OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 28 May 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 28 May 2019

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JUSTICE COMMITTEE
15th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Audrey Baird (Kibble Education and Care Centre)
Carol Dearie (St Mary's Kenmure)
Alison Gough (The Good Shepherd Centre)
Colin McConnell (Scottish Prison Service)
Lesley McDowall (Scottish Prison Service)
David Mitchell (Rossie Young People's Trust)
Wendy Sinclair-Gieben (Her Majesty's Chief Inspector of Prisons for Scotland)
Dr Helen Smith (NHS West of Scotland Child and Adolescent Mental Health Service)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 28 May 2019

[The Convener opened the meeting at 10:00]

Secure Care and Mental Health Services for Young People

The Convener (Margaret Mitchell): Good morning, and welcome to the Justice Committee's 15th meeting in 2019. We have received no apologies.

Agenda item 1 is the first evidence session in our short inquiry into secure care and mental health services for young people in our penal and care systems. I am pleased to welcome Wendy Sinclair-Gieben and Dr Helen Smith to our meeting. I refer members to papers 1 and 2, which are public papers, and paper 3, which is a private paper.

Before we begin, I would like to take this opportunity to express the committee's sincere condolences to the families and friends of Katie Allan and William Lindsay—young people who tragically died in custody.

I invite Her Majesty's chief inspector of prisons for Scotland to make a few short opening remarks about the review of mental health services at Her Majesty's Prison and YOI Polmont. We will then move to questions.

Wendy Sinclair-Gieben (Her Majesty's Chief Inspector of Prisons for Scotland): First of all, thank you for inviting me to give evidence. I am very grateful.

Secondly, I need to make it clear that I think that when any young person dies in custody, it is a tremendous tragedy for the family and for Scotland as a whole. My sympathies go out to them. Members might not know that my father committed suicide, so I have an absolute understanding of the misery and tragedy that it can cause.

The mental health review was commissioned, as members know, following the deaths of William Lindsay and Katie Allan, but it specifically excluded our looking at those two cases. In fact, we did not look at any individual cases because we felt that case reviews were not within the terms of reference.

We did a considerable amount of work within a very short timeframe. We talked to families, to children and to young people in custody—young people in HMP and YOI Grampian, who had been in Polmont. I visited two secure centres to have a look at the differences there. We did a huge clinical review, which Helen Smith will be able to talk about in more detail than I can.

We were not able to complete all areas of the work because of the timescale. For instance, a concern for me was that we should match the fatal accident inquiry determinations and recommendations with the recommendations from the death in prison learning audit and review. I would still like to complete that piece of work.

Two things came out clearly. One was that there is inconsistency or patchiness in the information that arrives in Polmont with the child or young person. The second thing that became clear was that all the academic evidence—I read more than I really wanted to know—says that social isolation is one of the key indicators of a person's being at risk. We have, in Scotland, a culture of remand prisoners not being given the same opportunities as convicted prisoners—for very good reason—but social isolation is, nonetheless, a real issue. Those two issues came out.

I want to make it clear that we did a lot. We commissioned the University of Glasgow to do an academic evidence review; its report is within our report. We formed three short-life working groups. The first one looked at information flows, the second one looked at everything to do with clinical and wellbeing issues, and the third looked at the DIPLAR and the existing strategy for self-harm. All three working groups were initiated at a round-table meeting at which we invited, to be frank, the world and its brother to advise us advice on how to take forward the review.

One thing that was interesting to me was how complex it was to find out about other reviews that were going on at the same time, or had recently been completed—who had chaired them and who was chairing them, and what their recommendations were and whether they had been fulfilled. One of my recommendations—as you will read in the report—is for a centralised co-ordinating body, run by the Scottish Government, that can, when a review, task force or whatever is starting, provide a toolkit and say where the information that has previously been gathered is. I was constantly aware that I might be treading on the toes of people who had completed major pieces of work.

That was a very brief canter through what we did.

The Convener: It was a very helpful canter through it.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Thank you, convener, and good morning to the panel. I would like to start by getting a better understanding of the mental health needs of young people when they first enter custody. I note

that the report speaks about the impact of adverse childhood experiences, and Wendy Sinclair-Gieben spoke about social isolation. Have the mental health needs of young people changed in recent history?

Wendy Sinclair-Gieben: I cannot answer that, but I am sure that Dr Smith can.

