OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 19 April 2022

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 19 April 2022

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

11th Meeting 2022, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Pam Gosal (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sarah Axford (Children 1st)
Dr Lesley-Anne Barnes Macfarlane (University of Glasgow)
Jordan Croan (Who Cares? Scotland)
May Dunsmuir (First-tier Tribunal for Scotland)
Alistair Hogg (Scottish Children's Reporter Administration)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 19 April 2022

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Joe FitzPatrick): Good morning and welcome to the 11th meeting of the Equalities, Human Rights and Civil Justice Committee in 2022. This is the first committee meeting in this session where we have people observing in person. They are very welcome.

I ask committee members and guests to ensure that all mobile phones and other devices are switched to silent for the duration of the meeting. We have received no apologies for the meeting.

Agenda item 1 is to agree whether to take item 4, on consideration of the evidence, and item 5, on consideration of correspondence from the Health, Social Care and Sport Committee, in private. Are we agreed to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Registration Services (Fees, etc) (Scotland) Amendment Regulations 2022 (SSI 2022/68)

10:00

The Convener: The next item is consideration of a negative instrument. I refer members to paper 1. Do members have any comments on the Registration Services (Fees, etc) (Scotland) Amendment Regulations 2022?

No members have indicated that they wish to comment. That being the case, are members content not to make any comments formally to the Parliament on the instrument?

Members *indicated agreement.*

The Convener: That concludes consideration of the Scottish statutory instrument.

Children's Participation in Court Decision Making

10:01

The Convener: The next item is to take evidence on children's participation in the courts' decision-making process. I welcome to the meeting Sarah Axford, service manager, Children 1st; and Dr Lesley-Anne Barnes Macfarlane, senior lecturer in Scots private law, University of Glasgow, who is joining us remotely. I refer members to papers 2 and 3.

I invite our witnesses to make short opening statements if they wish. I will start with Sarah Axford.

Sarah Axford (Children 1st): I will start by thanking the committee for inviting me.

I am a service manager for Children 1st, which is Scotland's national children's charity. At Children 1st, we stand up for children's rights and highlight when we feel that they are being violated by decision-making processes. We do that through regular contact with other organisations such as the Children and Young People's Commissioner for Scotland and the Scottish Women's Rights Centre. We believe that when families do well, children do well. The way we do things is to put relationships at the heart of everything that we do.

Children 1st is a trusted and established provider of children's services in the Scottish Borders, providing abuse and trauma recovery support to children, young people and their families. We are considered the only service with the skills and expertise to create safety for families in supporting their recovery, particularly when they are living with on-going abuse through child contact. That is because we have developed a high-quality, experienced and qualified team of staff who deliver a unique, person-centred and holistic approach. It is with expertise in those areas that I come before the committee.

There are two ways in which the children and families we support come into contact with the family justice system: child contact cases, and residence and permanence cases, which I hope I can also touch on in the session. For the majority of children and families who access support through our domestic abuse services, their experience of the family justice system has left them feeling unheard, insignificant, distressed and worried about the future. Many children tell us that they do not feel part of decision-making processes, even when decisions are being made about them, and that they feel overlooked. That has a significant impact on their development and happiness, especially when unsafe or concerning

decisions are made about contact with their parents without their consent and without an effort to understand why they might be reluctant to see a particular parent.

I look forward to sharing the child-centred, relationship-based, non-judgmental and non-stigmatising practice that makes up the Children 1st way of supporting children to participate in decisions that are made about them, but I also hope to share some examples of where children we support have had their input disregarded by those who were making decisions that affect them.

I would like to share the voices of two young people who have had very recent experience of not being listened to in the civil court process. Both young people have had their views taken several times, but they have not been listened to. The first young person said:

"It feels unfair. I feel because I am a child my view is unimportant. If an adult didn't want to see a parent it wouldn't have to go to Court. I felt like I was treated like property not an individual and I feel disrespected and disempowered".

The other young person said:

"I feel the Sheriff didn't listen to me and my right is to be heard and listened to and that didn't happen. I feel listened to by other people like my mum and school and everyone else except the Sheriff and he has let me down".

Dr Lesley-Anne Barnes Macfarlane (University of Glasgow): Good morning and thank you very much for inviting me. I am a child and family law researcher working in a team of researchers in the school of law at the University of Glasgow. Before I became an academic more than a decade ago, I was a family lawyer. I represented adults and children involved in family court cases. I also worked as a child welfare reporter and a curator ad litem.

I have been asked along to the meeting because the Justice Committee commissioned me in 2019 to produce an independent report when the Scottish Parliament was considering the Children (Scotland) Bill. My report evaluated the current law, which was and still is part 1 of the Children (Scotland) Act 1995. I was asked to review the 1995 act and comment on areas that might be in need of updating and reform from a human rights perspective, particularly from the perspective of children's human rights and the child's right to participate. The areas that I considered for potential reform included the imposition in current law of an age presumption of 12 years and older for the capacity to form and express a view and the general lack of infrastructure to support, guide and inform children who are involved in family court cases.

My report also analysed the 2019 Children (Scotland) Bill, which is of course now the Children (Scotland) Act 2020. Most of that act is not yet in force but, once it is in force, it has the potential to make positive changes in respect of enabling children to participate more fully in family court cases about them.

The Convener: Thank you both very much. We will ask some more in-depth questions but, initially, will you both give us a practical outline of how we try to hear children's voices and where it does not work?

Sarah Axford: I will comment on the ways in which the 1995 act outlines that children's views can be taken. The current methods are the F9 form, child welfare reporters and children speaking to legal representatives—children are entitled to their own legal representation—or speaking to a sheriff in private.

In our experience, the only way in which children's views are being taken at the moment is through child welfare reporters. The F9 form is not consistently used and we do not particularly agree that it is an effective way to take children's views anyway.

Child welfare reporters are the most common way in which children's views are taken, but that is pretty inconsistent, too. Commonly, children under the age of 12 do not have their views taken. I spoke recently to a solicitor about a five-year-old's views and the idea that that child's views would be considered was pretty much dismissed from the outset.

The Convener: Does the F9 form need to be replaced?

Sarah Axford: Yes. The form relies on adult support for it to be completed. Often, families do not understand how to fill it in and what should be on it. Teachers and other professionals are reluctant to help to fill in those forms because they would sometimes be viewed as having a bias towards one parent over another. It is really difficult.

The Convener: Lesley-Anne, could you also comment on the F9 form?

Dr Barnes Macfarlane: I will comment first on the current methods of taking children's views, which Sarah Axford has helpfully outlined as including the F9 form.

There is the possibility of speaking to a sheriff, but not many children do that; we know that from what limited research exists. Most children give their views through speaking to a child welfare reporter. Children can instruct their own solicitor, but that tends to happen only with older children and, again, relatively few children actually do it.

The Scottish Government family justice modernisation strategy flagged up a number of

areas in which the system could be updated and improved. I would also note the presumption of age 12 plus. An age limit is not given in article 12 of the United Nations Convention on the Rights of the Child, which is the article about the child's right to participate. Out of lots of different countries in the world, we are the only one that uses an age benchmark. That approach is contrary to the guidance that has been given by the UN Committee on the Rights of the Child, which is the international watchdog for children's rights. Certainly, the age presumption has not been helpful, although cases have been reported in which the courts have taken views of younger children through child welfare reporters and there is certainly guidance to do that.

When the 2020 act comes into force, it will replace that presumption with a different presumption entirely. The new presumption will be that all children have capacity to express a view. What we should see is all children, regardless of age, being asked what they think or how they feel about their family law case, and of course, in a legal system where asking the views of younger children has not traditionally been done, that will be a whole new area for training and development. Sarah Axford might want to comment on that further. The age 12 presumption has been an increasingly difficult area.

There is also a lack of a supportive infrastructure for children to give their views. There is no one in the current system who is there to support or inform children to help them articulate their views, or to explain the process to them and give them appropriate information at the right stages and, importantly, to explain a decision to children once it has been made and to let them know that they are being heard. Again, one of the reforms that the 2020 act should be bringing into force is the appointment of a child advocacy worker, who can fulfil that role and help create an environment where children feel supported and listened to.

I can follow up on some of the other areas that we have discussed this morning, such as the provision of explanations to children, which the 2020 act will newly bring in.

On form F9, I watched the round-table session at which that form was criticised by a number of people. I do not have any specific points of criticism to add to that, but I agree with the criticisms that were given. I agree that form F9 is certainly not the best way to take the views of children.

If the current way in which court proceedings are intimated to children is going to be replaced, there will have to be some other way in which children are told about the court process that is happening about them. We would certainly expect that to be part of the discussions when the 2020 act comes into force.

The Convener: Thank you. As you have said, we will cover some of those issues in more depth with questions from other committee members.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning to both witnesses. It is nice to see you here today.

