OFFICIAL REPORT
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Education, Children and Young People Committee

Wednesday 3 May 2023

Session 6

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
13th 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:

Natalie Don (Minister for Children, Young People and Keeping the Promise)
Debbie Nolan (Scottish Government)
Brendan Rooney (Scottish Government)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 3 May 2023

[The Convener opened the meeting at 09:39]

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

The Convener (Sue Webber): Good morning, and welcome to the 13th meeting in 2023 of the Education, Children and Young People Committee. The first item on the agenda is our final evidence session on the Children (Care and Justice) (Scotland) Bill. I welcome Natalie Don, Minister for Children, Young People and Keeping the Promise, who is joining us for the first time since being appointed. Good morning and congratulations. Alongside the minister are Scottish Government officials Brendan Rooney, who is the bill manager; Deborah Nolan, the bill team professional adviser; Hazel Crawford, head of the children's residential care unit; and Barry McCaffrey, solicitor in the legal directorate.

We begin with an opening statement from the minister. You have five minutes, minister, and I will keep you to time, given the technology issue that has delayed our start.

The Minister for Children, Young People and Keeping the Promise (Natalie Don): No problem. Thank you, convener, and good morning.

I start by recording my appreciation of the committee's diligent work on the bill and that of all witnesses, those who have appeared before the committee and those who responded to the committee's call for views. Your efforts have made a huge contribution to the important discourse on how we can improve Scotland's approach to the children and young people who come into contact with our care and justice settings.

Scotland and all the parties in this Parliament committed to keeping the Promise by 2030. The Government's implementation plan for the Promise was published just over a year ago and received cross-party support. The bill takes forward various key aspects of the Promise. It advances rights under the United Nations Convention on the Rights of the Child and brings consistency across various parts of legislation to the definition of a child as a person under 18. That approach builds on our getting it right for every child principles and our youth justice vision.

You will be aware from evidence to the committee that there are inconsistencies in how Scotland treats particular 16 and 17-year-olds. By raising the maximum age of referral to the reporter, the bill takes action, addressing many such discrepancies in how 16 and 17-year-olds experience the children's hearings and criminal justice systems and how those two systems interplay. It provides all children with the opportunity to access the hearings system in cases where they may need the care and protection of that system or in cases where they are in conflict with the law. Importantly, the bill does not disturb the constitutional independence of the Lord Advocate. Procurators fiscal will retain the discretion to prosecute children and young people in court where deemed necessary.

The bill makes provisions to improve the safeguards available to all children in the criminal justice system. Scotland's courts will still be able to deprive a child of their liberty but, in line with the Promise, the bill makes it clear that detention should normally be in secure accommodation rather than a young offenders institution, at least until that deprivation needs to end or the child turns 18.

I know that members of the committee have visited secure centres across Scotland, as well as HM YOI Polmont. You will have seen therefore that YOIs are not designed primarily as bespoke environments for children. Secure care centres are established to be trauma-informed and age-appropriate settings. They offer a high staff to child ratio of skilled professionals with the specific qualifications required to meet the complex care and support needs of young people. Secure care can and, indeed, already does care for those children who pose the greatest risk of serious harm. The supervision and support arrangements in secure centres are intensive, and you will have seen from your visits that, when a child is placed there, public protection and safety are critical elements. Facilities are locked.

I know that stakeholders unanimously expressed support for ending the placement of children in YOIs. However, concerns have also been raised about capacity and resourcing. The Scottish Government is not complacent in that area, which is why the reimagining secure care project, which the Children and Young People's Centre for Justice is undertaking on behalf of the Government, is running in tandem with the bill. Moreover, a national implementation group for the bill is due to start its work in early June.

Turning to the matter of cross-border placements, none of us want children and young people to be removed from their communities and placed far away. However, those arrangements need to be able to happen in some exceptional

circumstances. I am aware that the committee has heard some powerful evidence of such situations, but there must be rigour in how such placements are planned for and implemented in order that they are not detrimental to children's rights. The bill will provide powers to ensure that rigour. For temporary placements, responsibility rightly remains with the placing authority, which knows the child and plans their care.

09:45

The bill also gives further and more flexible powers to make providers more accountable for those types of cross-border placements. That enables the introduction of further requirements on residential providers, alongside extra powers for the Care Inspectorate in relation to placement providers.

Stakeholders have expressed support for the bill but have also raised considerations about resourcing more broadly. We are acutely aware of the need to work with partners to prepare for the bill and ensure that systems, settings, policy and practice are ready for it. That is why the multi-agency implementation group that is planned for June is crucial. That inception meeting of key partners will help us to explore resource and capacity requirements in more depth while co-designing governance and oversight measures.

I hope that those opening remarks are helpful. I look forward to answering the committee's questions.

The Convener: Thank you for being so good with your time, minister. We move to questions from the committee. I hope, in the interests of time, that one person will be able to respond to each question.

Stephen Kerr (Central Scotland) (Con): Why is the new definition of a child up to the age of 18?

Natalie Don: The UNCRC defines a child as under 18. As I said in my opening remarks, that has cross-party support. Sixteen and 17-year-olds are still children and have the best chance of being rehabilitated.

Stephen Kerr: Why do we go by chronological age at all? Why do we not go by the age of accountability or responsibility? Some of the 16 and 17-year-olds that we are talking about have the mental age of someone much younger, so why are we stuck on chronological age?

Natalie Don: As I said, we are committed to incorporating the UNCRC, which defines a child as under 18. Obviously, in Scotland, there are a number of definitions of a child, and there are age-based laws that allow, for example, 16-year-olds to live independently, but complexity does not necessarily mean incoherence.

In some instances it can be appropriate to treat young people in the same way as adults, and that will strengthen their rights, but in other contexts, such as diverging from the criminal justice system, which is what we are discussing here, treating young people in a different way from adults will strengthen their rights. Treating them in this way within the criminal justice system gives them the best chance of rehabilitation.

Stephen Kerr: But you can get married when you are 16.

Natalie Don: Yes, but, as I have just said, complexity does not necessarily mean incoherence.

Stephen Kerr: It seems somewhat incoherent to me that someone can get married at 16 but you are saying that the age of a child goes up to 18. Your Government just introduced legislation that was going to give children as young as 16 the ability to legally change their gender.

Natalie Don: Yes.

Stephen Kerr: That is incoherent, is it not?

Natalie Don: I do not believe so. As I said, how we treat children in the criminal justice system is a very specific issue. Children who are 16 or 17 will still be able to make decisions for themselves, but treating them like this in the criminal justice setting will give them the best chance of rehabilitation.

We know that children at 16 or 17 do not necessarily make decisions based on long-term thinking, and, depending on how they have grown up, they may not necessarily fully understand the law or have a clear depiction of what is right and wrong.

Stephen Kerr: I agree with you on that point; I just point out that—

Natalie Don: I believe that 16 and 17-year-olds should be treated as children within the criminal justice system.

Stephen Kerr: I point out that there are grave inconsistencies. Should this change become law, there are inconsistencies that will be hard to stand up. Minister, surely you must agree with that.

Natalie Don: As I said at the beginning, I do not believe that complexity—

Stephen Kerr: I know that that is your answer, so I will move on. There are inconsistencies.

Natalie Don: There are inconsistencies.

Stephen Kerr: And they do not stand up.

Natalie Don: I do not believe that a blanket definition of 16 for all the different things that you discuss is appropriate.

Stephen Kerr: No, and I—

The Convener: Mr Kerr has already said that he is looking to move on.

Stephen Kerr: I will move on.

We will have to increase capacity in the children's hearings system, because the bill will increase demand for its services. What do you estimate that that increase in demand will be?

Natalie Don: That is a good point. I know that the committee has taken evidence that has raised concerns about capacity in the children's hearings system. We expect that there could be up to 2,400 hearings, but we are working with the key stakeholders to ensure that capacity is in place.

