The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 29 January 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
3rd Meeting 2013, Session 4

CONVENER

Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Clare Adamson (Central Scotland) (SNP)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Neil Bibby (West Scotland) (Lab)
*Joan McAlpine (South Scotland) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Marco Biagi (Edinburgh Central) (SNP) (Committee Substitute)
Tom McNamara (Scottish Government)
Neil Stewart (Clerk)
Kit Wyeth (Scottish Government)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 6

Scottish Parliament

Education and Culture Committee

Tuesday 29 January 2013

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

Taking Children into Care Inquiry

The Deputy Convener (Neil Findlay): Good morning and welcome to the third meeting in 2013 of the Education and Culture Committee. I remind members and those who are just entering the public gallery that mobile phones and electronic devices must be switched off at all times.

We have received apologies from the convener, Stewart Maxwell. I welcome Marco Biagi to the committee as his substitute. I know that Mr Biagi will have some probing questions for the witnesses today.

The first item of business is a continuation of our inquiry into decision making around taking children into care. Today, we will take evidence from officials from the Scottish Government's children's hearings team, who will provide an overview of subordinate legislation arising from the Children's Hearings (Scotland) Act 2011, which the committee will consider shortly. We will also discuss concerns about the children's hearings system that have been raised during the inquiry. The committee took evidence on those issues a fortnight ago from various representatives of the children's hearings system.

I welcome to the committee Kit Wyeth, the head of the children's hearings team; and Tom McNamara, the team leader of the children's hearings team.

I invite Kit to make an opening statement.

Kit Wyeth (Scottish Government): We welcome the opportunity to speak to the committee about the Scottish statutory instruments that the Government will introduce under the 2011 act and to contribute to the committee's inquiry.

I will offer a brief overview of the 2011 act and the SSIs that will come to the Parliament over the coming months, and explain the role of the Scottish Government now and after the implementation of the act. I will also talk about the role of the national convener and Children's Hearings Scotland after implementation, as well as the role of panel members, picking up on some of the issues that were explored by the committee in its meeting on 15 January.

The key aim of the 2011 act is to strengthen and modernise the hearings system. It is very much a recognition that the system works extremely well at the moment but needs to be strengthened and modernised, with a focus on improving outcomes for children and young people by addressing their needs and promoting their rights.

As well as that improvement in outcomes, the objectives of the reform are to ensure that the hearings system is more child friendly, that it is nationally consistent but locally delivered and that it is better equipped to make effective, evidence-based decisions for the children and young people in it.

The 2011 act introduces changes to structures and procedures in the system and changes to the way in which the rights of children and young people are supported. In terms of structure, the act creates the role of national convener to be the figurehead and national voice for panel members. It also establishes a national body, Children's Hearings Scotland, to support the national convener; a national children's panel to replace the 32 local panels; and area support teams to support panel members at the local level. New procedures include the feedback loop, which will provide information to panel members on the implementation of compulsory supervision orders, and more flexible interim measures that will allow hearings to take urgent steps to protect children, when the need arises.

There are a number of rights-based changes. The 2011 act introduces a number of measures to ensure that the views and opinions of children are heard more effectively in the hearings system, through, for example, a mechanism to access advocacy support. The act also makes important changes to the retention of information on people who are referred to hearings on offence grounds.

Some of those elements of the 2011 act have already been commenced. For example, we now have a national convener and Children's Hearings Scotland. They were put in place to prepare for the coming into force of the act's main provisions on 24 June this year.

The 2011 act provides the framework for those new arrangements for the hearings system. The SSIs that sit beneath the act will provide much of the detail. In total, the Scottish Government is introducing around 20 SSIs between now and June 2013.

Five SSIs are already with the Parliament: four negative instruments, which deal with some issues relating to the Scottish Children's Reporter Administration, safeguarders and child protection; and an affirmative instrument, which deals with cross-border issues. I gather that the minister will come to this committee to move the motion in

relation to the affirmative instrument in early March.

The rest of the instruments—the majority of which are affirmative—will come to the Parliament during April and May this year. The most significant of them involves the procedural rules, which will set out the detail for the day-to-day operation of children's hearings and pre-hearing panels, which will form the bulk of the children's hearings system. Others deal with significant issues such as secure accommodation, legal aid and vulnerable witnesses.

I will not go into any more detail on those instruments now, but I am more than happy to take questions on them if members have any.

The Scottish Government is and has been responsible for the legislation and policy on the children's hearings system and for its governance. In practical terms, our team is responsible for overseeing the day-to-day operation of the system at the national level. We have responsibility for the development and oversight of legislation; for advising on all panel appointments, resignations and reappointments; for all children's panel advisory committee appointments administration; and for supporting the key national representative groups, such as the children's panel chairmen's group. We also provide general advice on the hearings system to volunteers, partners and other observers on a day-to-day basis. We also have responsibility for the current national training arrangements for panel members. The team also has a sponsor role in relation to Children's Hearings Scotland and the SCRA.

