



OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 29 March 2017

Session 5



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EDUCATION AND SKILLS COMMITTEE

10th Meeting 2017, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Johann Lamont (Glasgow) (Lab)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Ross Greer (West Scotland) (Green)

*Daniel Johnson (Edinburgh Southern) (Lab)

*Richard Lochhead (Moray) (SNP)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Gillian Martin (Aberdeenshire East) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*Ross Thomson (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mark McDonald (Minister for Childcare and Early Years)

CLERK TO THE COMMITTEE

Roz Thomson (Clerk)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Education and Skills Committee

Wednesday 29 March 2017

[The Convener opened the meeting at 11:02]

Decision on Taking Business in Private

The Convener (James Dornan): I welcome everyone to the 10th meeting in 2017 of the Education and Skills Committee and remind everyone who is present to turn their mobile phones and other devices to silent for the duration of the meeting.

The first item of business is a decision on whether to take in private agenda item 5, which is consideration of the committee's work programme. Are members content to take that item in private?

Members *indicated agreement.*

Children's Hearings (Reforms)

11:03

The Convener: Agenda item 2 is the children's hearings system. Last week, we heard from members of the legal profession about the role of solicitors in children's hearings, and we held a round-table discussion on the topic the week before.

I am pleased to welcome Mark McDonald, the Minister for Childcare and Early Years, and two of his officials. Tom McNamara is the head of youth justice and children's hearings in the Scottish Government, and Thekla Garland is the children's hearings team leader in the Scottish Government.

I apologise for the slight delay in starting, minister. I believe that you wish to make an opening statement.

The Minister for Childcare and Early Years (Mark McDonald): Yes, I do, convener. I understand the reasons behind the delay, and there are no problems from my perspective.

I thank the committee for its interest in and support for our children's hearings system, and I welcome the chance to take stock and to update members on our progress as well as on the priority work for the next period.

The main structural and procedural changes were introduced in June 2013, so the reforms are not quite four years old. There was also a phased approach to transitioning over from the Children (Scotland) Act 1995, so we now have around two full years to reflect on the Children's Hearings (Scotland) Act 2011 reforms. The main themes of the 2011 act reform were rights proofing, the clarifying of roles and responsibilities and improving children's rights and participation.

Children's hearings are independent tribunals that make life-changing and legally binding decisions. We need hearings that are confident, purposeful and child centred. There is work to be done, but the system is in good shape overall, having been enhanced by our reforms, and it is set to be further strengthened through the leadership of our key partners. The 2011 act's structural and procedural changes have been secured.

We have a distinctly Scottish system that is globally admired. The Parliament has only lately tested it and reaffirmed its fundamental tenets. We have refined the system to meet the challenges of the 21st century, and we have thousands of fantastic volunteers who, simply because they care and they can, are willing to give much to children who are in need or at risk.

I am hugely grateful to our partners, especially panel members and other volunteers, for rising to the challenge of getting it right for children who might need compulsory supervision. We have system leaders across diverse professions who are collaborative, reflective and principled. They remain alert to additional chances to do better yet, and we have a programme to add further value for children from a position of real strength. We need to see that reflected at the local level across Scotland, and that is a major theme in the next phase of our work.

We have clear priorities for the next two years, to address the remaining challenges. There are issues to do with confidence, participation, advocacy and the demonstration of effectiveness, but we have an ambitious shared programme to tackle them.

We need to unite around delivering better experiences and better results for children and young people. The modernisation process and the scrutiny of practice have highlighted the priorities on which we must all focus to better meet the needs of our children and young people, whom we are all here to serve.

The Convener: Thank you very much, minister.

I have a couple of questions. Has the role of solicitors in children's hearings grown over the past few years? Is there a risk that solicitors can make children's hearings less focused on the outcomes for children?

Mark McDonald: I recognise that there were discussions about that at previous committee meetings. It is important to reflect that solicitors have been present in the children's hearings system since 1971. Previously, having a solicitor present was the preserve of those who could afford to instruct one or who could secure pro bono representation at the hearing. However, changes that were made in 2002 allowed for an interim provision of representation for people who were not in those positions. The 2011 act introduced the opportunity for parents to have legal representation at a hearing through the Scottish Legal Aid Board.

A code of practice for solicitors is in place, and we have a clear expectation that it will be adhered to. I recognise that there has been quite a discussion about the matter, but we estimate that, since March 2014, around 4,000 cases a year have had solicitor involvement and there have been only 12 complaints about solicitor conduct over that period. Therefore, out of around 12,000 cases in which a solicitor has been involved, we have received complaints about solicitor conduct in only one in every 1,000 cases. It is clear that those are 12 complaints too many, but that puts the matter into perspective. When solicitors are

engaging with the system, they are doing so on the basis of ensuring that the rights of parents are reflected in the system.

The Convener: Thank you very much for that useful answer.