Stephen Kerr: There will be an increase in demand for children's hearings of somewhere between 10 and 20 per cent, will there not?

Natalie Don: I believe so—around 10 per cent.

Stephen Kerr: What about the number of new volunteers that the children's hearings system will have to find?

Natalie Don: I do not have those figures in front of me, but I am happy to pass the question to officials if they are aware of the detail.

Brendan Rooney (Scottish Government): You will see that the financial memorandum has quite an outline of the capacity increases that we envisage coming from the bill—

Stephen Kerr: I am aware—

Brendan Rooney: I know that Children's Hearings Scotland was in front of the committee and has given evidence. We have worked closely with CHS and the Scottish Children's Reporter Administration on the forecast. The financial memo talks about the increased number of hearings—

Stephen Kerr: So, how many volunteers is it?

Brendan Rooney: CHS's latest estimate is around 300. It was talking about it recently.

Stephen Kerr: It will not be easy to find 300 more volunteers in such a short space of time, will it, minister? What are your concerns about what might happen, given that it is currently difficult to recruit CHS volunteers?

Natalie Don: It is important that we have heard evidence that it will be possible and that the change is supported.

Stephen Kerr: Do you believe that?

Natalie Don: Yes, I do. As I said, the committee has heard evidence to that effect, so it is not necessarily about whether I believe it. That is what the key stakeholders are saying.

Stephen Kerr: No, no. You can hear evidence and you can decide for yourself whether you think that it is consistent with what is rational or feasible. Is it feasible for the children's hearings system to cope with additional recruitment on top of the attrition rate that it already has to deal with? That is already an issue. Is it feasible for the system to have a net increase of 300 volunteers?

Natalie Don: It is feasible. We would not be carrying out the changes if they were not feasible. As I said, Children's Hearings Scotland has said that it can cope with increasing capacity. The evidence is there for Mr Kerr.

Stephen Kerr: What happens if CHS cannot find the volunteers?

Natalie Don: I do not like to speak in hypothetical terms. We have said that it will be possible.

Stephen Kerr: Have you considered what might happen if we cannot get the volunteers?

Natalie Don: The proposal has been worked through and discussed. The process is on-going, so, if we see that there will be issues with capacity, the Scottish Government will absolutely—

Stephen Kerr: All that I will say to you, minister, is that the recent record of recruitment shows a fall-off in the number of volunteers, particularly in the past few years, so there is a real risk that it will not be possible to recruit the number of volunteers required. It would be responsible of Government to consider what that scenario might look like, given the demand that will be put on the children's hearings system.

What about training? Are you completely satisfied that the children's hearings system has the capacity to give the high quality of training that will be required, given the fact that it will be dealing with 16 and 17-year-olds and, perhaps, a different range of offences?

Natalie Don: I am satisfied. I am confident in that. Again, Children's Hearings Scotland has said that it will be possible. We have the working group under way and, if there are any issues or concerns, we will work through them.

The Convener: The Scottish Sentencing Council has guidelines for sentencing our young people. They apply to a young person who is under the age of 25 at the time of entering a guilty plea or when they are found guilty of an offence. There have been some cases recently. Were those guidelines considered when the bill was drafted? If so, why does the bill not go further to provide consistency with regard to the age of a young person in the criminal justice system?

Natalie Don: The Sentencing Council rightly has a statutory duty periodically to review the sentencing guidelines that it publishes. The Cabinet Secretary for Justice and Home Affairs intends to meet the chair of the council to discuss that work and, when doing so, will raise the general question of how the council plans to keep its guidelines under review, including those on the sentencing of young people.

The Convener: My question was: were they considered when you were drafting the legislation?

Natalie Don: Yes, they were considered.

The Convener: Obviously, there has been quite a lot of press coverage and public outcry on issues around the sentencing guidelines for people of that age. Do you have any comments on that?

Natalie Don: It is not for a minister to comment on a live case.

The Convener: Okay—convenient.

The committee also heard from Social Work Scotland that the bill has the "right aspirations and goals" but, due to resource issues impacting social work, there is

"a lack of confidence about our ability to deliver."—[*Official Report*, *Education, Children and Young People Committee*, 26 April 2023; c 19.]

That is on the same theme as the questioning from Mr Kerr. How will the Scottish Government support local authorities and their social work teams to implement the bill effectively?

Natalie Don: That is in a similar vein to the questioning from Mr Kerr.

The Convener: It is indeed.

Natalie Don: As I said, the Scottish Government is working with the key stakeholders and those involved to ensure that we can implement the bill. We are aware of persisting challenges around staff recruitment and retention in the social care sector, and those issues have obviously been exacerbated by the effects of the Covid-19 pandemic. However, the Scottish Government block grant to local government of £13.5 billion is an increase, despite the most challenging budget settlement since devolution, so the financial resources are there. In terms of support, the Government will work with local authorities on that.

The Convener: Tangibly, what support are you looking to give to local authorities regarding their social work teams—not their social care services. We have heard about the recruitment challenges and the training that will be required. What are you doing now to ensure that everyone can go from day 1?

Natalie Don: On the support for social work, I will hand over to my official, who might give a clearer response on that.

The Convener: Okay—over to you Mr Rooney.

Brendan Rooney: Obviously, the financial memorandum predates Ms Don's time in office. The process that we went through to quantify the effects that will stem from the implementation of the bill involved engaging with Social Work Scotland and the Convention of Scottish Local Authorities quite early on. That was done in the final third of last year, so the financial memorandum gives a snapshot of forecasts of the increases to social work resource and capacity that will be needed in implementing the bill. However, I know that evidence has been given at stage 1 from Social Work Scotland and COSLA, and that they have sent in specific responses to the call for evidence.

The Convener: We will come to questions on the COSLA submission later.

Brendan Rooney: That kind of moves the issue forward.

With the finances, there are a lot of variables. The bill enables 16 and 17-year-olds to go to the hearings system, but there are still the decision frameworks that the committee has heard about, such as the Lord Advocate's guidelines and the joint referral framework between the Scottish Children's Reporter Administration and the Crown Office, which will not dictate decisions but will give more rigour to how the decisions are taken. The forecasts were based on quite a lot of variables. We have quantified what we think the effects will be on social work, but we continue to work with Social Work Scotland.

The implementation group to which Ms Don alluded and which will begin next month will be key to that. We know that there have been quite a lot of developments since the financial memorandum was published. This is an evolving policy space and we are cognisant of what is coming forward at this and other committees, and of the need to look at the figures and keep the discussions alive.

The Convener: I am not sure that there is anything there that would inspire confidence for Social Work Scotland.

We will move to questions from Ruth Maguire.

Ruth Maguire (Cunninghame South) (SNP): Good morning, minister. As you say, the bill is about advancing children's rights, and I would like to cover some areas where concerns have been raised in that regard. On compulsory supervision orders, concerns have been raised with us that the imposition of movement restriction conditions could amount to the deprivation of liberty of a child

or young person, without legal safeguards. Have you considered whether more needs to be done with regard to access to legal representation for young people?

Natalie Don: MRCs are obviously designed to be less restrictive than secure care. Expanding the circumstances in which MRCs can be used will mean that more children can be supported in that way, although I appreciate that the member has concerns about that. The conditions will be imposed where that is deemed appropriate. The safeguards that already exist under the Children's Hearings (Scotland) Act 2011 will still apply, so I do not feel that they need to be added to the bill. A children's hearing is not a sentencing tribunal—it makes decisions to safeguard and promote the child's welfare throughout their childhood and not necessarily to punish a child for their actions. Therefore, MRCs, like any measure that comes through the children's hearings system, can be imposed only if doing that is better for the child than not doing it.

10:00

Ruth Maguire: You rightly highlighted in your statement the intensive support that accompanies MRCs. Can you give assurances that there will be intensive support whenever an MRC is imposed? Can you also talk a little about the additional resources that will be required to do that?