As we move towards and beyond June, our team will focus on supporting a confident and smooth move across to the new arrangements and will deal with any outstanding issues once we get beyond 24 June. After that point, we will no longer have responsibility for the day-to-day operation of the system, but we will continue to have on-going responsibility for the relevant legislation, we will continue to sponsor CHS and the SCRA, and we will have an on-going management relationship with the contractor who will be running the new national safeguarder panel. We will also continue to have responsibility for panel member training until September 2013. At the end of September, that responsibility will pass to the national convener and CHS, who will also take on the full range of administrative and other national panel support functions that we currently carry out, including appointments, reappointments and the day-to-day work of supporting the panel at a local level.

The national convener will also make appointments to and support the new area support teams. CHS staff will work closely with those teams to ensure that panel members get the support that they need at the local level. As I said, from October 2013, the national convener will assume responsibility for national training for panel members, too.

When the committee met on 15 January, there was quite a lot of discussion about the role of panel members and how well prepared they are to carry out the vital role that they play. It is important to remember that hearings are independent tribunals that are charged with taking decisions in the best interests of children. Since the establishment of the children's hearings system in 1971, the welfare of the child has been the fundamental principle of the operation of the system as a whole. I have never met a panel member who is not totally committed to doing their very best for the most vulnerable children who come before them at hearings.

Every panel member is specially selected and trained to sit as a tribunal member in their local area. Great care and time is taken over that process. For example, in the 2012 campaign for panel members, we had more than 10,000 expressions of interest and, from that, we appointed around 500 to 600. There is quite a long and intensive appointment and training process before someone takes up a role as a panel member. Once they are a panel member, they are regularly monitored and their suitability for reappointment is assessed every three years. It is quite a stringent process.

The Scottish Government has great faith in panel members and the decisions that they take. Panel members' skill and dedication have been very much the cornerstone of the hearings system up to now, and that will continue as we continue to move into the new arrangements after June.

The Deputy Convener: Does anyone have any questions on the statutory instruments? No? I am sure that we will have some as we go through all 20 of them at subsequent meetings.

I invite questions on the children's hearings system in general.

Liz Smith (Mid Scotland and Fife) (Con): I thank Kit Wyeth for that comprehensive overview of the procedure. What concerns the committee is that there are a lot of questions about various aspects of the new legislation. The first is about the consistency of decision making. It has been put to us in quite a lot of the evidence that we have taken—the issue was raised with our predecessor committee, too—that there is a lack of consistency. We have been given examples of panel members changing too frequently.

It has also been put to us that, in some circumstances, panel members have valued at different levels the opinions of different professionals. We also heard that people with

learning difficulties and people in the disabled community feel particularly aggrieved that their situations are not readily understood.

Will you give us some idea of how you believe the new legislation will address those pretty deep-seated concerns about the inconsistencies in the system?

Tom McNamara (Scottish Government): If it would be useful, I will try to take the first three or four elements of the question. There was a lot there to take on.

First, on consistency in decision making, although it is important that the tribunal makes decisions within the scope of its powers and within reasonable parameters, I think that what the tribunal would stand on, and what we would recognise as best practice and the most important facet, is that the best decision for the child on the day is made. At any given hearing, there are three individual panel members, all of whom are trained, prepared and overseen, as Kit Wyeth mentioned. They all give their own decisions, so that moderates decision making within the hearing, to a degree.

Prompted by the committee's interest at the evidence-taking session on 15 January, we took a look back at the SCRA's online statistics on hearings' responses to and handling of reporter decisions. I cannot claim to have done any detailed analysis, but there did not seem to be any undue variation in decision making in the conversion from recommendations for supervision going onwards to fresh supervision requirements. That is the consistency aspect.

The next area of interest was continuity of panel members between one hearing and the next. I thought that Hugh McNaughtan dealt with that beautifully on 15 January. Where it will be beneficial to the child and good for their experience of the system, there are arrangements to enable the hearing to log with the reporter that at least one member will continue on to the next hearing with that child. Under the new arrangements—specifically, in the draft procedural rules—there will be arrangements to allow that to continue to happen.

Liz Smith: Can I stop you? You are right, and I think that those arrangements are important. However, as I understand it, they cannot be made just now.

Tom McNamara: Yes, they can.

Liz Smith: What is it, specifically, about the new legislation that will improve the situation? Is the problem just that that approach is not being applied as it should be? What will happen to improve the situation?