Dr Helen Smith (NHS West of Scotland Child and Adolescent Mental Health Service): Good morning. From my clinical viewpoint, there has been an increase in the number of young people with neurodevelopmental disorders—in particular, autism spectrum disorder and attention deficit hyperactivity disorder. Also, as Jenny Gilruth mentioned, there are more adverse childhood experiences—young people from traumatic backgrounds and with trauma histories. When we looked at the secure-care estate, which is where I do most of my work, we saw that there had been a big increase in the number of young people with mental health difficulties. Whether they would all meet the criteria for having a mental health diagnosis is a different question, but I suggest that all the young people who come into custody have difficulties of one type or another.

Jenny Gilruth: Are the young people much more likely to have experienced some form of trauma in their life?

Dr Smith: Yes, definitely.

Wendy Sinclair-Gieben: We are certain that the reduction in the number of children who come into prison has meant that those who do come in are more likely to have a complex traumatic background.

Jenny Gilruth: Wendy Sinclair-Gieben mentioned, in her opening statement, inconsistent information. I was quite taken by that.

I note that the executive summary of the report says:

"During the HMIPS inspection of HMP YOI Polmont, we found that the wellbeing opportunities afforded for young people were evidence-based, leading edge and impressive. However, the take up of the remarkable opportunities remained consistently poor."

Why, do you think, is that the case?

Wendy Sinclair-Gieben: There is a combination of reasons that we have looked at quite extensively. One reason is the young person's wishes; they prefer to stay in their room and feel safer there. Why do they feel safer? I cannot say. When one speaks to young people about coming into prison, they certainly feel very nervous. When they are in—Polmont has a very good peer-mentoring system—they talk to other prisoners and they start to relax, but there is fear of the unknown and dealing with the trauma of coming into prison, so they just want to stay in their room and do not want to come out. It is a difficult problem, but the situation has certainly improved: the initial inspection report showed that 50 per cent of opportunities were not being taken up, and that has come down to 30 per cent, so there is progress.

Dr Smith: I cannot add much to that. The low uptake might be because of elements of mental health, but I think that the situation is much more as Wendy Sinclair-Gieben described.

Jenny Gilruth: Do the wellbeing opportunities include educational opportunities?

Wendy Sinclair-Gieben: They certainly do: there is a range of really excellent educational opportunities.

Jenny Gilruth: An eighth of curriculum for excellence is dedicated to health and wellbeing, so are those educational opportunities benchmarked against CFE? It would be interesting to know whether that is the case in Polmont and across the piece.

Wendy Sinclair-Gieben: Yes, they are.

The Convener: Before I bring others in, I have a question for Dr Smith. Did I pick you up correctly that everyone who comes into Polmont has mental health issues?

Dr Smith: It is very likely that a very high number of them will have mental health difficulties, but whether they have a diagnosable mental health disorder is a very different question.

The Convener: Is there never an exception to that? We know that people go to Polmont for a number of reasons and with different backgrounds.

Dr Smith: You are suggesting that young people who are remanded might have other difficulties, the impact of which is their offending behaviour. They have usually had ACEs of one description or another, so it is unlikely that there would not be some problem, but whether it is at a level that needs a mental health input would be debatable.

The Convener: Is such an assessment done when someone first comes in?

Dr Smith: Yes.

The Convener: For those who do not have such a diagnosis, is there a different path? Such issues could develop quite easily as the result of the trauma of being in a secure unit.

Dr Smith: As Wendy Sinclair-Gieben said, there is a peer-mentoring scheme. There are also youth workers, who are very highly thought of among the young people in Polmont. There are wellbeing services and there is peer support—there is lots of

support for those who do not need the mental health team.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. I will follow on from that line of questioning. Can Dr Smith give us her assessment of whether there are adequate mental health services? What is mental health services provision like for young people who have significant mental health problems? What do they need most and is it there for them?

Dr Smith: Are you asking about the situation in Polmont or in secure care? I know that we are looking at both, today.

Rona Mackay: I am asking about Polmont.

Dr Smith: In Polmont there is good access to mental health services—much better than there is in the community. People are seen within eight days, on average, which is good compared with provision in the community. There is nursing input, there is psychology input and there is psychiatry input: there is a wide range of disciplines to support people.

I think that some aspects of care interfere with, in particular, nursing staff being able to do what they would like to do. For example, lots of medication must be dispensed, which takes a long time in an establishment as large as Polmont, as you can imagine. That restricts their activity in some of the interventions that are available.

