what they deliver. Some panel members receive an immense amount of training; others receive absolutely no training other than the mandatory training. When they come together in other organisations, they wonder about that unfairness. Also, there is no quality control over a lot of the training that is delivered, which is why we need a national body to set minimum standards. A panel member who has to attend nine sessions a year thinks that it is grossly unfair if the neighbouring authority expects its panel members to turn out only twice. Perhaps a national standard would solve that problem.

The Convener: Okay, but there are no national standards in the bill. That is the point that the committee is trying to get at.

We move on to the role of the national convener.

Elizabeth Smith (Mid Scotland and Fife) (Con): Notwithstanding the interesting question that Mr Hart asked about whether we actually need a bill to address some of the serious issues, my questions are on the role of the national convener. Given that the bill proposes several changes, particularly legal ones, will the witnesses define what kind of person the national convener should be?

10:15

Iain Montgomery (Children's Panel Advisory Committee Glasgow): I am not sure that anyone has the answer to that. The bill seems to require an awful lot of the national convener. We are all saying that it is not necessary to put some of that in legislation to deal with the issues in the children's hearings system. It will take a very special person to meet the remit in the bill, because there almost seem to be conflicts in the role as it is defined. The national convener is expected to be the champion of a system that is working well, but at the same time they will measure whether the system works well. That will be an interesting conflict for anyone who takes up the position. They will have to try to bring together fairly disparate parts of the system into one team and model. Also, as has been alluded to, they will have to bring together the many different expectations that currently exist in the children's hearings system. There is no easy answer to the question of what type of person the national convener should be or the skill set that should be required. We need more definition of the role.

Alistair Hamilton: This might be stating the obvious, but it is important that the person understands the system. The level of understanding varies across Scottish governance generally—I do not meant the Government. If the national convener is to be a champion, it is important that they understand why they are championing it.

Elizabeth Smith: I want to tease out the issue that Mr Montgomery raised about a potential conflict between the convener's roles. Will you explain exactly what the conflict is and how it could harm the process and the child's best interests?

Iain Montgomery: I do not say that conflict exists; I say that there is potential for conflict to arise, because the convener will be the person who argues outwith the system that the system is working well, yet at the same time they will be looking at the system internally and setting standards. The convener will almost be asked to say that the standards that the convener has set are working. No external inspectorate will confirm and underpin that on behalf of the convener. As a former internal auditor, I am slightly concerned about that. I can envisage the convener as an internal auditor, but I do not see a model for an external auditor in the bill and the proposed models. That comes from my previous experience.

Elizabeth Smith: So you argue that the two distinct roles should be separated.

Iain Montgomery: Again, we come back to the concerns that have been raised—prior to the meeting and in it—that the role of the convener is extensive and perhaps more extensive than is necessary to achieve the outcomes that we all seek.

Elizabeth Smith: What can the local children's panel advisory committees do better than a national body?

David Forsyth: That comes back to my point that we miss something by not being able to discover best practice and tap into it. The current CPACs do a good job in their various roles—I would say that—but, with a body on a national

scale, we would be able to learn from others. That would be the biggest benefit.

Elizabeth Smith: Is it your opinion that the existing system could be improved without legislation?

David Forsyth: Frankly, yes. I see the power of the convener being the central focus to allow best practice to be established and disseminated. Once it has been agreed what standards are to be set, he or she will have the power to make that happen. At the moment, we are a disparate group and we are not able to achieve that. The issue is a combination of discovering what is best and then putting it in place. The CPACs, as they are currently structured, can certainly deliver what is required. The step from there to what I see as a more ideal situation is not huge and would not require a bill.

Elizabeth Smith: What do you feel about the principles of local area groups as distinct from 32 panels?

David Forsyth: Local area groups, in some manner within the area support teams, are still important. As I said before, the model that we currently operate works very well. We have three distinct areas, with their own panel groups, chairs and deputes, that work under the umbrella of one CPAC. That model works well for us.

The Convener: I want to ask about the additional role that the national convener will have in offering legal advice. You will all be aware that until September last year, if required, panel members could seek legal advice from the reporter, who could also offer legal advice. They are now no longer able to do that. How often do panel members require legal advice? Is it required regularly, or is that an unusual circumstance?

Alistair Hamilton: We need to distinguish between legal advice—in the sense that one would get advice from a lawyer about how to defend a court case, for example—and clarification. Most of the time, panel members want clarification. As we understand it, the revised role for the reporter enables them to provide that clarification.

We often require clarification in hearings—there is no question about that. I would have to think very carefully about the purposes of requiring any other kind of advice in hearings. That question perhaps needs more debate—possibly not today, but there is an issue about the kind of advice that is sought and why and who is best placed to provide it.

Ian Hart: Having been in the system for 35 years, I can say that it seemed a lot simpler when we had fewer people in the hearing room. We can now sit with three lawyers in the room, and my concern is that we are becoming more adversarial, which is not the spirit that Kilbrandon expected. I am also concerned that we could lose the child: we are trying to make it easier for the child to speak out, but we are making it more difficult, not only for the child but for the parent, because we now have a hearing room full of lawyers and others.

Judith Bell: When we considered the bill, the issue of legal advice concerned us. It is not clear from the bill how the system would work—whether there would be a telephone hotline or help desk, for example. We have reservations about that and the kind of advice that could be given in that way. If legal advice were to be a function of the national convener, there would have to be a lot more clarity about how it would operate. It could be difficult to offer legal advice on the telephone. If you were on the end of the phone to somebody and did not really know the full circumstances of the case, it could be possible to misinform them.

Barbara Reid: Panel members do not often ask for legal advice; what they look for is clarification of procedure. That could be done through some kind of helpline on the extranet, which panel members could check in preparation for meetings. However, I think that, within a hearing, panels would want to have a continuation to get the help that they needed.

The Convener: Certainly, it was clear from those who responded to the Government's consultation that the idea of a phone line to the national convener caused considerable concern. Panel members in my area have raised concerns about that with me. We heard from representatives from COSLA and the Association of Directors of Social Work at last week's committee meeting that they had reservations about the possible impact on hearings. For example, if a hearing had to be suspended to obtain legal advice, for how long would it be suspended? Judith Bell indicated her concerns about delivering advice by telephone. Does anybody else have views on that?

Alistair Hamilton: Presumably, advice given by telephone would have to be treated in the same way as clarification given by the reporter. In other words, it would have to be heard by everybody, which would require some sort of conference call—that might create difficulties in some locations. Barbara Reid alluded to the question of bringing someone into a hearing, presumably halfway through the proceedings, who had little knowledge of the case and—perhaps as important—little understanding of the dynamics of the hearing as it had unfolded on the day. It would be difficult to make that an easy process. I am not saying that it could not be done, but it would present some challenges.

Ian Hart: It would be inappropriate in any hearing for anybody to leave the room and telephone somebody else; it would be better to have a continued hearing. However, I would have thought that all of this could be dealt with through panel members' training.

Barbara Reid: It would also require the people who were enrolled as legal representatives to be trained so that they worked within the ethos of the system, because the idea is not to make the system adversarial and legalistic. We want people who can give advice and support in a way that children can understand, because the child is the most important person in the room. If the child cannot understand the process, we have lost the process altogether and we have lost the child.

The Convener: I get the sense from speaking to panel members that it is rare for them to seek legal advice. Often, they just seek clarification that they can take the course of action that they intend to take. That is one option that is open to them. Currently, the reporter cannot do that as much as they perhaps would have done in the past. Has that caused many problems since September 2009? Are you aware of any real dilemmas?

