



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 5 March 2013

Session 4

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**EDUCATION AND CULTURE COMMITTEE**

**7<sup>th</sup> 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)

Claire Burns (Centre for Excellence for Looked After Children in Scotland)

Aileen Campbell (Minister for Children and Young People)

Ann Darlington (Action for Children)

Jennifer Davidson (Centre for Excellence for Looked After Children in Scotland)

Malcolm Schaffer (Scottish Children's Reporter Administration)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

Committee Room 4



# Scottish Parliament

## Education and Culture Committee

*Tuesday 5 March 2013*

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

### Subordinate Legislation

#### **Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland—Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 [Draft]**

**The Deputy Convener (Neil Findlay):** Good morning, folks. I welcome everyone to the seventh meeting in 2013 of the Education and Culture Committee. I remind people, including those in the public gallery, to switch off all electronic devices, as they can interfere with the broadcasting system. I welcome Marco Biagi, who is here as a substitute for our convener, Stewart Maxwell, whom I understand is in Iceland—the country, not the frozen-food store.

Agenda item 1 is to take evidence from the Minister for Children and Young People on the draft Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland—Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013. The item is an opportunity for members to ask any technical questions or to seek clarification on the regulations. Do members have any technical questions or any points of clarification that they want to ask about? *[Interruption.]* Sorry, I am new to this job, and I have been reminded that the minister might like to make an opening statement first.

**The Minister for Children and Young People (Aileen Campbell):** Good morning, committee. I am joined by Kit Wyeth and Gordon McNicoll. I welcome the opportunity to introduce the draft regulations, which are made under section 190 of the Children's Hearings (Scotland) Act 2011. The regulations are the first of a number of Scottish statutory instruments that will come before the committee between now and June 2013, when the 2011 act will come into force.

The draft regulations will ensure that children moving to Scotland who are already subject to a care, supervision or education order made in England, Wales or Northern Ireland will continue to have compulsory supervision and meaningful local support from the date of their arrival in Scotland. The regulations will largely replicate the current arrangements for children moving to

Scotland that are set out in the Children (Reciprocal Enforcement of Prescribed Orders etc (England and Wales and Northern Ireland)) (Scotland) Regulations 1996. The 1996 regulations, which have largely been overtaken in the intervening years, will be repealed in June.

Under the draft regulations, a non-Scottish order will terminate and be converted to a compulsory supervision order under the 2011 act on the date of transfer. What is new in the draft regulations is an early review of the terms of the United Kingdom order, with a hearing taking place within 20 working days of the child's move to Scotland. That will ensure that appropriate support and supervision that is relevant to the needs of the child continues. For example, the UK order might include conditions, such as attendance at a particular school or support service, that are no longer relevant, given that the child is now living in Scotland.

The new regulations deal with the movement of children to Scotland. To ensure that all Scottish children who move get the care and support that they need, we have agreed with our UK Government counterparts to include the necessary measures in an order under section 104 of the Scotland Act 1998. That order will shortly be laid before the UK Parliament to ensure that the appropriate protections are in place from June.

In summary, the regulations largely replicate current practice, update terminology and listed orders and strengthen the process by introducing the 20-working-day review hearing. The regulations will ensure a smooth transition, with minimal disruption and change for children and families.

**The Deputy Convener:** Thank you, minister, and welcome to the meeting. I also welcome the Scottish Government officials Kit Wyeth, from the children's hearings team, and Gordon McNicoll, the deputy director of the communities and education division. Do members have any questions?

**Neil Bibby (West Scotland) (Lab):** The minister mentioned that for children who move from Scotland to the rest of the UK there will be subordinate legislation at Westminster for the arrangements to be reciprocated. Will that subordinate legislation be synchronised with the regulations that are before us? When is that likely to happen? *[Interruption.]*

**Aileen Campbell:** Oops—sorry for knocking over my glass. That was not a distraction tactic.

The section 104 order will shortly be laid before the Westminster Parliament and will come into force at the same time as the regulations—we need it for the go-live date in June. The instruments are being sequenced to ensure that

we have as smooth a transition as possible and that children who go to England and Wales or other parts of the UK are protected.

**Liz Smith (Mid Scotland and Fife) (Con):** Where a child in England who has been using private providers of support services comes to Scotland and seeks state provision, will that be covered under the regulations?

**Aileen Campbell:** As I said in my opening remarks, some of those services might no longer be appropriate. It will be the responsibility of the new home local authority to provide protection and other measures for the child. Those matters will be taken into account in the review that will take place within 20 days, which is new to the regulations.

**Liz Smith:** Would that be the case even if the child had not been using local authority provision in England because their parents had paid for private provision?

**Aileen Campbell:** Some kind of balance would need to be reached, but the review hearing within 20 working days would be able to take on board some of those issues. However, some things in the UK order might not be accessible in the new place where the child is living. The 20-day hearing, which is new to the regulations, will take on board some of the issues that might arise and will allow the new home authority to make appropriate provision.

**Liz Smith:** What I am driving at is whether there will be an obligation on the local authority in Scotland to make available provision that was not previously state provided south of the border.

**Aileen Campbell:** The 20-day hearing review will be able to look at the needs of the child to ensure that the best and appropriate measures are taken to ensure that the wellbeing of the child is paramount. Of course, the driving force of the children's hearings service is to ensure that the best needs of the child are met. The 20-day hearing will allow the transition to be seamless and smooth.

**Liam McArthur (Orkney Islands) (LD):** I have a question about the consultation. The policy note mentions:

"A total of 5 responses were received to that consultation and the instrument was re-drafted, as appropriate, to take account of comments made."

