



OFFICIAL REPORT
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Finance and Public Administration Committee

Tuesday 9 May 2023

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE

13th Meeting 2023, Session 6

CONVENER

Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Douglas Lumsden (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Clackmannanshire and Dunblane) (SNP) (Committee Substitute)

Natalie Don (Minister for Children, Young People and Keeping the Promise)

Helen Duncan (Scottish Government)

Professor Matthew Flinders (University of Sheffield)

Sophie Howe

Professor Steve Martin (Wales Centre for Public Policy)

Tom McNamara (Scottish Government)

Brendan Rooney (Scottish Government)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 9 May 2023

[The Deputy Convener opened the meeting at 09:30]

Interests

The Deputy Convener (Michael Marra): Good morning, and welcome to the 13th meeting in 2023 of the Finance and Public Administration Committee. We have received apologies from the convener, so I will convene the meeting in his place.

We are joined by Keith Brown, who is attending the meeting as a substitute member in the convener's absence. I am pleased to welcome Keith to the meeting, and I invite him to declare any relevant interests.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I am advised that I have no relevant interests in the register of members' interests, but I note that I am a member of the local government pension scheme.

The Deputy Convener: Thank you.

Effective Scottish Government Decision Making

09:30

The Deputy Convener: Under the next agenda item, we will continue our inquiry into effective Scottish Government decision making. We are joined remotely by Sophie Howe, sustainability futures and wellbeing adviser and former Future Generations Commissioner for Wales; Professor Steve Martin, director of the Wales Centre for Public Policy at Cardiff University; and Professor Matthew Flinders, University of Sheffield. I welcome you all to the meeting, and thank you for giving us your time.

I intend to allow up to 90 minutes for this session. If any of the witnesses wants to come in on a question, I would be grateful if they could post in the chat function so that I know to bring them in. I also ask my committee colleagues to name the first witness to whom they are putting their question.

Liz Smith will kick off the questions.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. A key issue that has been exercising committee members' minds throughout our evidence sessions relates to how much clarity of purpose there is when it comes to decision making. If there is not that clarity, it is very difficult to get good-quality decision making. How easy do you find it to set in motion that clarity of purpose? Do you have a good understanding of what clarity of purpose is when it comes to decision making?

The Deputy Convener: To whom are you directing those questions first?

Liz Smith: We will go to Wales first.

The Deputy Convener: Two of the witnesses are in Wales. I will bring in Steve Martin.

Professor Steve Martin (Wales Centre for Public Policy): Thank you for the invitation. I am pleased to be here with Sophie Howe and Matt Flinders to share what we can with you.

First, I should explain that my role is not as a policy maker. I am an academic working in an evidence centre whose role is to provide evidence to Welsh Government ministers and officials and to public services in Wales.

In relation to Liz Smith's questions, we are often presented with evidence needs. We then engage in a dialogue with whichever policy makers have asked us about evidence on a topic in order to properly understand what they need and why. That is where the need for clarity of purpose comes into sharp focus for us.

Part of our role is to, I hope, help policy makers think through exactly what they are trying to achieve and how they will achieve it. It is often helpful to disentangle those two questions. Sometimes, when we are asked for evidence, people say that they want to know how to do X, Y or Z.

I will give you a very early example. When we met the then Deputy Minister for Tackling Poverty, one of his first requests was about how to establish a network of credit unions across Wales similar to the network in the Republic of Ireland. I was amazed to hear myself say, impertinently, “That’s really interesting, minister. Can we understand a little bit the policy objectives that that network of credit unions would be aiming to achieve?”

That led to a discussion about the underlying social, political and economic challenges that the minister wanted to address, and it turned out that credit unions were probably not the answer or were only a small part of it. Disentangling what you are trying to achieve from the way in which you are trying to achieve it is a really important part of the policy making process. I presume that that is the case in Scotland, and it certainly is in other territories with which I have had interactions.

Evidence can feed into questions such as whether something is a problem and for whom and where it is a problem, but it can feed equally well into asking what other people have done about the issue. A policy maker might want to do something about an issue, because they are sure that it is a problem—and because all their constituents are telling them that it is a problem—so they might ask what others have done about it.

Sometimes, we are asked a question further down the line. A minister might know that something is a priority for them and understand what they want to do about it, but they will ask about the best way of going about delivering the change that they want to achieve. At that point, we get into questions about evidence to feed implementation.

I hope that that was helpful.

Liz Smith: Thank you, Professor Martin. The distinction that you have made between the two processes with regard to advising ministers is interesting. How easy do you find the second process—that is, looking at the evidence and guiding the minister to the data that might have been there previous to the decision that is made? Are you data rich or are there gaps in the knowledge that you have to provide to the minister?

Professor Martin: It is more the latter than the former, but it depends on the topic and the policy challenge, as you would expect.

We have a process that we go through in discussion with policy makers to establish whether something is an issue to which we can meaningfully contribute. Where there is no evidence at all, the answer is, “I’m really sorry. There isn’t any evidence that we can find across the world and we can find no experts who can advise you on it.” That is quite rare and, in those circumstances, we would recommend that a process of primary research be undertaken, some pilots launched or some experiments or trials with a rapid turnaround done to try some approaches to find out what does and does not work.

More usually, there might be no rigorous academic research evidence, but there will be some helpful expertise that we can bring in from academia, and we can pitch to research colleagues questions such as, “If you were the minister, what would be your best guess as to what to do?” That is not a purist view of evidence, but we have found it to be much more helpful than saying, “Sorry, there is no randomised controlled trial on the issue—there is nothing that the academic community has to say on it.” More often than not, we find that there is evidence that we can deploy, but the quality and nature of it vary.

Liz Smith: Are you able to access the information that you require relatively quickly?

Professor Martin: Our modus operandi is designed to be much more timely than traditional academic research, because we are drawing on evidence and expertise that already exist. At our very fastest, which was during the pandemic, we turned round some think pieces in a couple of weeks. More usually, we spend four to five months from the first discussion with a policy maker through to the end of a piece of work.

Liz Smith: Thank you. That was helpful.

Have the other two witnesses identified any difficulties in establishing clarity of purpose on what they are trying to achieve?

Sophie Howe: Wales is relatively unique in that we are clear on our short and long-term purpose, with the Well-being of Future Generations Act 2015 setting out seven long-term wellbeing goals that our Government and all our public institutions are required to set objectives to achieve. All policy making should be done in the context of those seven wellbeing goals. Because they are long-term goals, though, their span goes beyond political cycles, and they are therefore a level above the sorts of requests that Steve Martin described, where ministers are looking to take steps to achieve those wellbeing objectives and are asking what steps they should take, with all the various processes and discussions that then have to be gone through.

Therefore, there is clarity of purpose, and it is set out in law. The other part of that law that is really important for decision and policy making is the requirement to demonstrate that Government and other bodies across the public sector have applied five particular ways of working. Those are: considering the long-term impact of the things that they do; preventing problems from occurring or getting worse; integrating their actions across Government and across other sectors; collaborating with each other; and involving citizens.

Those ways of working provide a framework for taking decisions and the seven wellbeing goals provide a purpose for those decisions or for having a vision for the country. In my experience, the approach does not always operate absolutely perfectly, but it does mean that the whole of Wales—not just the Government, but the public sector organisations that are covered by the 2015 act and, increasingly, even those that are not—knows where Wales is heading. It is a bit like your outcomes framework, I suppose, but it is set out in law.

Liz Smith: That is very helpful. Several of us here had an excellent visit to the Welsh Senedd a couple of months ago and were very taken with quite a few things that we heard. Please pass that back.

I ask our final witness to finish the discussion on clarity of purpose.

Professor Matthew Flinders (University of Sheffield): [*Inaudible.*]—maybe Wales is—

The Deputy Convener: I am sorry, but we did not catch the start of that. Can you start again, Professor Flinders?

Professor Flinders: Clarity of purpose is often the key challenge. Ministers will feel that they want to do something, but what that something is can be up for discussion. It is often the role of external advisers and academics in various centres to narrow down which problem needs to be solved. That can be a key challenge; in many super-wicked policy areas with overlaid and different issues, narrowing down the core problem that needs to be addressed can be more challenging than might be expected.

To follow on from what other speakers said, I would say that it is interesting to think about what we mean when we talk about evidence. We now have a much broader understanding of the need to combine different sorts of useful knowledge, including academic and professional knowledge and lived experience. When we take that broad approach to evidence, the evidence does not always flow in the same direction, which can be a real challenge.

In recent years, an infrastructure has been developed to bring academic research much closer to policy makers at different levels of Government. I am not saying that it always works, but there are now more boundary-spanning structures that are designed to try to close the gap between research and policy than there were in the past.

Liz Smith: Can you give us an example of a time when different types of evidence have pointed in different directions and the difficulties that that might have caused?

Professor Flinders: Rough sleeping would be a classic example. One minister might see that as being about getting people off the streets and into temporary accommodation or hostels. The issue is that rough sleeping might well be manifested in people who choose to be homeless, but the root cause is often something far more complex, such as mental illness or dependency on alcohol or drugs. Unless the problem can be approached in a rounded way, you might deal with the obvious manifestation but you will not deal with the root issue.

Policy interventions are often relatively short-term. There can be a spark and an injection of money or resources, but what happens when that funding finishes? Often there is either little development of the interaction between different policy approaches such as housing, mental health, education or a failure to develop the notion of policy momentum that understands that the funding stream for a policy is going to finish and asks what will happen next. We often end up throwing mud at walls to see what sticks and, very often, very little does.

Liz Smith: Thank you.

Michelle Thomson (Falkirk East) (SNP): Good morning. I will ask Professor Flinders a couple of questions from an academic perspective.

09:45

Your submission makes comments about culture, behaviour, avoiding groupthink, confirmation bias, and so on. You also point out that there is a need for critical friends. How is that limited when power—for instance, over someone's job, career or their future line of funding, in instances where third sector organisations rely on Government—comes into play? What are your general thoughts about how prevalent that is and how commonly it is understood as a risk in the public sector?