Tom McNamara: This is probably a theme that we will return to during the discussion. There are elements and mechanisms within the system that allow those beneficial actions to take place, but it is a question of systematising that, ensuring that all panel members and players in the system are aware that such steps can be taken and are confident that they should be taken, and ensuring that that is nice and regular.

Liz Smith: Is that a training issue or will something specific be written into the legislation that you believe will solve the problem?

Tom McNamara: Specifically on continuity, at present the authority panel chairman has responsibility for scheduling the hearings rota. They take a range of approaches to discharging that responsibility, whether that is by completing it all themselves, by involving a deputy or by getting some administrative support from the local authority to complete it. How the chairmen approach that task in terms of the variables that they feed into the rota, such as conflict of interest, eligibility and intervals between sittings—all the components of the rota—tends to be discharged in different ways from place to place.

10:15

I said that we would be returning to a theme around systematising what takes place. It is important that that scheduling task will be taken forward under the new arrangements in a much more regular and organised way, on the basis of the national standards that CHS and the national convener have already published. Each of the key activities, whether it is scheduling hearings, monitoring panel members' practice in hearings or looking at suitability for reappointment, will be taken forward much more consistently at a national level.

Liz Smith: Will that happen because there are national guidelines?

Tom McNamara: Yes. There is quite a wide discretion within the Children (Scotland) Act 1995 and the Children's Hearings (Scotland) Rules 1996 to allow that to happen.

Liz Smith: On the second part of my question, it was put to us pretty strongly by some groups that their opinions are not always equally valued. I know that that is a difficult thing to deal with, but nonetheless it seems to be causing a great deal of concern. How could we make the situation a bit better?

Tom McNamara: Panel members are trained to take account of and give due weight to each element of the advice and assessment that they get. As independent tribunal members, they are probably more concerned about the quality, the

currency and the relevance of the information that they get rather than where or whom it came from, to be honest. They will look at who has presented the most persuasive and relevant arguments on that case in that moment.

Liz Smith: With regard to what Malcolm Schaffer said to us, what are the biggest changes that could take place within the training programme that would help to address the situation?

Tom McNamara: Malcolm Schaffer's evidence referred to an SCRA study that was carried out last year. In the study sample, panel members followed social work recommendations in more than 90 per cent of cases. In and of itself, that does not seem to indicate that there is a fundamental difficulty.

I know that the training officers involve partners from a range of professional disciplines—social work, the police, the judiciary and the health professions—in delivering panel member training. When an element that they are covering during the pre-service training is relevant to a particular professional background and interests, the training officers closely involve that profession.

It has been our experience that panel members are always receptive to feedback, suggestions and even criticism when that will help them to do better by children. I have never detected any complacency in that community. Having prepared the panel members properly and with the assurance that their work is appropriately supervised and so on, we have to respect their tribunal role.

Liz Smith: I appreciate that. It is a difficult issue. However, the wealth of evidence that the committee has is pretty strong—some groups feel that there is a problem. I was interested to know how you thought the new training procedure would help to address that.

The Deputy Convener: On that point, Mr McNamara said that the make-up of the panel could be consistent, if that was deemed to be beneficial for the child. Is that correct?

Tom McNamara: Yes.

The Deputy Convener: In whose opinion would that be deemed to be beneficial for the child?

Tom McNamara: Ultimately, the chair of the hearing—the panel member who is running that tribunal on the day—would make that decision. They would assess whether a particular rapport had been struck with one or more of the three individuals on the hearing or whether the issues that were live on the day or any remaining concerns merited more attention and it was felt that it would be useful for one or more members to continue to the next hearing.

Following the logic of remarks that have been made about the consistency of oversight and implementing and bringing home the national standards in practice and procedure, when all panel members are prepared, overseen and confident to the same degree, that brings comfort. Continuity can be arranged at times when it would be useful, but it will not always be possible in terms of the rota. However, the child and the family can have confidence that whoever sees them at their next hearing will be prepared, confident and competent to do a good job by them.

Liam McArthur (Orkney Islands) (LD): I will flip the issue round. Liz Smith is right about the evidence that we have received. We have listened to concerns about consistency, but at the same time there is a system in which panel members provide a check and challenge function for the evidence that is brought before them.

You have talked about the extent to which hearings tend to follow social work teams' advice and colleagues will come on to issues of the attitudes and involvement of parents in the process. Is there a risk that the training provisions, oversight and support that you talk about will bring about homogenisation? Could that challenge function be diminished because of a pursuit of consistency rather than there being a creative tension in the mix to force social work teams and others to defend the evidence and the recommendations that they make?

Tom McNamara: There will always be a healthy delineation between the roles of social workers, other professionals that come through the hearings system and the panel members, who are the ultimate decision makers. Those people are focused on pursuing the best interests of the child or young person and, because hearings take place to consider compulsory measures, it is inevitable that they will get into difficult discussions.

