OFFICIAL REPORT
AITHISG OIFIGEIL

Education, Children and Young People Committee

Wednesday 29 March 2023

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 29 March 2023

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

11th Meeting 2023, Session 6

CONVENER

*Sue Webber (Lothian) (Con)

DEPUTY CONVENER

*Kaukab Stewart (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
*Graeme Dey (Angus South) (SNP)
*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Ross Greer (West Scotland) (Green)
*Stephen Kerr (Central Scotland) (Con)
*Ruth Maguire (Cunninghame South) (SNP)
*Michael Marra (North East Scotland) (Lab)
*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sue Brookes (Scottish Prison Service)
Alison Gough (The Good Shepherd Centre)
Claire Lunday (St Mary's Kenmure Secure Care Centre)
Sheriff David Mackie (The Promise Scotland)
Gerald Michie (Scottish Prison Service)
Kevin Northcott (Rossie Young People's Trust)
Laura Pasternak (Who Cares? Scotland)
Chloe Riddell (The Promise Scotland)
Meg Thomas (Includem)
Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 29 March 2023

[The Convener opened the meeting at 09:00]

Children (Care and Justice) (Scotland) Bill: Stage 1

The Convener (Sue Webber): Good morning, and welcome to the 11th meeting in 2023 of the Education, Children and Young People Committee. Under our first agenda item, we will take evidence on the Children (Care and Justice) (Scotland) Bill.

Two panels of witnesses are joining us today. I welcome our first panel: Alison Gough, director of the Good Shepherd Centre; Kevin Northcott, deputy chief executive officer of Rossie Young People's Trust; Claire Lunday, headteacher at St Mary's Kenmure Secure Care Centre; Gerald Michie, governor of HM Young Offenders Institution Polmont, the Scottish Prison Service; and Sue Brookes, interim director for strategy and stakeholder engagement at the Scottish Prison Service.

We have a lot of ground to cover, so we will move straight to members' questions.

Stephen Kerr (Central Scotland) (Con): I will come straight to the point. Fundamental to the bill is the redefinition of "child". The bill will move the boundary of that age to 18. What are your reflections on that? Given your experience of dealing with young people, is that the right age for the definition of a child?

Sue Brookes (Scottish Prison Service): I think that it is. The Scottish Prison Service is supportive of the bill and the intentions behind it. It might help the committee to know that I am a former governor of Polmont, and my experience of working with very young children in our care is that their needs and the risks are very complex.

The SPS has developed a young people strategy, which is all about age-appropriate support, particularly in relation to building relationships and learning. For developing children—whose brains, as the evidence says, are still maturing—we think that it is more appropriate for that to take place in an age-appropriate and trauma-supported environment.

Stephen Kerr: Is there something in the bill that leads you to believe that outcomes will be better for that demographic?

Sue Brookes: I do not know whether there is something in the bill, but there is evidence, including the evidence that we have built up over a number of years. In particular, a colleague of mine in the SPS produced, in tandem with the Scottish Government and the Children and Young People's Centre for Justice, an evidence paper that sets out all the needs and issues that the children have. As the bill has been developing, we have been working with secure unit partners and the Scottish Government on what it will mean. To inform that process, we have been building up a number of case studies relating to the needs and risks around the young children in our care, and we have been passing that on. There is a growing evidence base on the adolescent brain, growing children and maturity, and the weight of that evidence suggests that this is the right thing to do.

Gerald Michie (Scottish Prison Service): I fully concur with Sue Brookes's position. When I, as the governor of the establishment, look at the children in our care, we often identify them in terms of their size, their age, their maturation and so on. We fully support the bill's ambition to remove children from Scottish prisons.

Stephen Kerr: Is anything missing from the bill that would improve outcomes? Obviously, the whole point of young people being put in secure places is that they will go on to lead productive lives after that experience. In that regard, is anything missing from the bill?

Gerald Michie: No. One of the benefits of the bill is that it recognises that case management should be done on an individual basis. Although it says that young people can go to secure units from the age of 16 up until their 18th birthday, there is the opportunity for them to stay longer. That opportunity exists for older young people. In the Scottish Prison Service, an adult is defined as someone who is 21 years old or older, but we can keep young people over the age of 21 at HMP and YOI Polmont if they are benefiting from it, if they are undertaking programmes or interventions, or if they are at risk.

Stephen Kerr: There are lots of flexibilities to allow that individual case management.

Gerald Michie: Yes.

Stephen Kerr: Alison Gough, what is your view on the change to the definition of a child?

Alison Gough (The Good Shepherd Centre): I fully agree with what Sue Brookes and Gerald Michie have shared. If the bill is to accept and recognise that all people under the age of 18 are to be regarded and treated as children, it is very important that that is fully enacted. There will be scope as the bill progresses to ensure that we overcome the risk of a two-tier system and the risks relating to current practices and approaches

that treat 16 to 18-year-olds differently in the justice system.

Secure care centres in Scotland work with children. Currently, children can be in secure care up to their 18th birthday. We have worked with children for decades to meet their needs, particularly in relation to United Nations Convention on the Rights of the Child article 39 rights, which all children who come into secure care have by virtue of the fact that they have met the secure care criteria and the state has decided that the risks and dangers of harm, abuse and neglect are such that they require to be detained. Such children have rights under article 39 in relation to recovery from abuse, harm, trauma and neglect. It is very important that how the bill is enacted recognises children's full rights as children up to the age of 18.

Stephen Kerr: I am thinking about your evidence. Are you referring to the flexibilities that exist around 16 and 17-year-olds being sent through the adult justice system? Are you unhappy about that?

Alison Gough: There are issues with the punitive elements of the system that do not fully embrace the Kilbrandon principles, and those issues have to be explored. It is very complicated, and we always need to strike a balance, because there are children who harm other children or other people. If the bill is to fully respect and recognise that people under 18 are children, it has to be recognised that young people who harm others nevertheless have the full rights of all children under the age of 18. How the bill is implemented and interpreted through the children's hearings system and the decision-making bodies will be important.

Stephen Kerr: Are you arguing that those flexibilities do not exist, or are you simply red flagging them?

Alison Gough: I am flagging them and saying that there will need to be careful consideration of the route for children and, in particular, of how we respond to children who have been involved in very serious offences of personal violence. It is absolutely right that we do that within a framework that accepts that everybody under the age of 18 is a child. Secure care centres have operated for decades on that basis and have fully embraced the SHANARRI—safe, healthy, achieving, nurtured, active, respected, responsible and included—principles. That is right and will need to continue in relation to young people coming in on justice grounds.

Stephen Kerr: Very quickly—

The Convener: We have questions on that theme later, in case you were thinking of probing further.

Stephen Kerr: Alison Gough raises an interesting point.

I will come to Claire Lunday next.

Claire Lunday (St Mary's Kenmure Secure Care Centre): I agree entirely that 18 is the most appropriate age. There are three critical factors to that. One is that it aligns with the UNCRC definition of a child. The second is that it takes into consideration developmental age versus chronological age—those ages are often very different for young people who have experienced trauma and difficulties throughout their life. The third is that, as Alison Gough said, it creates the potential to rationalise the irregularities between 16 and 17-year-olds who are on a compulsory supervision order and those who are not.

Kevin Northcott (Rossie Young People's Trust): There is not much more that I can add to what colleagues have said. I echo what has been said about the developmental impact of raising the age to 18. Research and evidence suggest that the brain continues to develop into the mid-20s.

Stephen Kerr: Do you believe that the provisions in the bill will facilitate better outcomes? That is the most important thing. If we are to change the law in any way, it has to be to bring about an improvement in outcomes. Are you satisfied that the provisions in the bill give some hope in that respect, or are bits missing?

Kevin Northcott: I suggest that "hope" is the correct word. Based on our current research and evidence, the outcomes for young people who access secure care up to the age of 18 are significantly better.

The Convener: I thank the witnesses for their responses so far. For the record, will you provide a brief overview of your respective roles in Polmont and in the secure care setting?

Kevin Northcott: My role in the organisation is deputy chief executive, so I have responsibility for the secure care, residential care and educational and specialist intervention services in Rossie. I do not know how much you wish me to expand on that.

The nature of the setting at Rossie means that we take a holistic approach—everything is under one roof. We have 18 young people in a secure setting, and we have capacity for up to 18 young people in the residential setting. We have two schools that facilitate the educational provision for those in secure care, and we have a residential school. The specialist intervention service contains psychology input and a team that uses a suite of interventions and works with young people from pre-admission all the way through their journey at Rossie.

We have a health department, which I am responsible for. We have medical provision on site, with a fully registered nurse and a health support team providing health input and support for all our young people.

Claire Lunday: I am the headteacher at St Mary's Kenmure. I have worked in a secure care environment for about 15 years. It is an immersive environment, so, despite my background being in education and that being my primary role, I also have responsibility for the strategic direction of the organisation, along with my colleagues who are on the senior leadership and management team.

There are three key aspects to our service—not dissimilar to those of my colleagues on either side of me—and those are care, education and health and wellbeing. All of those have to sit equally in providing the correct level of care and protection for the young people within our care.

Alison Gough: I am the director, which is the chief exec role, at the Good Shepherd Centre. We are a secure care centre and we also provide close intensive support.

In our secure care services, we have three secure care houses that provide up to 18 places—six children can live in each of those houses. We also have places for six young people in a close support house, which has elements of restriction of liberty but not full deprivation of liberty, and we have on campus an open residential throughcare support cottage for up to three young people.

Like Kevin Northcott and Claire Lunday, we take a very holistic approach. We have a WeDoCare system, which stands for wellbeing, education and care services. We have a fully qualified nurse and healthcare team, a holistic therapist and a range of specialist psychologists, including forensic psychologists, clinical mental health psychologists and cognitive behavioural therapists, who also support the organisation and the young people in it.

Prior to working at the Good Shepherd Centre, I led the secure care national project at the Children and Young People's Centre for Justice, so it has been very interesting to follow the journey of the changes that have been happening in secure care and the forthcoming changes.

Gerald Michie: I am the governor in charge of HMP and YOI Polmont. Ultimately, I am responsible for the safety, security and positive experience of everyone who lives and works in HMP and YOI Polmont. We are designated as an adult female establishment, and we are the national holding facility for young people in Scotland. Currently, we hold male and female children.

Sue Brookes: The directorate that I currently look after has responsibility for the strategy for young people across the SPS and for a number of related policy areas, such as our response to the UNCRC issues.

As I said, prior to that, I was a governor of Polmont. I was also privileged to be a co-chair of the independent care review, which led to the Promise. For a couple of years, I was on secondment to Education Scotland, working with policy leads and headteachers on how to prevent young people from coming into custody.

The Convener: Thank you. That is very helpful and should help our members to direct questions to the witnesses with the right expertise.

Will you outline what assessments are made when children enter a YOI or secure care establishment and what services are available immediately to deal with any issues that the children might have? Gerald Michie, do you want to go first?

09:15

Gerald Michie: I will start by giving a prison perspective. Children come into prison in two ways. One is through the transition from secure care route when they attain the age of 18. We have a long-standing and positive relationship with the secure care providers in Scotland, and we can often plan for up to six months for someone who will transit from secure care into Polmont. That planning involves on-site meetings during which we send staff to secure care and the young person comes to visit Polmont. They meet their personal officers and, potentially, the managers in their areas and some of the support staff that we have. That is a well-planned transition route.

However, a few people—thankfully, it is only a few—come through an unexpected or unplanned child admission. The majority of those will come with absolutely no notice at the end of a court day. At that point, we immediately assess their health and physical wellbeing. On admission, they will be screened by a nurse, interviewed by a personal officer and then placed in a specific area in the establishment that is for young people who are under the age of 18. During the next 72 hours, they will get a local induction from our staff and will see nursing and mental health staff—we also have inclusion staff—and we will build a package around them.

Our team will immediately reach out to the local authority, under the whole-systems approach, to inform it that a young person has come into our care. We identify who we are and who the personal officers are, and we invite the authority to a case conference within 72 hours, which can either be in person or on Microsoft Teams. From

there, we start to build an individual management plan for the young person.

Today, there are seven children in Scottish prisons: two females and five males. The majority are on remand, and there is one recall from the English system. The young people will be offered opportunities for education, youth work and vocational training. We have a whole catalogue of support that can be offered to them, whether they are convicted or on remand—the majority are on remand.

Alison Gough: We operate a 10-week assessment programme when children join us. The vast majority of children who come into the Good Shepherd Centre are admitted on an emergency basis because of the nature of the acute crisis that has led to the decision to detain them in secure care. That can be problematic—I am sure that the committee might want to explore that later—but we have worked hard to implement the secure care pathway and standards, which came into place in October 2020. The impact of those standards is currently being assessed by the Care Inspectorate.

Whenever possible, we engage with the young person and their family through the local authority prior to their coming to us. When young people arrive, we begin to understand their needs and get to know them. We have a holistic assessment and formulation system in place. There is a mental and physical health assessment and an education formulation assessment to work out learning needs.

The young people are introduced to the school setting very quickly. The majority of young people who come to the GSC have been outwith school for a period of time or have a very disrupted learning and education history. We are very proud of the approach that we take and the environment that we offer, which includes small classroom settings and sometimes individual tutoring to meet the needs of young people. We find that attendance is consistently extremely high; more than 95 per cent of young people who come to us will attend school full time and will benefit from that. We have been able to track and trace educational outcomes, formal attainment and wider achievements in previous years.

We operate a multidisciplinary team approach, which means that we also engage closely with NHS Greater Glasgow and Clyde on forensic child and adolescent mental health services—FCAMHS—and CAMHS. There are regular review meetings that involve the team that is around the child as well as external supports and agencies.

Claire Lunday: When young people arrive at St Mary's Kenmure, part of the immediate admission process is a physical and mental health screening that is followed up within 72 hours by our school nurse. Probably the most important part of the process that informs our plan for young people is the formulation, which involves looking at all aspects of a child's life from pre-birth to where they are now. The process involves all relevant parties, including the child and anyone who can contribute information about them. We use all that information to inform our approach and understand what has led to the child or young person being in the situation that they are in.