I would like to ask a question within the context of the pandemic, which has highlighted quite a few issues for a number of demographics. With regard to how the pandemic has affected children's participation in decision making, have any new issues been highlighted or have there been any extra difficulties that you have seen?

10:15

Sarah Axford: I suppose that one of the things that happened in our experience was that fewer children's views were taken. Because there were no face-to-face meetings and things like that, children's views were just not taken and no ways were found to take their views.

The impact of online hearings has been difficult. Many of the parents we have spoken to have found them to be disempowering, and they have felt less able to voice their views. Even before online hearings, teleconferences were being used in certain places. When the technology does not work, we revert back to telephone conferences, and people find that they are even less able to engage in those.

There have also been long delays to the start of hearings, and big gaps between hearings.

Those are probably the main issues.

Dr Barnes Macfarlane: I bow to the views of the people who are actually working in the system and who have experienced the delays and the pros and cons of the technology, in particular. The technology creates opportunities for working in different ways, but it should always be done in a way that is based on the needs of the particular child rather than on convenience or cost. When the new act comes into force, it will contain a provision that children's views should be taken in the manner that the child prefers, and the child should be able to say whether they want to have a meeting with an individual, whether they want to send an email, whether they want to talk through an online meeting, and so on. Those are positive steps in the way forward.

Maggie Chapman (North East Scotland) (Green): Good morning to you both, and thank you for joining us this morning. I have a couple of questions that build on some of your comments about how we hear children's voices and how we

give those voices their due weight as the UNCRC requires. In Glasgow, there are specialised hearings suites for criminal cases, and I wonder whether you have any thoughts about using pre-recordings, or giving evidence remotely, although I take on board what Sarah Axford said about some of the issues that people have with virtual hearings. Do such specialised hearings suites offer sheriff courts as well as criminal courts the opportunity to enable the child to participate in a safe space and more relaxed environment?

Sarah Axford: Absolutely. I stress, however, that we must recognise the importance of creating child-friendly spaces so that children can share to the best of their ability. Creating such an ideal environment is the most important thing. I think that children feel completely detached from the process now. They might hear about it and then get a 30-minute or hour-long meeting with the child welfare reporter to air their views, but that does not always happen. They then feel quite detached from the process and end up relying on their parents to communicate it to them. If there was a space where a child could go to give their views and know that it is directly connected to the court process, that would be good.

Maggie Chapman: I want to pick up on something that you said about how the child does not always get time with the child welfare reporter. Should we be thinking about how we ensure that the child gets that time, or is it not always appropriate for that to happen?

Sarah Axford: Our experience locally, although we have wider experience through Children 1st, is that there is no consistent approach to when and why child welfare reports are done. A child welfare report might be done without speaking to the child, so it would just be looking at the context. There is not a particularly consistent approach to that either. Some appointed child welfare reporters might do it in a particular way, which would not necessarily match the way of the next person who comes along. There is also the view that children under a certain age do not have the ability to speak to a child welfare reporter and are not able to form a view, and so it is just not done.

Maggie Chapman: Lesley-Anne, what are your views on the specialised hearings suites and associated possibilities?

Dr Barnes Macfarlane: My view is that anything that serves to make the process of participating in family court cases less intimidating and more accessible for children is absolutely worth considering. One of the most encouraging things to read about those suites is that children and young people were involved in their development and the consultation process, and that they co-designed the website and chose the images on it. That is very much children's rights compliant in relation to what the United Nations Committee on the Rights of the Child would say, which is that the best way to put in place the best methods for listening to children is by planning, working out and developing those methods with children and listening to what they say makes them feel happy, frightened, involved or—as Sarah Axford said—detached from the process. That is absolutely what we do not want, because it is above all a process that is about them and which has a massive impact on their day-to-day lives.

Maggie Chapman: I will follow up with a connected but separate question about advocacy services. The 2020 act makes provision for advocacy services to be provided as ministers consider necessary. I am interested in whether you believe that that provision should be enforced and whether there need to be restrictions or stipulations around it. How do we balance the right of the child to be heard with their right to be supported and have their views heard through an advocate? Is the advocacy there to support them to have their views heard?

Dr Barnes Macfarlane: In relation to the advocacy service, we are talking about a lot of ways in which the system can be improved and modernised. In fairness, the system came into force more than 25 years ago with the Children (Scotland) Act 1995. At that time, it was radical to be listening to children at all. Over the past 25 years, we have begun to realise that participation means more than simply taking a view from children and using it in an adult-centric process; it really means involving the child in some kind of dialogue where they understand what is going on.

It certainly seems to me that the plan to create children's advocates solves a number of problems with the existing system in a single stroke. It would mean having an individual who is dedicated to the child. That individual would explain the process to them and help them, if necessary, to articulate their views and feelings in a court process that should be all about them, but which is still quite adult centric. The person would offer support and appropriate information and explain to the child what a decision means in the context of the impact that it will have on their life.

I cannot see anything negative about having a children's advocate. I will go so far as to say that I am not sure that the provisions in the primary legislation—the 2020 act—will actually make that much difference to children if there is not a change to the basic structure that carries children through the process that they experience when they are involved in distressing cases about their lives. For me, it is an absolute necessity to enact those services for children.

Sarah Axford: I completely agree. Addressing children's advocacy is critical if we are serious about improving children's participation rights. Advocates can be a key part of children sharing their views in a number of different ways. Advocacy addresses a number of issues for the Scottish Government with regard to the children's hearings system and civil justice processes, but it is also needed at those points in children's lives when things get difficult—when social work or the police, say, get involved or when other matters of concern arise.

An advocate can also work with the child to help them to decide how their views will be shared. For example, the child might share their views in person so that they can build their confidence; after all, this is all about having confidence and that sort of ability. We would always want children to share such things in person, but we need to give them the resources to do that, which requires the building of a relationship and the time to work with them on that.

Maggie Chapman: Do you see advocacy as a potential way of dealing with some of the challenges that we have discussed at previous meetings, such as the tension between the child's welfare and their right to be heard and to participate?

Sarah Axford: Absolutely, because the person will be able to contextualise the child's life. They will work alongside the child to understand not just their views but the context and the other things that are going in their life. Those sorts of things are often lost in the current civil justice system.

Dr Barnes Macfarlane: There has been some incredibly positive feedback on the children's hearings advocacy service, which has just begun. It has been noted that having an advocate improves the quality of discussions and the decisions that are made, and that it helps children to realise their rights. It is all about facilitating children—[*Inaudible.*]

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, panel, and thank you for joining us. It is also nice to see people in what I think is called the public gallery for the first time since I came into Parliament.

Thank you for the evidence that you have given this morning and all the work that you have done over the years. My first question, which is for Sarah Axford, is about the Children (Scotland) Act 2020. Children 1st submitted quite a lot of evidence on the original bill and made a number of recommendations, some but not all of which were taken on board. What impact do you think the changes that were taken on board will have when the provisions come into effect? Has the delay in introducing them had any implications?

Sarah Axford: We are champing at the bit for the provisions in the 2020 act to be implemented. That cannot come soon enough for us, because the delay is having a direct impact on children and young people.

As we know, the 1995 act, particularly section 11, contains some really explicit stuff about listening to children's views and including the "welfare of the child" in any considerations, but the fact is that it is not being met consistently at the moment. We are therefore keen for the 2020 act to go further than that. My concern is that that is not coming quickly enough and that we are silencing children as a consequence.

I cannot recall which of our recommendations got into the legislation and which did not, so I will have to rely on my colleagues feeding back to you on that. However, we were certainly pleased that the presumption of shared parenting was included and that the stuff about parental alienation was taken out.

Dr Barnes Macfarlane: It is recognised that the 2020 act is the first step in a process of beginning the modernisation of the family justice system and that it is important in relation to compliance with the United Nations Convention on the Rights of the Child to keep that system under review. As Sarah Axford said, the pandemic has caused a lot of disruption to working life and processes, but I am keen to see the 2020 act come into force.

10:30

Pam Duncan-Glancy: My other question is about the presumption that children have the capacity to express their views, which will be a huge step forward. We have heard a lot about the structural changes that we might need to introduce that. Will we need specialised professionals who have experience of taking the views of particularly young children in the context of criminal and civil justice cases? Will you both answer that? I am keen to hear your thoughts.

Sarah Axford: The short answer is yes. We strongly advocate that professionals who take children's views should know how to speak to children and understand child development and the complexities of children's safety and welfare. We absolutely believe that children who are younger than 12 are able to form views, and it is not just about interviews. Children should be able to give views in written form or through drawings and things like that. We have recent experience of a permanency case where we were able to support a child's view through pictures that he had done, which clearly said that he did not want a relationship with his father. We were able to communicate in the court setting that the child had represented that in picture form.

As I said, such relationships need to be given time. We do not believe that we give children the best chance through a child welfare reporter interviewing them for half an hour. The relationship needs to be built. Safety and security need to be felt in the relationship for the child to be given the best chance of being able to communicate their views effectively.