Children's hearings training, as Kit Wyeth mentioned, is very diligent and highly regarded among the panel member community. Rather than bring homogenisation, the new arrangements will bring clarity so that social workers, other partners and observers can see the challenge function, as you put it, being carried out within parameters that can be seen, understood and related to.

Liam McArthur: You say that around 90 per cent of decisions tend to follow social work recommendations. Would you be concerned if that percentage increased as a result of the changes or do you expect it to remain the same, but that the qualitative decisions will be more robust and stand up to scrutiny?

Tom McNamara: That was a really useful statistic for responding to the concern that there

was a wholesale distance between social work recommendations and other people's views and assessments, and the ultimate views of hearings. I would return to the first principle that a decision should be the best decision on the day and that we should not go into those kinds of system-level indicators at each turn.

The Deputy Convener: You mentioned that the membership of the panel could remain the same or change if that was beneficial to the child, and that that decision would be made by the panel chair. That leads on to the next issue that we want to consider. A number of people, particularly those who have been through the system, have said that the system is very much weighted towards adults—whether that is professionals, parents or whoever—and does not particularly have the child at the centre, as is claimed. Will you comment on that?

Kit Wyeth: We certainly accept that there is an issue to do with children feeling and believing that the hearing is about them and not about the adults who are in the room. Plenty of research has been done with children and young people who are in the system or who have been through it that makes it clear that they do not always feel that the system is about them. We have sought to address that, in part through the 2011 act.

An obvious example is the provision on advocacy, but there are other measures that ensure that, in each hearing, the panel chair satisfies themselves that the child has had the chance to have their say and to put their views across, both in the preparation of the materials for the hearing and during it. A mechanism that is often used in hearings is that the chair clears the room of everybody but the child to give them the chance to speak by themselves, uninhibited by the professionals being in the room.

It is important to stress that the emphasis in panel training is on the fact that the hearing is about the child and that it is incumbent on the chair of the hearing to ensure that that is the case. Clearly, if the panel is to take the well-evidenced decision in the child's best interest that it needs to take, it needs to hear from the professionals. However, in doing that, the panel also needs to give the child their place and the opportunity to have their say. In many respects, that is about engaging effectively with the child to help them feel more comfortable about speaking in that environment. That is an on-going challenge. Provisions in the 2011 act will help to address the issue but, beyond that, there is a more general issue to do with the culture and practice of hearings that needs to be addressed. That cannot necessarily be done through legislation; it just needs to become more the way in which hearings take place.

The Deputy Convener: I appreciate that there is a role for advocacy, but there is a bit of an irony that the response to the issue is to bring another adult into the equation.

Kit Wyeth: Absolutely. However, the advocacy provisions are partly about helping to prepare the child for the experience that they will have in the hearing. Advocacy is not just about having someone in the room with the child during the hearing; it is also about helping them to understand the process and their rights and role in it. We will perhaps talk more about advocacy support later, but it is many things to many people. One element of it is definitely about empowering the child to speak on their own behalf. A child might not need to take someone into the room with them; the process might be about ensuring that, when they are there, they feel confident and can have their say.

The Deputy Convener: One theme in the evidence that we have received is about how well-connected parents can bring in different professionals and advocates for themselves throughout the social work system. What challenges does that throw up in the system?

Kit Wyeth: I do not know any panel member who would say that their primary focus in a hearing is not about the child or doing what is in their best interests. However, I accept that parents want and have the right to have their say, because decisions that are taken about their children will affect them. Back in 2009, a significant change was made in respect of parents, by giving them the right to state-funded legal support. Some parents—although not many—take legal advisers with them into hearings. The key point about that is the effective participation test. The support is supposed to be limited to parents who need it to participate effectively in the hearing. I am certainly not aware of any suggestions that parents have in any way influenced other information or reports that come to hearings.

10:30

Liam McArthur: I will move away from the basis on which decisions are taken to the length of time that it takes to reach them and, in particular, provide permanence for the child in question. We have had a range of written evidence on that and I think that the issue has come up in all our evidence sessions and visits. Angus Council said:

> "SCRA research acknowledges the impact of other systems such as Children's Hearings and Courts which can contribute to causing delays in achieving permanent care arrangements."

On 15 January, Malcolm Schaffer told us that the permanence procedure is "clunky". Social Care and Social Work Improvement Scotland—the care

inspectorate—expressed concern that the impact of recent adoption legislation on timescales might make the situation worse. It talked about

"uncertainty as to the impact of recently implemented adoption legislation in speeding up decision-making processes in the children's hearing system and courts."

We do not want a system in which decisions are made quickly but not necessarily correctly. Due process needs to be followed. In Glasgow we heard about the New Orleans intervention model, and we heard recently about the model that Perth and Kinross is developing, to shorten the timeframes. It would be helpful for the committee to know how the new legislation will speed up decision making without undermining the quality of the decisions that are taken.