Out of interest, it would be helpful to know what those areas of concern were.

**Aileen Campbell:** I think that some minor technical amendments were made. Nothing substantive came out of that, but the consultation was a useful process. Some technical minor details were changed.

**The Deputy Convener:** If there are no other questions from members, I invite the minister to move motion S4M-05714.

*Motion moved,*

That the Education and Culture Committee recommends that the Children's Hearings (Scotland) Act 2011 (Transfer of Children to Scotland – Effect of Orders made in England and Wales or Northern Ireland) Regulations 2013 [draft] be approved.—[*Aileen Campbell.*]

*Motion agreed to.*

**The Deputy Convener:** I will suspend the meeting for a minute or so.

10:07

*Meeting suspended.*

10:08

*On resuming—*

## Taking Children into Care Inquiry

**The Deputy Convener:** Our next item is an evidence session as part of our inquiry into decision making on whether to take children into care. The purpose of today's session is to inform our consideration of how the committee can best add value through the remainder of the inquiry by building on, rather than duplicating, relevant work that other bodies have carried out. The bodies from which we will take evidence today have carried out work in areas that are relevant to our inquiry.

I welcome Claire Burns, strategic policy implementation manager at the centre for excellence for looked after children in Scotland, or CELCIS; Jennifer Davidson, the director of CELCIS; Ann Darlington, operational director of children's services at Action for Children; and Malcolm Schaffer, head of policy at the Scottish Children's Reporter Administration. I invite questions from members—I think that Joan McAlpine was first on my list.

**Joan McAlpine (South Scotland) (SNP):** Has the Scottish Government set out an action plan in response to the SCRA's 2011 report, "Care and Permanence Planning for Looked After Children in Scotland", which included actions to be taken by CELCIS and the Government? Can you give us an idea of how work on that is progressing?

**Claire Burns (Centre for Excellence for Looked After Children in Scotland):** I oversee the work of the CELCIS permanence team, which has been in place since September last year. We are hopeful about the way in which things are going, and we are currently engaging with 22 local authorities on permanence planning.

We have clear evidence from the SCRA report on what was happening previously with permanence cases, so we can work from that baseline. One positive thing in the Scottish Government's response is that it has provided a strong voice on the type of improvement that it wants. We have also had a positive and non-defensive response from local authorities, which have acknowledged that the permanence process needs to change and said that they want to work in partnership with us. The response has been positive, because the authorities can see that the Scottish Government wants to work in partnership with them and with the CELCIS change team in a less punitive way than has perhaps been the case down south in relation to improvements in permanence work.

We are running the process as a change programme. Our engagement with the 22 local authorities is taking our team up to capacity, and we are working on some key strategic themes. We had a scoping phase, which was headed by the looked-after children strategic implementation group, and we held an event for each of the local authorities on permanence work in which we engaged with people at a strategic, operational and practice level and heard about the issues relating to such work.

Everyone acknowledges that changes are needed at a social work practice level with regard to assessment and decision making, children's hearings and court processes, and the team is progressing those strategic themes. We are working with colleagues in the Scottish Government, and Robert Marshall in particular.

We also have a virtual legal team, with a legal action plan in place, which is working on two things. First, we are looking at process change with regard to how we reduce the number of reports. A key issue is that there are too many reports involved in permanence work—for example, for the children's hearings, for local authority reviews and for the courts—and we are trying to streamline that in a way that reduces delay.

Secondly, we are addressing the issue of workforce development for people in legal services—particularly in local authorities—with regard to how they make decisions relating to child development. People in legal professions may not have had that type of training or background, so such development would enable them to make decisions that are in the child's best interests and remain aware of child development issues.

We have met key stakeholders in the SCRA and children's hearings to discuss what we need to do differently in training children's panel members. Again, we need to look at how they can make better decisions earlier that are in the best interests of the child.

With social work departments, we are looking at how we streamline services so that we can reduce delay and drift. We are process mapping with them and examining their current system for looked-after children to see where there is duplication and consider how we can help them to reduce it. We are looking at the evidence base around permanence, and at what we know works best for children.

Another key strategic theme concerns concurrency planning; we are looking to develop local consortia in that regard. Concurrency planning means that children go with prospective foster parents early on—even where there is a

chance that they may go home, they go with the carers whom they will stay with.

Those are the type of things that we are working on. The response from local authorities and our engagement with them have been extremely positive.

**Joan McAlpine:** Thank you for that extensive answer. How are you evaluating the work that you are doing? When will you know whether it is making a difference?

**Claire Burns:** We will probably not see many benefits from the extensive work that we are doing for a number of years, but we have a clear evaluation policy in place. As I said, the SCRA report gave us a baseline to work from. We have a researcher in the team whose specific remit is evaluation. For each of the local authorities that we go into, we start from a baseline in its permanence processes and give it clear milestones that we are looking for and that we will evaluate against. So there is a constant process of evaluation, which is built into the improvement plan that we work from. We have taken quite a lot of the methodology from the improvement guide that is being used for the early years collaborative. We are working alongside that, which is about consistently testing our assumptions on improvement and building in what we learn.

10:15

**Jennifer Davidson (Centre for Excellence for Looked After Children in Scotland):** In our evaluation, we are identifying proxy measures for long-term outcomes for children and families. Although we might not see the long-term effects on children and families because of the short-term nature of the project team, we have identified key systems changes that would be proxy measures for the longer-term impacts on children and families. We are tracking and measuring those as we go.