Professor Flinders: One of the great challenges, which is a contextual issue, is that we have what I would say is an immature approach to accountability and scrutiny. The approach often

focuses on finding out what went wrong, who is to blame and who should take responsibility. Those things are one part of the discussion, but I would call that a “gotcha mentality”, which creates a negative view of accountability structures. Often, people will not speak with candour because they are scared of the implications that doing that might have for them or their ministers, which, by definition, would reflect on them.

The key issue is how we create a culture in which accountability is understood as finding out what went wrong, with an equally strong emphasis on what we can learn from the experience for the future, instead of focusing only on who is to blame. At the moment, our structures tend to be blame focused, rather than learning focused. I completely understand the issues that you are raising about power and the implications for honest straight talking. However, in my experience, I have rarely worked with ministers who were not happy to face constructive feedback and challenge, as long as that was evidence based. It is not a case of not being able to challenge, is about being able to do that based on a sound understanding of existing evidence. Often, ministers want that challenge.

Michelle Thomson: Leading on from that, your submission also alludes to complexity—

The Deputy Convener: We appear to have lost Professor Flinders. Perhaps Steve Martin could answer Michelle Thomson’s question.

Michelle Thomson: I expect that Professor Martin will also have a view on that. Following my question to Professor Flinders about culture and behaviours, I want to ask about the relationship between complexity and risk and, therefore, any limitations on innovation. Based on your experience, how does the appetite for or attitude towards risk, linked to complexity, inadvertently limit innovation in the public sector in general terms?

Professor Martin: Sophie Howe probably wants to come in on that and will have more interesting things to say than I will. I will respond to your previous question on how we create a culture in which criticism can be constructive, rather than raising antibodies within the system. That relates to your question about complexity—perhaps Professor Flinders can come in on that now that he is back online.

We have an interesting relationship with ministers, in that we are part funded by the Welsh Government, but we also receive funding from the research council and Cardiff University. We have had to navigate with ministers the question of how we give honest independent evidence that is at times challenging and does not necessarily point in the direction that ministers want it to. A lot of that is about developing the trusting relationships

that you have talked about with other witnesses in previous evidence sessions, and a lot is about how we as advisers conduct ourselves.

I completely understand why policy makers might be wary of working with academics. The characterisation is that we take ages to report anything then heavily caveat everything that we say, and there is always a risk that we go into critical mode and start spouting in the media in an unhelpful way.

We have to be absolutely clear in our role that we will follow wherever the evidence leads and transmit that to ministers in a way that will not cause them any difficulty or surprise. For example, we have a publications protocol, which sounds very boring but has proved important, where we present the evidence that we have assembled for ministers. They have six weeks to assimilate that and then we make sure that it is published more widely so that everybody has access to what we are doing.

That steers a middle course between, on the one hand, not working in secret and depriving other policy makers of the evidence that we provide to ministers so that there can be proper scrutiny of the evidence that they receive and questions to them about why they are not following that—if they choose not to; it is absolutely their right not to—and, on the other hand, creating an environment where ministers can trust that we are trying to be constructive and help inform their decisions.

It sounds dull and obvious, but it is about relationships, culture and behaviour. It is important that if researchers want to engage with policy and practice, they are willing to take on some of the constraints that that relationship involves.

Michelle Thomson: That is helpful. The middle-road approach to continuous improvement that academia brings is worth the committee exploring further when we look at comparables in Scotland. I know that Sophie Howe wants to come in on my earlier point, then I will head back to Professor Flinders.

Sophie Howe: Can you see me? I cannot see myself, so I am not sure whether you have lost me.

Michelle Thomson: We cannot see you, but we can hear you clearly.

Sophie Howe: I will pick up on the point that Professor Flinders made around the immature approach to scrutiny. We saw that during my time as Future Generations Commissioner, particularly in relation to the Government’s willingness to self-reflect and be honest in that self-reflection.

It is interesting that the Welsh Government changed some of the requirements for local

government to focus more around performance reporting, self-reflection, peer review and so on, but the Government finds doing that within its own organisation challenging. That is a slight criticism, but I have some sympathy, because everything that is around the Government makes that quite difficult to do.

In relation to our audit processes, there is generally more of a focus on trying to do something new, different and innovative but failing rather than continuing to manage the status quo. The politics of Government are often unforgiving if there are mistakes—likewise in the media. That sort of environment makes it difficult for a Government to enter a space where it might feel that it is washing its dirty linen in public, if you like, but I see being able to genuinely reflect on where you are as an important part of the self-improvement journey—I do not want to speak for my colleagues, but I think that they would agree with that.

As Future Generations Commissioner, my job was to monitor and assess the progress that the Government and all our public institutions were making on meeting the seven wellbeing goals. We did that through a self-reflection exercise. The first one that we did back in 2019 was really interesting. The organisations that were saying, “All is well—nothing to see here—we are all doing incredibly well” were the ones that we took a much deeper look at. There were also organisations that were genuinely reflecting and having critical conversations within a framework that we co-created with them, which was about looking at where they were on their improvement journey, what the barriers were to their making progress, how to address any barriers and whether there were things that they could be doing better with partners or internally. In my seven-year experience of being Future Generations Commissioner for Wales, I learned that those are the organisations that continue to make progress. The organisations that perhaps do not want to wash their dirty linen in public are those that do not necessarily make the same level of progress.

That was one of the reasons why I used my powers as commissioner under section 20 of the Well-being of Future Generations (Wales) Act 2015 to conduct a review into a particular organisation or a collection of organisations. I have only used those review powers twice. Once, I conducted a review into a number of public sector organisations on the issue of public sector procurement, and, latterly, in my final year as commissioner, I worked with the Welsh Government to consider how well the machinery of government was embedding the requirements of the 2015 act.

The review was interesting, because we did it collaboratively with the Welsh Government, which is not usually how such reviews start to happen. We had quite a long process of building trust, and some of that was bumpy along the way, because, as you can imagine, the Government does not necessarily like an external organisation or commissioner coming in to look at the ins and outs of how it takes decisions. However, we found the process incredibly useful, and I think that even the Welsh Government found it incredibly useful. I feel that we were able to push it more into the space of critically reflecting on where things were working and where things were not. At the end, we developed a jointly constructed improvement plan for areas in which the Government could improve on implementing that piece of legislation.

The main point for me is that it is difficult for Governments to be in that space, and it does not necessarily create a healthy environment for good public policy making.

Michelle Thomson: Thank you. I would like to finish off with Professor Flinders, since he was cut off in his prime, as it were. Throughout this whole conversation is the theme of maturity, whether it is about how we deal with risk, innovation, complexity or power. Do you have any final thoughts or reflections on what you have heard thus far? This is the academic side of decision making.

Professor Flinders: Following on from Sophie Howe, I note that, although ministers and officials are often very open to considering questions about complexity and challenge, they have those very mature and open discussions off-stage. It is interesting that, when the discussions come on-stage in front of committees or the media, we tend to lock everything down in an immature way. One of the thoughts that I have had is about how to move on-stage the more mature off-stage conversations about the inevitable messiness of policy making and how to learn from failure, and how to do so in a way that might promote a much more sensible culture and understanding of the inevitable challenges of policy making.

Michelle Thomson: Do you have any bright ideas on that?

Professor Flinders: There are issues around policy advice. If you look at accountability in government, you find that the policy advice that is given to ministers is generally still kept in the black box and off-stage. If there were a process whereby some level of accountability was introduced for the basic advice that is given to ministers, not only would that demand that officials lifted the quality of that advice—because they would know that they would be held to account for it in the future—but it would provide a firmer

foundation on which to say to ministers, “Explain your decision”.

Again, one of the knock-on effects is one of the great issues that we have with regard to accountability and expertise, which is the amount of churn and turnover among civil servants and officials. It is a fluid system that means that, just as somebody gets on top of a role and develops the informal relationships and trust that are needed to really understand their specialist policy space, they move on and the whole process starts again.

10:00

Therefore, we need greater stability and greater maturity around publishing to some level the policy advice that ministers receive. We also need an obligation on the media and scrutineers to fulfil their side of the bargain, which is not to jump in with both feet and go for the low-hanging attack fruit but to accept that these are complex issues for which there are no magic bullets or simple solutions.

Michelle Thomson: Thank you for that. I am laughing slightly, given that we are operating in a political environment.

Douglas Lumsden (North East Scotland) (Con): I will build on the point that Michelle Thomson was making by asking a question about transparency. Professor Flinders, in your submission, you talk about two different aspects of transparency:

“transparency of the decision-making process”

and

“transparency around the reason for why a final decision was taken”,

which I think is what you were just talking about.

In previous evidence sessions, we have heard that, in New Zealand, minutes of Cabinet meetings are published a few weeks after the meeting has taken place. From your point of view, would that be a good thing or would it—the expression “government by WhatsApp” has been used in previous meetings—drive a lot of the decisions away from Cabinet meetings if the process were almost too transparent?

Professor Flinders: No. Again, policy making is all about pragmatism. Of course, there will be unintended consequences of anything that you do and a degree of gaming. We are also working in a political—with a small p and a big P—context. However, publishing a statement—it does not have to be a detailed exposition—of the standard of policy advice received by ministers and an explanation for why they took a particular decision, particularly when they go against the advice that

they received, would provide a firmer foundation for a mature discussion to take place.

New Zealand is an interesting example. It is the obvious example that everyone goes to, but it is a very small country. As you all know, it is on the other side of the world and it works on a much smaller scale. It also has a different political culture—I go back to the previous question, because that is what I am talking about. If you really want to have effective Scottish decision making, where everybody can make a contribution in an honest way with candour, you have to accept that everybody will not get what they want all of the time and that it will still be messy.

For me, it is a question of having transparency with regard to the quality of the policy advice that ministers receive and some post-decision explanation for why they took the decision that they did. That way, at least, you would have a much firmer foundation for sensible scrutiny. At the moment, everybody works almost in a vacuum. I think that that could improve the quality of advice that comes to ministers. It would create the knowledge among officials that the advice that they give would, at some point, be subject to public review and discussion. That would help and support the quality and, arguably, the range of advice that officials provide to ministers.

Douglas Lumsden: Do you think that there is a danger of some of those decisions being taken behind closed doors and of things being done in different ways?