Tom McNamara: The minister or colleagues would probably talk to you with more authority about the permanency agenda but, having spoken in general terms to colleagues and training officers, I can tell you that it is absolutely acknowledged that stable permanence is the way forward. There is an acknowledgement of that in the system.

When changes in relation to the Adoption and Children (Scotland) Act 2007 first came through, there was mandatory training for every panel member, to ensure that they understood the changes. On the perceived issues to do with the relatively recently-implemented legislation, my understanding from discussions with officials is that work is primarily being taken forward in the workstreams of the looked-after children's strategic implementation group. Officials certainly indicated that they are open to making what they described as surgical changes to adoption legislation, if doing so could expedite processes and facilitate sustainable and sound decisions in the right sort of timeframe. There is an acknowledgement that time passes quickly and issues can develop in a child's life.

Liam McArthur: That is helpful.

An issue that has emerged is the breakdown in communication. Malcolm Schaffer said that there was a need to improve communication between the SCRA and the Scottish Court Service. I am aware of cases in which paperwork and reports from social workers are delivered very late to the children's panel, which makes it difficult for panel members to assimilate the information, or are not presented in a timeframe that allows the hearing to take place, so the hearing is rescheduled, causing further delay and, I presume, anxiety for the children concerned. Do the SSIs contain provisions that will ensure that that does not happen or happens a great deal less? Will they ensure that enough advance notice is given that the system can be managed more effectively and smoothly?

Tom McNamara: There are competing considerations in that regard, if I am honest. Social work and other reports can come to panels late in the day for a range of reasons. By and large, panel members want to be certain of their ability to assess reports and discuss them with the professional who presents them, so that they can be sure of the integrity of the decision. That is important.

Kit Wyeth talked about the new procedural rules. We approached the drafting of the rules in such a way as to try to peg expectations so that there would be an appropriate lag between the delivery of the report and the children's hearing that would consider it. We did not want to make the requirements so strict as to preclude late-breaking updates to the situation, in case there was some sort of incident or breakdown the day before the hearing or the morning of it.

Liam McArthur: That would be entirely understandable if the bulk of the report was prepared and submitted and was simply updated with, as you said, late-developing information or insight. Presumably, however, the date of the hearing would be set by taking into account the views of social work teams about the timeframes that they would need to prepare the report. I presume that a fairly robust line could be taken that the set date should hold and that the information should be provided in time, while providing scope for any additional information that is required, although that would be regarded as embellishing or amending the main part of the information that is critical for the hearing to do its work.

Tom McNamara: Sure. It is absolutely the expectation that timely, relevant and helpful reports will be available to the hearing and that that will be clear to all professionals. Panel members can find themselves in difficult situations when there is incomplete or late information, given that the child and the family are before them and they want to have a meaningful discussion with them that is supported by up-to-date, relevant information. Equally, however, there may be vexed or critical issues in the child's life, so the panel members would have a dilemma about how and when to proceed. However, we want to reinforce the expectation that full and timely reports will be available to children's hearings to give them half a chance to do their job properly.

Clare Adamson (Central Scotland) (SNP): Good morning. We have taken evidence from a number of groups during the inquiry. I want to talk to you about accessibility and the alienation that is felt by parents with learning disabilities and by care leavers. Parents with learning disabilities told us that they have little understanding of the process leading up to a hearing, mainly because

the information given to them and the procedural aspect was not presented to them in a format that they could easily access, although they have a right to that. As a result, when the parents attended the hearing, they felt that everybody was against them and that there was no one there to support them as a family unit. Do you have any ideas about how the change in legislation might address some of those issues?

Kit Wyeth: There is no doubt that it is a very real issue for those parents. We have had various discussions with the Scottish Consortium for Learning Disability about that and it said very much the kind of thing that you have just said about how the parents feel and how difficult the circumstances are for them. We worked with the consortium in 2010-11 to produce a DVD for parents with learning disability to view before going into the hearing situation to try to help them understand what they would face. That was a small step and is by no means the solution to the problem. As I said previously, the situation now is that parents who are unable to participate effectively in a children's hearing can have state-funded legal support to help them.

There is nothing in the act that will specifically help parents with learning disabilities, but I was very encouraged by what the national convener said at the committee's evidence session on 15 January. She is clearly very well aware of the situation. I know that she has spoken to the consortium and others and is very committed to doing what she can to ensure that more is done to help parents in hearings.

Clare Adamson: There was a real sense of alienation from the whole process among the care leavers whom we spoke to. You have mentioned that an opportunity already exists to speak to the children involved in private, but the care leavers talked about how, for all sorts of reasons, they did not want to speak in front of their parents. That might have been because of fear or because they did not want to embarrass their parents. It could also be the case that coming face to face with a parent in that situation after a period of separation is such an emotional experience that they might just clam up.