The formulation process is overseen by our specialist interventions team and our consultant clinical and forensic psychologist. We create a plan that informs our care plan for the young person, which belongs to that young person, is informed by them and shared with them. Most importantly, that plan goes with the child beyond their placement in secure care, because secure care should always be time-limited until as soon as it is reasonably possible for the child to move on.

As part of their care plan, young people have access to education. Although young people should, theoretically, have had access to education in the community, sometimes the barriers for them to access it are just too great. We have a high level of universal and targeted support that enables our young people to access education, and we have similar success rates to those of our colleagues at the Good Shepherd Centre. That is crucial to the children and young people who are in secure care, because it may well be their first real opportunity in a number of years to access learning. As we know, the opportunity to access learning, benefit from education and gain qualifications is one of the greatest drivers out of poverty and deprivation and away from criminality.

It is important to mention the secure care pathway and standards. The "during" phase of secure care is highly regulated, and rightly so, as we are restricting the liberty of children. We, and all agencies that are involved with children, are getting better at the "after" phase, but the "before" phase of secure care continues to be difficult to plan for. Admissions to secure care generally are not planned and, because of the nature of the reasons why children arrive in secure care, arguably they should not be. However, that makes it difficult to reach the ideals and meet the objectives for children and young people.

Kevin Northcott: My response will be similar to that of my two colleagues, as we have similar models for delivery. I will add a comment on the pre-admissions aspect. The journey and the assessment period start when we get an initial telephone call or an email about the child or young person who has been referred to us. The papers

will come from care and education services and we will assess them with a multi-agency approach in order to make sure that we place the young person appropriately and in line with the Care Inspectorate's matching guidance. That is crucial to us, because we have to not only consider the needs and welfare of the young person who has been referred to us but give due consideration to the cohort of young people who we are looking after in the establishment.

When the young person comes in, a team is formed that encompasses care, education, special intervention services and health provision, and the young person is at the centre of that team. Our model is similar to what others have detailed. The young person will chair meetings on a six-weekly basis to assess their on-going outcomes. In the initial phase, we have a suite of assessments, including the young person's clinical outcomes in routine evaluation 10, or YP-CORE 10, and the short term assessment of risk and treatability: adolescent version, or START:AV.

A number of those assessments are done within the 24 to 72-hour period to ensure that the initial stages of the formulation—my colleague from St Mary's detailed the purpose of that—are done properly. The formulation will follow the young person through the journey during their time within the environment. As part of that, we will assess the educational stage that the young person is at to ensure that the curriculum that we deliver is appropriate. The committee will be aware that cross-border placements are a factor in our secure establishments. Education provisions need to take cognisance of the English curriculum as well as the Scottish one, to ensure that what is delivered to the child is most appropriate, because their future destination will, I hope, logically, be to their local authority, wherever it may be. That adds complexity to the delivery, but we manage it very well.

As colleagues have said, the secure care pathway and standards are crucial to delivery and assessment as we move through the journey. Our organisation's throughcare and aftercare department commences work almost at the point of admission to understand the next stages for the young person. The hopes and aspirations for any young person, and the goals and outcomes for where they are going to go, hinge on the next stages, and our throughcare team is critical to that process.

Sue Brookes: To build on something that Gerry Michie said, a significant number of young people who come in are with us on remand. That makes assessment difficult, because we often get no information immediately when people come in on remand. Although some of those young people stay for an extended period, they often come in for only one night, so making assessments of their needs, longer-term risks and vulnerability can be quite difficult in the early days.

From the case studies that we produced as evidence, we know that the vast majority of the children who come in have had previous contact with the children's hearings system, social work and the care system prior to the offence that brought them into custody. The committee may be interested in exploring that.

The Convener: On that aspect, we have a brief and directed supplementary from Stephen Kerr.

Stephen Kerr: It will take less time than the introduction.

My question is for Sue Brookes. How long, on average—the median average—does someone stay?

Sue Brookes: I do not have the answer to that; perhaps Gerry Michie does.

Gerald Michie: In the past 18 months, a number of young people have been in for one night. The longest period was when a person spent seven months and eight days with us, but, on average, a young person will spend 11 days on remand with us.

Stephen Kerr: What is the average—the median—time that the overall population of that demographic will spend with you?

Gerald Michie: It is 11 days.

Stephen Kerr: Is that for the whole population?

Gerald Michie: It is in terms of children.

Stephen Kerr: Is that on remand?

Gerald Michie: Yes, on remand.

Sue Brookes: For information, the proportion of children who are on remand is higher than the proportion for any other age group in custody.

The Convener: We will move on to questions from Michael Marra.

Michael Marra (North East Scotland) (Lab): It is projected that the bill will result in a potential increase in referrals into secure care. Do we have capacity in the secure care system to meet those referrals? I put that question to Kevin Northcott.

Kevin Northcott: The Scottish Government's trajectory on the purchasing and utilisation of a bed has been useful to start an assessment of whether that capacity exists. It is obviously still very early—the current arrangement has been in situ for only three months.

It would be useful to look at the number of 16 and 17-year-olds who have been referred as a trajectory over a 12 or 24-month period. We can

see what the numbers look like now and what they will potentially look like as we move forward.

From a Scottish perspective, there absolutely is capacity within the secure care establishment. Approximately 50 per cent of our current cohort of young people—I think that my colleagues would confirm this—are cross-border placements. Looking at that cohort, we see that there is capacity there. The challenge will always be in the children's hearings system and in the understanding and capacity of that system to manage that aspect. To answer your question on capacity, therefore, I would say yes.

Michael Marra: Do we have sufficient surge capacity? There is a policy in place regarding the last bed, under which a place is reserved to deal with issues that colleagues have mentioned to do with the results in court or in the children's hearings system on a particular day. Are we retaining that policy? Is it helpful?

Kevin Northcott: Yes, it is very helpful. With regard to accommodating young people appropriately in the Scottish system, it is absolutely appropriate.

Michael Marra: The Good Shepherd Centre said in evidence to the committee that, at points, the Scottish need for secure care has dropped dramatically

"in the face of English Authorities desperate to find a secure care placement which can meet the needs of their young person."

However, it also said that Scotland has been turning to England "to ensure sustainability". Should the committee be concerned about that?

Alison Gough: I am sure that this committee and other committees have explored that previously. That goes back to the Munby judgment in 2016, when the Scottish Parliament gave legislative consent to the Westminster Government's Children and Social Work Bill, which amended the way in which children can be placed from England in Scottish secure care services.

09:30

I was wearing a different hat at the time, and I shared some concerns about that bill—there was debate across the sector about the implications of the legislation. Since 2017, when the legislation came into force, there has been a dramatic and sustained rise in the number and frequency of referrals from England.

Michael Marra: My question relates to the sustainability issue. Are your institutions relying on the finance from those placements?

Alison Gough: We have had a smaller proportion of such placements than perhaps elsewhere in the sector since 2017. At one point, almost half of our children were from England, but that was for a relatively short period. At the moment, 25 per cent of children are on cross-border placements. The figure has been lower than that during the past couple of years at many points. I know that there is discussion of the capacity issues at the moment and that the youth justice team has been working with each of the secure care centres to explore the possibility of building on the pilot that was undertaken to purchase one placement in each of the centres.

The emergency beds that are referred to in the committee papers certainly have not been utilised. We have not needed to utilise or bring those into play recently, so there is additional capacity in that regard, too.

Michael Marra: In its written evidence, St Mary's Kenmure refers to cross-border placements subsidising the bed rate for young people in Scotland by

"cross border authorities who are willing to pay more than the Scotland Excel rate".

Claire Lunday: That is absolutely fair. We have found ourselves in that position for a number of years now, and that is probably representative of the entire secure estate.

If we are to exist and provide a service to Scottish children and young people, it is absolutely necessary that, when there are a number of empty beds because demand in Scotland is not high, we look to cross-border placements and try to find appropriate matches. I note that it is only when young people can be matched appropriately from England or from the rest of the United Kingdom that we admit them to our service. Without that income subsidy, no service for Scottish children would exist.

Kevin Northcott: It might be relevant to the committee to know that a recent three-year analysis found that 94 Scottish referrals—not placements but referrals—were made to Rossie over the past few years and that there were 515 English referrals over the past three years. On the one hand, that shows the demand that exists in the English system. On the other hand, it shows the lack of demand that exists in the Scottish system.

The Convener: Would any decrease in the numbers that are coming into your institutions lead to a positive impact on the Prison Service's ability to provide care and support for the young people who are in its care? Perhaps Sue Brookes can respond to that first.

Sue Brookes: On the statistics, as Gerry Michie said earlier, seven children are with us currently. I think that the statistical average is around 14. That figure has been dropping year on year.

We have a throughput of around 60 children annually. You asked about flexibility. The number goes up and down quite a bit. After January, we were a bit concerned, because the number was increasing. However, we get occasions when the number is as low as two, and it is very often the case that there are no girls.

There are issues in relation to the flexibility of provision. However, the question that I think that you asked was about whether, given that those numbers are dropping generally, that means that we are better able to cope. There are two issues there. The first is that we would still say that 16 and 17-year-olds, as children, should not be with us. Even if the rest of the establishment was empty, those children should be somewhere else. The second issue is complexity. As time goes on—partly because other alternatives are being found for children and young people aged 18 to 21—the numbers are reducing, but the background circumstances of the youngsters are becoming ever more complex, which means that they require much more intensive support. Therefore, we are simply redirecting the resources that we have to make sure that we do the very best that we can for all those children and young people.

The Convener: The bill could result in children under 18 who have been accused or convicted of serious crimes entering secure care rather than a YOI. Does that cause any concern? Do you have any experience of dealing with children who have committed serious crimes? What challenges do you foresee in managing that? Those questions are for the secure care providers.

Alison Gough: When the Good Shepherd Centre opened as a secure care centre, in 2006, several young people who were serving quite long sentences for their involvement in very serious situations were initially placed there. There is substantial experience of dealing with young people in that position across the secure care sector. We currently have young people who have been through the justice system and who are on remand or in other situations in our secure care centres.

It is absolutely the case that we have experience of that. The secure care centres are well used to balancing a very complicated and difficult balance of rights. Throughout the submissions to the committee and the considerations in relation to the bill, there is a constant tension between the child being regarded as the victim and their being regarded as the perpetrator—that language has sometimes continued to be used. It is a debate that has been going on for a long time, but our inspected and regulated services have a strong record of delivering care, education and wellbeing support in secure care. We also provide effective risk assessment and management of children who have been involved in harming others or in very serious situations of violence, and ensure their safety and security.

The Convener: So, you have a sense that the staff are all well trained and well equipped to manage such young people.

Alison Gough: Yes, very much so. In working with children and young people, and in the work that we do with young adults in our throughcare services, we always take an approach that involves looking through the lens of the SHANARRI principles.

As we and other organisations have highlighted in our submissions, what is proposed in the bill will have implications. We must ensure that further specialist training is provided and that, through careful partnership working and collaboration, we look at the role of the universal and specialist agencies in the delivery of forensic support and risk management, particularly when it comes to the interface with mental health services and FCAMHS.

The Convener: Kevin Northcott, would you like to comment?

Kevin Northcott: Absolutely. To answer your question, yes, I believe that we are well set up to provide such support. As Alison Gough said, the secure sector has significant experience of working with young people of the age and stage in question.

In my view, the trauma-informed journey is critical. That has been enhanced by the Scottish Government. As centres, we are very much at the forefront of that work. The trauma-informed approaches that we are using in upskilling our staff are designed to work with any human being and are not intended to help with the development of just young people.

Through our curriculum design pathway, Rossie is engaging with Education Scotland on redesigning the curriculum for young people up to the age of 18. On one level, that is very exciting, but it is also conducive to the learning of the young people we are talking about.

The other critical aspect is that, as centres, we have to tease out the expertise of those who have managed such young people for some time. We have been engaging with Polmont and Mr Michie to improve our understanding of that cohort of young people, and we will continue to do that, because they have managed young people in that

setting for some time. It is critical to all centres that we continue to have such engagement.

Claire Lunday: I echo what my colleagues have said. The admission of a 17-year-old who has a very serious index offence is not something that is new to the secure estate. We are well versed in handling such situations and we do so very well. We have had a number of successful transitions of young people leaving secure care and going to Polmont, and we work well with Polmont in order to support those transitions.

However, it is important to take cognisance of the fact that the secure estate and the young people who reside in it are continually diversifying, so the continuum of risk and need is ever expanding, particularly post-Covid. We have seen an influx of very young children with a very high level of need. I would hypothesise that those young children missed a critical stage of early intervention when resources were not available to them. Some of them have experienced extensive harm and their level of need has grown exponentially.

We have expanded at one end, with the admission of very young children with a very high level of care and protection need, and, at the same time, there is the admission of older children who have committed offences who also have extensive needs and have the same rights. We need to consider the fact that there is a very high level of risk to others associated with some of those young people and the offences that they have committed, as well as considering the entire environment and the demographic in the secure care facilities that we feed into.

The Convener: Thank you very much. We will move on to questions from Ross Greer.

Ross Greer (West Scotland) (Green): I am interested in getting a better understanding of some of the issues around transport. Claire Lunday and Kevin Northcott, when it comes to transporting young people to and from your facilities, who organises that? Do you provide any of your own transport services or do you contract third-party providers for transport?

Claire Lunday: There are a few third-party transport providers, which have limited resources. The onus to provide the safe transport to a secure provision—St Mary's Kenmure—is on the local authority that is purchasing the placement. That is generally pretty well managed on the way into the provision, although it is not always done timeously, because we are reliant on a secure transport provider that could be travelling from Portsmouth at 9 am to pick a child up in Glasgow and take them to the other side of Glasgow.

The management of that child in that time can be exceptionally difficult because it has been identified that that child is not safe in the community, and there will be a period in which, unfortunately, they will continue to be managed in the community. The child will know that they are going to secure care later the same day, which intensifies their risk. There are several reasons why children are required to leave secure care throughout the course of their stay—perhaps to attend court, meetings or hospital—and it can be very difficult to acquire transport when it is needed. There is often a delay in that.