Barbara Reid: I do not think that it has. It is about the panel member's skill in getting information in the open forum of a hearing. Previously, clarification could be sought before the family came into the room, when panel members would check with the reporter what they could do or whether they could have another warrant, for example. If such checking is done in the context of the hearing, it is part of the open forum, which allows other people to challenge it. It is about the panel member's skill in dealing with such a situation in a hearing, which should mean that, in many ways, there is no significant change from the old practice and that what is done is done in an open and fair way.

Judith Bell: I agree. My experience is that there has not been too much concern about the change in the role of the reporter, because panel members are aware that the reporter can give a view if there is thought to be a procedural irregularity. The change has not caused huge issues, as far as we are concerned.

Ian Hart: I think that panel members have responded very well to the change.

Ken Macintosh: To go back to the role of the national convener as champion, do panel members or chairs have any concern about the desirability of appointing probably a highly paid, full-time person as a national convener in a system that is run by unpaid local volunteers? Would they be an ideal champion for unpaid local volunteers?

10:30

Alistair Hamilton: That has not been an issue, but, if I may say so, there may be an issue with how the interface between volunteers and paid people is managed at local level. The current arrangements work quite well, but it is unclear how the area support teams will be constituted and operate, so there is an issue about how monitoring will be done with a mix of paid and unpaid people. That is potentially a little bit troubling.

David Forsyth: That is a core reason why we believe that the power that the bill currently gives to the national convener should be diluted or delegated. It is critical that people understand that panels are manned by volunteers. Many of the functions that are currently carried out by CPACs are also provided by volunteers. From the public's perspective, it is important for that to be recognised. As CPACs, we have no objection ultimately to the national convener being a professional who will have control over all those elements, but the core understanding should continue to be that panels are very much organisations that are manned by volunteers.

Christina McKelvie (Central Scotland) (SNP): Good morning, panel. I want to move on to ask about the new grounds for referral in the bill, which now include reference to "close connection" and matters such as "domestic abuse". Are the redrafted grounds for referral better? Will they ensure that children who need to be referred for supervision are brought before the hearing?

Barbara Reid: I think that the new grounds are quite woolly and do not address some of the issues. The bill is an opportunity to do something completely different with grounds for referral. I do not know why so many grounds for referral are needed anyway. A ground for referral that said mainly, "This child is in need of compulsory measures of supervision for the following reasons" would make much more sense to children. Some of the woolliness in the terms that are used will not help or improve the situation.

Alistair Hamilton: On the first question, I tend to agree with Barbara Reid that it might be possible to have a simpler statement of the grounds of referral. From my involvement in setting up Guernsey's tribunals system last year—it has been getting under way earlier this year—I know that it has a kind of catch-all ground that basically amounts to saying, "There is no one in a position to care for and protect this child in the way that the child is entitled to be cared for and protected." It might be worth looking at that kind of simplification.

On the second question—on whether the right children will be brought before the hearing—a different issue arises from the change that is

proposed in the bill. Currently, the social work department or the police may say that a child may be in need of compulsory measures of care, but the department refers the matter to the reporter who will reach a conclusion on whether that should happen. As other witnesses may have said, that is a different test. That perhaps raises the risk that, if a social work department, policeman or whoever has some doubt about whether the child should be made subject to compulsory measures, people might well err on the side of saying that the test is not met. The risk, of course, is that a child who is vulnerable might be missed. People might take the view that, if in doubt, they should not refer the case to the reporter. At the end of the day, it is the hearing's job to decide whether there should be compulsory measures of care, and it is the reporter's job to bring cases to the hearing where the reporter thinks that that might be the case. I worry that the bill will alter that position, possibly not to the advantage of children.

Christina McKelvie: Over the past few weeks, quite a number of witnesses—last week, Scotland's Commissioner for Children and Young People was very strong on this point—have raised the issue of the overlap with the Criminal Justice and Licensing (Scotland) Bill, which will raise to 12 the age of criminal prosecution. Can you give me your thoughts on how you see these changes coming about? Should there be changes to the criminal law consequences for children coming to hearings when referrals are specifically on offence grounds? There is obviously the divide between the age of eight and the age of 12. I seek your thoughts and feelings on that point and how we could remedy the situation.

Alistair Hamilton: It is interesting that we have a very low age of criminal responsibility in Scotland. I presume that that is partly because the situation has been masked by the fact that we have a hearings system. If there was no hearings system operating in the way that it does, the situation might have been viewed differently and it might have been discussed before it has been.

We are well aware of the debate. It is not an issue that we have discussed in any depth at the chairs group so far, but the spirit behind the hearings system is that we are trying to put troubled children back on track. It is hard to see that criminalising them will serve any useful purpose, to be perfectly honest, and there is some evidence that doing so may hold them back in later life. On how we might move forward from that position, clearly one way of doing that would be to say that acceptance of an offence ground at a hearing—supposing that we still have an offence ground—would not create a criminal record as it does now. The other way of doing it might be to say that the behaviour would be criminal if the child was of an age of criminal responsibility. I again refer back to Guernsey: it has taken the first of those two options, which is interesting.

Ian Hart: I agree with Alistair Hamilton. I have concerns about calling behavioural problems offences, and I do not think that they should go with the child into later life. I would prefer to see behaviour problems—

Christina McKelvie: As a focus?

Ian Hart: Yes. Nowadays, the percentage of children who commit offences is smaller and the children's hearings system is, in the majority of cases, involved on protection grounds rather than offence grounds—it might be about offences carried out by the parents.

Judith Bell: I agree with that. Criminalising children from the age of eight upwards does not fit neatly into the ethos of the system, particularly with the repercussions thereafter of the Rehabilitation of Offenders Act 1974. The offences that are committed by children aged eight years or upwards are sometimes symptoms of things that are happening in their lives and are more linked to the behaviour aspects that Ian Hart talked about.

Barbara Reid: It is ironic that we make a presumption that the age of 12 is when children can fully participate in the hearing, but that the age of eight is when they have the capacity to know the repercussions of something that may haunt them for the rest of their lives. I know that it is not about changing it to the age of criminal responsibility, but raising the age of when prosecution would take place to 12 would fit in neatly. All of us would probably prefer it to be much higher than 12 but, being realistic, perhaps moving it up to 12 and having both ages the same would be helpful.

Christina McKelvie: My colleagues in the Scottish Government are hearing that message loud and clear, because it is something that I have been particularly interested in.

I am interested about the fact that acceptance of a ground that is not tested in the court for children in that age group of eight to 12 could carry on to a criminal record in later life. It was interesting that Mr Hamilton said that Guernsey has taken the approach that it does not carry on as a criminal record unless it is an extremely serious offence. I want to tease that out a wee bit and get your thoughts on how we could apply that in the bill.

As you rightly said, the welfare-based approach to the hearings system is about giving children the opportunity to remedy some of the problems in their lives and to get for them the correct support into adulthood so that they can develop as individuals and contribute to society. I am really keen that we get a clear message about the

impact of criminalising children at that age and how we could remedy that by not having certain things on criminal records, which might mean that we have to look at the Rehabilitation of Offenders Act 1974. I am looking from a clear message from the panel that the committee and I can take forward.

