

Education, Children and Young People Committee

27th Meeting, 2023 (Session 6), Wednesday 1 November 2023

Children (Care and Justice) (Scotland) Bill

Introduction

1. The Education, Children and Young People Committee led Stage 1 scrutiny of the Children (Care and Justice) (Scotland) Bill, publishing its [Stage 1 report](#) on 13 June 2023.
2. In its report, the Committee supported the general principles of the Bill, however, it called for more clarity, information and improvements in relation to some sections of the Bill, including:
 - support for victims;
 - the resourcing of the Bill;
 - and the capacity of organisations to deliver the changes envisioned by the Bill.
3. The Committee also called on the Scottish Government to provide fully updated costings ahead of [the Stage 1 debate](#).
4. In its response to the Committee's Stage 1 report, the Scottish Government stated that it proposed "to publish the supplemented Financial Memorandum during Stage 2" and that this will allow it to factor in how the Bill may be amended and the consequent impact on costs.
5. The Committee therefore agreed to take further evidence on these issues at Stage 2.
6. The Minister provided [updated costings](#) on 6 October 2023.
7. At its meeting on [25 October 2023](#), the Committee took evidence from stakeholders.

Committee meeting

8. At its meeting today, the Committee will take evidence from the Minister for Children, Young People and Keeping the Promise, Natalie Don MSP, and Scottish Government officials.

Supporting information

9. A SPICe Briefing, prepared for the session, is included at **Annexe A**.

**Education, Children and Young People Committee Clerks
27 October 2023**

Education, Children and Young People Committee

1 November 2023

Children (Care and Justice) (Scotland) Bill: Stage 2 evidence: Minister for Children, Young People and Keeping the Promise

Introduction

This briefing has been prepared to support the Committee's Stage 2 scrutiny of the Children (Care and Justice) Scotland Bill.

Last week (25 October 2023) the Committee heard further evidence on victim provisions contained in the Bill and on updated financial information relating to the Bill. This week, the Committee will take evidence from the Minister for Children, Young People and Keeping the Promise Natalie Don MSP.

A summary of the Bill, details of the Committee's Stage 1 scrutiny and a summary of developments since Stage 1 can be found in the [SPICe briefing for the Committee's 25 October 2023 meeting](#).

This briefing sets out key elements of evidence heard at last week's meeting, along with relevant background information.

Please note: The Official Report of the meeting was not available at the time of writing. Quotes from last week's meeting have been transcribed from the recording.

Background

Updated financial information: Summary

During Stage 1 scrutiny, the ECYP Committee and the FPA Committee both raised concerns about the financial projections in the Financial Memorandum (FM) accompanying the Bill.

The ECYP Committee's Stage 1 Report called for full updated costings ahead of the Stage 1 debate. While the Scottish Government did not produce these ahead of the Stage 1 debate, updated financial information has since been provided to the Committee in a [letter from the Minister on 6 October 2023](#). The updated costings have been updated to 2024-25 prices to reflect the expected commencement date of the Bill.

The initial [Financial Memorandum forecast](#) overall costs of the Bill as follows:

- Cost of between £5.31m - £5.38m per annum to the Scottish Administration (including Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS), Scottish Legal Aid Board and the Scottish Government).
- Costs of between £5.36m - £6.56m per annum to local government.
- Total costs of between £10.6m - £11.94m per annum.

The [updated financial information](#) now estimates the following costs:

- £11m for the Scottish Administration. This is largely due to the Scottish Government clarifying it will fund secure accommodation places for children on remand with local authorities at an updated cost of £5.1m per year. The FM accompanying the Bill placed these costs with local authorities.
- £6.97m for Local Government.
- Total costs of £17.97m per annum. This is at least a 50% increase on the costings contained in the FM.

Further exploration of these updated costings is provided throughout the briefing.

Impact on social work teams

During Stage 1 evidence on the Bill, the Committee heard concerns regarding a lack of resources within local authority social work teams. Pressure on local authority social work was also highlighted in the [Care Inspectorate's Secure Care Pathway Review](#), published in September 2023, which highlighted "national recruitment and retention issues in the workforce".

The Scottish Government response to the Committee's Stage 1 Report acknowledged the pressures facing social workers, stating that an improvement plan had been developed with COSLA and other stakeholders. The plan includes measures such as a reserve list of social workers, reviewing pay disparities, international recruitment and improving access to social work education.