Dr Barnes Macfarlane: I add that taking the views of younger children and involving them in any kind of legal process is a really new concept in law, so there will definitely be a need and opportunities for the training of appropriate professionals in the new approach that we are developing.

Pam Duncan-Glancy: What training would be needed? Who in particular would be best to provide it?

Dr Barnes Macfarlane: Sarah Axford might have more information on specific training providers, but they would be required to understand aspects of child development and, in particular, how younger children communicate. As Sarah said, they are less likely to articulate their feelings in language that adults will immediately be able to understand and process, so we need to begin to learn how to listen to children. I am not sure that we do that particularly well as a society. The legal system is just one facet of that, so it would involve a multidisciplinary approach with people who understand more about child development than lawyers do.

Alexander Stewart (Mid Scotland and Fife) (Con): Thank you for your comments so far. You have both touched on children being overlooked and disregarded in the process and you have both talked about the role of the child welfare reporter. That approach is seen as the future method of supporting children and providing balance, but do you believe that it will do that? It is about giving individual children the opportunity to express their views, but is it possible that the required relationship will still not be there? How will child welfare reporters build the relationship?

What I have heard from both of you today is that it is about confidence—it is about the child feeling confident and that they have been given a chance to express their views. It appears that, in the past, those views have been disregarded or ignored. If we are putting a lot of emphasis on the child welfare reporter, what needs to happen to ensure that the approach is successful and that there is progress? Without that, we will be back to where we started.

Sarah Axford: It does not really matter what profession somebody comes from; what is important is the ability to form a relationship with the child and understand how to communicate with children at different ages and stages. That comes from training and having a system that is more accountable and structured than the current one.

It is important that people who become child welfare reporters have an interest in children's rights. That is where we need to start. I mean no disrespect to the legal profession but, at the moment, we draw on solicitors, and child welfare reporting is incentivised financially. In the area where we work, we draw on a very limited pool of people who also act as defence agents, which for me is a real conflict of interest. The important point is that the profession or the type of people who we draw on does not matter; what matters is that they have an interest in working with children and getting children's views.

Alexander Stewart: Dr Barnes Macfarlane, you have a background as a lawyer. You heard Sarah Axford's comments. Do you believe that the role of child welfare reporter is being managed in the right way and with the right focus and emphasis to ensure that relationships can be built?

Dr Barnes Macfarlane: In the way that the system is set up under the 1995 act and will continue to be set up under the 2020 act, child welfare reporters fulfil an important function, and they do lots of things—they do not just take children's views. The court rules say that their job is investigative. They carry out investigations, which usually involves investigating family members, teachers and other professionals who work with the child. Importantly, child welfare reporters then make recommendations to the court about what the court rules call the effective and expedient resolution of an issue or a dispute about children. When the 2020 act comes into force, there will be an additional role, which will be to provide an explanation to children of the court's decision, where the court asks them to do so.

That is an awful lot of roles that child welfare reporters are exercising. However, they absolutely are not a child's advocate—the role is not to support children and give them information. The child welfare reporters are important professionals in the process and, if they were removed, something else would have to be there to facilitate the court's decision making. However, they are not there to be the child's representative, supporter or advocate, so there is still a big gap and a need for someone who can make the process less upsetting and intimidating for the child and make them feel that they are being heard. That is not the function of a child welfare reporter.

I absolutely support the steps that the Scottish Government is taking to have a register and more uniform training, particularly in relation to taking views from younger children. My view, which I understand is also what Sarah Axford's organisation and other children's organisations are

saying, is that a separate role entirely—a children's advocate or whatever we want to call it—is needed to support children through the process.

I have no particularly strong views on whether the child welfare reporter should be a solicitor or someone from another profession. The important thing, as Sarah Axford said, is that they have an interest in children, that they understand children's rights and the process, and that they can investigate and give the court recommendations in that process.

Alexander Stewart: The Scottish Government has talked about the need to broaden the scope of the role and try to bring in other professionals. You have touched on that. At the moment, the legal service has the lion's share, but there has been talk about broadening it out and bringing social workers or psychologists into the role in order to tease out or embrace some of the focus that has been identified. Would taking the role into different areas and giving individuals more opportunities to participate be successful?

Dr Barnes Macfarlane: It is definitely worth discussing with the Scottish Courts and Tribunals Service the benefits that other professions can bring in, particularly if they have expertise in talking to very young children.

Alexander Stewart: Sarah, do you have any other comments on bringing different professions to the process?

Sarah Axford: No. As I said, it is about having an interest in working with children and an interest in children's rights.

Pam Gosal (West Scotland) (Con): I thank the panel members for their opening statements. My question is about judicial specialisation. Some legal systems around the world and in the UK make greater use of specialised family courts or family judges. In the larger urban areas of Scotland, some young people have access to specialist sheriffs, but others do not have that access. What impact would a wider roll-out of judicial specialisation have on children and young people's participation in decision making?

Dr Barnes Macfarlane: A system in which people understand and know more about children and their rights and how to communicate with children cannot be a bad thing, so greater specialisation for those who work with children is definitely worth discussing and considering.

Sarah Axford: I absolutely agree. We need to offer equity of service across Scotland. We are working in a rural area that has only two sheriff courts, with only one or two sheriffs presiding over all criminal and civil cases. We would absolutely welcome specialisation. It is really important to differentiate this particularly complex area of civil justice, which absolutely needs to be protected and treated differently.

Pam Gosal: My colleague Pam Duncan-Glancy spoke about the 2020 act, and Dr Barnes Macfarlane talked about putting comments in to make sure that certain things are covered, such as making sure that the views of children under the age of 12 are heard.

My colleague Karen Adam talked about the pandemic. With the 1995 act being there and now the 2020 act coming into force, I hope, but not in force yet, is there anything that you now feel should be in the 2020 act that you did not feel should be in it at the time? Dr Barnes Macfarlane, you talked about reviewing that. Is there anything that you would bring into that act now that was not there before?

Dr Barnes Macfarlane: Do you mean in view of the pandemic and the challenges around that?

Pam Gosal: I mean in relation to the pandemic, children's hearings and all the systems. We spoke about that earlier, and Sarah Axford mentioned that children's views were not heard when things moved online and so on. Does the 2020 act need to be changed or amended in any way to take into account where we are today and the fact that a pandemic can happen?

10:45

Dr Barnes Macfarlane: Fundamentally, the provisions in the 2020 act are a great step forward. The concern lies with the supportive infrastructure below the act. In relation to people's experience of going to court, family members are told about the primary legislation and the kinds of orders that they might get at the end of the day, but that might be months or years down the line. Their day-to-day experience is of going through a process. It is about how well they understand that process, how well they are represented and how well that process is explained to them.

For children, it is an incredibly long process. Although they are the subject of that process, we hear time and again that they do not feel part of it or involved and that they do not feel that they are listened to.

The 2020 act is a great step forward, and it will need to be kept under review—I am sure that there will be areas that will need to be tweaked and amended over the years—but the supportive elements and the day-to-day management of cases have to be considered. That is why we have been talking quite a lot about a support worker for children—somebody who can make sure that children can navigate their way through a process that adults find stressful and baffling at times.

Sarah Axford: I do not have much to add to that. I completely agree with what Lesley-Anne Barnes Macfarlane has said. It is important that we enact what has already been written in legislation and that we try to speed up the implementation process. There was a long consultation process, and many of the issues were present before the pandemic and have only been exacerbated by it. It is important that some of the new bits of legislation come into force as soon as possible.

Pam Gosal: I have one more question. Earlier, you mentioned that, when things went online during the pandemic, children felt that they were not heard. We heard from witnesses in earlier evidence sessions that many people found online sessions better, but some people did not, as you have said. Do you have any views on that?

Sarah Axford: It is about giving young people choice. We have the use of virtual technology, and we had to implement that at speed. Technology has given us more options in how we engage with children and young people. Some young people are more comfortable in that space and some are not. It is about being child centred. It is another option that we can offer to children and young people.

Fulton MacGregor (Coatbridge and Chryston) (SNP): It is fair to say that we have covered a lot of ground. I apologise in advance about the two questions that I will ask, because some of the issues have already been covered.

However, I will ask again about child welfare reporters. I was on the committee that considered the previous legislation, and we had a lot of discussion about that subject, as the witnesses will probably remember. We have talked a bit about who child welfare reporters are—whether they are legal professionals, social workers or psychologists—which was discussed when the bill was being considered.

In broader terms, do you feel that we now have the correct approach? What are the main features that the child welfare reporter system needs to have in order for it to be a success? Sarah Axford, I will come to you first.

Sarah Axford: I am just thinking about my answer.

As I said, the most important thing for us is the ability to speak to children and the interest in speaking to them, alongside the protection of children's rights.

