

Education and Lifelong Learning

Review of the Children's Legal Representation Grant Scheme

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The Legal Representation Grant Scheme was introduced in 2001. It allows children's hearings to appoint legally qualified safeguarders or curators ad litem to represent children when this is required either to allow the child to effectively participate at the hearing, or because it may be necessary to make a secure supervision requirement (or a review of such a requirement). The Scottish Government Education Information and Analytical Services Division, acting on behalf of the Children's Hearings Team, commissioned the Scottish Centre for Social Research (ScotCen) to conduct qualitative research to review the operation of the Scheme and to inform its future development. The study involved 51 in-depth telephone interviews with professionals, including local authority clerks, reporters, legal representatives and panel members, and 23 face-to-face interviews with young people in secure units who had experience of attending a hearing with a lawyer or legal representative.

Main Findings

- There were variations in the ways many administrative aspects of the scheme were handled by different local authorities, particularly around the recruitment, selection and appointment of solicitors to the scheme and to individual cases.
- Key barriers to solicitors taking on Grant Scheme cases included short notice, high existing workloads, long distances to travel to hearings, and a perception that the fees were inadequate.
- Participants identified four potential roles for legal representatives in hearings: a legal/procedural role, an explanatory/advisory role; a facilitation role; and a challenging/arguing role. However, these roles were not given equal weight by all participants and one view was that the role was 'muddy'.
- Young people thought that legal representatives should have a role in arguing for what the young person wants, regardless of whether they agree that this is what is best for the young person.
- There was a lack of certainty over whether and when legal representatives should be appointed in cases which might meet the 'effective participation' criterion.
- Level of contact between legal representatives and young people in advance of hearings varied. Those young people with little or no contact with their legal representative in advance of the hearing appeared to be particularly dissatisfied with the experience of having a lawyer.
- Young people identified both advantages to having a lawyer speak for them at hearings and reasons for sometimes speaking for themselves. However, young people were dissatisfied when they felt their lawyer 'just sat there' and did not represent their views adequately.
- Professionals identified both positive and negative impacts on the hearing itself from legal representatives' involvement. For example, they could help hearings focus on important legal issues, but equally they could get bogged down in legal jargon.

Background, aims and methods

The Legal Representation Grant scheme was established by the Scottish Executive in 2001 in order to allow access to free legal representation in hearings for children and young people in certain situations. In particular, a young person can be appointed a legal representative where either the hearing is likely to recommend that the child go into or remain in secure accommodation¹, or where legal representation may be needed to help the child or young person effectively participate in the hearing.

The main aim of this study was to review the success of the Legal Representation Grant Scheme from the perspective of professionals and young people in order to inform the future development of the scheme. The study was qualitative in nature. As such it aimed to map the range and diversity of experiences, behaviours or opinions, rather than to provide statistical or numerical data about use or views of the Grant Scheme.

The study involved 2 phases - 51 telephone interviews with professionals, followed by 23 face-to-face interviews with young people. The professionals included 15 children's reporters, 10 local authority clerks, 12 legal representatives and 14 panel members, recruited from across 8 local authorities. Local Authorities were selected based on their level of use of the Grant Scheme, and to ensure a mix of urban and rural areas and areas with low and high numbers of referrals to the Hearings System. Young people were recruited from 4 secure units. They included 9 girls and 14 boys, aged between 13 and 17 years-old.

All interviews were digitally recorded, transcribed and summarised for thematic analysis using 'Framework', a software package which provides a consistent method for organising and condensing qualitative information for robust analysis.

Administration of the scheme

The Scottish Government's recent consultation on the Children's Hearings System explored bringing the running of the whole System under a single national body. The Legal Representation Grant Scheme is currently administered separately in each Scottish local authority. A key aim of this research therefore was to review the practical operation of the Grant scheme to inform decisions about its future administration. The research found considerable variation in many administrative aspects of the scheme, including:

- How solicitors were recruited to the local 'pool' of legal representatives
- The background and qualifications of solicitors recruited to the scheme
- How the decision to appoint a solicitor to a case was taken, and
- How individual solicitors were selected for particular cases.