Alistair Hamilton: I do not know whether I will come up with the answer that is required, but my view is that one of the options that we ought to look at, and which we have mentioned, is the idea that the behaviour would be criminal if the person was old enough—assuming that the line about criminality is needed at all. There is obviously scope for a lot of discussion about that. That approach would certainly help.

I also quite like the Guernsey approach in principle, although it is not quite as straightforward, because it includes some exceptions for motoring offences and so on.

Barbara Reid: The Guernsey model, whereby we could say that unless an offence is on the Lord Advocate's list, it is not a criminal offence, might well take out a bulk of the criminalisation of children who come through the hearings system. There are matters that might have to be dealt with elsewhere. If they could be dealt with elsewhere, we could remove that element from the hearings system. If there is to be only one ground—that the child needs compulsory measures "for the following reasons"—that might well be covered too.

Claire Baker (Mid Scotland and Fife) (Lab): I have a couple of questions about implementation of the hearings decisions and the changes that the bill proposes. Currently, the power to raise court proceedings against local authorities sits with the principal reporter. That will be transferred to the national convener. Along with that change, the discretion of the reporter is to be removed from the system. Are those changes appropriate? Is it appropriate that the panel will be able to require the national convener to take a local authority to court for failure to give effect to supervision orders? In our previous meeting, the discussion was mainly around the lack of discretion in the proposed system. Does that present a problem?

Ian Hart: I cannot help but feel that when we start talking about taking people to court we lose sight of the spirit of the system. At the moment, we work in partnership with all the agencies and the local authority, which is more appropriate than talking about how we would force the local authority or whoever to carry out our wishes. It seems to me that if we get to that stage, we will have failed. As chairs, we work in partnership with the local authority and other agencies; they are involved in all our discussions. I struggle with the idea of bringing courts into the process, because that takes away from the spirit of partnership and discussions about children.

Alistair Hamilton: Part of the question was the business of there being a change in the discretion of the reporter. The problem with that might be that children's circumstances can change quite quickly. People might become embroiled in a court case that rapidly becomes irrelevant to the child, if you know what I mean. Those proposals need to be looked at very carefully.

Barbara Reid: There are lots of panel members out there. The Government previously responded to panel members' frustration about decisions not being implemented—there are still decisions not being implemented and there are still children not being allocated social workers, which is unforgivable. If a hearing gets to the stage at which it is felt that something has to be done, the change will make the process more clear cut.

However, perhaps the timescales are still far too long. It will not mean that every hearing would revisit whether the decision was still necessary and would be cussedly saying, "It's our decision and we're sticking with it." The hearing would always go back to the best interests of the child. In the current system, when we have got to the stage at which people say that they are going to start the process, it is amazing how many resources can become available. We should not need to go to court, but the reality is that not every local authority will fully support hearings' decisions.

10:45

Judith Bell: I agree with Alistair Hamilton that we need to look carefully at the removal of discretion, because children's circumstances change quickly and being tied into the process might turn out to be detrimental to children.

Claire Baker: Last week, we received evidence from the Convention of Scottish Local Authorities, which said that no case had reached the point in question. However, as Barbara Reid says, the arrangements can be an effective lever in trying to get action in areas if there is a problem with implementation.

For a panel to decide that a local authority must be taken to court, the local authority's feeling on the matter must be quite serious. We had a bit of a discussion about that last week. The children's organisations said then that court proceedings would not be appropriate in cases involving the child having access to the parent, as laid out by the children's panel, or in relation to minor faults in the local authority's carrying out of a decision. There was a discussion about the proposal for feedback, the information loop, whether that could be used more effectively in dealing with individual children, and whether panel members are assured

enough that decisions at all levels, whether they are quite small or more significant, will always be effectively carried out. Is there a better way by which panel members can be confident that that is happening?

David Forsyth: That is difficult. All those of us who have quite a lot of experience of the panel system have seen such problems. You have given the example of a contact arrangement that does not seem to be working. How does a panel know that? How can it do something about it? Panels rely on the family having the right to bring a decision back to a hearing after three months. Perhaps the issue is that families need to understand better their power if they think that certain actions that would be appropriate are not being implemented. However, it is extremely difficult to take such matters down a legal route or to have a mechanism to establish whether a decision is being effectively applied.

Barbara Reid: The timescale for appeals could be shortened. We are calling for a review for families. Three months is too long for a child to wait for something to happen. It would be much better to have a mechanism by which a review could be triggered at a much earlier stage if it was thought that the local authority was not fully implementing a decision.

Claire Baker: Finally, there was also a discussion last week about whether agencies such as the national health service should be aligned with the way in which local authorities can be held to account by panel members, whether services such as the NHS should be engaged in that, and whether matters should be addressed through a better partnership model or the legal system.

Alistair Hamilton: In some ways, the missing link in the discussion is the getting it right for every child approach to try to provide an integrated assessment in the first place. Perhaps part of the answer to the question of following up things and carrying them through lies in GIRFEC. There ought to be monitoring under that regime.

To return to your point, we have said that, as the bill stands, the duty to provide information to the reporter rests only with the local authority. Arguably, that duty should extend to health services and possibly to independent schools, which we mentioned in our submission, I think. Other people will have important contacts with the child, and they should be expected to provide information.

Ken Macintosh: To continue the point, although some panel members have expressed worries about implementation, many have a very good relationship with local authorities and are concerned that we are talking about bringing in a national body and using a big stick to fix a system that is not broken. Do you have any information about the number of cases in which decisions have not been implemented and about how many local authorities are affected? I do not quite have a picture of what is happening. Is there a problem in all 32 local authorities, in one or two of them, or is the number somewhere in between?

Ian Hart: I certainly do not think that the problem exists in all 32 local authorities. Most local authorities work well with us and implement decisions, but there are always a few where that does not happen, for various reasons. Panel chairs have discussions with local authorities, which normally resolve the situation.

Ken Macintosh: Iain Montgomery reacted to my question. Do you have something to add?

Iain Montgomery: I reacted more to your request for evidence. An awful lot of what we are discussing is based on anecdote, which has underpinned many changes that make people concerned. I used to clerk the partnership body that considered targets for referrals to and outcomes from the children's hearings system. The figures vary dramatically throughout the country, as has been said. That can happen for good financial, workload or staffing reasons, but we return to the argument that the existing partnership model allows people to resolve such issues. If examples of good practice exist, they need to be shared to achieve what is now the brownprint, rather than the blueprint—I am talking about the colours of documents.

It is difficult to measure the issues, because no overall picture exists. No one in the background is taking a measure throughout the country. Ken Macintosh mentioned the use of a big stick. That phrase is slightly unfortunate, but one big gap in the system is that it does not have one person who says, "This must happen," and who has the powers to make that happen. Whether such powers should be punitive remains to be seen, but some way of achieving what is wanted and bringing people together must be found, so that if targets are being missed in Glasgow but met elsewhere, for example, practice from there can be shared with Glasgow to allow it to consider whether it can take on board anything that would bring it closer to the targets.

I return to my first statement. The evidence is almost exclusively anecdotal. None of us around the table can point to anything empirical that justifies the extreme measures that the bill proposes.

Ken Macintosh: What you say confirms that, as far as I can tell, huge variations exist not even between Glasgow and other places but between parts of Glasgow, for example. If panels are based on a system of locally recruited members who

work with a local authority that cares for people and tries to keep families and children together in its area—if the ethos is that of a voluntary caring partnership—it is odd to introduce an element of national control, with possibly punitive sanctions, and national direction. That runs counter to the ethos. Is that necessary if the system works fairly well in most cases? I think that Barbara Reid and Judith Bell nodded or reacted to that. What are their thoughts on the relationship?