How will you ensure that any child who needs to be seen in private will be given that opportunity in the process?

Kit Wyeth: At the hearings that I have been at recently, that has been common practice. The child would always be given that opportunity to speak without the parent or any other adults—apart from those on the panel—in the room.

Advocacy provision is a big part of how we are looking to address the issue as we move forward. The advocacy support that we envisage being provided will be provided before, during and after the hearing, not simply while the child is in the room. It is a question of helping the child to prepare for the hearing and to understand what will happen.

At the moment, there are cases when a child will arrive at a hearing not knowing whether mum or dad will be there and not knowing who to expect to see around the table, which can be incredibly unsettling. The preparatory work that is done with the children should mean—if nothing else—that they go into the room knowing exactly who will be there. If they have not seen their dad for six months and he will be there, they should know that in advance. Hopefully, that will mean that they feel better prepared and better able to contribute to the hearing.

Clare Adamson: How do we ensure that the quality of the advocacy that is offered to the child is high enough?

Kit Wyeth: That is a big question. As I said, advocacy means different things to different people. Some young people would like a paid, trained advocate to be there for them, while others would like a volunteer to act as their advocate. Some would just like a friend, their auntie or their granddad to come with them to offer them the moral support and help that they need.

A system that involved volunteer and supported advocates working with children and young people would come with an element of quality assurance. We are still involved in a big piece of work to look at what advocacy support for children and young people in the hearings system should look like, which children should be able to access it and how they could access it. What advocacy means and how it is quality assured will be an important part of that.

Liam McArthur: As Clare Adamson said, some children expressed concerns about the way in which their views are taken on board and said that they experienced difficulties in articulating their concerns, particularly in front of their parents.

You suggested that, in such circumstances, it is very much the norm for the room to be cleared so that the child can address the hearing by themselves. Do specific safeguards need to be put in place to ensure that when—perhaps as a result of the evidence that children have given to hearings—decisions are taken that parents seek to challenge, there is a robust legal defence? As we have heard, in such circumstances parents might be more inclined to seek legal advice, if not legal representation. Do we need to ensure that they do not have more of an opportunity to challenge the hearing's decisions and—regardless of whether they are successful—to further drag out the process? Is that taken on board?

Kit Wyeth: As things stand, under the Children (Scotland) Act 1995, where that practice occurs, it is beholden on the chair of the hearing to recount the substance of what the child has said while the various adults have been out of the room. We would expect that practice to continue, but the Children's Hearings (Scotland) Act 2011 gives the hearing the power to withhold such information from the parent at that point in the process when it is felt that revealing it would place the child at risk of significant harm.

It is clear that when a decision is taken that affects a parent's contact or their dealings with their child and they cannot be told what it is that has caused that, there has to be room for appeal so that the parent can challenge the decision. A parent would not expect that to happen without having the chance to know why it was happening and to have their say about it.

Liam McArthur: Is there a timeframe for that appeal process? As you say, it is necessary to focus on the needs of the child, but we cannot trammel the rights of parents in the process, either. Are particular time constraints imposed to avoid an unduly lengthy appeals process? Can time constraints be placed on the process?

10:45

Kit Wyeth: Yes. If you wish to appeal the decision of a children's hearing, you have 21 days to do so. That applies to any decision, not just those related to that sort of incident.

Liam McArthur: So it would fall under that provision.

Kit Wyeth: Yes, absolutely.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Previous evidence to the committee suggests that a disproportionately high number of parents with learning disabilities have their children removed from them. I have had some experience of dealing with such a situation, in which one of the parents, who is classified as a vulnerable adult, had to go through a hearing process in connection with their children. Is there anything in the new provisions that will provide some sort of framework for dealing better with that issue, which the system does not seem to have been very good at handling?

Kit Wyeth: Nothing in the act addresses that specific point, but, as I mentioned, we are working with the Scottish Consortium for Learning Disability to do what we can to improve the situation, which the national convener is also trying to address. A whole number of issues are involved. Some might be addressed through the children's hearings, but others will go wider than that.

In my work with the consortium some while ago, I spoke to the training officers about the training that panel members receive on the issues faced by parents with learning disabilities, some of whom may be vulnerable adults. We certainly expect that to form part of the training arrangements moving forward, so that panel members are aware of the issue and can take it into account in the decisions that they make.

Colin Beattie: Is it the intention that specific training will be targeted at that aspect?

Kit Wyeth: That is a decision for the national convener, but the expectation is certainly that all the elements that panel members need will be included in the training that they receive.