We have heard inspirational evidence from Who Cares? Scotland and Barnardo's Scotland. One issue that came up in the Who Cares? Scotland session was that it had found, on many occasions, that the manner and behaviour of solicitors—it is not that they have been doing anything wrong—have been intimidating, as though they have been trying to prove that they are the most important person in the room as opposed to being there to ensure that the system runs smoothly and that the best interests of the child are looked after. I accept that there have been minimal complaints, but is there anything that we can do to make the hearings system much less intimidating for the children involved?

Mark McDonald: Steps are being taken in how hearings are conducted and how the rooms are set up. On a visit to Inverness, I saw a room that had been set up in a style that aimed for much more conversation instead of there being a table with the panel members sitting on one side and everybody else sitting on the other side. Attempts are being made to reduce the atmosphere that can exist in hearings.

I reiterate that there is a code of practice, and it is for the Law Society of Scotland to ensure that training is provided and taken up by solicitors who are going to represent clients in children's hearings.

At the moment, there is a very small number of complaints about the conduct of solicitors in hearings. Nevertheless, I take the point about how behaviours can be interpreted, and I will look at that further.

Johann Lamont (Glasgow) (Lab): It is for the Law Society to decide on the training, but there could be circumstances in which solicitors involved in hearings had not had that training. Are you looking at how that could be monitored?

I note that there have been only 12 complaints, but things have to get pretty far along the line before someone complains formally. Are you keeping an eye on this?

Mark McDonald: There is solicitor involvement in only about 10 per cent of hearings. The overwhelming majority of hearings take place without the involvement of solicitors. That is partly because, for parents to get legal aid for a solicitor, there has to be a demonstration of legal complexity and that the parents would not be able to participate effectively without the support of a solicitor.

I am happy to look at how we could better regulate the system when solicitors are instructed privately and to have discussions with the Law Society of Scotland about that. My clear expectation is that solicitors who take on representation at a children's hearing should see it as incumbent upon them as professionals to be aware of how they should conduct themselves at a hearing and then conduct themselves appropriately at the hearing itself. I am happy to look at what further steps could be taken.

Johann Lamont: I understand the thinking behind the 2011 act. I raised with the panel of solicitors the concern whether there is damage to the ethos of the hearings system should a solicitor advise a parent not to say anything.

One of the powerful things about the hearings system is that people have the confidence to say, "I have a problem here. It is a bit of a challenge for me." In the past, I advised parents to refer their young person to the hearings system because it was seen as a supportive place where they could access resources. Is there an issue with the culture of the courtroom coming into the hearings system even in the moderated way of solicitors cautioning people to be careful of what they say? The hearings system thrives on people being honest and frank about the challenges that they face.

Mark McDonald: The code of practice was drawn up in such a way as to ensure that that did not happen and that we did not get into a courtroom-style setting rather than what the hearings system is intended to deliver.

I sat in on a couple of children's hearings in Aberdeen, not long after I become a minister. One of those had solicitor involvement but, from a layperson's perspective, it did not feel as though that created a courtroom environment. The solicitor conducted themselves in a way that was entirely about ensuring not just that their client's interests were represented but that their client respected the process of the hearing.

Part of the role that a solicitor plays in a lot of cases is in looking after the best interests of the process as well as looking after the best interests of their client.

Johann Lamont: I agree with you. In the hearing that I sat in on, there were solicitors but it did not feel like a courtroom, so I may be overstating the point.

Is there, nevertheless, a question about whether people should be advised not to be as frank as they might have been? The solicitor's instinct is to say, "Be cautious," but panels can support the family when there are challenges. If the parents have been advised by a solicitor to be careful

about what they say, does that change the culture?

Mark McDonald: It is difficult for me to comment on that, because I am not present at all the hearings, witnessing how those interactions take place. However, the feedback that I have had from the hearings system is that solicitors play an essential role, particularly in the most complex cases.

I will reflect on and give consideration to the point. I am not sure, however, that I could take a position that would require solicitors to let parents speak. Ultimately, that is a matter for the relationship between the solicitor and their client rather than something that a minister could direct.

11:15

Colin Beattie (Midlothian North and Musselburgh) (SNP): Minister, it is evident that there is a bit of unease about the involvement of solicitors on a large scale in the children's hearings system. I am comparing the figures from the Scottish Legal Aid Board for 2013-14 with those for 2016-17. The figures show that the number of legal aid representatives for children has risen from 130 to 367 but that the number of representatives for relevant persons has risen from 1,179 to 3,066. It would therefore appear that the vast majority of legal aid is going to the parents to enable them to present their case rather than going to the children, although we would hope that they would get representation and protection in the hearings.

Mark McDonald: There is an incumbency inherent within the system. For example, the chair of the panel must ensure that the voice of the child is heard and reflected in the hearing. There is an incumbency on the panel chair to ensure that that happens. In a number of cases, safeguarders are appointed, and their role is to listen to the child and reflect the child's views in the hearing.

