



The law and social work in Scotland

The legal services council

Nick Balneaves:

Colin Moodie is the Legal Services Manager at Falkirk Council. The solicitors in his department regularly work with the council social workers and to find out just how that relationship works I went to Falkirk to meet Colin.

But to begin with what does a local authority solicitor do?

Colin Moodie:

The role of a local authority solicitor is to advise firstly the council itself and its committees on any need decisions which it's taken and the legality of them. Moving down from that though, it's also to advise the people who work for the local authority about how they carry out their own particular day-to-day functions.

The simplest level for instance, if you're required to take a court action, the solicitor will be there to represent you in front of the Sheriff.

Nick Balneaves:

Moving on to social work more specifically, can you give me an idea of the scope of your work in that area? What kind of things do you deal with?

Colin Moodie:

Well, the legal work stretches right across the whole area of social work from both childcare, community care to criminal justice. To give some examples of the scope of the work, we'll be involved in making applications to court. For instance, Child Protection Orders in the childcare area.

Applications to bring children for adoption. In the community care area, we'll be making applications for guardianships under the Adults with Incapacity Act; we appear on behalf of social workers before the Mental Health tribunal and out with the court and tribunal context we run a day-to-day basis advising social workers on the best time to undertake their particular cases.

Nick Balneaves:

So how much of your time and your department's time would you say is taken up with social work issues?

Colin Moodie:

There is always someone within the legal service occupied in a social work issue. There is not a day goes by where there is not someone working in a social work case. I think they're easily one of the largest users of legal services within our local government office.

Nick Balneaves:

In addition to the technical and procedural aspects of your job, what else do you bring to the relationship with social workers?

Colin Moodie:

Well I think it's probably fair to say that sometimes we have a different professional approach to issues. Solicitors have certain values which they can bring to particular issues and problems. One is procedural fairness, which is something solicitors are often very keen on. The others are really searching perhaps more carefully than some other professional groups for evidence of assertions and assessments.

I think we can offer some degree of objectivity and perhaps a fresh eye looking at a particular issue. One of the tasks of solicitors I think is to sit down and examine the whole factual situation and begin to ask some of the 'why' questions. 'Why is it that you're proposing this particular course of action? What are the alternatives to doing this? And how can you show that we've looked at all the particular alternatives before we move down that particular path?' And one of the reasons solicitors do that is that they know if they're moving forward, for instance, into a court situation, that they're going to have to answer that question.

So they almost take the role of the court in advance in trying to scrutinise what the particular social worker is doing.

Nick Balneaves:

And do social workers always understand that is why you're doing that?

Colin Moodie:

Well I think that's partly the responsibility of the solicitor involved to explain why they're undertaking that particular process. And if there's someone who hasn't, for instance, been involved in a complex childcare case before, one of the tasks that the solicitor has is to sit and explain why are we going through these particular processes to give them some sense of what's going to happen at a later stage, and why it's necessary to go through this particular process in advance.

Nick Balneaves:

Do you think the values of social workers and solicitors are always in harmony or can there be tensions there?

Colin Moodie:

Broadly, on a day-to-day basis, I think we can find that most solicitors who work directly with the social workers will be in tune with what the social workers are trying to gain. On a broader level, sometimes there are different approaches which can create tensions is one way of putting it, but they can sometimes be creative tensions.

And it is sometimes useful to get the two different professional groups sitting down to try and analyse together why they maybe are in disagreement with the particular approach to be taken to a particular case. Often in reality, I think it's found that we may get to the same outcome but sometimes through a different route, and that takes us back to some of what I was saying before about the differences in professional approach. For instance, on the issue of procedural fairness, we might often be more concerned with making sure that people are consulted, that we have heard everything that everyone has to say before we reach a particular decision, even though the decision ultimately is going to be the same at the end of the day.

Nick Balneaves:

Do you think social workers always understand where you're coming from in that regard? Do they understand your values and your way of working?

Colin Moodie:

Most of them are consistent I think with good social work practice and in fact are embedded within either the legislation which the social workers are dealing with, or with broader human rights concerns which really encompass the way we have to read legislation now.

I think it's a false dichotomy to say that on the one hand you have social workers saying they're in favour of welfare and solicitors on the other hand in favour of justice. All the pieces of legislation that we work with combine both principles and solicitors know perfectly well that the dominant aim in almost all of the legislation is the best interest of the service user. So that's what we are working towards at the same time.

Nick Balneaves:

We've talked about whether social workers understand where lawyers and solicitors are coming from, do you think solicitors always understand where social workers are coming from and what they have to do in their work?