Parity of service for children and young people is also important for us. There is a very inconsistent approach to the child welfare process. Lesley-Anne Barnes Macfarlane spoke about child welfare reporters having an investigative role. However, in our experience, we do not always see that happening, or we see the investigative role being carried out but the child's views not being taken. It is important that the role has that structure to it and that it provides equity of service for children and young people. They should know what that role is for and why, and the process should be explained to them so that they understand it and are able to contribute. It is about participation and about the relationship with the person in that role.

Dr Barnes Macfarlane: I do not really have any points to add to that. The current child welfare role in the system is necessary as far as I can see, but the role does not focus purely on the child's participation. There is a need for something extra—for another person who is more of a specialist and is more dedicated to the child—because taking the child's views is just one of the functions that a child welfare reporter fulfils. It is not reasonable to think that people in a legal system that has never taken the views of younger children before will automatically be able to do that. That is why we need input from child development specialists. We need training on how to communicate with children and understand the views that are expressed in lots of different forums by younger children.

Fulton MacGregor: Your answer leads me on nicely to my final question, which is about bringing the provisions in section 21 into force, which we have touched on already. The Scottish Government has expressed a policy concern about bringing those provisions into force because of the fear that children could end up with multiple support workers. In my experience, it is not uncommon for children to have multiple professionals or agencies working with them. Is that a valid concern in this context, or is it more about having an integrated approach to addressing the issue? That question is for Dr Barnes Macfarlane.

Dr Barnes Macfarlane: I do not really see that as a valid concern. Children need to have access to advocacy support in whatever forum they find themselves in, regardless of whether it is the children's hearings system, the criminal system or the family court system. There are a number of advocacy providers across Scotland, and their views could be sought on whether they see any practical or substantive problems with, for example, providing advocacy services to a child in an integrated way across more than one forum.

The Scottish Government's one-year review of the advocacy services that are provided through the children's hearings system, which are relatively new, stated that those services are essential to children properly understanding and realising their rights within that process and that they are improving the quality of discussions and

decisions. That is very much what we want to see in the family court forum, too, and it is very much what we think is missing.

Fulton MacGregor: Thank you. Does Sarah Axford have any views on that final question?

Sarah Axford: I do not have much to add. The advocacy role is important. That role needs to be prioritised, and the person in that role must be alongside the young person on whatever journey they are on, whether it is through a criminal process, a civil process or both. It is about having that trusted personal relationship. Such relationships minimise the risk of retraumatising children. Children having to tell their stories multiple times—they can be asked the same thing by different people six or seven times—is not okay. We need to be able to give children that consistency.

Fulton MacGregor: Thank you.

The Convener: As members have no other questions, I thank both witnesses for their evidence, which has been really helpful.

10:55

Meeting suspended.

11:00

On resuming—

The Convener: We welcome to the meeting our second panel: Alistair Hogg, head of practice and policy, Scottish Children's Reporter Administration; May Dunsmuir, chamber president, health and education chamber of the First-tier Tribunal for Scotland, additional support needs jurisdiction, who is joining us remotely; and Jordan Croan, advocacy and participation manager, Who Cares? Scotland.

I invite the witnesses to make a short opening statement if they so wish, starting with Alistair Hogg.

Alistair Hogg (Scottish Children's Reporter Administration): Thanks very much, convener.

I am the head of practice and policy at the SCRA. The children's hearings system, as I am sure committee members know, has been in existence for more than 50 years now, so we very much welcome the committee's invitation to give evidence and to share our own experience over the past 50 years. We have been on a real journey with our encouragement and improvement activity in obtaining children's views and their wider meaningful participation in our hearings system and processes.

I would not want the committee to think that we are claiming that we have got it all right—we are certainly not doing so. We try to get it right as much as we possibly can. On our 50-year journey, we have made lots of improvements, changes and adaptations, and we have had lots of engagement with children and young people, both individually and collectively, and with organisations that champion children's rights. We are still on that journey of improvement, which has been re-energised through the Promise and our activity in that respect.

Having heard the previous session and in preparing for today's meeting, I wanted to say that, although this area is not in the slightest bit easy and although we are still on a journey after 50 years, it is in some respects quite straightforward and not that complicated. If you are trying to obtain children's meaningful participation, you just need to provide the right foundations to allow them to provide their views and to participate meaningfully, and I am sure that we will explore those foundations in the discussion.

Essentially, though, children need to be properly informed. They need to be assisted and supported to help them understand what is going on; they need to be properly prepared for whatever process they will engage with and to have their rights protected and promoted; they need to be supported before, during and after the process; and that support needs to be consistent. They need to be allowed to build relationships with people who will help them participate and provide their views. They need the right environments, the right conditions and the right tools to assist them in providing their views. In other words, we need to create the conditions that enable their voices to be heard. Their views need to be valued and there needs to be a way of ensuring that they know that their views are valued. All of that takes investment of time and resources.

That is what we have found over the years. I am happy to share our experiences and provide any details if that will be helpful to the committee.

May Dunsmuir (First-tier Tribunal for Scotland): Thank you very much for inviting me to give evidence on the experience of the Additional Support Needs Tribunal.

The ASN tribunal is not as old as the SCRA—we have been around in various forms for 17 years now—but what we have learned is that meaningful children's participation has to begin at the beginning, not midway through the process and not at the end. In our jurisdiction, children and young people sit at the heart of our processes. They have the most authentic voice, and authenticity is very important here. After all, they have the expertise.

Beginning at the beginning can feel quite risky from an adult perspective. You do not have

complete control, and the child or young person can easily sniff out a fraud. I expect that the committee will want to hear about the sensory hearing suites that we have created and our journey to get there, but I would like to refer to that just briefly to illustrate what I mean about beginning at the beginning.

Over my many years as a children's reporter and a mental health lawyer, and then as a member of the judiciary, one thing has become crystal clear to me: children and young people's voices are often drowned out by the sheer volume of personal and professional adults in their lives. In 2014, when I became president of the former Additional Support Needs Tribunal for Scotland, as it was known before it transferred into the First-tier Tribunal, I made a public commitment to learn how to deliver justice by listening directly to children and young people.

What I meant by "directly" went beyond listening to children's organisations, the children's commissioner, teacher and parent groups and so on—although they are of great value—and into the company of children themselves. I began the journey by meeting first with the young ambassadors for inclusion and moved on from there. I started with a large blank sheet of paper—that was the only tool that I took when I went to speak to children and young people—and I asked two questions. First, I asked, "Do you want to come to hearings? Whatever they might be, do you want to participate in hearings that make decisions about you?" By hearings, I meant children's hearings, additional support needs hearings and court hearings, and I wanted to hear children's experiences and whether they wanted to be involved. After that question, I asked, "If yes, what should a hearing look like?"

From every group and individual child that I listened to, the answer to the question whether they wanted to come to hearings was a resounding yes. That took me aback a little, because although I expected a high volume of yesses, I also expected to hear some noes. However, the answer was a very resounding yes.

The answer to the second question, which was about what a hearing should look like, led to what we now call our sensory hearing suites. Right from the get-go, that big blank sheet of paper looked entirely different from what I thought it would. From that, we built, layer upon layer, an accessible justice environment, with each layer designed by children and young people. They own what we now have and they deserve the credit for that. Like Alistair Hogg's organisation, we are on a continuum of improvement. Improvement is not static and we are continually learning and improving on what we have.

I will end with some quotes from children and young people. One teenager, when asked what would help him to feel equal in a hearing, said a suit. Another, when asking for a table, said that the table should be round, like King Arthur's round table, where everyone is equal. Finally, one child, when asked what would help her to feel relaxed and involved in a hearing, said a drinking straw. Access to justice is not always complicated.

Jordan Croan (Who Cares? Scotland): Good morning. I am an advocacy and participation manager for Who Cares? Scotland in the south-east region. On behalf of the organisation and our members, I thank the committee very much for inviting us to contribute today.

Who Cares? Scotland is the country's only national independent membership organisation for care-experienced people. We currently have more than 3,500 members, and our strategic vision is to secure a lifetime of equality, respect and love for all care-experienced people in Scotland. At the heart of our work lie the rights of care-experienced people, and over the years we have seen the power of their voices bring about change for our community.

We provide relationship-based independent advocacy services, and we have a range of connection and participation offers for all care-experienced people across Scotland. In the past year, we have provided advocacy services for more than 1,600 young people. Our helpline also offers a lifelong advocacy service for care-experienced people—that is, adults who have lived experience of the care system.

We also work alongside corporate parents and others to improve understanding of care and challenge the stigma faced by care-experienced people every day. We also work to create opportunities for our members to influence policy makers, leaders and elected representatives, both locally and nationally, in order to achieve positive change and build on the aspirations of the Promise.

I manage a team of independent advocacy workers in my region who work day to day with children and young people to help them play an active role in decisions that are made about them and around them. It was interesting to hear May Dunsmuir talk about the noise around young people at formal process meetings and hearings, because we often describe ourselves and our role as being their megaphone. We are there to raise their voice, and we are not interested in the noise around them. I think that that is a really nice and simple way of explaining it—we are their way of raising their voice. As Alistair Hogg and May Dunsmuir have said, a lot of the answers that we are seeking can be quite simple.