I reiterate that, in order for a parent to be able to access legal aid to instruct a solicitor in the hearing, they must demonstrate legal complexity in the case that the solicitor will be instructed for and that they, as a parent, would be unable to participate effectively in the hearing without representation by a solicitor. There are, therefore, tests that have to be met before legal aid can be accessed. It is not the case that a parent or relevant person can simply go to the Scottish Legal Aid Board, say that they require legal aid in order to be represented at a children's hearing and access that legal aid; they have to demonstrate that they meet the criteria before they can access legal aid.

Colin Beattie: I understand what you are saying, but the tripling of the figure for legal aid

representation that has been granted to parents seems to me, as a layman, to be an exponential increase. Where will it end? Is it a growth market?

Mark McDonald: No, I do not think that it is. I think that it demonstrates that, in cases in which a solicitor requires to be instructed because the two key criteria that we have put in place as part of the stipulations to the Scottish Legal Aid Board have been met, that is happening and parents who require legal representation are receiving it. I do not think that it is a growth market, as you describe it. I think that it is entirely about ensuring that there is legal representation in cases for which it is appropriate.

The Convener: We will move on to training, the make-up of panels and the role of lay members, and I will bring in Liz Smith in the first instance. Before we move on from the issue of solicitors, however, we should reiterate the point that solicitors are involved in only a small number of cases and that there have been complaints in only a tiny percentage of cases. Nevertheless, we are making the point that we should try, as far as we can, to make hearings less intimidating for the children in order to ensure that the panel experience is all that it should be.

Mark McDonald: Yes. I recognise that, convener. I also recognise that, although we are talking about only a small percentage of cases, every case is absolutely critical for the individuals and families who are involved. I am not diminishing that. However, when we look at the totality of the children's hearings system, it is important that our perspective takes in both solicitor involvement and solicitor conduct.

Liz Smith (Mid Scotland and Fife) (Con): You quite rightly referred to the fact that there are hundreds of panellists across the country who do the most fantastic job. However, this committee and its predecessor committee have heard some concern that perhaps we do not have enough panellists to be able to cope with the system. Do you agree with that view?

Mark McDonald: We have just seen the recruitment of hundreds of new panel members, which was specifically designed to ensure that we have sufficient numbers working in the system. However, it would be fair to say that there are regional variations in the system. For example, when I was at the children's hearings system in Aberdeen, I was told that they had sufficient numbers and were not looking to recruit in the Aberdeen area. However, I recognise that there will be requirements in other parts of the country to recruit additional panel members. We saw that in the recruitment campaign, which I understand has seen a number of individuals coming forward.

Liz Smith: I want to pick up on two points. First, you are right to say that there are regional variations. Can the Government take any steps to reduce the gap between the regions? The second point was put to us this morning by a young person who was eloquent about his experience of the system. Sometimes the panellists change so frequently that it can be a problem. Could the Government look at that area to ensure that there is some continuity in the panellists who are dealing with a case?

Mark McDonald: There is always a balance to be struck, because the panellists are volunteers who give of their time to support the children's hearings system. Depending on when cases are coming back, particularly because a decision has been appealed or grounds have been agreed, having the same panel members throughout the case might lead to delays if scheduling depends on their availability. We want to ensure that we have consistency in training and competence for panel members so that, even if they are not familiar with a case from its inception, they will have all the relevant documents and paperwork relating to the case and they will have the competence and confidence to discharge their functions. That is what we want to focus on.

Liz Smith asked about the ability to deal with difficulties that may arise in certain regions. One of the issues that I have discussed with members of the children's hearings system is whether, in specific locations, there are enough opportunities for panel members to see cases and develop their skills. I am giving active consideration to that, because some locations see a much higher volume of cases, by dint of population. We have to bear that in mind to ensure that panel members have the opportunity to use and enhance their skills, so we must be aware of the number of hearings that they are sitting on.

Liz Smith: Is there a geographical trend in those regional variations? Is it more difficult in rural communities to find sufficient numbers and for people to access the service?

Mark McDonald: It is undoubtedly the case that there are some locations, by dint of population, where there are challenges—I would say challenges rather than difficulties—in ensuring consistent recruitment of panel members. However, I am considering that issue and it is also an active consideration for Children's Hearings Scotland.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a quick supplementary question, picking up on Liz Smith's point. I know that panel members are volunteers, but given some of the evidence that we heard from Who Cares? Scotland at this morning's informal session, I wonder whether it would be worth while

to give guidance to reporters asking them to attempt to ensure that at least one panel member remains consistent. Would that be worth considering?

Mark McDonald: I will certainly give it some consideration and look into the logistical practicalities.

Daniel Johnson (Edinburgh Southern) (Lab): One of the points that was made loudly and clearly in the Who Cares? Scotland session is that children attending hearings often feel that there is a room full of strangers and that, although the intent behind children's hearings is that the child's voice should be heard, the room full of people makes it difficult for children to feel comfortable and to express their views. I am interested in the role of the chair and the training that chairs have. You have said, minister, that that is their primary responsibility, so what do we need to do to improve chair training? Boyd McAdam told us that it can sometimes be a struggle to give chairs the confidence to cut in and control hearings, and perhaps to cut through some of the legal and professional jargon. What are your thoughts on that?