Colin Moodie:

I think it partly depends on the exposure which the solicitor has had to social workers. So, if you only met the before you were going to court, then that's the kind of situation where the clashes might arise. But we don't do that. We tend to be involved in cases at a much earlier stage and we will try to attend, look after and accommodate reviews or other care planning meetings for instance in the adult field as well, so that we know what some of the concerns are before we get to the court or tribunal situation.

Nick Balneaves:

Are you therefore open for social workers to approach you for general advice, to come to you very early in a case?

Colin Moodie:

Absolutely, and in fact we would encourage social workers to contact us where they think there is a going to be some kind of legal issue and where they think that we can assist early in the process. We can't say that in a 100 percent of occasions if a solicitor, sorry, if a social worker has a particular difficulty there will always be a solicitor at the end of the phone. But there will always be someone who can speak to them as soon as they're available to do so, and we would always encourage, at least here, social workers to keep in contact with their legal advisors.

Nick Balneaves:

Is there any way that social workers can make that process easier for you and for themselves?

Colin Moodie:

I suppose one is to try and think what they think the problem is in advance of getting on the phone to the solicitor, almost to try and marshal their own thoughts on the issue, to get together the relevant facts and to try and direct the solicitor to what their particular issue is, rather than simply contacting the solicitor involved and offering them an undigested version of the narrative which does happen from time to time. And there's nothing particularly wrong with that, it is part of a solicitor's task to try and unpick what the legal issues are within such an undigested narrative.

But, it speeds up the process and makes things a lot easier if the social worker can give some advance thought to what the issue might be.

And they can speak to more experienced colleagues within their own teams and there always will be people within teams, their senior practitioners and team managers, who will help them to be able to identify when there is a legal problem which makes it appropriate to contact the legal advisors. And in my experience I have to say, most social workers are able to do that because they are well used to working within their own particular legal framework, and many of them can come on and ask exactly the question which they need to ask, and just be able to talk it through in a very knowledgeable and professional way with the solicitor concerned.

Nick Balneaves:

Colin, as a solicitor, what do you think social workers should know about the law?

Colin Moodie:

I don't think we can ever expect social workers to know all the detail of the particular legal frameworks in which they operate. They're not expected to know all the case law, the procedural aspects of going to court. What I think I would expect them to have is at least some sense of the statutory framework in which they operate, some sense on when for instance they require to undertake a compulsory measure, how they would go about that and how best to gather together their particular information if they are presenting it to a body

which is authorising a compulsory intervention. For instance, in the life of a children and families worker, if they were going to the children's hearing, how best to present their information to the hearing.

Nick Balneaves:

The law can, however, seem an intimidating thing to outsiders. Is that ever a problem in your experience?

Colin Moodie:

There are some aspects of the law which undoubtedly are intimidating and the best or most significant example of that would be attending at court, and in my experience that's one of the most problematic areas for social workers in their practice. They find it, I think, an unfamiliar forum, it's one perhaps where those involved in the court, the solicitors, the advocates, the Sheriffs, aren't often altogether familiar with social work practice, so you can get I think again your clash of cultures. And sometimes I think the way in which social workers are questioned in these particular court situations can be very difficult and challenging for the social workers involved. It's just something they're not altogether used to doing.

Nick Balneaves:

How do you help them with that?

Colin Moodie:

Well, part of that would be to make sure that we are as satisfied as we can be, that what we've done is effectively covering all the bases before we get to court. Also on a more practical level, we can sit down in advance with the social worker, go through with them what their evidence is likely to be, suggest to them in some ways what some of the questions might be, help them to prepare in advance for the giving of evidence itself, subject, I should say, to certain professional ethical requirements which we have in that we are not supposed to prepare witnesses, we can't say to them what the answers need to be.

Nick Balneaves:

The law however is an ever-changing body of knowledge, and if social workers are to keep up with that they obviously need some education. Do you have a role in providing that education for them?

Colin Moodie:

Well we do it in a very practical sense in that we will do what we can to keep up to date ourselves with developments in the law and in the course of our casework with social workers, we'll be passing on when there are shifts and changes in legal practice. More generally, when there is, for instance, a major new piece of legislation like the new Mental Health Act, we would be involved in providing training, helping social workers prepare training materials for their own practice.

Nick Balneaves:

What do you wish social workers knew about your role?

Colin Moodie:

I suppose the main thing I would say to that is I would sometimes like social workers to be with solicitors when the solicitor is standing alone in front of the Sheriff, with the Sheriff asking difficult and probing questions about the particular case. And I think it would allow the social worker to better understand why we sometimes might seem to be asking difficult questions of them.

Nick Balneaves:

Colin - thank you very much.

Colin Moodie:

Thanks **Nick**