Judith Bell: I agree with Iain Montgomery. Much of what we are hearing is anecdotal. We hear about areas in which decisions of hearings are not implemented and in which families do not have social workers. No sanctions are imposed for that; nobody can say, "This shall happen." It is important to ensure that panel members' decisions are implemented fully. I am not sure how that can be achieved without a sanction or review mechanism.

Barbara Reid: Even having a clear definition would help because no clear definition exists of an unallocated case; the definition varies from authority to authority. In some authorities, an unallocated case is a child who does not have a social worker, but that is not the definition in other authorities.

A national system would mean that everybody was clear about what they were talking about. An egg is an egg—an unallocated case should be an unallocated case, no matter where it is. That discrepancy frustrates panel members, because it means that they are not quite aware of what is happening. I hope that, if the new mechanism is introduced, it will not be used often, but will be available when a child is not receiving what is required.

Ken Macintosh: Part of the system is the feedback loop, but my understanding of the feedback loop is that it gives no information on individual cases, but looks merely at whether, in general, an authority is implementing decisions. I imagine that that would be done annually rather than every three months, which you said was too long to wait, especially in important cases. How will the feedback loop help with implementation of decisions if we do not know in which cases decisions have been implemented and if feedback is not provided within three months?

Ian Hart: At the moment, we have evidence that we are able to hold local authorities to account if decisions are not implemented—there is sufficient evidence that when people have endeavoured to go down that route, the issue has been resolved before it has reached court.

Ken Macintosh: The evidence that we have is that there have been very few such cases—fewer than a dozen—and that in every case the local authority has resolved the matter before sanctions have been used.

My understanding is that a panel discovers that a case has not been allocated or followed up only when it comes back to the panel again. Is that correct?

Judith Bell: That is right. Panels have no other mechanism for knowing what has happened once they have made their decision.

Ken Macintosh: Under the bill, that will still be the case.

Alistair Hamilton: At one point, we suggested that there should be a mechanism for providing feedback to the reporter on individual cases, but there is a risk that if we were not careful, such a mechanism could become extremely bureaucratic. If the system is working most of the time, that would result in resource that could be applied to children being applied to a particular function. It is quite a difficult issue.

As I said, perhaps we should try to create a clearer route for feedback to the reporter through the GIRFEC process. The alternative way of solving the problem that Ken Macintosh has raised would be to provide individual feedback statements, but I am not quite sure whether that is the right answer.

Ken Macintosh: An alternative would be to impose on health boards the same duties to provide feedback and information that apply to local authorities. Does the panel agree?

For the record, everyone on the panel is nodding.

Aileen Campbell (South of Scotland) (SNP): I turn to secure accommodation authorisation. The bill will introduce a mechanism for appealing to the sheriff against the decision of the chief social work officer. I understand that panel members are concerned about the fact that decisions on secure accommodation are taken out of their hands. There are also European convention on human rights concerns about the current system, in that such decisions are not made by an independent tribunal. The new proposals are designed to meet ECHR requirements. Do the witnesses believe that the bill is adequate in that regard? Do you have any concerns about what is proposed?

Alistair Hamilton: The number of cases involved is not altogether clear. From panel members' point of view, there is an issue of principle at stake, which is that given that, generally speaking, the panel makes decisions in the best interests of the child, if it has decided that secure accommodation is in the best interests of a child, it is hard to see why that decision should not be implemented. In other words, if the decision is made, it should be implemented.

Discretion might be an issue in cases in which circumstances change for some reason and it becomes no longer desirable to keep a child in secure accommodation a day longer. That might need to be looked at. I do not have an answer to that but, in principle, our position would be that if we have made a decision that, in line with all the other decisions that we make, is in the best interests of the child, it should be carried through.

Aileen Campbell: How, then, would you go about addressing the concerns that the current system does not satisfy ECHR requirements?

Alistair Hamilton: As I understand it, the bill's provision of an appeal mechanism is intended to get over the fact that an independent tribunal has not made the decision. Our answer to the problem would be to have the independent tribunal make the decision.

Aileen Campbell: You believe that that would meet ECHR requirements. None of the other panellists has comments on the issue.

11:00

Kenneth Gibson (Cunninghame North) (SNP): I would like to set the scene on the definitions of "relevant person" and "pre-hearing panels". The Children (Scotland) Act 1995 allows the hearing to give advice about who the reporter might consider to be a relevant person, which is a person with standing in the system who is entitled to attend hearings, challenge grounds, and appeal decisions.

The test for relevant person status is in section 93 of the 1995 act, and is threefold: parents with parental responsibilities and rights, or any of them; other persons who have acquired parental responsibilities and parental rights, or any of them; and other persons who ordinarily have charge of or control over the child. Only in the third category is any judgment required because the others are set in legislation, and that judgment is exercised by the reporter.

On the other hand, section 185 of the bill defines "relevant person" to include only the first two categories, but sections 78 to 80 also allow a "pre-hearing panel" to "deem" a person a "relevant person" if they have

"a significant involvement in the upbringing of the child."

Section 185 of the bill defines "relevant person", but section 80 allows a pre-hearing panel to grant relevant person status to a person who is not within the section 185 definition. That shifts the judgment of who is sufficiently close to the child from the reporter to the hearing and is, of course, a significant change from the position under the 1995 act.

I am keen to know whether the panel members who are here would be comfortable with the new role that is set out in section 80 and with conferring relevant person status on persons who do not fall within the section 185 definition.

Alistair Hamilton: We are concerned that the new definition is so broad. To be honest, it is not quite clear to us what it might cover, and we would probably need to go through some worked examples to understand the implications of the change. The immediate reaction is certainly that significant contact is hard to assess, as is whether it was recent. At the very least, as we have said in our evidence, there would need to be some carefully considered guidance if we are not to have some major inconsistencies. In my experience—I can speak only to my experience—the present arrangement works quite well. It is not difficult to implement it in practice.

Kenneth Gibson: Are there any other comments?

Judith Bell: I agree that the definition of recent significant involvement is very unclear. How involved does someone have to be? Could they be a teacher or someone like that?

My other concern is that relevant person status could be conferred on someone for subsequent hearings. Some families are in quite fluid situations that can change significantly, and someone who is given relevant person status for one hearing might not have a significant involvement with the child six or seven months down the line.

Kenneth Gibson: Do all six witnesses believe that we should revert to the definition in the 1995 act?

David Forsyth: Although I understand the issues around the definition of a relevant person, I feel that the decision should be made by a pre-hearing panel, rather than being left to the sole discretion of the reporter.

Kenneth Gibson: So you do not all hold the same view. Are you keen on the change, Mr Forsyth?

David Forsyth: Yes.

Kenneth Gibson: What does everyone else think?

Iain Montgomery: I cannot really comment. I am in the specialised position of being clerk to a CPAC. It would have an impact on another of my roles because I appoint legal representatives to hearings, including legal representatives for relevant persons. I have already seen a significant increase in workload as a consequence of recent changes under statutory instrument. It is not for me to comment on those, but if the definition

extends access, it will have an impact on my role. Whether the definition is right or wrong is not for me to say.