The updated financial information provided by the Scottish Government increases the initial cost estimates for local authority social work. The Scottish Government now estimates:

"...the 5,200 to 8,000 additional referrals will require between 65,000 and 100,000 hours of social work support. Using the upper hearings estimate (of 3,435) an additional 58,395 hours of social work support will be required for initial and substantive hearings, and a further 57,536 hours of support will be required for

continued and review hearings. Combining the support required for referrals and hearings, this is a total of 215,931 hours.

The average cost of employing a full time social worker is now estimated to be £57,631 per year (this includes salary plus employment on-costs). This equates to an estimated cost of £31 per hour (36 hours per week x 52 weeks). Combining the information above, the implied additional cost of social work support would be £6.69m per year in 2024-25 prices.” - [Scottish Government updated financial information](#)

The revised cost of £6.69m per year is more than double the original estimate of between £1.8m to £3m per year.

Giving evidence to the Committee last week, COSLA, Social Work Scotland (SWS), Children’s Hearings Scotland (CHS) and the Scottish Children’s Reporter Administration (SCRA) all welcomed the Scottish Government’s revised costings. All organisations had contributed to the work around this.

Joanna Anderson of COSLA said that areas including family support, secure transport costs and additional administration and managerial time needed to support the children’s hearings process had not been recognised in the updated information. In addition, she also stated more work needed to be done on costs around training and aftercare.

Jillian Gibson of COSLA highlighted current resourcing and capacity pressures on the social work system meant there was “anxiety” around adding additional hours and pressures.

Ben Farrugia of SWS stated the key concern for his organisation is:

“...do we have the people and capacity to deliver these changes? That is as much a question about sequencing and implementation as it is – because of course we can do these things – it’s just about when we turn these provisions on, will we be ready, will we be able to do it?” - [ECYP Committee meeting, 25/10/23](#)

When asked whether there was confidence the money needed to deliver the Bill provisions would be available, COSLA and SWS said there were a number of related areas where change was happening. Joanna Anderson of COSLA described local government as being “already stretched to full capacity”. She said:

“...there are a lot of areas that will require funding. We all know the difficult financial position the Scottish Government is in, local government is in. That’s a lot of change to fund from not a very big pot of money. So how far that will stretch and what can be done with that is a concern.” - [ECYP Committee meeting, 25/10/23](#)

Ben Farrugia said that the fact that revised financial information had been provided was evidence of the Scottish Government Bill Team’s commitment to try and deliver. However, he noted:

“...money is extremely tight, I’m not clear where the money will come from”. – [ECYP Committee meeting, 25/10/23](#)

Ben Farrugia stated the recruitment of social workers was a considerable issue and retaining experienced staff a “critical challenge”. He also said:

“Social work posts are vacant. The money is there to pay for them, it’s not the absence of the money, it’s the absence of the people...Even if the government could find all the money, we’re still asking a system to deliver something it is probably not capable of doing.”- [ECYP Committee meeting, 25/10/23](#)

Current demands on social workers meant many were leaving the profession, and their experiences in the Children’s Hearing System has been identified as one reason why they are deciding to leave. Ben Farrugia said that while conversations were underway, “there is not a systematic plan in place” to address recruitment and retention issues. He later said:

“We want to realise these provisions, we want to realise the changes to the Children’s Hearings System, we want to realise The Promise, but we want it to be done with an honesty to the discussion about what the costs are in a financial sense and what we need in terms of people to do it. We do sometimes feel that is absent. There is a sense that we can ‘legislate and guidance’ our way to achieving these cultural, structural revolutions, and our position is that is just not possible.” - [ECYP Committee meeting, 25/10/23](#)

Ben Farrugia did not state how many social workers would be needed to implement the Bill. He stated that these social workers would not be “newly minted and cut”, but existing staff with additional cases and staff from other areas. He called for 12-18 months between the Bill receiving Royal Assent and its commencement date to allow for preparations:

“...we will do it; we always do. It’s what are the costs that will be impacting elsewhere.” - [ECYP Committee meeting, 25/10/23](#)

Ben Farrugia also pointed to services sitting outside of social work such as mental health support as being key in meeting children and young people’s needs. For example, a lack of complex mental health support was a “big driver” in young people ending up in secure care and requiring social work support.

Capacity of Children’s Hearing System

Section 1 of the Bill changes the age of referral to a children’s hearing to 18. The Committee noted in its Stage 1 report that the costings provided in the FM were based on a lower estimated number of hearings provided by SCRA. In her evidence to the FPA Committee, the Minister accepted that the higher figure should have been used and said this would be used in updated costings.