**Joan McAlpine:** You have identified them, but when will they be actioned by the Scottish Government?

**Jennifer Davidson:** I am perhaps not making myself clear. Those are not measures on which the Government needs to act; they are systems changes within local authorities—very small changes that will make a significant difference to the way in which, for example, social work might be delivered—to support departments to establish a tracking system to identify when there might be delay and to ensure that that is done swiftly. There must also be independent and ruthless review of the measures. We know that, where the proxy measures were not in place before, establishing them will address delay and drift in care planning.

**Liz Smith:** Claire Burns mentioned that there has been tremendous and encouraging progress in 22 out of the 32 local authorities, but said that you do not have sufficient staffing capacity to deal with the other 10 local authorities. How did you select the 22 and what will happen with the remainder?

**Claire Burns:** Some local authorities have had initial engagement with us and have asked to work with us next year, once they have prioritised what they want to do on permanence. The local authorities approached us—that is how we chose them. We are engaged with the local authorities that have the biggest number of looked-after young people and that tell us that they have the most significant issues with delay. Some of the bigger cities such as Dundee, Glasgow and Edinburgh are very much engaged with us.

We are trying to establish local consortia, particularly around children who are up for foster care and adoption. Previously, local authorities have tried to deal with the issue on their own so, although a young person could have been matched for foster care or adoption in another local authority, that might not have happened. At present, we are working with only 22 local authorities, but we are trying to get local authorities to work together better and to share their resources so that we can move young people on.

**Liz Smith:** What is your timescale for having all 32 local authorities engaged in some way? Are we talking about a year or two years?

**Claire Burns:** That depends on the needs of the local authorities. Some local authorities have less need for process planning. The way in which we engage with them means that we are developing local practice exchange workshops, so that local authorities with good practice can share it with others. We might not be engaged directly in process mapping for all local authorities, but we are engaged with them in providing information about good practice and an evidence base, as well as in looking at their assessment process. I would say that there are no local authorities with which we are not engaged at all, as they are all able to engage with us through the materials and good practice guidance that we produce. However, at present, we are directly involved in looking at the systems of only 22 local authorities.

**Liam McArthur:** You might have answered this in your response to Liz Smith, but am I correct that, in the testing and evaluation, you are not looking to run pilots all over the place; rather, it is about working with individual local authorities to establish their needs and to provide a consistent approach across all local authorities?



**Jennifer Davidson:** Yes, that is right. We are not establishing pilots; we are looking at each system to ensure that we understand how it functions and where the weaknesses or sticking points might be. We will feed back that information, which will vary to an extent from one local authority to another. We hope to bring to the work of the next local authority the lessons that we learn from each.

**Liam McArthur:** Is the intention to try and accelerate the process where there is more work to be done and where, to provide the consistency that you would hope for, there would have to be a catch-up process? Alternatively, will you simply have to acknowledge that some local authorities will be content to lag a bit behind others?

**Jennifer Davidson:** It might be useful to elaborate on what we mean by partnership and the way that we work alongside local authorities. We have been clear that we are working not within local authorities but alongside them. The initial work of helping them to identify what needs to change and to strengthen their self-evaluation capacity might mean that we can be less involved in the process as it progresses. I hope that we engage in a way that does not allow local authorities to lag behind, particularly given the inspiration of the way in which other local authorities are taking things forward.

**Neil Bibby:** Action for Children and the University of Stirling have produced reports on child neglect. I ask Ann Darlington to give us Action for Children's views on how the issues identified in the reports have been addressed.

**Ann Darlington (Action for Children):** The development of the getting it right for every child initiative and the child's plan has been useful in focusing all the agencies more coherently on the needs of children. The approach is still not comprehensive in every local authority area, but it is coming, and we are starting to see much more joined-up working across agencies.

Neglect is a complex area. As we said in our report, not everyone sees the issue in quite the same way. Therefore, we are using various toolkits in training our staff and staff in other organisations to help them to identify neglect and good enough parenting, and so that they know what measures we can take to intervene when parenting is identified as not good enough. A lot of multi-agency and collaborative working is happening to help us to make early identification, to provide services to help parents understand what is good enough parenting and, ultimately, to try to make swifter and more effective measures to intervene and sometimes remove children if parents cannot parent adequately. Some of our workers are doing assessments to help local

authority social workers decide when it is time to remove children.

**Neil Bibby:** What have you identified as the most difficult issues to resolve?

**Ann Darlington:** Physical neglect can be resolved by helping people to understand what it means and how to improve the circumstances in their home and physically care for their child. Emotional neglect is much more challenging, especially with parents who might have had poor experiences of parenting themselves. It is difficult for them to understand how to provide an emotionally safe environment for their child when they have had no experience of that. Therefore, a lot of our work is about trying to nurture parents to an extent. However, we have to keep the focus on the child all the time.

One example from my practice is of a parent who always held her baby facing away, so that the baby was looking out at the world, not at the parent. We tried to help her to understand that the attachment that she needed to form with her baby meant making eye contact and talking. Those are basic things that need to be done, but they are difficult for some parents to understand, because they are outside their experience.

**Neil Bibby:** The issue of identifying child neglect has been raised with me. Different professional groups sometimes have different thresholds for action. That can be within schools or social work departments. Are there any things that we should be doing on training? Should we look at the issue at a national level?

**Ann Darlington:** Absolutely. Some of the work that is starting to be done through the early years collaborative action groups will help with the early identification of neglect. Multi-agency training has helped us to look at thresholds and what is acceptable. There are still occasions when professionals do not agree that a situation has reached a point at which more intensive intervention is necessary. We are making progress with that, but the approach is still not as coherent and joined up as it needs to be.

