OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 6 September 2018

Session 5

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Thursday 6 September 2018

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
21st Meeting 2018, Session 5

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Oliver Mundell (Dumfriesshire) (Con)
Gail Ross (Caithness, Sutherland and Ross) (SNP)
*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Duncan Dunlop (Who Cares? Scotland)
Linda Fabiani (East Kilbride) (SNP) (Committee Substitute)
Marion Gillooly (Includem)
Lynzy Hanvidge (Who Cares? Scotland)
Claire Lightowler (University of Strathclyde)
Dr Claire McDiarmid (University of Strathclyde)
Professor Susan McVie (University of Edinburgh)
Malcolm Schaffer (Scottish Children's Reporter Administration)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 6 September 2018

[The Deputy Convener opened the meeting at 09:15]

Age of Criminal Responsibility (Scotland) Bill: Stage 1

The Deputy Convener (Alex Cole-Hamilton): Good morning, and welcome to the 21st meeting in 2018 of the Equalities and Human Rights Committee. Please ensure that all electronic devices are switched to silent. We have received apologies from Gail Ross—we wish her a speedy recovery. We are joined instead by Linda Fabiani, who is Gail's substitute on the committee.

I take this opportunity to thank our outgoing convener, Christina McKelvie. Christina has served the Equalities and Human Rights Committee with commitment and dignity, and we wish her very well in her new post as minister.

Our first item of business is our first oral evidence session on the Age of Criminal Responsibility (Scotland) Bill. Two panels of witnesses will give evidence to us this morning. I welcome the members of the first panel: Professor Susan McVie, chair of quantitative criminology in the school of law at the University of Edinburgh; Dr Claire McDiarmid, deputy head of the school of law at the University of Strathclyde; and Malcolm Schaffer, head of practice and policy at the Scottish Children's Reporter Administration. All the panel members have various interests in the bill and the journey that we have been on to get to this point.

What is your view of the bill? Do you think that it fulfils the requirements that were set out in the Government's statement of intent?

Malcolm Schaffer (Scottish Children's Reporter Administration): The SCRA welcomes the bill. We do not necessarily see it as an end to the debate, but we believe that it sends out a strong message about the ability to tackle difficult behaviour by children without criminalising them. We see that as an important and logical next step from the Parliament's decision to raise the age of criminal prosecution. However, we also think that further work could be done to consider an even higher age and we hope that the Government might commit to further work on whether to raise the bar further to the age of 16. There are separate complications in that, but I believe that it should be properly looked at.

Dr Claire McDiarmid (University of Strathclyde): I greatly welcome the bill. Raising the age of criminal responsibility is long overdue. There are advantages to raising it to 12. It accords with the way in which the civil law gives capacity to children in some areas—for example you can make a will when you are 12. It accords with the physical transition that children make from primary to secondary and meets—just—the international requirement set by the United Nations Committee on the Rights of the Child that 12 is the bare minimum.

Like Malcolm Schaffer, I think that there are questions about raising the age of criminal responsibility higher still. In recent years, much of that has come from emerging neuroscience, which provides evidence that young people's brains develop such that their impulse control is not fully developed until they are in their early 20s. For a long time, developmental psychology has suggested that development is at different rates in different children, but the necessary intellectual development might not come through till the mid-teens. Other international obligations, under the Beijing rules, suggest that we should try to ensure that the ages that confer some forms of adulthood are clustered together. Age 12 is still quite a lot younger than, for example, the age at which you can marry and, perhaps more importantly, the age at which you can sit on a jury, which is 18.

A further possible option might be to raise the age of criminal responsibility to 12 and then consider having a criminal defence for children over that age who still lack the capacity to be found criminally responsible.

Professor Susan McVie (University of Edinburgh): I agree with my two colleagues that the bill is long overdue and that raising the age of criminal responsibility to 12 is a good first step. I would question whether it represents a progressive commitment to international human rights standards. There are a number of reasons why we should be looking with urgency at raising the age even higher. We know that the UN Convention on the Rights of the Child states that the age of 12 is the bare minimum. If we make 12 the age of criminal responsibility, it will still leave Scotland trailing behind the vast majority of European countries and many other countries, both developed and developing.

In terms of whether raising the age to 12 will have any impact on children in Scotland, the evidence is fairly slim. The Criminal Justice and Licensing (Scotland) Act 2010 already puts in place a presumption of no prosecution for under 12s so, de facto, we are already using a minimum age of criminal responsibility of 12.

If we look at the evidence from Malcolm Schaffer's office, we know that very few children under the age of 12 are referred on offence grounds and certainly even fewer children are referred on very serious offending grounds. We know that retaining an age of criminal responsibility at 12 means that children who are still at a vulnerable age, certainly in their mid-teenage years, will go through a system that does not always have a positive outcome.

For example, we know that those who end up in our criminal justice system disproportionately come from poorer backgrounds and a huge proportion of them come from either looked-after backgrounds or youth justice backgrounds, so we have a way to go in terms of having a progressive commitment to those international human rights standards and of putting our children at the heart of a welfarist system that will not damage them.

The Deputy Convener: Thank you very much, all of you. We will now move to questions.

Oliver Mundell (Dumfriesshire) (Con): I will start by going back a step. Can the witnesses explain why the current age was set at eight and why it has taken so long to look at changing it?

Dr McDiarmid: I think that in the mists of Scots criminal law history, the age was set at seven. The institutional writers have a very developed system for deciding whether children can have criminal responsibility but nobody in Scottish legal history has ever wanted anybody aged six or under to be criminally responsible. The age was raised to eight in 1932, seemingly because there was a view that it should be raised, so it went up by one year.

My opinion on why it has taken so long to go any further is that there may have been a tendency to say that because Scotland has the children's hearings system, which means that we are dealing with children on a welfare basis, we do not need to worry about it. However, for some time up until the 2010 act, children aged eight could be prosecuted in cases of very serious offences, so I would agree that it has taken a long time to look at it.

Malcolm Schaffer: I would go along with Claire McDiarmid. The children's hearings system has almost been getting in the way of looking at proper reform by lulling us into complacency. We have not recognised the sort of criminalisation effects that an appearance at a hearing for committing an offence can have, particularly in terms of disclosure. Again, for that purpose, this reform is desperately needed.

Susan McVie is right that we are talking about a very small number of children—I think that about 200 eight to 11-year-olds were referred to the reporter for committing an offence last year, so it is a comparatively small number. Of those, very few appeared at a children's hearing but the consequence is significant for those who do.

The Deputy Convener: Professor McVie, do you have a view on this particular question?

Professor McVie: I have no knowledge of how it started but I know that over the years, the age of criminal responsibility has been discussed and debated. I think that one of the reasons that nothing has happened until now is that there has been no appetite within the Crown Office and Procurator Fiscal Service to raise the age, partly for the reasons that my colleagues have already set out.

The Deputy Convener: The committee heard from briefings over the summer and in other unrelated evidence sessions that one of the catalysts for equalising the age of criminal prosecution and the age of criminal responsibility is that, without equalisation, someone could still get a criminal record that could impact on their disclosure, as Malcolm Schaffer said. Are there any metrics on how many adults are currently affected by criminal records that were obtained before they were 12?

Malcolm Schaffer: The honest answer is no, but there might be significant numbers as we go back through history. The system has evolved positively. The number of children who are referred to the reporter for offending has dropped, particularly with the advent of the whole-systems approach. I started as a reporter in 1974, when vastly more children appeared at hearings having committed offences, and that was when the Rehabilitation of Offenders Act 1974 came in. Children appeared for offences that would not even be referred to a reporter today and were subsequently placed under supervision. Due to the rules on disclosure, that record lasts for a significant time—40 years, in many cases.

Oliver Mundell: The age of criminal prosecution went up to 12 in the recent past. Why was the age of criminal responsibility not changed at that point?

Dr McDiarmid: I have never had an explanation for that. It seemed sensible that the age of criminal responsibility should go up. However, the fact that it did not has allowed for a period in which we have been able to see what the effect would be of a wholesale rise. As we know from the research that was done by the Scottish Children's Reporter Administration, we are not referring many children aged eight, nine, 10 or 11 on offence grounds.

Malcolm Schaffer: Another positive factor might be the Children's Hearings (Scotland) Act 2011, which introduced new grounds of referral and allows us to cover more cases in which children show difficult behaviour and need compulsory intervention but in which we do not want to use offence grounds. There are now more

alternatives, particularly the one regarding the impact of behaviour on self or others.

Professor McVie: The introduction of the getting it right for every child policies and the whole-systems approach has reshaped the way that practitioners work with young people and how they think about the potential effects of putting them into a system that can be damaging. I suspect that some of the change in referrals to the children's reporter is due to children now being seen as in need of help and support rather than as offenders, so there might have been some practitioner change in that area.

We also know that there has been a widespread change in the way that children are behaving, not just in Scotland but across the United Kingdom and internationally. The number of young people who come to the attention of criminal justice agencies has diminished across many countries as part of a wider phenomenon called the crime drop. The crime drop across Europe, the United States and many other countries is predominantly a crime drop among young people. The reasons for that are complex but they might be related, in part, to the change in the way that children spend their leisure time—they spend far more time online and far less on the street. That means that a much smaller number of children come to the attention of the police and, as a result, the children's hearings system.

We also know that the whole-systems approach diverts children in a range of ways that is very effective. Therefore, fewer children are required to come in for more intensive intervention.

Oliver Mundell: You have all stated that you do not think that the bill goes far enough and referenced the previous rise of a year. Is there a danger that, if the bill is passed as introduced, it will be seen as the end of the debate on the age of criminal responsibility for another generation?