Natalie Don: Yes, absolutely. Further to my previous response, an MRC is always associated with the child receiving intensive support. The details of the intensive support that the child will receive will be contained in the MRC child's plan. The plan must be practicable to address the immediate and longer-term needs of said child, with a view to safeguarding and promoting that child's welfare. MRCs can be highly individualised and flexible on a case-by-case basis, depending on the child.

Ruth Maguire: For clarity, the specific concern was around an MRC being decoupled from secure care such that the support package would not go with it. Are you being absolutely clear that there will be a package of support for a child who has an MRC?

Natalie Don: Yes. As I said, it will be deemed on a case-by-case basis, depending on the circumstances surrounding that child.

Ruth Maguire: Okay. Thank you.

The other change relates to criteria and a move to a consideration of what is described as psychological "harm", which is a pretty subjective test—actually, it is a subjective test, not a "pretty subjective" test.

What consideration has been given to that in relation to children's rights, and what specific safeguards would you put in place to ensure that MRCs are used only in the appropriate circumstances?

Natalie Don: The new provisions that recognise the current criteria of injury are not necessarily a change but more a kind of redefinition. Injury always—

Ruth Maguire: Forgive me, minister, but the change that I am asking about is a move from something that has a—I am losing my words now. Give me a second.

The change to a consideration of psychological harm is a subjective test. There was perhaps some objectivity in relation to "reasonable person". I might be getting that wrong; if I am, forgive me. That is the specific change that I am looking for your reflections on.

Natalie Don: In terms of safeguards, as you mentioned?

Ruth Maguire: Yes.

Natalie Don: Appropriate safeguards remain in that any measure must be absolutely necessary, proportionate and in the child's best interests and, in limited circumstances, in order to protect the public from serious harm. You say that that is a subjective test, but harm was always contained in the definition, because psychological injury or psychological harm was always included in the current criteria of injury.

I am sorry—I can see that you want to come back in.

Ruth Maguire: I do not want to interrupt. I just feel that it is quite an important point. I appreciate that you are newer to the bill.

The evidence that we have heard is that there is concern that it is a move to a subjective test rather than having the objective safeguard of reasonableness in there.

Natalie Don: It is, and it always has been, a matter for the panel members to decide what impact the child's behaviour has on themselves or others and whether the criteria are met.

I will bring in Debbie Nolan, as I know that she would like to give more information.

Debbie Nolan (Scottish Government): Our position is that there has always been a level of subjectivity. The test has previously been the same as the secure care test, as you mentioned, which was about whether the child was likely to cause injury to another person. We have tried to recognise in this context that injury might be broader than physical injury. The previous test did not, in fact, specify physical injury, but our concern

was that that was how it was being interpreted in practice.

Panel members always had to determine that the child was likely to cause injury to someone else; now the test is whether they are likely to cause physical or psychological harm. We do not deem that to be necessarily a broadening and we do not necessarily deem that it is more subjective. However, we are obviously listening to stakeholders, who have told us that they feel that it is too subjective.

We will revisit the matter and, if we reach that conclusion, we can look at amending the criteria. However, as it stands, our position is that we do not think that the test is too broad or too subjective; we think that it builds on what is already there.

Ruth Maguire: You say that the bill builds on what is already there. I find it interesting that you have said that you feel that there is no change when, clearly, the bill widens the criteria. I am not necessarily disagreeing, but I think that it is important to be very clear about any potential risks or benefits of broadening those criteria. It is not more of the same; it is different.

Debbie Nolan (Scottish Government): I think that there is a clear benefit. Right now, the test is about injury. If that is narrowly interpreted as physical injury when the context is that a child is stalking another child, for example, or there is domestic violence or coercive control in a relationship, those types of behaviours would not be covered. Therefore, that child would not be able to be considered for a movement restriction condition. We have tried to broaden the test to include and recognise a wider range of behaviours. Partners in victims organisations and Police Scotland have been supportive of that change, recognising that the proposed test covers a broader cohort of behaviours.

We know that there are risks with any change. However, we will not introduce the legislation without considering the guidance, training and support that decision makers require alongside it in order to implement those changes in practice. That will be a focus of the implementation group, which will consider what sort of provisions need to be put in place to support decision makers to implement those changes in practice and to minimise any potential unintended consequences or risks.

Ruth Maguire: That is helpful, thank you.

My final question is about the effectiveness of MRCs. The policy memorandum says that no evaluation of the effectiveness of MRCs has been carried out. How will their effectiveness be evaluated going forward?

Natalie Don: That is another important question. As I have said, like any measure through the children's hearings system, an MRC can be imposed only if it is better for the child than not having it, when it is necessary and when it meets the child's welfare needs, which is a paramount consideration. An MRC is intended to be a restriction on a child's liberty, not a deprivation. As I said, it is the most extreme measure prior to secure care.

In terms of its effectiveness, if a child does not comply with an order, the local authority must notify the children's reporter to require a review of that order. A children's hearing will reconsider the child's whole circumstances in order to consider whether any additional or alternative measures are needed in order to address the child's behaviour. The scheduling of those hearings are prioritised, given the potential requirement for more restrictive measures to be put into place. As with other elements of a child's plan, including the risk management plan, monitoring and reviewing the risk, vulnerabilities and potential adverse outcomes are key. A MRC can be reviewed and monitored on an on-going basis.

The Convener: I did not get a sense of how you would be evaluating MRCs, but, perhaps when you respond to Mr Doris's supplementary, we might be able to pick out a little more on evaluating MRCs.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): That would be helpful, convener. I welcome the minister to her position.

The exchange with Ms Maguire was helpful, because I think that the committee has a better understanding of the policy intent behind the changes to the terminology relating to movement restriction conditions. The committee would welcome that being tightened up. We will produce a stage 1 report in due course. We have repeatedly heard about the challenges with the changes to MRCs and we have not heard much about the potential opportunities. I would not want those to get lost in our stage 1 report. Can you talk about what those opportunities might be?

I am assuming that an MRC is less restrictive than secure care, which may be better for a young person. For a young person who is in secure care, it is a big jump to have a full restoration of liberty. An MRC could be deployed as part of their pathway back into the community. I have not heard much about that.

Do you expect more MRCs to be used after the bill is passed? The convener is absolutely right to ask how that would be monitored. Will you also say what the potential benefits might be?

Natalie Don: I do not want to pre-empt anything, but it could very well be the case that

there are more MRCs following the enactment of the bill. To date, very few MRCs have been used in practice, which is perhaps due to the consistency of the test. As a result of there having been very few MRCs to date, there have been limited opportunities to assess or evaluate their use and effectiveness. However, as has already been detailed in evidence to the committee and via the call for views, it is recognised that, in certain circumstances, MRCs can be a very effective measure to support children to remain in the community.

As you said, secure care will be a very punitive measure, so the MRCs would allow them to stay in the community while being provided with intensive support and subject to appropriate restrictions on their movements.

The MRCs provide another option prior to final placement in a secure care setting.

Bob Doris: The more I hear, the more the convener's question about how that will be monitored becomes pertinent. In evidence sessions, witnesses have said that we do not want to set young people up to fail by putting in place an MRC that they will find really tough to comply with.

You mentioned that, should there be breaches of MRCs, there would be a review of the order that is in place and a fresh children's panel would be held. If MRCs were used instead of a secure accommodation disposal by the children's panels, that review would have to be done in short order. What reassurances can you give us, either today or by following up in writing, about how quickly children's panels can be set up to carry out that review and to decide whether the MRC needs to be reviewed or kept in place, or whether the young person needs to be moved on to secure?

The Convener: There is a lot in there, minister, so do your best to unpick that question.

Natalie Don: There is. In my previous response, I advised that the scheduling of hearings for the reviews of MRCs will be prioritised, given the potential need to consider further restrictive measures.