Only when it is absolutely necessary, which is usually when a young person requires medical treatment in a hospital environment, do we transport young people using our own staff. Whenever we can avoid that or when there can be a delay in the timing of that journey, we look to the local authority to arrange transport.

I would welcome some discussion about how that situation can be improved, because it is not easily managed for any of the secure providers or the local authorities who place children in our care.

Ross Greer: Before we come to Kevin Northcott, I want to ask about the example that you gave of waiting on a transport provider to come from Portsmouth to move somebody from one end of Glasgow to the other. Is that because there are very specific providers that you think provide the right quality of service, or is there just an absolute lack of service providers elsewhere in Scotland, which is why you need to go so far to find someone?

Claire Lunday: A provider from Portsmouth is probably quite an extreme example, but it is something that happens. More often than not, secure transport providers come from the middle or the south of England to Glasgow in order to transport a child from St Mary's Kenmure to Glasgow sheriff court and back. That is not because there is a lack of providers of secure transport, but because there is a lack of providers of secure transport that is trauma informed and appropriate for children. It is difficult to come by.

09:45

Ross Greer: Kevin Northcott, is your experience at Rossie Young People's Trust similar?

Kevin Northcott: Very much so. There is a reason that the transportation of young people to and from secure accommodation is subject to discussion. It is written in the secure care pathways and standards. It is critical to young people's experience.

We continue to involve young people because of their experience. When you ask any young person about their experience in secure care, they

will tell you that one of their vivid memories is of their arrival or transportation. Part of that is, unfortunately, the experience in secure transport.

As Claire Lunday said, pretty much all the secure care transport providers are England based. Some have offices in Scotland, but they are few and far between. To give an example, sometimes, based on risk assessment, a transport division will travel from London to Montrose to transport a young person to Ninewells hospital, 30 minutes away, and return them via that 30-minute journey before returning to London. That clearly comes at a significant cost.

To answer the other part of your question, we will all be the same in the secure centres: we will always endeavour to transport our young people ourselves where risk allows that. That requires three staff and one of our own personal vehicles. If the risk assessment allows, it might be two staff, and it will very rarely be fewer than two staff. The resource implications of that can be quite extreme, especially when there is an emergency. Therefore, because it is written in the secure care pathways and standards, there has to be substantial discussion about, and substantial decisions have to be made on, the provision of secure transport.

Ross Greer: If anybody else on the panel wants to come in at any point, they should feel free to do so.

I am interested in your thoughts on the proposals that have been made by the hope instead of handcuffs campaign. One of its proposals is for mandatory reporting of any instance of the use of restraint by a transport provider. Claire Lunday and Kevin Northcott—Claire in particular—both said that they try to use providers who take a trauma-informed approach. At the moment, are there any formalised arrangements with the providers that any of you use such that you are confident that, in any instance in which they have had to use restraint, you will be informed upon the young person's arrival or return to you?

Alison Gough: I will reflect on what Kevin Northcott and Claire Lunday shared. As the committee will be aware, there is a working group, led by the Convention of Scottish Local Authorities and the Scottish Government, that involves all the secure care centres, and it is exploring those issues. However, fundamentally, in terms of the pathway and standards and the work of the secure care strategic group that led to them, it is a children's rights issue.

At the point at which the decision is made to deprive a young person of their liberty and at which they are then brought to a secure care centre, the standards that apply to them under the UNCRC in relation to treatment, use of pain-inducing restraint and some of the other difficult situations that we have heard about from young people should be adhered to. Therefore, secure transport requires to be regulated and brought into the entire pathway for children and young people through secure care.

As Claire Lunday explained, the situation is complicated by the commissioning arrangements. It is the local authority's responsibility, so the local authorities commission the transport rather than the secure care centres, which have an overview and analysis of the standards that are applied by the staff who are employed by the agencies that work for secure transport companies.

The Convener: Ross Greer, will you repeat the other part of your question succinctly so that we can get evidence on the reporting element?

Ross Greer: Are the witnesses confident that, at the moment, transport providers will inform them of any incident in which they have used restraint? On the wider point, if we move to a system of more formalised reporting, should the information be reported just to the local authority, or is there a need for it to be collated and reported nationally? That is, should the Care Inspectorate have to be informed of every instance of restraint being used by a transport provider?

The Convener: I ask for succinct responses, please—I have my eye on the clock.

Claire Lunday: Anecdotally, and informally, I am confident that the staff who transported a young person would let you know whether they had been involved in a physical restraint situation. My professional view is that all restraint should be regulated. Further, it makes sense for responsibility for that regulation to sit nationally; I do not think that it is enough for it to sit with local authorities.

Alison Gough: I agree with Claire Lunday.

Kevin Northcott: I would say that, anecdotally, the situation is inconsistent and I do not have full confidence in what is going on. I agree that, if the data is to be collected accurately, the responsibility for that should be at a national level.

Gerald Michie: We have a different contract provision. GEOAmey is the secure transport provider for the Scottish Courts and Tribunals Service, Police Scotland and the Scottish Prison Service. In terms of transport, males and females are treated separately. Children, young people and adults might be in the same vehicle, but the vehicles are cellular, so they would not be together. We have a robust process around any incidents, and any uses of restraint would be fully reported and investigated.

On transporting women and children, we try to do that very directly, so there should not be multi-

drops, and individual risk assessments are made by the provider in relation to transporting children.

The Convener: Graeme Dey has a supplementary question.

Graeme Dey (Angus South) (SNP): I have a daft laddie question. Can you paint a picture of what appropriate trauma-informed transportation is? Can you define it for the benefit of people who do not have an understanding of that?

Claire Lunday: That is a bit of a utopia that does not exist at this point in time, because admission to secure care is not trauma informed—it is a traumatic experience. The decision to admit a young person to secure care is made in order to prevent them from experiencing further trauma. It provides a place of safety and stabilisation, but the physical journey to get there—as well as the mental process of arriving in secure care and adjusting to that environment—is not a pleasant experience for a child.

The process that Gerald Michie just described—which relates to the journey to Polmont—is not trauma informed. Young people who are being transported to secure care are transported in a car that is probably not dissimilar to yours, sitting in the back seat with an adult on either side of them. I would like to think that the adults try hard to engage them in discussion to help them to relax and to inform them of where they are going, why they are going there and what they can expect on their arrival. The driver will stop as often as necessary to allow the young person to use the bathroom, stretch their legs or have something to eat or drink. However, they will still be sitting in a car on a journey—perhaps quite a long one—with three adults whom they have probably never met before. In the best-case scenario, when they arrive in secure care, they will be met by their social worker, who will generally be the only familiar face to them.

Graeme Dey: Why is appropriate trauma-informed transportation not available in Scotland? It does not seem to be a particularly challenging thing to set up.

Claire Lunday: It is not a service that I would like to be responsible for. It carries a lot of risk. Although the financial return is high, if you are transporting a child to a locked environment, travelling at 60mph or 70mph on a motorway, and the child has a feeling of hopelessness or desperation, a lot can go wrong.

Kevin Northcott: Essentially, the core principles of the trauma-informed approach rely on trust, safety, collaboration and empowerment, and the core principle that underlies all of that is relationships. Quite simply, Rossie Young People's Trust believes that responsibility for secure care transport should lie primarily in the secure centres, because we have those relationships, which means that we are trauma informed and can approach the transport issue in a trauma-informed way.

Graeme Dey: The convener touched on some of this earlier, but I want to focus on the physical environments of prison settings and secure accommodation. Some people are concerned about people going to secure accommodation instead of a young offenders institution, but I do not believe that it is a soft option. I have visited Rossie and have been in the secure unit. For the benefit of people who think that it is a soft option, will you outline what is inappropriate about the physical prison setting for young people who have committed serious offences? What is it about the secure accommodation setting that deprives them of their liberty? Is it a secure and appropriate setting?

Kevin Northcott: I have worked with Mr Michie in a prison setting for a number of years, so I can compare and contrast that with my current role. There is a clinical nature and setting to the prison environment, although the prison service has done a lot of work on that over the years, including on the sensory aspect of things such as noise and keys. Things such as that add to the complexity of the needs of the young people who come to secure care.

The environment in secure care is significantly more therapeutic in nature. On the size of the area, the environments are primarily four or six-bed houses with individual rooms with en suites. Residents are separated into corridors; they do not share a room but share a corridor. There is direct access to a living room, a games room, dining rooms and a suite of activities. A number of places have swimming pools and secure gardens. Further, the staffing ratio is almost one to two, but to achieve that in a prison setting is almost impossible because of resource implications.

In our view, having therapeutic intervention work and relational-based work as part of a trauma-informed approach can achieve better outcomes for young people more quickly.

Gerald Michie: We are trying hard to soften what the prison looks like, but, architecturally, it is a prison. For example, today, the five young men who are in our care are in half a gallery in a hall in Polmont—there are 44 single cells, and there are only five of them. The prison is absolutely massive. There are young offenders above them and below them. Prisons tend to be noisy and busy places. The young girl who is in our care is with another three female YOs, but those four young ladies are in an area with 34 single cells. We try to soften the environment in terms of the fashion and fabric of the furnishings that we put in, but prisons are massive. Polmont has a design

capacity of 810. If any of you have visited, you will know that prisons are rather large, busy and noisy places.

Graeme Dey: You indicated earlier that the move to have young people and children housed in the sort of environment that Kevin Northcott described is desirable.

Gerald Michie: Completely. The numbers also suggest that it is the right thing to do. We have had periods when there have been one or two young boys and one female or no females in our care. We are legally obliged to keep their living and sleeping accommodation separate, but, with risk assessments, they can attend activities and education with other people. However, there are so few of them that they might be isolated in prisons, so we need to work hard to stop that social isolation. Being with young people of their own age group in much smaller living conditions and with a much more trauma-informed approach is absolutely the right thing to do.

Graeme Dey: How secure is secure accommodation from the perspective of the public?

Alison Gough: Secure accommodation is as it says on the tin—it is secure, in terms of the physical environment—although all our secure care centres are designed to be as therapeutic and homely as possible, and they are on a much smaller scale than a prison setting. We have fully operational schools, sports, relaxation and recreation facilities, gardens and so on. We have airlock doors and we have security systems to ensure that we have a very good track record.

10:00

The statistics and outcomes in prison settings and other forms of secure care for young people across the UK relating to incidents of violence between young people and situations of serious self-harm, including the extreme tragic outcomes, show that we have a very good track record of keeping children and young people safe, and we have high levels of security that meet the standards that are required. Over many years, we have successfully cared for many young people on remand and subject to sentence through the courts, and we have done so while keeping everybody safe.

The Convener: Thank you. We will move to questions from Ruth Maguire.

Ruth Maguire (Cunninghame South) (SNP): Good morning. I would like to ask about the changes to movement restriction conditions. Do you think that the provisions in the bill go far enough to support the rights of children? Alison Gough, you spoke a little bit about the balancing of rights, so I will come to you first.

Alison Gough: There are mixed views on the provisions at GSC, and we noted with interest the submission from Includem, which you will be considering later on. We have some concerns that what is being considered could lead to some missed opportunities and unintended consequences. Further refinement might be necessary to ensure that we are not creating, by default, a situation whereby we may be unnecessarily depriving young people of their liberty or restricting liberty in some communities, particularly where the onus is on the young people themselves in some of the provisions—young people who are at risk. For example, some young people may have been sexually, financially or physically exploited by others and are then subject to a movement restriction condition. If that is not properly enabled and supported but instead is simply a matter of the young person's own movement being restricted and their not being able to go to certain areas or spend time with certain individuals, that could be very problematic in terms of children's rights.

We also think that there could be a further look at the boundaries and the provisions in relation to what we have described as bridging support, because a lot of young people experience a cliff edge when they move on from secure care. In our experience, it is extremely rare that the type of package involving movement restriction conditions is delivered to a young person when they move on from secure care into an open community setting. At the moment, it really is a cliff edge in relation to how the secure care criteria work with the interim compulsory supervision order or the compulsory supervision order. A young person is subject to full deprivation of liberty one day but, the next day, there is nothing to help to keep them safe. We believe that a good parent who is very concerned about the dangers and risks around their young person will, at times, apply some restriction of liberty in order to keep that young person safe and to protect them. Therefore, we think that there should be a further look at those provisions.

Ruth Maguire: Do you have a view on access to legal aid for children with an MRC?

Alison Gough: I believe that it is correct to have that access. If the state is moving to restrict a child's liberty, they should have that right.

Ruth Maguire: Do any other panel members have views on that?

Claire Lunday: There are occasions when an MRC can work effectively. However, more often than not, at the disposal of our children's hearings system, we are relying on a traumatised and dysregulated child to assume responsibility for

their own regulation. That is a big ask and quite an unrealistic one. If the outcome of that is a return to the children's hearings system, where the consequences of not meeting those requirements may result in an escalation and in further restrictions, we are potentially setting children up to fail in that situation.

Ruth Maguire: Thank you. That is helpful.

Forgive me for not being able to remember exactly who this came from, but something else that was raised in written evidence was the change to considering "harm" done, rather than "injury" caused, and the subjectivity of that. An MRC might be used to prevent a child from causing physical or psychological harm to others. Do witnesses have a view on that change?

The Convener: There are lots of shaking heads.

I am conscious of the time. We are getting some really excellent information, but I ask witnesses to do what they can to make their answers and responses concise. I know that committee members will do all they can to keep their questions as concise as possible.

Kaukab Stewart (Glasgow Kelvin) (SNP): We have had some great and detailed answers already with regard to smaller, safer, trauma-informed secure places for our young people. Do you think that the bill goes far enough in addressing the recommendations in "The Promise"? Sue Brookes, do you have anything to say about that?