09:30

Malcolm Schaffer: I hope not, and I hope that there is further thinking on the matter. As we did with eight to 11-year-olds, we in the SCRA can do work on comparing children's referrals on offence grounds in the 12 to 16-year-old age group and look at the issues to see whether, as I suspect, there are similar background issues. That would also give us time to tease out the implications for the older age group of dealing with, say, a 15-year-old who was charged with a particularly significant and serious offence. How would that be dealt with in the legal system if there was no age of criminal responsibility? I believe that there are ways of doing that, and my fundamental belief is that, as I hope, there should be further reform. However, those issues are separate and more complex than those involving eight to 11-year-olds and need to be teased out.

Dr McDiarmid: I hope that the matter will be kept under review. If we look at the issue at all, the first question that arises is that one that you have just asked: how did the age of criminal responsibility remain at eight for so long? There are, as you have heard, answers to that question, but they are perhaps not particularly effective. Having come this far and with the ability to raise the age to 12, I can see that the matter is clearly on the agenda, and I hope that it will stay there.

Professor McVie: I agree. I come back to the bill itself, which talks about reflecting a

"progressive commitment to international human rights standards".

If Scotland looks to comparators to see what is happening elsewhere and to reap the best of what is happening in other countries—not just in Europe, but internationally—it will see that the direction of travel for the age of criminal responsibility is upwards. Where it is being changed, it is certainly not coming down.

A really great example of what you might call a natural experiment can be found in Denmark. Following a particularly punitive period with a tough-on-crime policy agenda, the Danish Government decided to reduce its age of criminal responsibility from 15 to 14, which enabled researchers to test the effect on the 14-year-olds who were experiencing that legislative change and who were, as a result, subject to criminal justice policy compared with those 14-year-olds who had escaped that attention. It was found that, following the change, the rate of offending amongst 14-year-olds went up significantly, and they were still more likely to be offending 12 to 18 months later. They were also more likely to drop out of school at an early stage, and those who stayed in school achieved far less in terms of educational attainment. The policy was changed, and the age put back up to 15 within two years.

If we look at evidence from other countries, we see that in the vast majority of European countries the minimum age of criminal responsibility is 14 or 15. Scotland is currently at the bottom of the pile; moving the age up to 12 might put us slightly higher up, but we would still be at the bottom next to other countries that are also considering moving the age up. In the Netherlands, for example, the age of criminal responsibility is 12, but they are looking at moving it to 14 at the moment. I hope that this issue will very much stay on the agenda, because it is certainly on the agenda of many other countries.

The Deputy Convener: That was fascinating. Fulton MacGregor would like to come in.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I just have a supplementary, convener. Professor McVie, would you be able to make the study that you have mentioned available to the committee?

Professor McVie: Of course.

The Deputy Convener: It would be great if you could liaise with the clerks on that.

Professor McVie: I have actually prepared a paper that I can submit afterwards.

The Deputy Convener: So you have one that you prepared earlier. That is fantastic.

Mary Fee (West Scotland) (Lab): Following on from Oliver Mundell's line of questioning, I am really interested in finding out why the decision has been taken to raise the age to 12. I know that the issue was touched in your earlier answers, but I am keen to hear you expand on where we sit in relation to the rest of Europe. I know that there are only three other countries where 12 is the age of criminal responsibility, so we will still be very much on the floor in that regard; after all, the UNCRC has said that 12 is the minimum that the age should be raised to.

Secondly, how does raising the age to 12 sit with the Government's GIRFEC agenda and the really good work that has been done in that respect? Do all of those things fit together? In short, can you expand on your views with regard to 12 as the age of criminal responsibility?

Malcolm Schaffer: As was said earlier, 12 was the easy age to go to, because it fits with the age of prosecution. The evidence of offending referrals in that age group is much smaller. Bluntly, it is an easy one to crack in terms of the legislative impact. As you go higher, where do you set the bar? Do you set it at 14, or do you go on to 16 or even, as some would say, 18? Each of those ages raise more questions that can be answered but need careful thought to ensure that we have a system that can still respond to the difficult behaviour of a child, no matter what their age, and offer proportionate measures that do not criminalise somebody for their whole life. That is one of the big issues around the use of offending, even within the hearings system. The system needs to allow rehabilitation and meet the aim of getting it right for every child. That is where it fits with the GIRFEC agenda of working with a child in their best interests, taking account of their wellbeing, while ensuring that the work that is done with that child does not have an adverse impact on them for the rest of their life.

Mary Fee: Perhaps we can come on to talk about behaviour and understanding in a minute. Does anyone else have a view on raising the age to 12?

Dr McDiarmid: It is hard to think of reasons why we would not raise it to 12. I agree with Malcolm Schaffer that if you are going to raise the age, it makes sense to go there. We have the evidence from the Scottish Children's Reporter Administration that it might not make that much difference to raise it to 12. Children can still be referred on the ground of causing harm to themselves or others. That came in in 2011.

There is an issue of what goes with criminal responsibility as opposed to just responsibility. Children's hearings can discuss with a child of whatever age who has been referred to them responsibility for any behaviour, whether it be truanting from school or any of the conduct grounds on which they have been referred, and they can help them to take responsibility for that behaviour and move on from it. Criminal responsibility has the issue of disclosure attached to it, particularly at the moment, but there will always be a stigma attached to having committed a criminal offence, whichever forum deals with it. If there is a way to raise the age and diminish that stigma, that would be helpful.

Professor McVie: I come back to the progressive commitment to international human rights standards. The UN convention states that a child is anyone under the age of 18. It also stipulates that we should act in the best interests of the child.

In other areas of Scottish policy, we have been showing a strong commitment to human rights. The changes in policing and the recent changes to stop and search show a strong commitment to human rights. There is a well-crafted section in the stop and search code of practice about how children, young people and vulnerable people should be dealt with.

GIRFEC and the whole-systems approach are founded on human rights principles and, through those policies, we have been trying to divert more young people away from formal intervention into more effective but less intrusive interventions on their behaviour. We are trying to retain more 16 and 17-year-olds within our youth justice system. All that fits with an international standard of human rights. The decision to set the age of criminal responsibility at 12 jars with all those other things.

On how we sit within Europe, we are 10 years behind Belgium, which has 18 as its age of criminal responsibility. We are certainly below our Nordic neighbours, whom we consider to be similarly progressive. They all have 15 as their age of criminal responsibility. We are much lower than many Latin American, Asian and African countries.

It is interesting that the bill documents say that the bill is not so much about taking account of capacity, yet the age of criminal responsibility is

entirely about capacity, and we should take that into account. As Claire McDiarmid said, there is a growing body of neurological evidence that shows that brain formation does not end in the teenage years. The frontal cortex, which is the area of the brain that controls behaviour, does not become fully formed until the mid-20s. There is growing sociological literature that says that adolescence as a period of development is ageing. People are leaving home later, getting married later, having children later and entering the labour market later than ever before. We see that sociological shift, we have increasing information about neurological development and there is broad criminological literature that says that children are not starting to offend until they are older. The evidence for shifting the age upwards is compelling.

Mary Fee: If moving the age to 12 is the start of a journey and it will be moved further, would it be helpful to have a review clause in the legislation to say that we will revisit the issue after two years and, if appropriate, raise the age by two years or a year, for example?

Malcolm Schaffer: I personally would very much support that.

Dr McDiarmid: Yes. A formal requirement to keep the age under review would be helpful.

Professor McVie: Yes—absolutely. The Government's advisory group has been active in providing evidence for the bill, and such a provision would give that group a mandate to continue to look at the wider evidence in order to have a more informed decision about what the correct age would be.

Mary Fee: In countries where the age is higher, what approaches are taken to young people? Do those countries have similar welfare-based approaches and interventions to ours?

Professor McVie: It varies hugely. There is no one-size-fits-all youth justice system. No other country has adopted a children's hearings system—ours is still considered to be unique and is the envy of many countries. Other countries have a similar sort of welfarist structure, but most other countries have some form of youth courts, which of course we have avoided for the most part. We have talked about the age of criminal responsibility in other countries, but it is worth saying that the issue is a little more complicated than that because, although some countries have a minimum age of criminal responsibility, they may have other wider policies that shape the way in which young people are dealt with. For example, in Russia, the age of criminal responsibility is 16, but there is a get-out clause that says that children as young as 14 who commit severe or grave offences can be prosecuted. There are a lot of nuances in the way in which other justice systems operate and sometimes get around the problem.

The Deputy Convener: Oliver Mundell would like a brief supplementary question on that point.

Oliver Mundell: It is exactly on that point. Is it common for countries to have an age of prosecution that is different from the age of criminal responsibility? Is that the case elsewhere or are the ages aligned in other countries?

Professor McVie: Most countries have an age of criminal responsibility and they often have a graded set of ages for other things. Sometimes, those graded ages go upwards. For example, a country might have an age of criminal responsibility at 15 but not prosecute below 16 or 17. Some other countries go the other way, so they have a minimum age of criminal responsibility but an effective age of criminal responsibility that is younger than that. As I say, there are many nuances in the ways in which justice systems operate, which means that a period of further review would be useful.

Mary Fee: Are you aware of any studies that have been done in any European countries on the relation between the age of criminal responsibility and the level of adult offending? Is it the case that, where there is a higher minimum age of criminal responsibility, there is a lower rate of adult offending?

09:45

Professor McVie: The short answer is that I have not seen any such studies, but I would say that those countries that have a higher age of criminal responsibility—for example, our Nordic comparators—have lower rates of criminal conviction than we do.