On your point about the child, we absolutely do not want to put the onus on the child, which is why there will be on-going review. If any potential changes or further improvements can be made with regard to monitoring MRCs or evaluating their effectiveness, that is certainly something that can be taken forward. However, at the moment, because we are relying on such a limited number of MRCs, it is harder to give data on that or provide reassurance.

Bob Doris: Thanks, minister.

The Convener: We are going to jump back a little bit, because Pam Duncan-Glancy has a supplementary question on one of our earlier themes. I omitted to bring her in, and I apologise for that.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you, convener. I appreciate the opportunity to go back a bit.

I welcome the minister to her new role. I will go back to some of the questions that my colleague Stephen Kerr asked about age. The financial memorandum notes that, in practice, the cut-off to access children's hearings will be about 17 and a half years old, not 18 years old. Witnesses have argued that that cut-off appears to be "arbitrary" and is actually due to the lengthy waits, which Sheriff Mackie said have left children "lingering" in the system. That cut-off could also contravene the UNCRC, which you said is incredibly important here.

Is the delay in the system the real reason why 17 and a half has been mentioned? Is that cut-off justifiable on any grounds other than slow processing? How will the minister make the bill compatible with the UNCRC when it is brought back to Parliament, if that happens?

Natalie Don: Thank you for the question. Logically, there absolutely has to be a cut-off somewhere. The bill raises the age of referral to the principal reporter to 18, but, as you mentioned, as detailed in the financial memorandum, due to the time taken for a referral to the reporter to progress matters and for the hearing to convene and put meaningful measures in place that can take effect, it is expected that the Lord Advocate, in reviewing the current guidelines, will consider whether a formalised cut-off age is needed so that an offence can still be appropriately dealt with.

We have said that someone could enter secure care up to their 19th birthday. That is to allow those children who might have received a short sentence just prior to their 18th birthday to not be put into a young offenders institution. That is a safeguard, but I am sure that you will agree that, because we are looking at the rights of a child, there has to be a cut-off somewhere. I would say that that is logical.

10:15

Pam Duncan-Glancy: I appreciate that, but, in your answer, there were three cut-offs: 17 and a half, 18 and 19. Which one is it? The UNCRC says that the relevant date is the date on which the alleged offence, if we can call it that, happened, so surely that should be the relevant date.

Natalie Don: The cut-off date has not been formalised yet, but it will be. We have said that, for

safeguarding children, we have allowed the age to go up to 19 for entry into secure care centres. We are saying 17 and a half at the moment, but the cut-off date is not yet formalised.

Pam Duncan-Glancy: Thank you. If it is okay, convener, I will move on to the next area.

The Convener: Please do.

Pam Duncan-Glancy: The committee has heard from victims of offences that are committed by children that they are not given the breadth of information that is afforded to victims of offences that are committed by adults. Has the minister considered whether a more equitable approach to providing such information to all victims of crime should be taken?

Natalie Don: This is a finely balanced area. The issue of upholding the rights of the person who has committed the offence and, of course, those of the victim has had strong consideration. Crucially, at the end of the day, children's hearings are not criminal justice settings and the rights of the victim in that setting must be balanced carefully against the rights of the child in question.

I know that evidence that the committee has received via written responses to its call for evidence has highlighted the range of views on this matter, including the challenges of the fine balancing act that I have spoken about. I consider that the bill strikes the right balance between the victim's needs and the principles that inform and underpin the children's hearings system.

I assure the member that we have listened carefully to the points made during the evidence sessions about information sharing, and we will continue to do so as the bill progresses through Parliament.

Pam Duncan-Glancy: What conversations have you had with the Information Commissioner about this?

Natalie Don: As I am very new to the role, that is not a conversation that I have had. I will pass over to my officials to speak about that.

Brendan Rooney: In the course of last year, in formulating the provisions during the drafting of the bill, there was on-going engagement with the Information Commissioner's Office. That is a statutory obligation, and it was done across the bill and not just on this issue. I know that a representative of the Information Commissioner's Office also gave evidence.

As Ms Don has said, the way in which the bill was approached, using the principles of the UNCRC and the ethos on which the children's hearings system was founded, means that it does not make any seismic changes to the hearings system's approach and how it has worked up to now for children and certain children who are 16 and 17 who were already going through it.

The issue was raised a lot during the consultation, and views were quite polarised, but the crucial point about it not being a criminal justice setting and the principles that the hearings system was founded on still ringing true is how it has been approached. However, as Ms Don said, we are listening to what is being said. We hear a lot of the views that are coming in and we are considering them, and we look forward to hearing what the committee has to say in its stage 1 report.

Pam Duncan-Glancy: I have a short final question. Sheriff Mackie noted that restorative justice allows victims to participate and the hearings system does not allow that. What can you do to make that happen so that victims can feel that justice is being served?

Natalie Don: There are updated regulations in the bill that allow the hearings system to update the witness on when the outcome of the process will be available. We recognise that restorative justice seeks to ensure that the needs and voices of those who have been harmed are central. Obviously, that can support accountability and responsibility in relation to those children who cause harm.

The Scottish ministers are funding posts in the Children and Young People's Centre for Justice to support the development of those restorative justice services, because we recognise that the requirements of those young people might differ in that regard. That work is under way and is a priority.

The Convener: It will be interesting to see how that develops.

We move to questions from Bill Kidd.

Bill Kidd (Glasgow Anniesland) (SNP): Good morning. I do not want to go over things that you might think we have covered already, but I want to talk a wee bit more about age ranges and so on.

The supervision or guidance of post-18-year-olds is an important aspect of what is being done. Because of the variations in young people's developmental processes, it is important to look at the idea of an age limit not being a cliff edge when it comes to support. That has come up during multiple evidence-taking sessions, and it is important that we know what consideration the Scottish Government and the bill team have given to that and to what might be done to encourage successful transitions when someone reaches 18.

Natalie Don: I have already touched on this issue in previous responses. We considered extending compulsory measures beyond 18, using the children's hearings system, but the system is

completely designed around making decisions on compulsory orders on children, with relevant persons also having rights to the child.

The test that is currently applied is that compulsory orders can be made only if they are necessary to safeguard or promote welfare throughout childhood, and any extension beyond the age of 18 would require an entirely new framework for the system, and the tests that are needed to justify compulsion beyond childhood would need to be altered and restated in order to accommodate the rights of that young adult. That could also cause capacity issues in the system, and volunteer panel members would require to be trained and supported in decision making in relation to young people as opposed to children. Therefore, the proposal has not been taken forward. I know that, in its written evidence, the SCRA agreed with the approach that we have taken.

Bill Kidd: From what you have said—which is perfectly reasonable, as far as it goes—it seems that we have to hope that, when a post-18-year-old is moved to the next stage, there are people who are trained and capable available to help them to move forward, rather than the system just saying, "You are 18 now, so too bad," if you know what I mean.

Natalie Don: Absolutely. We do not want the system to say, "That's you turned 18, so just get on and deal with it." The bill is specific to under-18s but, in many areas, Scotland is still developing a really distinct approach to young people aged between 18 and 25. That includes, for example, the Scottish Sentencing Council's guidelines, which I have already touched on; the extension of the whole-system approach under the youth justice vision; and youth court pilots. All of that will continue to be monitored to provide learning for future considerations for those between 18 and 25. We absolutely want the support to be there for that age group.

Bill Kidd: That is useful to know. Thank you.

The Convener: We will now go back to questions from Bob Doris.

Bob Doris: I have a couple of brief questions, minister. The bill includes a number of provisions that seek to enhance the rights of children who have been detained in police custody with rights that they currently would not have. Could you expand on what those provisions are and how they will benefit young people in those situations?

Natalie Don: I am sorry, Mr Doris—I missed the beginning of your question.

Bob Doris: At the moment, young people of 16 or 17 years, depending on whether they are already part of the children's system, do not have the same rights in police custody as younger children do. The bill extends additional rights to young people in relation to police custody. Can you say a little about what those rights are and how they will benefit young people?