Sue Brookes: The key objective for 16 and 17-year-olds is to get them out of custody. "The Promise" also talked about the issue of restraint and the need to move away from using restraint. The Scottish Prison Service is currently moving towards a model of non-pain-inducing restraint for women and young people up to the age of 21. We are training our staff at the moment and are due to go to pilot in the middle of April. We have independent evaluation in place for that process. Staff are very enthusiastic about it and it has been really well supported in collaboration with some of our trade union partners. Restraint is obviously a very sensitive issue, so that is a really positive step forward for us. We will be happy to share our learning with secure unit providers in due course; some are coming to see a demonstration relatively soon. I think that that is another important dynamic of the Promise.

I can also talk about seclusion and isolation. Gerry Michie might want to support me in talking about what precisely is being done at Polmont, but we have gone a long way towards reducing isolation for all young people, not just the children, in our care, and there is some really innovative work taking place in the inclusion unit.

Gerald Michie: We are looking at neurodiversity and speech and language. We build individual management plans and we timetable activity for all the children in our care. Whether they are convicted or on remand—as I said, the majority are on remand—they will have access to purposeful activity, education and life skills, Monday to Friday, from 8 to 5. They have two large periods of learning between recreation, evening activities and a chance to use a gymnasium or outside spaces.

Fife College is our education provider. We have embedded learning by stealth. The young people get vocational training to be joiners or brickies or go into engineering. Education is embedded everywhere, so, whether or not they sign up to education, they are learning things. There is a huge opportunity to learn life skills and have vocational training. We have a programme to get them work ready and give them various different skills for when they go back outside.

If their personal officer does not engage, there are other personal officers, inclusion officers, community safety officers and Barnardo's youth workers who have a responsibility for safeguarding. We build packages around individuals and bring those individuals out so that they have the most meaningful experience that they can have—given that it takes place in a prison setting—and we have had real success.

Kaukab Stewart: Do you get feedback from the young people themselves? What is their opinion? How do you test that feedback?

Gerald Michie: Often, the personal officer of a young person in our care will become a trusted friend, a responsible adult, someone who will advocate for them—I am sure that the colleagues who are sitting next to me will say so, too—and the young person will often go looking for advice from their personal officer.

In the early stages, the young people are often unwilling to engage, but we are determined—we encourage them and have different ways to bring them out. Once they are involved, they are genuinely grateful and many of them benefit from the activities that are available.

Kaukab Stewart: Okay. Does any other witness want to come in on that point?

Alison Gough: The provisions of the bill would give a strong foundation for moving forward with keeping the Promise; however, it will really be about how the bill is implemented and resourced.

Significant issues exist in relation to the bridging support that we were talking about earlier around transitions for young people who are coming into secure care settings from the community and moving on once they have experienced a period in

secure care. It will be about the direction of resourcing in relation to services that promote wellbeing and try to prevent significant harm and risk from arising in a situation where a young person requires to be secured.

A significant piece of work needs to be done around framing and language. During the course of the bill, we have still seen the use of terms such as "recidivism", which is applied to situations involving really quite young children.

We, in the secure care settings, work within a theoretical framework around child development, attachment theory and trauma sensitivity. The way in which we are regulated and registered means that we work to national standards that relate to children's residential school care services. We are registered with the Care Inspectorate and Education Scotland and are thoroughly and regularly scrutinised and inspected. The reports that have been published in recent years are testament to the fact that we have the skills to do this work and are working hard to keep the Promise in relation to our standards for children and young people. However, we have a big job to do around the language that we use in relation to how young people feel about themselves—secure care can still be associated with a sense of punishment and othering, which is not aligned with keeping the Promise.

The Convener: We will move to questions from Michael Marra.

Michael Marra: Earlier, I touched on a point about the financial sustainability of cross-border placements. The bill seeks to further regulate those placements. Do the provisions go far enough in terms of ensuring the welfare of those vulnerable children?

Claire Lunday: The changes in the bill in relation to cross-border placements are necessary given the other changes in relation to young people no longer residing in Polmont. However, the secure estate has to exist in order to make any of those changes.

There will always be a need for cross-border placements with regard to the needs of both the child and the centres. I will give an example of when cross-border placements can be effective. A number of young people—they are quite often from London boroughs—who have been involved in child criminal exploitation come to us. The purpose of a secure placement in Scotland is to break those links to criminality. When young people are associated with criminal networks, a placement closer to home makes breaking those links very difficult, because the criminal networks are well established and able to create opportunities to communicate with and apply pressure on children even when they are in the relative safety of secure provision.

When those children are plucked from a London borough and taken almost to obscurity in Glasgow or Montrose, that severs that tie immediately and almost completely. It allows criminal proceedings to begin elsewhere to address the behaviours of the adults, which is exactly what we should be doing. It creates a bit of respite for the children, who can articulate that they absolutely needed secure care to maintain their safety and sometimes to continue to be alive, as they have been placed in situations in which they have been in grave danger.

10:15

It is very often the case that those young people are able to articulate to their guardians—for English young people, it is their social workers—and to their immediate care providers in our centres that they do not want to return to that environment and that they would like to look for other opportunities and remain in Scotland beyond their secure care placement. In those instances, we can support transitions much more effectively than we can if the young people are returning to London or the south of England.

That type of placement, of which there are many, serves a real purpose in meeting the needs of the children and young people. There are other situations in which placements seem to be more of a quick fix for the local authority, which can potentially create bigger problems by removing a child from positive family networks and associations that they need in order to thrive.

Michael Marra: We had evidence on that point last week. One panel member said:

> "By making it harder for local authorities to place children in Scotland, our hope would be that that would somewhat force the issue of providing more appropriate places in England."—[*Official Report, Education, Children and Young People Committee,* 22 March 2023; c 46.]

In terms of the dynamic of the bill, do you see that change happening in England if we make it more difficult for such placements to happen in Scotland?

Claire Lunday: No, not really. We have been waiting for that change for a long time. A number of years ago—I would guess that it was maybe late 2016 or early 2017, and I had a role in another organisation at the time—I had a visit from the Department for Education in England, which was driving that very agenda. Seven years have now passed and the predicament is becoming bigger, because the issues that children and young people are exposed to are changing. I mentioned the changing demographic of the young people in the secure estate. There has been a real

escalation in child criminal exploitation and child sexual exploitation.

In Scotland, we are still learning about child criminal exploitation. The networks that have been established in London and the south of England are now extending to Scotland and are impacting on young people here. Further south, young people are much more entrenched in those networks and in the associated behaviours and criminality.

The problem is increasing tenfold, so, even if the work that I referred to was to happen now south of the border, I do not think that they would ever be able to catch up with the level of need that young people have.

Kevin Northcott: It might be poignant to point out some data that comes from discussion with commissioning bodies in England. At any point in any given week, between 60 and 80 young people who meet the secure care criteria are in a variety of places—in my experience, that includes barges on rivers and things like that, even though we are talking about young people who meet the secure care criteria.

In Scotland, when those young people are referred to us, we see a child. I completely and utterly understand the political position and agenda, but, for me, if a young person is referred to us, they meet our criteria and we have a vacancy, it is incumbent on us to support that young person and to meet their needs.

I fully agree with and understand the regulations on cross-border placements. I know that the Care Inspectorate has done a lot of work on the regulations and has looked at unregulated placements, shall we say. The fear would always be about the monetisation of young people. The more that you create the right structures, the more other things will perhaps be created that continue to monetise young people. As much as the trajectory of the intentions is correct in Scotland, my fundamental fear is about what we create through unintended consequences.

The Convener: The last set of questions is from Willie Rennie.

Willie Rennie (North East Fife) (LD): This is a question for Alison Gough. You have said some quite strong things about the children's hearings system and about attitudes in the justice system. Could you elaborate on that and say how widespread you think those issues are?

Alison Gough: I refer back to my comments in response to a question from Graeme Dey on the perception that secure care is a soft option. There is a lot of work to do on the language that we use—the words that we think, say and write about children—and on reframing our understanding of the children who experience secure care. Ninety to 95 per cent of the children and young people who come into secure care services come from the children's hearings system. That is their route into secure care. In common with children who have harmed others and have come to us through the justice system, those children have experienced high levels of adversity, disadvantage, exclusion and, at times, discrimination.

There are still misconceptions. We have certainly heard them, and young people who come to stay with us have told us that there is a perception that secure care is a soft option and that young people who are involved in the kinds of difficult situations that they are involved in really should be dealt with through the justice system and punished in some way. There is a fundamental mismatch between people's understanding of the Kilbrandon principles and how we have operated in the secure care setting for decades.

Willie Rennie: I asked that question because, through the bill, we are putting more faith and trust in the children's hearings system. You have identified that your experience of the system is variable. Do you have concerns that the children's hearings system will not be able to live up to our expectations? If so, what do we need to do with the system for it to be able to do so?

Alison Gough: I have confidence that the children's hearings system can adapt in the way that it has for all the decades that we have had it in place. Having worked with colleagues who were at Children's Hearings Scotland when it came into being as our national children's panel, taking over the running of the children's hearings system from the 32 local authorities, I believe that there is an appetite there. I believe that the children's hearings system is on a journey, as are we in secure care.

We need to ensure that everybody, including panel members and the Scottish Children's Reporter Administration, is equipped to respond to the needs that young people have now and that we reframe our response to young people who are in need of intensive support.

Willie Rennie: Do you think that the tools that are available to the children's hearings system should be broadened? There has been talk about perhaps giving it greater powers on restorative justice and so on. How would that happen? What more should be given? I am quite happy for others to come in if they have a view, but I would like to hear from Alison Gough first.

Alison Gough: I think that that should be explored. Way back at the beginning of the children's hearings system, it was envisaged that there was potential for wider involvement of family

and community. It would be beneficial to look at that potential and at other models of community justice and how those can interface with the children's hearings system. In terms of keeping the Promise, the issue is about the totality of the child's life. No child exists without their family or community.

We need to look not just at standard legal powers but at how they are implemented. What kind of orders could be developed through the use of conditions related to CSOs and ICSOs, and how would they be implemented? What is the interface between that and the responsibilities of local authority social work departments?

Willie Rennie: Would anybody else like to come in?

Kevin Northcott: I share Alison Gough's view about having every confidence in the children's hearings system. That said, we deliver training annually to the children's hearings system from Rossie's perspective across the east coast of Scotland. The fact is that secure accommodation was in situ before the pandemic and recommenced last year, but what has been evident—this has been acknowledged by those in the system—is a lack of understanding of the provisions that exist in secure settings and how beneficial they are. That situation will continue this year, and we are worried about those who are delivering an outcome for a young person at a children's hearing having a fundamental lack of understanding of where the young person is going.

I echo the point that the justice approach could be explored, but we need a full understanding of what that would look like to be able to deliver it.

Gerald Michie: Elliot Jackson, the chief executive of Children's Hearings Scotland, visited us last year. Alison Gough said that the organisation is on a journey; some of Mr Jackson's senior team have been into the establishment to hear the user voice, to look at the experiences of young people upstream and so on. We continue to work with Children's Hearings Scotland staff to help them to improve their systems and to engage the user voice.

The Convener: I want to circle back and bring in Stephanie Callaghan, who has a supplementary question on additional support needs.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): I suppose that this is a quite separate question. I noted the comment in the St Mary's Kenmure submission that, more often than not, children are in the centre because of acute stressors, neurodevelopmental impairments and adverse childhood experiences. I would be interested in hearing from Claire Lunday the numbers on neurodevelopmental issues, if she has that information.

Claire Lunday, you have also talked about the way in which children arrive at the centre, and I was just wondering whether you can suggest any additional preparations that might be helpful to other children such as letting them see photographs and pictures of where they will be going, dimming the lights a bit, keeping the noise down and so on.

Claire Lunday: By definition, every young person in secure care has an additional support need. Indeed, being a looked-after young person is, in itself, an additional support need.

Such needs tend not to come alone. After all, you do not arrive by magic as a looked-after child in secure accommodation. Being in such a situation is the result of multiple adverse experiences throughout a child's life that contribute to the person they are, their rate of development, their cognitive ability and so on.

Most of our young people therefore have numerous additional support needs and barriers to learning. Some barriers can be quite easily overcome in a secure environment, where there is an intensive level of support, but it is undoubtedly more difficult to continue that support in the transition back to the community.

There are some steps that we can take to support admissions to St Mary's Kenmure and the other secure care providers, and I think that we have, between us, already touched on some of them. There are lots of things that we would like to do. We have a video of our service—you could almost call it a tour—that is narrated by other young people and that shares lots of the nice experiences that young people at St Mary's will be involved in. For example, it shows what the school is like; it shows what the young person's admission will look like; and it shows people having fun, playing football, going swimming and being in an art class.

We also have a pre-admission meeting at which we try to gain as much information as possible about a young person. When we agree on their admission, the video that I referred to is shared with the social worker in the hope that they will share it with the child. More often than not, though, the child will arrive without having seen it. At that point, we show it to them.

We try to be as kind, empathetic and trauma informed as possible with the young person at the point of admission. It is not uncommon for a young person to arrive in fight-or-flight mode, because the experience is very traumatic, and it can take time to help them begin to feel safe and secure in a new environment with adults who are complete strangers to them. As a result, we take our time with that process and do everything that we can, particularly on their first night, to help young

people to feel safe. All of them receive a welcome box that contains colouring pencils, paper and fidget toys, and we ensure that they have clean and fresh clothes.

In fact, I guess that what we do goes back to Maslow's hierarchy of needs and ensuring that every basic need is met immediately, but it takes a long time to understand the young people, to begin to unpick the trauma that they experienced before their arrival in secure care and to support them through it.

The pre-admission process can often be very difficult—

10:30

The Convener: I am sorry, Claire, but I am very conscious of time and Mr Northcott wants to come in, too. Can you keep your response concise, please?

Claire Lunday: Yes. I just wanted to say that it is very difficult to access information on young people of the quality and at the level that we would like prior to their admission into secure care. Not having that information makes the beginning of their secure care journey more difficult than it would ideally be.

Kevin Northcott: I just wanted to highlight some data on additional support needs. In our secure provision at Rossie, we have 16 diagnosed young people and nine are suspected, and, on our residential campus, we have 10 diagnosed young people and one suspected. We have started on the journey of seeing whether there is a trend or correlation between the suspected and diagnosed situations with regard to admission to secure care and the early intervention pathway.