The evidence on the impact of criminal justice contact in the early teenage years in terms of a longer-term criminal conviction career is compelling. There is strong international evidence to show that the earlier and the more intense such contact is, the more likely someone is to have a longer-term criminal career. When we did a comparison between Germany, which has more of a punitive system, and Scotland, which has much more of a welfarist system, we found very similar things. Those children who had earlier and more intensive contact were far more likely to end up in the criminal justice system and to have a longer-term criminal career than those who were not drawn into that system—even when those other young people were offending to a similar extent.

However, we need to be careful. Practitioners do not go into youth justice services every day thinking that they are causing damage to young people, and many young people come out of youth

justice services having turned their lives around significantly. Therefore, we look at the average effect over time, and that still suggests that, on balance, the negative consequences of early and intensive contact—which recycles young people round the justice system for a long time and then throws them out into the adult criminal justice system—are hugely damaging.

The labels that are attached to young people never come off. At a Scottish Prison Service event yesterday, I met someone who said that he had had to move 300 miles away from his home and his family in order to lose that label and restart his life. We should not have to make young people leave their homes and communities to shift a label that is applied by the system.

Mary Fee: I want to move on to a question about behaviour and understanding. It concerns young people who are aware of the difference between right and wrong but who are unable to understand the full consequences of their actions. If we use that as an argument for raising the age of criminal responsibility, at what point do we stop? At what point do we say that every young person fully understands the consequences of their actions? Is there enough flexibility within the system—I am sorry; this is a long question—to take account of the fact that a young person of 12 or 13 who commits a crime might understand the difference between right and wrong but might have only a slight rather than a full understanding of the consequences? That could equally well be true of someone of 15, because young people develop in completely different ways. In a room of 20 young people, all of them will have developed differently. How do we find a medium that fits everyone?

Dr McDiarmid: You have hit the nail on the head when it comes to the use of chronological age for any purpose. It draws a beautiful clear line that the law likes very much, but it does not tell us much about the person it relates to.

There are possible ways of dealing with that. It would be possible to have an age of criminal responsibility and to look at individual young people. In England and Wales, for 1,000 years until 1994, there was the Doli incapax presumption, whereby it was presumed that children aged between 10 and 14 did not have the understanding that you referred to, which meant, in effect, that the prosecution had to prove that they did. Some academic commentators have suggested that, instead, there could be a criminal responsibility test that could be used pre-trial to test the child's capacities in the required areas, which go broader than knowing the difference between right and wrong. Toddlers understand that difference simply because they are told not to do something, but they have not internalised the rules.

Another possibility, which I suggested in my opening remarks, might be to have a defence of developmental immaturity, which those young people whom it would be unfair to hold criminally responsible could plead. The age of criminal responsibility will draw an arbitrary line and it is difficult to know where that should be. Those are some of the other possibilities around the edges of that.

Professor McVie: The neurological literature says that full brain maturity does not occur until around the age of 25, but I cannot see there being any appetite to set the age of criminal responsibility at 25.

As Claire McDiarmid said, if we decide to use a legal threshold and an arbitrary age, we must have other policies and allowances in place to take account of the fact that we are all different. There are many adults whose capacity to fully understand could be questioned, and very few people have the capacity to fully understand what the impact of contact with the criminal justice system will be on their later lives.

The Deputy Convener: The Parliament has certainly grappled with the issue of the age of majority in a range of legislation. In some legislation, there are two ages of majority, for reasons to do with vulnerable adults and the protection of vulnerable groups.

Fulton MacGregor: Would Malcolm Schaffer be kind enough to explain what happens in the process when a child or young person of any age—not necessarily someone under 12—is referred on offence grounds? It would be quite helpful for the committee if he could take us through that process on the record.

Malcolm Schaffer: Sure. If a child is referred to the reporter by the police for committing an offence, we have to look at two issues. First, we look at whether we have enough evidence to prove that the child has committed the offence. Also, whether we have enough evidence or not, we look at whether there is an alternative ground that might be more appropriate. Secondly, we look at whether the child is in need of compulsory measures of supervision, because only children who are in need of compulsion should be referred to a children's hearing.

To help with that decision, the reporter tries to gather together such information as is proportionate and necessary for a conclusion. They make contact with the agencies that might know the child—their school, obviously; perhaps the social work department; and medical authorities, depending on the individual situation—to draw together a whole picture of the child, to look at the child's behaviour and to look at the reasons behind that behaviour. It might be that,

when they look at the child and what is going on with them, they see that there are other, more significant, issues that are the cause of the behaviour, which might relate to parental care at home, parental control or even particular associations that the child has. There was certainly evidence of that with a number of children in the study that we undertook of eight to 11-year-olds.

The whole purpose of our decision making should be about identifying the ground that signifies the problem in the child's life so, even if the child has been referred for an offence, the reporter might decide not to proceed with the offence and, if the child is not getting appropriate supervision, proceed with grounds of the lack of parental care.

If the second test is made for the need for compulsion, we would again contact the social work department, the school and other agencies about whether the issue that the child has presented is an on-going problem or a one-off, to what extent it can be dealt with in the family and to what extent other agencies can support the family on a voluntary basis without having to involve compulsion.

Only those children for whom there is enough evidence to demonstrate the need for a ground of referral and who are in need of compulsion should end up at a children's hearing. On last year's figures, we refer to a hearing about 25 per cent of the overall number of children who are referred to us. Interestingly, when it comes to children who commit an offence, that figure drops to about 8 to 10 per cent, which might partially be because we use other grounds, and might partially be because we think that other measures can be used without the need for compulsion and involvement in the system.

That is the decision-making process for the reporter. If the reporter were to refer the child to a hearing, the child and parents would be asked whether they accepted the grounds for referral, and any denial or lack of understanding would be referred to a sheriff court to determine whether the grounds had been made out. If that were the case, the matter would come back to another children's hearing for disposal, and the hearing would have to decide on the need for compulsion.

Fulton MacGregor: The last bit of that very good explanation was actually where I wanted to get to. I should also have declared an interest earlier as a registered social worker who worked in child protection for eight years.

I want to explore what happens when a child within age goes to a hearing and those grounds are put to them. Can you tell the committee how that works and what rights the child and their family have in the process?

Malcolm Schaffer: We would flag up to the child their ability to get legal representation in certain circumstances, particularly if there was any issue of secure authorisation or if the child was coming from custody. We would send out with the grounds a leaflet highlighting that acceptance of grounds might have an impact on future employment prospects and that the child might wish to speak to a solicitor prior to that. It is by no means the case that all families get legal representation.

At the hearing, the chair is under a duty to satisfy himself or herself that there is a proper understanding of the grounds and that, because it is such an important part of the process—after all, it is the threshold to the hearings system and compulsory measures—he or she should not proceed any further unless they are satisfied with regard to acceptance and understanding by the child and the parents.

Fulton MacGregor: I do not know whether it is the same across the country, but when I was working in this area, I was always struck by the fact that when a child and family were put in that quite stressful situation, the desire to get things over with seemed to be greater than any desire to reach an understanding of the possible impact on future employment or life chances 10 or 15 years later—or, indeed, even sooner than that. What is your own experience in that respect?

Malcolm Schaffer: For a number of reasons, I really worry about the current disclosure provisions and, because they are so complicated, the extent to which they are not understood not only by children and parents but, indeed, by all professionals.

Fulton MacGregor: I am happy to leave that line of questioning there. I was going to ask about what reports would bring out about children's other circumstances, but I think that you covered that in your initial response. Thank you very much.

The Deputy Convener: Before I bring in Linda Fabiani, Mary Fee has a short supplementary on Fulton MacGregor's line of questioning.

Mary Fee: What measures are you able to take when a child comes before a hearing? Is the system quite rigid, or is there enough flexibility in it to ensure that when a child or young person comes before you and you need to take action to help them—which, ultimately, is what you are doing—you can tweak things and use a bit of this and a bit of that? How often are the measures that you are allowed to use reviewed and added to or changed?

Malcolm Schaffer: We can apply any proportionate and legal measure for a child. We can—and should—look first at what is available to support the child in the home, but residential measures can be put in place, if necessary.

As for the availability of services, that is a good question. Availability could come down to, say, geographical accidents, or services could be at risk because of public spending impacts on what was the wealth of youth offending supports and skills. At one point, those supports and skills were quite significant, but there seems to have been a diminution of them.

10:00

Review is probably one of the stronger aspects of the hearings system; no child can be on supervision for longer than a year without having to come back for a further hearing. Children or parents can ask for a review at any point after three months, and a social worker can bring a case back at any stage, either because provision has worked and is no longer needed, or because it is no longer working and something else needs to be tried. In the extreme cases in which the child's behaviour is so significant that they are placed in secure accommodation, that must be reviewed after a maximum of three months by a further children's hearing.

Mary Fee: That is very helpful. Thank you.

Linda Fabiani (East Kilbride) (SNP: As a substitute member of the committee, I am not as immersed in the subject as my colleagues are, but I have jotted down a few things that I have heard on which I would like a bit of information.

First, I note that the committee papers talk about the current system in which, for someone who is aged between 12 and 16, the Lord Advocate can decide to move to criminal proceedings. How might that alter if we were to make the age of criminal responsibility 16? I understand from what you said earlier that that has been an informal non-official thing for people aged from 12 to 16—it is something that has become practice, rather than being the law.

Malcolm Schaffer: If the age of criminal responsibility was 16, the Lord Advocate would have no role, because the child could not be charged with a criminal offence.

Professor McVie: If the age is 12, nothing will change.