Also, before the review and the inspection, in Polmont there was no psychology input for young people under the age of 18. That has been resolved—there is a psychologist available for them, so that gap in services has been filled.

Rona Mackay: Are you, when young people first come into Polmont, adequately informed of their needs and of their medical background and mental health history?

Dr Smith: The situation is very variable. In my experience, some young people, particularly those who have been sentenced, come in with a lot of information, but we can get very little such information on young people who are remanded.

Rona Mackay: Could that be improved with more interaction?

Dr Smith: It definitely could.

Rona Mackay: I will ask about social isolation, which you mentioned and which features highly in the report. How does isolation exacerbate the situation of young people who are experiencing trauma just because they are in Polmont? What could be done to alleviate that, and what measures could be taken to avoid it?

Dr Smith: I think that that might require a joint answer. I will start on the effect that social isolation can have on the person's mental state. Obviously, when a person is left alone doing no activity, they are alone with their thoughts. They might ruminate and become quite negative in their thinking. There is no form of distraction whatsoever from those negative thoughts, so that can really impact on their mental state and how they feel about things. Wendy Sinclair-Gieben has made some recommendations on resolving that.

Wendy Sinclair-Gieben: I have made a vast number of recommendations: I apologise. I tried to reduce the recommendations to seven, with suggestions beneath those—but, inevitably, we ended up with something like 81.

There are ways and means to deal with social isolation. The primary one would be through legislation, which currently implies that remand prisoners are not allowed or are not required to work. Their not being required to do that means that when a member of staff says, "Come on—out of your room. Time to come out and mix and do things. It's great fun. Go and pat the dogs", the young person can say no, and can say that they do not have to because they are on remand. We need to remove that possibility and recognise that a degree of coercion should be available to get people out of their room, to get them to take advantage of opportunities, to go to induction and so on. That would be a legislative solution.

The second thing, for me, is to do with in-cell technology. Those of us who have teenagers know that young people are welded to their phones, but in Polmont we take away from them their primary means of communication. Currently, if the person is distressed at night, they can ring a bell and somebody will come and give them a phone so that they can call Samaritans. That requires a level of self-help behaviour, but if they could just phone a helpline or phone their family or whoever from their room without having to stigmatise themselves, that would be a huge benefit. I certainly see that as a quick win.

10:15

Rona Mackay: I understand exactly what you are saying, but would their having phones also pose risks?

Wendy Sinclair-Gieben: Not that I can see. I cannot see any difference between using a phone in their room and using the phone on the wing: such use would follow exactly the same security guidelines. People might ask what would happen if the person phoned their family and became distressed. They could still phone the helpline and could still ring the buzzer to ask for staff help. That would be no different from when they might become distressed in their room without access to a phone.

Rona Mackay: Could the Scottish Prison Service do that, or would it require legislation?

Wendy Sinclair-Gieben: That would not require legislation. It would need support: one can imagine that the red tops would have difficulty with it.

Liam McArthur (Orkney Islands) (LD): Just for clarity, I think that what you are talking about is the ability to make phone calls in cell, as opposed to allowing young people to retain mobile devices and whatnot in their cells—

Wendy Sinclair-Gieben: Absolutely, yes.

Liam McArthur: —which I think absolutely would give rise to wider concerns in the Prison Service.

Wendy Sinclair-Gieben: They are cordless phones, but people have to enter their PIN and they can only dial the numbers that it has been agreed they are allowed to use. It is very safe. The other advantage of course is that staff can listen into the calls that are happening in the middle of the night, which is when most people get very distressed, and can think, "Oh right, we need to go and help."

Liam McArthur: This is a model that I think has been piloted in some prisons south of the border.

Wendy Sinclair-Gieben: Yes.

Liam McArthur: Has there been an assessment of the impact that it has had and the cost implications of rolling it out across the estate?

Wendy Sinclair-Gieben: Yes.

Liam McArthur: Can you share the details with us?

Wendy Sinclair-Gieben: The cost implications vary according to the age of the prison. Where there is already cabling into the cell, the cost implications are neutral. The cost of putting in phones is offset by the profits that the company that installs them makes from the number of phone calls. Inevitably, the number of phone calls goes up hugely. Rather than having to queue for a phone, worrying about how your wife's labour is going, you can just go into your room and phone in private. As a result, the company that installs the phones—and it varies with the company—makes sufficient money that the phones pay for themselves after two years, so it is worth doing. I put the phones into a juvenile prison with 400 juveniles and thought, "Oh, how much will this cost us?" It is interesting that, at the end of a year, no phones had been damaged, our levels of violence had gone down 40 per cent and our levels of self-harm had gone down dramatically.

