



The law and social work in Scotland

The legal perspective

Nick Balneaves::

Hello and welcome to the first program in this series on the The Law and Social Work in Scotland.

Throughout this series I will be meeting people from around Scotland who are involved in Social Work, the workers themselves, the people who support them and the people they support.

I'll be learning about some of the legal issues that Social Workers face, about how the law affects their daily practice and about the lessons they have learned in the course of their working lives.

And I'll be talking to Solicitors, to Judges and to service users, about their view of social work, of Social Workers and of the Law.

Jill Hunter

is a social worker with over 20 years experience of working with children and families. In the course of that work she has had to attend both children's hearings and the sheriff court.

When I meet her I wondered what standing up in court for the first time had been like.

Jill Hunter

A very, very nerve racking experience which I'll never forget. I think even with experienced social workers nobody necessarily enjoys going to court or to hearings. I think with hearings you get used to the format and the people, because the people tend to be consistent players, but with court it's not really the social workers kinda of patch, I suppose because you don't go to court that often as a social worker.

Nick Balneaves

When you first went to court and went to a hearing, did you understand what was going to happen?

Jill Hunter

I think the hearing system and the court system are quite different. I had an understanding that the children's hearing had decisions to make in law, but was informal, but I think it was very hard initially to establish just how that informality worked, and how you presented the circumstances or your assessment in an informal forum that had lay people and a vulnerable child and perhaps an angry family and some key decisions to make. So that takes a bit of getting used to, I think, to decide how to present your social work view. I think with court there's a much more set system, but I think it's more of an alien system to social workers, because we don't go there every week of our lives, certainly not children and families, criminal justice, yes, they would probably feel quite differently about court, but I think for children and families workers, it's much more about the kind of court and solicitors running the show.

Nick Balneaves

You have considerable experience of working within the children's hearing system, can you describe to me how that system differs from a court in its approach to children's cases?

Jill Hunter

Well it, it is very informal, you know. You arrive, you sit in a waiting room with the family, with other representatives who might be there. It's not about being separate from witnesses or anything like that.

There generally aren't solicitors involved in a hearing. There would be the reporter to the children's hearing who will advise both the panel and anybody in the hearing about the legal aspects, but doesn't participate in the decision-making and the panel members will be three lay people, with at least one woman or one man, it can't be one gender, and it's generally a round table with toys in the corner of the room and is geared up to be informal and to help families participate, actively participate, in the hearing.

So there's no format about standing up and titles and it can be a bit of a free for all discussion, though there are certain things the children's panel members have to go through to cover in law, certain procedural aspects of the hearing to make sure the law is satisfied.

Nick Balneaves

But in general it's much more informal?

Jill Hunter

Much more informal. People can shout, people can get angry, people can walk out, people can swear, people can say what they think of the social worker. It has to be well managed, I think, to be kind of a successful hearing, but that takes a bit of getting used to.

Nick Balneaves

What advantages does that informality bring to the hearing?

Jill Hunter

I think it does allow parents, families, children, young people, who aren't necessarily articulate, who are anxious, who are scared, who are angry, say what they want to say in whatever way they can say it and not be, you know, thrown out of the building or done for contempt, as perhaps would happen in court.

Nick Balneaves

Does the informality of the system have any disadvantages?

Jill Hunter

I think sometimes you can't always get your point across. You're not always able to kind of communicate the information you want to communicate because of that.

Nick Balneaves

What do you mean?

Jill Hunter

Perhaps because you miss the opportunity to say what you want to say, or the families dominate things perhaps through their emotion or anger, that that can paralyse a hearing really, or can influence a decision. Faced with very distressed children and a very distressed parent saying 'please let me have contact with my child'. Sometimes a panel could perhaps be influenced by the emotional presentation of people as opposed to just the presentation of information.

Nick Balneaves

From a personal point of view is working in the children's hearing system easier than working in say the formal court system?

Jill Hunter

I think you can become more familiar with the children's hearings, because you're going to them a lot, but I don't think they're necessarily easier. With some of the complex child care work that I was involved in, I found myself feeling very nervous and anxious before a hearing

and that never got easier necessarily, even after I became experienced at doing it. I think because some of the decisions that you know are going to be made in hearings are going to have lifelong consequences for families and you know they're going to feel upset and anxious and you're perhaps also anxious are you going to get the decision that you want and you're conscious of the huge responsibility you have going into that hearing, arguing for that, you know, decision. So I think while you can enjoy working with the hearings and feel confident of how they work, they are still an anxiety-provoking situation.