Professor Flinders: I suppose that, at the moment, we might say that everything—all the decisions—is done behind closed doors. It is like a halfway house. People used to say the same about the Freedom of Information Act 2000. Again, New Zealand was a model for that. People said that we would have government by Post-it—that people would not write stuff down in official documents. Actually, that has not really happened.

It is interesting to consider long-termism. Often, things that happen are seen as quite radical at first, but they become accepted parts of due process; it is almost that the system matures around them. If you were to start to introduce the publication of policy advice, my concern is that, in the short term, that would be likely to fall in a political context that was very immature and it would be problematic. However, I would hope that, in the medium to longer term, the innovation would settle down and just be seen as part of due process, and that, before long, people would say, “I can’t believe we ever did things a different way.”

Douglas Lumsden: Thank you. Sophie Howe and Steve Martin, do you have a view on transparency in decisions that were taken?

Sophie Howe: Yes. I take a slightly different view to Matt Flinders. To give you a little bit of context, I worked in Government with politicians, the First Minister and the Cabinet for a number of years prior to being the Future Generations Commissioner. I am of the view that that would drive people to not express the full picture in terms of the full range of evidence and insight that they might otherwise take, because they would feel that it was not a safe space in which to do that. On the one hand, I totally agree with Matt that, in an ideal world, you would want that sort of transparency; on the other hand, we are operating in the world of political reality.

I am not convinced about the FOI point. I do not have any evidence to prove or disprove this, but I am guessing that the issue on FOI is that we do not know what we do not know. We do not know how much was only being recorded as a bare minimum as a result of FOI. With regard to Government policy making, I am not sure that such transparency would drive civil servants to take a really comprehensive approach; I think that it would drive them back to the bare minimum. I think that a more fruitful exercise—certainly in the short term—would be to focus on building that into your challenge within the system.

I agree with Matt that there are problems around the churn in the system and the level of expertise. Most civil servants are generalists, by the very nature of the way that the civil service operates. They move between different policy departments and there can sometimes be a reluctance to bring in external expertise to work alongside civil servants on particular policy areas. Where we have seen that happen, I think that we have seen better policy making.

I can give an example. For the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, which was passed by the Senedd a few years ago, civil servants who were generalists worked alongside experts from the field. The experts were seconded into Government for the period of taking that bill through the Parliament, doing the policy development and so on. In the short term, I think that that is a safer way of building in that expertise.

The other area is creating some safe space around internal challenge. One of the things that we did as part of the section 20 review was to look at a number of ministerial submissions and to critique them in a safe space, so that we could help officials who filled in those submissions to understand how that could have been done better from the perspective of using future trends, looking at things in an integrated way or involving citizens. There was quite a reluctance to do that and to have that kind of space, even though I would say that we were in a space of safe internal challenge.

If we could build that in somehow, that would be quite fruitful.

The final element is the role and expertise of more senior civil servants in providing that challenge. I am assuming that the process in the Scottish Government is similar to the one in Wales, where policy development will often start either from a minister or from a particular pressure from outside, and officials will look at what policy can be developed and so on.

When a submission goes up to the minister, a more senior civil servant will consider that submission. That comes back to the question of how skilled that senior civil servant—or perhaps, in some cases, that group of senior civil servants—is at critiquing the submission from the perspective of the Well-being of Future Generations (Wales) Act 2015 and the five ways of working, and whether there is work to do with senior officials on that. Even if they have done a really good job of critiquing, we need to consider how well that process is used as a learning exercise for civil servants so that, in their policy development role, they could say, “Okay—this is where we could have done better,” “This was done really well, so we’ll share it—here’s the learning,” and so on. I am not convinced that that happens effectively enough.

I would very much like to get to the point at which we have what Matt Flinders described, but I would like it to be done in a genuine way rather than as a box-ticking exercise. I would like to get there but, in the early phases, it is a question of improving the internal culture mechanism and creating a safe space for external people to come in and challenge things.

Douglas Lumsden: Professor Martin, do you have anything to add?

Professor Martin: I have a brief additional thought. I, too, am agnostic on Matt’s proposal, but I think that it is entirely legitimate for you, as scrutineers for the public and the media, to require policy makers to explain the evidence base behind the decisions that they make. If a decision is not evidence based, they should have to explain that, too.

Evidence is only part of the policy process, of course, because ministers have a democratic mandate and they can decide to implement whatever they feel is right, but sometimes there is a lack of inquiry into the basis on which decisions are made, whether those decisions are about what to do or how to do it, as was said earlier.

The mature questioning of whether ministers have looked at evidence and asking them what their take on it is would be a very helpful injection into the policy-making process. It would, at least, make more transparent the basis on which

decisions are made, but it would not necessarily make the process by which they are made clearer.

The Deputy Convener: The points that you have all made about accountability provoke some questions about the role of private sector consultancy companies, which all Governments in the United Kingdom involve in policy advice and policy development. Do you have any reflections on the role that you have seen those organisations play and on how they are involved in the decision-making process?

Professor Flinders: Private sector consultancies play a key role. They are often brought in to provide expertise and specialist knowledge that the more generalist civil servants might not have. The key issue is that, often, part of the culture is that private sector consultants know best and know exactly what should be done. However, they often bring in private sector-based ideologies and models. Those might improve policy and have some element of challenge, but the idea that private sector consultancies always know best is problematic.

When we talk about decision making in policy, we are talking about decisions that are taken at the very highest level, but my understanding is that consultancies are more involved in the fine tuning of operational issues, organisational structures, management and things like that, rather than at the top end, as an interface with a minister, a senior official or a special adviser. We are talking about how we make sure that they understand what effectiveness might, could and does look like.

10:15

The Deputy Convener: A Conservative minister was quoted in 2020 as saying that Whitehall had been “infantilised” by the use of consultancy companies. Reflecting on Professor Flinders’s point about where they are positioned in the policy-making chain, I thought that that was a highly critical comment.

I will bring in Professor Martin, as he is on the screen.

Professor Martin: I worked a lot with the UK Government 15 or 20 years ago, and it seems to me that there is a contrast between its use of public sector consultants and that of the Welsh Government, which I am now much more familiar with. In part, that is a reflection of civil service policy-making capacity, which is a serious issue that we need to address in the short to medium term. Often, I feel that Government asks us to take on roles that we would not be asked to take on if the civil service was fully up to capacity and was given the capabilities that it should have.

The issue is partly about gap filling, as well as opportunism on the part of the private sector. I think that that directs our attention towards understanding what the capacity and capability of the civil service, local government and other policy actors currently is. Every time we have some form of engagement, we are reminded that we are in a state of permanent crisis. We are told that it might be very nice to be able to analyse the evidence in a measured way, but that that is not the world in which we are operating.

To me, that speaks to the need to be realistic about our policy ambition. Can we actually do everything that we would ideally like to do, or do some of our strategies and policy ambitions outstrip our current capacity? Rather than questioning too much whether private consultancies are the right or the wrong vehicle, I would prefer us to turn our attention to how we can develop the capability and capacity within the system to deliver what ministers want.

The Deputy Convener: In their recent book on the role of consultancy firms in government, Mariana Mazzucato and Rosie Collington say:

“The more governments and businesses outsource, the less they know how to do.”

Does that ring true to you?

Professor Martin: Based on our experience—and on what Sophie Howe and Matt Flinders said about ways of bringing in external expertise—I would not formulate it in quite that way. It is, of course, true that that will happen if you outsource policy making to the big four consultancies all the time. However, I think that the co-production principles that Sophie Howe talked about enrich policy making. If you take different forms of evidence from different forms of actor, that greatly enhances your chances of being able to deliver on the policy that you are trying to enact.

It is a good idea to involve local government, the voluntary sector, users of services—including, for example, women who have lived experience of domestic violence, as Sophie Howe mentioned—and so on. You should also bring in academic expertise, as there really is a wealth of expertise and research in our universities. My personal mission is to make that much more accessible and help policy makers to tap into it much more easily.

The Deputy Convener: Sophie, do you have thoughts on this area?

Sophie Howe: I agree with Matt Flinders and Steve Martin. On the use of external consultants, and particularly the big four that Steve Martin mentioned, I do not think that our experiences in Wales reflect the Whitehall experience at all. I would not describe the situation quite as Mariana Mazzucato and Rosie Collington did. I think that

we have a much stronger approach around co-production with the sorts of groups that Steve Martin outlined. Increasingly, we are seeing those groups not only taking part in ministerial advisory groups that are slightly outside Government, but also being brought into the civil service.

That was the case with the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, which I mentioned earlier, and it is also the case with the Social Partnership and Public Procurement (Wales) Bill that is currently going through the Senedd. That bill is about putting the social partnership between trade unions, the private sector and Government on a statutory footing, and trade unionists were seconded into Government to help with the policy development around that. That is a good model that results in better policy making.

Going back to Steve Martin's point about the pace of people being able to provide evidence, I add that, sometimes, politicians just want to borrow our brains. They do not necessarily want us to spend five months crafting all the evidence, although I completely agree that that would be absolutely ideal. They are continually responding in what is—this is a new word—a polycrisis; they are responding on many different fronts and often very quickly, because there are real lives out there, as well as political pressures.

It is partly about how to convene experts in a safe space to have conversations with ministers and civil servants, who will set out their boundaries in the context—for example, the amount of money that they have, the political reality that they are working with and the scale and pace at which they need to deliver. Borrowing those experts' brains, they can ask those people to help them to craft the best possible solutions within those boundaries. That is what ministers want. That is why they often rely heavily on their special advisers and their trusted networks, if you like—perhaps people from their own backgrounds or professions or contacts that they have developed throughout their careers. We need to recognise that and the system as a whole needs to respond to it.

It is about trying to develop that internal capability and capacity. Part of it is certainly about secondment into Government. I have mentioned a few things, but if there was one thing that we could do to drive better policy making across the whole of the public sector, it would probably be mass job swaps or secondments with, for example, the social worker working in policing and the green infrastructure expert working in health. Such cross-fertilisation is not often encouraged in Government, but it needs to be.

