



OFFICIAL REPORT
AITHISG OIFIGEIL

Education, Children and Young People Committee

Wednesday 26 April 2023

Session 6



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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
12th Meeting 2023, Session 6

CONVENER

*Sue Webber (Lothian) (Con)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)
*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Ross Greer (West Scotland) (Green)
*Stephen Kerr (Central Scotland) (Con)
*Bill Kidd (Glasgow Anniesland) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Ruth Maguire (Cunninghame South) (SNP)
*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Bermingham (Children's Hearings Scotland)
Jenny Brotchie (Information Commissioner's Office)
Councillor Tony Buchanan (Convention of Scottish Local Authorities)
Ben Farrugia (Social Work Scotland)
Jackie Irvine (Care Inspectorate)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 26 April 2023

[The Convener opened the meeting at 09:15]

Interests

The Convener (Sue Webber): Good morning, and welcome to the 12th meeting in 2023 of the Education, Children and Young People Committee. I welcome Ben Macpherson, Bill Kidd and Pam Duncan-Glancy, who are joining us this morning for the first time as committee members and are replacing Kaukab Stewart, Graeme Dey and Michael Marra. On behalf of all members, I thank Kaukab, Graeme and Michael for all their invaluable contributions to the committee's work.

As Ben Macpherson, Bill Kidd and Pam Duncan-Glancy are joining us for the first time, our first item of business is to invite them to declare any relevant interests.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Thank you, convener. It is good to be with you, colleagues. I refer members to my entry in the register of interests—in particular, my being registered on the roll of Scottish solicitors, which might be pertinent on certain occasions.

Bill Kidd (Glasgow Anniesland) (SNP): Thank you, convener. I am really pleased to be on the committee and I have no relevant declarations to make.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning and thank you, convener. I, too, am pleased to be a member of the committee and look forward to the work that we will do together.

I refer members to my entry in the register of members' interests and declare that I have introduced a bill in the area of education—the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Bill—which has come to the committee.

The Convener: Thank you very much.

Deputy Convener

09:17

The Convener: Due to the changes in the committee's membership, our next task is to choose our deputy convener. The Parliament has agreed that only members of the Scottish National Party are eligible for nomination as deputy convener of the committee, and I understand that Ben Macpherson is the Scottish National Party's nominee.

Ben Macpherson was chosen as deputy convener.

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

09:18

The Convener: Agenda item 3 is an evidence-taking session on the Children (Care and Justice) (Scotland) Bill. I welcome to the meeting our panel of witnesses: Ben Farrugia, director, Social Work Scotland; Councillor Tony Buchanan from East Renfrewshire Council, who is children and young people spokesperson for the Convention of Scottish Local Authorities; Jackie Irvine, chief executive, Care Inspectorate; Stephen Bermingham, head of practice and policy, Children's Hearings Scotland; and Jenny Brotchie, regional manager for Scotland, Information Commissioner's Office. I thank you all for coming.

As we have a lot of ground to cover, we will move straight to members' questions and, breaking the habit of a lifetime, I will ask the first. The committee appreciates that the bill's provisions relating to the definition of a child have been put forward as Scottish Government policy. Do you have any views on the bill's proposed definition of a child arising from, say, your experience of dealing with children and young people? Is 18 appropriate?

Jenny Brotchie (Information Commissioner's Office): I will take that, though I do not have much to say beyond the fact that, under data protection law, a child is defined as a person aged under 18, so the bill's definition is in keeping with that. Individuals aged under 18 are also given specific protections under recital 38 of the general data protection regulation.

Stephen Bermingham (Children's Hearings Scotland): It has been a long-held aspiration of Children's Hearings Scotland to raise the age of referral to the principal reporter to ensure that we are compliant with article 1 of the United Nations Convention on the Rights of the Child, under which anyone under the age of 18 is defined as a child. Therefore, I think that the proposal is absolutely correct and appropriate.

Ben Farrugia (Social Work Scotland): I fully agree with my colleagues. I welcome the rationalisation that the bill represents, in that it will bring the age more in line with our expectations with regard to 18. However, as I think was implied in your question, convener, we have thoughts—rather than reservations—about how we operationalise that in systems that have become very accustomed to other definitions. The bill's implementation needs thoughtful consideration to ensure that we do not create risks by making the change. In general, however, it is welcome.

As well as changing the definition of a child, the bill looks to extend the availability of services currently available to children to those whom we would consider as adults. That area, too, requires a bit more discussion and consideration.

Councillor Tony Buchanan (Convention of Scottish Local Authorities): I am happy to agree with colleagues. COSLA very much agrees with the change, which ties in nicely with the UNCRC with regard to the age of 18. As has been said, we are fully supportive of that.

Jackie Irvine (Care Inspectorate): You will not hear anything different from me, convener.

The Convener: I did not think so.

Jackie Irvine: We want children up to 18 to be treated as children and in an age-appropriate manner. We acknowledge that, for some people, even those beyond 18, their chronological age might not reflect their developmental age. There are children in the hearings system who have been subjected to traumatising experiences, which has obviously had an impact on their maturity and the support that they need. We absolutely support the change.

The Convener: I am sure that we will get into that issue later in the discussion.

Pam Duncan-Glancy has further questions on this subject.

Pam Duncan-Glancy: Good morning, panel, and thank you for the written submissions that you provided in advance, and for answering that first question.

I would like to begin where Jackie Irvine just left off. The committee has heard compelling evidence on the issue of developmental and chronological age that Jackie has just described. How do we design a person-centred approach that is responsive to the difference between chronological and developmental age, and how do we end the cliff edge of age-based detention?

As Jackie Irvine raised the topic, I ask her to start. I am also keen to hear from Ben Farrugia and Stephen Bermingham.

Jackie Irvine: In relation to secure care, which is obviously a big part of the issue, you cannot under existing legislation keep someone in secure beyond 18. I know that there is potential in the bill to extend provision to someone's 19th year, although not beyond their 19th birthday. From previous cases and examples, we are aware that, for children who go to secure on a justice basis—that is, either on remand or after being sentenced—it can be tricky if their sentence ends after their 18th birthday. We know of some, though not many, cases where children were in secure, and rightly so—obviously such children can go to

secure now, and the bill will mandate it—and then went into the young offenders institution at Polmont, for example, for the last three weeks of their sentence. The ability to extend the time in secure care into someone's 19th year gives flexibility so that children are not moved unnecessarily.

Pam Duncan-Glancy: Is 19 the right point at which to make that decision, given that other legislation, particularly that relating to the Promise, looks at supporting people up to the age of 26?

Jackie Irvine: We need to balance provision, given that we look after a range of children from as young as 10 in secure settings. Therefore, there is a balance in terms of the mix of children and young people in that setting, and there are potential risks in that respect. Although it would be helpful and ideal, I do not think that provision at the moment would allow us to accommodate that many children. I should say, though, that that is not my area of expertise—obviously, that is for the secure establishments to talk about.

As those young people get older—and if they are there with severe charges against them—there is significant risk. I am sure that we will come on to discuss how to manage that mix of children coming from the hearings system and from the justice side, ideally via hearings. We absolutely support the Promise, but it is helpful to have that little bit of flexibility beyond the age of 18 instead of just a cut-off at 18. Those are some of the challenges that we face.

Ben Farrugia: I agree with my colleague Jackie Irvine, but I have a few points to add. In the conversations that we have within the Social Work Scotland membership, there is an appreciation that, provided that we continue to have separate child and adult services, there will be a cliff edge somewhere. Of course, we are focusing on and discussing social work and social care services, but this is just as much of an issue for health services, particularly for the group of children whom we are talking about today. Indeed, for them, it is an acute issue, so it needs to come into the mix. How are we, in a systemic way across all relevant public services, adapting to these changes and ideas about when it is appropriate to move children—or, in this case, young adults—from one service area to another?

This might sound blunt, but there is a point at which children must become adults, particularly if we maintain that service structure. It is my understanding, however, that that is what many young people want to happen, too; they want the rights and independence that come with the designation of being an adult.

In answer to your question, I am not sure that there is any fixed age in that respect. That is the

core point that I want to emphasise: the only way in which we address the cliff edge is through person-centred planning, which is how you framed your question, and we can do that only with a sufficiently robust and skilled workforce.

That is not really about legislation. Legislation will help, of course—it sets the framework—but the reality for individuals is whether they have professionals who are building a plan around them that is really tailored to their needs, irrespective of their chronological age. That is as true of somebody who is 70 as it is of somebody who is 17. That is the focus that we really want: we want enabling legislation, but with the real focus on whether we have the capacity in the workforce to work in that way.

Stephen Bermingham: I agree with Ben Farrugia. There is a cliff edge but, potentially, there does not need to be one between children's and adult services. I welcome the provisions in the bill to extend the option for children's hearings to ask a local authority to provide guidance up to the age of 19. That is a progressive move.

Another progressive move in the bill that we certainly welcome relates to its provisions with regard to the status of young people who have been in secure care and their being looked after and potentially having their rights to pathways to care extended until the age of 26. With regard to that notion of corporate parenting, there is an argument for extending all of that further for young people in the care system who have particular needs, but that is outwith the remit of the children's hearings system.