Some of this variation in practice related to differences in the availability of solicitors with particular characteristics between areas – for example, one reason given for not restricting the scheme to solicitors who are also registered as Curators ad Litem or Safeguarders (as suggested by Scottish Government guidance on the scheme) was that there were too few of these solicitors in the area. The amount of notice for hearings was also a factor – for example, where hearings were held at short notice in some cases reporters appointed a legal representative without recourse to the panel beforehand.

Solicitors' motivations for joining the scheme included an interest in child and family law, the fees, a social commitment to the work, and a desire to learn more about the Children's Hearings System. On the other hand, barriers to solicitors taking on Grant Scheme cases included: the amount of notice given for cases; high existing workloads; long distances to travel to hearings (particularly in rural areas or where the hearing was being held outside the local authority); and a perception that the fees were low. These barriers were often exacerbated in combination with each other – for example, the fees became more of a problem if the hearing was being held some distance away.

Legal representatives suggested that the fees were either too low in general, or that the higher flat fee (£200 for a first hearing with a child) was acceptable, but the lower flat fee (£80 for subsequent review hearings) was inadequate. There was a perception that the different elements of travel, preparation and waiting time were not adequately covered by the existing fee structure.

There was no standardised training for, or formal monitoring of, legal representatives working under the Grant Scheme. Examples of local training and support targeting legal representatives included a legal representatives' discussion group, a 'buddying scheme' and a leaflet explaining the system to new legal representatives.

¹ Secure accommodation is provided for children and young people who pose a risk of, or have previously absconded, or who pose a risk to themselves or others. Scotland currently has 7 dedicated secure units.

Legal representatives' role

Participants in the study identified four potential roles for legal representatives in children's hearings:

- a **legal/procedural** role, in ensuring the decision of the panel is legally correct
- an **explanatory/advisory** role, giving children and young people advice on the process, the likely outcomes, their options and the implications of the hearings' decision
- a **facilitation** role, in ensuring children and young people get their views across, and
- a **challenging/arguing** role, actually making the case for those views to be acted upon.

These roles were not, however, given equal weight by all professional participants in the study. Moreover, one view was that the legal representative role is '*muddy*' and that more guidance is needed.

Among young people, there was a clear perception that legal representatives should have a role in arguing for what the young person wants to happen, regardless of whether they agree that this is what is best for them. However, some young people did not have a definite idea of what their legal representative had been there for, and one opinion was that they did not fulfil any useful role.

Contrasting opinions were expressed on whether or not legal representatives should conduct themselves in a different manner from either lawyers acting in a courtroom setting or from lawyers representing children and families in a private capacity (where they are appointed directly by the child or family, rather than by the panel under the Grant Scheme). One view was that there is no difference, while another was that lawyers working in hearings need to adopt a less 'adversarial' role. A key question is whether these distinctions imply only a difference of style, or whether there is (or should be) a substantive difference in the role of lawyers acting in different contexts.

It was suggested that professionals and families may need more information about the role of legal representatives, while one view among young people was that they should take a more active role in hearings in general.

Types of cases

Professionals interviewed for the study gave examples of legal representatives being appointed in three broad types of case: those where secure accommodation was

being considered; those where tagging was an option; and those where legal representation might help secure 'effective participation' by the child. The latter included cases where the child had no independent adult support, where the child had learning difficulties, and where the child was a repeat offender.

However, there was evidence of a lack of certainty over whether and when to appoint under the 'effective participation' criterion, which appeared to be reflected in variation in the extent to which such appointments were made in practice. One view was that legal representatives should be appointed in more cases which might fall into this category. It was also suggested that more specific criteria are required. There was also some uncertainty over whether legal representatives were required when the child or family brought their own lawyer, when secure was only being considered (rather than recommended) and where a secure order was being removed.

Young people suggested that they might also find having a legal representative useful in situations where hearings are repeatedly continued, cases where non-secure residential accommodation may be recommended, and where the young person is referred on offence grounds, particularly where they are new to the system. On the other hand, young people also suggested that legal representatives may not be needed if secure accommodation is not being discussed or if the outcome seems pre-determined, while a further view was that they are not useful at all in hearings.