Stephanie Callaghan: Are you talking specifically about neurodevelopmental issues?

Kevin Northcott: Yes.

Stephanie Callaghan: Okay. Thank you.

The Convener: I thank all the witnesses for their time today. I know that some of the witnesses have to dash off to other commitments.

I suspend the meeting until 10:40 to allow for a change of witnesses.

10:31

Meeting suspended.

10:46

On resuming—

The Convener: Welcome back. We will now take evidence from our second panel on the Children (Care and Justice) (Scotland) Bill. I welcome to the meeting Sheriff David Mackie, who is the chairperson of the hearings system working group at The Promise Scotland; Chloe Riddell, who is the policy lead at The Promise Scotland; Meg Thomas, who is the head of research, policy and participation at Includem; Laura Pasternak, who is the policy and public affairs manager at Who Cares? Scotland; and Kate Wallace, who is the chief executive officer of Victim Support Scotland.

We will move directly to members' questions, and we start with Graeme Dey.

Graeme Dey: I suspect that I know what the witnesses' answers to my first question will be, but I am going to ask it anyway. What are your views on the definition of a "child" being someone of 18 or under, given your experience of dealing with that cohort? Laura, would you like to go first?

Laura Pasternak (Who Cares? Scotland): Our perspective is that the definition of a child being someone who is 18 or under is in line with that of the UNCRC, although we know that the Children and Young People's Commissioner Scotland, for example, supports care-experienced people up to the age of 21 and that our legislation supports care-experienced people up to the age of 26, in line with brain development. I think that that answers your question.

Graeme Dey: Does anyone have anything to add to that, or does it summarise where you all are on the question?

Chloe Riddell (The Promise Scotland): It is important to be clear that we have had some discussion about the fact that we are now treating 16 and 17-year-olds as children. We have heard about that in previous committee discussions. However, it is not suddenly the case that 16 and 17-year-olds are children; they have always been children. We ratified the UNCRC in 1991, the first article of which says that a child is someone up to the age of 18. What we are doing with the bill and the processes to help to keep the Promise is bringing the law into line with what has been agreed and established since we ratified the UNCRC.

Graeme Dey: This question is probably for Sheriff Mackie. Given that, as we have just heard, the bill is about changing our approach to 16 and 17-year-olds, is there an argument for introducing elements of restorative justice into the children's hearings system, beyond what is in the bill?

Sheriff David Mackie (The Promise Scotland): There really is. I agree with that. The starting point is recognition that the children's hearings system is not a criminal justice process. It is rights based and is fundamentally concerned with taking a welfare approach to the interests of the child who is referred.

With that background and starting point, how do we address the needs of the victims of crime? The rule of thumb in relation to sentencing in the criminal justice system is that sentencing addresses retribution, rehabilitation and reoffending. What will not happen so clearly through the children's hearings system is any form of outright retribution. However, a restorative justice process offers the opportunity to the victims of offending behaviour—those who have been harmed by the behaviour—to engage in the process and, in many cases, to gain some satisfaction from it.

Therefore, I agree that the promulgation of restorative justice services in the children's hearings system, as well as in the criminal justice system, is something that should be promoted.

Meg Thomas (Includem): I agree with what Sheriff Mackie has said. We support young people who have been harmed by other children, but we also support children who harm. Young people who have caused harm often want an opportunity to make amends in a way that is not retributive but that promotes restoration of relationships, because often the people whom they have harmed are people in their communities and people whom they interact with, and there are knock-on effects from the inability to restore relationships. Therefore, we strongly advocate for restorative justice processes in the children's hearings system.

Graeme Dey: Does anyone want to add anything?

Kate Wallace (Victim Support Scotland): From the point of view of Victim Support Scotland, there are two key issues. One is that we ensure that children who have been harmed or who are victims are free to choose and that their choice about whether they want to be involved is paramount. As you will have heard in previous evidence sessions, it is also important to note that, at the moment, the lack of information sharing would make that process pretty much impossible. People who have been harmed by children or young people do not get any information at all about the case, so it is hard to see how that could work without significant change.

Graeme Dey: However, you would obviously welcome such change.

Kate Wallace: We work with some young victims who actively ask for a restorative justice approach—provided that they have free choice and that it is a victim-centred approach to restorative justice. Victims get very nervous when they see it as being about softer justice, if you like, for perpetrators. It would help if we were to ensure that we take time to design a restorative justice system that is, from the start, clear about being victim centred.

Stephen Kerr: Would the bill bring Scotland into line with the UNCRC and the European convention on human rights? I suppose that I am looking for a straightforward yes or no answer. Is there not a straightforward yes or no answer?

Laura Pasternak: I do not think that I can give you a straightforward yes or no. For the most part, the bill would do that, and it would be a massive step forward in bringing our criminal justice system into line with the UNCRC in terms of increasing the maximum age for referrals to the children's hearings system and the abolition of detention of children in young offenders institutions and prisons.

A couple of tweaks to the bill would make it more compliant with the UNCRC and the European convention on human rights. I hope that we can discuss that during the question session, particularly in relation to age. The financial memorandum to the bill states that the age of 17 and a half would be the cut-off point for referral, but we know from the United Nations Committee on the Rights of the Child's general comment 24 on child-friendly justice that the relevant date in human rights standards is the date when the harmful behaviour happened. Therefore, if the processes are not in place in time for the person to go through the children's hearings system before they pass 18, they should still be dealt with through the children's hearings system. A few tweaks need to be made here and there to make the bill—

Stephen Kerr: So, the process should be appropriate to the age at which the offence was committed or is alleged to have been committed.

Laura Pasternak: Exactly.

The other concern that I have is about the lack of reference in the bill to rights to independent advocacy and to legal representation. There are various points in the bill where those rights need to be made clearer. We need to ensure that children who are going through the children's hearings system are involved in the decision-making processes with the support of an advocate, that they can understand the offence grounds or welfare grounds that are being put to them and that they can understand how to instruct a solicitor to ensure that their rights are upheld. Those are key areas that could be improved to make the bill more UNCRC compliant.

Stephen Kerr: That is helpful. There was not a yes or no answer after all.

Meg Thomas, do you want to comment further?

Meg Thomas: No. I fully support what Laura Pasternak said in relation to legal issues. I will also

highlight the movement restriction condition. At a number of points in the bill, there is no clarity about the right to legal representation. That needs to be considered.

I welcome the provisions that are in line with the right to recovery from trauma. The move to place children in secure care rather than in young offenders institutions will go a long way towards meeting that obligation under the UNCRC.

Kate Wallace: There is, under the bill, a challenge with the rights of victims—in particular, children who have been harmed by other children. The bill is focused on the rights of the child who has harmed and is not so much focused on the rights of the child who has been harmed. That needs to be addressed. I refer to the point that I made about the lack of information. As others have said, it is difficult to see how the right of children who have been harmed to participate in proceedings can be fulfilled. There is also a question mark over the right to recovery from trauma for children who have been harmed. There is a bit of work to do on that.

Chloe Riddell: I agree with Laura Pasternak's broad overview. "The Promise" was clear about a child-friendly approach being taken in youth justice. We know that some 16 and 17-year-olds and younger children will still go through the criminal courts. I do not propose that that should be addressed in the bill, but it is important to recognise that we still have, within the adult criminal justice system, some inappropriate structures for children that should be addressed.

As with all our legislation, it is important to uphold children's rights not just in consideration of the bill, but in its implementation. The bill has significant resource implications and we need to consider not just the changes that it makes to the children's hearings system but the changes that it will bring about for our colleagues in local authorities and the police. I am sure that you have heard from other witnesses that children's rights will not be upheld in implementation unless the significant resource implications are addressed.

Stephen Kerr: Those are implications for human resources and the infrastructure itself. The infrastructure is not right.

Chloe Riddell: Yes. That is the case in terms of availability of support services. However, we know that 16 and 17-year-olds have particular needs that younger children might not have—for example, in terms of housing, transport and what we have discussed on restorative justice and early and effective intervention. Therefore, we need to ensure that the supports are in place to uphold those children's rights; otherwise, we will just be making legal orders in the absence of support.

The hearings system working group that Sheriff Mackie is chairing, which is facilitated by The Promise Scotland, is considering some of those points. We would be happy to share a bit more about the group's work in the meeting. However, one of the primary things that the group is considering is how we ensure that a redesigned children's hearings system and the changes that are set out in the bill are compliant with the ECHR and the UNCRC.

Stephen Kerr: There is a lot to unpack in what you have said. I am sure that other colleagues will ask about it.

The Convener: Questions on some of those threads are coming from colleagues.

Stephen Kerr: "The Promise" is explicit that under-18s should not be placed in prison-like settings, because they are considered to be deeply inappropriate for children. Clearly, that would include secure settings such as those that are specified in the bill.

Chloe Riddell: "The Promise" is clear that young offenders institutions are inappropriate. There are broader discussions about secure care that I am sure will be picked up. We welcome the absolute clarification that no children should be placed in young offenders institutions.

Perhaps Sheriff Mackie would like to pick up on that.

11:00

Sheriff Mackie: I agree with everything that has been said so far. Whether or not we are ECHR compliant or, especially, UNCRC compliant is more a matter of practice than just a performative provision in a piece of legislation. That is particularly apt in relation to older children. It is all very well having 16 and 17-year-olds coming into the children's hearings system, but we do not want there to be a cliff edge for people at the age of 18, with services being withdrawn or unavailable. It is difficult to find a legal way for that gap to be bridged. As Meg Thomas said, it will be bridged by ensuring that adult services are accessible to older children who are going through the children's hearings system and who can be supported beyond the age of 18—not necessarily through a court order or a children's hearing order, but with services that they want and need and that are available to them. A great deal depends on practice and attitude as much as it depends on having provision set in law.

Stephen Kerr: There are many other things that we could talk about, but I should probably—

The Convener: On the thread of children's hearings, that moves us nicely on to questions from Willie Rennie. Thank you, Stephen.

Willie Rennie: Perhaps Sheriff Mackie would like to explain a bit more about his work on the working group. You perhaps heard some quite strong words in our earlier evidence session about attitudes within the justice system and among some people in the children's hearings system. How would your reforms address those issues? Could you tell us a bit more about that?

Sheriff Mackie: I have to qualify everything I say by explaining that we have not yet arrived at final recommendations and there is a limit to how much I can disclose. Our interim report on emerging themes gives a strong hint as to the direction of travel.

We imagine that children's hearings will be strengthened in a number of ways to meet the needs of young care-experienced people and to avoid their having repeatedly to tell their story to anonymous adults who are about to make big decisions about their lives. We are looking for continuity—at least, in terms of who chairs hearings. That desire for continuity exists, in any event, for better-quality decision making and decision writing. One could reasonably anticipate the aspiration to have a permanent chair, who can be there for the child throughout their journey in the children's hearings system. That is one area that we are addressing.

We are devoted to adhering to the Kilbrandon principles and to restoring the notion of the children's hearing as a non-adversarial inquisitorial process at which the only issue that the tribunal has to decide on is what is in the best interests of the child. Nobody is so naive as to think that there will not be competing views as to where the child's best interests might lie. Indeed, there might be some quite strong competing views. Nonetheless, that would be the single objective. How that all operates will depend a great deal on what we hope will be a strengthened, better-qualified and more competent chair.

One important thread running through all this is the notion of the child's plan. We recognise that the children's hearings system sits within the much wider context of a child protection regime, and we will be making a strong statement about that. Before a child arrives at a children's hearing, there should be a child's plan, and a lot of work should have been done with the child and family long before they reach the hearing.

Rather than have the hearing as a fresh starting point for decision making, it would be important to have continuity of decision making, recognising the expertise that will already have been involved in work with a family, which includes looked-after care reviews, child protection meetings, teams around the child and so forth. That expertise should be drawn on and the thread maintained through the whole process, so that the child's plan becomes central to decision making at the hearing.

I could go on at some length about the ideas that we are coming up with, but those are some of the important threads that have been emerging, which I hope will give you the sense that our recommendations will lead to a much strengthened and more robust tribunal in the form of the children's hearing.

One final point in relation to Mr Rennie's question is about implementation of orders of the children's hearing and accountability. Again, although we recognise the need for the national convener to have an enforcement role—nobody is suggesting that that should change—we are desirous of creating a more immediate response to the needs of children and families when orders of the children's hearing are not working well or are not being implemented as people expected. We therefore anticipate greater oversight, probably through the chair, of the implementation and conduct of orders.

Chloe Riddell: It might be helpful to talk briefly about the process in the working group. The group is comprised of representatives from Children's Hearings Scotland and the Scottish Children's Reporter Administration, with the Scottish Government performing an observatory role and The Promise Scotland facilitating and participating in the group, which is chaired by Sheriff Mackie.

The process has been quite long. We have had about a year of broader engagement with more organisations than are on the group, including the police, social workers and all sorts of other organisations, and we are now in a period of deliberation. The recommendations will be published in May, so it might be helpful for the committee to have the report in advance of stages 2 and 3 of the bill.

In terms of the process, it might be useful—

Willie Rennie: Could I just ask one follow-up question? That all sounds eminently sensible so what is the hard bit? What will be the most challenging aspect of what you have described?

Sheriff Mackie: The most challenging aspect might be in the administration and the processing. We imagine, for example, that hearings will take longer than they do at the moment. Much more care will be taken in the conduct of hearings and in offering the child and the panel members opportunities to reflect and confer and so forth. That is one thing.

Capacity might also be an issue, because 16 and 17-year-olds coming into the system will undoubtedly challenge the system's capacity. Our ambition is to reduce the number of children and families who come into the children's hearings

system in the first place, hence the emphasis on the wider child protection regime contributing to the call for more and better services to support families.

We are therefore effectively adding to the call for greater capacity and early support, as well as for social work services.

Willie Rennie: If those things do not arrive, could we see longer waiting times?