Perhaps the Government can take a lead by encouraging all agencies and local authorities to train all staff who have direct contact with families. At present, many staff who have direct daily contact with families do not have the breadth of training that trained social workers have. Some people might see children only in a particular way, such as in school, and so they might see that a child is not adequately dressed or not clean, but not know about the home circumstances. The work that agencies such as mine and local authorities do with families at home helps hugely in identifying the real home circumstances. We should definitely have training for staff at all levels

on identifying neglect and making early interventions. The collaborative groups will help enormously with that.

The collaborative will address the needs of children in their early years, but we also need to focus on older children in the five to 11 age group.

**Neil Bibby:** I have a general point. We talked about consistency across the country and how local authorities take different approaches. Obviously, we want minimum standards for intervention to resolve such issues, but there has to be an element of local flexibility and professional judgment. Different areas will face the same issues, but the numbers that councils such as Glasgow City Council have to deal with are different. What do you think about the argument on national consistency versus local flexibility and local authorities being able to respond to issues in their areas?

**Ann Darlington:** There should be a balance between having national standards for practice and an expectation that everyone should deliver to a standard, and the local flexibility that you mention. Different areas have different strengths and ideas. I have a particular interest in rural communities, where it is sometimes difficult to deliver services. A city such as Glasgow has a high volume of cases, and it is challenging to deliver services there, but it can be equally challenging in rural communities, because the population is sparser.

I keep going back to the way in which the collaboratives are working. Although the Government has set a standard and everyone works to achieve that, local leadership groups have to implement it. That can be the same for all areas of practice. However, it is important to have national standards that we are all expected to achieve.

10:30

**Liam McArthur:** I do not underestimate the extent to which training is critical, but there are also workforce pressures, which Neil Bibby alluded to. My constituents in Orkney have often suggested to me that if they had been living in central Edinburgh or central Glasgow, they would never have come to the attention of social services and other groups.

How do we handle those who feel that they are being treated unfairly—that the intervention is there not to support them, but to remove the child from their care? It is a difficult argument to sustain if you are saying, “It goes without saying that if you were in an urban setting, you would not necessarily be facing the challenges that you do,” albeit that the child in question may be suffering as a result of that. How do we balance that, or do we

simply accept that that is the nature of what we are dealing with?

**Ann Darlington:** Neglect is neglect, whether it is in an urban setting or a rural one. I understand what you mean about the goldfish bowl that people can feel they are in when it is a small community and, if agencies are involved, everyone in the community knows. In those circumstances, we need huge sensitivity. However, if we work to the same standard, whether we are in an urban or a rural setting, as professionals we have to ensure that the child is at the centre of everything that we do.

If a child is neglected in any community, that needs to be addressed. In the more isolated and rural communities, we have to have extra sensitivity as to how that is experienced by the family. It may be that some of the more intensive support is delivered through the more universal services—through a nursery, a school or a health visitor—so that the blue-light agencies are not going in. Nonetheless, if a child is being neglected, they still have to get the right level of support—unfortunately, families will have to live with that level of scrutiny.

**Liam McArthur:** So you think that it is not only possible but essential that you have a baseline—whether it is with regard to neglect or whatever—that triggers the intervention. How that intervention is then delivered is perhaps a question of environment and of what support is accessible.

**Ann Darlington:** Yes, absolutely.

**Malcolm Schaffer (Scottish Children's Reporter Administration):** You would then look to the legal system if compulsory interventions were needed. Such a baseline could provide an objective standard for when intervention was required and should apply—in terms of a test of lack of parental care—in any part of the country.

**The Deputy Convener:** In evidence to us, people who have been through the care system mentioned how long it took for decisions to be made on some of their cases—often several years. They felt that much more damage was done to them because of the delay, than would have been if a decision had been made quickly. How do we make decisions more quickly and how do we make good-quality decisions?

**Malcolm Schaffer:** We followed up the permanence report with research into children on supervision for more than five years, which has again looked at some of the themes and tried to break things down to where the delay occurs. We will follow that up over the next year by looking in more detail at the initial parts of the system because although there has been a lot of concentration on the court end and the maze that can occur there, our permanence report

underlined that some of the core delays were at the very beginning of the process of working out when to move the child on.

We are trying to focus a bit more, firstly, on our own decision-making—when we take decisions, how long they take, what information we get that helps prompt our decision-making and how we can improve on that.

Secondly, we are looking at when decisions are taken to refer children to the reporter. Ann Darlington referred to the operation of the getting it right for every child approach and the inconsistency in different parts of the country as to when that referral is made and triggered. We hope that a further study of that will help explore the critical first element of the process and where improvements can be made that will have a national significance for referrals to the reporter and the reporter making decisions to move a child on.

In the hearings system we have a blueprint for the different elements and how long each element takes. That allows us to see where delays occur, track them and build in improvements. The current work on permanence is along those lines.

**Jennifer Davidson:** The reason that delays are harmful is that they often leave a child or young person in adverse circumstances, which creates further damage. What we see in the experiences of such children is that those circumstances create additional emotional and behavioural problems. Ultimately, if those children are brought into the care system, their ability to build connections and to attach to their carers will be compromised, the longer there is a delay. There is a greater chance of instability in their placements and a greater likelihood of them being moved from placement to placement, sometimes to placements with increasingly expensive tariffs. That is a direct consequence of delay. In addition to the moral argument from young people who say that delay is harmful, the research will show that there is also an economic imperative to address the question of delay.

**The Deputy Convener:** There are many different elements in the system, including the children's hearings system, the criminal justice element, children and families and social work. Is the system too complex and, if so, how can it be streamlined and made less complex?