Linda Fabiani: Yes. What puzzles me is this: what if there was a really serious issue involving a 15-year-old? I hesitate to talk about a crime, because there would be no criminal responsibility, but if something very serious happened that was deemed to be the fault, responsibility or whatever of the 15-year-old, how would that be dealt with if the age of criminal responsibility was 16?

Professor McVie: The decision about the age that is set has to be based not just on broad human rights standards but on capacity. I appreciate that the bill does not take so much account of that, but if we as a society agree that children under the age of 16 do not have the capacity to understand when they commit something that is very serious, we have to stand by those young people and put in place every measure that will support them and prevent them from committing a crime again, and we have to put in place all possible measures to support the victim.

If we take the ideological stance that the age of criminal responsibility is 16, we cannot bend the rules when a child who is younger than that age commits a crime. Some countries put in place caveats on the age of criminal responsibility, but I think that that is dangerous: if you are going to put in place caveats, why bother having a set age? If the principle is that we want to protect and support our young people, we have to accept that they will sometimes do bad things, even though that is relatively rare.

Linda Fabiani: On the point about that being relatively rare, Malcolm Schaffer talked about the number of eight to 11-year-olds, but I think he said that not enough work has been done so far in relation to 12 to 15-year-olds.

Malcolm Schaffer: If a review date is set at two years, we would offer to the Scottish Government—indeed, we have already done so—that we would do for 12 to 15-year-olds a similar study to the one that we did for eight to 11-year-olds, in order to tease out the nature of the offending that is being reported in that age group, how it would be covered if the bar was set at 16, what alternative measures would be available and the implications of that reform.

Linda Fabiani: That ties in with something that, I think, you have all said, and which I recognise: the change could not be made unilaterally, but would have to sit among wider policies on support and disclosure, for example. I get the impression from all of you that disclosure is important, so it may well be that wider policies could look at disclosure being tied in with an increase in the age.

I am always up for the inclusion of review clauses—often, we do not study the effect of legislation enough—but this strikes me as a major issue with a lot of policy implications. I am picking up that you all agree that the legislation should go forward, but do you think that review after two years would be enough to do it justice?

Malcolm Schaffer: Significant work has already been started that takes account of disclosure, with the protection of vulnerable groups review and the Management of Offenders (Scotland) Bill. The work that we can do within the SCRA would be easily achievable within that time.

We will then need to work through the implications for any potential gaps in powers. For instance, the maximum bar for the hearings system, which would be the alternative route for compulsory support, is age 18, and the period between 16 and 18 is covered only if the child is on supervision. Is there, therefore, a case for looking at extending the powers of referral to the hearings system to cover children and young people who are not on supervision but who are in need of compulsion, at least until 18, and to tease out some of the implications of that?

Also, we need to think about and tease out the implications for the case of somebody who commits a very serious and significant offence at the age of 15 years and 11 months. If the powers in the hearings system last only until the age of 18 but there is still a need for support after that, how will that support be provided? I am sure that there are answers to those questions, but they are examples of things that need to be considered in greater detail.

Professor McVie: Some research has been done. The Edinburgh study of youth transitions and crime is a longitudinal study that looked at a group of young people who were growing up in the late 1990s and early 2000s. It followed those children over a six-year period and collected significant information on their social work contact, children's hearings contact and criminal records, and it showed a number of things.

First, the study showed that the vast majority of children were getting involved in some bad behaviour. It is a normal aspect of adolescent development and the vast majority of those children do not have any need for any formal services. There are all sorts of informal social controls that operate within our communities that take care of many such things.

The children who come into the children's hearings system or to the attention of the police tend to be a smaller segment—the thin end of that wedge. They are also the poorer end of the wedge, it has to be said. Children from poorer communities and disadvantaged backgrounds are significantly more likely to come into contact with our justice services. We need to bear that in mind in relation to resources. We are not talking just about resources to deal with offending; we are often talking about resources that are needed to deal with a multitude of complex needs.

Our research found that, of the children who travelled through the children's hearings system during their mid-teenage years, some went on to a chronic pathway of interconvictions and ended up in the criminal justice system, while others did not. When we looked at the key factors that decided whether someone followed that chronic pathway, we found that it was not their serious offending that was behind it, but a series of other things, including continuous and increasing police contact and increasing contact with the youth justice system.

The principles of the youth justice system are set very much on the Kilbrandon principles, and are absolutely spot-on in terms of welfarism and human rights, but the problem is often in implementation of decisions that are made by the hearings system, because the resources do not exist to put in place the services that young people need.

School exclusion was also a key factor in determining those young people's lives. The more we can keep children in school, the better.

The issue cuts across a range of policy areas, and that integrated multi-agency response is something in which Scotland has become very expert. The whole-systems approach is predicated on a multi-agency response.

Do we want a period of longer than two years? I think that we should stick with two years and see where we can get to in that period. If we were to make the period longer, there would be a danger that things could get kicked into the long grass. That period will give us the opportunity to interrogate the impact of the policy not just on youth justice but on education, health and all the other areas in which systems will need to be put in place, and to do so in a rounded way that helps the children who come to our attention.

Linda Fabiani: I understand everything that is being said and the human rights implications, but I have concerns about saying unilaterally that we will have a review in two years' time. Two years in politics—let alone in life—is a very short time, and there is so much to do. We should welcome the idea of making the initial change, but we should not be prescriptive about how long it should take before we review whether to go further.

The Deputy Convener: I am conscious that we are coming perilously close to the end of our time with the panel. I want to take us back to children's rights. I should have said at the start of the meeting that I refer my fellow members to my entry in the register of members' interests, as I was the convener of the Scottish Alliance for Children's Rights, which is known as Together.

The First Minister announced in the programme for government the Scottish Government's

intention to incorporate into Scots law the principles of the United Nations Convention on the Rights of the Child. Invariably, there are in the UNCRC tensions in which rights sometimes compete with one another. There are tensions in various sections of the bill—some are easy to rectify and some less so. There are tensions specifically in section 23, which is about the power of police officers to remove a child from a situation and to take the child to a place of safety. Section 23(2) states:

"The constable may take the child to a place of safety and keep the child there if the constable is satisfied that it is necessary to do so"

for a range of severe reasons. There is an immediate tension between a child's protection rights and their participation rights. If the child says, "I don't want to be here", and the constable says, "Tough", the child's article 12 rights would be being impeded. Can the panel explore those tensions?

Dr McDiarmid: Tensions certainly exist, but the bill has been extremely well thought through, and much consideration has been given to minimising the criminal justice aspect of it. If we take away the link between the age of criminal responsibility and capacity, we are saying that children under 12 are not criminals because we say that they are not, rather than because they do not understand what they are doing. There is an issue in all the provisions about how that will feel to a child. Under the "place of safety" provisions, the search provisions or, indeed, any other provisions, we could take a seven-year-old child, and it is important to have an eye to that. I read the bill thinking that I would not like any of the additional provisions at the end, but they are very well safeguarded in terms of protecting the rights of the child. However, it is important not to lose sight of the tension.

The Deputy Convener: The only "place of safety" that is referred to in the bill is "a police station"—albeit that it says that a police station should be used as a last resort. However, that jars with article 37 rights on children not being held along with adult suspects. Do we need to do more to unpack that? Perhaps we should have a schedule of other places of safety that constables should try first and, if a child has to be in a police station, include in the bill other safeguards, such as that they should never be held in cells. Dr McDiarmid clearly has a view.

Dr McDiarmid: Such provision would be helpful, because if the legislation gives only one option as the last resort, there is a danger that that option will become the first resort.

Malcolm Schaffer: The deputy convener is right to say that there is a tension. However, the first significant thing to say is that we hope that those powers will be seldom, if ever, used. I know that a lot of thought has been given to the matter. It is about balance and keeping the rights of the child within the process, but it retains a lot of elements that have a criminal justice feel.

10:15

On alternatives to taking a child to a police station, one responder asked whether, because we are developing the Barnahus model for child protection, that sort of resource could also be used to interview young children. That would get such situations completely away from the police station, the "get my brief" system and the feel of criminalisation, as the reform is trying to do. I hope that that can be given further thought and that imagination can be used to find alternative resources to make the reform properly meaningful.

Professor McVie: If you have ever had to remove a child to a place of safety, you will know that it is a hugely distressing event. No one should be under any illusion: a child who is removed under such circumstances is in severe distress. To take the child to a police station seems like one of the least humane things that could be done, notwithstanding the fact that we have fewer police stations. Serious consideration should be given to that. Again, it comes down to resource issues: social work centres and family resource centres are also in short supply. If we want to take the issue seriously under the human rights standard, we need to have humane places to which we can take children who are in distressing circumstances.

The Deputy Convener: I agree. Many of us would not consider that a police station on a Friday night would necessarily be a "place of safety" in any situation.

I have a final question before we have to move on to the next panel, which is also on rights. Stop and search, which Parliament has agonised over, has been mentioned. We have moved a considerable distance from where we were, for which I am grateful. Are you content that the provisions under section 25 of the bill about the power to search on suspicion that a crime

"is being or is about to be committed"

are sufficiently safeguarded by the work that underpins that, and that, should we happen on less enlightened times, the legislation that we will introduce through the bill will not allow a slide back into wholesale searching of innocent children on our streets?

Professor McVie: On the contrary—as it is framed, the bill is pretty tight around the circumstances in which stop and search can take place. Police officers have adapted very well to the

introduction of the code of practice, which, in addition to the legislation, has given a fairly detailed set of circumstances around which it is expected that stop and search can take place.

The 12-month review of the stop and search processes is being done at the moment, and the report will make recommendations for the Cabinet Secretary for Justice. Some of the recommendations might be around slightly extending the legislation. There is some confusion: there is a grey area that is the extent to which police officers can search in the circumstances of prevention of loss of life, which jars slightly, because the bill does not quite allow police officers the security of mind to know that they can search in those circumstances.

