Dear [redacted]

I know that the last couple of weeks has turned our world up side down. But I haven't heard from you whether you got my email (below, sent 6th March)?

Did you have any comments or corrections to make to the email summary? Or responses to my further ideas that I added about the absence of due 'applied science' in the review process?

Have you shared the email with the Minister? Our meeting was offered to me in response to my request to meet Ash as my MSP.

[redacted]

[redacted]

~ ~ ~ ~ ~ ~

Email Sent 6th March 2020

Dear [redacted]

Thank you for the very generous (90 minutes) meeting you afforded me last week on Fri 6th Mar 2020, at St Andrew's House. It was largely a discussion between myself and [redacted].

This is the summary I promised. Let me know if you want to change anything to make it more accurate. It is for Ash Denham's information too - my MSP and the Minister you advise on policy.

Here too - as for last time - is a link to my recording of (70 mins of) our discussion. It is confidential, for our own reference only and to share with immediate colleagues (especially the Minister or you, [redacted], if you want to review what we said).

[redacted]

Apart from that internal use, you and I agreed not to share this recording (or a transcript of it). If you or I wish to share anything from it at any point, we would only do so after gaining each other's permission in writing.

Who was helping whom?

I set out at the start that I was there to help you develop good policy and advice. You ended by making a welcome commitment to involve more diverse contributions (including my own) in future developments. But you also asked me if the discussion had helped me. Two points:

1. I hope you were just being polite and that the 90 minutes had been of some value to you. If not we need to try again since, for me it helped only to strengthen the concerns that I was

there to express, about the present policy development process and draft Bill. … Anyway, I think we need a part two for this reason ...

2. Afterwards I realised you had in fact helped me in another way:
You helped me see and 'diagnose' more clearly a large blank gap there seems to be between us. The blank gap remains between you, the Scottish Government (SG)'s policy, policy advisors and process, and others of us who have specific qualification in matters to do with children, families and multi-disciplinary issues of their development, mental health, relationships, welfare and protection.

I think understanding this gap extends and helps us work out the concerns we covered in our discussion. Hence my suggestion that we have a further discussion soon not leave it with just this email summary about the meeting. However I will endeavour to outline below what I would like to discuss in 'part two' of our meeting. First:

The Competence of the Process of Policy Development

Using a page of short excerpts from the public meetings of the Justice Committee (attached), my main question was a 'high level' one: I wanted to clarify more about where the SG's 'views' and 'thoughts' came from that are variously mentioned. The question arises from my continuing concern about the competence of the review and planning process itself over the years.

I have elsewhere submitted my reasoned concerns about the competence of some of those who operate the present family law system, about the competence of private solicitors as Bar now Child Welfare Reporters (CWR) failing the Law Society's Code of Conduct B1.10, about how the proposed regulation would make little difference to the competence of solicitors for that role, as well as about the dubious purposes the UN CRC 'views of the child' are being made to serve in private family law.

Our discussion naturally raised these other concerns for competence. But my focus was primarily on whether the legal and SG reports, reviews, working groups and planning have sought and used enough (what I consider to be) obvious and due diversity of expertise in the matter of child welfare and protection.

Your answers to my main question

Your answers to my main question were clear enough. Thank you for being straight forward about that:

With the exception of consulting some interested organisations and voluntary sector groups, the primary profession that has been involved has been pretty much all lawyers all the way through.

Many of the key committees about the law are convened within the legal domain, not through the SG. They may have lay representatives, eg from the voluntary sector. But their core membership is naturally drawn from the legal profession.

You explained that your process of developing SG policy does not generally entail a select group of people who work steadily together with you to help you develop good policy and advice.

I note in passing though, that Scotland's famed Kilbrandon Report and the sweeping changes it brought were created in just that way with a diverse group working at their task together. I have wondered if that sweeping outcome of Kilbrandon accounts for the legal profession's wish to keep control of private family law, to not risk that happening again?

The Bar Reporters Working Group (BRWG 2013-18) was unusual in being convened by SG. It was largely composed of lawyers (because they did most of the Bar Reports). In 2013 you did actively request Social Work involvement. You haven't done so since. You said that was because Social Workers do some Bar Reports, not because you wanted their special child welfare expertise included in the BRWG. But at that time, more than once, no one responded from Social Work. However, voluntary sector (mainly) parent-interest groups did join in on the BRWG.

You said you didn't think to recruit any psychologist or child psychiatrist to the BRWG.

You didn't mention that there had been any other involvement of these professions in any other reports or policy development through the decades.

So: it has been predominantly lawyers. Those with appropriate experience and qualifications in the field of child welfare - Social Workers, Child Psychologists or Child Psychiatrists - have not been recruited into the process of policy development prior to publishing the Bill.

My conclusion must be that several decades of policy development have been, in this strikingly significant way, not competent.

Diagnosing the large gap: the absence of applied science

Now for why I'd like us to have a further discussion:

After we met, I was puzzled and wanted to understand better this gap between us. The gap shows up, I think, in a difference between us in recognising that there is a major difference between professions, a failure even to know how to recognise that the difference is there and that it matters.