Natalie Don: Thank you for repeating that for me. The bill increases the opportunities for local authority notifications and visits. That includes the ability for the local authority to advise that intimation should not be sent to a parent or a named adult if the authority feels that that might be detrimental to the wellbeing of the child. The aim is to ensure that every child has an appropriate person notified and that no child is left in police custody without being visited by either a parent, another adult or the local authority.

The bill also extends considerations for keeping children in a place of safety prior to attendance at court, as well as helping to ensure that a solicitor is present during police interviews.

Police Scotland has provided evidence on how the current provisions work in practice, and the Scottish Government is in on-going dialogue with Police Scotland on the potential implications of the bill in that light.

Bob Doris: Thank you. I will not dwell on this aspect, as it is a pretty uncontentious part of the bill, but I note that the bill provides that young people will not be able to waive their right to legal representation, which is an additional protection.

At last week's meeting, I nudged witnesses on the issue of whether young people should ever be detained in a police station. I am not saying that this is necessarily my view, but it has been suggested that a "place of safety" should never be a police station, unless that is—I am stumbling to say it—impractical. Do you think that there is a case for saying that it should be set out in the bill that no young person should ever be detained in a police station? If not, in what circumstances do you think that that would be unavoidable?

Natalie Don: I think that we would absolutely like to work towards that but, at the moment, I am not entirely sure that it is logistically possible. The law requires that the police must take every precaution to ensure that a person is not unreasonably or unnecessarily held in police custody. At present, a number of incidents are dealt with in the community and there has been no need to arrest the children or bring them into police custody at all.

The Lord Advocate has issued guidelines on that issue separately. In deciding to bring a child into police custody, various factors are considered, including the rights of that specific child, the possibility of interference with victims or witnesses, the severity of the offence and the need to fully investigate the offence. There are

factors that could impact on whether a child needs to be brought into police custody.

Currently, when an arrest is absolutely necessary, the police must, by law, take any arrested person, including a child, to a police station. That could be necessary to prevent further offending or to facilitate investigations, such as by capturing fingerprints, photographs or DNA. The decision to keep a person in custody must comply with the Lord Advocate's guidelines.

What I am saying is that we would definitely like to work towards the position that you suggest, but that was not consulted on as part of the bill consultation, because there are logistical issues around how that would take place. It is something that we can certainly look at in the future.

Bob Doris: That is helpful, minister. I have no further questions.

The Convener: The committee heard from Social Work Scotland that it is "almost inconceivable" that police custody will not have to be used for under-18s—this is the important line—

"for a number of years to come."—[*Official Report, Education, Children and Young People Committee,* 26 April 2023; c 39.]

How would you respond to that point? Will local authorities be expected to use secure care as an alternative to custody? If so, what are the cost implications of that?

Natalie Don: Secure care would be very much a last resort as an alternative to police custody. I would have to hand over to my officials to give the costings.

The Convener: That would be perfect, if they can assist.

Debbie Nolan: I think that secure care can be used only in very limited circumstances if a child is in police custody. All other alternative places of safety should be considered. The legislation is very clear that secure care is one of a range of places of safety, but, if a child were to be placed in secure care, they would still have to meet the secure care criteria, and it is not always the case that they would do so. In that situation, a child could not be placed in secure care.

The costs for secure care are in excess of £6,000 a week, so there would be cost implications if secure care were to be considered. However, the cost implications are almost secondary. A child must meet the secure care criteria to be placed in secure care as opposed to police custody, and the drive should really be to look at what alternative places of safety can be used in that situation.

Local authorities and the Scottish Police Authority are working on the approaches to places of safety, what alternatives can be used and what else might need to be developed or considered in such situations.

10:30

The Convener: If I may come back to you, Ms Nolan, does that mean that we can foresee that police custody will be used for under-18s for a number of years to come?

Debbie Nolan: I do not think that we can forecast how long that will continue for, but there is a consensus, first, that we should not keep children in police custody and, secondly, that there is a longer-term aim that we will not need to bring children into police custody at all. There are plans and work under way to achieve those aims. That work involves a range of stakeholders and partners to make those aims a reality. How long that work will take we do not know because it is fundamentally linked to other developments.

The Convener: Thank you. We move to questions from Ben Macpherson.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning. I have questions around the restrictions on reporting. First, you will be aware that stakeholders have called for greater legal certainty around when reporting restrictions begin to apply to child suspects, witnesses and suspected victims. What assessment has the Scottish Government made of those calls? Will the bill be strengthened in that regard as we move through the legislative stages?

Natalie Don: Before court proceedings in which a suspected offence involves children, those children, including victims and witnesses, will benefit from automatic reporting restrictions. A court can currently dispense with reporting restrictions only if it is in the interests of justice, and the extended protection is important because the implications of a child's being identified are similar and significant at any stage of proceedings. Identifying a child during a police investigation undermines the protection offered by the presumption of anonymity during subsequent court proceedings.

In direct response to the minister's question—I am sorry; I mean Mr Macpherson's question—we are considering that. I am sorry; I was thinking of a few weeks past.

Ben Macpherson: There has been a role reversal. [*Laughter.*] Thank you for your answer, minister.

By way of a follow-up question and in the constructive spirit of your response, I want to draw your attention—not necessarily for answer today but for consideration as we move through stage 1 and into stage 2—to response 97066875 from Dr

Andrew Tickell and Seonaid Stevenson-McCabe from Glasgow Caledonian University. They have commented on the new reporting restrictions.

Of course, since the bill's publication, in recent weeks, we have also seen the publication of the Victims, Witnesses, and Justice Reform (Scotland) Bill. I would be grateful if the Government would consider the points about consistency with regard to those pieces of legislation and complainer anonymity. I just want to raise that point about the comparison between the two bits of legislation in that regard—feel free to take it away.

Natalie Don: I can provide a brief response to that. Yes, absolutely, the Government will continue to assess any potential differences in provisions between the two bills. As noted in the policy memorandum for the bill, the Scottish Government committed in its 2022-23 programme for government to introduce a bill that will make provision granting a statutory right of automatic lifelong anonymity to complainers in sexual offence cases.

The Victims, Witnesses, and Justice Reform (Scotland) Bill delivers on that commitment by providing an automatic lifelong right to anonymity to the victims of sexual offences and other offences of limited scope that share the same underlying concerns. It should be noted that the provisions governing restrictions on the publication of identifying information, in so far as they extend to victims of those offences in this bill and certain other limited offences, are subject to change in the future, given the planned provisions on automatic anonymity for complainers, which Mr Macpherson has referred to.

For assurance, we will continue to assess any differences in provisions between the two bills as each one continues to undergo parliamentary scrutiny.

The Convener: Provisions in the bill will ensure that no child under the age of 18 can be held in a young offenders institution or prison either on remand while awaiting sentence or having been sentenced, including for very serious crimes. Can the minister expand on the rationale for including all crimes in the policy for the detention of young people? Have victims organisations or others raised any concerns about the policy, particularly in regard to serious offending? What are those concerns and how might they be allayed? Again, there is a lot in there.

Natalie Don: The Scottish Government's key priority and commitment is to keep children out of prison. The key word is "children"—we are classing 16 and 17-year-olds as children. The hearings system is not based on a specific offence or age; secure care already deals with some of the most serious offences and is already equipped to deal with children—at the moment, aged under 16—who have committed serious offences. I know that the committee has heard strong evidence from secure care that it is equipped and able to deal with 16 and 17-year-olds who have committed those serious offences.

I go back to what I said at the beginning, which is that, although I appreciate that concerns exist around that provision, the Lord Advocate still has the right to try a child in a criminal court, although it will end in a secure care setting instead of a YOI. As I said in my opening comments to Mr Kerr, it is about rehabilitation of the child and giving that child the best chance to not reoffend, and a secure care centre is definitely the most appropriate setting for that to be the case.