SCRA initially forecast an additional 3,900 – 5,300 referrals of between 2,600 – 3,400 children. The Scottish Government’s updated costings document states SCRA now estimates an additional 5,200 – 8,000 referrals of between 3,900 – 5,100 children as a result of extending the age of referral as proposed in the Bill.

Previous SCRA forecasts estimated an additional 80 to 150 hearings on offence grounds and 650 to 1,200 on non-offence grounds (between 730-1,350 additional hearings per year). This has now been updated to between 1,850 – 3,435 additional hearings per year. The updated financial document states this is:

“...an increase of 42% from the Financial Memorandum. This increase is partly due to extending the age range for all referrals up until the child’s 18th birthday and including new data in the modelling.” – [Scottish Government updated financial information](#)

Stakeholders including COSLA, Social Work Scotland and Police Scotland stressed the importance of ensuring the hearings system had sufficient capacity to deal with the increased number and range of cases as a result of the Bill.

The Committee's Stage 1 report concluded that there were "significant risks associated with these recruitment, resourcing and training challenges not being met", and called on the Scottish Government and Children's Hearings Scotland to work together to set clear targets and timescales for recruitment, training and planning.

The Committee also urged the Scottish Government to set out how planned reform of the Children's Hearing System following the recommendations of the Hearings System Working Group (HSWG) would impact timescales for implementing the measures contained in the CCJ Bill.

In its response to the Committee's Stage 1 report, the Scottish Government said the CHS recruitment campaign began in September 2023 and has a target of recruiting and training between 500-800 panel members. While acknowledging there is pressure on volunteer recruitment, the response stated that mitigations including "live monitoring, the option of cover between areas, flexibility in the new legislation for mixed gender panels and the agility to bring forward scheduled recruitment campaigns if required" are in place.

The Scottish Government also said it was considering sequencing and prioritisation of developments running alongside the Bill, including the recommendations of the HSWG. This work will be informed by the multi-agency implementation group, with any legislative change introduced in 2025.

In evidence to the Committee last week, Alistair Hogg of SCRA stressed the need for funding to be in place to ensure success of the Bill. He said SCRA was encouraged by the Scottish Government to take a "maximalist approach" when providing numbers for the updated finances. He said the 42% increase in hearings was "eye-opening" but that was down to using data from non-COVID years and numbers no longer being based on a cut-off of 17.5.

Stephen Bermingham of CHS said that the Scottish Government's updated costings are based on a volunteer panel model and there are capacity concerns around this. Updating the Committee on CHS' latest recruitment campaign, Stephen Bermingham said that 650 applications had been received, and of these he expected around 325 applicants would be successful. He stated this was not enough, and that another recruitment campaign was planned.

The difficulty of recruiting volunteers, along with slightly decreased retention and length of service of panel members were highlighted by Stephen Bermingham as challenges for the system. Speaking personally, he said he believed a system of salaried chairs and remunerated panel members as proposed by the HSWG would help CHS address issues of consistency for hearings, stating:

"There's an inherent fragility in terms of running a statutory service on the good will of volunteers. We have to make sure that the volunteer experience is positive and responsive to local needs." - [ECYP Committee meeting, 25/10/23](#)

Sequencing and planning change

During last week's evidence session, COSLA representatives mentioned that a Children's Hearings Redesign Governance Board had been convened, co-chaired by COSLA and the Scottish Government. This would look at HSWG recommendations and related changes to the hearings system resulting from the Children (Care and Justice) (Scotland) Bill.

[COSLA's response to the HSWG recommendations](#) was published last week following the Committee's evidence session. It stated that COSLA cannot currently accept all the recommendations, and more work is needed to understand how the HSWG recommendations will be impacted by the Children's Care and Justice Bill and the Secure Care Redesign project.

COSLA, CHS and SWS all told the Committee that sequencing of changes will be crucial.

Ben Farrugia said that many of the changes proposed by the Bill would be more deliverable if the system proposed by the HSWG was in place.

To help build capacity and plan for change, Stephen Bermingham said CHS had also asked the Scottish Government for 12 to 18 months between the Bill's Royal Assent and commencement date. This would enable CHS to ensure there is capacity in the system and recruit the panel members required.

Alistair Hogg agreed that 12-18 months from Royal Assent to commencement would be reasonable. He later added that certainty of funding from year to year would help SCRA plan for change.