Sheriff Mackie: It is difficult for me to answer that. Logically speaking, it might happen, but the answer depends entirely on how processes are developed and devised to respond to recommendations and changes that might be coming through. Yes, if we do not reduce the numbers and increase the capacity of the system to cope with the larger numbers, logically speaking, that would lead to longer waiting times. Even under the current system, with the modelling that the SCRA has done on the potential increase in numbers, there is an expectation that we will need a number of additional panel members to cope with the increase in volume and capacity. It is therefore probably logical to say that, yes.

The Convener: Graeme Dey has a brief supplementary question.

Graeme Dey: Thank you, convener. I just want to pick up on that point. What is the average time at the moment, and what does the modelling show that it could become?

Sheriff Mackie: At the moment, the length of time it takes for a referral to be processed from the very beginning through to completion is about eight and a half months. That is an average time. However, far too many children are lingering in the children's hearings system for longer than necessary, and sometimes for years. Part of our ambition and aspiration is to improve the quality and the gravitas of the tribunal and to ensure that the decision making is truly effective.

Remember what I said about the child's plan—it should have a clear exit, so that any child who comes into the children's hearings system has some kind of understanding of where the process is taking them and what their exit from the system might be, if not an actual date, although that is not really what I mean. Part of our aspiration is therefore to reduce the length of time that children are kept in the hearings system.

Graeme Dey: Sitting in there may be the child victims—or the alleged victims—in all this. They could wait eight and a half months for justice, which they may not see completely in the end. By what amount, roughly, does the modelling suggest that the numbers could increase?

Sheriff Mackie: I do not have figures that I can give you—I do not know whether anybody else has.

On the increase in numbers resulting from the increase in age, we have been told by the SCRA that, based on its modelling, the system can expect something of the order of 2,000 additional cases, of which the majority are likely to involve offence-based grounds. That is as much as I can tell you. Those are very broad figures that I am holding in my head, but that is broadly what we have been told to expect.

Graeme Dey: What would 2,000 cases compare to currently? What percentage would that increase be?

Sheriff Mackie: I am afraid that I cannot answer that—I do not have the information.

Graeme Dey: Perhaps someone could write to us with that information.

Laura Pasternak: I have some information from a parliamentary briefing. In 2020-21, there were proceedings against 595 children, aged from 16 to 17, in a criminal court. It was estimated that there would be an increase from 730 to 1,000, with 350 additional hearings per year.

The Convener: This might seem to be a bit of a shift in approach, but we will move on to some questions from Ross Greer.

Ross Greer: I am interested in hearing the witnesses' thoughts on transport to and from secure accommodation, in particular, for all the young people we are talking about. You may not have direct experience of that, but, if you do, I would be interested in hearing about it.

The hope instead of handcuffs campaign made the point that, while we have been on a journey of gradually increasing standards, regulations and inspections of secure accommodation itself, transport has been missed out. There have been instances of what the campaign believes to have been inappropriate use of restraint. It proposes, among other things, a mandatory system of reporting of every incident of restraint and seclusion.

In the first instance, I am interested in hearing whether anybody has any reflections on the current state of play on transport provision to and from secure accommodation. We heard from the previous panel about the basic logistical challenge of even trying to get a transport provider at all and about having to get people from the south of England to come up to Montrose to collect a young person and go to Ninewells hospital, which is 30 minutes away. If anybody has any initial thoughts on that, it would be very helpful to hear them.

The Convener: I see that Laura Pasternak is nodding—do you want to come in first, Laura?

Laura Pasternak: I watched last week's evidence session, so I thought that you might ask that question.

We would support the recommendation for mandatory reporting. At Who Cares? Scotland, we provide independent advocacy to various secure care centres across Scotland, and in the past year we have consulted with some members in secure care regarding their transport to that care. In general, the comments concerned the approach to entering the centres and the private transport providers that were commissioned by local authorities to take people to secure care.

Several young people were handcuffed throughout the journey. They spoke of journeys of up to eight hours to get to secure care. There was an emotional response from a lot of the young people when they were asked whether they had known why they were going to secure care, whether they had understood the reasons and whether they had known where they were going. There was a running theme of deception in what we heard from those young people: they had been lied to about where they were going or why.

One anecdote struck me, from a young person who woke up on Christmas eve when a staff member came into their room. The young person told us:

"He said do you want to go to McDonalds? I said, 'Sound man, let's go'. I put my best tracksuit on. On the journey there, he asked me 'what are you getting?'. I said, 'A Big Mac ...' We were on the M8, then he passed by McDonalds. I said to him, 'McDonalds is that way'. He said, 'You're going to secure mate.'"

That is a striking example that highlights the damaging and traumatic experience of not being aware of the circumstances that you are in and a system in which things are done to you, and the secure care pathway and standards not being upheld. It comes from the consultation that we did last summer.

11:15

As recently as last week, one of the advocates told me that young people continue to have such experiences. There was a young person who found out that they were going to secure care only when the car drove up to the garage entrance to the centre. Secure care standards 11, 13 and 14 are not being upheld: a young person is supposed to understand why they are going to secure care; they are supposed to have somebody they trust with them during the transport; and they are supposed to know the details of where they are going to be staying. We heard about incidents of people not being given toilet breaks on their journey, not being given food to eat and feeling unsafe because of the speed at which the cars were going.

We are hearing about allegations of violations of article 3 of the European convention on human rights. When we are talking about someone being taken somewhere where there will be a severe interference with their article 8 right to family life, we need to make sure that their rights will be protected not just when they are at the secure centre but on their journey there as well. We are really concerned about that, and we want the bill to do anything that it can to better protect rights on the way to and in secure care. I hope that we can discuss that more later. We are really interested in that.

Ross Greer: Thank you. That is powerful evidence, and I am glad that you shared it with us.

On the specific recommendation about mandatory reporting of any incidents of restraint, I would be interested to hear thoughts on what route that mandatory reporting should take. Should it go from the provider to the local authority? Should the provider be mandated to report not just to the local authority but to the Care Inspectorate? Should there be mandatory reporting to the secure accommodation centre? Where should that sit? Should it rest with the individual institution concerned—in other words, the secure accommodation provider—or should it be at local authority or national level, or somewhere else that I have not thought of?

The Convener: Laura Pasternak and Chloe Riddell seem to be keen to respond.

Chloe Riddell: Your question points to the existence of a broader issue. There are some policy issues there, but there are some things that absolutely should not be happening in practice that could be addressed immediately, without legislation.

Quite a lot of work is being done. There is a joint Scottish Government and COSLA group that is looking at secure care transport and the redesign of secure care and what that might look like.

It is really important that we do not continue to work in silos, whereby we think about secure care transport in one place, secure care in another place, young offenders institutions somewhere else and children's hearings somewhere else again. Those are all part of the same thing, and it is often the same children who are involved.

"The Promise" stated clearly:

"Scotland must strive to become a nation that does not restrain its children."

We know that we are quite a long way away from that. There is a broader issue, which is how we

record instances in which a child has been restrained, whether in an education setting, in secure care, in a residential children's home or in secure care transport. The forthcoming Promise bill—the Government implementation plan has identified that there will be another bill—might be an opportunity to look at consolidating some of the legislation on restraint and reporting. However, it is really important that we do not look at that as a separate issue and that we consider it alongside all the issues that we are discussing today, such as what the attitudes and values are when it comes to how we treat children, how we uphold children's rights, how they access their rights, and how they know what their rights are and what to do when those rights are not being upheld.

The issue that you are describing must involve a cultural change. It cannot be fixed simply by aligning legislation.

Laura Pasternak: I agree with that. We need to look at the Promise and the trajectory that we are supposed to be on. "Plan 21-24" refers to there being well communicated and understood guidance on restraint. It is 2023. When are we going to get that guidance?

The committee that considered the Children (Equal Protection from Assault) (Scotland) Bill in 2019 said that it did not think that that bill was the appropriate vehicle to look at guidance on restraint. If the Children (Care and Justice) (Scotland) Bill is not the appropriate bill to do that, what bill will be?

I think that, with this bill, an opportunity has been missed to consider how we can have less ambiguous guidance on restraint to ensure that there is no ambiguity in practice and that rights are upheld. I mentioned articles 3 and 8 of the ECHR. We are also talking about articles 19 and 37 of the United Nations Convention on the Rights of the Child. If the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill is to be reintroduced in Parliament, we want to get the provisions on restraint right in the Children (Care and Justice) (Scotland) Bill.

Ross Greer: I have one brief question for the whole panel, following on from what Laura Pasternak just said about the bill. There are several options: the group that is being led by the Convention of Scottish Local Authorities might create guidance to put into the bill; there might be ministerial powers in the bill to create regulation through secondary legislation; or there might be primary legislation in the future. Does anyone have any particularly strong views on how we should address that? The evidence that we have received shows that there is a broad consensus about the need to address it. There are multiple options and we do not have to choose just one. Does anyone have a strong view on an option or options?

Laura Pasternak: I think that whatever could happen soonest would be best, and I bow to your judgment on that. Young people have been waiting for that, because the most recent guidance comes from 2003. We should do whatever could happen soonest.

The Convener: There are lots of nodding heads. Meg Thomas and Sheriff Mackie want to come in.

Meg Thomas: Regardless of what we do, it needs to be put on a legislative footing. We already have evidence that guidance on school exclusions, for example, is treated as guidance only and that there are lots of anecdotal accounts of young people being—for want of a better word—illegally excluded from school for a variety of reasons. There was concern that the guidance on the use of restraint in schools was guidance without any legislative footing. Regardless of the approach, it must be legislative in order to protect children's rights.

Sheriff Mackie: To pick up on that point, I think that it would be desirable for the principle to be embedded in legislation. It may be that the detail on transport could be picked up in schedules or in secondary legislation, but I think that the fundamental principle that the child's rights should be upheld should be embedded in fundamental legislation. If this is the opportunity to do that, the opportunity should be taken.

The Convener: Thank you. We will move on to questions from Stephanie Callaghan.

Stephanie Callaghan: I am interested in victims and I am wondering what you feel would be the impact of the bill in its current form for child victims.

Kate Wallace: We have spoken to victims about the bill and it is quite challenging for some of them, particularly for victims of more serious offences.

We have heard feedback about moving children who have committed serious offences, such as murder and serious sexual assault, out of young offenders institutions and into secure accommodation. That is a concern. Victims who are in secure accommodation at the moment because of serious welfare concerns are worried that they are going to be put at risk if serious offenders are placed in secure accommodation with them. They would like to know what is going to be put in place to safeguard them there, so they are not put at further risk.

I made the point that the lack of information about a case when the person who has caused the harm is a child is really difficult. What we are talking about means that that will happen more

often to more people; we have just heard the numbers being discussed. That will be pretty difficult for some people.

We also want to make a point about movement restriction. When a movement restriction order is imposed on a child due to the threat of physical or psychological harm that they pose to an individual but the person who is intended to be kept safe by that order is not fully informed of the conditions or of any breaches of those conditions, there will be significant problems. We do not want to see something that happens in the adult system, which is that victims feel that the responsibility for monitoring those conditions falls on them. If they do not have the information to do that, they cannot, but they cannot effectively plan for their own safety in the absence of that information. I know that the committee heard from others last week about the need to put more around movement restriction into the bill, because it is pretty woolly on that at the moment.

Some things that were raised in the consultation have not followed through into the bill in the way that we would have liked, in terms of detail. In relation to information provision, for example, if you are offended against by an adult, you can opt into a victim notification scheme in order to get information if someone has escaped or absconded from prison. You are also entitled to know when they are released. However, if, for example, you have been subjected to a serious sexual assault by a child or young person who ends up in secure care and goes through that route, at the moment, you will not be informed about when they leave that secure establishment. That will be very difficult for a lot of people, which I know from the types of phone calls that we get to our helpline from people who are in extreme distress about exactly that type of thing.

A number of issues need to be picked up on, including the fact that more detail needs to be put into the bill to safeguard victims and their rights. I also spoke earlier about the balance of rights and how that is out of sync.

Stephanie Callaghan: That is helpful. I will ask you about that balance in a minute. For now, I wonder whether Sheriff Mackie or Chloe Riddell wants to say something. Last week, we heard that only 14 per cent of victims respond to the offer of information. Clearly, there needs to be research into why that is, because the people we spoke to did not have the information behind that. Could the working group look into that, or should it be looked into somewhere else?

Sheriff Mackie: That is very much a matter of practice in the children's hearings system in relation to the way in which the reporter engages with the people who have been harmed by the conduct of others. Kate Wallace's answer was very forceful. I agree with everything that she said, but it highlights the extent to which it is difficult to generalise about victims in court. In many cases, the distinction between the perpetrators of behaviour and the victims of behaviour is not always clear cut; the people who come before the system are not always neatly categorised.

In relation to the hearings system itself, I touched earlier on the possibility of restorative justice processes coming into play. That would be a process whereby the victims, or people harmed by the behaviour of others, could have direct engagement and an opportunity to participate in the process.

Beyond that, it is probably more a matter of practice in relation to the way in which the reporter manages cases and engages with not only the child who is the subject of the referral and their family but also the individual who might have been harmed by the conduct of that person.

Stephanie Callaghan: Do you feel that there is a need for a bit more research to understand why only 14 per cent of those victims respond?

Sheriff Mackie: I do. It would definitely be desirable to have a proper understanding of that.

The point that I was just about to make is that I would not expect it to be devolved entirely on to the shoulders of the reporter. It perhaps indicates a need for other supports and services.

We have touched already on the availability of advocacy services for children and young people who are brought into the children's hearings system, but it may be that those who are the victims of such behaviour would benefit from that sort of advocacy with a small "a", or from a voice to speak on their behalf or to make representations and support them through a process. It exists already in a patchwork way and, in a perfect world, for example, in relation to domestic abuse. One of the most effective supports that is available to victims of domestic abuse is the provision of advocacy support from the very beginning. It would be worth exploring and investigating the notion of some degree of advocacy support.

11:30

Stephanie Callaghan: That is really helpful, and it goes back to Kate Wallace's earlier comment about balance and about children who have been harmed having a right to recovery and having agency. You also said that restorative justice has to be victim centred. Could we add anything to the bill that would support that?