Jackie Irvine: We are doing a review of the secure care pathways standards, and we are working with young people who have previously been in and come out of secure care as well as those who are on the edges of it. We have touched on pathways out of secure care, which is a really important part of the responsibilities of corporate parents, local authorities and any services involved with the young person, including health, and the review will tell us a lot about that journey for the child before, during and after secure care. It is due to be published in September, and it will be informative in ensuring that, regardless of the age at which someone leaves secure care, there is a good plan and good support in place.

Ben Farrugia: This is a good theme of conversation. A potential deficiency in the bill is sufficient appreciation, particularly on the financial and resourcing side, of some of those increased aspects. Obviously, we would welcome these innovations and moves to address the cliff edge by extending the provisions from age 18 up to the age of 26, but the extension of corporate parenting responsibilities and duties is not a cost-free

exercise. Are we confident that, if we raise expectations—and rightly so—and increase our promise to these young people, we can actually meet that promise? That has been a common theme in the conversation that we have had in Social Work Scotland. We welcome the proposal, but there is a concern that we will not have the implementation plan and sufficient resourcing to match the ambition that is being articulated.

The Convener: We will have questions on that theme later. Pam, do you have any further questions?

Pam Duncan-Glancy: Yes, I have a final one on this theme. I also have a question on finance, but, as the convener has said, we will come to that later.

Further to that, Ben Farrugia, you note in Social Work Scotland's submission that the bill does not fully understand the interface between guardianship and adult support and protection. What should the bill do in that space, and what in that regard should be understood and addressed in the bill?

09:30

Ben Farrugia: I will perhaps dodge the question of exactly what the bill should do. The issue that we raised is that the bill does not sufficiently explain how it will manage the impact on other bits of legislation—largely adult legislation, as we have described it—that affect the same populations. What will be the interaction between the legislation when, for the sake of argument, children's services are moved over to a proportion of the adult population while we still have adult legislation in place?

In social work, we have separate teams that, in a largely operational sense, have responsibilities and duties in relation to the same population of people. We want to be reassured through the rest of the bill process that thought has been given to how other bits of legislation will be amended and what the consequences of doing so will be, right down to a practical understanding of how teams should work when they have an individual who might fall within the scope of this bill but about whom there are also, say, protection concerns that meet the tests requiring the adult team to carry out an investigation. Which team should have priority and which set of legislation will be paramount? That has not yet been sufficiently explained, but I think that it can be. I will not offer a solution, but we would want to see some solution before the bill became an act.

The Convener: We have had discussions on that issue. Under the bill, it will be possible for a child convicted of a serious crime to be placed in secure accommodation with young people who will

be there on welfare grounds and who are therefore particularly vulnerable. Is that a cause for concern? What steps might need to be taken to ensure that the rights and best interests of all children in secure accommodation are taken into account?

Jackie Irvine: I have heard the evidence that others have given on the matter, and it is an area of concern that needs to be considered. There are children and young people in secure accommodation who are on a justice order, but the issue is the seriousness of the crime and the risk that they pose, and staff need sufficient development to understand how to manage such a complex mix of children.

The other difference relates to children who are in secure accommodation while on remand or post-sentence. In such cases, the secure unit will be instructed to take them; however, for the children who go there on a welfare basis, the unit will assess its ability to provide such care. Those are quite different situations, and the staff and management in those establishments will have to adjust accordingly. Trying to care for and ensure the safety of all of those children will create additional demand and give rise to a complex set of circumstances, as some will be there because of their vulnerability and some because of the risk that they pose to others.

There is already an element of that in the current population. The criteria for a secure care placement relate to a child's vulnerability or risk to others—or both—but the issue of severity would need to be well supported. That will require resource and a bit of a culture change, given the need to look after all of these young people.

As for the practicalities, the fact is that our secure estate is not large. I do not think that the people involved have a huge ability to manage the estate differently, but one thing that you would want them to look at is how children with different needs are cohorted and cared for.

The other thing that we anticipate—indeed, we have seen it in residential and community-based services—is an increase in the number of children presenting with neurodivergent needs. That adds another complexity.

The Convener: Does Ben Farrugia or Stephen Bermingham want to comment on that, or has Jackie Irvine covered most of the ground?

Stephen Bermingham: As the number of young people in young offenders institutions is quite small, I have faith that secure care providers can manage the risk. I understand that the secure care estate and secure care standards are being reviewed, but the situation could be managed if the right investment, particularly in staff and infrastructure, was put in place.

Ben Farrugia: I broadly agree with Stephen Bermingham. If the question is being framed as whether we have a concern about the population of children that you described moving into secure, in general terms we do not—I think that that is the right place for their needs to be met. Our concern is whether they would be moving into the secure estate as it is now. Change is needed, in terms of both how the secure estate is constituted and how it is populated. That is not required for every child, but it does need to happen for some children, in order to give us confidence that a move into secure would be the safe and right move for all the children who will be impacted by that.

The Convener: Thank you. We will move on to the next block of questions, which will be asked by my colleague Stephen Kerr.

Stephen Kerr (Central Scotland) (Con): I turn to the children's hearings system, so I think that most of my questions will involve a Stephen-to-Stephen exchange.

What effect will the bill have on the number of hearings in the children's hearings system?

Stephen Bermingham: We have looked at the figures and have forecast the figures with our colleagues in the Scottish Children's Reporter Administration. We anticipate an increase of about 10 per cent in the number of hearings and the number of young people coming into the children's hearings system. In terms of actual numbers, we are looking at about 2,400 additional hearings a year and about 1,020 additional young people—16 and 17-year-olds—coming into the children's hearings system. From a capacity point of view, we think that we will need about 320 additional panel members and area support team volunteers to deal with that impact.

Stephen Kerr: That is the answer on capacity.

Stephen Bermingham: Yes.

Stephen Kerr: What does that involve? You mentioned getting an additional 320 people. In practical terms, how long will that take? What is the process?

Stephen Bermingham: We are planning for implementation in around April 2024, but we think that the numbers will start to come in in full in around the summer of 2024, if the bill keeps on schedule.

With regard to the way in which that works, our core role is to recruit, train and support panel members to make legally binding decisions in the best interests of the child. We are hoping to recruit in around September and potentially next year, too. We provide a high level of training.

Stephen Kerr: Do you have the capacity to deliver?

Stephen Bermingham: We have the capacity. We have made a case in relation to the financial memorandum about the cash resource implications for us, which you will have seen. The main challenge for us will relate to recruitment. We have a well-oiled machine when it comes to providing high-quality training to panel members. The pathway takes about 18 months to complete. Recruitment is followed by pre-appointment training—

Stephen Kerr: How easy will the recruitment process be? What do you anticipate in that regard?

Stephen Bermingham: It is always a challenge, but it is one that Children's Hearings Scotland has always met. There have been a number of challenges—

Stephen Kerr: This will be quite a step-up, though, will it not?

Stephen Bermingham: It will be a significant step-up, but we have a track record of adapting to changing conditions. We did that during Covid.

Stephen Kerr: You are coming across as saying, "We're confident that we can deal with this."

Stephen Bermingham: Yes, we are confident that, with the right planning and the right support, we can deal with it.

Stephen Kerr: What impact will the bill have on the fundamental role of the children's hearings system? Will it change that in any way?

Stephen Bermingham: I do not think that it will. I think that it reflects our aspirations to be rights respecting and to treat all children in the same way. At the moment, there is a two-tier system whereby young people who are subject to compulsory measures get treated differently from 16 and 17-year-olds who are not subject to compulsory measures. We see the bill as an opportunity to bridge that gap and to ensure that our welfare-based system—which seeks to provide age-appropriate support for children, regardless of where they have come into conflict with the law and regardless of what additional support and protection they need—can meet those needs. We welcome the bill, but there will be a challenge in terms of resources.

Stephen Kerr: Could you expand on what you mean by "a challenge in terms of resources"? I heard a very confident response in answer to my question about capacity.

Stephen Bermingham: You did.

Stephen Kerr: What do you mean when you talk about facing a challenge around resources?

Stephen Bermingham: The issue regarding the impact will be around recruitment.

Stephen Kerr: Are you talking about the availability of candidates?

Stephen Bermingham: Yes. The challenge is whether we can attract the right candidates in order to meet the increase in demand.

Other changes are taking place in the system. There is a sequencing issue in relation to the work that David Mackie and The Promise are doing in the hearings system working group, which will look at the future role of panel members.

Stephen Kerr: I think that we will find out about that next month.

Stephen Bermingham: I think that the report will come out on 10 or 11 May.

Stephen Kerr: We will be a bit more informed about all this when we see what it proposes.

Stephen Bermingham: Yes, but we are confident that we can meet the challenge. We welcome it, and we think that it is the right thing to do.

Stephen Kerr: What about existing panel members? Will they require additional support and training, given that they will be dealing with a distinctly different age group?

Stephen Bermingham: Absolutely, and we are already working on that.