Serious offences

During the Committee's Stage 1 scrutiny, a number of stakeholders including Rape Crisis, Victim Support Scotland, Education Scotland and St Mary's Kenmure highlighted the need to ensure that panel members had appropriate and robust training to deal with an increase in the number of serious offences being dealt with via the Children's Hearings System.

The Committee's Stage 1 report called for all panel members to receive training to equip them to deal with serious offences and young people with complex welfare needs.

On responding to serious offences and welfare needs, the Scottish Government said planning for training to ensure panel members can respond effectively to these needs was underway, noting CHS had told the Committee that contact had been made with specialists on providing high level specialist training. The Scottish Government also said it is considering funding multi-disciplinary training in respect of the Bill.

During the Committee's evidence session last week, Stephen Bermingham of CHS said all panel members had to complete trauma informed practice training, and in pre-service training all panel members learn about trauma informed practice, domestic abuse and coercive control. He said there was an opportunity to look across the sector at the training offer to help the hearings system respond to an increase in these cases.

On supporting panel members to respond to the needs of older children coming into the Children's Hearing System, Stephen Bermingham said CHS was working with the Children and Young People's Centre for Justice (CYCJ) to develop a mandatory training resource

covering issues including domestic abuse, coercion and control. This would be rolled out following the Bill's passage through Parliament.

Alistair Hogg of SCRA said all Children's Reporters all receive mandatory training on domestic abuse from Scottish Women's Aid. Reporters were currently dealing with cases "through the lens of children in the household"; SCRA recognise the dynamics of cases may change as a result of the Bill, with a greater number of cases involving victims and perpetrators of abuse.

Alistair Hogg added it was difficult to be clear on the number of such cases that will come through to the hearings system and how many will be retained by the criminal justice system:

"At the moment, the position of the Lord Advocate stipulates children will not be prosecuted except in certain circumstances, and the guidelines stipulate what those circumstances are. Undoubtedly there will be consideration ongoing - and it's not for me to speak for the Lord Advocate who is totally independent and it's her decision - but I would imagine that there will be consideration around those situations about whether those are the types of incidents which will require to be jointly reported and therefore a discussion will need to take place about which system is the appropriate one to deal with the circumstances that are presented there." - [ECYP Committee meeting, 25/10/23](#)

Compulsory supervision orders

Section 3 of the Bill adds to the list of measures that can be included in a compulsory supervision order (CSO) made by a children's hearing. The Bill proposes the addition of measures to prohibit a child from entering a specified place, type of place or area.

During evidence at Stage 1, Includem, Good Shepherd Centre, Aberdeenshire Criminal Justice Social Work Service and Victims Support Scotland all raised concerns about CSOs being applied to young people at risk of exploitation or harm. The organisations stated this measure would place the onus on victims to avoid places they may be harmed and failed to deal with those perpetrating the harm. In addition, failure to comply could result in more restrictive measures.

The Children and Young People's Centre for Justice (CYCJ), Scottish Women's Aid, Rape Crisis Scotland, Includem and Aberdeenshire Criminal Justice Social Work Service welcomed the power to prohibit a child who had harmed from a particular location. However, Rape Crisis Scotland, Scottish Women's Aid and Children's Hearings Scotland questioned the enforcement of these provisions and how non-compliance would be dealt with.

The Committee's Stage 1 report asked the Scottish Government to set out how the new CSO measures would be implemented, monitored, and reviewed and how they would protect children at risk of harm. In its response, the Scottish Government said that, as with any CSO, compliance would be monitored by the implementation authority and in cases where the measure was not being complied with, the Principal Reporter would be notified. The CSO would then be reviewed or varied at a further children's hearing. The response also stated that where a child would not cooperate with a CSO prohibition, a children's hearing could consider a Movement Restriction Condition (MRC) as a measure.

Concerns about the onus being on children at risk of harm and subject to CSOs containing prohibition measures to avoid people and locations that may be harmful to them were not addressed in the Scottish Government response.

Lack of protection for victims

During last week's evidence session, when asked how Bill proposals on CSOs for children at risk of harm might be improved, Fiona McMullen of ASSIST suggested measures replicating non-harassment orders currently available to victims of cases being dealt with in criminal courts could be introduced, as these orders are robust and have consequences when they are breached. Such a measure would also take the onus off child victims currently being asked to manage their own risk.