Otherwise, the bill is pretty tight. We have seen from the reduction in the number of stop and searches and, in association with that, the significant increase in detection rates, that the legislation appears to be working well.

The Deputy Convener: I thank you all for your time this morning. If there is anything that you would like to have said that you did not get the opportunity to say, please write to the committee. We will certainly be meeting you privately in our further consideration of the bill.

10:19

Meeting suspended.

10:21

On resuming—

The Deputy Convener: Welcome back, everybody. I welcome our second panel of witnesses: Marion Gillooly, who is head of strategy and innovation at Includem; Claire Lightowler, who is director of the centre for youth and criminal justice at the University of Strathclyde; Duncan Dunlop, who is chief executive of Who Cares? Scotland; and Lynzy Hanvidge, who is a care-experienced policy ambassador with Who Cares? Scotland. You are all very welcome.

I will start in the same way that I did with the first panel and ask you to give your initial view of the bill and whether it meets our stated intention to move to the UN prescription of the minimum age of criminal responsibility.

Lynzy Hanvidge (Who Cares? Scotland): I am in agreement and I would like Parliament to pass the bill. However, I would also like the consideration of the age of criminal responsibility to continue. Right now, we have the age of criminal responsibility and the age at which someone can be convicted but what are we doing in moving it to the age of 12? How are we advancing on this? That is my stance.

The Deputy Convener: That is really helpful—thank you.

Duncan Dunlop (Who Cares? Scotland): Thank you for the opportunity to speak today. I struggle to say this, but it looks as though we are just doing a wee bit of housekeeping. This is not making Scotland the best place in the world for children to grow up in; it is just about getting us on a par with the worst places in Europe.

The previous panel was saying that in Russia the age of criminal responsibility is 14, but we might just get to 12. I think that that is shocking, to be honest. It is as though it has been a slight embarrassment that we have had the age of criminal responsibility at eight for so long and the feeling is that we just need to get it over the line to 12. However, in my view, it is time for our Parliament to show some leadership on the issue. We do not need to wait two years to review whether it is the right thing; we have to be far bolder.

Who Cares? Scotland very much speaks for the care-experienced population. We know the consequences of being care experienced; we will no doubt talk a bit more about that as the morning goes on. However, the age should be at least 16, if not 18, because the consequence of involvement in the justice system is more involvement in the justice system, which means that potentially more offences are being committed later in life. You end up with people who are more likely to be involved in the justice system later on.

Certainly, if people are involved as young adults in the justice system, it does not create safer communities and it does not do any good for those who will potentially be the victims of crime or those young people who are going through this entire system.

We have to look at the issue based on the reality of what we know and not accept a populist mantra. The involvement of police and in fact—bizarrely—the justice system means that people are more likely to continue offending. We have to look at a different approach and we should seize this opportunity. The age of 12 is really nothing.

Marion Gillooly (Includem): We welcome the fact that we are debating a bill. I agree that moving the age to 12 is not going far enough; it is the absolute bare minimum, as suggested by the United Nations Committee on the Rights of the Child, so we would like the bill to go further. It is fair to say that the bill covers some complex issues, and it is important to note that a great deal of consideration has clearly been given to these complex issues—I think that that comes across in the bill. However, criminalising children is in

nobody's interest, and the stigma that is attached to that identity is incredibly damaging for those children and for all of us in society. We need to look at the needs of children who display harmful behaviour. The term "harmful behaviour" is much more helpful than the terms "offending" and "offending behaviour". We need to look much more at how we use that kind of terminology.

Claire Lightowler (University of Strathclyde): You are going to hear a similar response from me. It is hard not to welcome the bill because, as the committee discussed with the previous panel, it has been 20 years since the change was recommended, which is a criminal waste. For the life of the Parliament, the issue has been ticking away in the background. Most commentators, 96 per cent of consultation respondents and all those who have given evidence to the committee, both written and in oral form today, have indicated support for the age being 12.

We are at an important moment and the bill is an important statement of where Scotland stands in responding to children who experience distress and who behave in ways that harm others. It is important to acknowledge and welcome that step but, as others have said, we need to consider whether the bill goes far enough, what the age should be and how we can better respond to that distress. There are a lot of arguments about why it matters that we think about what is going on for children. The truth is that a criminalising response does not address the issues that children are experiencing. We know that nearly all children who are involved in a pattern of offending behaviour have backgrounds that involve domestic violence and have been harmed by those around them—they are vulnerable and victimised. The criminalising response does not address those issues. That is why the issue matters. The framing of a criminal lens can be very harmful, because the child starts to think that they are bad, others around the child start to think that and we do not get to the real underpinning issues.

The Deputy Convener: Thank you—that is very useful. We are starting to get unanimity across the panel, which is quite a rare thing, but a good one.

Oliver Mundell: I want to pick up on Duncan Dunlop's points. The evidence from the first panel suggested that it would be much more complicated to go beyond the age of 12. Would you have us delay the bill to work through those issues, or is it better to push ahead and start the process?

Duncan Dunlop: Our aspiration is for the minimum age to be at least 16. How quickly we can get there is the Parliament's business. Really, the age should be 18, given what we expect for young people and children, but we know from the care-experienced perspective what will happen. I am not sure of the consequences of delaying the bill to look at all the implications of having a different age. Potentially, that could be done in parallel, but I do not think that you need two years to review whether it is the right thing to do. It might take two or three years to implement, because the consequences go beyond policing and relate to creating different responses. That will come back to a cultural issue to do with how we view young people and, as was mentioned, having provisions available for vulnerable children that are appropriate to meet their needs.

We really need to be bolder. We can talk later about the good and the bad bits in some of the provisions and how they may need development. However, we need to have the ambition to raise the age of criminal responsibility to 16 or 18. If we do not do it now, it will not happen. We have been waiting for 20 years. It is not as though the Parliament has been against raising the age for 20 years. The issue will not get on the legislative agenda again—it might do, but it is taking quite a risk to assume that it will. I do not know about the technicalities of how to formulate legislation, but we must have the ambition to go much further. That is our recommendation.

10:30

Oliver Mundell: The other issue that came up with the first panel that I want to ask all of you about is the idea of introducing a criminal defence for children who are over 12 but under 16 or 18. Would that satisfy some of your concerns in the meantime?

Marion Gillooly: Before I address that, I would like to answer your first question. If passing the bill gets us to a place where we start to look beyond the age of 12 sooner, that is the right thing to do, and it might be that that is the case.

As far as a defence is concerned, that involves consideration of capacity, which is an extremely complex issue. I agree with the members of the previous panel on the problems that are introduced by having a flat-line cut-off point, but it is difficult to see how, in law, we can have anything other than that.

In my view, every case involving a child who has displayed harmful behaviour needs to be considered individually, and the needs of that child need to be considered in making decisions about what should happen beyond that point and what support should be put in place for not only the child but the victims who experienced the impact of the harmful behaviour. For me, it is very much a case of interpreting the law in a way that suits the needs of each individual.

The Deputy Convener: Claire, you touched on this issue in your submission. Would you like to comment?

Claire Lightowler: I certainly would. If we accept the UNCRC, children are those young people under the age of 18. That means that if the minimum age that is chosen is not 18, thought needs to be given to how we respond to children between that minimum age and the age of 18.

There are now particular protections for care-experienced young people up to the age of 25, so the need for protections for that older age group is acknowledged. There is no cut-off at a particular age. I welcome the fact that we are teasing out and testing how far beyond a minimum age of 12 we can go, but we need to think about what response will be provided to children under the age of 18. We suggested that a closer look should be taken at other jurisdictions, such as the German model, where there are tests to do with children's ability to understand and to act on that understanding. That is extremely important.

The committee has heard about brain development. Another important factor is the group of people around the child. A child could grow up in a criminal family in a criminal community and they might be exploited. Serious organised crime groups target vulnerable children—there is often a link between child sexual exploitation and serious organised crime groups. A child can be sexually exploited and then be used to commit a range of drug offences. What are we doing when we hold children who are in those circumstances criminally responsible?

It is the ability to exercise free will and act independently that matters. If a child's family and those around them are acting in a criminal way and are encouraging them to engage in criminal activity, how can they say no? Do they have the independence to say no? The issue is not just about the child's understanding; it is also about their ability to exercise free will. That is why I think that a provision to put in place tests to establish whether a child can understand and whether they can act on the basis of that understanding would be a useful addition to the bill, regardless of what minimum age is chosen, if it is to be less than 18.

Duncan Dunlop: If we know that people are care experienced, we need to consider why they are care experienced. It might be worth bringing in Lynzy Hanvidge at this point, because I think that it is worth understanding that children are not born bad—they are really not. Given what we do and how they grow up and are nurtured, or how we parent them or bring them up as a society, we sometimes push them further away from being the best version of themselves. At some stages, potentially, they cannot get back to that, but we have already heard that, up to the age of 25, there is a good chance that people can make quite significant changes in their lives.

We are looking at the age of 12. Lynzy can give an example from when she was 13, when she first interacted with the justice system.

Lynzy Hanvidge: The first night I went into care was in May 2007. It was Friday night, and I remember I was away to baby-sit just along the street from where my mum lived. When I came home that night, there were loads of police outside the flat that we lived in, and social work was there. When I went up the stairs, they told me that I, my brother and my sister were getting taken away from my mum.