Our former permanent secretary, Shan Morgan, made a small intervention in that regard. I am not sure whether it continues, but it was quite good. It

was called the short-term experience programme, or STEP. Civil servants were given time to go into an organisation outside Government for up to six months. It could involve people going in for a day a week or undertaking a placement for a month, for example. Some really interesting things came from that. For example, someone from the Government's major events division came into my team, and now, two or even three years post-pandemic, the major events strategy in Wales is built around the Well-being of Future Generations (Wales) Act 2015 because that civil servant was immersed in a team that gave her a completely different perspective from what she might get internally.

There are such innovative ways of shaking up the system and building in that expertise. Civil servants, even senior ones, are so busy managing crises. There needs to be some capacity in the system for people to lift their heads up and ask what they could do in the medium and long term—and sometimes even in the short term—to craft better responses when we are in a constant state of crisis.

Professor Martin: I like Sophie Howe's concept of borrowing people's brains. It has certainly been our experience that ministers and officials welcome the opportunity for dialogue. For us, it is more usually about borrowing a number of different brains.

I am an academic. When I started in this role 10 years ago, I envisaged that we would be writing reports and that there would perhaps be a summary or a policy briefing alongside that. However, we rapidly found that the most useful thing that we can do is probably to convene safe spaces—round-table discussions where experts can come together with officials and sometimes ministers to talk an issue through over a couple of hours.

It is not a question of just throwing those people together; we structure things carefully and pick experts who have a range of complementary experiences and expertise. It is rare to find the renaissance woman or man who has all the answers, so bringing together a group of experts to work through what the evidence suggests and how it might apply in Wales has probably been the most fruitful thing that we have done, if we listen to the feedback that we get. That does not need to take five months; it could be done in two or three weeks.

I think that there also needs to be an intermediary there, because even the most confident of academic colleagues are wary of going into those sorts of fora. They need help to understand that the expertise that they bring will be relevant.

Professor Flinders: I am taken with the point about mobility and short-term placements. World-class policy-making structures are often defined by the capacity to facilitate the mobility of people, talent and knowledge across traditional institutional and professional boundaries.

The emphasis on facilitating the flow and mobility of people so that they can learn in different environments and the setting up of formal and informal linkages is important. There is a great example of that in the Scottish crucible programme, which is all about innovative thinking and bringing together people from different backgrounds who would not normally meet. It is about how we can create structured serendipity that allows ideas, linkages and perspectives to emerge that would not normally happen in traditional siloed environments.

John Mason (Glasgow Shettleston) (SNP): Continuing with the theme of who does what, I am interested in the concept of commissioners, so I will start with Ms Howe. You and your position have been held in high regard and it has been suggested that we in Scotland should copy the Welsh model and have a commissioner for future generations or something like that. At the same time, a multiplicity of commissioners are being sought in Scotland and I can see us ending up with 14 or perhaps more in the short term. Where do commissioners fit into decision making? Are they taking away work that members of the Senedd should be doing?

Sophie Howe: I will speak to my experiences and some of the interactions that I have had with commissioner colleagues such as the Children's Commissioner for Wales, the Older People's Commissioner for Wales and the Welsh Language Commissioner.

We provide scrutiny. The Well-being of Future Generations (Wales) Act 2015 covers all policy areas and potentially every decision that could be taken for anyone who is alive now and anyone who is yet to be born, which is a huge remit. I could not look at every issue, but the remit enabled me to have a helicopter view of policy making at the Government level and across Government departments, and also to see how that policy making flows down into the rest of the public sector.

I often think that the position under the 2015 act is a bit like when we talk about mainstreaming equalities or gender and that sort of thing. The overall aim that we want to get to is, I suppose, for commissioners and that level of intensive and specific scrutiny to no longer be needed because what we are trying to achieve—in this case, to ensure that we take decisions in a way that meets today's needs without compromising the ability of future generations to meet their needs—will be

completely embedded in the system. Everything that we have heard this morning and, I am sure, everything that the committee has heard throughout all the evidence that it has taken points to the specific significant challenges in doing that.

Perhaps I can give the committee a flavour of what my daily interactions looked like in order to show the role of a commissioner. Sometimes it was about taking time out, commissioning my own research and convening people and experts to put what I would call progressive policy ideas to Government, a number of which have been taken up. Some of them would perhaps not have been considered possible. For example, a first pilot of a basic income was not on the political agenda at all just a few years ago, but we are now seeing that pilot in Wales. That is the result of a lot of my work with people in communities, non-governmental organisations and the third sector, for example.

10:30

I would often look at particular policy areas and make connections with other organisations, and I spent an inordinate amount of time introducing civil servants in different departments to one another. We would not necessarily think that that is the role of a future generations commissioner, but there was a requirement relating to long-term preventative and integrated policy making.

The example that Matthew Flinders gave involving homelessness was a really good one. We still see silo decision making and people trying to do short-term fixes rather than taking a long-term view. A lot of what I did involved working directly with civil servants to try to join up the dots between different aspects of public policy making, asking them how they were applying the Well-being of Future Generations (Wales) Act 2015 and, in many cases, holding their hands to apply that act. I also tried to provide a link to what was happening outside Government on policy areas—with the private sector and the voluntary sector, for example—in order to bring integration.

The other area that we were heavily involved in was building capacity and capability among civil servants and the civil service around applying foresight, long-term trends and future generations thinking. That was entirely new to civil servants when the 2015 act came into force.

I do not know whether any of that would have happened if there had not been a commissioner. I cannot say that for certain. However, I am not at all convinced that it would have happened if there was not an institution—whether that was a commission or a commissioner, or whatever it was called and however it was set up—whose primary role was to do that and that had a legislative

mandate to directly work with Government and others to do it.

John Mason: Thanks. That is very helpful. I will come to Professor Flinders shortly, but I will press you on something that you said. You mentioned the short term and the long term quite a few times in your answer. Do you think that it is impossible for politicians and civil servants to take a long-term view unless there is somebody outside kicking them?

Sophie Howe: I am not sure that I would use the term “kicking”; rather, I would use the terms “working alongside”, “enhancing capability” and “helping with learning and development and so on”.

Nothing is impossible, of course, but taking a long-term view is very difficult when the system is continually in a state of crisis and is continually being asked to respond. That is incredibly difficult without external challenge and support to require the system to lift its head above the polycrisis that it is continually in.

John Mason: I saw Professor Flinders nodding at one point. Do we need commissioners to look at the long term?

Professor Flinders: I would use the word “nudging” rather than “kicking”. Commissioners can be very useful in nudging and creating oversight. That goes back to an issue that we discussed earlier that relates to politics with a big P. One of the benefits of having an independent commissioner is that they can come to topics, issues and challenges with slightly less heat than might be expected if those things were being examined by a parliamentary scrutiny committee.

There are, of course, similar issues at Westminster. In recent years, there has been a rather ad hoc growth in the number of commissions and commissioners there. That creates a cycle of reviewing how many there are and whether we should get rid of them, merge them or amalgamate them. However, given their capacity, particularly on policy, and because they are slightly depoliticised, they have a good role to play in nudging sensible discussions, reviewing and integrating.

I am sorry if I am telling people stuff that they are well aware of, but I want to touch on an issue that Sophie Howe raised. The amount of fragmentation and disconnection in Government is incredible. I often have officials in Whitehall contact me in Sheffield to ask what is going on in different directorates of their own department. The simple role of joining people up and introducing them in order to let them know what is going on is key. You would think that it would not be needed, but the integrating role that a commissioner or an

organisation such as the Wales Centre for Public Policy can play is crucial.

John Mason: Thanks. Professor Martin, do you have any comments?

Professor Martin: I do not have much to add to that discussion. I agree with what my colleagues have said. We have exactly the same experience: sometimes I think that my function is to introduce civil servants to one other or to remind them of an initiative that one of their predecessors undertook. Commissioners and the centre can helpfully provide that organisational memory.

John Mason: I am interested in the Wales Centre for Public Policy, which other witnesses have spoken of quite positively. Does Scotland need something like that? In Scotland, we have an ad hoc relationship between Government, Parliament and academia; we bring people in to talk about a particular issue and then do not speak to them for a while. Is there just a better relationship between the Government and the universities and academics in Wales and that, as a result, it is a longer-term relationship?

Professor Martin: Ten years ago, the relationship was certainly similar to what you have described, with different parts of Government and local government, health and others having their own links to research centres and individual academics in Welsh universities. I was often contacted about issues about which I knew next to nothing, just because I was a professor of public policy in Cardiff and the civil servants knew me.

First, we have tried to open up the policy-making process here to a much broader range of different kinds of evidence not just from Welsh universities, but from across the UK and internationally. When we first started, some of my colleagues thought, “Oh, this is great—we will be able to have even more interaction with the Welsh Government through the Wales Centre for Public Policy”, so they have been slightly disappointed to find that, most of the time, we draw in expertise from much further afield. One of the differences between what we do and the relationship that you have described is that we draw on the much wider world of evidence.

Secondly, there is a danger in ad hocery in that certain kinds of voices get privileged. For example, because people know me, they come to me. There are many other sources of expertise and advice that do not get taken into account, because they are not known and have no pre-existing links. The more systematic approach that we have taken, which involves scanning the horizon to determine who the experts are in a field and what they can bring to the table, has been a really helpful part of what we are doing.

Thirdly, we find that there are parts of Government that are well served by evidence and other parts that are largely evidence-free zones. Much of what we have tried to do in the past three years has been about providing evidence to the directorates and departments on those policy issues where there has not been a strong evidence base in the past. In very broad terms, health policy is often underpinned by evidence and education policy is reasonably well served by the Welsh Government's internal research function and relationships with the universities here in Wales, but there are other areas, such as housing, net zero and tackling poverty, which historically have not had those links to good, reliable sources of evidence.

I recognise your description of the picture in Scotland, as it is a good description of how things were in Wales 10 years ago. However, having an infrastructure of evidence and intermediaries who can help define what is needed in the discussion with policy makers, in the way that I described earlier, and then going out and seeking sources of advice and evidence that specifically address that particular evidence need is a different ball game to the one in which people depend on existing links, serendipity and who knows who.