The Convener: What would you specifically say in response to some of the challenges and criticisms from the victims organisations around that point in order to allay the concerns that they might have?

Natalie Don: I would say specifically that we will continue to monitor the situation—we will work with the secure care and local authorities; indeed, we are in discussion with them now—and that I am not shying away from it.

As I have said clearly—and the committee has heard strong evidence on this—the secure care centres have said that they are equipped to manage, and are comfortable with, the provision. The reimagining secure care project is under way and it might feed back into that.

It is not something that we are not looking at—we are working on the issue and are happy to take any feedback as we go on.

The Convener: Thank you, minister. I call Stephanie Callaghan.

Stephanie Callaghan (Uddingston and Bellshill) (SNP): Whether children and young people in secure care are secured on welfare or offence grounds, they are the most vulnerable and at-risk people in Scotland. The bill will bring changes for secure accommodation providers, because they will be accommodating older young people and, as the convener spoke about, those young people who have committed serious offences.

I have two questions. First, what care and support needs do you anticipate for those young people who have committed the most serious offences? Secondly, how will staff who currently work in secure care settings be trained and supported to perform that role?

Natalie Don: A range of measures are under way, and that point is under consideration. Secure care is more appropriate for 16 and 17-year-olds, as I have mentioned. The environment is age

appropriate and child centred, with focused work to address the child's specific behaviours. As I have said, a therapeutic and educational setting can help to lead children to healthier development and better outcomes, and it can decrease the likelihood of future offending.

Secure care is the right setting to better support children who require to be deprived of their liberty in order to address their underlying needs and the causes of their behaviours and to help them to reintegrate, to recover, to rehabilitate and to desist. That, in turn, will reduce the number of future victims and will benefit society as a whole.

Children are not mini-adults. A child's propensity to alter their behaviour and change their path can be far greater than that of adults, as I have already mentioned this morning. Safe and trusting relationships are the absolute cornerstone of promoting children's healthy development and positive outcomes. Through the provision of 24/7 care, the relationships that secure care staff can provide are absolutely key. That was something that the member mentioned specifically. The knowledge, skills, training and ratios of staff—there are often two staff per child—are supportive of the development of such relationships.

Staff in secure care centres must be registered and qualified in relation to care and education. The care-based, child-centred ethos and environment that secure care affords are supported by the centres, which are registered, monitored and inspected by the Care Inspectorate and Education Scotland.

I hope that that goes some way towards answering the member's question.

Stephanie Callaghan: Thanks for that answer. That really is a change. A lot more time will be spent with those people who have committed serious offences as well. Yes, care providers are very supportive of the bill, but they are also very clear about the real risks around accommodating those older young people. Sometimes, very serious or even gruesome offences have been committed, and we must take the risks really seriously.

Obviously, the expertise of those involved in secure care is hugely important. They have been talking about grouping together children and young people in groups that are quite safe. Can you give some reassurance that you will be working closely with those directly involved in secure care to find a way forward on the issue? As you said, they have expertise and specialist training so that they can understand the complex needs involved.

Natalie Don: Absolutely. As I mentioned earlier, each child's care, even within a secure care centre, is dealt with on a case-by-case basis. It is defined by the child and the support that they need. Secure accommodation centres already utilise a range of interventions and strategies to meet the needs of all children, to ensure that their safety is maintained and that risk is managed. That is important in relation to the member's comments about the most serious offences.

Risk assessment and risk management frameworks allow for decisions about the level of care, the supervision and the restrictions on a child to be bespoke, proportionate and tailored to the needs of that child—that is what I was referring to when I mentioned dealing with things on a case-by-case-basis. That is to ensure both their safety and the safety of others in the secure centre.

We have no plans to change that or to separate children who are placed in secure care on the basis of considerations such as their route into secure care, their age or the offence type. Yes, we will listen, and we will work with those who are involved, and we will continue to monitor the issue as we go forward.

Stephanie Callaghan: I have a short question. When you are doing that work alongside providers, are you happy to build in and take seriously any need for flexibility, including with regard to infrastructure, to ensure that they are able to work effectively with those young people?

Natalie Don: Absolutely. That will be taken into consideration.

The Convener: I have my eye on the clock, minister. We will extend the session, but we still need concise responses, as well as concise questions, as we continue.

I call Willie Rennie.

Willie Rennie (North East Fife) (LD): I welcome the minister to her new position. Do you have an estimate of how many additional places in secure units we will require as a result of the change?

Natalie Don: Yes. I have figures in front of me. However, those tend to fluctuate, so I do not necessarily want to put an exact figure on it and say that that will be the case going forward.

There are currently five under-18s in young offenders institutes and, as of 2 May, there were seven places vacant. I know that those figures changed during the lead-up to the committee meeting, but they have generally been around that level.

10:45

Willie Rennie: When we went to Polmont, we saw that the national health service was integrated with the young offenders institution and was providing care directly. It seemed that people were

able to get everything that they needed, when they needed it, because of that dedicated specialist support. We did not get independent verification that the service was provided to the standard that we would like it to be, but, nevertheless, the service was provided directly. That is not the case with secure units. Have you any plans to change that?

Natalie Don: Currently, trained practitioners and professionals are based in secure care centres, and specialists can be brought in to respond to the needs of children in their care. At the moment, there are no plans to change the legislation on access to health professionals, but officials are working with mental health colleagues to consider the specialist healthcare needs that many children in secure care might have and what additional support could be made available in the community. As I said, we will continue to monitor that throughout the bill's passage and beyond.

Willie Rennie: When we visited a secure unit, we saw that good relationships had been built with local health providers as a result of the good efforts of staff. However, there were sometimes issues when individuals came from health boards outside the area. Continuity of care was an issue. The connections, the good service and the integration were mainly down to the good will of staff, and there is no guarantee that that will always be the case. Will you consider the possibility of the NHS providing direct support to ensure that things are more co-ordinated and seamless in the future?

Natalie Don: As I said, we will continue to monitor the situation. I do not rule anything out. On your point, we are committed to funding the interventions for vulnerable youth service, which is hosted by Kibble, as you might be aware. IVY is a specialist psychological and social work service that provides three types of service: professional consultation and advice, psychological assessment and psychological intervention for children who are at risk of harming others. Such support can be given to those on the edge of secure care and to those in secure care settings. We are committed to that service.

As I said, I do not rule anything out as we go forward.

Willie Rennie: Quite a lot of young people from outside Scotland are placed in the secure units, and there have been reports that some authorities are paying higher rates than the funding that is provided through the Scottish system. Are we dependent on those places to keep the secure units adequately funded? Are you comfortable with those differential rates?

Natalie Don: We have been clear that the number of cross-border placements needs to be reduced. I do not want to say that such placements should end entirely, because, as I have mentioned, they are required in exceptional circumstances.

You will be aware that the Scottish Government currently funds the last bed in secure care centres in order to keep capacity for children in Scotland. That helps with capacity and funding issues, but we will need to monitor that.

I am going to meet Claire Coutinho, a UK Government minister, to discuss cross-border placements. The arrangements for my meeting with her were finalised just this morning. Although that will be an introductory meeting, the issue of cross-border placements will come up, because, regardless of financial circumstances, we want to minimise the number of such placements, which should be provided only when they are deemed to be absolutely necessary for the safeguarding of the children.

Willie Rennie: Can I just go back—

The Convener: Mr Rennie, some of those questions were assigned to one of our colleagues for later on.

Willie Rennie: Oh, were they?

The Convener: Yes.

Willie Rennie: Right.

The Convener: But it is fine—

Willie Rennie: No, I can conclude on this point. It is connected with the question about what additional resource will be required to provide the extra places in the secure units. Minister, you have indicated the scale of the issue, but have you done calculations of what will be required in the secure units?

Natalie Don: Absolutely—this is on-going work. The full details of what we currently have are set out in the financial memorandum. I will pass over to my official to go through some of that in more detail.

