A qualitative study of decision-making by children's panel members in Scotland
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Introduction

One of the most difficult decisions any professional will be required to make is to remove a child from the care of their parents and if, having done so, to decide whether it is safe to reunite them with their family (Article 9, UNCRC, 1989). These types of decisions are part of the routine work of all professionals and lay people involved in child welfare/child protection (Benbenishty et al., 2015). Mistakes in the decision-making process can result in a child being removed permanently and unjustly from the care of their parents (Smith, Fluke, Fallon, Mishna & Decker Pierce, 2018). Whilst there has been a scarcity of studies of assessment and decision-making in child maltreatment (Bartelink, van Yperen & ten Berge (2015), more recently studies have sought to develop our understanding of the decision-making process and outcomes (Benbenishty et al., 2015; Smith et al., 2018).

In the UK and internationally there is a paucity of research on judicial decision-making about children's welfare, with more studies on juvenile than child welfare courts (Masson, 2015; Sheehan & Borowski, 2014). The Scottish Children's Hearing System has been in place for forty-seven years; however, little research has been undertaken on how lay children's panel members make their decisions, despite them being required to make potentially life changing decisions regarding children's welfare (Waterhouse, 2017).

Methods

Six panel members aged from 50 – 67 years, three of whom were female, volunteered to participate from an Area Support Team. A think aloud procedure (TAP) was used after participants read a case vignette (in two parts), adapted for the Scottish context from a Dutch study (de Haan, van der Asdonk, van Berkel, Alink & van IJzendoorn, n.d.) and a semi-structured interview was administered. Thematic analysis (Braun and Clarke, 2006) was used to analyse the TAP and semi-structured interview transcripts.

Findings: Thematic analysis yielded five master themes, each with emergent themes

Master themes and their emergent themes

Theme 1 Observing people face-to-face

All participants consider that observing people (professionals, children, parents and other family members) face-to-face in a children's hearing is essential. They rely on observation of individual behaviours and interactions between individuals to inform their decision-making.

Observing people individually

"… the child is too young to be interviewed so I would have hoped that the child would be at the hearing even if it's only for the first part" (P 3)

"you made a decision based on … how she was talking to you, how she was reacting with you." (P 5)

Observing interactions between individuals

"… you see the way people react to people, to children, who they go to, how they look, how they look at their parents … whether the head up or down or whether they look at you, whether they can make eye contact." (P 1)

"… I have known professionals to be unfair on the parents … that's usually evident in the hearing." (P 3)

Theme 2 Assessing change

The participants' decisions are underpinned by evidence of sustained change. Motivation to change is an essential component of the change process, as is willingness to work with professionals. In assessing change, The participants draw on different sources of evidence ranging from reports of professionals and experts to the testimony of children, their parents and wider family members within the hearing.

Receiving appropriate and sufficient information from professionals

"I would also look at psychological reports, mental health reports, school reports." (P 2)

Motivation to change

"If they haven't got the motivation to change their parenting style or parenting behaviour … it's going to make you think more about removing the child." (P 6)

Willingness to engage with professionals

"evidence that they have been engaging with agencies to change in a positive manner rather than just a token "yeah, well, I'll do it … just to cover the bases."" (P 2)

Evidence of change

"… is this a piece of evidence that is saying to me, well, there's still light at the end of the tunnel and we can get to a stage for the permanence to be back at home." (P 5)

Results of parent-assessment interventions

"Mum can see … not only what she's doing but the child's reaction to it, and that can be explained, I think that's a brilliant idea." (P 3)

Theme 3 Protection from harm

The child's welfare and whether the child is safe is central to the participants' role and their decision-making.

Child safety

"… if she loses control, if she's smacking the child or really loses her temper … there's nothing in these reports that makes me feel that the child's in imminent danger, but I think it should be considered a possibility." (P 3)

Keeping the focus on the child's needs

"… when it comes to parents, if they haven't got their act together fairly quickly, you can't afford to wait if the children are really small." (P 3)

"… what stage are they at? Is it criminal behaviour or are they just still doing daft things, or have they actually started being a bit more organised with it? Are they attending school …" (P 3)

Child rights versus family rights

"… the rights of the child are … important. You have to keep that at the back of your mind the whole time. The mother has rights as well. And the right to family life … is one of the most important ones but … protection is essential." (P 6)

"nowadays … we're getting a lot of solicitors in hearings and that … often they will take away from the focus on the child … they can be very, very good at doing that, though they shouldn't be, but they do." (P 5)

Theme 4 Community and wider family resources

The safety of the child and having their needs met relates not only to the role of parents but also to the resources available in the community and wider family. In making their decisions, participants took account of the range of services required to meet the differing needs of children and families in any community.