Matt Flinders referred earlier to the very big investment that there has been in evidence infrastructures of different kinds not only here in Wales but across the UK. I would be concerned that, if you do not have something that carries out a similar role to ours, you might be missing out on sources of evidence outwith Scotland, which you might want to tap into, in spite of the political differences and the need to navigate those.

There is a what works network of 13 what works centres of which we are a part, and we provide Wales with a strong link into those other centres to look at, for example, educational attainment, regeneration, early intervention, children, social care and higher education policy. At the moment, Scotland does not have a link into that network, and that, I suspect, is a missed opportunity.

John Mason: That was all extremely helpful.

I have a final question. Earlier, you talked about round-table events and how they are safe spaces. Are those events recorded or the proceedings published? Is a summary of what happens provided? How does that work?

Professor Martin: It is exactly as you have described. We want the round-table events to be a safe space where people can ask the questions that they want to ask, but we also want to ensure that it is not a secret space. We publish our work programme in advance, so that Opposition parties and others can understand what we are working on, on behalf of ministers. We publish key findings

from events such as a workshop or a round-table event, which means that the evidence is available to everybody—and, indeed, without our identifying who said what and who asked what, as the events all happen under a sort of Chatham house rule.

The key evidence points to emerge from the advice are then made available to the whole world. They would probably be subject to a freedom of information request if we did not do so, but we choose to do it anyway, because we think that it is a good thing to do.

John Mason: Okay—that is great. Thanks, convener.

The Deputy Convener: Thank you, convener—I mean, thank you, Mr Mason. I am the convener. *[Laughter.]* I thank all our witnesses for joining us and taking the time to speak to the committee today. Your evidence has been invaluable.

With the committee's agreement, we will rejig the agenda slightly and move to item 4 now, which we will take in private. We will then reconvene in public to take evidence from the minister at 11 am. Do members agree to do that?

Members indicated agreement.

10:42

Meeting continued in private.

11:01

Meeting continued in public.

Children (Care and Justice) (Scotland) Bill: Financial Memorandum

The Deputy Convener: Agenda item 3 is an evidence session on the financial memorandum to the Children (Care and Justice) (Scotland) Bill. I welcome to the meeting Natalie Don MSP, Minister for Children, Young People and Keeping the Promise, and her Scottish Government officials: Brendan Rooney, bill manager; Tom McNamara, head of youth justice and children's hearings; and Helen Duncan from the children and families analysis branch.

I thank you all for coming and welcome you to the meeting. I invite Natalie Don to make a brief opening statement.

The Minister for Children, Young People and Keeping the Promise (Natalie Don): Thank you, deputy convener, and good morning to the committee.

The fundamental principles that the bill takes forward are as follows. Where children come into contact with care and justice services or into conflict with the law, Scotland must respond appropriately, and that should happen in age-appropriate systems and settings. Our obligations under the United Nations Convention on the Rights of the Child and our commitment to keep the Promise are clear on those points, and those commitments benefit from cross-party endorsement in this Parliament.

The bill takes forward important measures to improve experiences and outcomes for children in Scotland, especially those who need extra care and support. The bill builds on our getting it right for every child principles and our youth justice vision. By helping to address the causes of the child's offending behaviours, we can assist them to desist and to rehabilitate and, in turn, we can prevent further harm and minimise the number of future victims. In doing so, we can help to improve outcomes for everyone in society.

In relation to public expenditure, it is important to recognise the wider backdrop of the benefits that these change programmes are advancing. The negative economic and social costs to society, both at the time and into the future, of offending and crime are well documented. For example, the Promise "Follow the Money" report estimated the cumulative private costs of physical and emotional harm, lost output and public service costs to be £3.9 billion. By investing in services that take an early intervention approach, we can

lead to more positive pathways being taken more often for individuals and communities.

We are coming from a strong baseline. Between 2008-09 and 2019-20, there was an 85 per cent reduction in the number of children and young people who were prosecuted in Scotland's courts and a 93 per cent reduction in 16 and 17-year-olds being sentenced to custody. Although the Government is not complacent and it recognises that there will always be a level of offending and a requirement for care and protection in any society, the bill represents a solid step forward.

The Government has engaged widely on the forecast costs. In addition to our full public consultation, extensive engagement has taken place with a host of partners and stakeholders. The cost forecasts in the financial memorandum are based on the feedback and figures that were provided from that engagement.

I am aware that the stage 1 process has brought to light some helpful additional detail and updated information. That is part of the legislative process and we absolutely welcome it. The Government is alert to the need to ensure that forecasts can be refreshed and as up to date as possible. That is why the multi-agency resourcing and implementation group, which starts meeting next month, will be crucial to our preparations. We will work with partners to explore individual and combined resource requirements in more depth and report any necessary updates or clarifications to Parliament.

That work will feed into budget profiles for next year and the years beyond, as is the established process for financial planning regarding proposed legislation. We are, of course, mindful that parliamentary agreement is required and will therefore keep projections refreshed as the bill moves forward and is amended through scrutiny.

The issue of secure care funding has been a key topic in stage 1 scrutiny. We have had a last-bed pilot running in each of the four independent secure centres and we are exploring extending that exercise towards funding up to 16 secure beds in 2023-24, so that sufficient capacity will stand ready should the bill be passed.

We are also looking closely at the appropriate mechanisms for funding remand costs and will update when we have concluded that work. We welcome the additional insight and precision emerging from the stage 1 process in various parliamentary committees. That is integral to producing the best possible quality in our legislative output.

I hope that those opening remarks have been helpful and I look forward to taking the committee's questions.

The Deputy Convener: When might Parliament see a revised financial memorandum?

Natalie Don: I do not have a date for that at the moment. The working group has a meeting scheduled for 5 June, and stage 1 needs to be completed before that can happen. Everything that we have heard so far from committees and stakeholders will feed into that.

The Deputy Convener: So we will have a revised memorandum prior to the completion of stage 1.

Natalie Don: No. Stage 1 will feed into the financial memo, so it will be following that.

The Deputy Convener: On your point about putting the last-bed policy in place for 2023-24, is the funding for the policy continuing or has it expired?

Natalie Don: It expired at the end of March 2023 and we are looking to expand and increase it now.

The Deputy Convener: So the secure accommodation does not have the funding in place at the moment.

Natalie Don: Not just now, but the funding would be for the full financial year, so that would not be an issue for secure care centres at the moment.

Michelle Thomson: We are all pleased to hear about the updated FM. I am sure that we all agree on the worthiness of the bill, but this committee's specific focus will always be on the money and the spend. You have indicated that there is uncertainty about the original estimates. I want to explore how you see the scale of the challenge going forward. We know that multiple areas of various sections are excluded from the original FM—those areas have no estimates at all. In addition to that, there is the group that you mentioned—I am sorry, but I have forgotten its name.

How will you assure yourself, first, that all costs are included, albeit in estimate form, and secondly, that the costs have taken account of what is now a high inflationary cost environment? Critically, I suppose that the question that I am probing is, to what extent will the FM be given the full weight it deserves, alongside the undoubted enthusiasm for what are some very strong policies?

Natalie Don: That is an important question. I understand the committee's concerns around that. Obviously, the financial memo was completed well prior to my time in office but, as the member pointed out, it was completed prior to some wider issues, such as inflation. As I said, the financial memo was completed with the contribution of stakeholders and organisations, so it was a good

snapshot in time of what the costs were at that point.

As we have rightly said, that will need to be updated, but we are confident that we can fulfil that. The multi-agency meeting on 5 June that I referred to in my opening statement will take forward these discussions with the appropriate stakeholders and organisations. Based on the feedback that we have already received or heard, that will be helpful.

In terms of the longer constraints, it is important to recognise the wider backdrop of the benefits that these change programmes could have and the potential savings to public expenditure. The negative costs to society—both economic and social—of offending and crime are well documented. For example, the Promise "Follow the Money" report estimated that the cumulative cost for physical and emotional harm, lost output and public service costs equated to £3.9 billion. We will need to consider that in terms of the savings that will be made in the longer term.

Michelle Thomson: I do not disagree about any of the principles, but the devil will be in the detail. What I am looking for are your assurances that the multi-agency meetings will put an equivalent level of attention on the costs and the savings, which you have outlined, as they will on driving forward the policy. The last thing that you, as a new minister in post—and I appreciate that you are talking about something on which you have had no say—would want is for this to be subject to considerable cost overruns because the things that are missing from the FM are missing because they are complex and difficult and you do not have policy detail.

I suppose that I am looking for assurances, because some people think that the funding is quite dull compared with the policy; however, if you think that, you are taking a risk, and I would not want to see you do that. I am simply looking for your assurances that you will pass that on to the people who are supporting you.

Natalie Don: Absolutely. It is a priority for us to get this right, because we want it to be implemented appropriately. As I have said, the financial memorandum was a snapshot in time. The committee evidence and scrutiny will feed into it and will help to direct and input to the conversations that will take place on the finances that are needed. We will also continue to press the UK Government for additional funding for joint priorities, and we would welcome support from across the Parliament, the Convention of Scottish Local Authorities and individual local authorities in that respect. I assure the committee that this is absolutely a priority for us, and we are well tuned into it.

The Deputy Convener: On a point of clarity, will the updated memorandum take account of pay inflation, and will there be some reference to the increased demands?

Natalie Don: As far as I am aware, it will take heed of inflation. I will pass over to one of my officials to clarify that.

Helen Duncan (Scottish Government): Yes, it will be updated for inflation. The figures in the financial memorandum as it stands took us up to 2022-23, but we recognise that the rate of inflation has changed quite a lot since then, and we will update for that.

The Deputy Convener: The memorandum as it stands appears to indicate that the calculations for social work resource are based on a social worker working 35 hours a week for 52 weeks a year. Will that formula be rejigged following the criticism that came from COSLA and Social Work Scotland?

Natalie Don: I understand that concerns have been raised about the funding for social work. I reiterate that the figures were worked out in conjunction with various organisations, including Social Work Scotland. We very much value the work of our social workers, and I want to ensure that their engagement continues throughout the process. They will be involved in the meeting of the group on 5 June that I have mentioned.

I will pass back over to Helen Duncan on the intricate details.