Nick Balneaves

What are the difficulties for you working in a hearing?

Jill Hunter

I think you can be the lone representative of the social work view, if you don't have anybody else from social work. Quite often there can be a teacher there or a nursery worker or an educational psychologist. But I generally find that other professionals don't necessarily want to upset families so they'll be less willing to say perhaps contentious statements, or statements that will be unpopular with families. It tends to fall to the social worker to, to give the, the difficult statements. So you can feel quite kind of alone, and you can feel perhaps that you're not taken seriously or that your recommendation isn't given as much weight, and that can feel quite undermining.

Nick Balneaves

How can you make your life easier in that situation?

Jill Hunter

I think you can build up credibility with the hearings by building relationships with the reporters, and by every hearing you go to establish yourself as a credible, competent, thorough social worker, and children's panel members will often be sitting on your next hearing and they will begin to recognise you and know your work, if you like. And they will then, because you've established yourself, they will trust your recommendations and your statements because they know that they've worked out on other situations and you've got a history, you've got a reputation. I think the other thing that you can do is present good, thorough reports which are based on thorough assessments and work with the family. It will come across, if you don't know the family well, if you've not really done the visits, if you haven't done the work. And I think if you've done that, and that's produced in a competent report, then that will stand you in good stead in the hearing, because you've already done part of the work before you even get in there.

Nick Balneaves

How do you prepare for a hearing?

Jill Hunter

Well part of my preparation is to write a good report for a hearing and to discuss with the reporter in advance if I think there are particularly complicated issues perhaps about contact, or a child going home or not going home. I will show my report to a family in advance of the hearing, I will discuss it with the young person or child. I will tell the family what I'm recommending and why, so nothing will come as a shock to them in the hearing. And I will think through what it is I want to say, you know, what's the evidence for what I'm saying, and if necessary I will take a manager along with me if I felt it was a particularly complex case that I needed support for, particularly if I felt a family was perhaps going to be aggressive or unreasonably angry, which is a possibility.

Nick Balneaves

You haven't mentioned taking legal advice, is that something you do?

Jill Hunter

Not necessarily for children's hearings, I suppose the focus for advice would be the line manager of the team and the reporter, because you can be doing five hearings a week. The solicitor in the Council would be inundated by social workers consulting them about children's hearings, so it tends to be a working knowledge of how the

hearing system works that social workers will acquire the more experience they have of hearings. But there might well have been case planning in advance of the children's hearing in terms of case conferences, meetings held in the office with, you know, a number of different professionals that would make that decision that would then be presented to a hearing. But unless it was a very complex childcare case, you wouldn't take legal advice from the Council solicitor and going to a hearing.

Nick Balneaves

Let's talk about the court system. I know you have experience of giving evidence before the Sheriff court. Can you give us an example of a case you were involved in?

Jill Hunter

I was involved in taking applying to the court for a Parental Responsibilities Order.

Nick Balneaves

What is that?

Jill Hunter

It's where the Local Authority would want to acquire parental rights on children, and the parent would lose their parental rights. And it was on three children who had been accommodated for a number of years and the parent was opposing our action. And I was called to give evidence.

Nick Balneaves

And what was going to court like?

Jill Hunter

Very nerve-racking. You know, I was an experienced social worker, but I knew it was going to be a difficult situation because the Sheriff had a reputation for being antagonistic towards social workers. Mother had an, an advocate, we had an advocate, we also knew that our evidence was quite slim, so our evidence was very important.

Nick Balneaves

How do you find the process of giving evidence?

Jill Hunter

I think it's quite hard to think on the spot about the answers you're going to give. From your own solicitor, you know what questions are going to come up, but obviously when you're being cross-examined you don't know. So thinking on the spot is hard, and I found, probably out of nervousness, I spoke very fast and quite often the court typist would have to say 'will you slow down, can you say that again?' And that kind of stops your flow. So, I think it is a skill to you know, to take time, to take a breath to think about what you're going to say, say it in a considered, slow way and that helps you buy time to think. But obviously when you're nervous that's easier said than done. But I'd also been given advice by our Advocate about answering the question, don't give any more information so I found myself repeating the same statements, because the questions were very repetitive, but the feedback I got later on from the advocate was that was the right thing to do.

Nick Balneaves

Did you think that the court understood your role as a social worker? And did they respect that?