Kate Wallace: Specific wording could be put in to make that absolutely clear. For example, there could be risk assessments on restorative justice to

ensure that children are not potentially being placed at further risk. As the committee will be aware, concerns have been raised about that within the adult process.

A lot could be added to the bill on information provision. Although we welcome the wording about people having the right to request information, we know that, in reality, they are not given information about their individual cases. That needs to change. It might well be driving that 14 per cent figure, because, when people know that they will not get information about their own cases, they ask, "What is the point?"

I could say quite a bit—probably more than I have time to do here—about what could be added to the bill.

Stephanie Callaghan: We would really welcome a further submission from you with that detail, which it would be helpful for the committee to see.

The Convener: Thank you. We will move on to questions from Michael Marra.

Michael Marra: I want to ask about cross-border placements, which the bill seeks to regulate. Do its provisions go far enough towards doing that? Will you outline the complexities that you currently experience in dealing with such placements?

Perhaps Meg Thomas could start.

Meg Thomas: Is that because I made eye contact with you, Michael? [*Laughter*.]

Cross-border placements are always fundamentally difficult. It is hard to support or to see a circumstance in which removing a child from their community, connections and family relationships supports their right to a family life and their other rights. However, it is a really complex landscape. The findings of the care review in England will need time to take effect. In Scotland, the reality is that we do not have a say in the legislative decisions that are made in other home nations in relation to children.

At Includem, we have first-hand experience of supporting young people from Scotland who have needed a secure bed but have been unable to access one because such beds have been full with cross-border placements. Those young people end up in Polmont instead, in really inappropriate—and, in some cases, tragic—circumstances. As with everything, the problems are about implementation and resourcing.

We are really strong advocates of providing community-based support where possible. Let us ensure that young people are not in secure care or young offenders institutions when we have the capacity in our community systems to support alternatives to remand, which is sometimes the situation that young people find themselves in when they go into secure care.

Again, we cannot regulate for what happens in England and Wales that results in children coming across the border. However, the suggestion is that we need far more community resources to ensure that those children can be held safely in their communities instead of having such extreme distance and removal from their family relationships.

Michael Marra: Thanks, Meg. Kate, would you like to come in?

Kate Wallace: The point that I would make about such placements from a victim's perspective is that those represent another situation in which a lack of information is unhelpful. In an adult context, there are provisions for victims to be notified when people who have harmed them either are moved out of the jurisdiction or, crucially, are returning to the community. We would like to see similar provisions in the bill, too.

Michael Marra: Are there any other comments from the panellists?

Laura Pasternak: If we are really serious about keeping the Promise, we need to acknowledge in the bill that cross-border placements have to end—they are not sustainable. When the 2022 regulations from the Scottish Government came out, effectively converting English deprivation of liberty orders into the compulsory supervision orders that we have here, we were promised that there would be a framework for cross-border placements in the bill, but what is in the bill feels like a repetition of the guidance. It is not as radical as I expected, given that we are trying to put an end to cross-border placements.

Meg Thomas covered the extreme risk that children in Scotland on cross-border placements experience. They are further away from their family support networks and communities, which affects their right to a private and family life. However, they are also unable to access the same rights as care-experienced children from Scotland can access. Our advocates are seeing that day in and day out. There is a kind of two-tier system for children in Scotland that is completely contrary to the fundamental principle of the universality of children's rights. When the bill is passed, we will almost be legalising a process that will put us in contravention of the UNCRC. A lot more thought needs to be given to cross-border placements in the bill.

I echo Clan Childlaw's comments last week. Its representatives had specific concerns about the increased use of English deprivation of liberty orders for cross-border placements, because the children are being held in unregulated settings in

Scotland, where the deprivation of liberty is not lawful. In 2020, there was an Equality and Human Rights Commission case against NHS Greater Glasgow and Clyde and HC One Oval Ltd because care homes were unlawfully detaining adults with dementia, in contravention of the law. The whole process was really undignified. We need to learn from our mistakes and not allow in Scotland the unregulated deprivation of liberty of children who are not from Scotland.

Michael Marra: The basis of your desire to end cross-border placements is about maintaining the right to a family life—is that correct?

Laura Pasternak: Yes.

Michael Marra: The previous panel expressed real concern about that. Its expert opinion was that it is sometimes necessary or advantageous to put children at a distance from some of the negative influences on them, which gives them a chance to have a restart and a reset. Could you reflect on some of that evidence?

Laura Pasternak: I did not listen to the evidence this morning, but I am sure that, in some circumstances, that can be more appropriate.

I would make a general reflection on the bill. I was going to talk about this in relation to compulsory supervision orders. We need to think about a contextual safeguarding approach whereby the onus is not on the child to remove themselves from the harm but on the child protection systems to rally around the child and think about what they can do to make people and places safer for the child. What interventions can they put in place—

Michael Marra: I suppose that that goes to the heart of my concern. Some of the evidence that we have received seems to indicate that, by removing that option, we will somehow make a change in England. As I said to the previous panel, we were told last week that the hope is that making it harder for local authorities to place children in Scotland will somehow force the issue of more appropriate places being provided in England. However, at least one member of the previous panel said that they did not believe that that would happen. In order to protect and enforce the rights of young people in England, are we not right to have some form of backstop option that allows young people to come to Scotland to be safe?

Laura Pasternak: Yes—that is the short answer. As long as children who are not from Scotland are coming to Scotland, we must ensure that their rights are being upheld as though they were from Scotland. There cannot be any distinction there, but that comes with resource implications—

Michael Marra: But that is not ending cross-border placements, which was your original position.

Laura Pasternak: No, but no plan has been set out for how the Governments will co-ordinate to try to end cross-border placements, which is implied in the Government's implementation plan for the Promise. I had expected to see some development in the bill, but I am not seeing that, and I am therefore not convinced that the practice is going to end. If the idea is to end the use of young offenders institutions and put more young people in secure care, I do not think that that is sustainable, given how, as was mentioned last week, 50 per cent of placements in secure care are cross-border placements.

Michael Marra: That was really useful. Do you want to come in, Chloe?

Chloe Riddell: It is not easy to give a quick answer to that question, because multiple things are going on.

The Promise was really unequivocal about the monetisation of care and, indeed, contains very clear statements about Scotland stopping the selling of care placements to local authorities outside Scotland. That could happen in various ways. For a start, Governments could work together to implement the recommendations of the care review in England, which, I think, include the development of regional collaboratives to make plans and provide homes for children.

Some of this is also about our work and practice in Scotland, about ensuring that secure care is the right place for children to be living in, and, in a lot of cases, about helping children and their families a lot earlier so that we do not need to resort to such care. It is also about ensuring that the rights of children in secure care, regardless of where they are from, are upheld, which will involve providing help and support beyond the placement and co-ordination between Scottish and English local authorities to uphold children's right to mental health and trauma recovery support.

The committee has already heard about transitions and what happens when a child reaches 18. How is information on a child's support needs shared between two local authorities? We also need robust provision to ensure that regulation and support are in place.

I absolutely agree with Laura Pasternak's comments about contextual safeguarding. We need to discuss what it might mean for a child to be removed from a particular situation, but that is not a long-term option. As a result, we need a much more robust understanding of child protection processes and what our response should be to changes around, say, child sexual exploitation, child criminal exploitation, trafficking

and grooming. We must ensure that all our decision makers, not just those involved in the work of the hearings system working group, are alert and alive to the risk of other things happening in a child's life.

In short, this is a really complex and complicated issue that does not have any quick fix, but there is certainly a lot more work to be done on the co-ordination between Governments and the upholding of rights of children in secure care. We should not be putting the onus on the child to protect themselves; we should be looking at what else is happening in their lives.

Michael Marra: What we have heard from St Mary's Kenmure and the Good Shepherd Centre indicates that they are reliant on the higher-level cross-border fees to pay for Scottish children. Is the panel concerned about the sustainability of those organisations? I see Chloe Riddell nodding, but what about the other panellists?

Sheriff Mackie: That does concern me. I echo Chloe Riddell's point about keeping monetisation out of the care system, as it can be a distorting influence.

The underlying principle is that children who are brought into Scotland on these cross-border transfers do not arrive with a sort of diplomatic immunity that keeps them within the English system. In other words, they become our responsibility. If we accept that principle, everything that Chloe Riddell has said makes sense. We need, first, to develop serious partnership working with agencies that want to make these transfers, to ensure the care of the children and, secondly, to address the children's needs once they are here. That might well involve their family contacts, their particular circumstances, their personal mental health needs and so on. We cannot just act as some sort of store for these children; they become our responsibility and part of our system, and our system will respond to them.

If we recognise that principle, the services and agencies involved should respond. We have done this sort of thing with unaccompanied minors coming into Scotland. Indeed, we are doing quite a good job on that front, and we should take the same approach and apply the same principle to cross-border transfers.

The Convener: I call Kaukab Stewart.

Kaukab Stewart: I know that we have covered quite a lot of ground, but I am just going to pitch these questions out there, just in case there are any gaps that need to be filled in.

We have mentioned a few inconsistencies that already exist for 16 and 17-year-olds, depending on whether they go through the children's hearings system or the criminal justice system. If there are any further inconsistencies that you can tell us about today, that would be really helpful.

Chloe Riddell nodded her head first. I think that Laura Pasternak also wants to come in, and Meg Thomas as well. Brilliant.

11:45

Chloe Riddell: That is a great question. The important thing to remember is that we are talking about a legal tribunal for children—a process and a system that has evolved over the past 50 years, that is based on evidence and that is evolving all the time. We already have 16 and 17-year-olds within the children's hearings system. As has been pointed out before, it is important to avoid inconsistencies in how we treat older children, and the bill will address that.

We are bringing more children in Scotland into an agreed, welfare-based approach. We know that it is not perfect, and that is why the hearings system working group exists and why we need much more robust continuity of decision making. There is a lot of work around competencies, training and so on, which the hearings system working group is considering. Essentially, we have collectively agreed that the system in Scotland is the most appropriate decision-making model for children—and that means all children, not just children up to the age of 15.

Laura Pasternak: I completely agree. The only thing that I would add is on an issue to which I alluded earlier: the need to ensure the provision of relationship-based independent advocacy for all children going through the children's hearings system. We have the national children's hearing advocacy scheme, and it appears from the financial memorandum to the bill that the plan is not for that scheme to be expanded. I am confused about that, because it was expanded when the Children (Scotland) Act 1995 came into force, in order to support sibling participation rights, and it was expanded for young people in relation to deprivation of liberty orders and cross-border placements. That is potentially an oversight. Clearly, there will be a greater need for advocacy, because there will be more children going through the children's hearings system.

Meg Thomas: It is important to recognise that we have been talking about 16 and 17-year-olds entering the system on the presumption that they are doing so because they have caused harm. The opportunity is being opened up for a number of 16 and 17-year-olds who are potentially being criminally or sexually exploited or harmed in their home situations also to get the support of the children's hearings system, which they are often precluded from at the moment. That makes it very

difficult to apply a contextualised safeguarding approach, because all systems are required to work together. We need to recognise that the proposals offer a protective mechanism for a lot of 16 and 17-year-olds who currently fall into the gap between adult support and protection—because they do not hit the three-tier question—and child protection. The children's hearings system is a protective mechanism for all young people, not just those who have caused harm, although it is equally protective for them, as we have discussed.

We have concerns, however. If we are going to bring young people who are potentially victims of exploitation into the system and link that to movement restriction conditions, there is the potential for young people who are victims to be tagged or subject to a movement restriction condition while we are trying to take them away from those who are causing the harm and for less to be done in the system to provide the disruption that is needed from those who are doing the exploiting. Laura Pasternak made a point about using a contextualised safeguarding approach to deal with that. How are we going to use our child protection mechanisms to ensure that those children also are safe?

It is important to recognise that it is not just a question of taking young people—16 and 17-year-olds—out of the adult justice system; it is also about protecting a cohort of young people who currently fall through the gap between child protection and adult support and protection.

Kaukab Stewart: That is really interesting. My colleagues will pick up on movement restriction conditions in a bit more detail. We have talked a lot about the bill regarding where a child has to be deprived of their liberty and the point about no child under 18 being committed to a prison or young offenders institution but going to secure and residential care. Do you wish to share any further views? We have already heard about those issues, but I just wanted to give you an opportunity, in case anybody has anything further to say on that before I hand back to the convener.

Kate Wallace: We have heard some feedback voicing concerns about the lack of a distinction between levels of seriousness of offences and about the possible risk to children and young people who are already in secure accommodation.

I want to go back to the point about 16 and 17-year-olds. One concern that has been raised with us is about the domestic abuse that we are seeing in relation to those we are supporting in that age group. Given the increasing number of young people who will be going into the hearings system, we must ensure that the right training, support and information go to panel members, panel chairs and others, so that they are equipped to deal with those situations as well as with the more serious offences that may come to them.

The overarching point that has been made to us is that having no one under the age of 19 going into a young offenders institution means that there will be a lack of understanding of what is appropriate for those who have committed the most serious offences or of the risk that they might pose to other children who, as we have discussed, may be in secure accommodation for other reasons.

The Convener: Research has shown that care-experienced children are overrepresented in the criminal justice system in Scotland. I do not think it will be possible to do this briefly, but, if you can, please explain concisely why that is the case and what might be done to address that.

Laura Pasternak: I will go first, and then someone else might want to come in.

It is a really massive sign of inequality in Scotland that care-experienced people are overrepresented in the criminal justice system. The independent care review found that there was a lack of evidence of a greater amount of harmful behaviour by care-experienced people. That should be looked into. Why is there that overrepresentation? What discrimination and prejudice is being experienced in the systems that are supposed to help children to grow up "loved, safe and respected"?

Many of the systems I am talking about are corporate parents and have duties towards care-experienced people. We have evidence about police stop and search and about comments being made about young people coming from a children's home or about the groups that children hang around with. We must be conscious of those prejudices and combat them whenever we see them.