The way in which Children's Hearings Scotland set up the hearings system means that the national convener can make certain training mandatory. We will make training on the bill and its implications mandatory for all panel members. We are already making initial contact with experts in the field with regard to how we provide a high level of specialist training.

Stephen Kerr: You will need to give additional training to existing panel members and you will have to recruit more than 300 new panel members, but you are still smiling.

Stephen Bermingham: That is right. It is not without its challenges—

Stephen Kerr: It is not without its challenges.

Stephen Bermingham: It is not without its challenges, but it is the right thing to do and we are fully supportive of it.

Stephen Kerr: Okay. This is an opportunity to indicate whether there are any challenges that you think we, as parliamentarians, need to be aware of.

Stephen Bermingham: There is a challenge in whether we can continue to rely on the good will of the current 2,500 panel members across Scotland

in order to meet the future requirements of the hearings system. That is a systemic challenge.

Stephen Kerr: What do you mean by the "good will" of panel members?

Stephen Bermingham: They are all volunteers.

Stephen Kerr: When you say "good will", you are talking about whether they stay on board and you can retain them.

Stephen Bermingham: Yes—I mean whether we can retain them and whether they continue to give that commitment. We have a brilliant and committed group of members, but they are volunteers. We are the largest legal tribunal in Scotland and are reliant on volunteers in order to deliver our statutory services. There is an inherent challenge in that regard.

Stephen Kerr: That brings us back to next month's report and what it might suggest as a possible set of changes.

Please come in, Ben Farrugia. I have been speaking exclusively to Stephen—it has been a Stephen-only conversation.

Ben Farrugia: I will come in to give Stephen Bermingham a break.

Stephen Bermingham said something really nice: with the right planning and support, we can do this. I echo that confidence. With the right planning and the right support—when I say "support", I mean investment, implementation planning and consideration of capacity—we can do anything.

Stephen Kerr: Indeed.

Ben Farrugia: It is integral to the bill that that plan is provided.

Stephen Kerr: The plan and the resources.

Ben Farrugia: Precisely—the plan should indicate what resources will be invested.

Stephen Kerr: I can see Councillor Buchanan nodding. I had better let him say something about that.

Councillor Buchanan: Ben Farrugia and Stephen Bermingham have touched on this. The knock-on effect is that, if there are additional children's hearings, more people will come through the system, and the knock-on effect of that is that we might require more social work involvement or more care involvement in our care centres, which are very limited at the moment. Earlier, we touched on that movement and how we increase capacity to deal with those issues, because there is a knock-on effect.

Stephen Kerr: I have a feeling that there will be more questions on that.

Councillor Buchanan: That leads me to the additional costs, because further training will be required. We need a workforce that can provide increased capacity and take on those challenges. Again, unfortunately, that comes back to costs as we move forward.

The Convener: Stephen Kerr has one final question.

Stephen Kerr: My question, which is directed to Stephen Bermingham, is about the scope to introduce additional elements of restorative justice, such as community sentencing, into the children's hearings system. What are your views on that?

Stephen Bermingham: I think that restorative justice has a role to play in relation to young people who have potentially caused harm or come into conflict with the law. My reservation is about mandating that for children and young people. There is an opportunity to co-produce what restorative justice might look like with the young person or the child involved. It is less likely to work if it is an order and an absolute requirement. We should sit down with the child or young person to see what they think is the right way to respond to a particular issue and to hear their thoughts about restorative justice and answers, and then we should provide the right level of support so that they can do that.

Stephen Kerr: There must also be the right level of support for panel members so that they know how to apply that particular level of sentencing effectively.

Stephen Bermingham: Yes. However, I am not sure whether panel members could apply sentencing in such cases; I think that they could make a recommendation to the local authority to consider restorative justice.

Stephen Kerr: Okay—fair enough.

The Convener: Bill Kidd has a supplementary question on this theme.

Bill Kidd: We have heard a lot of really interesting information. It has been said that 320 additional panel members are to be sought by about this time—or up to July—next year. That is a lot of people. With regard to the sourcing of that number of candidates for such an important role, do you go out and look for them or wait for them to come to you because they have heard about the role and think that it would be a great way for them to contribute as a volunteer? What level of capability do people have to display to be taken on board?

09:45

Stephen Bermingham: The recruitment process is robust and people have to go through

extensive pre-service training. It is therefore a big ask of them.

On the numbers, it might be worth qualifying what I said. We are looking at about 270 additional members. In addition to that, we have area support teams, which consist of volunteers who support panel members in a local area. We are on the case in looking at an enhanced area support team, which would involve some remunerated posts to make sure that the support is of a high quality.

We run a recruitment campaign at least every year. We go out to employers, who are often very generous in releasing staff to sit on panels. We have a strong track record in recruiting and sustaining the number of panel members that we need in order to provide the support that we do.

Bill Kidd: That is very helpful.

Ben Farrugia: Children's Hearings Scotland has done a great job in its recruitment campaigns over the past few years. Social Work Scotland's membership is concerned less about the capacity of Children's Hearings Scotland to achieve the task and more about the context in which it is trying to do so. It will be difficult to recruit panel members when a fundamental reform of the children's hearings system is taking place. Trying to bring anyone into a system that is in massive flux will add a great deal of complexity. I, of course, do not know whether they will, but it is very likely that Sheriff David Mackie and his group will suggest some pretty fundamental changes to the children's hearings system. That context raises concerns; it is not that there would be concerns about the ability of Children's Hearings Scotland to do that in completely normal times.

Stephen Bermingham: That is a good point, which I will follow up. We are aware that volunteering numbers have gone down nationally. I think that the cost of living has had an impact. We are aware of the pressures and are planning for them.

Willie Rennie (North East Fife) (LD): We have covered some of my points in discussing whether the secure units are fit for purpose for the new cohort, but I want to explore them a little bit more.

We have done a number of visits and have found it striking that the understanding between Polmont and the secure units is pretty limited; they do not exchange much with each other. A bit of learning and understanding about what each of them provides and, therefore, how the transition can be managed is needed. That fits in with what we have talked about. It is not that new for some units that deal with young people who are in this cohort. Nevertheless, there needs to be an understanding.

One issue that has come out is health services. When we went to Polmont, we saw that the national health service is part of it; it is almost a statutory service inside it. People there therefore have the best when they need it, immediately, and without long waits to get mental health support, for instance. However, that is not the case in the secure units. They are able to get such services where good personal relationships have been built up with local health boards, but it is not guaranteed. Do we need to address that in the bill or otherwise? Should it cover not only the health service but other areas?

Ben Farrugia: I will try to be brief. Yes—that absolutely needs to be attended to. The extent to which the NHS plays a role in and around the cohort is a source of real grievance and challenge among the Social Work Scotland membership. That is particularly the case in relation to provision of secure care, a significant proportion of which is about attending to the mental health needs of children and—as Jackie Irvine said—neurodiversity. We would love to see this as an opportunity to look fundamentally at the role that the NHS plays in the secure estate and in provision of secure-type options for children and young people who have complex behaviours. We would absolutely welcome the committee's focus on that and the bill's attending to what are some real challenges in the current system.

Jackie Irvine: In some respects, there has been a bit of a shift. I have worked in social work in Scotland for a long time—I dare not tell you how long, because it would make me feel old. There used to be, when a young person went into a secure unit, greater frustration about how to get them forensic mental health support, in particular. That position has shifted a bit, although I am out of practice, given my current role. My current understanding is that the health board that covers a secure unit will provide services for it.

One of the challenges is that there is not necessarily a transition service when a child is moved back to the local authority of origin. Do not get me wrong: I have negotiated transitional arrangements for some children, but there is a bit of a cliff edge. When a child is taken out of a very secure setting and put into the community, support such as they had in that setting might be diluted or not provided at all, or they might have to be referred to another service, which obviously presents some challenges. I have no notes on the issue, but I know from my background in social work that such situations make a significant difference to our collective ability to ensure the best outcomes for children and young people.

Willie Rennie: That issue was certainly raised, so you are more up to date than you think.

Jackie Irvine: That is good.

Willie Rennie: Secure care has been considered to be the last resort, but some people expressed the view that, in some cases, we go round the houses on every other option and eventually end up choosing secure care when secure care should have been the first option. Are we getting the balance right in relation to secure care being the option of last resort? Does that make sense?

Stephen Bermingham: From a children's hearings perspective, we have to explore every possibility. Depriving a child of their liberty is probably the most extreme measure that a state can take against them. The UN has criticised the United Kingdom on the levels of that and how it is done. It has described depriving a child of their liberty as depriving them of their childhood. It is an extreme measure, so every other possibility should be explored. In general comment 24 of the Beijing rules, the UN says that deprivation of a child's liberty should be the last step, that it should happen for as short a time as possible and that it should take place as near as possible to their community. I think that that is the right position.

Willie Rennie: People have expressed to me the view that going through all the second-best options, as they consider them to be, sometimes does more damage when a period in secure care would be of benefit and would allow the child to transition back. Are we taking an extreme position by trying to follow what you have set out, or are you pretty sure about what you have said?