Fiona McMullen added that taking 16- and 17-year-olds out of the criminal justice system as the Bill currently proposes would remove some existing victim protections. She said:

"It feels like we are actually taking away from victims that have protective measures at the moment - whether that be special bail or non-harassment orders – and we're not replacing it with anything that is robust." - [ECYP Committee meeting, 25/10/23](#)

Dr Marsha Scott of Scottish Women's Aid said that a "gender blind" approach to the Bill had led to a problem of invisibility for some young victims in the Children's Hearing System. She added that protecting victims did not mean taking rights away from offenders.

Fiona McMullen of ASSIST provided an example to the Committee of a case going through criminal court where the offender is 16 years old. The offender was charged with assault and given special bail conditions not to approach or contact the victim. ASSIST was able to help the 14-year-old victim with safety planning and encourage the school to put the onus on the person causing harm rather than try to minimise the victim's school life. In such cases, ASSIST can share information with Procurator Fiscals, understand court outcomes and review safety plans.

Fiona McMullen compared this with another case where the person causing harm is going through the Children's Hearing System. In this case, there are no protective measures in place, no information has been received about the process and actions regarding the person causing harm, and there is no way for ASSIST to input information into the process. This has led to a situation where the 14-year-old victim has stopped attending school, feels her abuse has been minimised, and is struggling to engage with ASSIST. Of this, Fiona McMullen said:

"The message we are giving to young victims is really significant here." - [ECYP Committee meeting, 25/10/23](#)

Dr Marsha Scott of SWA said the case studies highlighted the need to ensure responses that provide risk assessment, appropriate information, and action around non-compliance.

Ben Farrugia of SWS said that the Children and Young Peoples' Commissioner (CYPCS) had provided the Committee with a belief that it is possible to balance the rights of victims with those who have harmed to share information. He stressed that having the right people in place was a key part of managing the complexity of this issue.

Compulsory Supervision Orders: Movement Restriction Conditions (MRCs)

Movement Restriction Conditions (MRCs) are measures which can be included in CSOs to restrict a child's movement using an electronic monitoring device (commonly known as an 'electronic tag'). MRCs should also involve giving a child intensive support. Changes proposed by Section 4 of the CCJ Bill would change the criteria for MRCs, decoupling them from the criteria for secure care authorisation and potentially increasing their use. Use of MRCs is currently low; Scottish Government figures show that over the past four years there have been an average of 26 MRCs per year in place for children up to age 18.

The Bill proposes two conditions for imposing an MRC:

- The child's physical, mental or moral welfare is at risk;
- The child is likely to cause physical or psychological harm [defined in the Bill as "fear, alarm and distress"] to another person.

An MRC may be applied by a children's hearing or Sheriff if one of the above conditions applies and it is considered necessary to do so.

Compliance with MRCs

A child cannot breach an MRC; it is down to the implementation authority to decide whether they are not complying and give notice to the reporter requesting a review. Victim Support Scotland (VSS) called for clear guidance on how the conditions of an MRC will be communicated to victims and how compliance will be monitored.

Scottish Women's Aid (SWA) and Rape Crisis raised concerns about a lack of clarity around the breach process, highlighting these uncertainties as unhelpful in relation to the need for victims to be able to plan for their own safety.

During the Committee's evidence session last week, Kate Wallace of VSS again stressed the lack of detail around how MRCs will be monitored and how breaches would be dealt with.

Fiona McMullen of ASSIST and Dr Marsha Scott of SWA agreed that the lack of information provided to victims in relation to MRCs was a significant problem.

Intensive support around MRCs

The Committee's Stage 1 report concluded that for Movement Restriction Conditions (MRCs) to be successful, they must be accompanied by a package of intensive support from social work. In evidence, [CYPSC stated](#) that such support had "fallen away in many cases", while [Who Cares? Scotland described](#) support as "patchy".

The Committee raised concerns that a cost for intensive support around MRCs was not included in the FM accompanying the Bill. The Scottish Government response to the Committee's Stage 1 Report stated that costing intensive support for MRCs involves complexities due to the differences in the packages provided. In the [updated financial information](#), the Scottish Government used the three year average of children with a secure authorisation, which is 22. The average cost of electronic monitoring equipment is £14,000.

Support costs were worked out assuming average costs of £1,000 per week for three months for 22 children on MRCs.

The updated projections estimate:

- A cost of £0.32m per year to the Scottish Government for MRCs.
- A cost of £0.29m per year to local authorities.