**Malcolm Schaffer:** Where systems interlink we must look at how efficiently that is done and how quickly decisions are taken. For instance, if there is a link between criminal justice and child protection, we must ensure that the criminal justice element, although important, does not delay any measures to protect children. We work closely with the Crown Office on cases that have a joint

interest, to ensure that there is no delay caused at either end.

It is also a matter of examining the different processes at work and asking whether they add value. When I was last before the committee, I suggested that there were elements in the permanence process that could possibly be eliminated, which could reduce timescales. For instance, we calculate that the permanency advice hearing adds, on average, at least three months to the process. The question is whether that hearing has sufficient value to justify its existence and whether it would speed up the process if it were removed. I am sure that there will be other elements of the process that will be examined.

**Liz Smith:** I want to come back to Ann Darlington's point. One of the great difficulties that we have is to define neglect. Two of the groups that we have visited said that sometimes there is a suspicion that there is considerable neglect but there is an unwillingness on behalf of the parent or guardian to tell the authorities about it.

I am not sure that we have asked the right questions about how we can improve the situation. Could you help us in our deliberations? First, what kind of questions must we ask to bring out the number of situations where there is not an admission of the problem? Secondly, how do we handle the difficult circumstances in which parents are fighting against the system? What must we do to improve that?

**Ann Darlington:** One of the things, I think, is to be absolutely explicit about what we expect for children. We should not be afraid to say that we expect that children will be nurtured, loved and cared for in all the ways that they need. Some parents do not really understand that. I cannot emphasise enough that some parents have had such poor experiences themselves that they really do not understand that. We need to find ways of engaging with those parents in a non-threatening and non-judgmental way. We are not saying, "You are a rotten parent," and we accept that the parents love their children and want the best for them, although they sometimes do not understand how to go about giving them that.

As a society, we are perhaps not always as open about the fact that children need to be loved and cared for and have boundaries set for them. We are not always honest enough with parents when they are not achieving that. One of the more useful things that we can do is to see what is happening at home. If those people who go into the home—whether they be health visitors or third sector workers or whoever—have any concern about the wellbeing of a child, they need to know what is happening at home. If they feel that there is something wrong with a child but do not know

what it is, they need to engage and see what happens at home.

You are right that some parents do not want to engage, but I think that we have to be very strong and really honest with them about our concerns. Sometimes, I think that we wander around the problem rather than be as direct as we should be.

**Liz Smith:** In number terms, how significant a problem is there with very articulate parents who are able to play the system a bit? In other words, how many parents are able not to admit to the problem but fight their own battles by playing off the different people who are trying to help? Is that very significant?

**Ann Darlington:** It is fairly significant. A number of families are able to present as if things are going well and, if they are challenged about something, they can answer and respond very well. That is a real challenge for us. There is an imbalance of power between people like us who work with families and the families themselves. If the families are living in fairly dire circumstances, somehow we feel that we have some kind of moral authority—that is something that we need to question ourselves on all the time. However, if someone is presenting well, is articulate and is able to challenge by saying, “Why are you asking? You have no right to ask,” we need to be very strong in keeping the child at the centre and reiterating that we are trying to address a concern about the child. That is very difficult.

As you say, there are a number of fairly articulate parents who have some emotional difficulties but who are able to fend off agencies. That is where we need to work together as a team—whether the people involved are from health, the local authority, the third sector or the children’s hearings system—so that we present a united approach about our concerns for the child.

**Liz Smith:** That is very helpful indeed. Is that a growing problem, even if the number involved is not huge?

**Ann Darlington:** I do not really know, but that is possible. Anecdotally, I know of one or two cases that my organisation is working with in which the parent is able to present and articulate very well and makes demands on services but, when the services raise concerns, the parent will say, “I am telling you what I want, but you are not going to tell me what I should be doing.” That is only anecdotal. I do not have any numbers.

**Claire Burns:** A significant issue is the number of parents who have legal representation at children’s hearings. We are seeing a much more litigious process within the children’s hearings, which can make it very difficult for social workers to function because they feel that their assessment is undermined by that process.

10:45

**Neil Bibby:** My question is about the targeting of resources. It is clearly not the case that we can say that child neglect happens in certain areas and not in others. However, we have seen recent reports—including a report on Scottish education that was published only yesterday—calling for resources to be targeted at those in most need and those from the most disadvantaged areas. Do you share that view?

**Ann Darlington:** Yes, I think that we should target our resources at those who need them most, but we must do that in a way that does not stigmatise. It is very important that the child does not feel that they are being targeted because of family problems. You have talked about children feeling that they have been treated differently in school because they are looked after. It is hugely important that we target resources within a universal setting. If a child in school needs additional help, we must provide that without making them feel different from their peers. I absolutely feel that we need to target resources at the most needy, but we should do that within a universal provision as far as we can.

**Jennifer Davidson:** The GIRFEC model leads to a targeting of services as the needs become higher. I would have a real concern about diminishing in any way an understanding of the role of the universal services. I say that particularly in the light of our conversation about neglect and particularly in relation to a group of children who are neglected. The neglect may be low grade, but the cumulative effect of that low-grade neglect may be significant and damaging in the long term.

For the most part, those children will not reach any threshold for social work services to intervene; therefore, the universal services need to be strengthened in order to address the needs of the children and their families effectively. My hesitation about the targeting of services is that we will continue to miss the children who are neglected in a low-grade way but for whom the impact of that neglect, over a lifetime, will be hugely significant. I think that targeting is just one small component of the answer and that strengthening universal services is a really important way of addressing the needs of those children.