I remember feeling angry and sad. I did not know what to do. I did not want to leave my mum. They tried to force me. The social workers tried to force me out of the house, and that did not go down too well. As you can imagine, being 13, I had all these emotions building up. I kicked off a little bit and I told them I did not want to leave my mum. My mum was going to be left by herself. They took my behaviour as harmful behaviour, as if I was just kicking off. That is how it felt to me—as if I was just kicking off for the sake of it.

They put me in handcuffs in my mum's house in front of her and my brother and my sister. I was 13, my sister was six and my brother was 15. They took me out of the house. I was not even dressed properly. I remember—my mum will kill me for saying this—having jammies on that had a hole in the back of them. I did not realise that they were the ones I had put on, but they still had me cuffed at the front and they forcibly removed me from my mum's house.

I got my first charge that night. When I got to the bottom of the close, they were pulling me about the place—I was quite a wee girl when I was 13—and I hit him. It was just that I wanted him away. I wanted to get back up the stairs and make sure my mum was okay. I got taken to the police station that night. This happened at about 10 or 11 o'clock at night. I was not picked up until about half 7 the next morning. I was taken to a children's home where my brother and my sister were. They had spent their first night in a children's home. I spent my first night in care in a prison cell, locked up. I had not done anything wrong, but I felt like I had done something wrong.

That was my first experience of being charged or being involved with the police, and that was them taking me to a place of safety. It did not work out that way for me.

The Deputy Convener: Lynzy, can I thank you on behalf of the committee for the candour of your statement? I do not think that anyone can fail to have been moved by that, so thank you for your

bravery in sharing it, and we will carry it with us throughout the deliberations here.

Given that story, what we have heard and the unanimity on the panel, I am struck that the age of 12 is the floor—it is the de minimis position set by the UNCRC. When I hear your story and I see the Scottish Government's view that it has picked the age of 12 because it is a nice fit, as that is when people go to high school, I would like it to meet you. I would like it to hear your story and the reasons why you were accused of offending behaviour when you were doing what anybody in this room would probably have done in your circumstances. Thank you so much.

Oliver, do you have any further questions?

Oliver Mundell: No, but I will just quickly say that it is not just about age. When we hear a story such as that one, we can see that it is also about the way in which the criminal justice system decides to treat people. Sometimes, for a variety of reasons, compassion does not come through in the way the system works. That is very frustrating and it is sad to hear.

Lynzy Hanvidge: It is dehumanising. You do not feel like you are valued or like you are a human. You are just another wee person who is causing trouble, and that is what they do. They put you away and you are left there, and then you come out. I remember that, the next morning, at half seven, I got a bowl of lentil soup and bread for my breakfast, and nobody spoke about me being in the cells that night. I was just expected to deal with it, and that was that. They went on with what they were doing.

Thank you for listening to my story.

The Deputy Convener: Thank you for sharing your story. I am really struck by the fact that we are, as a Parliament, coming to terms with an understanding of trauma and looking to all our working practices across public life from a trauma-informed perspective and what happened to you is the antithesis of that—it is the complete reverse of that. A trauma-informed approach to what you were going through, being separated from your mum, would never have involved adding additional, horrendous trauma to that by putting you in a prison cell overnight.

It comes back to what both Claire Lightowler and Marion Gillooly were saying about looking to why young people are exhibiting harmful behaviour, understanding what unresolved trauma, attachment disorder and loss can do to behaviour and meeting that with a more appropriate response.

What would a more appropriate response in terms of a trauma-informed approach to dealing with harmful behaviour look like?

Claire Lightowler: When we get it right across Scotland, this is what happens—this is not linked to the age of criminal responsibility. When we see the child, we understand the context for their behaviour. We challenge, where appropriate, why they are behaving in particular ways and we bring in the professionals we need. We work out what the child needs from across psychology and social work, but mainly from those who have a direct relationship with the child, supported by that team of professionals.

When we get it right, that can and does happen. The issue about the criminal responsibility angle is that it encourages sole responsibility for behaviour to be placed on the child; what they are externalising becomes the focus. That means that we can miss what is going on. Everybody can miss what is going on with the child at certain points because we are so focused on how they are harming others.

It is important to keep that in mind and to really understand that rather than just attaching a criminal responsibility label to a child. If we understand the context, it allows us to get under the surface and better support that child as well as reduce the risk for others.

Marion Gillooly: As Claire Lightowler says, when things work well, it is when professionals work well together, always thinking about that child and what they need. It is about service providers such as Includem providing relationship-based support that allows workers to get to know that child. They need to find out what the child's experience has been by listening to them. They can then start to help the child work through how that experience has influenced their behaviour, to think about the consequences of that behaviour and how to develop different ways of coping. All the while, they need to acknowledge what has happened and understand what has happened for that child, which is really important. It is about helping the child to understand what has happened and, crucially, it is about removing the inference that there is blame for their experience. That is something that we are passionate about.

Claire Lightowler: The other element of this is to keep the child included in various settings. Susan McVie alluded to that in terms of school inclusion but it is also about inclusion in social activities and in groups such as youth groups. We need to try as much as possible, wherever possible, to ensure that support is put in place for the child to continue doing things that will help them to step away from problematic and challenging behaviours.

Obviously, sometimes keeping a child included is very difficult to do and care protections are needed in relation to how that child can engage in certain circumstances, when we are talking about

the more serious end of offending. However, wherever we can, we need to keep children included. It is a key factor in diminishing the likelihood that they will continue that pattern of behaviour.

Duncan Dunlop: Lynzy Hanvidge's story is not unusual. I was with two young women last week—both of them are just 20—and for both, their first memory of their experiences of care was of the police removing them from their family. It is a really blunt instrument. The police are there because it is the blunt tool that we are currently using but we know what goes on in relation to the statistics on care-experienced people's involvement in the justice system. The minimum figure is on record as 30 per cent-plus; that means that a third of the young people who are in Polmont would be care-experienced. That is a very crude statistic. I remember going to Polmont when Derek McGill was governor and he reckoned that it was closer to 80 per cent.

You are looking at a huge proportion of a small population. Only 1.5 per cent of our young population is care-experienced. Why are they ending up in those spaces? In the adult prison population, the proportion could be as high as 50 per cent. We really need to look at that. It is not a matter of saying, "Oh, that's just care-experienced people". If we extrapolate that out into the severity of what we see as offending behaviour when we are incarcerating people, that is the population that we have to consider and in relation to whom special measures might be required.

10:45

The Deputy Convener: Thank you. Wow. We will move on to Mary Fee. I do not particularly want to leave that line of question, but I think you are going to pick up on it, Mary.

Mary Fee: Yes, I am. From the comments that the panel have made, it is clear what your views are on raising the age to 12, so I will not ask you to comment any further on that. I am interested in where moving the age of criminal responsibility to 12 sits in relation to the GIRFEC approach. Is that at odds with GIRFEC or does it work in co-operation with GIRFEC?

Marion Gillooly: I guess that I am going to repeat myself. It is a starting point. GIRFEC is about the things that we have been talking about. It is about not making judgments about children. It is about keeping them at the centre, asking them for their views and respecting their rights.

As I have said, this is a start, but it is not enough. If we are going to take a getting it right for every child approach, we need to think about how we move forward. If we make 12 the age of criminal responsibility, how do we then move to raise the age further?

Mary Fee: Before I bring Claire Lightowler in, it might be helpful to get on the record the maximum age to which the getting it right for every child approach applies.

Marion Gillooly: GIRFEC considers a child to be a child until they are 18, which is in line with the UNCRC definition of a child.

Mary Fee: Okay. Thank you.

Claire Lightowler: That is exactly what I was going to say. The UNCRC and GIRFEC treat children as children up to the age of 18. Something happens when children display harmful behaviours to others that means that we struggle to keep hold of the fact that they are a child, and if they are under 18, they are still a child and still require a range of protections of different types. Because they are still children, there are also exciting opportunities to deal with them and help them to address and change their behaviour and the issues that underpin it.

If we are honest, we as a society have struggled to remember that children are children up to the age of 18, particularly when we talk about children who are involved in more serious offending. Keeping that in mind at all points of the system becomes more and more difficult for people and for different parts of the system. If we are to truly get it right for every child, I suggest that we need to keep in mind that they are a child. They might be causing significant harm to others and various interventions and support might need to be put in place to minimise the risk that that child poses, but they are still a child and we must always hold on to that.

Duncan Dunlop: Lynzy Hanvidge has a really good example of what we are talking about. We see GIRFEC as getting it right for children up to the age of 18 but Lynzy's example, involving someone she knew from her care experience, shows what happens to them when we do not, and what the consequences are later on.

Lynzy Hanvidge: When I was young, I had a friend—I would still consider him to be a friend. He grew up in care all his life. At the age of 13, he started displaying some harmful behaviour and running away. He was sent to a residential school. He ran from there too because he did not feel safe. He ended up in secure care for running away, but nobody ever asked him why he was running away or why he behaved the way he did.

He went from secure care back into residential care, back into secure care, back into residential care, all the way up until he was 16. He was let out of secure care a month after his 16th birthday and not even three months later, he was in young

offenders. He has been in and out of young offenders for the past five years, and he is now in an adult prison. He was out on licence and he told me, "I'm going to do something silly, Lynzy. I need to go back to jail." I asked him why and he said, "I can't do it out here. I don't know how to live in the outside world." He was institutionalised because nobody cared enough to understand why he behaved in the way that he did. They cared more about the behaviour that he displayed.

Raising the age of criminal responsibility to 12 would not meet GIRFEC. We have to have a child-centred approach. If somebody had taken the time to listen to my friend all those years ago, his life could be different today. He faces another 10 or 20 years of going in and out of prison. Is that fair?