Helen Duncan: I am aware of the section of the feedback from COSLA that the deputy convener has referred to. COSLA is coming at it from a slightly different point of view. We have worked out the indicative cost of an average hour of a social worker's time, which is why we have used the number of hours worked in a week by a full-time social worker and 52 weeks for a full year. However, there is some criticism from COSLA about the weeks of annual leave within the year.

The Deputy Convener: Holidays have to be paid for as well.

11:15

Helen Duncan: Yes, holidays have to be paid for as well, and that would be reflected in the costs to the employer. It is reasonable to use all the hours across the year that the social worker is paid for. That is why we used those figures, but we will engage further with COSLA on that.

The Deputy Convener: That is reassuring.

I have a final point of clarification. The memorandum recognises demand for aftercare but does not allocate any resource for it. Will you be looking again at that?

Natalie Don: Again, it is difficult to quantify that.

The Deputy Convener: Of course.

Natalie Don: That is the case with many things in the bill, as has been alluded to. That is something that will be looked at.

The Deputy Convener: That is good.

Douglas Lumsden: Minister, what assurances can you give local government that it will not be impacted financially by the bill?

Natalie Don: It comes back to what I have been saying. COSLA was involved in the discussions that led to the creation of the financial memorandum. However, I understand that it has now raised specific concerns about the funding. COSLA will be feeding into the 5 June working group and we will be engaging with COSLA and working through the matter in discussion with it. Those reassurances will come as discussions go forward.

Douglas Lumsden: COSLA raised serious concerns about what the bill means financially for our local authorities. It would be good for local authorities to have some assurance that they will not be impacted. Do you think that that assurance will come out as we go through the process and that they will not be impacted financially by the bill?

Natalie Don: As I said, we are working with local government on that, and examples of where we could have done things differently in the bill have already come up. For example, when we created the financial memorandum, we used the lower number for the projected number of hearings, but we now accept that the higher figure should have been used. That will be updated in any updated financial forecast.

With regard to your wider point about reassurances, I am using that example to show you that we are taking cognisance of decisions that have already been made and where things can be improved, and that we are working with local government to ensure that this runs the way we want it to.

Douglas Lumsden: Skills and training are an area that has been highlighted. Will that be covered by the updated financial memorandum?

Natalie Don: That will be based on discussions that take place with the working group.

Douglas Lumsden: Local government has highlighted that it is concerned that it will lose out financially in that area due to the bill.

Natalie Don: I have seen COSLA's comments and I am aware of them. As I said, we will be engaging on the matter.

Douglas Lumsden: Social Work Scotland was quite critical as well. It said that it

“does not consider that the Financial Memorandum sufficiently appreciates the scale and financial costs of those changes.”

Should the committee be alarmed by that statement?

Natalie Don: That is a point that Social Work Scotland made. I reiterate that Social Work Scotland was involved in the initial discussions. As I said, that is something that is on-going. If Social Work Scotland has now raised those concerns, they will be looked at and discussed as we move forward. I appreciate those concerns.

Douglas Lumsden: Okay. They will, I hope, be addressed.

Police Scotland and the Crown Office and Procurator Fiscal Service have noted that the legislation has potential cost implications for their organisations that are not reflected in the FM, but they did not give any indication of their scale. What engagement was done with Police Scotland, for example? Why did it not feel that it could elaborate on what the potential costs might be?

Natalie Don: I am sorry, but I cannot necessarily give an answer as to why those bodies feel that they could not engage. They were involved in the group that was set up to establish the financial memorandum and have been engaged in the continued discussions. You said that the Crown Office and Procurator Fiscal Service had raised concerns. Is that correct?

Douglas Lumsden: Yes, that is right. It noted that the bill has potential cost implications for the organisation that are not reflected in the financial memorandum but did not give an indication of their scale. It was strange that COPFS raised concerns but did not quantify them.

Natalie Don: It can be difficult to quantify those future costs. However, I will bring in my official Tom McNamara to clarify the point.

Tom McNamara (Scottish Government): It will be helpful to the committee if I add to the level of detail on the engagement that has been happening with the key statutory and other delivery agencies going back a number of years.

The bill has not emerged from a clear blue sky in relation to the care and justice sectors. It was heavily influenced by Claire Lightowler’s report back in 2020 and, indeed, by the Promise. We have engaged across all sectors at the levels of principle and of operational implications and trying to quantify what the demand might be. In particular, we set up a rapid review group in which Police Scotland and the Crown Office were engaged.

We are trying to quantify what the implications would be of displacing more children and young people under 18 away from criminal justice and into children and family services. Those discussions have informed the population of the financial memorandum and the other accompanying documents to the bill but, as the minister said, they were all products of their time and we are more than ready to refresh and intensify those discussions—to get to the heart of the matter and the point that you raise, Mr Lumsden—to quantify the extent of the unmet demand. To help the Parliament and give the minister the advice that she is looking for, it would be useful to have some idea about the numbers that the COPFS was talking about.

Douglas Lumsden: Social Work Scotland also notes a lack of available secure accommodation. Who would be responsible for providing such accommodation? Do you have, or will there be, capital budget in the financial memorandum to try to plug that gap?

Natalie Don: Obviously, this can fluctuate but, at the moment, there is capacity in secure care. There are currently six spaces and there are five 16 and 17-year-olds in young offenders institutions. However, as already mentioned, we look to expand the last-bed policy, which currently sits at four beds, to 16 beds to ensure capacity for Scottish children. That is being discussed at ministerial level and we hope to provide an update on it soon. Therefore, the answer is yes, in essence.

Douglas Lumsden: So that will be part of the updated financial memorandum.

Natalie Don: Yes.

Liz Smith: Minister, you talked in your opening remarks about the initial engagement with stakeholders and said that the evidence that they provided was the basis for the first attempt at a financial memorandum. You are now suggesting that the second financial memorandum will have to take cognisance of the fact that some of that evidence was perhaps not as complete as it might have been. What will have to be added to the second financial memorandum, given that the evidence that you took for the first one is turning out not to be accurate?

Natalie Don: I would not say that it is not accurate. I would say that, as I mentioned, it was an accurate snapshot of the issues and the finance that would be required at that moment.

The financial memorandum was not based on the engagement with stakeholders but they contributed to it to a high degree. Wider issues, such as the cost of living and inflation, have impacted on it. They could not have been factored in when it was created. As with any legislation, we

need to set out the financial considerations for the bill at the time.

I do not necessarily want to say what I think should be in the new financial memorandum; that will be something for the working group to discuss, based on the evidence that we have heard so far and the issues that have arisen with the first financial memorandum.

Liz Smith: I entirely accept the point about cost of living issues, inflation and so on—that is absolutely accurate. However, you seem to be suggesting that more information will have to come forward in order to make the second financial memorandum more accurate.

You said that you are having a meeting on 5 June. Can you explain to us your expectations of the additional information that you are looking for so that the committee can be more confident that the second financial memorandum is more reflective of the true costs than the first attempt?

Natalie Don: I apologise if I have given the impression that I think that more information will be coming forward. What I meant is that the information that we have gathered from stakeholders thus far, and the evidence that we have heard in committees, will ultimately feed into that process, whereby stakeholders and organisations can come together with Government to discuss those issues and present new costs.

It is not that I believe that there will be any new information. The new memorandum will be based on the discussions and the work of the working group that has already been going on thus far, which will feed into it.

Liz Smith: No committee could expect the figures in any financial memorandum to be absolutely spot-on first time round—that is a given, as Parliament's experience tells us.

Nevertheless, we are on the back of having a look at the first financial memorandum for the proposed national care service, which—as you know—was found, by general consensus, to be very seriously lacking, to the extent that this committee sent it back because it was just not good enough. If we come to a point at which a second financial memorandum is required, that would mean, by implication, either that additional information is forthcoming or that there would be an updated set of statistics that builds on the first financial memorandum.

I am interested to know to what extent you think that the meeting that you are having with stakeholders will bring forward any additional information, because I suggest that that is the expectation.

Natalie Don: I think that the meeting will be very useful and beneficial for the updated costs. The

timing of it is expressly to pick up on the stage 1 committee evidence, to which I referred in my previous answer, and to support any necessary revision and updating work ahead of stage 2. The costs will need updated and updated—there is no getting away from that. As I said, however, I think that the engagement and the evidence that we have had so far will be the best method to prompt discussions around the working group and its future work.

Liz Smith: Given the criticism of the bill that has been levelled by the Convention of Scottish Local Authorities and various other groups, do you expect that, at that meeting, they will come forward with a carefully worded argument to the Scottish Government about what they think would need to be adjusted in the second financial memorandum in order to give an accurate reflection of the costs? Is that your understanding?

Natalie Don: Yes—absolutely. I understand that they have raised those points in other sessions with other committees, so it would be best for them to raise those in the place where we can take action on them.

Liz Smith: The bill stands to benefit a little bit—as I understand it, other committees have been looking at it, and there is general agreement that the principles of it are good. The concern is that if we are not going to get the second financial memorandum until after stage 1 is completed, that raises questions about the process between stage 1 and stage 2. As the Finance and Public Administration Committee, it is our job to make sure that the process is absolutely watertight and that, between those two stages, the relevant information is put before the Parliament.

As I said, that has been a concern for us with previous bills. Can you give us an undertaking that that will happen so that the new financial memorandum is much more accurate on what the figures will be?

Natalie Don: I can give an assurance that that is why that multi-agency meeting has been scheduled for 5 June. Without presupposing the express will of Parliament, that meeting has been set up so that we can get on with the discussions as soon as practically possible. We want to see the bill go through and implement the changes as efficiently as possible to the benefit of our young people, in line with keeping the Promise and keeping to the UNCRC.

As I say, the fact that that meeting has been set for the beginning of June shows the committee that this is a priority and it will be worked on as soon as stage 1 evidence has been completed.

11:30

Liz Smith: I understand the point about reflecting what is right for children, and I get the point about the UNCRC. What I and the committee are concerned about and have been concerned about with previous financial memoranda is the process of scrutiny of the figures that go into them. That is our big concern and it has been with various things over the past couple of years. I am just trying to make sure that Parliament is absolutely watertight on that scrutiny.