**Clare Adamson (Central Scotland) (SNP):** You have answered many of the questions that I wanted to ask. You mentioned people in rural areas experiencing a light being shone on the problem as like being in a goldfish bowl. Could the targeting of services lead to that problem being exacerbated in rural communities?

**Jennifer Davidson:** Ann Darlington specialises in rural services.

**Ann Darlington:** Yes, we must be very careful. If we have a child protection concern, whether in a rural community or anywhere else, it needs to be addressed, but it can make the situation worse for children if they are in that goldfish bowl, so the situation must be treated with huge sensitivity.

In some of the services for which I am responsible in rural communities, we have staff who undertake mentoring and befriending of young people. Those services are offered to young people through the local school and are seen as things that are nice to have. An adult spends some hours with the young person every week, and other children are sometimes slightly envious of that.

It is very difficult to balance, but I go back to the point that we cannot not do it—we must do it; the question is how we do it. Additional resources can sometimes be put in through local community organisations such as the local youth club. Organisations such as Action for Children, Barnardo's and other voluntary organisations will add value to some of those services in that young people who are attending a particular activity will be referred to us and we will give them more specific support but, a bit like in a classroom, in a way that tries not to identify the child who has a problem but tries to help the whole class while ensuring that the child is able to participate in everything that is happening. That becomes more difficult when the problems are severe and when children might need to be on supervision orders and to have regular visits from social workers and other agencies. That is more difficult in rural communities, but we cannot not do that work.

Sometimes, rural communities can be enormously helpful, because they will recognise that a family has difficulties. People will try to help and be supportive and they will encourage their children not to stigmatise a child who is in a family that has a lot of attention because of difficulties. The issue is a major factor in some of the work that we do.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** The committee has taken evidence from a wide variety of witnesses about the decision-making process for whether to take children into care. Are there any areas that the committee has not focused on or investigated adequately or that we should have looked at but have not? That presupposes that you have followed all the proceedings.

**Malcolm Schaffer:** I had better say quickly that I have followed the inquiry closely. The committee has gone into a huge number of areas. The issue is almost narrowing them down to the critical ones. Some of this morning's questioning has reflected key operational challenges that we see day to day. What is considered to be good enough parenting

is critical in relation to emergency—or even non-emergency—interventions in children's lives.

A quick answer to your question is that I cannot identify any area that the committee has not looked at and which requires to be looked at.

**Claire Burns:** I gave evidence in the previous inquiry as well. It is acknowledged that, as Malcolm Schaffer said, we need to get much better at decision making, particularly when it has been decided that a child can no longer live at home. We must also get better at ensuring that fewer children come into care and that the children who come into care need to do so. We are talking about that—about earlier intervention and the role of universal services.

Ann Darlington made the point that we are moving in the right direction with what the early years collaborative is doing. A response is needed from community planning partners, because social work, education services, health services and their partners all need to be involved. The committee has acknowledged that that needs to happen.

**Colin Beattie:** Can I take it from the panel that, broadly speaking, the committee has taken the right breadth of evidence?

**Witnesses:** Yes.

**Clare Adamson:** You have discussed in detail some of the complexities, such as the number of agencies that are involved and the geographic challenges in the process. The consensus is that we need to get better at the process, as Claire Burns said. What would be appropriate action from the Scottish Government to drive change?

**Claire Burns:** We are going in the right direction. It is acknowledged that social work cannot be the gatekeeper or the service that responds to difficulty for every family in the community. A much greater response is needed from universal services. The work of the early years collaborative is looking at the response from community planning partners. It is looking at the fact that we cannot keep doing what we are doing—that important principle underlies the collaborative.

The structure and the process that we have are not giving us outcomes for looked-after young people and young people in the wider community that are as good as we need them to be. The testing process involves testing the assumptions that we have about what works well. We then need to scale up what we know works well. Those are good principles for moving forward and they will be really important for managing the number of young people who are looked after.

The Scottish Government has done work through the permanence plan on young people who need compulsory measures of care and need

to move on, and has acknowledged that there must be changes and action at different levels. It is not just about what is happening in social work, children's hearings or the court processes; it is about changes to all those, understanding how they are linked and ensuring that assessment and judgment are better at each of those stages.

We have been looking at the role that leadership plays in scrutiny and we have discussed the delay in decision making. We think that the role of the seniors and team leaders who manage the social work caseworkers is critical for improvement. Those managers can say, for example, "You've been working on this case for six months. Nothing much is happening. We need to move this to the next level." We have looked in particular at what role an independent reviewing officer might play in local authorities by providing, along with the inspectorate, independent scrutiny. For example, he could ask what is being done about a case that has been going on for six months, rather than it just rolling on from review to review.

As Ann Darlington said, it is critical that we are much clearer with parents about what our expectations for change are. We must focus on the child, but we have been considering how we can use contact more constructively for our assessments. For example, we might say to parents, "This is what we expect will change in the next six months. You need to demonstrate this change." Often, we have not been as clear or as articulate with parents as we have needed to be.

**Jennifer Davidson:** The committee is asking an important question about the role of the Scottish Government. From the perspective of CELCIS and that of colleagues around the table and others, the difficulty is the implementation of some of the change. The issue is not what the Scottish Government has not done, but about how we get the policy, which is fairly sound, on to the ground to change things. How do we get traction?