During last week's evidence session, Kate Wallace of VSS expressed concern about support packages around MRCs being decided on a case-by-case basis with very little detail about what this would look like. She added:

"...we do not believe [MRCs] to be an effective tool to safeguard women and girls against harm without clear guidance and without a means of them being enforceable." - [ECYP Committee meeting, 25/10/23](#)

Kate Wallace said part of the issue was down to children's hearings only taking into account the needs of the child who has been referred. This meant the needs of the child who has been harmed are not considered.

Fiona McMullen of ASSIST stressed that young victims repeatedly told her organisation:

"We are not looking for punishment, we're looking for protection." - [ECYP Committee meeting, 25/10/23](#)

Fiona McMullen explained that reporting abuse often increased the risk to victims, and they did not always feel protected after reporting.

COSLA's Joanna Anderson welcomed the Scottish Government's updated costings for intensive support around MRCs but cautioned the actual costs were relatively unknown and called for them to be kept under review following passage of the Bill.

In response to a question around ensuring the consistency of intensive support packages around MRCs, Ben Farrugia of SWS said that there were some parts of the country where the required support was simply not available, and his expectation was that panels "over time will not lean towards setting those kind of conditions as an option because of lack of confidence that there will be a package of support". He stated this may be an explanation for why MRCs are rarely used currently.

On costs of providing support, Ben Farrugia said the SWS costings provided to the Scottish Government were for the social work element, but actual cost would be more expensive due to other specialist services involved.

Provision of information to person affected by child's offence and behaviour

Section 6 of the Bill proposes that, where practicable, the Children's Reporter will be required to inform a victim/person harmed by a child's behaviour or their relevant persons of their right to receive information. The age at which a victim is considered a child will also rise from 16 to 18 as a result of the Bill. In cases involving under 18s, the Children's Reporter will also write to a relevant person for the child.

This change will not mean a person entitled to receive information will automatically do so; they will simply be advised of their right to the information. In addition, where a victim has expressed they do not wish to be contacted, the Policy Memorandum states that this should be respected.

SCRA previously told the Committee that under current practice the Children's Reporter already writes to victims to advise them of their right to information. The proposed legislation would put this practice into statute. Last year, more than 2,500 letters had been sent to victims or their relevant person last year, however, only 13-14% of people requested information.

During Stage 1 evidence, the Committee heard there was a lack of information sharing, with people harmed by children or young people not receiving any information in relation to their case. Information received was generic and focused on the process of the system. VSS previously highlighted to the Criminal Justice Committee that the lack of a Victim Notification Scheme¹ meant victims were unable to plan for their safety.

The need to balance the rights of the victim with the rights of the child who has caused harm was highlighted by multiple stakeholders, including CYCJ, Includem, The Promise, Who Cares? Scotland, CYPSCS and the Information Commissioner's Office.

The Law Society of Scotland and Police Scotland stated support for information that would be available to a victim in the criminal justice system being available to victims with cases dealt with through the Children's Hearing System. CYPSCS and Police Scotland expressed support for a single point of contact for children and their families to provide information and support.

In its Stage 1 report, the Committee stated its support for the Criminal Justice Committee's request for the Scottish Government to consider how the wider needs of victims can be met including on information sharing - in this Bill or, possibly, the Victims, Witnesses and Justice Reform (Scotland) Bill.

In its response the Scottish Government said SCRA would undertake research to understand why the percentage of victims requesting information was low. The Scottish Government also said it was considering the conclusion of a [recent independent review of the Victim Notification Scheme \(VNS\)](#) and will update the Committee when this is published. Consideration of what learning can be taken from the review in relation to the provision of information to victims in the Children's Hearing System will be given. In addition, the response stated learning will also be taken from the work of the Victims Taskforce.

During last week's evidence session, Kate Wallace of VSS suggested a three-tiered, risk-based approach to information sharing. The level of information shared would be based on the risk attached to the case. This would provide an opportunity to balance the rights of the child who had harmed with the victim:

“This is not about sharing information for information's sake, it's actually about safety planning. How can you properly safety plan if you don't know what's happened? It makes a huge difference knowing if somebody is, for example, in your immediate

¹ The Victim Notification Scheme provides eligible victims with information about offenders including the date of the offender's temporary or permanent release, if an offender escapes, and whether an offender is being considered for parole or release with an electronic tag.

vicinity or if they're not. That will have a massive impact on how you safety plan." - [ECYP Committee meeting, 25/10/23](#)

She added that while the Bill had been: "conceived from a good place of thinking about how you help prevent children who have harmed becoming adults who harm... the issue is we have done that in complete isolation and away from thinking about the impact and at the same time the support, information and rights of victims."