Stephen Bermingham: Secure care is about therapeutic care, rehabilitation and reintegration. The decision-making process can happen pretty quickly when the level of risk is high. I think that that option should be the last resort.

Ben Farrugia: Should we have a greater array of services that provide therapeutic care without the need to deprive a child of their liberty? Absolutely, we should. Because of how we have allowed the system to develop over the past two decades, intensive wraparound education and healthcare happen in secure care. That is a weakness, not a strength, of our system.

Willie Rennie: That helps a lot.

The Convener: That will be a useful line of questioning later.

I will bring in my new deputy convener, Ben Macpherson.

Ben Macpherson: I will build on the questions from my colleague Stephen Kerr by asking about finance. Mr Farrugia talked about the bill's operation once it is passed—assuming that that is the will of the Parliament—and Councillor Buchanan talked about implementation challenges. I note that COSLA has said that

“the changes proposed in the Bill will require significant ‘system’ changes with implications for services, resources and the workforce”.

I am interested in the witnesses’ views on the additional costs that are likely to be incurred as a result of the bill’s provisions. What level of funding, with due consideration of the pressures on public finances, is required to successfully implement the proposed changes?

Councillor Buchanan: As you know, there is already huge pressure on public finances and many difficulties. We also have in the offing a number of changes that could have an impact. We touched on the increased number of hearings, which generates an increased workload for the care services and social work services that are required on the front line.

It is fair to say that, at the moment, in every authority, our services are under significant pressure in just dealing with the day-to-day issues that all of us around the country face. The resource will need to be significantly improved—all my colleagues have touched on that point. I think that we all want better services, so that goes without saying if the bill is to work.

It was said in the answer to the previous question that the last resort is secure care. Ideally, all the services that are required on the front line to assist children and young people would be delivered at the local level and, generally, as close to home as possible, unless there is a particular reason why that cannot happen, but all that requires additional resource. I speak on behalf of all authorities: we all share the view that, at the moment, our front-line services are under pressure. We will be adding to what those services do. That has to be looked at: the only way that the work can be done is by ensuring that we have a workforce that is sufficient in number and sufficiently well trained to deal with the issues. It is likely that the cost implications of that will be significant.

Those changes have to be made because it is about achieving an outcome that we all agree is the right thing to do. However, there is a cost of delivering those services.

Ben Macpherson: Did COSLA have appropriate input into the financial memorandum and the Government costing? Has COSLA done its own cost analysis of implementation of the bill?

Councillor Buchanan: I would need to ask officers to contact you with any figures that we have. I know that we are under pressure with the current services that we deliver, and that adding another burden will increase that pressure. That will need to be looked at: work is needed to ensure that the added burden can be managed.

Ben Macpherson: I am keen to hear from other witnesses on the particular issue of financing. Is local government anticipating a preventative spend effect, with a reduction in costs in the medium to longer term as a result of the bill?

Councillor Buchanan: Prevention should be at the heart of everything that we do. If all the processes that are laid out in the bill have the desired outcomes—to prevent recurrence and to prevent children moving into adult care services or even into adult justice services—then it will be significantly more cost effective. However, that cost effectiveness will not be realised in the space of one or two years; some of the differences will be almost generational. Preventative spending now will have an impact, but we will not necessarily be able to measure it in a year or two years: it will be an on-going process. In the future, we will see outcomes such as there being a reduced impact on care services and the justice system, but that will take time to filter through. That is one of the difficulties in relation to finance: the money has to be put in now to deliver care and provide preventative measures, but the impact will not be measurable after only a short time.

Jackie Irvine: On preventative spend and prevention, from the inspections that we do across the country, we are aware that our colleagues are under pressure: they are stretched—that is probably an understatement—and are struggling for staff. We also know that the country is not getting as many social workers through training and placements as we need.

We are doing a piece of work on the secure care pathway—we are looking at what happens before, during and after children go into secure care in order to see what prevention was available and how successful it was. We still struggle with that. The emphasis should be on prevention at all costs.

On measurability, we can measure the effect in the short to medium term outcomes for children and young people because we are preventing them from going into higher-tariff services. However, it is a real challenge for local authorities and services.

The bill will not fix everything. It is about taking on children at a certain point in their lives, but if we do not do highly intensive community-based work before that and get it right, there will be a constant stream into secure care.

10:00

Ben Macpherson: That is helpful.

Ben Farrugia: I appreciate that it is very difficult for a financial memorandum to capture all the costs that are anticipated or are likely to arise

through the introduction of new legislation, but it is not impossible. The financial memorandum could do better on that front. We could get a better and stronger picture, not through taking a huge amount of time but with investment of resource in attention and conversations.

For instance, the financial memorandum projects savings from transfers of money between social work teams. That is highly unlikely because of the reality of demand, but it is also just not how funding works, because of legislation. Funding for justice services is ring fenced, so any perceived savings that are accrued there—there will not really be any savings—could not be transferred to children's services. Those points could be unpicked better and a stronger case could be made through the financial memorandum.

The really important point that picks up on what Tony Buchanan said is that, although the bill rightly pushes us to make changes in the current system, this is about the people—the human beings. The current workforce is fighting to stand up at the moment. Pushing the workforce to move forward is right in many ways, but those people are fighting to maintain the current level and quality of services.

That is why Social Work Scotland's membership is really torn by legislation like the bill and much of the other legislation that comes before this committee and others. There are the right aspirations and goals, but there is a lack of confidence about our ability to deliver. There is also the knowledge, from experience, that the reality is that, ultimately, what happens is a criticism of the professions, workforces and systems that are required to deliver the bill. It looks like failure rather than a healthy appreciation at this stage of the system's ability to deliver what it is being asked to do.

Jackie Irvine: It is important to point out that the preventative measures before we get to the stage of secure care are about fulfilling the aspirations of the Promise. Although we are talking about the Children (Care and Justice) (Scotland) Bill, in order to fulfill the aspirations of the Promise, we have rightly committed to having a linked policy that needs to be developed to cover the whole picture.

I apologise for using the word "cohort". We tend to think about children—and adults—in groups according to whatever criteria we use. However, if you think about what is needed to fulfil the promise to keep children in their communities and have them supported at home, at school and by social work and healthcare where that is required, you will see that the whole system needs to work to fulfil the commitments.

Ben Macpherson: Those are important points.

Stephen Bermingham: I agree with Ben Farrugia's observations on the financial memorandum. For Children's Hearings Scotland, the biggest risk factor and the thing that will make the biggest difference is the intensive support packages that are offered to 16 and 17-year-olds.

We know from the data that the threshold for children coming into the children's hearings system has gone up and up. Children are no longer coming in for skiving school or for shoplifting offences; they are coming in with a range of complex needs. New 16 and 17-year-olds coming into the system who have not been in it before are likely to have some of the highest levels of need. There will be acute mental health issues and issues to do with sexual exploitation, homelessness and poverty.

The most important factor for effective implementation of the bill will be the intensive support packages that are available at the local level to support some of the most vulnerable young people who will come through the system.

Jenny Brotchie: Stephen Bermingham mentioned that there will be a 10 per cent increase in numbers coming through the children's hearings system and mentioned the intensive support packages. Those things mean that there will be an increase in the volume of personal data. It is sensitive personal data that relates to children—vulnerable children at that. There is a real risk of harm if that data is shared inappropriately or is not held securely, or if children cannot access their data protection rights.

I want to highlight that we need, as part of all this, to think about the resource that is put into ensuring that good data protection practices, policies and procedures are in place. It requires resource: unless we have the time, capacity and ability to make the really complicated decisions on things that can cause real-world harm, you are going to struggle.

We have mentioned prevention. A really important element of preventing harm is having good data protection practices in place. "The Promise" mentions the importance of good record keeping, too. We are talking about the record of people's life histories, particularly those of children who have been in care, and there is real risk of harm if that falls by the wayside because of resource pressures. I want to highlight that point.

Ben Macpherson: Thank you all for those very important points about implementation, and for highlighting issues that we will need to follow up.

The Convener: Do you have a brief supplementary, Mr Kerr?

Stephen Kerr: There has been quite a lot of implied stuff about resources existing elsewhere.

For example, in its written evidence, Children's Hearings Scotland says:

"It is important that the resources are moved from existing provisions into the Children's Hearings System".

Where do you think these resources to meet costs can be moved from?

Stephen Bermingham: I know that one of the bill's aspirations is, wherever possible, to move children out of the criminal justice system into the children's hearings system. I suppose, in that case, that resources should follow that.

Stephen Kerr: Right. So, the resource would move from the criminal justice system into the children's hearings system.

Stephen Bermingham: And into children's services.

Stephen Kerr: My underlying question, then, is this: is the same true for other areas? How much of this is new money?

The Convener: I think that Ben Farrugia made the point about money earlier.

Stephen Kerr: Did he?

The Convener: Yes, he did.

Stephen Kerr: I did not get a precise feeling about it, though.

The Convener: My understanding is that he gave quite a precise answer.

Jackie Irvine: Having managed criminal justice services, I point out that criminal justice funding is one of the remaining ring-fenced budget areas. If a local authority underspends or saves that money, it goes back into the public pot; the authority is not able to move that money somewhere else. It would need to be a national position.