Independent advocacy is different from advocacy itself. The simplest way I can describe it is to say that we are skilled professional advocacy workers who have no other purpose or role in the young person's journey other than to help them understand their rights, realise those rights and represent their views in an informed way. We make sure that they have all the information that they need to make an informed choice and to express their views to the people around them. We believe that independent advocacy, which is defined by the Scottish Independent Advocacy Alliance as

"speaking up for, and standing alongside individuals or groups, and not being influenced by the views of others"

is a key tool in helping children and young people claim and understand their rights.

I hope that, after this conversation, we are able to offer more clarity on advocacy, the difference between that and independent advocacy and how we can best help meet article 12 of the UNCRC and realise the rights of young people to express their views in a way that suits them. Although we have 40 years' experience as an independent advocacy agency—we are not quite 50 years old yet—I myself do not have anywhere near 40 years of experience, so we will offer written evidence on anything that I cannot answer.

The Convener: We now move to questions. Committee members will direct their questions to witnesses; however, if they have not asked you and you want to come in, just indicate that to me. May Dunsmuir, you can put an R in the chat if you want to come in on anything in particular.

Maggie Chapman: Good morning and thank you for joining us today and for your opening remarks. You have already given us a lot of information and a lot to think about.

I will put this question to all three of you, if that is okay. Following on from the questions about advocacy services that I asked the first panel, can you tell us a little bit more about the role that the children's advocate performs in the current hearings system and tribunals? What can we learn from that—what are the pros and cons of having a system that has a significant role for children's advocates?

Jordan Croan spoke about the distinction between advocacy and independent advocacy. How do we draw that out in the children's advocate issue?

Jordan Croan: I will start with that last question about how we draw that out. The point that I want to get across the most is that the independent advocacy worker has only one role; they do not have what we have described as a lot of different roles. That helps to redress some of the power imbalances that young people face with the adults that are around them. Understandably, young people might sometimes feel as though they are at the bottom of the balance so they might need one professional person who is there just to help them to make sense of their views because they might not know what they are or they might change them, as they have every right to do.

11:15

It is about investing time in that process to help young people to grasp and understand it. That is where advocacy within the children's hearings system comes in. As I said, we have been providing advocacy locally and nationally for more than 40 years, in various different ways and all across Scotland. We work in 29 of the 32 local authority areas and, with the introduction of advocacy within the CHS, we also have a lot of other providers in different local authority areas. The main issue with that is also time. There is a five-step process and, without going through all the steps, it has a beginning, and middle and an end. Relationship-based advocacy is about giving the young person the choice to be able to continue with the process.

We have previously spoken about whether there are going to be multiple advocacy workers for young people. The CHS is already dealing with that issue, and it goes back to the principles of the Promise. We all have to be able to speak to and advocate for young people so that people will listen to them. We also suggest that the independent advocacy worker is important because they are skilled professionals and advocacy is their sole purpose.

Alistair Hogg: As Jordan Croan said, advocacy has been in the hearings system for decades. What changed just over a year ago was the implementation of section 122 of the Children's Hearings (Scotland) Act 2011, which allowed for national provision and the ability to access advocacy right around the country when the service was previously only available within a particular local authority area.

The advocacy service has been a resounding success since the coming into force of the section 122 provision, but prior to that, it was widely recognised that advocacy workers would bring substantial benefits to hearings. The advocacy worker is there to support, represent and assist the child and, as Jordan Croan said, such support before, during and after the hearings is crucial.

We also know that consistency of relationship is important. Children and young people tell us all the time that it is essential to build a consistent relationship.

Having someone who is independent with them can be extremely helpful for the child or young person. There is also something in what children and young people tell us inhibits them in participating, which is about the power dynamics that can go on not just within the children's hearings, but within any court or tribunal setting. There is a sense that others are in control and have the power, and the child or young person does not know what they can say to change that. The advocacy worker or some other kind of representation can help to address that sense of power imbalance and those power dynamics.

Was there another part to your question?

Maggie Chapman: It was about that element of independence, but I think that Jordan Croan covered it.

May Dunsmuir, I want to come to you and talk about your experience. I have a question about access to justice, which you ended on, and I will come to that later. However, on advocacy in additional support needs settings, how is that distinct or different? What benefits do you see it having in such settings?

May Dunsmuir: Advocacy is critical in the additional support needs tribunal. In our primary legislation, Scottish ministers are obliged to make provision for advocacy services for children and young people who are going to be involved in our proceedings.

I have served in a number of jurisdictions over the years, and I have to say that it is in this jurisdiction that I have seen most advocacy available. The problems in other jurisdictions were that it was sometimes difficult to find provision and the statutory basis of provision was not always entirely clear. We are starting with a very clear premise in having the obligation to make that provision. I have never had any real difficulty in finding advocacy services across Scotland. There was a brief period where we struggled to see advocacy provision in the north-east, although that was largely resolved.

In 2018, I produced guidance on independent advocates in our proceedings to reinforce understanding of the value of their role. I could not improve on the comments made by Jordan Croan about the role of the independent advocate. That is what makes their relationship with the child so valuable and important. Throughout our proceedings, we emphasise the importance of independence. We always talk about the independence of the tribunal, that we have nothing to do with health, social work or education and that we are wholly independent of all of those. However, the independent advocate has an even stronger value to the child in that element of independence.

It is also important to acknowledge that developing a relationship between the child and the advocate takes time. That is something that Jordan Croan commented on. There is a beginning, middle and an end. A question was asked earlier about the role of advocates in different proceedings. My hope would be for there to be a place for a single advocate to be with a child on their journey across multiple jurisdictions. Ultimately, that advocate is there to support the child to give their views, rather than to act as a representative, which is a distinct and separate role. It ought to be possible to have one person. Over the years, we have learned that children need a consistent individual adult in their life, whoever that adult may be. The advocate could be that consistent person.

The committee might be interested in the work of the Scott review, which looked into the mental health legislation. In the consultation document, in its focus on children and young people, it suggested that there was value in having a single system for children—instead of children having to go through multiple systems, they could go through one system that would deal with multiple areas of law. That might seem like blue-sky thinking, but personally, I do not think that it is because I think that we ought to be very ambitious when it comes to children and young people. I mention it because I think that an advocate can journey across more than one system.

Independent advocates are very valuable and involved. I cannot think of many hearings where a child has not had an advocate—[*Inaudible.*] If a child does not have an independent advocate, we will instruct an independent advocate to take the views of the child. Although we are the ones instructing that, that does not compromise or interfere with the independent relationship between the advocate and the child.

Maggie Chapman: Thank you, that is really helpful. I want to pick up on the final point about access to justice not needing to be difficult but sometimes involving really easy and—once we think about them—obvious adaptations and measures. What lessons should the sheriff court system be learning from the additional support needs tribunal system to enable and enhance access to justice in that safe, informed and consistent way that all three of you have spoken about?

May Dunsmuir: We all need to learn from one another. Our learning journey has come from a variety of sources. Jordan Croan is speaking for Who Cares? Scotland today. We have learned from Who Cares? Scotland: a young adult came to speak to us and taught us that the impact of retraumatisation is so considerable that whenever she walks past the place where children's

hearings are held she is physically sick, even much later as a young adult. Learning from one another is absolutely critical.

The tribunal is different to the courts. We are a specialist tribunal and we deal only with children and young people in that setting. Using our specialist knowledge, we have grown and developed over time. We need to continue to share with one another. The Judicial Institute for Scotland has regularly asked the tribunal to deliver training to courts on what we have learned about the impact of the environment on children and young people. What I say to the courts and to others who ask is that what I have learned is not rocket science and does not take highly expensive or magical ingredients.

What we have developed in the sensory hearing suites could be recreated, although perhaps not to the spec that we have, because we had an investment of resources to do that. As I have said to others, if children are saying that they want to have a table, but they do not want it to be a rectangle and would prefer it to be round because that makes them feel as if there is parity, you can find a round table. Take away the different sizing of chairs and have all the chairs looking the same. Have fewer adults in the room and stop drowning out the voices of children in that way. Ask children what they want before they come along and help them to understand what they are going to face, including what the place is going to look like and who the person is that they are going to be giving their views to. Use social stories, which is a great tool that we have used regularly throughout the pandemic while we have had to help children and young people to give their views on screen. We learned that they were better at doing that than we were—we were far less comfortable than the children and young people and they taught us a great deal more about the use of screens.

We need to share our learning and there is an awful lot that we can learn from one another. Ultimately, we need to learn authentically. I keep talking about the authentic voice of the child; you need to listen to what they are telling you. When you have developed something, do not think that you have cracked it and that that is it, because you will discover that there is something else that you could do better. The young person who came up with having a round table came to the launch of the sensory hearing suite in Glasgow, and when he walked in I was more nervous about his view than I was about that of the Minister for Children and Young People, who was with me at the time. He walked in, looked at the round table, tapped it and said, “This is cracking, absolutely cracking”.