I am concerned about the part of the bill that deals with movement restriction conditions. The stigma behind those is rooted in media and literary stereotypes about care-experienced people, which influence our way of thinking. How do we know that a tag will not just cause further harm? How do we know that the places where a child can go with that tag on are safe for that child? For example, they might not feel safe if they have been told to stay at home.

We really need to look at the stigma behind those practices, which result in an inequality that can affect care-experienced people throughout their lives. We often talk about care-experienced children and young people, but that identity does not leave someone when they leave care. It can follow them when they apply for a job later in life, and it can affect their access to loads of different services. We are really conscious of that.

The Convener: I cannot remember whether this comment was made during the first or second panel, but there is silo activity. There is a lot of research out there, but we need meta-analysis to bring all of that together and to drive real actions that can be delivered to help care-experienced young people.

We will move on to questions from Ruth Maguire.

Ruth Maguire: Good morning, panel. Thank you for your evidence so far. It has been really helpful.

I want to ask about movement restriction conditions. We have received written evidence from Includem and from Who Cares? Scotland, and we have picked up on some of the issues in that regard.

Meg Thomas mentioned the lack of automatic legal representation for a young person who might be subject to an MRC. Meg, can you say a bit more about that and why it is an issue?

Meg Thomas: We need to recognise that the movement restriction condition, although it is not a complete deprivation of liberty, absolutely restricts children's liberty around where they can go and with whom they can have contact. It can breach their privacy, given the level of data that is available in relation to a tag. There are also implications resulting from the unintended consequences of stigma, which Laura Pasternak talked about.

Children, whether they are going to a children's hearing in relation to an offence or to a movement restriction condition, need to have the right legal advice to support them. The bill does not currently provide for that, which I think is remiss.

It was suggested in the briefing notes on the bill that we have to consider whether movement restriction conditions are a deprivation of liberty. Of course, we are not depriving children of their liberty completely, but it is definitely a restriction of liberty, and we need to consider that issue.

The concern—and the reason why I think that legal advice is needed—is about strengthening or widening the criteria for which a movement restriction condition would be applied and, in relation to secure care, the criteria for psychological harm. I do not think that the bill is strong enough in defining what that looks like. I have some concerns about some of the language mirroring the language that would be applied to what would commonly have been called a breach of the peace. There needs to be a real strengthening of the criteria for what that looks like, because there is a danger that, without good legal representation, that fear and alarm will be applied in a way that will have the unintended consequence of far more young people being subject to a movement restriction condition or secure care, because of the way in which that very subjective analysis has been applied and interpreted.

Ruth Maguire: Thank you. You answered my two follow-up questions in one answer, which was great.

I had a question on the subjectiveness of psychological harm. I am interested in hearing about the victim's perspective from Kate Wallace, because there are two sides to that subjectivity.

However, I will come to Laura Pasternak first. Laura, you spoke about stigma and the potential issue that the place where someone is allowed to be is not actually safe for them. Do you want to say a bit more about that issue? Is there anything else that you want to scoop up around that?

Laura Pasternak: That is obviously an issue. There is an implication that a tag could set someone up to fail—for example, if their home is unsafe, they are obviously going to abscond.

I am also concerned that the stigma around wearing a tag will potentially affect someone's willingness to go to school and to take part in play and recreational activities, because they will be seen as the one who is wearing the tag. It could also affect someone's ability to recover from trauma and rebuild relationships.

We need to be careful. I go back to what Meg Thomas said, which Clan Childlaw also talked about last week: the bill implies that a movement restriction condition or a prohibitive order is not a deprivation of liberty when, in fact, it can amount to a deprivation of liberty. The bill uses the term "restriction of liberty" but, depending on the conditions of the restriction, it could amount to a deprivation of liberty under human rights law, triggering article 5 of the ECHR. Under article 5, the proportionality of the restriction would have to be considered.

Uncoupling those orders from secure care, which the bill clearly defines as a deprivation of liberty, would remove the special legal safeguards that apply to children under article 37 of the UNCRC and under article 5 of the ECHR. Those safeguards ensure that the order would not be in place for longer than necessary; that other, less restrictive orders would be considered first; that it would be under review; that there would be access to legal representation and to advocacy; and that there would be compatibility with rights.

I reiterate that the "Plan 2021-24" for the Promise talks about there being sufficient community-based alternatives so that detention is used as a last resort. I am not seeing any of that in the bill, and it has to happen by next year, so I

think that we could be a bit more creative about alternatives to secure care for children.

12:00

Ruth Maguire: Thank you. That is helpful.

Kate, we spoke about that point, and the committee is quite aware of the balance of rights that exists, because, often in those instances, it is two children or young people that have been affected by whatever is going on to cause involvement with the justice system. Do you have any comments, from the perspective of a victim, on the widening out of the provision to include

"physical or psychological harm to another person"?

Kate Wallace: We found that provision helpful, thinking about it in tandem with the widening up of the types of situations and children that would now be referred. We agree, however, that there should be more specific wording around it.

Our concerns are slightly different. We can see a place for the provision when a threat of physical or psychological harm to an individual exists and it is intended to keep someone safe. Our issues are around how that will be monitored—it is not monitored brilliantly in the adult system—and around how children or other people who have been harmed will be informed of that condition. More crucially, we want to ensure that victims are not seen to be, or feeling that they are, responsible for monitoring MRCs that are designed to keep them safe or for reporting any breaches—because the breach process is not clear in the bill either. Those issues have come up for us in the adult system, so we really want to ensure that they are not replicated here.

We have a different position, given the type of people we support. As I say, the overarching thing that the victims tell us is that they want to ensure that what has happened to them does not happen to anybody else and that they want to be able to feel safe and plan for their own safety. We feel that, in some cases—if it were properly put in place and monitored, and if victims were supported so that they did not feel that they had to do the monitoring and policing of it—the provision could achieve that aim.

Ruth Maguire: Thank you. That is all very helpful.

The Convener: We will move on to questions from Bob Doris on that theme.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Ruth Maguire has asked most of the questions that I wanted to explore. I understand why most of the witnesses are quite sceptical of some of the aspects of the bill in relation to MRCs, but they jumped out at me as a potential opportunity for a young person. Perhaps I am being naive, but if the case for the young person going into secure accommodation was borderline, perhaps a less severe restriction could be placed on them, which might be provided by the MRCs.

I would like to turn the whole thing on its head, if that is okay. What might you see as positive about using movement restriction conditions—with regular review, and with appropriate legal advice and advocacy—instead of secure care when less restrictive orders have been rejected as inappropriate? So far, all we have heard is the negatives. What are the positives?

Laura Pasternak: I am glad that you asked that question, because I wanted to say something that relates to that. I will be a wee bit negative and then positive. A CSO comes with an intensive support package, and we hear from our advocates that the provision of intensive support packages is patchy across local authorities—how good that support package is depends on where you are. The positive is that, with a really intensive support package, and if we find alternative pathways for children and young people, it is possible for that CSO to end in a really positive outcome.

We do not want an order that has only monitoring and does not have support, so that people end up going into secure care because of a lack of an alternative measure. There should be mention of the care and support plan either in the bill or in the statutory guidance, in order to address the root of the problem, which goes back to the contextual safeguarding approach that I mentioned earlier.

Chloe Riddell: On that point, it is important to be clear that we are talking about an additional number of looked-after children. Under the Looked After Children (Scotland) Regulations 2009, they should all have a child's plan, as Laura Pasternak has talked about, but that is not included in the financial memorandum. We are talking about a significant number of looked-after children, who will have complex needs. As we have all talked about, they are often children who have experienced harm themselves. There will be some who are not involved in the criminal justice system at all and who are referred on care and protection grounds. Some of them will be parents, and some will have concerns about being exploited through trafficking, grooming and so on. Some will have housing needs.

The biggest thing, particularly with offence grounds, is that, as Kate Wallace mentioned, victims often want to know that what happened to them will not happen again to somebody else. However, that is unlikely to be the case if we just impose movement restrictions on children or place them somewhere for a temporary period. To break

the cycle of reoffending, the welfare-based approach of the children's hearings system must kick in. We need to understand the child's needs, not deeds, which is what Kilbrandon talked about. Also, the wraparound support has to exist—there must be restorative justice provision and community-based supports, and the recruitment and retention of social workers has to be urgently and immediately addressed. There are really significant rights-based issues about placing a movement restriction condition on a child without also providing the support that they need to address the challenges in their lives.

There are positives, such as the changes to compulsory supervision orders and allowing a skilled and competent panel to determine what measures of support are most required, taking into account the voice of the child. However, there is a lot of work to do to ensure that the provisions that are referred to in a child's plan are in place, but also that there is a child's plan. Many children will not have a child's plan.

Bob Doris: That is helpful. I will bring in Meg Thomas in a wee second, but first I want to put something on record—I hope that I will get nodding heads and will not have to go to three different people to get the same answer. We heard from the first panel that movement restriction conditions can be used when young people are stepping down from secure care back into the community. We heard a concern that, if there is no wider support package, we might be setting up the young person to fail or not meet the conditions. It might escalate their interaction with not just the children's system but the adult judicial system if we do not get the wider package correct. Do you concur with that?

Meg Thomas: Yes.

Bob Doris: I see that Sheriff Mackie wants to come in. I am breaking my own rules now, but do you want to add something, Sheriff Mackie? I will take you in a second, Meg, if that is okay.

Sheriff Mackie: I am simply going to reinforce what has already been said. The technology exists to act as a force for good, but you cannot just park the kid in front of the video. The key to success will be the services that surround the child and the work that is done with that technology to make good use of it. Therefore, rather than focus on the movement restriction condition by itself, the emphasis should be on the surrounding services that support the child in the community. That tool should be used as an aid rather than as a solution.

Bob Doris: I have one final question. Meg Thomas can come in on this.

I just want you to bring to life how movement restriction conditions could provide some comfort for the victims, who are usually other young people. Are we talking about restrictions from the local high street, if that is where a lot of the offending and risky behaviour has taken place, or from parks or train stations? I hope you can bring to life for us a little what the conditions would be used for, because at the moment it is an abstract concept for the committee. What kind of restrictions are we talking about? What benefits might there be, if information is communicated properly and effectively, for the reassurance of victims?

That is my final question. Meg, you have been very patient.

Meg Thomas: Any movement restriction condition needs to be accompanied by a really robust care and risk management process that considers the unique risks for the child and what needs to be done to prevent them. For some children, that might be restricting them from one small place. However, there is a danger that we make a blanket statement. For example, rather than restrict them from a particular park that is causing an issue, we might say that young people cannot go into parks at all, but we know from a desistance point of view that they need to have hobbies, be reconnected to their communities and have opportunities to engage socially in positive ways. There are real dangers if we talk about the restriction being used in a generalised way. It must be informed by the care and risk management approach.

We are talking very much about the holistic support for the child, but we need to broaden out to whole-family support. A question was asked about care-experienced young people being overrepresented in the justice system. We need to take a step back from that because, actually, children in poverty are overrepresented in the care system. We need to ensure that any movement restriction measures are robustly supported by whole-family support that considers the things that Chloe Riddell talked about, such as housing, poverty, benefits maximisation, access to education and access to continued training.

All of those need to be considered, and that is where the care and risk management assessment under the framework is important. It means that each child has a plan that is unique to them and that manages the risks as they need to be managed instead of their being restricted from a particular area, such as the high street, or at a particular time.

In the past, movement restriction conditions have just applied blanket curfews, such as by saying that young people have to be in between 7 o'clock at night and 7 o'clock in the morning. However, young people have found employment that does not end until 6 o'clock and, with public transport arrangements, they are not home until 7

o'clock, so, suddenly, they cannot take that employment, even though we know it will help them to move away from offending behaviour. We need to be really careful and ensure that, in the guidance and implementation, any restriction is linked really carefully and considerately to the child's plan and an assessment of risk.

The Convener: Kate Wallace, do you want to respond to any of those points?

Kate Wallace: We absolutely agree about the need for individualised, robust risk assessment and care packages. Part of the reason that that needs to be done individually and why there is no straightforward answer to your question, Mr Doris, is that we have learned from the adult system that, if movement restriction conditions are not managed properly, they can inadvertently put young people at more risk. We have seen that happen when movement restrictions were put in place in an adult setting to ensure that the person who harmed a particular victim who was a target did not contact them but the restrictions disclosed where the victim lived and, in a domestic abuse context, put them at further risk.

The situation is complex and restrictions need to be individualised. I really hope that we can learn the lessons from some of the poor practice that has gone on in other places and avoid it here.

Bob Doris: That is really helpful. Thank you.

The Convener: Kate Wallace, I have a final question for you. It is a follow-up to something that we heard last week. Do you have any views on the idea of having a single point of contact for victims?

Kate Wallace: Yes. That should happen. Victims should be supported right the way through. We have heard conversation going on about what will be put in place to ensure continuity for children and young people who have harmed. That continuity needs to put in place for victims, too.

We often hear that the process and involvement in it is more traumatic than the harmful behaviour itself. Part of that is to do with people not having a single point of contact, having to repeat their stories time and again and having no real understanding of a cluttered landscape. I was surprised that the bairn's hoose approach is not mentioned in the bill. It is designed to provide that continuity, with services going to the child as opposed to the child going round loads of different adult services.

We absolutely agree on the need for a single point of contact, so that victims are supported right at the very beginning, from contact with the police—or even in being helped to report, if that is what they need—all the way through to the other side.

The Convener: Thank you very much.

We have had a robust discussion, this morning. Thank you for your time. We will have a short suspension to allow our witnesses to leave.

12:15

Meeting suspended.

12:17

On resuming—

Subordinate Legislation

Children's Hearings (Scotland) Act 2011 (Safeguarders Panel) Amendment Regulations 2023 (SSI 2023/66)

The Convener: Welcome back. Our next item is consideration of a piece of subordinate legislation that is subject to the negative procedure. Do any members have any comments on the instrument?

Is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: The public part of today's meeting is at an end. We will consider our final item in private.

12:18

Meeting continued in private until 12:48.

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