

Response to the Scottish Parliament's Education and Lifelong Learning Committee's call for evidence on the Children's Hearings (Scotland) Bill

ADSW would like to note its appreciation of the genuinely inclusive way in which the Scottish Government has consulted on this Bill. The Association appreciates the efforts of the Bill team and the personal involvement and commitment of Adam Ingram, Minister for Children and the Early Years, to try to achieve consensus on the provisions of the Bill before it was laid in Parliament.

General comments

At its inception the children's hearing system was heralded as innovative and radical. There is no doubt it has stood the test of time, but ADSW agrees that the time is right for a detailed review of the system.

ADSW positively welcomes the intention of the Bill to strike the right balance between maintaining local links and achieving national consistency. The current proposals should allow local involvement, whilst creating more consistent standards in relation to the knowledge, understanding and capacity of panel members.

Over the years, some frustrations in and with the system have fostered certain myths and prejudices, often fuelled by anecdote. If we are going to 'get it right for Scotland's children' and deliver the best outcomes for them, we need to find a way to set these frustrations aside and focus on working together in a way which respects and values different roles and contributions. The Bill affords a real opportunity to renew and refresh relationships between key players in the system.

There do, however, remain certain areas about which ADSW is concerned. These are detailed below and relate to: the enforcement of children's hearings' decisions; the provision in the Bill to allow the determination of type of service provided to rest with the hearing, irrespective of whether such services are provided by councils and irrespective of their potential costs; the provision of information; the issue of safeguarders; and the terminology used to describe the relevant officers of the local authority.

Enforcement

The Anti Social Behaviour (Scotland) Act 2004 introduced a power to the Principal Reporter, on instruction from a hearing, to seek enforcement through the courts of the implementation by the local authority of a children's hearing's decision. An important element of this was the discretion of the Principal Reporter. The Children's Hearings Bill, as currently drafted, reaffirms the power, transfers it to the National Convener, but removes the discretion. This means that if a children's hearing so requests, the National Convener must take the local authority to court to seek enforcement of the hearing's decision.

The discretion articulated in the Anti Social Behaviour legislation is a critical element in the responsiveness of the system to children's changing needs and circumstances. It would be contrary to the principles of a child centred system not to take into account the child's changed circumstances between the original decision of the hearing and the enforcement process. To enforce a decision that may no longer be in the best interests of the child, simply because the discretion not to do so is removed seems contradictory.

The Association believes that the discretion that currently exists should remain when this power transfers to the National Convener, on the basis that this represents good, child-centred practice, allowing for changes in circumstances to be taken into account.

Resources

In addition to the issue of enforcement, the Bill states: "The duties which an implementation authority may be required to carry out under a compulsory supervision order include securing or facilitating the provision for the child of services of a kind which the implementation authority does not provide." (Section 138 (3))

It further states: "In determining whether to direct the National Convener to make an application under section 141 to enforce the authority's duty, the children's hearing must not take into account any factor relating to the adequacy of the means available to the authority to enable it to comply with the duty." (Section 140 (7))

This effectively means that the children's hearing could impose a requirement on a local authority to provide any service, anywhere, without limit of cost and without any reference to the authority's other duties or budget constraints.

There are a number of issues here: first, it is important that Children's Hearing operates within the same financial realities as the local authority. Where budgets are more constrained than ever, it is unrealistic and impractical to allow the hearing not to have any regard to the capacity of the local authority to comply with its decision.

Second, this is a much less flexible, more litigious and therefore more costly way of operating and would supersede the good working relationships between the Reporter, the Panel and the local authority that exist currently.

Third, sections 138 and 141 place the duty of compliance on the local authority. This is contrary to the principles of the Getting it Right for Every Child policy and does not acknowledge the important contribution and responsibility of the health service.

Provision of information

The principles underpinning Getting it Right for Every Child and the Early Years Framework – key, long-term policy initiatives – are of shared and joint responsibilities between partner agencies, working together to deliver services, and through these, positive outcomes for children. Despite these principles, the statutory responsibility as articulated in the Bill is on the local authority to provide information on services delivered and outcomes achieved.

This landmark legislation should take the opportunity to ensure that the responsibility for delivering multi-agency care, support and protection plans and services is a multi-agency one, rather than a local authority one as is implied by the current proposals. The Bill represents a good opportunity to make more tangible the language of shared responsibilities.

Safeguarders

The reasoning behind the establishment of a national body responsible for ensuring quality and consistency in relation to panel members applies equally to the issue of safeguarders. Safeguarders play a critical role in decision making for children in the hearing system, and the requirement for national standards, training and consistency for safeguarders is as

important as the requirement for panel members. If the means of securing this consistency and quality for panel members is the establishment of a national body, the centralisation of the recruitment, training and monitoring of safeguarders would produce similar benefits.

Terminology

The term "chief social worker" appears in the draft Bill. This is not a recognisable term. The term "Chief Social Work Officer" is established in statute and is in common usage across local authorities. It is supported by recently published national guidance. The role is explicitly broader than that of a "chief social worker" in terms of its scope and responsibilities. The Association assumes that this is an unintended drafting error.

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