Barbara Reid: I agree. At the moment, the definition is far too wide and it is unclear what is meant by it. The second part of your question was about whether hearings could make that kind of distinction. Currently, at a business meeting, the reporter may ask the hearing whether someone is a relevant person under the clear definitions that we have. Perhaps the change will not be so significant if the bill clearly defines who can be included in the role of the relevant person.

Ian Hart: I would certainly go along with the present system. It works well and there is no real reason to change it.

Ken Macintosh: What has been the feedback from panel members, as opposed to the feedback from local authorities to panel members? Do panel members feel that the bill addresses the concerns that they have expressed to you? There is no formal mechanism for hearing what panel members think, but you are all in a good position to know. Will the bill make it easier to recruit panel members? Will it make being a panel member more attractive? Will it make it easier for them to operate?

Ian Hart: Panel members are generally a bit confused about why we are going down this route. They are leaving the system, although I am not suggesting that it is because of all that is going on. They have been consulted on quite a lot of things over the past few years and they wonder where it is all going—it is not what they envisaged when they came into the system. Panel members are also leaving partly because they did not fully appreciate the commitment that would be involved—for example, the amount of training that goes on. That, rather than the bill, may be why they are leaving the system. There is, nonetheless, confusion out there as to why we are going down this route.

Alistair Hamilton: When changes are made, it is important that the panel is still seen as something local. It is absolutely fundamental to the spirit of the Kilbrandon report that the local community makes the decisions for the local community and for the children concerned. The panel must be labelled locally rather than nationally if we are to achieve that. That is important and we should not lose it. It gives people a sense that they are serving within their community and helping local children.

Ken Macintosh: Anyone else?

David Forsyth: I completely agree with that.

Judith Bell: We have said that we think that a national set-up would help consistency, standards and training, but we still need the local approach to training panel members, not a national training programme.

Barbara Reid: Panel members need to feel supported by a local network that they can link into easily. Most panel members want to go to the hearing well prepared, to make a good decision for children, to know that that decision has been implemented and—if they are concerned about something—to know that there is somebody at hand who can address those issues for them. They are not interested in the bigger machinery; they just want to do what they are trained to do effectively for children.

Ken Macintosh: Does the bill make it clear who will provide that support?

Barbara Reid: It could do. It depends on what the national convener and the national set-up are to do. It could set the standards and set out what should happen. As in the case of the joint central children's panel advisory committee, which David Forsyth cited as an example, there could be groupings. There are, currently, natural groupings of panel members coming together to do things, and they can perhaps keep the local element.

David Forsyth: It puts the emphasis on getting the area support teams right.

The Convener: That concludes our questions. Thank you very much for your attendance. The committee will suspend for a few minutes.

11:09

Meeting suspended.

11:20

On resuming—

The Convener: We continue the committee's consideration of the Children's Hearings (Scotland) Bill with our second panel of witnesses. I am pleased to welcome Netta Maciver, the principal reporter and chief executive of the Scottish Children's Reporter Administration. Netta Maciver is joined by Malcolm Schaffer, the head of practice and policy with SCRA, and by Alison Wright, authority reporter for the Western Isles. Thank you for your attendance at committee, and for the written submission that you sent us in advance of the meeting.

We will move straight to questions, starting with one about relationships, in particular the one that you envisage SCRA having with the proposed new body, children's hearings Scotland.

The draft bill that was published in 2009 envisaged the relationship somewhat differently from that which is proposed in the bill as introduced. Originally, some of SCRA's functions were to be given to the new body, but it is now

envisaged that you will retain most of your functions. How do you see the relationship between your organisation and the new organisation developing?

Netta Maciver (Scottish Children's Reporter Administration): There are a few strands to that, and I will start off with the personal one, for me as principal reporter, or PR. Having a national convener means that there is immediately a point to someone being there, whose job it is to focus on the panel part of the process, and who I can relate to and engage with. It provides more equality to the two pillars to have that person in post. That is not to exclude what currently happens at a different level—between authority chairs and the chairs of local children's panels. That relationship has been critical, and I can see it continuing and developing.

That is an overview. Considering some of the services that SCRA provides, I see it as important to involve the national convener in our research programme and in studying the information that we gather. In the areas that are system wide, we tend to do the work but, with a bit of stretch, we could stretch that provision across the whole system. It feels better to stretch work across the whole system, rather than keeping it exclusively to the SCRA part.

I hope that that sets out some starting points.

The Convener: The committee has heard evidence and some concerns about the role of the proposed national convener. There might perhaps be some conflict for the national convener, given the various tasks that they are being asked to do. Does SCRA have a view on that, or would you not be able to comment?

Netta Maciver: I can comment on that. In any organisation, one of the jobs is to be clear about why that organisation exists, what it is doing, who the work is being done for, how the staff or volunteers are doing—whoever the workforce is—and how the tasks are being done. Clarity about what people are there to do is critical. Then ways of gathering information about how well the organisation is doing can be considered, after which it can be asked how to do that better. We are all continually striving to improve what we are doing.

Sometimes people are asked whether they are doing the job well. Part of the reason for that question is to focus on what they could do better. I do not have a problem with reconciling that aspect, which is to be critical of one's own organisation's performance in order to improve it. Coming to places such as the Parliament and saying that we do our work well, but that there are some bits that we could do better, is part of what is required to move a whole organisation forward.

The Convener: Might any aspects of the bill create unnecessary tension or conflict between SCRA and the national convener, or have the changes that were made since the draft bill was published addressed those areas?

Netta Maciver: The bill as introduced is very different and we are delighted to have it in front of us. Tensions and conflicts tend to come down to people, so we want an operating structure that allows us to have the best possible relationships. If we look at the current responsibility on me as PR, that takes us to the point that was raised in the earlier discussion about how we direct local authorities and whether we talk about that as a stick or as shining a light.

We gather a lot of information about the system—not about allocated work, but about all kinds of other areas of work. We try to make that information available so that every local authority in the country can go to the SCRA website and see how it is performing compared with two other local authorities—they can choose which two. We could, for example, look at how the three island authorities are performing in producing reports for us. Everyone has a target to get 75 per cent done within a certain number of days. One does it in 27 per cent of cases, one does it in 69 per cent, and one does it in 79 per cent. That is not an acrimonious situation for us; those are facts. We can shine our light, and it is then for the local authorities and those who scrutinise them to ask whether that divergence is acceptable and, if it is not, how we can draw people up to the required level. It is great that someone is exceeding it. In fact, one local authority is reaching 95 per cent. It is important to consider how authorities can do that.

We should go forward with the belief that we are aiming to improve the system. This is not about being critical. It is about getting the best service for each child and family. It is not about wielding a stick. In saying that, we have to say to those who are performing less well, "You can perform better. You can compare yourself with these two local authorities and find out from them how they have addressed the problems." However, they need to have the will to do that.

Ken Macintosh: I will ask a question that Alistair Hamilton raised earlier. The bill changes the wording so that, instead of a local authority or the police referring a child when they believe a supervision order might be required, they will do that when they think that an order should be in place. Does that alter the role of the reporter? Are you worried that it shifts the balance of power?

Malcolm Schaffer (Scottish Children's Reporter Administration): We support what Alistair Hamilton said earlier. The change raises the threshold too high. The reporter's role is to act

as a gatekeeper in the system; the reporter has that independence. The test that a referral "may be" required seems to us to reflect appropriately the standard at which we should consider referrals. "Should" puts it too high and there is a danger that referrals would slip, without independent scrutiny and without consideration whether referral to a hearing is appropriate. We share the reservation about the change in wording.