In response to a question about the suggestion in a submission to the Committee from the CYPCS that information could be shared confidentially in cases where it was appropriate to do so, Kate Wallace said that Croatia shares information with victims in secret, enabling them to safety plan. She also said VSS had been involved in discussions with the Scottish Government around a single point of contact for victims.

Fiona McMullen of ASSIST gave an example of a 17-year-old persistent offender with three victims. The victims are being supported by ASSIST, and managing this within the criminal justice process was already a struggle:

"When I look at what we've got here [in the Bill] it's absolutely not going to impact on his behaviour and increase the safety of those three victims." - [ECYP Committee meeting, 25/10/23](#)

Fiona McMullen and Dr Scott of SWA highlighted the need for risk assessment that is domestic abuse and coercive control competent. Dr Scott said that enacting the child advocacy duties of the Children (Scotland) Act 2020 would help provide trusted professionals to help facilitate a child's engagement with the system.

When asked about research the Scottish Government had asked SCRA to carry out into why only 13-14% of victims and witnesses currently requested further information, Alistair Hogg said that it was in the organisation's research plans but was expected to take 12-18 months due to capacity issues on the research team.

Supervision or guidance post-18; and Aftercare for those leaving secure care

Section 7 of the Bill raises from 18 to 19 the age at which a child can be provided with supervision and guidance when a CSO comes to an end. Section 21 of the Bill also provides that a child detained by the order of a criminal court is treated as a looked after child and therefore eligible for aftercare support.

During Stage 1 evidence on the Bill, the Committee heard that there was a need to ensure young people did not face a "cliff edge" of support at age 18. Ben Farrugia of Social Work Scotland told the Committee that the cliff edge could only be addressed with "person-centred planning".

In its Stage 1 Report, the Committee recognised that extending supervision and guidance for young people will put pressure on local authority budgets. It called for resources to be allocated to local authorities for this as these costs had not been factored into the original FM. The Committee also noted that costs of providing aftercare support for children leaving secure care had not been factored into the original FM.

The [updated financial information](#) estimates a cost of around £200,000 per year for providing aftercare support to children over the age of 16 leaving secure care. This figure is based on estimates provided by Social Work Scotland for a team of social workers supporting around 30 children. The document states that, given the small number of children expected to be impacted, these costs could be absorbed into existing aftercare services.

During last week's evidence session, Joanna Anderson of COSLA said that needs of young people requiring support could be significant and said the Scottish Government's assumption that costs could be absorbed was not acceptable. Ben Farrugia echoed this, adding that young people moving to adult services really see a "cliff edge" of support, and attention needed to be given to this.

Stephen Bermingham said the £200,000 figure in the Scottish Government's updated financial information represented a "very, very small percentage of children that are coming through the hearings system".

Ben Farrugia and Jillian Gibson of COSLA both highlighted the difficulty of costing aftercare support. Ben Farrugia said that local authorities must find a way to fund aftercare packages as this is a statutory duty, and sometimes this led to overspend which meant savings and cuts had to be found elsewhere. Jillian Gibson said that as the Bill will expand aftercare support to more 16- and 17-year-olds, there is no way to know what support needs these young people will have.

Restrictions on reporting

The Bill includes provisions which deal with restrictions on the reporting of (a) suspected offences involving children, and (b) proceedings involving children. Further information about the changes proposed by the Bill is available in the [SPICe briefing for the Committee's 25 October 2023 meeting](#).

During Stage 1 evidence, Together Scotland, Social Work Scotland and CYPSC welcomed the reporting restrictions proposed by Section 12 as they address a current gap in the law whereby children accused, victims and witnesses can be legally identified before formal proceedings begin.

However, Together Scotland and CYPSC both stated courts should be able to extend reporting restrictions for child complainers and victims. In a written submission to the Committee, co-founders of the Campaign for Complainers Anonymity Dr Andrew Tickell and Seonaid Stevenson-McCabe of Glasgow Caledonian University stated the need for clear and workable thresholds for anonymity laws.

In its Stage 1 report, the Committee noted the recent introduction of the Victims, Witnesses, and Justice Reform (VWJR) (Scotland) Bill which will provide lifelong anonymity for victims of certain sexual offences (subject to waiver by the victim or the court in certain circumstances). The VWJR Bill provisions on anonymity therefore go considerably further than what is proposed in the CCJ Bill.