The Deputy Convener: For someone in that position, it would obviously be extremely upsetting to go before a hearing. The person might be very anxious and forgetful, for example. Is there any facility whereby people can provide evidence in another manner? For example, could they sit with their advocate and provide a video-recorded film of their evidence? Obviously, there needs to be some interaction—questions or whatever—but can people provide a statement by audio recording, for example, so that they can express themselves in a more relaxed way outwith the heat of the tribunal room?

Tom McNamara: I cannot swear to the technological arrangements that you allude to, but I certainly know that parents in those sorts of circumstances can be given the opportunity to have their views reflected in a range of reports prior to the hearing so that not everything depends on their articulating themselves on the day.

The Deputy Convener: How, practically, does that happen?

Tom McNamara: I think that that can happen in a number of settings, such as over the phone or in face-to-face meetings with the social worker, the reporter or the other professionals who may be involved in preparing reports to the hearing. In actual fact, those views might be taken earlier on in the process, as part of the normal assessment on whether the concerns amount to a case for compulsory measures requiring a children's hearing.

As Kit Wyeth mentioned, I know that SCRA has produced a number of research reports about not just the experience in the hearings room but the accessibility of the system overall. The SCRA is looking to overhaul information materials to make them more accessible, in plain English, for a range of audiences. For example, specific drafting has been developed for younger children, older young people and teenagers.

Attempts are therefore being made to make the drafting of the materials more accessible and straightforward, so that they can be made available to people to explain what they can expect of their whole experience in the system—it will not be limited to the intensive experience of the single day in the hearings room. The SCRA is certainly anxious about the issue, and the different partners in the system will want to be fair to individuals who might have a range of needs, in order to allow them to play their fullest part in hearings.

I have also recently spoken to training officers, who said that it has long been best practice for panel members to check and check again that there is genuine understanding of what is at stake in the discussion, that people are not just accepting things simply because they feel that they have to given the importance of the discussion, and that they genuinely see what is at play for themselves and their children.

Kit Wyeth: One of the SSIs that I mentioned will deal with vulnerable witnesses. It is not the instrument that I am most familiar with, but I am certainly happy to send the committee more information about what the regulations cover and how we deal with vulnerable witnesses across the piece. I know that the regulations will deal with children as vulnerable witnesses, but I will double-check and come back to you on that, if that would be helpful.

The Deputy Convener: That would be helpful.

Neil Bibby (West Scotland) (Lab): On the question of how the new legislation will support parents in getting an advocate or representative, concerns have been expressed that, at the moment, the majority of people who have legal representation at children's hearings are those who can afford it. How do we ensure that people are treated equally in the process?

Secondly, although charities such as Barnardo's do a lot of good work on children's advocacy services, such services are available only in certain areas. What are you doing to ensure consistency in support and advocacy throughout the country? Obviously, we have heard about children's needs and concerns, but I think that this is a particularly crucial issue.

Kit Wyeth: Access to state-funded legal support for children's hearings was introduced for children and young people in 2002 and relevant persons in 2009. With regard to relevant persons, the hearing has to apply an effective participation test, which is to decide whether, to participate effectively in a hearing, the parent in question needs access to state-funded legal support.

The act also allows—

Neil Bibby: But is it not right that, as we have heard previously, current legal aid provision does not cover representation by a solicitor at a hearing?

Kit Wyeth: That is right: as it stands, legal aid is not available for children's hearings. However, under an interim scheme that has been running for 10 or so years, each local authority area has a panel of legal representatives that is maintained by the authority. If a person needs a legal representative, they will be able to get one from that list to work with and represent them in the children's hearing. However, the 2011 act is changing that by making legal representation available to children and relevant persons through legal aid from the Scottish Legal Aid Board.

On your second question, we absolutely accept that at the moment advocacy coverage is patchy. As you have said, in some areas, voluntary organisations and others provide a really good service while, in others, provision is not quite as strong. The issue is being worked on by the advocacy working group, which includes SCRA and all of our key partners in this area, including children's rights officers and advocacy providers. After all, there is no point in telling children across the country that they can access advocacy support if it does not exist, and one of the issues under examination is how we provide the support that needs to be available.

Neil Bibby: With regard to legal representation at hearings, do panel members receive any training in dealing with advocates? For example, in one case that I have heard about, an advocate was asked to leave a panel meeting because the chair said that it was unsuitable for them to be present, even though they were supposed to be representing the children's views. I know that you have the SLAB code of conduct, but what other training and guidance are being considered in that respect?

Tom McNamara: When the interim changes were introduced, panel members would have received mandatory training. Those members and the chair of the hearing in particular are responsible for keeping the tone and focus of the discussion appropriate and centred on the child.