Ken Macintosh: Did the Government consult you about it? It is unclear whether the change of wording is a deliberate policy change or an unintentional one.

Netta Maciver: We have had an opportunity to comment. As you know, we sent you detailed written evidence. We will have addressed it there, and the Government is aware that we raised the issue.

Christina McKelvie: I asked some questions earlier about the new grounds for referral and I would like to tease that out with you as well. Is the new statement of grounds in section 65 of the bill an improvement on the existing grounds in section 52 of the 1995 act? Are there any other improvements that you suggest?

11:30

Malcolm Schaffer: It is critical to get the grounds right because they define how we can intervene when children are at risk. They need to be sufficiently specific out of fairness to children and parents to give them proper notice of why the child has been referred without being too cumbersome.

We support the redrafted grounds. They cover all the grounds. We heard evidence earlier about the notion of having one specific ground. Although we will be interested to hear how that goes in Guernsey, our concern is whether it would give sufficient fair notice to the child and the relevant person of exactly why the child has been referred.

The one improvement that we might consider to the grounds in the bill is a definition of domestic abuse. We are all in favour of having a ground that relates to domestic abuse but, from agency practice in the past, we have seen some confusion about what that means. It would be helpful to have some guidance on that to help agency practice to develop.

Christina McKelvie: Last week, the Scottish Child Law Centre argued that we should scrap all the grounds in favour of a single ground. You have already talked about that. The centre's suggestion was a ground that the child was in need of compulsory measures of care, protection, guidance and control. Will you give me a wee bit more detail about your reaction to that?

Malcolm Schaffer: That connects to what I said earlier. Is that ground specific enough? If you were the parent of a referred child and you wanted to know why your child had been referred, would that ground give you sufficient indication? The current range of grounds enables you to identify precisely why the child has been referred and the circumstances surrounding the referral.

Christina McKelvie: I am interested in the continued existence of the offence ground. There are issues connected with the age of criminal responsibility. Is keeping that ground justified? If so, are there other amendments that you would like to be made to ensure that disclosure and rehabilitation are dealt with appropriately? We have heard concerns about children carrying through into adult life criminal records that were not tested in court but were accepted as grounds at a panel hearing.

Malcolm Schaffer: You will see from our submission that we strongly believe that there is a need for review of the Rehabilitation of Offenders Act 1974. At present, it covers children to the extent that, after the termination of supervision for any child who appeared at a hearing for an offence ground and accepted it—or a year after that hearing—the ground is regarded as a spent conviction. Straight away, the wording is uncomfortable, is it not? It is not in keeping with the ethos of the system. That is the first aspect that we would want to consider. The second concerns the impact on the child's future employment and the extent to which standard or enhanced disclosure can still impact.

For those reasons, we believe that there is a need for a fundamental review. You have heard a couple of outcomes canvassed. One is to have a ground that, alternatively, considers behaviour that would be criminal. A second that was canvassed this morning relates to having a list of potential offences. A third is a requirement for a specific risk assessment test if there are concerns about the impact of the child's behaviour on the community. We know that there are such concerns about a limited number of children and, in those limited circumstances, should there be a specific test before a sheriff that would allow the continued keeping of the child's record?

Christina McKelvie: That is helpful. Thank you very much.

Kenneth Gibson: Some years ago, SCRA argued strenuously for a limited interpretation of the 1995 act's definition of "relevant person", but the courts held that the definition includes people such as long-term foster carers. The courts have since been faced with cases in which people seek

a contact order simply in order to give them a right to attend children's hearings as a relevant person, but the bill prevents that. Given the comments in the SCRA submission about the new definition of "relevant person", would the agency prefer to revert to the 1995 act definition?

Malcolm Schaffer: There is a problem with the current definition, especially in relation to biological fathers who are not married but have contact with their children. Some cases that are before the Court of Session at present may provide an answer for us, but we believe that the issue needs to be dealt with and is not addressed sufficiently accurately in the current law.

We have major concerns, some of which have been raised with the committee today, about the definitions in the bill. First, they are found in two separate sections, which means that there is a lack of clarity for anyone who is seeking to work out whether they are a "relevant person". Secondly, the new definition of "significant involvement" in the child's life could cover a whole range of people. Thirdly, Judith Bell made the point that there needs to be a continuous ability to review. What happens if a foster parent, for example, has been defined as a "relevant person", has been looking after a child and is accused of abusing the child, who is removed from their care? I see no mechanism in the bill that would stop that person being treated as a "relevant person". We need some mechanism to allow us to review whether someone should still be treated as a "relevant person".

In summary, we believe that further work is needed to take account of the cases that are before the court, to look again at the definition of "significant involvement" and to look at the review process. We must look again at the definition of "relevant person". As members are aware, it is important in relation to whether grounds are accepted or denied and whether people have the right of appeal, the right of attendance at the hearing and, crucially, the right to receive all the papers that are available to the hearing.

Kenneth Gibson: Basically, you do not want to retain the definition in the 1995 act and want to move on, but you are not happy with the wording of the bill and would like definitions to be tighter.

Malcolm Schaffer: It may be possible to extend the definition in the 1995 act to include fathers with contact.

Kenneth Gibson: It is as simple and straightforward as that.

Malcolm Schaffer: I am not sure that anything is simple and straightforward in this area.

Kenneth Gibson: Certainly not in this bill. Would other panel members like to comment?

Netta Maciver: The view that Malcolm Schaffer has set out is our common view. We have discussed the issue.

Kenneth Gibson: That is great.

Ken Macintosh: My question relates to sheriff court appeals. The ground for appeal will be changed from a decision that is

"not justified in all the circumstances of the case"

to a decision that is "not justified". Might that cause difficulty? Are you concerned about the change?

Netta Maciver: I should have said at the beginning that we have set out responses to the questions that we thought that you would ask, so when one of us gives a view it is a common view with which all of us agree.

Alison Wright (Scottish Children's Reporter Administration): The aspect of the appeals system to which Ken Macintosh referred does not give us concern, but there are two other aspects that do. The first involves a significant change in the scope that sheriffs have. A sheriff may find that a hearing was fully justified in its decision and knock back a family's appeal, in a sense, but the bill specifically allows him also to consider whether there has been a change of circumstances for the child. Where he identifies such a change, he can intervene in a number of ways, just as he could do if the appeal were successful. That is a significant extension of the sheriff's role. As we know, many children have a lot of changes of circumstances in their lives. The provision would open up a range of appeals for families in a way that might not be helpful. We believe that it is appropriate for changes of circumstances to be dealt with by the key decision makers—the panel members at the hearing.

Our second concern relates to the scope that the sheriff has, once he has accepted that an appeal is justified or has found that there has been a change of circumstances, to intervene and make a decision. The 1995 act allows the sheriff to substitute his own decision in some cases but only through the substantive supervision order. In fact, we know that sheriffs do not use the power very often. Generally, the sheriff will choose the other option and send the case back to the panel for reconsideration.

The bill gives sheriffs more powers to substitute decisions, including the power to impose not only supervision requirements but interim supervision orders. Although the proposition might seem attractive, it will simply create a confused economy of decision making for a child. The child would come to an appeal; the sheriff might decide that the appeal is justified and impose an interim order. As such orders last only 22 days, the child would have to go back to the hearing for another

decision to be taken. The picture is rather confused and suggests that the role of those on hearings as decision makers will be somewhat undermined.