The Convener: That, I hope, answers the question.

Jackie Irvine: That is just about criminal justice funding.

The Convener: In the interests of time, I will move on to questions from Stephanie Callaghan.

Stephanie Callaghan: I suppose that my questions follow on from what Jenny Brotchie was saying, so I will come to her first. Kate Wallace from Victim Support Scotland told us in evidence about a "lack of information sharing" and that

"People who have been harmed by children or young people do not get ... information"—[*Official Report, Education, Children and Young People Committee*, 29 March 2023; c 33.]

about their cases. Is the bill strong enough in dealing with that aspect?

Jenny Brotchie: My understanding of the bill is that it places an obligation on the children's reporter to inform victims of their right to receive information, but, as far as I am aware, I do not think that it changes the information that victims can receive. Such decisions are really complicated, and other legislation sets out what factors must be considered when providing information to victims.

As I have mentioned, under data protection law, there is an expectation that high levels of privacy will be attached to how you process children's data. The data really should not be disclosed unless there is a compelling reason to do so, but there will be situations, particularly those involving safeguarding, in which it will be appropriate to share it. It is certainly the case that data protection law will never get in the way of sharing data in such situations. However, it is complicated, and it is about balancing the rights of the child who has caused harm with the rights of the victim, who might well be a child, too.

The other thing that we should bear in mind is the purpose of information sharing, what objective you are hoping to achieve and the personal data that it is absolutely necessary to share. In some cases—the safeguarding situations that I have mentioned—that might be necessary; in others, it might be just a case of providing the victim with information about how the children's hearings system works more generally. That might be enough to fulfil the purpose.

I hope that that answers your question.

Stephanie Callaghan: Yes, that is great. Stephen Bermingham, do you want to comment?

Stephen Bermingham: Yes. Jenny Brotchie is right. The bill places a duty on the reporter to provide information on the existence of a compulsory supervision order, but no details will be provided on what the order covers. For example, with the two new provisions in the bill relating to a young person being prevented from going into particular premises or communicating with a specific person or class of persons, such information would not be included in the information that is shared with victims.

However, from a children's rights perspective, you would hope that, when that information could impact on the rights of a child—for example, if another child could potentially be harmed—there would be ways of sharing it at a local level that would not require legislative change.

Stephanie Callaghan: That would happen if, for example, it was serious—if there had been a serious sexual assault or something like that. There was also a suggestion that there should be a victim notification scheme, similar to the existing one for adults, so that people would feel that they

could keep themselves safe and have agency. What about that aspect of it?

Stephen Bermingham: The risk assessment around that would be hugely complex. It would have to happen on a case-by-case basis, and it would have to look at the risk not only to the victim but to the child who had caused harm. I would not really want to say much more about that.

Stephanie Callaghan: Ben Farrugia and Tony Buchanan both mentioned in their submissions that having a single point of contact could be quite important for victims. I suppose that goes back to what Jenny Brotchie said about having that trust in being able to get information about the process.

How important is that? How critical is that? Does that to some extent support the victims so that it is not really about getting too much individual information but about them feeling that they can have trust in the system and that they are being supported through the process?

Ben Farrugia: I am not an expert in the very technical area of information sharing, but I think that it nicely illustrates the real—and appropriate—complexity that we are trying to wrestle with in that area. There is probably no solution that everyone would feel completely satisfied with.

However, in relation to the question about a single point of contact, I have, on occasion, sat on the victims task force, as has Kate Wallace. Victims' stories about feeling isolated and alone, without access not just to information but to somebody who can support them through that experience, really resonated with me. That is why that point featured in our submission.

That comes back to the earlier point about how we address the cliff edge. It is about human beings working with human beings—that is how we can address those issues. We can probably operate in a very safe space around information sharing, where we do not share inappropriate information, but we can reassure a victim that they are being heard and listened to and that they can plan for their safety, as you rightly expressed in response to Kate Wallace's remarks. It would be positive to ensure that that is being done in some form. The term "single point of contact" does not have to be used, but it is about ensuring that victims have access to human beings who can help them.

Stephanie Callaghan: Are there changes that you feel should be made to the bill to emphasise that?

Ben Farrugia: That is a good question. I will take that into consideration and think about what could be added.

The Convener: Ruth Maguire has a supplementary in this line of questioning.

Ruth Maguire (Cunninghame South) (SNP): I would like some clarification from Stephen Bermingham. You said that we could not tell a victim details of a compulsory supervision order, which I absolutely appreciate. You will all have real-life examples of where harm has been done and there is a victim. In terms of the victim's safety planning, you said that there could be informal ways that children and their families might be able to understand—I will just say it bluntly—that they would be safe and they would not encounter the person who had harmed them in certain areas. Is that the sort of thing that you mean, whereby their victims could be partially informed without getting the details of the individuals? Does that make sense?

Stephen Bermingham: You would hope that, at a local level, if social workers or the police felt that someone was particularly at risk, they would inform that person that they were risk.

Ruth Maguire: Is that element of the safety of the victim covered in existing guidance for practitioners and professionals?

Stephen Bermingham: I am not an expert on that point, so I do not want to comment any further.

Ben Farrugia: I would not want to say definitively that it is not, but my lack of ability to articulate to you that it is probably suggests that it is not sufficient. Again, the bill is an innovation, which is taking us into new territory. A lot of work has been done in the past couple of years with the increase in the age of criminal responsibility, which would probably be relevant and appropriate to that area—I will be honest and say that I have not had lots of conversations with the Social Work Scotland membership about that. Your line of questioning, now and previously, suggests that we need to think more about that bit of the bill and how we would operationalise it.

10:15

Ruth Maguire: That is helpful. Thank you.

Jackie Irvine: Can I come in on that point?

The Convener: Certainly.

Jackie Irvine: Although I do not discount what has been said, we need to remember that the child or adult protection responsibilities of local authorities and statutory partners remain for everyone, whether they are a victim or a perpetrator. One would hope that, at a local level, as Stephen Bermingham has said, if one became aware that the person who is causing the risk was breaching any conditions or they had the potential to harm someone, child and adult protection services and statutory partners would have put in place other processes—whether the victim was a

child or an adult—to ensure that everyone was safe.

Ruth Maguire: I hear what you are saying and I am sure that, in extreme circumstances, they would have to do so. I suppose that I am thinking of examples—I will not start talking about specific ones—whereby harm can be caused that is not reaching that level, which we could be preventing.

Ben Farrugia: I have one quick point. I suppose that one of the measures would be around the movement restriction conditions.

The Convener: We might come on to those later, or do you want to pick up that line of questioning now, Ruth?

Ruth Maguire: If that would be acceptable, yes, I do.

The Convener: That is fine. We will jump ahead.

Ruth Maguire: I am skipping the queue—thank you, convener, and apologies to other committee members.

We have heard some concerns that compulsory supervision orders might not attract the same safeguards—the obvious one is the entitlement to legal representation—against depriving children of their liberty. I noted that Children’s Hearings Scotland had some concerns about the methods for tracking people, which the Information Commissioner might share in terms of the right to privacy.

I am keen to hear reflections on that point so that we can get on record what the concerns are about that. Does Jenny Brotchie want to go first?

Jenny Brotchie: My understanding is that a lot of the detail on that will come through secondary legislation, because the bill gives ministers the powers to set regulations on what devices and so on can be used.

There is an obligation on Scottish ministers to come to us, as the ICO, to consult on any preparations for legislation—which could include secondary legislation—that involves the processing of personal data. We would expect a formal consultation with ourselves to take place when that secondary legislation comes through, in which case we could look at the detail and provide nuanced feedback.

The general principle is that any tracking or monitoring that is in place must be absolutely necessary and proportionate. As I mentioned previously, you are looking at what the purpose of the measure is, what you are trying to achieve and what the minimum privacy impact is that you can have in relation to the solution that you are using to enforce those movement restriction conditions.

What you want to shy away from is collecting excessive data.

That point will also have to be determined case by case. For example, if you take a welfare approach and the purpose is to prevent an individual from visiting a place where they might purchase drugs, is it appropriate for tracking and monitoring to take place the whole time, so that you can track where that individual is going? I do not think that that would meet the data minimisation principle, which says that you must process only the personal data that is absolutely necessary for your purpose. It is about being clear on purpose and on what is necessary and proportionate case by case.

Ruth Maguire: Children’s Hearings Scotland had raised that point in relation to children’s rights to privacy.

Stephen Bermingham: That is right. It is worth pointing out to the committee that the bill is decoupling movement restriction conditions from secure care authorisations, lowering the threshold and replacing what was previously described as “injury” with “harm”.

The numbers of children who are on movement restriction conditions are quite low at the moment—there were 23 last year and 15 the year before—but we might see an increase in the numbers as a result of the bill, because the criteria are being lowered.

We have some unanswered questions about monitoring in relation to data protection. If a movement restriction condition is put in place, how will that be effectively monitored? One of the points that the policy memorandum supporting the bill mentions is about GPS. We want clarification on GPS monitoring and how that data would be used.