Provision of resources, including family support

"… the help of social work and other people, especially her … psychiatric help, is to help her go forward into taking as much help as she can" (P 1)

"… putting the supports in place for Mum is a costly exercise. But … we want the need to be the deciding factor." (P 4)

Family networks

"they're being supported by the grandfather. … it appears to be a good, strong structure … support there for her." (P 2)

Social networks

"… she's expanding her social network … I'd be wanting to ask the Mum in what context has she met those people and what sort of things does she do …" (P 3)

"… are they going to Boys' Brigade, are they going to Cubs or Girls' Brigade …?" (P 3)

Theme 5 Making the right decision

The panel makes decisions about whether it is in a child's best interests to make a compulsory supervision order and, if so, whether this order should have measures attached to it setting out where the child should live and with whom the child should have contact. The participants in this research are exercised about making the 'right' decision for each child. They are aware that removing a child from his or her parents, sometimes permanently, will have life-long consequences, as will leaving a child in an unsafe family situation.

Attitudes to alternative care options

"Obviously, you don't want to move a child unless it's absolutely necessary" (P 5)

Past experiences of panel members

".. being from a health background … I always emphasise the health side of things." (P 6)

Majority/minority decisions

"I was a newer panel member at the time … I got swept up by her strong opinions. … I just didn't think it was good … it was a majority decision rather than a unanimous decision, so that one I regretted." (P 3)

Compliance with the law

"we make decisions for the welfare of the child according to our remit. We make decisions and put good reasons to them and then they stand the test in the court …" (P 4)

Anxiety about making the right decision

"you have to make decisions that are incredibly hard for people and that's not easy … we don't do them lightly … I spend days and days and days reading the notes and make loads of notes …" (P 1)

Ensuring fairness

"… when I prepare for a hearing, I look at the risks and the protective factors to try and balance those out. … not just picking up on the negatives. …" (P 6)
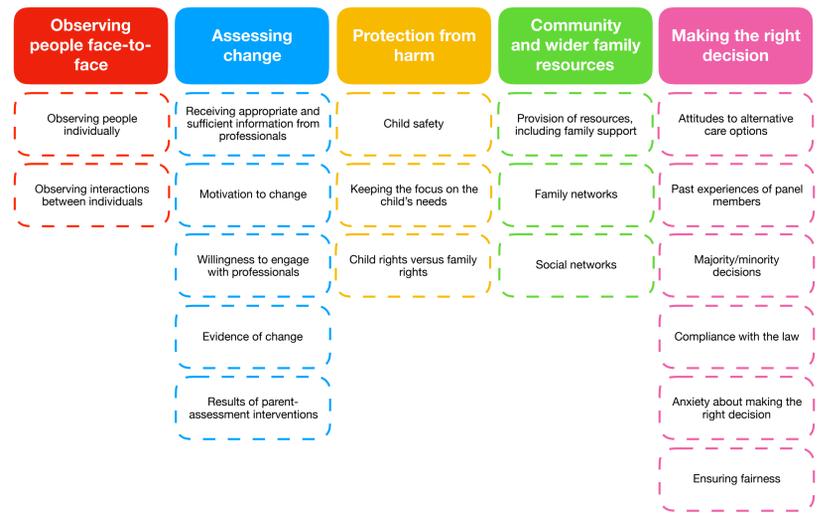
Conclusion

The findings from this study provide an in-depth understanding of how panel members make their decisions at panel meetings and identify the many different factors they consider during this process. The value panel members place on observing all the parties face-to-face as well as listening to them and reading all the available reports was an interesting and unexpected finding. It seems that panel members drew on their own experiences to assess the meaning of what they were seeing and suggests further exploration of how their observations influence their decision-making would add to our understanding. The panel members are driven by the importance of making decisions that ensure children are protected from harm, their developmental needs are met, and they and their families are supported by the available community and wider family resources. Evidence of change and of the children and parents' capacity to sustain this change were actively sought out by panel members, who were anxious to make the right decision for each child. This highlights the importance of children, their parents, and professionals presenting this type of evidence to a Children's Hearing Panel, and it has implications for the content of professionals' written reports and training on how to write an evidence-based report. Participants were very positive about evidence provided by the intervention-based assessment. This suggests it is an approach that would benefit from being piloted in local areas to evaluate its effectiveness in enhancing the quality of the decision-making process. Given that this is the first study to investigate panel members' decision-making in Scotland, replication of this research in other geographical areas of Scotland could establish whether the national findings are similar and therefore merit policy consideration.

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