The Deputy Convener: Thank you, again. The texture that you provide with your stories is invaluable. They are symptomatic of a lack of a trauma-informed response to such situations.

Mary Fee: Thank you, Lynzy, for your honesty and bravery in sharing those stories. My next question was to have been about the long-term impact on young people who are involved in the criminal justice system at an early age and about the level of offending and disorder that quite often affects their whole lives. Obviously, Lynzy's stories have demonstrated that clearly.

Duncan, do you have anything to add in relation to care-experienced young people?

Duncan Dunlop: It has a lifetime effect. The story that Lynzy told was really sad, and it is not uncommon. They get used to the system, which is how they know how to perform in it.

When we worked with the Education and Culture Committee in the previous parliamentary session on raising the care-leaving age, a young man called Tony McDonald talked very candidly about how he would get fevered up when he left Polmont. He went the whole way through the care system and spent six and a half years in prison after it. He managed to turn himself around—he is now 23 and a half and I am proud to say that he is doing very well. He talked about getting fevered up the night before leaving prison because, on leaving, he did not know what to do. He would have his 20 or 30 quid to get back home, he would buy his bottle of vodka to take on the train and, when he got home, he would end up back in the cells. In fact, that was where he wanted to be as he knew how to work in an institution.

As others have said, any hope for the young people we are talking about lies in relationships. However, what breaks that is our use of the very blunt instrument of the justice system, which deals with the behaviour that is being displayed. However, why is that behaviour being displayed? It is because, in care, the young person does not normally have a relationship that has given them the lifetime love that they require to understand the world. They lash out because they do not have our language, education or communication ability. I asked Tony what the problem was. He said that he did not know how to speak about or communicate all these feelings that he had. It is the solidity of the relationships around young people that can give them the stable loving structure that enables them to not get engaged with the behaviour. Whatever we do—whatever service, intervention or justice punishment that we bring in—we have to bring it back to the relationship.

The opportunity is in looking at a culture shift, and that can certainly happen with regard to policing. The fire service did it—this is a slightly crude example—as it went from simply putting out fires to trying to prevent them. There could be a similar culture shift in policing. The police have a key role and they are certainly not alone in this, because it seems that we use them as a system when we do not know what else to do. That is symptomatic of a system that is not working, which is why there is a care review going on. We know that a disproportionate number of care-experienced people get stuck in the system. People do not bring them up; institutions do.

If you want to look at the financial cost, it costs on average £100,000 a year to bring up a child in care, and it costs £37,000 to £40,000 a year when they are in the adult justice system.

We go beyond the moral issue—that is what life is. I have met several young people who have said that they thought that either their life would be spent doing a life sentence or they would not have a life at all. That is not an exaggeration: we lose a care-experienced person under the age of 25 once a month on average in this country—they die. For most of them, that is probably a consequence of being involved with the justice system for lower-level offences. That is what is going on.

The consequence of us getting this wrong is horrendous, and we need to get a lot better at tracking the issues, statistics and everything else. As a society, we are getting far more turned on to the issues and where they really need to be addressed. As Alex Cole-Hamilton said, we are doing this with a trauma-informed approach and by understanding adverse childhood experiences and the like, but we have to bring in the services. We know the issue, so what will we do to fix it? We know that policing in its current guise does not work.

Mary Fee: Culture change can take many years. It does not happen overnight. Is there enough flexibility in our welfare-based approach to make tweaks and changes to make things better

while we go through the longer process of culture change?

Duncan Dunlop: Culture change needs leadership. If we look at this country, there are probably still people out there who would back capital punishment if there was a referendum on that, but this Parliament does not back it. The Parliament needs to start showing leadership.

Mary Fee: Do we need to be more bold?

Duncan Dunlop: We need to be much bolder about showing that we are going to move on this issue. That is why looking seriously at the issue around the ages of 16 to 18 creates space that other solutions and cultures can come into and populate to make it work differently. Unless that happens, we may get a little bit of incremental shift but we will not get to the stage of doing things differently. We need to create that space as people out there may have the solutions, and things may then start to come to pass.

If we look at policing and sensitive issues such as how the police interview witnesses or victims of crime—we talked about places of safety earlier—we see there are a lot of ways in which we could address the matter differently, even just in terms of police involvement. However, I do not think that the police are the solution. They are brought in as a blunt instrument at the end when we do not get it right.

Marion Gillooly: Our experience of supporting young people who have been involved in offending behaviour is that one of the difficulties is that their sense of belonging and inclusion is with their peer group, who are often also involved in similar harmful behaviour. One of the challenges of supporting a young person to make changes in their life is the requirement to support them to remove themselves from where they feel safe. That is a really big issue, and if we come to it too late the chances of success are much lower.

I agree with Duncan Dunlop that we need to be bold. We need to have leadership demonstrated to us and we need the Government to be brave about committing resources to the services and supports that we have in Scotland, which are often not resourced well enough to provide the levels of support that we know that they could.

Earlier intervention is needed, whatever that means, and I do not just mean early years. We need early intervention when we know that there is an issue that can be resolved. There are organisations and local authorities with staff who are trained, skilled and experienced and would be able to provide support if only they had the capacity to do that.

Claire Lightowler: I completely agree. This is a culture change and culture changes never end—it is an on-going process of improvement at a practice level as well as a policy level. It will always require attention, but there are moments such as this when we can send a clear message, as well as removing the additional obstacles to enabling children to address their behaviour that a criminal lens creates. It is an important marker, but it needs to be part of a much broader range of actions and activities at all levels and in all areas of practice. Policing is one such area; residential childcare is another.

I am struck by what Duncan Dunlop and Lynzy Hanvidge have said about the relationship between the care-experienced journey and contact with the justice system. It is important to acknowledge that most care-experienced young people do not go on to offend—we need to make that very clear; of course they do not—but children who are involved in offending very often have some level of contact with the care system or some trauma and adversity in their background. Both of those things are true at the same time so, because we do not want to stigmatise people, we cannot just identify all children experiencing adversity and do work with them. It is not as simple as that.

However, when we see it on the other side, in terms of children involved in offending, there is much more that we can do to understand why and what that comes from. It is also important to acknowledge the issues that the system adds to that mix; it is not about a child acting in isolation. Despite what is going on in their families and communities and how that is playing a part, the system can also make their offending worse.

That is particularly the case, for instance, in residential childcare, where we still hear horror stories of children being criminalised for throwing something at a member of staff, trashing the room or taking some food. The police are called and the situation is exacerbated by the system imposing that criminal lens.

We did some interesting research on that with staff in residential childcare. Nobody sitting here in a committee room thinks that that is the right response, and nobody thinks that they will phone the police in that circumstance. However, if there is a lone worker and a situation is escalating that they do not know what to do about and they are frightened about it, without the right support and training around them they may well phone the police, and that can have the knock-on effects.

It is really important that the approach is nuanced. It is not about blame and we need to take people with us in that broader culture change.

11:00

The Deputy Convener: We should reflect on the idea that we need a culture change. I worked with Duncan Dunlop very closely during the passage of what became the Children and Young People (Scotland) Act 2014, which brought in provisions relating to the age of young people leaving care. One of the issues that we tried to address was the devastating reality that when a young care-experienced person dies, as they do every month, there is no formal mechanism for understanding the circumstances around that death or what might have prevented it. That is symptomatic of the fact that we are not trying to understand the basis of trauma that leads to harmful behaviour. We need that culture shift so that we stop asking, "What's wrong with you?", and start asking, "What happened to you?"

Fulton MacGregor: It would be remiss of anybody who contributes to the debate not to thank Lynzy Hanvidge for telling her powerful story. As I said to the previous panel, I am an ex-social worker and an MSP, and I feel a compulsion to apologise for the treatment that she received that day.

The discussion has moved on since she spoke, and we have talked about the societal change that needs to take place. Professionals who work with young people need to realise the consequences of young people receiving criminal convictions, as has been outlined very well. This debate is about raising the age of criminal responsibility to 12, but we might want to go further, as has been mentioned by all panellists.

I want to explore the children's hearings system, which we explored with the previous panel but not to any great extent with this panel. The children's hearings system that we have in place is good and unique, but how could it better deal with young people who come forward on offence grounds?

Lynzy Hanvidge: The system should not scrutinise a young person for their behaviour but try to tease out where the behaviour is coming from. A young person will not act out and display harmful behaviour for nothing; there will be background reasons. If we do not understand that, we cannot address the harmful behaviour.

Duncan Dunlop: This came up in the previous panel. We know that children accept offence grounds without having a clue what it means. They just go through processes, and that is another process. Children in the system see a lot of professionals and a lot of people with titles, and they very rarely get legal representation. I think that about 90 per cent of the legal representation within the hearings system is for parents. That is not necessarily the case for offence grounds.

Just as children do not understand the offence grounds, we doubt sometimes that panel members understand that children can get a criminal record that will be with them for life as a result of being referred to the hearings system on offence grounds. There is a real problem with voice and with understanding what is going on. We have campaigned for a long time for greater representation of advocacy. Less than 3 per cent of young people have advocacy in the children's hearings system, which is unacceptable in this day and age. That is about to be improved to a limited degree.

If we are to understand the child's perspective when they turn up to a room like this one—I know that a hearing is not quite like this any more—we need to think about the best way that they can represent themselves and their voice. They can do it via a relationship that they trust, and that enables them to say, "This is what's going on for me. This is what matters. This is why I was doing what I was doing. This is the person or the things that will help me to feel safe." That relationship might be with their school or, more likely, somebody in the school. It might be a relationship with a granny or a brother or sister. It is really important that we start to understand matters from the perspective of a care-experienced young person or child. We will not get that on the day of the hearing, with a stranger—whatever title or intention they might have—who is asking what the issues are. We have to look at it very differently.