As we are talking about MRCs, I will say that there is another area that causes us a little bit of concern: the change in the criteria around psychological harm. The bill talks about “fear, alarm and distress”, whereas the Children’s Hearings (Scotland) Act 2011 talked about “injury.” The former is quite a subjective test, and we would have to do quite a bit of work to refine the criteria and practice guidance around that. I would hope that my colleagues in local authorities and other health and social care services would do the same so that there is consistency of application.

Ruth Maguire: I am grateful that you raised that, because another of our concerns is the subjectivity of that change. In its submission, SWS also mentioned some concerns in that area. Is there anything that you would like to share in that regard?

Ben Farrugia: The issues have been really well articulated—much better than I could have done—by Stephen Bermingham and Jenny Brotchie. I fully support what was just said.

Ruth Maguire: Does SWS have an opinion on the fact that some of the conditions mean that the focus might be on the child keeping away from harmful people or places rather than on us doing something about harmful people and places?

Ben Farrugia: Yes. I understand why the bill is drafted in the way that it is, but we would much rather it was about protecting the children and creating safe spaces for them to grow in.

Jackie Irvine: The bill lowers the threshold, so the balance of risk and the restriction of liberty need to be considered. An MRC is a form of restricted liberty; it is not secure care, but it restricts a child's freedom.

The other thing that I will say about practice around children who have an MRC is that there needs to be enough support so that a movement restriction order is not the only thing that is being relied on. Intensive support needs to be wrapped around the child, otherwise the MRC will not work, because it restricts their liberty without support and rehabilitation.

Ruth Maguire: If that support goes with it, is that where the greatest opportunity to be helpful to children lies?

Stephen Bermingham: Yes.

On Jackie Brotchie's point about support, legal representation is important. At the moment, a child gets automatic entitlement to legal representation with secure care authorisation. Restricting a child's liberty is a significant decision, and the child and their family should have automatic access to legal support.

Jackie Irvine: Just to be specific about that, the access needs to be there before the decision is made so that there is an influence on the decision. It should not be there only when an MRC is made. I am sure that Stephen Bermingham would concur with that view.

Stephen Bermingham: Yes.

Jackie Irvine: If that is being considered by a local authority—for example, as an application to the hearing—it would be unjust to go into that conversation with that family and child not having any professional advice.

Ben Farrugia: That nicely illustrates the level of change that will be expected in a children's hearings setting, when some quite complex legal and technical arguments will happen between families' advocates and children's advocates over issues such as that. It also illustrates the scale of the change, which we spoke about earlier. I think

that we can make the change if it is well planned and properly resourced, but it is still quite a considerable innovation.

Councillor Buchanan: The points have all been covered, but what must be highlighted—this has just been touched on—is the intensive support required around a restriction of liberty. That has to be factored in, and it creates an additional burden. It has to be part and parcel of the whole process. Yes, we might be keeping someone out of secure care, but the restriction will still require intensive support alongside it, whether that be legal, social care or social work support.

The Convener: Bob Doris has a supplementary question.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): I have half a supplementary question now, because witnesses have already dealt with the idea of not setting up young people to fail by not putting a support package around them when they get a movement restriction condition, so I will not pursue that part of it. However, we have not really heard about any potential opportunities arising from altering the threshold to make it easier to apply a movement restriction order.

Witnesses have said that putting a restriction on a young person's liberty is a major thing to do and that legal advice and so on is required before it is applied. However, if it was applied instead of a placement in a secure unit, it would represent less of a restriction of liberty. It could be applied in order to get a young person out of a secure unit earlier—as a pathway to restoring liberty by giving the young person their rights back on a tapered basis—which would be an additional benefit.

Could you outline whether you believe that there are opportunities along the lines that I have suggested, so that we do not just hear the potential negatives?

Stephen Bermingham: I think that there are opportunities in terms of keeping children safe. If we are thinking about secure care authorisation, that should be the last resort.

Bob Doris: Are some young people being put in secure units just now because the threshold to apply a movement restriction condition is quite high? Could we avoid putting them in a secure unit if the threshold were lowered, with the appropriate support package, of course?

Stephen Bermingham: Yes—if, as you say, the appropriate support package were in place.

Ben Farrugia: I could not say whether there are people in secure units who would not be there if the threshold were lowered, but I think that there are opportunities in this area if the appropriate support package is in place. If I were here to give

evidence on a piece of adult criminal justice legislation, we would be saying that we should pursue opportunities to keep adults out of custody and in the community, where they can have a more successful rehabilitation, and I would need to be consistent with regard to the legislation that we are discussing today.

Bob Doris: Are there young people who are in secure placements longer than they would be if the threshold were lowered to allow movement restriction conditions to be applied in a way that allowed them to leave secure accommodation earlier, again with the significant caveat about an appropriate support package being in place? I do not think that that has been discussed in evidence so far.

Jackie Irvine: I do not think that we could confidently answer yes or no, because no research has been done on that, so there is no data. The decision making for going into secure accommodation is specific, and the person needs to meet those conditions for the duration of their time in the unit, but, obviously, there is then no testing of risk and so on.

Various factors will influence the decision about ending the order and bringing the person out of secure accommodation. The matter would go back to the children's hearings system, and a panel would make a decision about what the local authority might be recommending.

There is good regulation around the decision-making process once the young person is in the secure accommodation, and there are frequent reviews. Further, obviously, people can ask for a children's hearing at any point. Therefore, I do not think that lowering the threshold would be the only thing that would affect the decision about a young person coming out—the situation is a bit more complicated than that.

The Convener: Stephanie Callaghan has a brief supplementary question on this issue, and then we will have questions from Ross Greer.

Stephanie Callaghan: Jackie Irvine mentioned ASN and Tony Buchanan spoke about intensive support and intervention. From the evidence that we have heard, it seems that people are trying to get the most out of their time in young offenders institutions and secure care. It seems that, at that point, everything speeds up and a young person can get a diagnosis that, if they had had it earlier, would have perhaps prevented them from ending up in the place that they are in. Does anyone have any comments on that?

Ben Farrugia: You are summarising the narrative around secure care that has existed within the Social Work Scotland membership for the past decade. It is an unfortunate reality that, if we had a better array of community-based

services, we could be diverting at least a proportion of that population and preventing them from needing to be deprived of their liberty. However, there is an appreciation of the reality that many of them will get access to the support that they need by going into secure care. That said, we should not have to make that trade of their liberty for the service that they need.

Stephanie Callaghan: Thanks for letting me get that on the record.

The Convener: I thank Ross Greer very much for waiting—we come to questions from you now, Ross.

Ross Greer: Thank you, convener—not at all; those questions and answers were all important and useful for our evidence.

10:30

My line of questioning relates primarily to transport provision for secure accommodation. The questions will be mostly for Tony Buchanan, in the first instance.

You are probably aware of the evidence that we heard in previous sessions from secure accommodation providers, who laid out the complete absence, essentially, of transportation provision based in Scotland. They cited some examples, including worst-case scenarios whereby young people needed to be transported from one side of Glasgow to the other, or from Montrose to Ninewells hospital, and the transport provision had to come from Portsmouth or at least from somewhere in the midlands or somewhere else far south of here.

I presume that the local authority has to deal with the matter and find transportation provision. Why do you think that the situation is happening? Is it a case of market failure in Scotland, or is it something else that means that nobody is providing the service here?

Councillor Buchanan: It is potentially a failure of the market. You are right in what you said—on occasion, children are waiting for a ridiculous amount of time to be transported a relatively short distance because a vehicle has to be brought up from south of the border. That is ludicrous, and I am sure that we would all agree that that situation should not exist.

If it would be useful, I could read out the points arising from the review that is being chaired by COSLA, which has highlighted a lot of the issues. Looking at the care centres that we have—my understanding is that we have only four—it is fair to say that it would make more sense if they were able to provide that transport as part and parcel of the care service that is provided. That would seem to be the logical approach, given the failure, in

essence, of the market, the costs involved and the time that children are waiting, perhaps in an environment that is not the most suitable—they may be held in a young offenders institute or in a police cell because of a time delay in getting transport. In anybody's book, that makes no sense.

Ross Greer: Thank you. If anybody else on the panel wants to come in, they should feel free to indicate.

On the point about the centres themselves providing transport, what is currently blocking that? One way or another, transport needs to be paid for; at present, separate private providers are being paid to do it. Presumably, in an ideal world, the money that is being used for that could simply be reallocated and go straight to the centres, which would provide the service. It is obviously not as simple as that, so what is currently preventing the centres from putting on transport provision themselves?

Councillor Buchanan: I am not 100 per cent aware of that. I do not think that it is currently within the gift of the centres to do that—I do not know whether that is down to cost or the support that would be required to put in place and run that service. That is part and parcel of the difficulty. Personally, I think that the arrangement needs to be reviewed to ensure that the centres have the ability to do that, because it would make so much more sense than having to wait for hours or indeed potentially days to have someone transported what is usually a relatively short distance across our centres.