Mark McDonald: There is mandatory training for chairs on the management of hearings, communicating effectively with children and families, managing conflict in hearings, attachment and resilience, revisiting decisions and reasons, the Children and Young People (Scotland) Act 2014, and getting it right for every child. Contained within those themes are some of the points that Daniel Johnson raises. It comes down to assessing and analysing the effectiveness of the chairs.

Essentially, there is a feedback system whereby panel members and reporters can look at how chairs have performed. Often, we will not know for sure how effective a panel member will be at chairing a hearing until they do it, so that is an element. We are putting in place much more training and capacity building for chairs of hearings to ensure that they have the confidence and the competence to be able to address the issues that you raise.

Daniel Johnson: One thing that became very clear in the informal session that we had before the meeting is that the culture of the hearing room and the language that is used are important. For example, there is a requirement for children to confirm their age, but we heard that children are asked to state their date of birth rather than being asked, "What age are you?" I wonder whether we need to concentrate on the language and the way in which hearings are conducted. Another point that was raised was that there seems to be a focus on the paperwork and the procedure rather than the relationship and the conversation with the

child in the hearing room. Is there scope in the training for chairs to address those cultural issues and to focus on the relationship with the child in the hearing room?

Mark McDonald: It is important to emphasise that the hearings are legal tribunals, so there are elements of process that need to take place. However, we are keen to move away from some of the more scripted elements, which can feel quite alien to children, and towards a more conversational approach. We are taking steps to do that. I certainly saw it reflected in the hearings that I witnessed and I have heard feedback that hearings are starting to move more towards that conversational approach. That relates to the point that I made in answer to Johann Lamont about the way in which the rooms are being set up differently, perhaps to move away from having the panel sitting on one side of the table and everybody else on the other side. Obviously, that is not suitable for every hearing but, in some hearings, there is a more rounded conversational room design, to try to remove some of the distance that can be felt.

Daniel Johnson: One thing that we heard about that makes a big difference is having a relationship-based advocate in the room—somebody who knows the child before the hearing and who can help them to articulate what they want to say. However, we also heard that only 2 per cent of children who attend hearings have such a relationship-based advocate. Could that be reviewed and could such advocates perhaps be made a mandatory part of the system?

Mark McDonald: We have not yet enacted section 122 of the 2011 act, which sets out a requirement for the chair to inform a child or young person of the availability of advocacy. We are operating pilots in Fife and North Lanarkshire to look at how that will be taken forward. I recently agreed to provide funding for those pilots. That is with a view to creating a sustainable advocacy system that can be rolled out nationally by enacting section 122. I understand entirely the important role that advocates can play but, if we are going to introduce the availability of advocacy nationwide, it is important that we absolutely get it right and ensure that children are well served by it.

The Convener: Fulton MacGregor has a supplementary on this issue.

Fulton MacGregor: Yes—it is on advocacy. Following the pilots, will consideration be given to having a relationship-based advocacy worker as part of the grounds for a hearing? I might be thinking out of the box here, but this is based on my experience and on some of the comments that we heard today. A children's hearing obviously works best when a child believes that they have somebody who is in their corner and who is

listening to them and advocating for them. If such a person is not there, the ethos of the children's hearings system is in question, so would it be possible to make it a ground of hearings that they cannot proceed unless there is such a person in the room, whether it is a local authority worker such as a social worker or teacher or, if that is not possible, somebody else? Is that potentially on the radar and under consideration?

Mark McDonald: Obviously, at the moment, the chair can determine whether a safeguarder needs to be appointed. Part of what we are looking at in the pilot is what the best model would be for advocacy in the system.

Your point is worthy of consideration and we will look at how the pilots pan out in that regard. We will look for the right points in the process for advocacy to be advised and undertaken. There is a balance between the advocate being available and the advocate being taken on by the child, so we must ensure that they are able to make an informed decision about taking forward advocacy. We will give that careful consideration as part of the pilots.

11:30

Gillian Martin (Aberdeenshire East) (SNP): At some of the committee's recent sessions, a lot of different people who are involved with children's hearings, such as social workers, Barnardo's Scotland, lawyers and so on, have talked about the training that they go through individually, almost in a silo. There has not been much in the way of multiagency training and bringing people together to understand one another's roles. What movement has there been on that? Additionally, what involvement have children's hearings-experienced young people had in informing that training?

Mark McDonald: We have done some multiagency training in Glasgow on GIRFEC and the principles behind the hearings system. We are looking at rolling that out with a session in Edinburgh and further sessions in other large population centres, which are the areas where huge numbers of hearings take place.

With regard to the role that care-experienced children have in that process, there are children involved in the training that panel members receive. I will look carefully at how we can expand that role, because part of the multiagency approach is about getting a better understanding of the different roles that individuals play in the hearings system. It is worth noting that the Children's Hearings Scotland board has recently appointed three new members, one of whom is a care-experienced young person.