I am happy to continue to share what we are learning from children and young people. I think that the courts are open to that because we are all keen to get this right and to do it better.

Maggie Chapman: That is super.

Pam Gosal: Thank you for your opening statements. I want to put to you a question that I put to the previous panel. A common theme in the discussion with the previous panel, which emerged in relation to the pandemic, was that of whether a child should have the autonomy to decide for themselves the manner in which they wish to be heard, including whether that is online or in person, and also how they wish to be represented. The implementation of article 12 of the UNCRC would strengthen a child’s right to have their views heard. Do you think that being more flexible and adaptable to what the child is comfortable with is key to the court making the best decision in the interests of the child?

May Dunsmuir, I put that question to you first, because it is about how children feel and how relaxed they are, and you mentioned things that might help with that, such as straws, round tables and suits.

11:30

May Dunsmuir: That question goes to the heart of what we do. I say to my tribunal that anything that is possible is possible. That is the premise of our proceedings. We always give the child the opportunity to decide how they want to be heard, where they want to be heard and the best way for them to communicate.

We are on a journey towards reintroducing some aspects of in-person hearings. The hearing room can look exactly as the child wants it to look. We have a sensory wall in our hearing suites, which they can put their own imaging on—if a child says that the colour red helps to soothe them or that they have a great doodle that they would like to put up, we can put that on the wall. That is where the concept came from: there was a child who was doodling the mane of a lion, of all things, who said that having that doodle on the wall would really help them to relax. We can personalise the hearing room itself.

We also have a breakout area in the hearing room, which has beanbags and a little fridge where children can access water and snacks. Children with autism find snacking very helpful—they like to bite into biscuits and sweet things. All the children said that they needed fresh water. The principle of the breakout area is that it belongs to them, rather than to us—no other adult can use that area. Children were telling us that they get fed up with adults telling them when they have had enough. Sometimes children would get upset when they heard people talking about personal things, but they wanted to be able to remain in the

hearing and they did not want the fact that they had become upset to result in them having to leave the hearing room. The breakout area is valuable as a place where children can go while remaining in the hearing room. They can choose to sit at the table or in the sofa area at one side if they prefer to sit on soft seating.

For online proceedings, the children can choose which room to be in and whether they want to speak to everyone with the cameras on or whether they would prefer to have the cameras off. They can choose to send a video or to use talking mats. They can use various different forms of language, including Makaton and British Sign Language. I cannot think of anything so far that we have had to say that we cannot do.

Just before the pandemic hit, I was the legal member of a hearing and, much to my disquiet, the child who was coming along wanted to bring a very large guinea pig with them—I was told that it was about the size of a rabbit. Guinea pigs are not my favourite animal, but that was fine. We learned from listening to registered intermediaries who are specialists in communication with children and young people that bringing a pet to proceedings can sometimes help to produce the very best of evidence because the child is most relaxed, so we allow pets. During online proceedings, we have had dogs, cats and various animals on screen that children felt would help the most. I brought my own dog into an online hearing at one point to help a child to relax. I introduced my dog to the child, which helped them to settle down and they were much more comfortable after that.

I could go on forever, but that gives you a sense of the approach that we take. We say that anything that is possible ought to be possible.

Pam Gosal: Thank you. Jordan Croan, you mentioned that, in the last year, more than 1,600 people came to your service. Do you have any views from them to give us on whether they would like to be online or present in the room?

Jordan Croan: It goes back to having a choice. I think that that was the original answer that was given earlier. The pandemic did not really give young people that choice, because we were all forced into a situation in which we had to go online. However, I hope that we are now moving to a situation in which we can meet in person again—it is great to be here today, as opposed to being on screen.

Every young person is different, and the CHS is now able to support each young person's choice about whether to attend online or not. In addition, depending on the circumstances around them and what is going on in their life, their choice about whether to appear online or in person might change from one meeting to the next. It is great that we have the choice. May Dunsmuir's examples of how to help and involve young people are incredible.

I do not have much more to add on that, other than to say that we also have loads of really inventive and creative ways of gathering views from young people and helping them to choose how they want to express their views. That could be through arts and crafts activities. We also have some advocacy workers who use Minecraft as a digital tool to help young people to explore their thoughts and feelings—the young person can build a digital world that they can show to members of the panel at a children's hearing.

In relation to the court system, one thing that I would highlight is that flexibility is key but so is consistency. When young people use our services for family law or anything to do with courts, there have been a lot of examples recently where there have been barriers even to accessing advocacy.

We had a specific example where a referral was made by a social worker for a young person who was already receiving advocacy and already had a relationship with our local worker. The issue was around contact arrangements with mum. That young person spoke to their advocacy worker and explored how they were feeling about the situation. They decided that they did not want any changes to be made to their order on contact: they liked the fact that they could choose when they wanted to see mum, which was important to them. Those views were fed back to the social worker, who presented them to the court. However, the written views were not accepted because the sheriff decided that, because they had not asked for those views, they were not going to listen to them. Instead, they instructed a child welfare reporter to go out and speak to the young person. Although the advocacy worker was able to support the young person, they could not say anything at that meeting. That can have an impact, because we build relationships with young people and, between the two of us, we figure out what is best for them and what works for them.

Another example that I can give is that of a young person who has an advocacy worker and is autistic. When they are in meetings, they like to listen to the question, write their answer on their iPad and then show it to their advocacy worker who says it out loud. That is the perfect example of the very essence of advocacy and of being that megaphone. However, at a meeting such as the one that was instructed by the sheriff, they would not have been able to do that. That is why flexibility is key, but it is also important that the decision is not up to the sheriff or the child welfare reporter—whatever the role is—so that we can ensure that young people are given flexibility and consistency every time.

Pam Gosal: Alistair Hogg, you spoke about being on that journey and having the right foundations in place. You talked about children being prepared, informed and supported before and after meetings. What are your views on attendance online or in person?

Alistair Hogg: As May Dunsmuir and Jordan Croan have said, choice is absolutely key. There needs to be a range of options. Talking about holding meetings online or in person, that was a choice that we were trying to work towards before the pandemic, although it was proving technologically challenging. When the pandemic arrived, that changed almost overnight—it is incredible how we are able to achieve things in a crisis. That journey on the use of technology for virtual hearings has been on a trajectory of improvement ever since then, and there is now a much more bespoke and supported offering.

We have had definite feedback from children and young people that being online is their preferred way of engaging with a hearing. However, being online is not for all children and, as Jordan Croan said, they will not want to be online every time—the choice can change depending on the circumstances of the individual child at the time. We absolutely continue to offer choice. The choice can be to attend the hearing in person, to attend a fully virtual hearing or to attend virtually a hearing where other people are physically in a room. Technically enabling that is challenging, but we have been able to achieve that quite successfully.

When it comes to the environment, if the individual child wishes to physically attend the hearing room in the hearing centre, we can do a lot to support that. We have not gone to the lengths of having dogs and guinea pigs in the hearings, but there is no reason why we could not consider that, if that would help the child to participate. However, we have embarked on a project of changing every hearing room in which we operate children's hearings. We are nearly at the end of the first cycle of that journey to having all of them done.

Contrary to what has been said, rather than having a round table, the children and young people who fed back to us said, "No table, please—we don't want a table," because, again, that was felt to impact on the power dynamic. Therefore, we do not generally have large tables in our hearing rooms. We arrange, organise and plan those in accordance with what children and young people tell us to do. That can relate to the furniture, the colour scheme or the pictures on the wall, but what they wish for most of all is that a hearing centre is safe, warm and welcoming. Those are the environments that we try to create.

We offer lots of ways of supporting children and young people. For example, we offer pre-hearing visits, whereby they can come along to the hearing centre before their hearing takes place, see the environment, choose where they want to sit and get a feel for whether that will fit with their needs and their ability to participate.

As May Dunsmuir said, we can learn a huge amount from one another. I am learning from today, as well. I hope that sharing our experience is helpful.

Alexander Stewart: Thank you for the information and answers that you have given. We have talked about the idea of trying to ensure that young people feel at ease and are part of the process.

Not just today but from other discussions, we have learned that a young person might have eight to 10 adult professionals working in support of them. That can be daunting for anybody at any age, far less a child. It would therefore be useful to get a flavour from you all of the strengths and weaknesses in the system at present, and of how that system can be adapted and supported to ensure that there is a better outcome, because we want to hear about the outcomes for the young people.

You have given examples of how you can facilitate some of that, but the basic outcome that the child wants is to be listened to, to have that acted on, to be supported and, potentially, to be protected. What strengths and weaknesses in the system need to be looked at to achieve that goal for the young people concerned?