Jill Hunter

I think they did, but I think they didn't trust that what I was saying was true, and that upset me quite a bit that, you know, things I said about, I think there was an issue about arranging contact and their was criticism that I hadn't arranged contact for this mother. And I had, and the solicitor really cross-examined me quite closely about that, with the parent in the background, obviously saying, that what I was saying wasn't true. And I found that hard, that your credibility as a social worker was kind of in question in some way.

Nick Balneaves

Do you think that's a problem that's unique to social workers?

Jill Hunter

I think social workers, because of the adverse publicity about the profession in recent years, has made it much more of an uphill struggle for our evidence to be held credibly and for us to be seen as experts in our own field, definitely.

Nick Balneaves

But yet you are experts in your own field, you've all had the training.

Jill Hunter

Yeah, and I think now that we're an accredited profession and you have to be registered, things might change in the years to come, but I think it's going to be a long time before change comes, and I think, because social work knowledge is quite an intangible body of knowledge to other people, and it's about attachment and it's about child development and a mixture of all that, I think it's hard for some people to accept what is our expertise about? It can be quite general expertise as opposed to psychologist or health visitor, and I think it's therefore hard for us to establish that we are experts in particular fields.

Nick Balneaves

What advice would you give to a social worker going to court, about how to establish that credibility?

Jill Hunter

I think, again, be well prepared. Look professional, behave professionally, do your homework by reading case files, knowing exactly what evidence you're giving and why. Being well briefed about what the expectations of your evidence, giving it in a professional non-judgemental, competent way that comes across that you have done your homework and preparation, because I think those intangible bits help to kind of build up your credibility.

Nick Balneaves

Do you always have the luxury of time to do that much preparation?

Jill Hunter

No, you don't. And I think certainly when you're preparing for a big court case with a lot of complex issues, you'll be doing a lot of that preparation work in your own time in the evenings.

Nick Balneaves

That's not very good (laughter).

Jill Hunter

(Laughter) That is the reality of the job!

Nick Balneaves

So far we've been talking about this whole thing from the social workers point of view. Can you look at the service used as families' experience of going to court, or going to children's hearings? What concerns do they have?

Jill Hunter

I think they probably worry, are they going to get a fair hearing. I think from any families going to hearings, they're going to worry about losing their children, they're going to worry about being criticised and feeling a failure as parents themselves.

And for many of them, you know, they've had huge difficulties that have got in the way of them becoming good parents, and I think you really have to be aware of that when you're

going in that there might be a horribly messy situation with children who aren't being well looked after, but those parents themselves have needs and I think you need to be very careful about how you present your information to take account of all that.

Nick Balneaves

Do you think parents always understand the purpose of a children's hearing, do they understand the welfare aspect of it?

Jill Hunter

No, I don't think they do. I think particularly perhaps where young people have committed offences and parents are very angry, or perhaps children have truanted significantly from school, I think parents have an expectation that somehow the panel will sort them, by perhaps punishing them or telling them off, and that it's not welfare they need, it's punishment.

So I think that takes some kind of explanation. But I think parents who perhaps have neglected and hadn't thought about their child's welfare themselves, it is hard for them to appreciate that the hearing will be operating on that basis. But I think families will be nervous, because they're worried about the outcome and about whether people will listen to them.

Nick Balneaves

And how can you help them with that?

Jill Hunter

Again, I think preparation beforehand. Reassuring them this is not a war with a sort of for and against. But I think one of the dilemmas is, you know, you might have very important information to present to the hearing members, but you have to remember who your audience is. You're saying perhaps very critical things about parents, you're saying perhaps very difficult things with a child present and you have to bear that in mind in the language that you use and how you say it.

So I think it is about telling families beforehand what to expect. Telling families what you're going to recommend and why so nothing comes as a surprise, so they have got preparations and so that they can go in and say, 'well this is what I think, I disagree with what she's saying', they've not just had it sprung on them in the room.

Nick Balneaves

And yet if you are saying critical things about them, you still have to maintain a relationship, a professional relationship, with this family. How does that work?

Jill Hunter

I think that's very much the bread and butter of social work. You are often having to make very difficult decisions, perhaps removing children, perhaps recommending that children go to residential schools, yet still then encouraging that parent to go and see that child or taking them in the car to visit their child and it's part of building relationships with people and with a good working relationship with a family they can often accept that you are making decisions they don't like, but they'll still work with you.