Gillian Martin: We spent time this morning with some people who have been through the hearings system and one of their asks was that their experience is taken into consideration more when any development of the children's hearings system takes place. They were able to give us examples of having been involved with training when the individuals involved—whether panel members or not—had had a different view when they went into the children's hearings system, which is really child centred.

Should we make it a bigger part of the training of lawyers and solicitors to hear the views of young people about how their experience of having solicitors in the room made them feel? That could make solicitors modify their demeanour—although perhaps not their behaviour—to be more child friendly.

Mark McDonald: In the existing landscape, we have the care review, which is being led by Fiona Duncan and which will look at the whole system, of which the hearings system forms one part. There is also the children's hearings improvement partnership, which involves a range of stakeholders, some of whom are there to advocate on behalf of and represent the views of children and young people in the children's hearings system. We are firmly of the belief that to get the improvement in the system right, children's voices have to be part of that. All those different components work together to ensure that children's voices are heard on the matter of the reforms and improvements that we undertake.

Gillian Martin: Another ask that we heard this morning was for us to look at how technology might be able to help in a situation in which a child feels particularly vulnerable and when there are too many people in the room for them to feel comfortable and supported. Has that come up in your discussions on the matter and, if so, how is it being looked at?

Mark McDonald: Yes, absolutely. Digital opportunities cover a number of different possibilities, including young people perhaps being able to be involved in the hearings system without having to travel for long distances or leave school. In the coming budget, we have made funding of just over £2.5 million available to the Scottish Children's Reporter Administration and Children's Hearings Scotland to jointly develop a digital strategy, so we are also very much looking at how technology can be utilised within the hearings system to improve the experience for children and young people. We will take that forward as part of the digital strategy.

Gillian Martin: My final question is about the information and the documentation that is given to children before they go to the panel and throughout the time when they are going through

the hearings system. It has been mentioned that a lot of that information is impenetrable and not age appropriate.

Has the minister looked into the idea of having an age-appropriate summary of what is in the documentation so that a child can understand who will be in the room, what will be discussed and possibly what the outcomes of the hearing might be, so that they can understand what will happen and prepare?

Mark McDonald: That is a very sensible suggestion and I am happy to look into it. Certainly, if we want the system to have children at its heart, children have to be able to understand the process that they are involved in. I will take that suggestion away and look into it.

Ross Thomson (North East Scotland) (Con): Gillian Martin has just pinched my questions, but never mind.

In the session that we had with Who Cares? Scotland, one of the asks from one of the participants was for young people to be involved in the recruitment process for panel members at every stage so that they felt that they were involved in the system and in selecting the people who were going to be on the panel. Will the Government take that into consideration?

Mark McDonald: We will give consideration to that idea. One step that is being taken is the appointment of a care-experienced young person to the board of Children's Hearings Scotland, which suggests that direction of travel. However, there are examples of young people being involved in the recruitment process, so I am more than happy to consider how that could be expanded and perhaps better publicised, so that young people are aware of the opportunities to get involved in that process.

Ross Thomson: To follow on from Gillian Martin's question, one of the benefits of using technology would be that young people would not be taken out of the classroom. Many of them do not want to leave the classroom, because they do not want to have to justify why they are having to do that and they do not want to be taken out of that environment.

Also, in their evidence the lawyers suggested that technology can be beneficial because the people who are on the panel become more aware that the child is there. They said that sometimes it is too easy to forget the child who is sitting the room, but when the child is up there on the television screen, it is much more difficult not to acknowledge that they are there.

How could technology be better used in those situations, not just to make the process more

accessible to young people but to ensure that the voices of young people are heard?

Mark McDonald: I would hope that, irrespective of whether the child is physically in the room or on a television screen, they would be recognised as being in the room and they would be acknowledged in the hearing. I would be concerned if that was not the case.

We have to get the balance right in when hearings are held, so that they are held at an appropriate time to enable children and young people to attend hearings when that is the right thing for them to do. Obviously, there are some circumstances when children and young people do not attend hearings; sometimes, the safeguarder attends on their behalf. We have to make sure that the balance is right so that children and young people have every opportunity to attend without it creating any of the difficulties that you have highlighted.

Ross Thomson: On the paperwork side of things, it is great that you have agreed to follow up on the question about making information more child friendly and accessible. One of the pieces of paperwork is the have your say part. Sometimes just presenting a young person with that can be daunting for them—even knowing where to start can be difficult. Some of the children we spoke to at the informal session today suggested that, sometimes, the social worker can direct them down a particular line. We had evidence today that the paperwork could be changed and that it did not really reflect their view. What more can we do to ensure that the voices of young people are heard?

Mark McDonald: That is why the role of the panel chair is critical. They have to ensure that the child's perspective is central to the discussion. They need to be strong enough to ensure that the views that are expressed by, or on behalf of, the child reflect the child's views.

Ross Thomson: Some of the young people to whom we spoke said that they were not aware that, when going into a hearing, they could have an individual meeting with the panel or the chair. That had not been made clear to them but they would have taken it up if they had known about it. Do we need to do more to make young people aware that they do not just have to fill out the form but can sit down more informally with the panel and have a discussion about what they want?