Alistair, I come to you first, given the generations of experience that your organisation has on all those matters.

Alistair Hogg: There are things that we know and have heard for many years, most recently through the Our Hearings, Our Voice project, which involves a group of young people with current or very recent experience of children's hearings, and which provided its 40 calls to action in a fantastic document. Within that, there are lots of indications of where we can make changes that will help. One of those relates to the number of people—both the number of people in the room and the number of people involved in the child's life.

11:45

We also know from research that we carried out jointly with our partners at Who Cares? Scotland that one of the issues is the number of people with whom a child's sensitive and confidential information has to be shared. The more people who are involved, the more people get to know all

about the child's private life. That can really impact on their sense of freedom when it comes to sharing their views and information.

In particular, we need to ensure that we are careful about how many professionals are involved in a young person's life. There is a difference between those people who are necessarily involved in a child's life and those people who are involved as a result of the process. A child or young person will have many people in their life with whom they have an existing trusting relationship, and it is really important to allow them to be part of the child or young person's journey and process. If a child or young person wishes someone to come with them to a hearing to support them, we should ask them who they would wish that to be. It might be somebody in addition to an advocacy worker—they would be entitled to have that. It might be their uncle, grandfather or grandmother. It might be a neighbour or friend. That could help them, but we need to be careful about how many people get involved.

That links back to the earlier question about the potential for there to be multiple advocacy workers. I echo what May Dunsmuir said about that. It should be possible to have an integrated advocacy service that could provide the service no matter what process a person is involved with.

Alexander Stewart: Jordan, you talked about trying to facilitate, and there is no question but that you are doing that. However, are there any areas that you could enhance or where you have already identified a weakness or blind spot?

Jordan Croan: Yes. I will comment on some of the strengths first. It is interesting that there was a significant difference in hearings centres when the table was taken out. I was an advocacy worker in Midlothian at the time and it was a significant moment when the table was taken out. The hearings centre recognised that difference: the centre was Ikea-fied—it was all soft furnishings. That was led and co-designed by the young people and was a really significant moment.

There is definitely more choice and more value is placed on advocacy and on the importance of young people feeling as comfortable as they can in situations in which we are talking about difficult circumstances and emotional topics.

The weaknesses will not be news to anyone because they are all highlighted in the Promise. The language that we use is a particular weakness. Even at Who Cares? Scotland, we are going on a journey in the language that we use. We all have a bit of work to do on language and on how we document—how we write things down. There is a piece of work going on called "write right about me", which is about involving young people as much as possible in how we write about them, because it is their information. Members at Who Cares? Scotland have done a lot of work on the impact of getting papers from social work. That is challenging and difficult, particularly when a lot of information is redacted and there are things that we would not want written about us. There is a lot of work to be done on that in general.

Alexander Stewart: May, you talked about ensuring that policies and procedures exist to ensure that organisations and individuals feel part of the process and accepted into it. If there are layers of adults who are trying to manage a child's situation, what are the strengths or weaknesses of that in ensuring that the child feels that they are getting their information, that they are being listened to and are confident in how they are being communicated about?

May Dunsmuir: As Alistair Hogg and Jordan Croan have touched on, we are on a continuum of learning, and we are trying consistently to do better. There are many strengths in the Additional Support Needs Tribunal, the first being that a child or young person can be a party and raise their own case in specified circumstances—very clear party rights are extended to them. Recently, I updated my guidance on that, because the national children's agency, My Rights, My Say, fed back to me that the adult parties were not treating the child parties as equals in the hearing process. I was invited to reinforce their rights as a party in guidance, which I did and then published it. That is an example of the continuum of learning.

The majority of children who appear in our proceedings have neurodiverse conditions. Many of them have autism. In Scotland, we are learning that we are touching only the tip of the iceberg when it comes to the number of children and young people who have neurodiverse conditions. When we consider their ability to participate, particularly in the context of multiple adults, if we do not make the physical environment as child accessible and friendly as possible, we are failing at the first step. We have a responsibility to think about that when it comes to the UN Convention on the Rights of Persons with Disabilities.

The environment is very important, and the sensory concepts that we have include the table that the children's hearings system took out. When I began this journey, I expected the children and young people whom I was meeting to say, "No table, please", because I had just gone on a nice tour and looked at all the new—as they were then—hearing suites in the children's hearings system. We have a table in the hearing room, but there is also a place for having no table. There are three principal components: the soft-seating area with no table, the round table and the breakout area. That reinforces choice.

We also limit the number of people who are permitted to enter the hearing room at any one time, whether online or in person. It is not the case that whoever turns up comes in; it is the case that the minimum number of people are in the hearing room. Anyone who is there to give evidence comes in, gives their evidence and then leaves. That has been a critical tool for children and young people in their journey through the hearing process because, as Alistair Hogg said, they do not want everyone to know their very sensitive and private details.

As I said, children can give evidence how they choose, but I have not mentioned the one-to-one room that we have, which was drawn from the Barnahus model, which we are looking at closely in Scotland. It is a small room, which is comfortably furnished with two soft armchairs and a number of sensory toys. It has a window, which appears as a window in the room, but is a one-way mirror that allows the hearing tribunal members and representatives to watch and observe.

Children and young people have the choice whether to use the room. They will be aware that everyone else is outside the room watching, but they only have one person in the room, whom they speak to. The one-to-one room has proven to be very—[*Inaudible*.]

In our proceedings, I do not permit cross-examination of children or young people. There has to be a list of questions that both parties agree on, and the tribunal decides who will ask those questions.

If the child has an independent advocate, that will be the person who asks the questions. Sometimes, it will be a tribunal member, which leads me on to the point that the tribunal has specialist knowledge and expertise. Our members include speech and language therapists, psychiatrists, teachers, occupational therapists and people who have had experience of additional support needs, either because they are a parent or a carer, or because they themselves have had additional support needs. I am also pleased to say that we have representation on our membership of people with care experience. Another critical part of the additional support needs definition is that children who are looked after automatically have additional support needs.

As I said, advocacy is very much a feature of our proceedings, but I should also mention that one of the strengths is the specialist training that is given to our tribunal members so that they are not left without the tools that they need to have in order to make sure that the child is able to fully participate.

I did not mention the sensory room that we have in our sensory suites. That room has various sensory components. The lighting is very particular, and there are lots of soft toys and tactile features. Children who become stressed or distressed can go there to rest, after which they can come back into the hearing room. We use social stories to make sure that children know what their journey will look like.

We have also developed a “needs to learn” website, which has unique features to reinforce independence. At the moment, it is designed for children from the ages of 12 to 15, but we will gradually expand that age range downwards so that it is more accessible for younger people, too. We are about to introduce animations on our website, which will talk about what children can expect when they come to a hearing, what it will look like and what to expect when it comes to giving their views. We have developed child and young people forms that they can use when they are parties to the proceedings.

As far as weaknesses are concerned, the greatest weakness—this relates to what Alistair Hogg said at the beginning about children knowing what their rights are—is that children in Scotland do not know enough about their rights. I think that a right is only a right when you know that you have it and you know how to exercise it. That is a weakness across not just my jurisdiction but all the jurisdictions, and I think that we need to do better to overcome it.

Another weakness is that we are only at the beginning of a journey in developing sensory hearing suites. We have them in Glasgow and we are developing them in Inverness, but I think that such facilities need to be rolled out across Scotland. Although the fact that we have some sensory suites is a great strength, the fact that we have so few is a weakness.

The Convener: I must ask members and witnesses for tighter contributions from now on, although we have received lots of useful information, which is extremely helpful to the committee.

Karen Adam: I thank members of the panel for their testimony, which has been fascinating. It has been interesting to hear how far we have come. Fifty years ago, it would not have been understood how important it is to validate a child, how traumatising invalidation can be and how important boundaries and consent are. Gone are the days when children were seen merely as immature adults; they are now seen as being their own person. May Dunsmuir touched on that when she spoke about the young person who wanted a suit. I have kept reflecting on that throughout the discussion. The fact that that young person wanted to be taken seriously and wanted to be

seen as an equal in the room spoke volumes. The point that was made about having equal standing at the table is really important. I thank members of the panel for what they have said; it certainly offers us food for thought.

Sheriffs and summary sheriffs do not communicate directly with children a great deal. However, we know that effective communication underpins the entire legal process and that ensuring that everyone involved is understood and understands is extremely important. Can any decision maker be trained to work with children and young people, or are only specific decision makers with specialist skills equipped for that task?

12:00

Jordan Croan: For us, there are two parts to that. The Promise clearly sets out that we all have a responsibility to fulfil it. That is about how we treat young people, behave around them, support them to give their views, treat them as people with their own views, and respect those views. However, in order to navigate what can be very complex situations and give young people something that they are in control of, the person who sits alongside them to navigate those situations, whose sole purpose is to help them to come to an informed decision about what they want, how they want their views to be represented, what their views are, and how their rights will be understood, fulfilled and realised, has to be skilled, trained and completely independent from all our services.