It is worrying how many people find out that what was agreed to as offence grounds through the structure of the children's hearings system is still with them in their 20s, 30s and 40s. It is not just that it will come up in checks under the protection of vulnerable groups scheme or when applying for a job. It might need to be disclosed later on for other reasons, for example if the person becomes involved with the justice system.

Fulton MacGregor: The whole context of the children's hearings system comes into play, because many young people will be told that, if they deny the offence grounds, the matter will go to court, which can sound even more frightening and intimidating.

Marion Gillooly: I agree with Duncan Dunlop that hearings, or panel members, need to find a way of hearing the voice of the child, although I know that it is easy to say that but much more complicated to achieve it. The move away from using offence grounds is appropriate, as is having other grounds to call a hearing.

I agree that we need more advocacy and support for children and young people who are in the hearings system and who go to hearings. I have a concern about the provisions on advocacy in relation to interviewing a child. If we find it

almost impossible to provide advocacy in the hearings system, what will be different in providing the advocacy that the bill requires? We need to look at that.

We also need to look at what happens after a hearing and what supports are available for the child. We need longer-term thinking on how to sustain supports and services and how we invest in services in our communities. We need to think about how we address children's needs across Scotland, because something that works for a child in the central belt may not be available for a child who lives in the Highlands or in a remote area. That is quite a complex issue.

Claire Lightowler: Children experience contact with the children's hearings system as punishment. Raising the age of criminal responsibility and taking away those grounds will help with that, but a range of other things have to be done to change that experience. To an extent, the system will always be experienced as punishment, because children may not want to voluntarily do the things that a hearing recommends. That is an important balance and it is the place in which hearings sometimes sit.

I will throw in a couple of things to add to what Marion Gillooly, Duncan Dunlop and Lynzy Hanvidge said on the importance of listening to voice and relationship. The population that we are talking about have enormous speech, language and communication needs. We do not have research on that in Scotland, but UK-wide research has indicated that 70 per cent of children who come into contact with the youth justice system have a speech, language or communication need. We do not understand those needs properly, and we certainly do not assess for them. In practice, many of our services do not account for the fact that children may not understand. Because of those issues, children might answer in monosyllabic words and avoid eye contact, and, in the justice context, all those things can make a child look guilty. As well as the age and stage issue, we must take account of the speech, language and communication needs in the hearings context.

With the earlier panel, you had some discussion about 16 and 17-year-olds and heard that, unless they are on supervision, they are not necessarily under the remit of the children's hearings system. A clear message from GIRFEC and the UNCRC is that children should be supported through the hearings system. We can look at what needs to be in place and what improvements can be made in that system. There are important things to be done to improve what happens in the hearings system, but the level of understanding of children going through the court system is absolutely appalling. Even if the age of criminal responsibility is changed to 12, that will mean that 12 to 18-year-olds will potentially go through the court system if the level of the offence permits that. We have to think about that aspect as well as about what we can do in the hearings system to account for those issues.

Fulton MacGregor: We have heard compelling evidence from both panels about raising the age even further. It will be interesting to see whether that continues as the committee gathers more evidence in the next few weeks and months.

Is there an opportunity with the current children's hearings system to do things differently? For example, the reporter who gave evidence in the previous session told us that offence grounds were not always brought for children under 12—or even for those over 12. Is there any merit in reporters being given guidance on redirecting all offence grounds, if possible, unless there is public interest in a specific offence? I know that we are probably running out of time, convener, but I wonder whether the panel can briefly address that issue.

Marion Gillooly: Such an approach might take us some way towards raising the age of criminal responsibility beyond 12. If we are going to have 12 as the age of criminal responsibility, we are going to need to be creative and look at how we support and promote the wellbeing of the children who come into the hearings system.

Claire Lightowler: It is an approach that, in effect, raises the age of criminal responsibility. In part, what the committee has heard from us is that, by making some of those other cultural changes and improvements in practice clear to people, you are also making a statement about where they fit in the criminal responsibility lens. It is, in effect, the same thing.

Duncan Dunlop: It was a bold statement of the sort of thing that we are saying will be required to move things along, and I very much welcome it.

The Deputy Convener: We are almost out of time, but I want to come back and ask Lynzy Hanvidge, in particular, about the question of place of safety. I realise that this is quite granular detail to be looking at when we should really be looking at the wider issues raised in the bill, but I think that your experience suggests that police stations can be places of trauma rather than places of safety. I am not sure how much of the bill's detail you have read, but police stations are the only places named in the bill. Obviously, others are available, but do you think that police stations should still be the last resort for someone?

Lynzy Hanvidge: No. A child should never have to enter a police station, because having to do so—and being put in a cell—will traumatise

them. In our submission, we talk about a project being planned in West Dunbartonshire to have a safe room where the police can conduct interviews with young people. It will be in a council-run building, and there will be access to that building at any point in time. It will be in among other services in what is quite a child-friendly building—I work there—and the plan is to make the room itself child friendly, too. It will not be one of these big interview rooms; it will be colourful; and it will be soundproofed so that nobody can hear what is going on. It needs to be a place where a child can feel comfortable and does not feel that they have done something wrong; even if they have displayed harmful behaviour, you will never get to the root of that behaviour in a police station, at school or in several other places that have been suggested to me but in which our young people would not feel comfortable. It needs to be outside the police system.

The Deputy Convener: I think that you are absolutely right, and I share your view about interviews. However, the place of safety provisions in the bill refer not to investigative interviews but to those times when a young person needs to be removed from a situation because a police officer deems them to be at risk of doing harm to themselves or others. What do we do in such situations? Where do you think young people should be taken if you feel that a police station is not a place of safety?

Lynzy Hanvidge: A new space should be created. We keep saying that we are going to provide the best place for children to grow up in, but what about having a child-centred approach to this issue? Where would you want to be taken if you were a child? You would not want to go to a police station, because that would scare you even more. Some of our young folk have mentioned schools and so on. However, I am not sure, so I will pass the question to Duncan Dunlop.

Duncan Dunlop: There are a couple of things you can do. For a start, you can design such a space with children. Someone who went through secure care and the prison system told me that secure care was worse than prison. Because it was such an enclosed space, she felt that she had less freedom. We need to consider how we create spaces to keep children safe. There are very few children who present a risk of doing significant harm to themselves, and we need to understand why they are in that position.

11:15

I return to an issue that Claire Lightowler raised. We ought to raise serious questions about the police being called to a residential care house, because that results in stigma being attached by people in the community, who think, “That’s where the police are.” Normally, that is to do with someone running away. Why are the police involved? We ought to ask residential care providers why they use the police in those circumstances. They should not be allowed to use the police in that environment. Some of the offences are, frankly, ridiculous. Lynzy Hanvidge’s story showed how a trauma can end up turning into the offence of assaulting a police officer. We could easily design a place of safety. We have done that in the context of interviewing victims of crime, and I think that we could do that with young people.

I say to all members of the committee that there are many other young people who could give evidence in different formats and forums; they could go more deeply into some of these issues, if you require.

The Deputy Convener: We welcome that offer.

I have a question for Lynzy. You do not have to answer it. Do you have a criminal record as a result of that night?

Lynzy Hanvidge: I do not have anything that has shown up on a PVG or a disclosure check as of yet. My most recent charge was four days after my 16th birthday, so it is possible, depending on which jobs I apply for, that a potential employer might find certain things that took place a long time ago.

Many people I work with who are now in their 40s or even their 50s did things like smash plates when they were teenagers, and those offences show up. I am talking about behaviour that is normal for children. If I lived with my mum and I smashed a plate, she would not phone the police, but our kids are criminalised for things like that.

The Deputy Convener: Thank you for your honesty.

We have a few minutes left—we need to end the session at about 20 past 11. As my colleagues have no further questions, I invite the panellists to say anything that they have not had the opportunity to say.

Claire Lightowler: For me, the issue is also about justice, and the injustice of holding solely responsible children who are in extreme distress. We shy away from discussions about justice, because we think that justice involves being punitive, but that is not the case. The children we are talking about do not get justice. It is not appropriate to hold them solely responsible, and they experience a lot of distress. That is the wrong lens to view justice through—that is not what justice looks like.

Marion Gillooly: I agree completely with that. As a society, we need to take a good look at how we treat children and how we think of them.

Frankly, it is unfair to hold children responsible at an early age for actions that are influenced by their experience of trauma, abuse, neglect and loss, and if we are a just society, we need to do something about that.

Duncan Dunlop: I reiterate that I believe that the Parliament has a good way of operating in reaching out to society. That is why people like us are giving evidence today. We will give you any evidence that you require to be bold and to show leadership. It is not bold to have a minimum age of criminal responsibility of 12. Frankly, that is embarrassing. We have an expectation that you will go further, and we will give you any evidence that you require to enable you to go much further and to support you with that narrative. I ask you to please keep that in mind.

The Deputy Convener: Thank you, Duncan. Lynzy Hanvidge will have the last word.

Lynzy Hanvidge: I would like to share a quote from our submission:

"Remember that they are weans! Some people might be slower at learning than others."

Members of the committee have the power to make a radical change and to have an impact on so many young people's lives. As Duncan said, if you come to meet us, we will help you along the way.

The Deputy Convener: You have certainly helped us in our deliberations this morning, and I thank you for that.

We have come up against our time limit, but if other thoughts materialise or there are things that you forgot to say, please get in touch with the committee. This is an on-going process. We have all been very impressed by the depth of your knowledge, so we will be tapping it again.

11:19

Meeting continued in private until 11:34.

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