Mark McDonald: Yes, and it needs to be emphasised in the training that young people have to be made aware of that opportunity because, as you rightly highlighted, if they have it, that can set them at ease for the process that is about to be undertaken. My expectation is that that would be clearly emphasised to panel members as part of their training.

The Convener: It is good news that that will be emphasised in the training, but could something be put into the papers that are sent out to the child, particularly in the summary, that reminds them that they are entitled to address the panel on their own or with an advocate? All three of the very impressive young people to whom we spoke before the meeting said that they did not know about that until years into the process. One of them has been out of the system for a number of years and still did not know until four weeks ago that she could have addressed the panel.

Mark McDonald: The example that you highlighted will predate the reforms if that young person went through the system a number of years ago. It is important to reflect that the system has changed because of the reforms that we have put in place such as mandatory training. There is much stronger training now for panel members and recognition of the child-centred nature of the children's hearings system. A change has taken place but I will not sit here and say that we get it 100 per cent right in every instance. That is why we have an improvement partnership in place. I will give careful consideration to whether we have the balance right in ensuring that children and young people are aware of the opportunities.

Ross Greer (West Scotland) (Green): In previous meetings, we came across evidence—in particular, from teachers whose interest was to support young people who they were aware were going through the system—that there was an issue with communication between local authorities. Young people who are in the kind of situation that we are talking about are more likely to move accommodation, move school and, often, move between local authorities when they do that. If they moved school within a local authority, there were some issues, but communication problems did not seem to occur too often. However, when they moved between local authorities, there was a breakdown in communication and teachers in particular found it more challenging to support them. How do we improve the structures that are in place to ensure that there is no breakdown or lag in communication that would result in a young person who moves school and local authority not receiving support that they need during the children's hearings process?

Mark McDonald: We need to have a discussion with local authorities on that and to ensure that the practices that are in place are as strong as they can be.

I recently made a statement on our steps to improve the child protection system. One of those steps is consideration of a national child protection register. Many of the examples that you are speaking about will sit below the point at which child protection is an issue so, although we can

take steps in relation to children who are subject to child protection measures, there will be children who have been in, or are part of, the hearings system for whom we need to ensure that the information is appropriately conveyed.

There are issues with ensuring that data protection legislation is complied with. We have just gone through a process in relation to how information is shared, which is entirely about the level below child protection and welfare concerns. We will give some careful consideration to how best we can ensure that the information is appropriately shared within the requirements of the Data Protection Act 1998.

11:45

Johann Lamont: My question is loosely about the feedback loop that is used to try to figure out what works and is effective. Some of the evidence that we heard, particularly from the guidance teachers, suggested that even when a hearing decided that a certain thing should happen—that resources should be allocated for some kind of support or whatever—that did not always happen. How are you monitoring recommendations that are made by panels that are then not met?

The important point is that, if a decision is made but nothing happens as a consequence of that, the system itself is being undermined, particularly in the case of recommendations for support for the young person or for social work involvement. Are you monitoring the impact of the lack of resources before a school might go to the children's hearings system? The teachers said that, in the past, they might have been able to do things themselves but that they no longer have the resources to do that, so a young person will be referred to the hearings system.

A second and more important point about cases in which a determination is made at a hearing but nothing happens by the time of the next hearing is that that has an impact not only on the young person who needs the help but on the attitude of the family. The family may think that, because nothing has happened, it does not really matter, and therefore their view of the importance of going before a hearing is diminished.

Mark McDonald: The feedback loop is in its early stages. The report that was laid by the national convener highlights that we need to accelerate efforts to ensure that recommendations are being carried out and that we receive appropriate feedback so that we can take steps where required. I have a meeting coming up with the national convener to look at how we respond to the feedback loop and at what steps we should put in place.

Another step that we want to take is for me to have an early meeting with whoever succeeds Councillor Primrose as the education spokesperson for the Convention of Scottish Local Authorities after the local government elections. There is obviously a key role for local government in ensuring that decisions that are made by children's hearings are effectively implemented and monitored.

The Convener: Thank you very much. We are drawing this session to a close. Does anybody have a final question?

Richard Lochhead (Moray) (SNP): Members have highlighted very eloquently many of the issues that have come to the attention of the committee, particularly some of the powerful informal evidence that we took from young people who have been through the hearings system. It is clear that they have some specific ideas about how to improve the experiences of young people. Would you be willing to speak to them and perhaps to ask them to compile a brief report on some of the measures that could be taken, so that you can consider whether those can be taken forward?

Mark McDonald: I have constant discussions with Who Cares? Scotland and the young people who are part of that and from whom you heard evidence today. I may not have spoken to the specific individuals, but I have certainly had lots of discussions with young people with care experience and I look forward to continuing those discussions.