Contact between young people and their legal representatives

The level of contact between young people and their legal representatives in advance of hearings varied. Young people described meeting their legal representative for the first time either in advance of the day of the hearing, immediately before the hearing, or having no contact with them at all prior to the hearing.

Opinions on the adequacy of meeting on the day of a hearing only were mixed among both young people and adult professionals. Young people who had no or very minimal contact with their legal representatives before the hearing appeared to be particularly dissatisfied with the experience of having a lawyer.

Reasons legal representatives gave for being unable to meet young people in advance centred on fees and notice, with both these barriers exacerbated where the young person resided at some distance to the lawyer's practice.

Impact of legal representatives

The impact of involving legal representatives on young people's participation in hearings was discussed in detail. The young people interviewed sometimes preferred their legal representative to speak for them in hearings because they were too shy, embarrassed or nervous to speak for themselves, or because they felt their legal representative could keep calmer or put arguments better than the young person. However, young people also identified reasons to speak for themselves: one opinion was that doing so was easy, but other young people said they did not speak at all when their legal representative was not there. Another view was that having a legal representative simply made no difference either way to young people's ability to get their views across in hearings. Indeed, the main reason young people gave for being dissatisfied with their legal representative was that they had 'just sat there' and had not represented their views adequately.

Professionals also described the positive and negative impacts legal representatives could have on the hearing itself. They could improve the atmosphere by helping to keep clients calm, or they could inflame already volatile situations by not understanding their role. They could have a positive impact on communication by ensuring the panel heard the child's views, or they could silence the child and/or inhibit the panel from speaking. Legal representatives could help hearings focus on important legal issues, but they could also get 'bogged down in legal jargon'.

Suggestions for improvement

Key suggestions from professionals and young people for improving the Grant Scheme included:

- Ensuring legal representatives take an active role in representing young people
- Providing more information about their role to professionals and families
- Widening the pool of legal representatives and/or having a national pool
- Appointing legal representatives in more cases
- Allowing reporters to appoint legal representatives without recourse Business Meetings
- Allowing young people some say over which legal representative they have
- Increasing or revising the fees
- Requiring legal representatives to meet with children or young people in advance of hearings
- Providing specific training and monitoring for legal representatives.

Conclusions and policy implications

Four broad issues emerge from this study which Scottish Government and other policy makers may wish to consider in taking the scheme forward. These are as follows:

- **Defining the legal representative role** – Is this simply a matter of lawyers adopting a different style in children's hearings as distinct from courts, or is there a difference in the substance of the role? In considering this question, policy makers should bear in mind evidence that young people may expect lawyers acting for them in hearings to argue for what they wish to happen, even where the lawyer may disagree that this is in the young person's best interests.
- **Addressing variations in practice** – In considering new arrangements for the administration of the Grant Scheme, it will be important for policy makers to be aware of the reasons for variations in existing local practice. This may include, for example, variations in the availability of lawyers specialising in child and family law in different areas of Scotland. Other variations in practice may require further training, guidance or monitoring of legal representatives and of use of the Scheme. Finally, it may be worth exploring what training and guidance is available to *all* lawyers on working with children in the Hearings System, including those lawyers who represent children and families in a private capacity rather than under the Grant Scheme.
- **The impact of fees on the service** – The study found evidence that the view among legal representatives that the fees were low was, in some cases, having an impact in terms of the amount of time lawyers spent preparing for cases, their willingness to travel longer distances to hearings and their willingness to meet the child in advance of the hearing. In considering whether changes are required to the current fee structure to ensure that every child receives an equally good service from their legal representative, the Scottish Government may wish to examine how the scheme compares with and overlaps with legal aid.
- **Ensuring children and young people's views are taken into account** – Finally, in making any changes to the Grant Scheme, it is essential that the views of young people on what they do and do not find helpful are taken into account. The Scottish Government may wish to consider whether it is possible to build more say for children and young people into the scheme, both in terms of having some say on the legal representative they are appointed and in seeking their views in terms of future monitoring of the scheme.

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This document, along with a full research report of the project, a report of the findings for young people, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, or would like further copies of this research findings summary document or the full research report, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.

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