Ken Macintosh: Would you like to go back to the situation pre-1995, when the decision was simply referred back to the panel? In other words, the sheriff would not be able to impose his own decision, whether or not the appeal was successful.

Alison Wright: I remember that, with the 1995 act, there was a lot of discussion and debate about this new invasion of the sheriff and their ability to substitute a decision. However, we have found that, in practice, sheriffs have been reluctant to go there and have stepped in in only a very small number of cases. The legal textbooks on appeals support such an approach. I think that we would like to stick with the 1995 act.

Ken Macintosh: So there should be no further extension.

The bill changes the wording of the ground for appealing a decision from

"not justified in all the circumstances of the case"

to "not justified". Has the phrase

"in all the circumstances of the case"

been removed because it is redundant? Is the change irrelevant or significant?

Alison Wright: I would not wish to answer on behalf of the draftsmen but, in my view, it does not significantly change the test.

Christina McKelvie: Will increasing legal representation at hearings for children and other relevant persons, including vulnerable persons, have any benefit?

Malcolm Schaffer: We think so, in the very limited circumstances in which such a move would be appropriate. Although we share Ian Hart's anxiety about increasing the number of people at hearings, we think that in the limited circumstances in which, at the moment, legal representatives can be appointed they can serve an important purpose in supporting what Kilbrandon and the hearings system itself are all about, which is to encourage the effective participation of relevant persons at hearings. In any case, such appointments should be limited to complex cases or circumstances in which no one who is not a legal person, if you like, is available to help a parent who might have been judged as being unable to participate effectively.

Experience suggests that in the majority of areas the number of such appointments is not significant. However, it is important, not least from an ECHR point of view, to ensure that parents can participate effectively, because it is a critical element of the hearings system. The bill will help by involving the Scottish Legal Aid Board and ensuring that there is quality assurance so that any legal representation is of sufficient quality and provides sufficient help to children and parents. We welcome that move, as it will make a significant difference.

Christina McKelvie: Do you foresee any problems with the proposal to involve SLAB?

Malcolm Schaffer: We have already had some discussions with SLAB. Delays might be a difficulty, but the dialogue that we have had suggests that our concerns about ensuring that someone is automatically available to parents for emergency hearings or at very short notice can be met through, say, the introduction of a duty solicitor scheme. We must also ensure that legal representatives are available throughout the country, as that is not the picture at present.

11:45

Christina McKelvie: You are absolutely right about the delay. That has come up a lot in our evidence sessions, as has the issue of automatically having a legal representative, especially in a child protection case in which there is an issue about taking a child into secure accommodation.

Malcolm Schaffer: We can work with SLAB to ensure that we have protocols in place to ensure that the delay is minimised and that legal representation is available.

Christina McKelvie: You feel sufficiently reassured by SLAB and you have on-going discussions with it.

Malcolm Schaffer: Indeed.

The Convener: You said that the number of legal representatives who have been appointed is not significant. What is your definition of "significant"? The matter was contested during parliamentary scrutiny of the statutory instrument and it would be helpful to get a feel for how many legal representatives have been appointed.

Malcolm Schaffer: In most areas, about two or three a month are appointed, although there are exceptions. The concern was expressed that we might end up with a legal representative in virtually every hearing, but it appears that the test of effective participation is being applied. The scheme started in the late summer and had to be introduced quickly, so there has been a period in which it has had to settle down as people have decided when legal representation is appropriate. Some further evaluation of how the scheme is working will be helpful in planning the future progress of the scheme.

Netta Maciver: It is something on which we could gather information, which we could feed into the committee if that would be helpful to you in your deliberations.

The Convener: It would be helpful if we could get a picture of how many appointments are being made. As part of that evidence gathering, it would also be helpful if you could find out whether there are areas of the country where there are particular difficulties in identifying appropriate people to carry out the legal rep work. Anecdotally, I have heard that there are some areas in which it is not easy to identify people who could undertake that task. I do not know whether that is borne out by your experience.

Netta Maciver: I can say anecdotally that we do not have a single legal representative based in the Western Isles; we have to ship them in from other parts of the country.

Alison Wright: Or not, this week.

The Convener: In the previous evidence-taking session, we talked about legal representation and legal advice for panel members and the role of the national convener in giving that advice or clarification. The role of the reporter has changed since September. How is that change working in local authority areas around Scotland? Is it being implemented to the letter of the law and has it caused any difficulties for you?

Netta Maciver: It was very reassuring to hear both training organisers and panel chairs say that they have not experienced any difficulties. It might be useful to spell out what we have done regarding the change in the role of the reporter. As earlier witnesses said, we have stopped having any pre-hearing discussion and we have stopped having any post-hearing discussion or involvement in writing-of-reasons discussion. Otherwise, reporters are able to offer procedural support to the panel members, so there is not a huge difference in the content. The differences will have arisen because some parts may have been more reliant on the reporter than others have been. In truth, moving practice on after 39 years will take more than six months to do. However, I assure you that we are committed to doing that, and that we have in place a robust system that enables us to act if we hear that it is not happening consistently. We were aware that there was an intention to implement some enforcement measures on us in relation to that. We have the responsibility for ensuring that that happens. I assure you that we are supporting the practice changes in a robust way and will continue to do that. We are six months into the new system and are just reviewing it now. We will learn from that and the process will get better.

I should point out that, even if there were some enforcement measures, you would have to ask us to implement them. What we are doing is putting those changes in place now, and I am keen to assure you that we are doing that robustly.

Kenneth Gibson: The reporter can seek an enforcement order from the sheriff against a local authority that has not implemented the hearing's decision, and the bill allows the national convener to seek an enforcement order. However, many councils are implacably opposed to that, on the ground that it would remove discretion to reach a negotiated compromise. How do the reporters in the current system come to their decision on whether to seek an implementation order?

Netta Maciver: Just to clarify, it is the panel members who would ask the principal reporter to do what you are talking about. The power, therefore, is currently with the panel members.

A lot of work goes on between authority reporters and their counterparts in local government when they are not happy about what is happening. However, where the panel members have been sufficiently unhappy that they have decided to bring forward an enforcement order, it has never resulted in a court action because action has been taken by the authority. There has been a deterrent value in having the power. I am not seeking to hold on to that power, and I know that you might want to transfer it. However, if you transfer it, I ask that you attach to it the same discretion that I currently have. That is important not to save local authorities or anyone else embarrassment; it is about the child's circumstances. If the child's circumstances have changed, you do not want someone to be forced to take an action when that is not in the child's interests.

Kenneth Gibson: Do you worry that the national convener will have less discretion than the principal reporter?

Netta Maciver: It is critical that they have that discretion.

Kenneth Gibson: Given that the sheriff principal does not need to make the order and the hearing does not need to direct the national convener to seek the order, is there any real difference from the existing model in what is being proposed, or is the difference fairly modest?

Netta Maciver: I have already stated what I think about the removal of discretion. The issue is that the panel members have not had someone to ask before now. If there is a convener, they have someone to ask who is coming at the issue from the point of view of the panel members who have reached a decision that has not been implemented, with the result that the child has not been receiving the appropriate service. The critical

difference for me is that there is now someone who is the voice of the panel members and can take on that power.

Kenneth Gibson: But you think that that person should have more discretion than they currently have, under the bill.

Netta Maciver: Yes. I know that there has been some talk about anecdotal evidence already, but it might be helpful for us to try to say what there is in the system. Our website contains lots of information about the situation across Scotland, so that might be a good source for you.