An integral part of the care review will be to ensure that the voices of children and young people with care experience who have been through the system are heard, and that they are reflected in the improvements and changes that we make at the end of the review. As I said, we have a landscape of different reviews and improvement programmes that are taking place, but I see those as being complementary to one another. Ensuring that the views of children and young people are reflected in those is a central priority.

The Convener: I thank the minister and his officials for attending today.

11:49

Meeting suspended.

11:52

On resuming—

“Performance and Role of Key Education and Skills Bodies” (Responses)

The Convener: As most members will know, this is the last meeting at the committee for Richard Lochhead and Fulton McGregor. Thank you both for your contributions, which have been greatly appreciated. Your wisdom has been very useful, as always.

Fulton MacGregor: I assume that you are talking about Richard.

The Convener: You, too, Fulton—your wisdom as a former social worker has also been very handy over the past few meetings. You will be missed by the committee, although I am sure that you will enjoy your work on the committees that you are joining. Thank you for your work and good luck in your new committees.

Richard Lochhead: Thank you, convener, for your valuable input and equally impressive wisdom. I wish my fellow committee members all the best.

The Convener: Yes. Who could argue with that?

Fulton MacGregor: I echo Richard Lochhead's thanks. This is a strong committee. Although we do not all agree, I have, as a new member, learned a lot from members from other parties, including Liz Smith and Johann Lamont, who are experienced—

Liz Smith: You mean members who are old. Just say it.

Fulton MacGregor: I have learned a lot from my year on the committee. There has been good and wise convening.

The Convener: Yes, the convener is a very wise man. Please remember that the meeting is in public, so we should have a bit less of the complimentary stuff.

Our next item of business is consideration of a number of responses to the committee's report, “Performance and Role of Key Education and Skills Bodies”, which was published on 17 January. The committee made recommendations on the performance of Skills Development Scotland, the Scottish Further and Higher Education Funding Council, the Scottish Qualifications Authority, Education Scotland, the Convention of Scottish Local Authorities and local authorities. We have received responses from those bodies and the Scottish Government, whose

response covers the work of all of those bodies. I thank all the organisations for their responses.

I suggest that we consider the responses to our recommendations on each body separately in the order in which they are set out in our paper. If members have any comments on a public body, the Government's response or any suggestions for future work, please catch my eye.

The key issue with SDS was localised delivery of services. Would anyone like to comment?

Members indicated disagreement.

The Convener: Okay. Essentially, SDS argues that it provides a very localised service, but evidence that we received cast some doubt on that. Do members agree that we should explore the question further as part of any future work that we do on skills and SDS's work?

Members indicated agreement.

Ross Thomson: Did we get feedback from SDS's meeting with chambers of commerce? SDS undertook to follow up on some of the criticism.

Roz Thomson (Clerk): That feedback is in the main report; I can send that to you.

The Convener: Thank you. Does anyone have comments on the Scottish funding council's response to the recommendations?

Members indicated disagreement.

The Convener: The committee made a number of recommendations and observations, many of them to do with the enterprise and skills review. We are likely to consider the review further, so we can bring up any points at that stage.

Are there any comments on the SQA's response?

Daniel Johnson: The SQA's response is unsatisfactory in two fundamental respects. One key point concerns means of communication. The SQA is not responsive to teachers and other people on the ground, and its response in this case is simply more one-way downstream traffic, when the point is that it needs to listen more.

Secondly, I think that the SQA has a problem with technology. It said that the problem with the amount of guidance is that technology makes it more complicated, but its response seems to involve more technology. The SQA is not, at present, an organisation that inspires me with its ability to use technology well.

On the point about communication, which is narrow but fundamental, I do not find the SQA's response comforting.

The Convener: Does anyone else have any comments on the SQA's response?

Liz Smith: I do—but not on the issues that Daniel Johnson has raised.

The Convener: Okay.

Liz Smith: There has been a bit of publicity in newspapers about payment rates for markers, invigilators and so on. I do not know the full facts about any of that, because it is quite difficult to find them, but it would be in the SQA's interest for it to be up front about all that, given that there is an impact in terms of whether people are motivated to take up positions as markers and invigilators. It would be helpful if we could get some clarity on that. I see that there are a few comments on the issue in the SQA's response, but it does not give us a full explanation. It is hard to say whether there is a real problem. I find it difficult to know whether the problem has been solved, because we have not been given the right information.

The Convener: Two points have been raised, one of which is on communications. We asked the SQA about the new national qualifications as well as the issue with markers. I suggest that we bring the SQA to the committee early in September to see how it has been getting on after this year's exam diet. We should certainly write to it about the issue with markers, and reinforce what exactly we are talking about with regard to communication. We can ask the SQA for a response and, even if we do not get one—although I think that we will get one before September—it will know what we will be asking about at the committee meeting.

Tavish Scott (Shetland Islands) (LD): That is where the connection to the curriculum for excellence management board matters. When we took evidence on that, we found that Education Scotland and the SQA are doing everything in isolation. The curriculum for excellence management board is meant to oversee a new interpretation of exam setting and criteria—which is exactly the point that has been made.