The Deputy Convener: Minister, why do you want to reduce the number of cross-border placements?

Natalie Don: Cross-border placements should really only be used in exceptional circumstances and I know that other committees have heard powerful evidence about what those circumstances are. The issue with cross-border placements is the fact that England simply does not have enough capacity, and that should not impact on children in Scotland if there is no place in secure care for them.

The Deputy Convener: What do you think will happen to those young people in England?

Natalie Don: I cannot say that at the moment. However, I know that England is working on that separately. My focus is obviously on what we are doing in Scotland. However, I have a meeting coming up with Claire Coutinho, the Minister for Children, Families and Wellbeing. At that meeting, I will raise cross-border placements and what the UK Government is planning to do to remedy the situation.

The Deputy Convener: In the absence of any remedy, do you have any idea what will happen to those young people? You are going to lobby for a remedy, and I understand that and agree with you that England should change what it is doing, but if that remedy is not forthcoming, what happens to those young people?

Natalie Don: I am sorry, but as a minister of the Scottish Government, I cannot give you any assurances on that. I have said I will discuss the issue with the appropriate minister but my focus will be on the Promise for children in Scotland, and the bill works towards that.

The Deputy Convener: I think that other members will have a general concern for the welfare of those young people. Also, the secure care sector in Scotland depends on the money that comes from cross-border placements. In evidence given to the Parliament Rossie Young People's Trust said that approximately 50 per cent of the current cohort of young people are cross-border placements. If your stated intention is

delivered, how do you imagine that the sector will continue to be able to meet its costs?

Natalie Don: There will need to be a gradual change with the costs, but I have already mentioned the last-bed pilot and the increase to 16 beds, which will ensure capacity for Scottish children while reducing the capacity for cross-border placements from England. I emphasise that we are cognisant of the fact that cross-border placements will still be required to happen in exceptional circumstances, but only when it is absolutely essential for the child's welfare.

The Deputy Convener: What allowance have you made within the financial memorandum cost for a secure care place at the moment and what will that cost be after the legislation has passed? Is there a difference between the two?

Natalie Don: Yes. At the moment, the costs for secure care are significantly higher than the cost for young offenders institutions. For the exact detail on that, I will pass over to my official, Brendan Rooney.

Brendan Rooney (Scottish Government): The costs for a secure care placement are running at about £6,500 a week. As Ms Don said, they are significantly more cost intensive than YOIs, but that reflects the level of support and provision for the young people in them.

The Deputy Convener: I recognise the difference between a young offenders institute and secure care and the difference in cost, but my question is about whether you are still working with that stable cost of £6,500 for a secure care placement after the legislation is passed. Is that correct? You do not see the allowance increasing. Tom McNamara, can you provide that clarity?

Tom McNamara: Yes. We do not anticipate that the bill itself will disturb the usual weekly cost per place for secure care. Obviously, that is subject to annual fee level negotiations with the independent providers and with Scotland Excel, which manages the framework contract for COSLA.

However, you asked about the availability of secure care and the impact on the viability of the providers overall and what the Government's interventions for all that meant. Therefore, I thought that it would be useful to the committee to highlight some of the work that we are doing with the secure care centres and some of the commissioners and purchasers with regard to preparing the Scottish secure care offer and reconfiguring that in concert with providers to match the expectations in the Promise for the period beyond 2030.

I guess that the premise of your question concerns the resourcing arrangements in order to

sustain the secure arrangements on the basis that they are currently offered on—the 78 places—

The Deputy Convener: No, it is not. I will pursue that point. The Good Shepherd Centre gave evidence to the Parliament that Scotland has been turning to England “to ensure sustainability”. That is based on the fact that people pay above the rates that are referenced in the Scotland Excel frameworks that Mr McNamara has just mentioned. However, the minister’s stated intention is to reduce the number of people who are paying above that rate. Therefore, how will the sector maintain the sustainability if that revenue is removed, minister?

Natalie Don: As I said in my previous response, the 16-bed pilot scheme will go a long way to ensuring the viability of secure care centres going forward. Obviously, we have a lot of work on-going on reimagining secure care. That phase is preparation for the bill, ending the use of YOIs for under-18s and the Promise statement that

“Scotland must fundamentally rethink the purpose, delivery and infrastructure of Secure Care, being absolutely clear that it is there to provide therapeutic, trauma informed support.”

That will—

The Deputy Convener: I—

Natalie Don: Let me finish, please. The work of reimagining secure care will have four phases, and it will involve looking at issues with regard to funding going forward. However, the last-bed pilot scheme is the method that we are currently using to look at how to make secure care centres more financially viable.

The Deputy Convener: The last-bed pilot scheme is about ensuring that there is emergency surge capacity. That is to ensure that, if there is a dispensation and a young person is sent to a secure care unit, there will be a space—that the place will not be full. However, the evidence that the Parliament has had relates to up to 50 per cent of the current cohort—it is not about one bed or the fact that the place is full; I am talking about financial sustainability, as I think that we all are, minister—but there is nothing in the financial memorandum to recognise the removal of that revenue from your policy intent. Is that correct?

Natalie Don: That will be looked at when the financial memorandum is updated. Based on discussions with the minister, we will have to see how that will play out. It will not simply be the case that all cross-border placements will be removed the next day. We will monitor the on-going situation.

The Deputy Convener: Therefore, with regard to that reduction over time, that monitoring could include modelling?

Natalie Don: Yes, absolutely, it could.

The Deputy Convener: Okay. That provides some assurance, minister.

Ross Greer (West Scotland) (Green): I have a couple of questions on the increase in the number of cases that will go through the hearings system and the relative cost.

There have been some suggestions—and agreement—that the number of hearings will increase and that the complexity of the additional cases will be greater on average than that of existing cases that are in the system. That has raised questions about the averaged-out cost per hearing. Could you clarify whether it is assumed that the cost of the additional hearings will average out at the same cost as the hearings that are currently in the system? If so, how do you respond to the suggestion that those hearings are likely to be more complex? If you have a different cost average for the hearings, can you expand on how you came to it?

Natalie Don: I will bring in Tom McNamara to get into some of the more technical details and talk about some of the facts and figures.

Tom McNamara: We have worked with Children’s Hearings Scotland on the children’s panel element and the Scottish Children’s Reporter Administration on the throughput from local authorities, police and other referrers in order to quantify the demand. Mr Greer is right that it is not a case of simply having a unit cost in relation to children and young people. It is foreseeable and, in many respects, reasonable to say that if we are looking to support 16 and 17-year-olds—older young people with, arguably, more entrenched needs and risks—this is a legitimate point for colleagues in the hearings system to make.

By the same token, however, it is also reasonable to say that the young people turning 16 and 17 who have entrenched and chronic needs might well already be known to the system. Therefore, it is reasonable to expect that most of the additional demand on the hearings system will be on the offence side. I do not think that that lends itself to the simplistic suggestion that each of the additional cases that the children’s hearings system will cope with will be of a nature that has not been seen before.

We think that our projection is reasonably safe. Discussions and negotiations will home in on that with the hearings system bodies, and that approach will probably be supported by work being taken forward by the Crown Office and the SCRA on jointly reported cases—that is, the ones towards the more serious end of the scale. In cases that eventually end up being diverted to the children’s reporter and which are liable to be

considered by a children's hearing, the terms of the prosecution policy will be framed by the Lord Advocate and the Crown Office. We will be able to be really clear about this only when we have the benefit of that updated policy.

Although it is foreseeable that there will be more complexity, we have always tried to respond to additional demand in that respect. Over a number of years, the gross number of referrals to the hearings system on care and protection or offence grounds has decreased appreciably, but we have maintained the funding commitment to the hearings bodies and wider children's services in recognition of the fact that what is left to be considered for compulsory measures tends to be more complex. The system is already dealing with difficult cases.

Ross Greer: From a policy perspective, I completely agree with everything that you have said, and I accept your point that we should not, in general, see this as a unit price thing. However, for the purposes of the financial memorandum, we need to. For the sake of clarification, then, can I confirm that, as far as the costings in the financial memorandum for the additional hearings are concerned, it is assumed that the unit price is essentially the same as the unit price of the current average in the hearing system—or is it more?

Tom McNamara: The material that we have received from the reporter directly and from Children's Hearings Scotland reflects the existing cases, including the 16 and 17-year-olds that the reporter already sees, and anticipates what would be displaced from the criminal justice system and what would come in afresh on welfare grounds for 16 and 17-year-olds. It then converts that to the percentage of cases that would go from initial reporter referral to a hearing, the number of appeals and the number of pre-hearing panels. All of those are factored into the numbers.

Ross Greer: I have a final brief question. I was glad to welcome the minister's response to my question about secure transport at last week's meeting of the Education, Children and Young People Committee and the comment that the Government is considering either amendments to the bill in order to reflect that or taking measures in that area in one form or another. However, will that be taken into account in revising the financial memorandum? Various submissions have suggested that savings could be made in the area of secure transport provision through, for example, creating secure transport provision in Scotland. Indeed, we have previously discussed how most of that provision comes from England.

The flip side, though, of trying to raise standards in secure transport provision is that it could have additional costs. It would therefore be of interest to

Parliament if it had some indication of the financial implications of changes to secure transport provision. I accept that a decision has not yet been made on what those changes will be, but can you just confirm that the financial memorandum will take that into account?

11:45

Natalie Don: I thank Mr Greer for that question. For the committee's benefit, I should say that the bill makes no alterations to the backdrop regulation for secure transport, so it is not quantified in the financial memorandum. However, as I have already said, we are listening to the views that have come forward during stage 1 on that and a range of other areas, and they will be explored and any refreshed financial forecasts made for the bill.

Ross Greer: Thanks very much. That is all from me.

John Mason: Pursuing the cross-border placements issue a bit more, I presume that it is better for a young person to be nearer to the local authority area that is responsible for them. As I understand it, the local authority is still responsible for education and other measures of support.

Natalie Don: Yes, absolutely. That is why I am saying that we really do not want those placements to happen unless they are absolutely essential or for exceptional circumstances. We do not want to remove a young person from everything that they know and from resources and support networks that could be around them. In essence, then, the answer to your question is yes.