Alistair Hogg: I agree with Jordan Croan. We can learn a lot from the Promise in that regard. There is an expectation that all decision makers—actually, everyone involved in all the different systems and processes—should have a level of skill and training in relation to how to interact and communicate with and listen to children and young people. The training and skills that the Promise reflects involve having an awareness of the trauma that may have impacted on the child, how that trauma has impacted, how it might affect the way that the child provides their views or their ability to provide their views, and how they behave and act. The person should be skilled in understanding how to communicate; they should know about how child development will impact; and they should understand neurodiversity. Collectively, everyone has a role in ensuring that they are skilled and trained in all those areas, but that is particularly the case for decision makers. I see that as essential for them.

Karen Adam: I really enjoyed what May Dunsmuir said about BSL and Makaton. We often forget that a lot can get lost in translation. Ensuring that there is really effective communication is important, and it is great to hear about the work in those areas.

May Dunsmuir: In the interests of being succinct, I wonder whether I could rephrase the question. I know that you asked about all decision makers. I think that any decision maker for children and young people must have specialist training. That has to be a prerequisite; it is certainly a prerequisite in our proceedings. A person cannot just come along and do their best; they have to learn, understand and develop concepts and practice. As Alistair Hogg said in relation to the Promise, the practice has to be trauma informed. If a person is going to make decisions about children and young people, they must have specialist training. That has to be a prerequisite.

Pam Duncan-Glancy: I thank the witnesses for their evidence so far. I have been particularly struck by the good practice that we have heard about, particularly from May Dunsmuir, and by the ingenuity that has been explained and described. I have often said that, if we can get it right for disabled people and disabled children, we can often get it right for everyone. That seems to be a really good benchmark. It is really important that we engage in an inclusive way. Well done on everything that you have outlined, your approach, and sharing your learning. I have been struck by the fact that you have all said that it is important to learn from one another.

I want to ask about the Children (Scotland) Act 2020. It has been said that we could learn a lot from the children's hearings system and said that we could replicate some of those things in the family court system. It would be good to hear from Alastair Hogg about what he thinks those things are, where they should be replicated and how the good practice that we have heard about this morning in your various services could reach other parts of the system.

As a supplementary to that, what impact do you believe the delay in introducing the changes under the 2020 act has had on the ability of children and young people to fully participate in decisions?

Alistair Hogg: I am aware of the time, so I will try and keep my answer concise. We have already heard an awful lot about what could be learned not only from the children's hearings system, but from other tribunals. We heard from May Dunsmuir about a huge amount of incredibly impressive work.

We spoke about investing in the foundations. If the family court setting wishes to learn and improve in relation to genuinely allowing and enabling children to participate and share their views, there has to be investment in that. I heard the earlier discussion about child welfare reporters

and their role, and about whether the introduction of advocacy in that system would be helpful. That lesson came from the children's hearings system. Prior to the introduction of national provision under section 122 of the Children's Hearings (Scotland) Act 2011, our experience of advocacy workers in hearings was extremely beneficial.

The role of the safeguarder in the children's hearings system may be somewhat analogous in relation to child welfare reporters. A safeguarder would be an independent person who would be trained and appointed to investigate, engage—which would include engagement with the child or young person—and make recommendations to the hearing. That role might be worth looking at; I am sure that it already has been.

There is also the whole issue of creating adaptable, consistent and constant choice and never assuming that the same choice will be made by the child or young person as to how they will engage. We need to create the right environment, provide the right tools and—crucially—the right support. As I have said, I do not claim that the hearings system has got all of that right, but we have learned an awful lot. We have a project called better hearings, which has been going for more than a decade and which is all about improvement and creating bespoke hearings to meet the particular needs of the individual child. That means that we create the right circumstances, select the right place and time, and invite the right people. All of that will better support and enable the child or young person to share their views. That will then be built on by all our work in relation to the Promise, both through the on-going improvement work and the redesign work that has already started.

The second part of your question was about the delay. The purpose of the 2020 act is to try and address what are perceived to be issues and gaps, and it is clear that if there is a delay in its implementation, those gaps will not be filled. As a witness on the previous panel said, as long as there is a delay, there is a barrier to children's meaningful participation in the family court process.

Pam Duncan-Glancy: Thank you. Jordan Croan, would you like to contribute?

Jordan Croan: I will be brief. There is a lot in the 2020 act that we are encouraged by, but one thing that we hope to achieve in the not-too-distant future is a right to independent advocacy for all young people.

There is also a point about access to advocacy. I have spoken about the fact that our service provided advocacy for 1,628 young people last year, but in the same year 14,458 young people in Scotland experienced care, so our numbers are still very small. We are not saying that all young people want advocacy, but they have a right at least to have access to it.

Fulton MacGregor: Good afternoon. I thank the witnesses for all their evidence and answers so far. It has been a really worthwhile session, as was the previous one.

The difficulty with asking questions last and being the only member taking part remotely is that a lot of areas have been covered in great depth. I appreciate that. I had questions about how young people can be helped to give their views, but we have covered a lot of that. Some really good examples have been given in relation to pets and the use of tables. When I was a social worker, the big table in the room was always an issue in children's hearings, so it is great to hear that we are moving on from that.

I will focus my substantive questions on legal representation. I am happy for the witnesses to answer in any order. In your experience, how common is it, in practice, for children and young people to be legally represented at children's hearings and tribunals? When they are, what are the advantages and drawbacks of that?

May Dunsmuir: In our proceedings, it is very common for children and young people who are parties to have legal representation. That stems, in part, from the national children's agency My Rights, My Say, which provides advocacy and legal representation as a service for 12 to 15-year-olds, whose rights to bring a case to the tribunal were extended in 2018. In those cases, having legal representation is more common than not, but I suspect that that is less likely to be the case in Alistair Hogg's experience.

I will refer briefly to another tribunal: the Mental Health Tribunal for Scotland. As is the case with the Additional Support Needs Tribunal for Scotland, it is common for children and young people to have legal representation in those proceedings. I suspect that that is because there are clear and distinctive parties in cases before the Mental Health Tribunal and the Additional Support Needs Tribunal. Therefore, there are distinctive rights, one of which is the right to representation. That right is not expressly to legal representation; a child or young person could bring someone who is not a lawyer to represent them. However, in my experience, across both those jurisdictions, it is common for a solicitor to be instructed to represent the child at the tribunal.

Alistair Hogg: Legal representation of children and young people is not very common in the children's hearings system, but it automatically occurs in certain situations. If certain criteria are met, such as if there is a risk relating to a child being accommodated in secure accommodation or

if a child protection order is in place—I am thinking of situations in which there is severe and acute interference in a child's life—legal representation is provided automatically.

More generally, as May Dunsmuir said, a child or young person always has the right to representation. However, that right requires the ability to instruct a legal representative. It is very uncommon for a younger child to instruct a legal representative. It is less uncommon for an older child to do so, but there are still relatively few occasions when that happens. It is much more common for children to be represented by someone else or to have an advocacy worker with them.

12:15

Fulton MacGregor asked about the advantages that legal representation brings. As always, it brings a protection of someone's rights. In essence, a legal representative's role is to ensure that someone's rights are protected and to advocate for what they want to achieve. Legal representation also helps to address the power dynamic, which I spoke about earlier. In the children's hearings system, it is much more common for the relevant persons—the parents or carers of the child—to be legally represented and for the child not to be. Sometimes, the power dynamic is quite imbalanced, so legal representation of the child can sometimes help to address that. However, that imbalance can be addressed equally by other representatives who support the child, such as an advocacy worker.

Jordan Croan: That leads perfectly to my point. On independent advocacy, we work quite often with young people who have legal representation. As Alistair Hogg said, in certain circumstances, young people are automatically given legal representation. Independent advocacy and legal representation can complement each other. The difference between a solicitor and an advocacy service is that we do not give legal advice.

I will give an example of how independent advocacy can complement a young person's access to legal representation. If a young person has a meeting with their solicitor, it is very common for the young person to want their advocacy worker to go along to the meeting—I have been to such meetings. Before a meeting with the young person's legal representative, the advocacy worker can meet the young person and travel with them to prepare for the meeting. They can discuss how the young person wants their views to be represented, what they want to say and what is important to them. The advocacy worker can support the young person in their meeting with the legal representative and can ensure that they understand what is being discussed. Afterwards, the advocacy worker can travel back with the young person to allow them to gather their thoughts and give any reflections, and to ensure that they understand what has been said and any information that they have been given. That is how independence advocacy can complement legal services.

Fulton MacGregor: Thank you.

The Convener: We are well past our time, so we will have to wrap up. There is lots for us to think about following the contributions that the witnesses have made. I thank all three of you for your evidence, which has been really helpful. I am sure that we will be back in touch as we consider our work in the future.

12:17

Meeting continued in private until 12:33.

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