That said, the Scottish Government's leadership on, for example, the question of permanence has been essential in moving forward the implementation of that. If you asked me what the Scottish Government needs to shed light on that will facilitate change in other areas to help support the change that is already happening, I would suggest that one such area was that of strategic commissioning. I do not regard strategic commissioning as procurement, but as an assessment of a population's needs and ensuring, in partnership with service providers, that services are provided to meet those needs. Strategic commissioning therefore relies on leadership in community planning partners and others, and their vision, but it also relies on courage. The courage will be strengthened if there is support from the Scottish Government for leaders to take decisions

to, for example, stop delivering some services in order to be able to deliver other services, which is a tough thing to do.

Ultimately, that can be done much more effectively if there is good data. Our data in Scotland in relation to looked-after children and children in need is very weak. It is therefore much more difficult to understand the needs of the population or to be able to look back after a couple of years to see whether we have improved in those areas and reduced the level of distress in a group of children. There are measures that we can use across the country, but we are not doing that. If we did, it would help to lay a foundation for effective strategic commissioning to bring in evidence for informed practice and allow people to make courageous decisions to stop some services that may not be as effective as others.

**Clare Adamson:** I take it that data collection is done differently in every local authority.

**Jennifer Davidson:** Yes. Part of the difficulty of that is that there are no comparators. We do not have a national comparator to assess whether the additional disadvantage that we see in one local authority, for example, is compromising its ability to move forward compared with that of another area. I am not suggesting the production of league charts or tables in that regard. We just need information about understanding the needs of children in Scotland, which we do not have yet.

**Joan McAlpine:** On what the Scottish Government can do, Claire Burns said earlier that one of the noticeable changes recently has been use of legal representation by parents at children's hearings. That issue also emerged in our earlier evidence-taking sessions. Is it of serious concern to other members of the panel? Do you think that the Scottish Government should examine the issue and consider whether anything can be done about it?

11:00

**Malcolm Schaffer:** In the Children's Hearings (Scotland) Act 2011, which comes into force on June, the responsibility for appointing legal representatives goes to the Scottish Legal Aid Board. At the moment, legal representatives are chosen from local authorities, which have a panel from which they can choose.

The essential reason for appointing a legal representative is to support a parent who cannot participate effectively in a children's hearing. Given the decisions that hearings must take and their impact on family life, legal representation is a necessary and appropriate step. There may be examples of legal representation going over the top, but there have been many cases in which the legal representative has been effective in

mediating and in supporting the work that has been done between the local authority and the parents. Much as I like the thought of always thinking of the legal profession in bad terms, there are many good examples of effective legal representation.

From June, the Scottish Legal Aid Board will be able to produce a code of practice, which has already been developed, and to ensure that there will be appropriate training, knowledge and behaviour to enable effective legal participation in children's hearings. SLAB will also be able to monitor practice and pick up bad examples.

There is also a genuine issue for all agencies involved in the children's hearing system in terms of their ability to transpose their knowledge into the legal system and to work effectively with it so that they will not be thrown by questions from the legal representatives, and in terms of their being able to present cases, which can often be tricky. Ann Darlington gave examples of the difficult issues around emotional neglect, for instance, and the difficulty of producing hard evidence to show what that means both in reports and in articulating it in a hearing or court in presenting a case.

There are therefore challenges for the professions in adapting to such practice, but we must not think of legal representation as necessarily producing a bad effect; it can inform the quality of decision making by ensuring that a balanced view can be presented in cases in which parents are unable to do that themselves.

**Joan McAlpine:** You said that legal representation tends to be for parents who have difficulties. However, in an earlier evidence session, someone who was in charge of social work in quite a middle-class local authority, so to speak, referred to middle-class parents who neglect their children getting legal representation to challenge the authorities. That situation seems to be slightly different from what you described. Is that situation a problem, in your view?

**Malcolm Schaffer:** Those parents are able to fund legal representation themselves rather than depending on the legal aid scheme. That happens, but I am not aware that it is a hugely significant issue, other than in individual cases in which it may be a challenge. Again, I would have thought that the ultimate challenge for agencies is to ensure that they feel confident about the quality of their information and assessments so that they can stand up to legal scrutiny, as they should. If my child was referred to a children's hearing, I would certainly employ a lawyer and want to prevent inappropriate intervention in the life of my family.

**Liam McArthur:** Joan McAlpine has covered much of the ground that I was going to cover.

Claire Burns talked about the risks of a more litigious process, and Malcolm Schaffer gave us the same answer as he gave when we previously tackled him on the issue. Is that reassurance sufficient? Do you think that the incidents that have taken place are isolated incidents? Is the issue about improving training for people who are involved in children's hearings, whether they are panel members, social workers presenting to the panel or solicitors presenting to the panel?

**Claire Burns:** Yes.

**Liam McArthur:** You are satisfied that things will not become bogged down in overlitigious arguments that are not focused on the interests of the child.

**Claire Burns:** I hope that they will not. We are at an early stage. Malcolm Schaffer is quite right to say that parents deserve advocacy; they deserve legal representation when they need it in such a serious setting. Social workers feel that their assessment is often undermined by that process, however, and might not have the confidence to challenge it. We need to work on the confidence of our social work colleagues. That is one issue; another is the need for training and guidance for legal representatives on child welfare, child development and what is in the best interests of the child.

**Liam McArthur:** Are there sanctions—either now or as a result of the legislation coming into force later this year—that would enable the chair of a hearing to say that, after a suitable warning, the behaviour of a solicitor, or the way in which they were conducting themselves and prosecuting their argument, was still out of keeping with the rules and requirements of a hearing, and that they should therefore be excluded from the hearing? Is that ultimate sanction available or would it be helpful?