John Mason: You are not suggesting some quick cut-off—in fact, you are suggesting that it will probably take time—but the aim is that, over time, children from Kent and Cornwall should not be coming to Scotland.

Natalie Don: Absolutely. It would be a gradual thing. It is not the case that every child who is in a cross-border placement will be removed in a short period of time; however, the overall aim is to get to a place where our young people and children are being protected and cared for in the areas where they are from, unless there are reasons for them not to be. We absolutely need to make it less encouraging for local authorities in England to want to place children in secure care centres in Scotland, so we can ensure that the capacity is there for children in Scotland who require those places.

John Mason: That is great.

I fully accept that there will be a new—or revised—financial memorandum, but I note that at the moment the overall total costs range from £10.67 million to £11.94 million. That is a pretty

small amount compared with other bills that the committee has looked at, although I accept that it is still money that we need to look at.

The other thing that struck me was how tight the forecast was. There is, broadly speaking, only a 10 per cent difference between the bottom and top costs. That is a good thing, because we sometimes see financial memorandums that have been absolutely all over the place. How is your range so tight? Indeed, I think that there are some people who feel that it is perhaps too tight.

Natalie Don: That question might be better directed to one of my officials. I ask Tom McNamara to answer it.

Tom McNamara: The reason why we had such a degree of confidence around the relatively narrow band that Mr Mason is referring to was that those figures were referable to the tripartite discussions that, as I mentioned to Mr Lumsden earlier, were had with the Crown Office and the Scottish Children's Reporter Administration and which looked at the types, number and gravity of cases that, if the bill's structural changes were to go through, were liable to be displaced across to the children's system. Those were, in turn, referable to the real-world under-18s cases that the Crown Office had dealt with in times past and the ones that had been liable to the joint referral mechanism between the Crown Office and the SCRA and whichever system ended up taking them. As we based the figures on those discussions, we felt reasonably confident about the size of the shift in demand.

John Mason: So, although the future is never predictable, the costs for this bill are, in one sense, a little bit more predictable than they might be in some areas of legislation.

Tom McNamara: I would not make that claim. What we are saying is that we have discussed the matter with the relevant prosecutorial and statutory agencies in the children's domain, and in both cases, they have taken an informed view on the range of cases that they would be likely to move across, with reference to the real-world data on the cases that were dealt with under the old arrangements. We therefore felt reasonably confident that that aspect was tight. Again, it was all about trying to offer Parliament as much precision as we could, while recognising that each and every one of those cases is, in the ultimate analysis, in the individual professional prosecutorial gift of the Crown Office.

John Mason: Can you say anything about how the funding would be distributed among local authorities? If you had a few years with nobody from, say, Shetland needing the changed service, would that mean that Shetland would get no money for those years? If Glasgow had more of its

share of young people, would it get a bit more money?

Natalie Don: As far as I am aware, that would take place through the usual budget process. However, if such a specific situation were to become an issue, it could be monitored. In addition, the secure care centres in Scotland are discussing how they can manage such issues. I am confident, therefore, that that could be managed.

John Mason: Some money is shared out to local government in different ways—for example, by population share, by need or by other methods.

Natalie Don: Indeed. As far as I am aware, the money would, under the current arrangements, be distributed through the normal budget process. However, as I have said, we would have to monitor that. If it turned out that a lot of young people were needing secure care in one area and not so much somewhere else, that would need to be looked at. As I have said, the secure care centres are having those discussions among themselves, and they can work out those issues, so that type of situation could be addressed.

Keith Brown: I want to return to the issue of the cross-border situation. I understand the point that you are, legally, responsible only for what happens in Scotland and not for what happens because of failings south of the border. However, there are cases—as I am sure that you are aware—in which young people have been accommodated well away from home, in bed and breakfasts with private security guards outside their door, in some pretty bad situations.

I know that it is your responsibility to ensure that everyone in Scotland has accommodation. However, has there been a rejection in principle of the idea that, if there were available beds, as long as the Government was able to guarantee that the last bed was available, they could and should be available to people from elsewhere in order—to go back to the convener's point—to help with the financial sustainability of the entire system?

Would that not happen if we had people in the accommodation here in Scotland but there were still some beds available? I know that it is not easy to judge how the numbers fluctuate, but why would we not want to do that?

Natalie Don: I can understand that. As I said, my priority would be to ensure that there is capacity and space for children in Scotland who require it. In my meeting with Claire Coutinho, I will encourage changes to the practice in England.

As part of the on-going engagement with the UK Government so far—again, some of that predates my time in office—we continue to emphasise the

importance of addressing the lack of capacity in adequate care accommodation in England.

We now have a memorandum of understanding that underpins regular discussions on these issues, and I will be taking them forward now. That commenced in March 2023, and it allows us to pursue the UK Government's intended course of action, in particular in response to its independent care review. Those discussions are on-going.

I understand Mr Brown's point about what would happen if there was capacity in Scotland; however, the priority is to ensure that there is capacity in Scotland and, working with the appropriate minister, in England as well.

Keith Brown: I understand the priority but I think that there is a big opportunity that might serve everyone's interest, including the interest of financial sustainability.

My last question is about sections 12 to 14 of the bill, which deal mainly with children at court. One reason given for why more financial information is not available in the financial memorandum is the reluctance to cut across judicial discretion. I cannot say that I am convinced that a judge or sheriff might think twice about their decision because an indicative budget has been attached to that somewhere.

The imaginative response might be to say that anything agreed through discussions with the judiciary will give an indicative budget to be used only for that purpose. It might also be helpful for Parliament to look at potential costs, while also ensuring that the judiciary did not feel in any way fettered.

Natalie Don: I understand that that is an issue and it could certainly be looked into as part of updating the financial costs.

Douglas Lumsden: I will return to something that John Mason asked about, which was the lower and upper estimates of the cost of ending the keeping of under-18s in young offenders institutions. The lower cost estimate is £5.41 million and the upper cost estimate is also £5.41 million. It seems unusual that there is no difference between those two figures. Can you explain that? Is the figure completely fixed?

Natalie Don: I will hand over to Brendan Rooney to talk in detail about that.

Brendan Rooney: The figures may not be completely fixed: we have talked about inflation and other issues. At the time, those were the best and most precise forecasts that we could give. They are based on the weekly and annual costs of secure care at that time. That is why they are fixed.

Those figures are predicated on the number of children in YOIs being at 16. Care was taken with the financial memorandum so that the costs to both central Government and local government were not underestimated. As the minister said, there are currently five children who are in young offenders institutions but who, under the provisions of the bill, would be transferred to secure accommodation. The costs will probably be significantly more than they are at the moment. There has been a lot of discussion about the fluctuation, and the numbers go up and down, but those are the numbers that were deemed most appropriate at the time.

Douglas Lumsden: The figure seems to be based on the £6,500 weekly cost for secure accommodation. So, my final question is about whether the cost for a 12-year-old in secure accommodation is the same as the cost of a 17-year-old. Would we expect to see differences between those two costs?

Tom McNamara: It might be helpful to add to what Brendan Rooney just said. The weekly cost of a placement in each secure centre is agreed during our annual contract negotiations. That is why there is no fluctuation. The high fixed costs associated with a secure care placement in a given centre, such as staffing, are negotiated with each of the centres at the start of each year, via Scotland Excel. Those costs do not vary according to age.

Each child or young person who is placed in secure care requires intensive support, which gives us the usual anticipated costs. There is some flexibility. An even smaller microcosm of that very small, but high-demand, cohort of young people will need additional augmentation and reinforcement. For example, an individual child might need to have empty rooms on either side or might need additional specialist input. That will cost more than the average £6,500 to £7,000 a week. If an individual child needs something extra, that is negotiated with the individual centre.

Douglas Lumsden: So you do not anticipate that secure accommodation providers will charge more for a 17-year-old.

Tom McNamara: No, we do not, because secure accommodation providers already care for 17-year-olds. The average age of a child in secure care at the moment is about 15 and a half or 16. They already care for 17-year-olds, as I said. The key distinction in the bill is the supervision status of the kids who go into secure care.

The Deputy Convener: So, there is no intention at the moment to revisit the Scotland Excel framework in terms of the costs that are paid.

12:00

Tom McNamara: Not as a direct consequence of the bill. That is why I mentioned during my earlier remarks that the bill cuts into a context that is suffused with change around the necessity of the sustainability of the existing centres, which is predicated on the 78 beds in the four centres. We are engaged in a Promise-keeping exercise alongside the secure care centres to reimagine and reconfigure secure care to meet Scotland's needs in the period beyond 2030, and what might be needed to ensure viability in that period might not be the same as the current break-even point of 90 per cent occupancy. In addition, on the national and local contribution in Scotland and what secure care centres might need in the period beyond 2030, that might look a wee bit different.

The Deputy Convener: That is partly based on the evidence that we have heard that the sector relies on cross-border placement money to keep the lights on.

Tom McNamara: It is very important to the sector under the current funding and contractual arrangements.

The Deputy Convener: Up to 50 per cent of placements are cross border.

Tom McNamara: Again, the prevalence of cross-border placements varies from centre to centre. The extent of the reliance on that money therefore differs from centre to centre, and the extent of the expectation of the contribution that is made by the Scottish Government and other partners varies, as well—that will need to be resolved over time.

The Deputy Convener: There are four centres, and I have evidence from two of them stating that they are reliant on that money. It is worth emphasising, minister, that your stated policy intent of reducing the number of or eliminating those people is not a marginal issue. There are concerns from across the committee for those young people—young people in England as well as those in Scotland—and their welfare. I understand your legal responsibility in that regard, but, on a human level, we all have great concern for the outcomes of those young people.

More generally, we are concerned about the fact that we have a sector that is entirely dependent on that money, yet I am not hearing a lot of evidence from you or your officials that that is being dealt with in the long run. There is talk about dealing with it in 2030. Let us hope that the meeting with agencies in June comes up with some answers, and that, when we see the second version of the financial memorandum, it is in a state that we can agree with.

Thank you for your evidence today. That brings to a close the public part of the meeting. We will take the rest of the agenda items in private.

12:02

Meeting continued in private until 12:17.

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