Brendan Rooney: I know that the committee has heard evidence on the commercial viability factor for secure care centres—that viability comes at an occupancy level of about 90 per cent. The commercial element will always exist. We are looking at secure care capacity, training and accommodation across the estate, alongside the bill process. The cross-border element is still there, although the bill takes measures to try to disincentivise that, which goes along with the ethos of the Promise and wider Government ambition—the figures are looked at in that context.

I suppose that the number of children going to secure care will always fluctuate. The number of children coming before the Scottish courts has

reduced by something like 85 per cent over a 10-year period. In recent years, huge strides have been made on the number of children offending or coming into contact with criminal justice services. The number of children in secure care and the number of cross-border cases fluctuate, but the measures in the bill are designed to disincentivise the commercialisation of the cross-border element of those placements.

Willie Rennie: Okay—that is fine.

The Convener: Pam Duncan-Glancy has a brief supplementary on this theme.

Pam Duncan-Glancy: I have listened carefully to the responses that have just been given. The committee understands that the pilot to fund and retain the last bed in secure centres will be extended to March 2024, but there is nothing on that in the bill. How will that be addressed?

I suspect that my colleagues will pick up more on the finances, but, given the answers that we have just had, I am worried about the financial sustainability of the system, because I do not see much about the necessary backfilling in the financial memorandum.

Natalie Don: We need to recognise the wider backdrop to the issue. Over time, there will be a saving for society and for public expenditure. As I said, the financial memorandum sets out the headline cost and was produced via in-depth engagement with partners and duty bearers. As my officials have pointed out, given the nature of care and justice services, there is a high degree of variability, so it can be difficult to forecast. The Scottish Government wanted to avoid underestimating in many areas, and obviously there are significant financial implications. As I said, it is important to recognise the wider backdrop of the benefits that the change programmes could have for our society and for public expenditure.

I think that you had another question tacked on to that.

Pam Duncan-Glancy: Yes, it was about the cross-border gap. A lot of the secure care centres have said that the cross-border placements sustain their service, as my colleague Willie Rennie has highlighted. How are you going to fill that gap?

Natalie Don: I think that you originally asked about whether the last bed approach will be increased. We do not require legislative change for that—that will be taken forward but not necessarily through the bill and its implications.

The Convener: Pam Duncan-Glancy did not quite get the answer to her second question, which was on funding. Maybe colleagues can pick that up in asking about the financial aspects.

Natalie Don: As I said, the situation tends to fluctuate. I am more than happy to write to the committee with more information on the exact costings around that as we move forward, if the committee would like that.

Pam Duncan-Glancy: I would certainly appreciate that.

The Convener: Yes—more detail would be good.

The bill does not include any measures to end restraint in secure accommodation, which has been described as a “missed opportunity”, with stakeholders stating that legislation will be needed to make progress on the issue. How will the Scottish Government address the issue of restraint?

Natalie Don: Following consideration of the responses to the consultation, I am content that there is already sufficient legislative provision to enable secure transport to be used when necessary and to ensure the safety—

The Convener: Sorry—I am not asking about secure transport. I am asking about restraint in secure accommodation.

Natalie Don: That is fine. Thank you, convener. I am happy to get to your question.

I know that that issue was raised during the evidence sessions and in written evidence. As I said, following careful consideration of the responses to the consultation, the Scottish Government is content that additional legislative provision in relation to restraint is not necessary to ensure the safety of the child and others. That is because an overly prescriptive approach to minimising restraint practices could have adverse consequences in relation to escalation and criminalisation. Instead, ministers consider that a blended framework of regulation, guidance, practice support and precise reporting is likely to serve Scotland’s children best.

Work is on-going with partners to reduce and, where possible, eliminate the use of restraint with children in care. That includes working with the Scottish physical restraint action group to explore definitions of restraint along with the availability of data, training and support.

The Convener: We visited Polmont two or three days after the first use of soft cuffs. The roll-out of that method of restraint is progress, as it is less painful. Do you seek to make a pain-free method of restraint standard?

Natalie Don: Yes, that could certainly be considered.

The Convener: We now move on to questions regarding transport, from my colleague Ross Greer.

Ross Greer (West Scotland) (Green): I will come back to questions about standards for secure transport and, specifically, to points about restraint. However, first of all, the minister will be familiar with the evidence that the committee has received on the provision of secure transport. We have had anecdotal evidence that most secure transport providers are based in England. There have been instances of a young person being taken from one side of Glasgow to the other or from Montrose to Ninewells hospital and a secure accommodation provider needing to call up transport from south of London—Portsmouth was, I think, one of the examples given.

Does the Scottish Government recognise that there is an issue with the availability of secure transport provision in Scotland? Why is that the case? We have tried to find out from witnesses in previous evidence sessions whether it is a question of market failure, whether it is about procurement practices or whether something else is going on. It seems a significant problem if we have to call up cars from Portsmouth to take somebody on a half-hour journey across one city in Scotland.

Natalie Don: Absolutely. I recognise that that is a problem. I would not want to say exactly why it happens, although there could be issues with the fact that it is not a regulated or registered service.

I confirm that further consideration is under way as to who is best placed to provide a secure transport service. That includes consideration of whether secure transport should be a regulated, registered service. That should provide more solidity.

Ross Greer: I welcome that. Is that consideration being undertaken as part of the bill process with a view to lodging, or being open to the potential for, amendments at stage 2 or 3 that would, for example, give ministers the necessary regulation-making powers if the decision was taken to regulate and establish a registration system?

Natalie Don: Yes. As I said, we are currently considering that as we take the bill forward.

Ross Greer: That is fantastic.

On standards in transport, you mentioned in relation to the wider issue of restraint in secure accommodation that you are considering a mix of regulation, guidance and precise reporting. One issue that has been made clear to us is that there is no consistency in reporting on the use of restraint in a transport setting. Sometimes, the secure accommodation provider is informed by the transport provider about the use of restraint but, sometimes, they are not. Sometimes, the local authority might be informed but, sometimes, it will not be.

As part of its consideration of possible amendments, is the Government considering introducing a consistent reporting requirement on transport providers, or whoever the responsibility would lie with? The requirement could be on the accommodation provider, and there would then be an onus on it to find out from the transport provider. Is the Government considering some kind of requirement for consistency in the reporting of instances of restraint on transport?

11:00

Natalie Don: I think that that would make sense, if it is decided that it would be better to have a regulated service. At the moment, as you have mentioned, information on the use of handcuffs on secure transport is organised by local authorities and is not held centrally, so there are issues around that. The short answer to your question is yes—that could be considered.

Ross Greer: Most of my questions were angled at persuading the Government to move in that direction, but you are clearly already doing so. In the interests of time, therefore, I will ask only one more question. In principle, does the Government think that there is ever a situation in which the use of handcuffs in a transport setting would be appropriate?

Natalie Don: If there was a suggestion that handcuffs should be used to protect the child or other people, that would be a decision for the people involved. I do not know whether I am best placed to say yes or no, because I would not be dealing with the incident, but I can understand that there might be instances in which restraint would be necessary. However, we would want to ensure that that was the case only in extreme or exceptional circumstances and that it was done appropriately.

Ross Greer: I welcome those answers.

The Convener: We move to questions from Ben Macpherson.

Ben Macpherson: There has been some mention of the financial considerations and the resourcing for implementation of the bill, should it be enacted. The financial memorandum estimates costs of between £5.36 million and £6.56 million a year to local government. Will the Scottish Government provide that additional funding? What engagement has it had with the Convention of Scottish Local Authorities on that matter? Witnesses have suggested that the financial memorandum underestimates the cost to local government, so I would be grateful to hear the minister's thoughts on that.

Natalie Don: As I have said, the financial memo sets out the headline costs and was produced

following in-depth engagement with partners and duty bearers. Given the nature of care and justice services, there is a high degree of variability.