**Malcolm Schaffer:** I know of an instance of a solicitor being excluded from a hearing, when they were completely disrupting proceedings. The danger is that a parent might be deprived of effective participation, so such a step would not be taken lightly, I would hope. On conduct that is considered to be extreme and inappropriate, we are linking up with the Scottish Legal Aid Board to discuss what its expectations would be. For example, would there be an avenue for the hearing to report back to SLAB on the matter?

**Liam McArthur:** That would not only be in relation to solicitors who were appointed through the Legal Aid Board. As Joan McAlpine said, middle-class parents who could fund representation from their own pockets would similarly be required to have their solicitor operating within the bounds of the hearing.

**Malcolm Schaffer:** Sure: that is an issue about confidence on the part of the chair of the hearing and his or her colleagues about being able to manage the process. That includes taking charge of legal representatives and how they conduct themselves by ensuring that they do so in the spirit of the hearing system and allowing appropriate participation.

A dilemma can arise in court, too. There is a desire to ensure that every party has a fair chance of putting across their case. The chair wants to control the hearing and a good hearing chair will take charge and will interrupt if an individual, whoever it is, is going over the score. More often than not, they are able to do so.

That is unquestionably work in process, and more work can be done on the confidence of everyone involved to ensure that the right balance is struck as regards communication with lawyers.

**Colin Beattie:** A central theme throughout the inquiry has been the view that children and young people should be at the centre of the process and that their views should be heard and taken into account. Has that been the case during this inquiry? If not, how could that be done better? What would be an appropriate safe way to ensure that?

**Ann Darlington:** I do not know the details regarding the young people who have been spoken to. I have read the report on the matter, and a lot of contact has been made with children and young people. There are organisations that are very good at helping young people to present their views, including Who Cares? Scotland, for example. It is always worth engaging with such organisations to help to facilitate the views of young people.

It must be difficult for the committee to ascertain the views of very young children. To ascertain what a pre-school child thinks, for example, is an issue for us all. Again, there are agencies and workers who can help with that. There is great distress caused to children who are going through the process, whether they have been removed from their parents, or are under a supervision order and attending a hearing. Sometimes a child does not participate because he or she finds it too challenging.

There are bodies that can help to present the views of young people or to support them in presenting their views. Sometimes young people want to do that anonymously, because they do not want to speak to the likes of you or me. However, they might express their views in a different way. We have all had experience of young people talking over a DVD, for example, in order to express their views.

It is incredibly difficult for young people to express their views, and we should never stop thinking about better ways to facilitate that in order to ensure that their voices are heard and that we understand what they mean, because sometimes they are in a state of distress and confusion and find it hard to articulate their views and feelings.

**Malcolm Schaffer:** One of the provisions in the Children's Hearings (Scotland) Act 2011 allows for the introduction of advocacy services for children, which can help. That involves people who do not necessarily speak for the child, but instead help the child to speak for themselves. The new act stresses the participation of the child and puts the onus on us to look at how we can improve the ways in which a child can participate in the hearing, in order to ensure that the views of the child are transmitted to the panel members. That may be through a variety of measures, and we should think of all children, not just the older children.

I agree with Ann Darlington that the tendency is to exclude young children from the hearing process until they are older. We must find a way to ensure that any child who is able to articulate any view has the opportunity to do so.

**Colin Beattie:** Have we managed to gain adequate access to the views of children and young people in the inquiry?

**Jennifer Davidson:** Ultimately, that is a question for the committee and I am not in a position to answer, because I do not know how fully the committee has consulted. We would be happy to offer the committee the resources that exist from the many consultations that have been undertaken with young people about their views on the care system.

My plea is that when the committee consults young people, those young people hear back from the committee about how that information has been used, because that is important to them. We do not necessarily need to hear that, but young people who have been a part of the process will feel valued, appreciated and respected if they hear back from the committee about how what they have shared has been used. It is important that we hear the views of children and young people.

We know what research says about child development and about the importance of attachment, and the impact of poor attachment and neglect on brain development. We must hold all that in our minds and develop a collective understanding of what children need when we make assessments about how Scotland's looked-after children system is caring for its children.

**The Convener:** The committee will consider how to take forward the evidence under the next



agenda item. Your answers will give us food for thought in that.

I want to ask a final question. You said earlier that the committee had taken the right evidence and there were not many other areas to consider. One of the things that concerns me—I am sure it concerns all of us at the table—is whether the inquiry will become simply a bundle of paper on a shelf along with the huge volumes of other paper that have been written on the subject over the years. How can we ensure that that does not happen and that it means something for the young people who go through the care system? What would you like the committee to achieve? Now is your moment.

**Jennifer Davidson:** The way in which the committee conducted the inquiry earlier—by bringing partners who work in the sector together to give their feedback in order to reach its findings—was a unique and forward-thinking way to help us to own the issues. Ultimately, the report will not sit on a shelf if it is owned by the people who work with the children and who are ultimately responsible for them.

I cannot give a precise example of a next step, but I suggest that in order to give the inquiry and its findings life and spark, the committee must ensure that the people who have a leadership role and can take things forward have a sense of ownership of the findings. The committee is on the right track, based on what it did last time. In addition to the strength of the committee's voice, perhaps more can be done on persuasion and influence in order to reassert the ownership that is needed to take this forward.

**Claire Burns:** On permanence, we have learned from the Scottish Government's strong response to the evidence that there is a clear expectation about the change that it wants and expects in local authorities. That has been really helpful. There is a strong voice on what we want to see change.

**The Convener:** I thank the witnesses very much for their evidence this morning. We will of course keep you posted on how the inquiry develops. If there are issues that you want to follow up with the committee, please do so.

11:16

*Meeting continued in private until 11:40.*



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