Information is also contained in a useful report—admittedly, it was published in 2002, but it must have been forward looking because not only did it consider whether orders were implemented, it considered outcomes. It showed that, in 22 per cent of cases, there was no identified worker. It might be interesting to know what that figure is now. It also pointed out that, when cases were allocated, panel members and families were happy with what they got—they said that they got good services and that a difference had been made to the child's life.

Further information is available on other websites—we have to go trawling through them to find it, but I suggest that you would have the power to ask for it. The Social Work Inspection Agency's reports on local authorities, which are available on its website, say where cases are allocated and not allocated and whether there was a definition. The bottom line for us is whether the child is receiving a service. I imagine that SWIA could collate that information from its reports and give you information that does not rely on anecdote.

Claire Baker: At the moment, the discretion lies with the reporter. For clarification, would that be someone in the authority reporter role, rather than you, as the principal reporter? Does the power lie with an individual and, if there was to be discretion for the national convener, would the power also lie with an individual?

Netta Maciver: Yes.

Ken Macintosh: You said that the 2002 report stated that 22 per cent of cases were unallocated. Does the report say how that figure is spread between various local authorities?

Netta Maciver: The summary does not provide that level of detail, but I am sure that we could get the information for you, as the people are still in the system. However, it says that three quarters of the unallocated cases were in four local authority areas.

Ken Macintosh: I do not think that any of us will be surprised to hear that. Further, at the time, there was a crisis with regard to the number of social workers. I would be interested to know whether that report details a one-off problem or whether there is an endemic problem in the system.

Netta Maciver: I am not sure that your eyesight will be good enough to enable you to see the graph that I am holding up, but it shows how well local authorities comply with what is expected of them in terms of social work reports. Some reach levels of 17 per cent, when they should be reaching 75 per cent, and others reach 95 per cent—you will be delighted to know that that is East Renfrewshire Council.

Ken Macintosh: I take personal credit for that, by the way. [*Laughter*.]

Kenneth Gibson: Where is the 17 per cent?

Netta Maciver: East Ayrshire and Glasgow are both at 17 per cent. Western Isles Council reaches 27 per cent.

Ken Macintosh: Is that Kenny Gibson's area?

Kenneth Gibson: I am afraid that it is not.

Elizabeth Smith: I want to ask about the sensitive and controversial area of child confidentiality. As you know, that confidentiality cannot be extended to someone unless the parents consent to it. Do you support the proposal in the bill to change that?

Malcolm Schaffer: At heart, we do. We want to support anything that can help a child to participate in the hearing and give their views more openly. One qualification, which has been raised by other bodies, concerns the issue of a child saying something that is critical for the hearing's decision. If you were that child's parent, you would want to know what that was, and it might be fair for you to be able to know. That is the only slight reservation that we have. We have to find a way in which that can be achieved while still ensuring that children feel that they can contribute.

Elizabeth Smith: It was put to us last week that that is not a slight reservation but a major one. Do you have any suggestions about how we can get over that issue?

Malcolm Schaffer: I am not sure that it is an issue that we can get over, except by making children feel safer when giving opinions, knowing that what they say will be revealed only when it is critical to decisions. That opens up the question of how children give views. We might want to speak further about that, because it is such a significant area of the system.

Elizabeth Smith: Could you expand on that?

Netta Maciver: We are keen for there to be a statutory responsibility for a report to be produced on the child's view. We think that ensuring that the

child's voice is expressed clearly in their own words, not via a social work report or in someone else's language, would be an opportunity to have the legislation lead some of the cultural change.

You can get views from the youngest of children—they can tell you who they like and who they feel happy and safe with. You can have statements in the form of anything from a sticker book to the verbal statement of a child who has been prepared to give such a report, as well as a written statement.

We think that there is an opportunity to build in the right for the child's view to be on the table alongside the views of others. Sometimes it is difficult for the social worker to say what the child's view is because it is at odds with what they think is best for the child, but our belief is that we should get the child's view to the table, whatever their age. There would be difficulty in doing that with some children—it would obviously be hard for pre-verbal children—but we contend that the hearing members should have that for the rest. We do not propose to exclude the child from being able to speak—in fact, that whole process of preparing reports might allow for more effective participation.

12:00

Elizabeth Smith: My final question is also on something that was put to us last week, which is that a potential stumbling block is that the proposal is contrary to the rights of parents under the ECHR. Will you comment on that?

Netta Maciver: I do not think that that concern applies to a report of the child's view; the only ECHR issue that we are aware of is about information that is withheld. If a child is well prepared to put their views, as Malcolm Schaffer said, the more they can do that openly, the better. However, if a view is expressed privately, that does not allow fairness under the ECHR. That will be a stumbling block, and I do not know whether there is a way through it.

Elizabeth Smith: Do you think that that is likely to happen in a lot of cases?

Netta Maciver: I would be guessing if I answered that. Malcolm Schaffer or Alison Wright might be in a better position to answer.

Alison Wright: I speak from a practice point of view and considering the hearings I was in yesterday. There already is the mechanism to speak to the child on their own. Skilled panel members will explain to the child that they want to hear from them but that they have to give the gist of what they say to their parents. The child needs to know what will happen because, otherwise, they are walking down a blind alley and they could be being set up for something very difficult.

It would be lovely if we could give the child the power of confidentiality, but there are too many problems to do that, so perhaps adding the pre-hearing encouragement that we have talked about to the current system would be an effective way to beef up the voice of the child.

Ken Macintosh: There are many points in the written submissions that we have not touched on but which members will take account of—on warrant to secure attendance, for example. In the initial submission, however, I did not fully understand the point on information sharing:

> "A power for the Principal Reporter to share information in certain tightly defined circumstances ... would be a positive addition to the Bill."

What do you mean by that?

Malcolm Schaffer: As you will have seen in child protection reports, information sharing is critical in ensuring the best outcome for children. If there is an urgent issue for the welfare of the child, there is no problem with information sharing—we can share it under both statutory responsibilities and human rights legislation.

The situation becomes more complex when information sharing is not covered in statute. Examples include contributions to multi-agency audits or queries from another jurisdiction about a child whom we are involved with but about something that is not an urgent child protection issue.

The bill recognises the need to widen our powers to share information with the Crown Office, and we are suggesting that they should be widened to cover a number of other circumstances. We would ensure that data protection is respected as appropriate but, when there is a need to share information because of the welfare of the child or children, that should be done. We have made a proposal to the Scottish Government to that effect.

The Convener: That concludes our questions to you today. Thank you very much for your attendance.

12:04

Meeting suspended.

12:06

On resuming—

Subordinate Legislation

Special Restrictions on Adoptions from Nepal (Scotland) Order 2010 (SSI 2010/130)

The Convener: Item 2 is consideration of subordinate legislation. There have been no motions to annul the order, and the Subordinate Legislation Committee has made no recommendation.

Kenneth Gibson: Before we make a decision, can I ask whether there has been full consultation with Joanna Lumley, given that the order involves Nepal?

The Convener: I am afraid that I am not in a position to comment on that, Mr Gibson. I am guessing that you have no great desire for us to communicate with Miss Lumley about whether she has a view on the order.

Kenneth Gibson: No, it does not involve the Gurkhas so I am sure that she does not.

The Convener: In that case, and as it appears that there are no comments from any other member, I will move to the question. Does the committee agree to make no recommendation on the order?

Members *indicated agreement.*

Meeting closed at 12:07.

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