As I have mentioned to other members, it is important to recognise the wider backdrop of the benefits that the change programmes could have to society. The negative economic and social costs to society of offending and crime are well documented. For example, the "Follow the Money" report, which is associated with the Promise, estimates that the cumulative private costs of crime, physical and emotional harm and lost output, as well as public service costs, are upwards of £3.9 billion. A huge amount of money is being spent in that regard. Although the costs in the financial memorandum look large, if you balance them against that other sum, you can see that there is real potential there.

Ben Macpherson: The points that you make about the positive impacts of preventative spend on society and the public finances are well understood and are in accordance with the Christie principles. However, implementing the bill in a way that gets us to that point will require investment from local government and from the Scottish Government in the areas for which it has responsibility. As we take the bill on its journey through Parliament, we will need to consider the feedback that has been received from local government and Social Work Scotland about what sunk costs will be required to ensure that the implementation puts us on a trajectory towards preventative spend.

I understand that you might not have anything further to say on that today, but I am interested in what engagement you or colleagues have had with COSLA on those matters and how you intend to work through the practicalities of the financial considerations when it comes to implementation.

Natalie Don: We are not complacent. We understand that new investment is needed to implement the bill's measures, as there are costs associated with them. We have worked with partners to quantify the financial memorandum, which outlines about £11 million a year of additional spend. We are listening to views that are coming forward at stage 1, and we will consider where further work can be done as scrutiny progresses. I am more than happy to keep the committee updated on that. I will appear before the Finance and Public Administration Committee next week to discuss some of the finances in more detail.

The Convener: Stephen Kerr has some questions on the financial aspect.

Stephen Kerr: For the sake of brevity, minister, do you accept what COSLA says about the inaccuracy of the costings—specifically, the costs around social work—in the financial memorandum?

Natalie Don: I accept what it says; witnesses are more than welcome to give their opinion. I have already said that the numbers fluctuate, so I do not think that there are inaccuracies, but the costs need to be updated.

Stephen Kerr: Sorry—I am a bit confused. You say that you accept that there are inaccuracies.

Natalie Don: No—I do not accept that. You asked me whether I accepted what COSLA said, and I said that I do. Witnesses are free to say what—

Stephen Kerr: Do you accept it as factual?

Natalie Don: No—that would be its opinion.

Stephen Kerr: You do not agree that COSLA's evidence is factual.

Natalie Don: Sorry?

Stephen Kerr: You do not agree that COSLA's evidence is factual.

The Convener: I think that we are going round in circles here.

Stephen Kerr: It is a fact that COSLA said it, but do you accept that the evidence that it presented is factual in its content?

Natalie Don: It is factual in its context, yes, but as I said—

Stephen Kerr: So you agree that there are inaccuracies in the financial memorandum.

Natalie Don: There are no inaccuracies. It needs to be—

Stephen Kerr: Discrepancies.

Natalie Don: Yes—it needs to be updated.

Stephen Kerr: It needs to be updated.

Do you also accept what COSLA says about the fact that there is no facility to transfer costs from the criminal justice system to local government?

Natalie Don: I accept what it says in relation to local government funding. Mr Kerr is perfectly aware of how that works, so I will not get into it just now, in the interests of time.

The Convener: We have some time.

Natalie Don: So, you would like me to go through the local authority funding settlement—

Stephen Kerr: No, no. What I am trying to—

The Convener: Mr Kerr, can I come in? We heard a lot of evidence about the concerns. Minister, you have spoken about the long-term aspirations and the cost savings to society from the settlement. What we are saying is that, right

now, there is no mechanism to transfer the savings from the justice system into local government, children and families and social work. What is the Government going to do to address that imbalance?

Natalie Don: We are listening to views and—as I have made clear throughout the entire committee meeting—we are happy to look at the matter as we go forward. There are no plans for what you describe at the moment, but that can be addressed if the requirement is there.

Stephen Kerr: I am trying to unpack what COSLA told us about the cost implications arising from what is in the financial memorandum accompanying the bill. As has been said, COSLA highlights the impact on social services from the inaccuracy of the costs.

I am still not clear on whether you accept what COSLA says—

The Convener: Let us move on.

Stephen Kerr: Okay, convener. I will move on.

Minister, do you also accept the issue with regard to the difficulty—perhaps, in COSLA's view, the impossibility—of transferring savings that will, theoretically, occur in the criminal justice system into local government, as the convener outlined? What is your response to that?

The Convener: I believe that the minister responded to my question by saying that that matter would be considered.

Natalie Don: Yes.

Stephen Kerr: I did not catch that.

The Convener: Well, it was answered, Mr Kerr. The minister said that the Government is listening to that view but is not doing anything to address it at this stage.

Stephen Kerr: Right. The final point that COSLA makes relates to the additional resource that is required for the local area support teams—the people who arrange the children's hearings. Minister, do you accept that they will need increased resources for a range of staff and functions that they do not currently fulfil?

Natalie Don: Yes—if they require extra funding, that is simply the case. As I have said, that will have to be looked at once the bill has progressed.

Stephen Kerr: It is critical to the functioning of what is required of local authorities by statute. Do you accept that?

Natalie Don: I am sorry—could you repeat that?

Stephen Kerr: Those costs are critical to the functioning of what is set out in statute. Will the Government therefore meet the funding requirements in order to make that happen?

Natalie Don: The Government will meet the funding requirements to enact the bill and the provisions in it. I cannot give any further information on that.

Stephen Kerr: That is a significant comment: the Government will fund all those functions.

The Convener: Mr Kerr, a number of other members want to come in on this issue.

Stephen Kerr: Okay, but what the minister just said is significant: the Government will fund the additional costs.

Pam Duncan-Glancy: I have two small points on what has been raised.

Minister, on the point about transferring funding from justice to other services, how do your justice colleagues feel about that?

Natalie Don: I am sorry—how do my justice colleagues feel about what?

Pam Duncan-Glancy: How do they feel about moving some of the money from that system into other systems?

Natalie Don: As far as I am aware, that is not going ahead at the moment, but I have said that it can be looked at.

Pam Duncan-Glancy: Okay. My other—

The Convener: This must be your final supplementary question.

Pam Duncan-Glancy: Thank you, convener. My other question is on inaccuracies that Social Work Scotland has highlighted. It has referred to inaccuracies in uprating, which means that the financial memorandum is out by £0.5 million.

What is your view on updating the estimates for inflation before a bid is made for budget in order to avoid the situation that arose with the Carers (Scotland) Bill in 2015, which missed eight years of inflation by 2023? Social Work Scotland has asked specifically for that. Are you prepared to commit to doing it?

Natalie Don: I agree that there should be uprating. As I have said to the committee, I will go through the financial details in greater detail at the Finance and Public Administration Committee next week, so I encourage members to tune in to that for more information.

The Convener: I am sure that we will.

I will bring in Ben Macpherson—I am sorry for making you wait so long.

Ben Macpherson: Thank you, convener. I want to bring some elements of the discussion together,

with regard to what Mr Kerr and Pam Duncan-Glancy have asked about.

Minister, you have stated that you take the evidence from COSLA in good faith as its position; that was how I interpreted your answer to Mr Kerr. However, it is important to recall that, as a Parliament and as a collective—local government, national Government and across parties—we are committed to keeping the Promise. That is the essence of this bill.

In that spirit, I think that the message from the committee, having had the feedback from local government and from other stakeholders on the costs, is that we encourage the Government to have further dialogue with local government and other partners on the costings and how those will be met through the budget process in due course, should the Parliament pass the bill.

Natalie Don: Absolutely. I think that I have been clear throughout the committee meeting that we are listening and engaging and that we are working with the relevant stakeholders on each aspect of the bill. Obviously, the finance is a core part of that, so my answer is that we will absolutely do that.

The Convener: It has been an informative session this morning, as ever. I thank everyone for their time.

The public part of our meeting has now concluded. We will consider our final two agenda items in private.

11:12

Meeting continued in private until 12:45.

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