The discussions about this policy process and draft Bill seem not to register that there is a major difference between the training and skill of a solicitor from that of any of the child and family professions. In the documents about policy development and drafting and scrutinising the Bill, it is as if the legal profession and the child and family professions are all somehow not that different, all fit enough to operate in a common realm of a child welfare focused task.

I simply cannot agree with that. Why would the dedicated onerous specialist training - of the likes that I've done in my time - not make a difference? Though the present Bill says otherwise, you said that many solicitors think they're the right people for the job - though nowhere I've read says that a Child Welfare Report (CWR) is primarily a legal matter. If

solicitors can assess child welfare, does that mean they could equally get an assessment job (if they wanted to) in Social Work or in Child and Adolescent Mental Health teams?!

You will agree that's ridiculous. Yet the documents and discourse repeatedly talk as if solicitors are interchangeable for a child welfare reporting role with those qualified child and family professionals.

I think this big gap in our perspectives on it comes from two very different ideas of how policy is to be developed. For policy review and development on matters of child welfare, I would think it obvious to substantially include those quite different professions who are actually qualified in child welfare, and whose regulated qualification is way more than a notional 4 days CPD per year.

Perhaps you did get this point when you said in our meeting (at about 01:07:00):

"We know what the problems are looking back; that's why we're doing this. I'd be more interested in the discussion on: what should we actually be doing in terms of Child Welfare Reports; who should be doing them; what's the point of them; should they have recommendations in them; should they have other [steers?] for the court; what training etc do you need?"

It is very worrying if this is a new statement of forward-looking concerns that has not been top of your agenda looking back over the last ten years or more. If these aims haven't featured before, what I wonder has been the main purpose of those years of review?

Let's hope this might be the start of a bridge across the big gap. But I was wondering (since we met) if the gap is but a symptom of a broader difference, of how the law, and your policy team too, have a culture, custom, practice and value system that has no place for what I call 'applied science'?

Applying science to family law and policy development

Applied science is found most concretely in fields like engineering, business and medicine. In general, these occupations design things that do good for people. These professions would be no use if the 'things' they did, failed to 'help' people. To ensure they do help people, they 'apply science' to plan and measure the outcomes for those receiving the services. A priority is given to routine objective measures of the helpful outcome that the final target user of the service gets as feedback to shape the service up.

In Scotland, the law and its policy development seems to have been rather above attempts at such objective outside-researchers' valuation or thinking in terms of applied science about the outcomes received by those who are meant to benefit.

Being 'helpful' to children is clearly implied everywhere by the ambition to 'get it right for every child' and by the mantra of the paramountcy principle in family law. If family law and developing its policy were treated as if it was a helping service to children and families, like a health service would be for example, then the first thing to do would be to seek to measure what the problems are that are supposed to be being helped, and to measure how and how far in objective fact the services achieve that help or not. One would certainly want to find out and avoid harmful outcomes.

What would first strike us if we were to apply science like that - and we already do know this - is that a delay of months and years to assess and intervene in a matter of child (health or) welfare or safety can never be doing the job right. Full stop. That inbuilt degree of delay fails to spot, and in fact contributes to, harming the child. Even if some of its practitioners were quite good at their job, a health service that failed like that would be immediately required to stop and change its ways.

And the second thing to strike me, in Scotland especially, is the general absence of courts having a culture of specifying and authorising services to provide ongoing help between court Hearings to those families who struggle to carry out the unadorned orders of the court. Again, if a health service - after assessment etc - then failed to deliver anything that helped its users, it would be urgently challenged and made to change. What would be the point of such a pointless service?

Conclusion

Thanks for meeting with me. I hope the meeting and these further thoughts arising help us to see better what is missing and is needed looking forward now.

The discussion I suggest we need to have now is about how policy and policy advice in a field of helping children can only be competent if it 'applies science' to that outcome. Collecting and collating opinions and 'placating stakeholders' is just not enough. 'Placating stakeholders' was the phrase that caught my attention in my quote to you of the Policy Memorandum para 91. I suggest 'getting it right' would be in order here, not just 'placating stakeholders'.

'Applied science' to 'get it right' is why the belated input from the likes of [redacted] nd [redacted] is so important, along with her more objective evidence about CW Reports. I trust you rate her 'applied science' as more than just the opinions of a stakeholder, someone to placate. And I hope that your ending: "Did that help you, [redacted]?" meant more than that I was a stakeholder to be placated.

In support of my request for more discussion about 'applying science' to 'help' the children and families going through family law, I submit the views of a wise member of the legal profession:

Some years ago, I persuaded Sheriff [redacted] to improve his CPD on family law for sheriffs. As we negotiated, he gently scoffed at my earnest notion that law was about 'helping' anyone. The law he said was about 'applying the law justly' not about helping. … Of course I hold with the rule of law and I regularly recommend the therapeutic power of finding justice. In other words, justice is definitely very 'helpful' in its deliberative indirect way. … But I fear that Sheriff [redacted] is right. Family law, carrying with it as it does so much of its parent institution, is really not designed to be helpful to its customers. However much it professes 'paramountcy of children', in Scotland at least, I fear that family law can not be competent for the job of helping children.

I hope we may be closer to working afresh at how your policy and advice on family law can be helped by applying more science.

If you agree to a part two of our discussion, please let me have some dates that would suit you.

Yours sincerely

[redacted]

[redacted]