Ben Farrugia: I reassure the committee that the issue has been exhaustively explored over the past couple of years with the leadership of COSLA and the Children and Young People's Centre for Justice. Having been part of that conversation at times, I know that a number of options have been explored. I have been reassured of the thoroughness of that process. However, it has got us to a point at which—as you articulated in your question—we understand the problem well and what some of the solutions are, but ultimately we still need to push one of the solutions over the line.

An obvious solution is to have the care providers providing transport. There is a cost to that, and they would have to maintain vehicles and retain the staff to provide the transport on an ad hoc basis, as we cannot predict when children will need secure care. Who should be responsible for sustaining that additional cost? Would it be added to the cost of placements? Would it fall on local authorities or on the Scottish Government?

In a very reductive way, that is where we have got to with the conversation. I feel that there is a plan there, and if the committee wants to hear

more on that, I am sure that the right colleagues from COSLA and CYCJ could talk about it. Nevertheless, it needs a final push to try to get a much more sustainable and appropriate child-centred model. Every month, I hear about a case or an individual example of a child who has had a completely inappropriate experience in relation to transport, which is reflected in the evidence that the committee has received. We must bring that to an end as soon as possible.

Ross Greer: I am keen to move on to talk about the COSLA-led working group and how we get to those solutions, but, first, given that evidence of such experiences is coming up monthly, as Ben Farrugia said, we face the issue of how to report it. My question is for Tony Buchanan initially. Are local authorities confident that, when a secure transport provider has had to physically restrain a child for whatever reason and by whatever method, the local authority responsible for that child is being informed of that? Are you confident that there is a consistent reporting mechanism for those instances? Does that vary by local authority? Are individual authorities making policy about what that reporting should look like, or is there something national?

Councillor Buchanan: There is a specification that goes out. I will read it out:

“The Provider will have in place appropriate strategies to help the child manage their behaviour in line with the Holding Safely guidance. A physical restraint must be lawful (ie a last resort, only for the purposes of protecting the child or another person from harm, using the minimum necessary force, for the minimum necessary time and never for the purposes of discipline or punishment) and staff must be trained in physical intervention techniques by an accredited body, they must be subject to refresher training and annual reaccreditation. A restraint outwith this criterion will be unlawful and should be treated as a child protection concern and safeguarding issue. It may also be a criminal offence. Each time any intervention or safe hold is used, the team around the child must be informed. There should be an appropriate recording and monitoring process, including any intervention to try and avoid a safe hold, duration of the restraint, the child's views of the incident if appropriate, and the decision making around the safe hold. Verbal feedback will be provided upon arrival at the child's destination, with appropriate paperwork within 24 hours.

Quarterly data on the use of safe holds will be presented at monitoring meetings.

The Provider will not use mechanical restraint or handcuffs nor use pain as a form of restraint.”

That is the expectation. That is what goes out with every transport recommendation, and we would expect that to be upheld.

Ross Greer: I welcome your reading that out and putting it on the record. Bearing in mind the evidence that has been submitted to all of us in various guises at various points, how confident are you that the present reality reflects that?

Councillor Buchanan: I cannot answer that personally. It is up to my colleagues on the front line who are delivering those services, and who might have the information to hand, to answer that. I do not have that information to hand.

Jackie Irvine: The Care Inspectorate would find it to be good practice for the receiving or secure service—whether children come from across the border or from within Scotland—to be clear about how children are getting there and what the arrangements are for getting them there.

I have heard the evidence and we certainly hear of and identify poor practice, but we also see evidence of good practice. That can be something simple, like a social worker being with the child who is being transported. I know of one case of a social worker going to the secure service ahead of the child, so that they were there to help to prepare and settle the child. A social worker might also maintain telephone contact and keep a call open throughout a long journey.

The child, or their family, should also have an understanding of where they are physically going—which country and where they are going—and should know what to expect. Their views should be taken on board.

That will all lead to a more open conversation if something goes wrong or if restraint has to be used during transport. That information should be passed on to the receiving service and the service should let the local authority that the child has come from know that there has been an incident.

I am not sure how confident I am that there is a written record of the rationale for decisions. That is a question for the secure services, because that is where that should be communicated. Unfortunately, we do not have anyone here from secure services, but that might be a question that you would want to ask them.

Ben Farrugia: Social Work Scotland does not collect information about that sort of thing, so I cannot give you a definitive answer. We are talking small numbers and the level of information that my members have about the experience of children in transport to a secure unit suggests that, whether good or bad, the information is being reported through the kind of framework that Tony Buchanan outlined.

Ross Greer: I have a potential daft-laddie question about the funding. If a young person injures himself or has some kind of medical issue that means that they need to go from secure accommodation to a hospital, who pays for that? Someone needs to procure the transport provider. Does the secure accommodation centre pay for that from the block grant of funding that they are given for the child, or does it invoice the local

authority for individual journeys? How does the funding work?

Ben Farrugia: I do not know.

Jackie Irvine: It is probably a combination of both. If someone who is in a secure service in the west of Scotland needs to go to either the Queen Elizabeth hospital or the Royal Alexandra hospital, which is not that far away, that might be fine. If the hospital is further away, they would probably negotiate with the local authority and say that they are seeking that. It will be a combination.

Ross Greer: Might it delay the journey if negotiation about who is going to pay for the trip needs to take place before the young person is actually placed in a vehicle and taken to wherever they need to go for whatever it might be?

Ben Farrugia: That issue has not come up—I am not saying that it is not a big issue—in the conversations that I have been part of for the national secure care group or in those spaces. Again, although I do not have the information, I am moderately confident that the issue is managed within the current framework of the provision of secure care. A lot of secure care providers maintain transport of their own. The issue is about getting children to and from secure care at the start and end of their placement.

Jackie Irvine: If it was a medical issue, the Care Inspectorate's expectation would be that the child would get medical treatment as soon as possible—just as we would expect for anyone. If the travel relates to going to secure accommodation or from secure accommodation to court or to a children's hearing, for example, then that cost normally falls to the local authority.

Councillor Buchanan: The local authority generally picks up the tab for that, unless there is an emergency, in which case we would need to look at and find out what those costs are for.

Ross Greer: Tony Buchanan, the COSLA submission says that you believe that secure transport should be included in the regulations. Do you support the inclusion of a power in the bill for ministers to make regulations in this area? Is it correct to say that you are not looking for anything specific, such as the criteria and standards for secure transport, to be included in primary legislation and that you would be content with ministers having that regulation-making power?

Councillor Buchanan: If we have secure centres, it makes sense that they should be able to provide transport to and from those centres. Obviously, providing that transport would mean an increase in costs, but I suspect that if our centres made that provision, those costs would probably be significantly less than the current wait and

costs involved in transport coming from south of the border and travelling much further.

Jackie Irvine: In relation to having those services regulated, the question is who would regulate them? Just to be clear, nothing falls within the legislation for the Care Inspectorate that allows us to regulate transport, particularly if it is based outwith Scotland. We have no jurisdiction over any service outwith Scotland.

However, we are involved in a working group discussion with the Scottish Government, COSLA and other colleagues in relation to the myriad complex issues around transport, although no one solution is jumping out at us at the moment. Some people might assume that the Care Inspectorate could take on that role and we cannot, as things stand.

Ross Greer: If it was to take that on, would it require a change in primary legislation or could it be done through secondary legislation?

Jackie Irvine: It would require a change in primary legislation, and obviously an additional cost.

The Convener: Talking of transport and cross-border activities, we will move to questions on cross-border placements. We have heard that the funding model for secure care depends on centres running with at least 90 per cent occupancy—some of the words are a bit harsh, and I am not comfortable with saying them. The number that is required for that level of occupancy is generally more than the number of young people from Scotland who come into those centres, so many of the centres are reliant on young people from the south and other parts of the United Kingdom being placed in their care.

Do our witnesses have any views on cross-border placements? Are you aware of any differences in the fees that might be charged for Scottish young people and for those from elsewhere in the UK?

10:45

Jackie Irvine: Anecdotally, I understand that it is probably a higher fee, but I do not have that detail to hand. There is a particular issue in relation to what the bill suggests for the Care Inspectorate and cross-border placements, particularly around regulation of services in Scotland that would take a cross-border placement. That would be not just about secure, because we know that children will come across the border and be placed in open residential settings, for want of a better description.

One issue that we raise in our written submission is that we need to better understand what is proposed in the bill around specific

standards and outcomes in relation to cross-border placements, because we would expect the same outcome that we seek for Scottish children. We regulate services using the health and social care standards, which were developed by Healthcare Improvement Scotland and the Care Inspectorate, so we have some anxiety about creating another set of standards, which would give us a twin-track system, when we should be treating children—whether they are from England, Wales or Scotland—against the same standards. We would urge against creating another set of standards for cross-border placements.

The other complication is that it has been suggested that, when we register a service in Scotland for the first time, if it plans to take cross-border placements, we would register it for that as well as for local placements. From reading the bill, it seems that an existing service would need to apply for that registration, but the reality is that, even if that is not stipulated in a service's conditions of provision, the market position is such that a service or business might receive a call on a Friday from a London borough asking, "Have you got a place?" and, if it has, that child would come. We need to be realistic on that.