As a committee, we want to be assured that the matter has been properly discussed, and that all the agencies are pulling in one direction and are not adding to teacher workload. Workload comes up as an issue time and again and has not—as far as I can see—been scaled back at all. I want to know that that will be covered in some way in September. I hope that we are not going to lose sight of the issues around the curriculum for excellence management board, which has not, as far as I can see, done its job over the past seven years.

The Convener: Yes. I was just about to say that September seems to be the appropriate time for questioning, in order to give the SQA a bit of time to address the issues.

Liz Smith: It is a very busy time for the SQA just now, with the exam diet coming up.

The Convener: Exactly. Does anyone have any comments on the Education Scotland recommendations?

Johann Lamont: I am sorry, but I have another point to make about the SQA. On its having to be self-financing and doing international work beyond Scotland's boundaries to achieve that, we have not had a satisfactory answer on whether focusing on that work dilutes the SQA's ability to focus on its day job. I think that we should pursue that question with it. It has said that such work raises Scotland's profile internationally, but if there are concerns about what is happening in the education system in Scotland, that will damage our international reputation more than it will be enhanced by the SQA taking on extra work. I want us to continue to focus on that.

The Convener: We can certainly ask the SQA whether it could send us evidence that shows us the benefit to learning.

12:00

Johann Lamont: The SQA has listed a number of reasons but, to me, they are just assertions. The focus should be on opportunity cost to its ability to do its core business. As we have discussed before, perhaps we should in the longer term reflect on whether the SQA should be self-financing. Why should it be, if it is absolutely integral to the workings of our education system? I am not convinced that it should be. If it is having to go looking for work in order to ensure that it can do its core business, there is a problem. There are questions on that that we should continue to pursue.

The Convener: I agree that the issue is one for another day.

Ross Greer: Briefly, I found the SQA's response to be generally defensive and platitudinal. On its fourth point, about its workload and resources, I learned nothing from the SQA's response.

The Convener: That suggests that there is still an issue in respect of communication.

Ross Greer: Exactly.

The Convener: That is a point that we can raise in our letter.

Johann Lamont: Perhaps we should accept that there is an issue, because so much of the SQA's response has been to say that people just do not get it, or do not understand. That is not about communication; it is about recognising that there might be a problem that goes beyond that—about people not being clever enough to understand what it is trying to say to them.

Ross Greer: There has been a pattern in which the committee highlights an issue and the SQA simply reiterates what it is doing rather than responding to the issue that we have highlighted.

The Convener: Okay. Our clerk is noting those points. We move on to Education Scotland.

Liz Smith: I would like to start on that, because I feel very strongly about it. I will echo the point that Johann Lamont made about the SQA: the problem with Education Scotland is its inability to recognise exactly what the problem is. I know that we will have a debate in the chamber this afternoon about some of that, but the report that Education Scotland itself has undertaken has identified five key areas for improvement. In almost all of them—in fact, we could almost argue in all five—the problems have been created by Education Scotland itself. Therefore, there are big questions about its ability to recognise why the problems exist and what we have to do to address them. We got in the response to the committee an outline of what should happen, in theory, and what structures should work in Education Scotland, but the response did not deal with practice—with what is actually happening on the ground. That is my overall view of the evidence that we received.

It is very clear that people in the profession are struggling to understand what responsibilities they have in delivery of CFE, because a lot of the guidance is not clear—from the SQA and from Education Scotland. It is a worry to me that the body that is paid to oversee implementation of CFE has some real issues about delivery. That is not a party-political issue but a cross-party one, and it is coming through from almost every teacher that we speak to.

The Convener: We have already agreed to speak to Education Scotland after the Easter recess, so some of those issues will be brought up then.

Liz Smith: Good. Thank you very much.

Daniel Johnson: I will be brief. Sections 3 and 4, in particular, of Education Scotland's response are quite mind boggling. From reading section 3, one could think that Education Scotland has only a peripheral responsibility for CFE: it points in every direction other than at itself. That is certainly not my understanding of its role in CFE.

Secondly, and perhaps more fundamentally, all the response talks about is the inspection regime. The question that was asked was whether we can assess how well CFE is actually working. It was about data, the Organisation for Economic Co-operation and Development study and the points that Lindsay Paterson made. The response simply ignores those points and talks about something else. I find that deeply unsatisfactory.

The Convener: As I have said, we are going to have Education Scotland in to speak to us, so I am sure that those points will be raised with it at that point. Are there any other comments—perhaps on education authorities? In the absence of any comments, I will say that we received a very interesting response from Aberdeen City Council and the northern alliance. The key issues that we identified were how local authorities influence national policy and how they support their teachers. I imagine that we will consider those issues once the Government's education review is complete. We have discussed doing some work on the north-east and the northern alliance. Perhaps we should just park that for now and pick it up once we know more about the Government's proposals.

No one has other comments. That brings us to the end of the public part of the meeting. I ask people in the gallery to leave the room, please.

12:05

Meeting continued in private until 12:18.

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