In addition, except for cases such as perjury, the VWJR Bill proposes that a court can only dispense with reporting restrictions if the child consents to the publication of the information. The child also has the right to withdraw that consent up to the time of publication.

Giving evidence to the Committee on 3 May 2023, the Minister for Children, Young People and Keeping the Promise Natalie Don stated the Scottish Government would assess potential differences between this Bill and the VWJR Bill.

In its response to the Committee's Stage 1 Report, the Scottish Government set out that the VWJR Bill proposes an automatic and lifelong right to anonymity for all victims of sexual offences, offences with a significant sexual element and certain other offences where similar questions of vulnerability and privacy arise (e.g. human trafficking and modern slavery). The provisions in this Bill will also apply to children.

The Scottish Government response also states the stakeholder views outlined above will be considered ahead of Stage 2.

Victim anonymity upon death

At the Committee's evidence session last week, Members heard concerns around current reporting practices in relation to child victim or witnesses who had been killed or had since died. Members had received a letter from VSS asking them to refrain from continuing to mention in Parliament the name of a child who had been murdered. The letter stated mentions led to the child's name and photograph appearing in the media and this was retraumatizing for the family of the child.

Kate Wallace of VSS told the Committee that currently, victims lose their anonymity when they die. She stated that for the family of the child in the letter, there continued to be a significant amount of coverage on news and social media, including YouTube and TikTok. She explained:

“When [the perpetrator] is mentioned then it results in press coverage about the victim without any regard to the family. So it's having a massive impact – a retraumatizing impact – including on other children within the family.” - [ECYP Committee meeting, 25/10/23](#)

Kate Wallace said VSS would like to see reporting restrictions providing automatic anonymity for victims. She added that overturning this would probably involve going to court and asking for a court order to waive anonymity, which can be traumatizing. However, families that VSS had spoken to felt having this option available would be better than the current situation where there is no choice involved.

Kate Wallace said that VSS had discussed amendments to the Bill with the Scottish Government and the Commissioner for Children and Young People's office but added:

“I can't say we are making a huge amount of headway with that unfortunately...” - [ECYP Committee meeting, 25/10/23](#)

Fiona McMullen of ASSIST stated that reporting causing issues for the young people they work with regularly. She added that information shared in the press often put a victim's safety at risk and led to private information about them ending up in the public domain.

Detention of children involved in criminal proceedings

Sections 16 and 17 of the Bill propose changes to arrangements for detention of children involved in criminal proceedings either on remand before trial, or after conviction but before

sentence, or on sentence. The changes will mean that a child under 18 years of age can no longer be detained in a young offenders' institution.

The Committee heard evidence from stakeholders looking at how these changes might affect other young people in secure care settings, particularly those there on welfare grounds for their own protection. Managing the risks posed by young people convicted of serious offences to those in secure care on welfare grounds was flagged as a concern.

Alison Gough of Good Shepherd Centre, Kevin Northcott of Rossie Young People's Trust and Claire Lunday of St Mary's Kenmure all stated that risk assessments are undertaken of each child placed with them, and secure care providers have a great deal of experience in balancing the needs of the children in their care.

The Care Inspectorate highlighted concerns around secure care practice, as services will need to admit children referred to them, rather than assessing whether they can meet a child's needs before taking the decision to admit them, as they do currently.

Secure care providers agreed extra training and support would be required in order to ensure a well-supported, remunerated and trained staff team providing a high-quality environment.

In its response to the Committee's report, the Scottish Government said that the Reimagining Secure Care project led by the CYCJ will look at longer term funding and commissioning arrangements for secure care and the secure estate, and this work will inform considerations and cost implications of the Bill.

During last week's evidence session, Kate Wallace of VSS said VSS want to see more detail on how the move of serious offenders to secure care would be managed. She said young people in secure on welfare grounds had expressed concerns about their safety in relation to the Bill, adding that moving more serious offenders into secure care has the potential to:

“...replicate some of the scenarios in young offenders' institutions if that is not being managed well.” - [ECYP Committee meeting, 25/10/23](#)

Dr Marsha Scott of SWA highlighted the need to speak to young women in secure care to get their views, as young women may be more likely to be in secure care for welfare reasons.

Lynne Currie, Senior Researcher (Further and Higher Education, Children's social work, child protection and adoption), SPICe Research

26 October 2023

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