At the committee's previous evidence-taking session on 15 January, concerns were expressed about how lay volunteers could hope to deal with qualified and skilled solicitors. They have certainly been prepared to meet that challenge—indeed, I have seen that in action at the odd hearing I have observed—and by and large legal representatives have added to or augmented the system by being prepared to absorb the ethos and see the hearing as a discursive rather than an adversarial forum.

When there is inappropriate behaviour or concerns arise that the focus is moving away from the child, the chairing member can take steps to manage the people in the room by, say, having a short adjournment to clear the air and then bringing everyone back in and ensuring that there is a proper discussion with all the representatives and that everyone's rights are protected.

Marco Biagi (Edinburgh Central) (SNP): On its visits, the committee has heard how interaction with child protection committees can lead to an overlap between two quite complex systems. Indeed, as far as users are concerned, the same people deal with both. Have you considered streamlining or improving the process?

Tom McNamara: All panel members are trained in the child protection guidelines. Moreover, before the arrangements change in June, updated training resource manuals on the revised guidelines and the national expectations and best practice will be available for them to take into the hearing room.

As for the hearings system's alignment and interaction with other approaches to child protection, such as getting it right for every child, information has been made available to panel members. Indeed, it has long been practice for professionals from the pathfinders or particular disciplines to share with panel members their own developments in practice, and I know that there have been healthy interactions among those sorts of professionals, children's reporters and others.

The fact is that a combination of professionals should be clustering around a child and working with the family to address that child's needs in accordance, one would hope, with the family's wishes but certainly with their interests and the child's best interests. Where, for whatever reason, the child or the family is unwilling or unable to engage and the need for compulsion arises, or where things have developed to the point that compulsory protection might be needed, the children's hearings system will come in. However, before the tribunal considers compulsion, people should have already had the benefit of the child plan and there should be clear evidence of the history of efforts that have been made to improve matters for that child.

The Deputy Convener: As members have no more questions, I thank the witnesses for their evidence and suspend the meeting for a couple of minutes to allow them to leave.

10:59

Meeting suspended.

11:00

On resuming—

The Deputy Convener: The next item also relates to our inquiry into decision making on whether to take children into care. As part of that inquiry, the committee undertook a series of informal fact-finding visits, and it is important that we get the main points from these visits on the record. Notes of our final three visits that have been prepared by the clerks and agreed with the organisations that hosted us have been published with this week's papers. The aim of this item is to discuss the notes, which will then be put on the website with the other evidence that has been received.

Members will also have a list of the meetings that we have had. On 13 November, we met the chairs of the child protection committees; on 20 November, members of the People First (Scotland) parents group; and on 17 December, care leavers at Who Cares? Scotland. We have also met the National Society for the Prevention of Cruelty to Children Scotland, and Perth and Kinross Council.

I do not know whether all members got this, but I certainly received a letter this morning from Who Cares? Scotland thanking us for our visit and saying that it looks forward to its young people having the opportunity to give evidence. The committee clerks have made some suggestions on how we might move that forward to enhance our discussion, and I invite Neil Stewart to say a bit more on the matter.

Neil Stewart (Clerk): I just want to say that there will be an opportunity in a couple of weeks' time to have a wider discussion on next steps and options for the rest of the inquiry and that this discussion can be incorporated into the paper for that meeting.

The Deputy Convener: If members have any thoughts about how we might proceed, we can always come back to them at that point.

Colin Beattie: I might be missing something but, with regard to the visit to Glasgow to look at the New Orleans intervention model, did someone not say that there was a 27-month trial and that only a low number of children were involved? I cannot find that reference in the paper, but perhaps I have skipped over it.

Neil Stewart: It is not in the note, but we can attempt to incorporate it.

Colin Beattie: I think that it is important in giving some context to the evaluation of the pilot.

The Deputy Convener: I, too, want to make a point. With regard to the fourth bullet point in the section entitled "Pre-care" in paragraph 3 of the

note on the meeting with Who Cares? Scotland, which talks about siblings of children who were removed, the people we spoke to were keen to get across the fact that the lives of the young people who had been removed from the family home had improved whereas, in their view, the life experiences of their siblings left in the family home had got worse. I think that it is important that we put that in. I am trying to remember who else was at that meeting—I think that Neil Bibby was there. Would it be fair to include that point, Neil?

Neil Bibby: Yes.

The Deputy Convener: I am sure that if members have any more comments they will feed them to the clerks in due course.

Subordinate Legislation

Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2012 (SSI 2012/354)

11:04

The Deputy Convener: The next item is consideration of a negative statutory instrument. No motion to annul has been lodged and the Subordinate Legislation Committee determined that it did not need to draw the instrument to the Parliament's attention. If members have no comments, does the committee agree to make no recommendation to Parliament on this instrument?

Members *indicated agreement.*

The Deputy Convener: With that, I close the meeting.

Meeting closed at 11:04.

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