People would also be keen to know how many cross-border placements we have at any one point in Scotland—I think that that has come up in previous evidence to the committee. That relies on us being informed of cross-border placements, whether that is the Care Inspectorate or the local authority because, obviously, a lot of the provision is independent. Therefore, although it might become a technicality that a service needs to be registered to take a cross-border placement, if we discovered that a placement did not meet that regulation, we would not necessarily seek to de-register the whole service, because we would understand that it was caring for other children. A bit of reality needs to be brought to that part of the bill.

The Convener: From the visit that I took part in earlier this week, I know that some providers charge the same fees, irrespective of where the young person comes from, but it was also intimated that that might not be the case everywhere.

Does anyone else want to comment?

Ben Farrugia: In general, the matter of cross-border placements exercises the Social Work Scotland membership a lot, and Jackie Irvine picked up on some of the issues. There are existing expectations about the sharing of information on children who are moved across borders and placed in residential or secure care in Scotland. Those expectations are not always fulfilled by our English colleagues and, when there has been a serious incident in relation to a child

who has been placed here from England, it is not uncommon to find that that is the first time that the relevant local authority and health board has heard about it.

I have to say that the Scottish Government has been on the case about the issue for the past couple of years, and the bill represents a staged approach to improve what we can do in a complicated legal area, where we have different jurisdictions and a single UK internal market, which adds some complexity. However, we welcome the fact that the bill is taking steps to improve how we regulate with a small r, despite Jackie Irvine's comments about the practicalities of doing that.

It is a very welcome step. Indeed, we would like things to be taken even further, not necessarily in this bill but subsequently, to ensure that we provide great-quality care to all children who are placed here and that we are not creating a situation in which some of our services are reliant on a flow of English children to sustain their model.

The Convener: Can you make your comment brief, Stephen? I am just keeping an eye on the clock.

Stephen Bermingham: I will be very brief, convener.

Cross-border placements, in essence, circumnavigate the children's hearings system. Numerous organisations, including the Promise, the Care Inspectorate—which has done a report—and the Children and Young People's Commissioner Scotland, have highlighted the fact that those young people's rights are not as well respected as they perhaps should be. I suppose that, for us, an issue would arise if a child on a cross-border placement were to be referred into the hearings system, and, as Ben Farrugia alluded to, it would be all about navigating the different jurisdictions and the complexities that that would entail.

The Convener: We move to questions from Bob Doris.

Bob Doris: I want to have a wee look at enhancing the rights of children—16 and 17-year-olds—in police custody. As I understand it, the bill will ensure that, wherever possible, they are not detained in police custody in the first place and that their parents are notified, unless the child objects, in which case they can identify another individual in that respect. The two things that will always happen are that the local authority will be informed, given its wider duty of care, and the child will not be able to waive their right to a solicitor.

I hope that I have summed up the enhanced rights, but are they sufficient? What difference will they make? Should the range of rights that I have suggested be added to? Ben Farrugia, do you want to go first?

Ben Farrugia: This is a really interesting area and, again, I reassure all of you that a lot of activity and conversations are going on, particularly with Police Scotland and partners such as us, to address the issue of children being held in police custody.

We welcome those innovations. We have not necessarily put forward any suggestions for further development, partly because the central theme of our evidence and my feedback today is that we just need to be confident that we can do this.

I think that the suggestion with regard to the enhancement of rights is appropriate. The local authority will, appropriately, have increased responsibility, but the question is whether we are in a position to meet that requirement properly. We will want to match our pace of improvement to what we can actually do—and even this will stretch us. At the moment, we have children and families social work teams at 60 to 70 per cent capacity, so this will be a stretch.

Bob Doris: So, the notification requirements and active engagement from the local authority, social work or whoever will be, as you have described it, a stretch. Perhaps this would be an appropriate time to bring in Councillor Buchanan.

Councillor Buchanan: I think that Ben Farrugia has described the situation. At the moment, there is massive pressure on our front-line teams—our social work teams and, indeed, the care teams. That is not just from a financial resource point of view but from the point of view of having staff in place, getting them trained and being employable enough for us to take them on. There is a significant shortage in that respect and, as with all these things, we would like massive improvements to be made. Ultimately, there are costs in ensuring that training is in place and that there are enough social workers to fulfil our needs.

Bob Doris: This is not part of our questioning, but I wonder whether investment now in social work and local authority engagement with 16 and 17-year-old young people will not just be the right thing to do but represent a cost saving in future years, as they might be less likely to have direct interaction with the judicial system. Is it worth making that investment?

Ben Farrugia: Definitely. I cannot speak to potential cost savings, because my experience so far is that such things are very difficult to pin down, but the reality is that this is the right thing to do for children and young people so it is the right investment to make.

Bob Doris: Finally, I note that Ben Farrugia did not suggest any additional rights that he might wish to see at this stage, but instead said that we should get these ones on board in legislation, see how they pan out and then go back and consider the issue. My briefing paper suggests that I might want to nudge you slightly on that. Is there a case for saying that children should never be detained in a police station under any circumstances? If so, should that be in the bill? Can you provide any practical examples in which there would be no alternative to detaining a young person in a police station?

Those are the two extremes, if you like: should we go further and put something in the bill, which would mean that we would lose the flexibility, or, as a counter, do we need to have flexibility? I am targeting Ben Farrugia with that question.

Ben Farrugia: That is okay—I can easily answer that. I think that we still need the flexibility. You have asked whether a case can be made for children to never be held in police custody: absolutely. However, the reality is that, with the infrastructure that we have in Scotland, it is almost inconceivable to me that we will not have to use that resource for a number of years to come. I give credit to Police Scotland, as it is aware of that and is investing in its police estate to ensure that it improves its provision to take that into account for the affected population of children and young people.

There have been lots of interagency conversations between Police Scotland and Social Work Scotland about where other appropriate places of safety could be found for children who are not in police custody. The reality is that there is a capacity issue. For better or worse, the police force has capacity in its custody suites, where it can hold a child for their safety or the safety of others. For the foreseeable future, that would need to be the case. We do not recommend that that provision be included in the bill, as we would not be able to deliver it.

Bob Doris: Do you want to flesh that out a little? Can you give a specific example, other than capacity issues, of where police custody would be absolutely unavoidable, which would mean that we would not want the provision to be included in the bill?

Jackie Irvine: That links to the legislation on the age of criminal responsibility. In relation to children who are above the age of criminal responsibility, the police will still have a statutory duty to investigate any crime. At this point, you could not say that a 17-year-old will never have to go into a police station, because that is the job of the police. What gives me assurance is that, for under-16s, it has been the case all along that we would expect to be notified that their time in police custody

would be reduced as much as possible and an appropriate adult would be provided for them. The bill helpfully extends that to 16 and 17-year-olds. However, unless the age of criminal responsibility is raised to 18, the police will still have to investigate those individual cases.

Bob Doris: Ben, do you want to add anything?

Ben Farrugia: No—that is very clear.

The Convener: Pam Duncan-Glancy mentioned that she might have a supplementary. Please ask it briefly, as I am keeping an eye on the clock.

Pam Duncan-Glancy: Thank you, convener—I appreciate your using your discretion to do that. I will be brief.

My question is about the support that young disabled people who are in the system might need, which was mentioned earlier. Are you confident that secure accommodation will be able to provide additional support, for which you are seeing an increasing requirement?

Jackie Irvine: At the moment, I cannot say that from a practice point of view. There would need to be an adjustment. Children's needs are assessed on a case-by-case basis, and if they have a disability or an additional neurodevelopmental issue, that should be assessed as part of the package of support, and adjustments should be made to ensure that those needs are met. That would be the standard expectation.

The Convener: I thank everyone for their time. We covered a lot of ground. I suspend the meeting to allow for a comfort break.

10:58

Meeting suspended.

11:10

On resuming—

The Convener: Our next agenda item is consideration of our recent external visits to the young offenders institution at Polmont and to two secure units, as part of the committee's scrutiny of the Children (Care and Justice) (Scotland) Bill. The bill proposes that 16 and 17-year-olds will no longer be held in young offenders institutions and that, should 16 and 17-year-olds need to be detained, that will generally be in secure accommodation. The bill will also provide for young people who are in secure accommodation to potentially remain there after they turn 18, although that will depend on the individual circumstances and would not apply beyond the age of 18.

Given the proposed changes, committee members visited YOI Polmont and the secure

accommodation centres St Mary's Kenmure and Rossie. The committee is very grateful to the governor of YOI Polmont, Gerry Michie, and to Jim Shields at St Mary's Kenmure, and Mary Geaney—I am sorry if I got that name wrong; it was just Mary when we met—at Rossie, and their respective teams, for facilitating the visits. We are also grateful to all the staff whom we met for taking the time to speak with us, show us round their facilities and explain how they support young people in their care. I also thank the young people with whom we had the opportunity to speak.

I thank everyone for their time today. The public part of today's meeting is now at an end and we will consider our final agenda items in private.

11:12

Meeting continued in private until 12:25.

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