Liam McArthur: That is helpful.

Daniel Johnson (Edinburgh Southern) (Lab): Can I begin by thanking you for your report? It is extremely extensive and very detailed, so forgive me if I get some of the detail wrong, as I have not fully digested all of it.

I am interested in the provision of mental health services, and I get the sense that it is a mixed picture. The report talks in very complimentary terms about the initial assessment that is made with the nurse and says that the talk to me programme has the right intent, but the report also says that it is at times a tick-box exercise and that there is a lack of strategic integration with the health board. Am I right to conclude that there is a mixed picture? If so, where are the gaps in mental health provision?

Wendy Sinclair-Gieben: I will hand over to Helen Smith because, again, it is joint answer, but my feeling is that there is a lack of a mental health strategy across Scotland for prisoners and perhaps a mental strategy for young people. The mental health approach that they will get in the community, in secure care, in any form of residential care and in Polmont should be seamless and the same, so that it does not matter where or what they are coming from or where they are going to. Having that continuity and a seamless pathway of care is important.

In reality, provision is fragmented, in the sense that all the health boards do their own thing. What we have found in Polmont in particular is that the information transfer between secure care and Polmont or between community and Polmont is not rapid, so for a child coming in on Friday afternoon, the staff at Polmont are unlikely to get the full information until they have done the research on Monday, rather than being able to access the person's health record with a couple of clicks. Do you see what I mean?

Daniel Johnson: I absolutely do. It certainly echoes the frustrations that I have heard from people in the education sector about their experience of integration with mental health services. That is a point well made, but I am struck by some of the numbers in the report. It says that 50 per cent of young people in Polmont have some sort of learning difficulty or disability, a third have a head injury, and a very significant number have experience of care. I wonder whether the figure that is given is underreported. People in the children's sector have said to me that as many as 80 per cent of these children have some experience of care, whether that is kinship care or more formal care.

Likewise, as somebody with a diagnosis of ADHD, I have read academic literature that says that ADHD alone could account for 50 per cent of the young offender population, which would make the 50 per cent figure for young people in Polmont

with learning disabilities an underestimate. Do you agree that those figures are potentially underestimated? If so, by how much? The follow-on question to that is whether we need to have a much more proactive screening mechanism to detect these things. Does too much of the reporting rely on self-reporting and do we need to be more proactive in identifying such individuals?

Wendy Sinclair-Gieben: That question is more for Helen Smith than for me.

Dr Smith: In answer to your second question, yes, I think that we need to be more proactive in screening for the difficulties that you are referring to. One thing in my clinical practice that makes it very difficult is the transition of care, because the young people go from secure care to Polmont to the community—they move around. We all see the same young people, but I have to transition their care wherever they go if they are not in my area. That is not good care. It is not very safe in terms of the transition of information, so I agree that we need to be more proactive. That is probably within the remit of the at-risk work stream of the child and adolescent mental health services task force, which is looking at some of these young people. As Wendy Sinclair-Gieben was saying, there are so many reviews that overlap that it is hard to know where that issue is dealt with, but I absolutely agree that we need to be much more proactive for these young people.

Daniel Johnson: I have a final question that touches on the answer that Dr Smith just gave. I am going to give a shameless plug. At stage 2 of the Management of Offenders (Scotland) Bill, I explored whether we need to guarantee registration with a general practitioner for people leaving the Prison Service. Could that proposal help to manage the continuity of care?

Dr Smith: I think so. I do not know whether it would be doable—some people do not know where they are going when they are leaving prison or secure care, so it can be difficult to know where they are going to be placed—but absolutely it would help. It has been difficult for people to get registered with a GP.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a very brief supplementary that probably picks up on the point that Dr Smith just made. Dr Smith referred to the task force that was started by Dame Denise Coia. I wonder whether Dr Smith has found in her own work any potential areas of overlap. The minister said last week that the Government and the Convention of Scottish Local Authorities are currently looking at how to take the recommendations forward, and I wonder whether Dr Smith has any thoughts.

Dr Smith: I am a great one for believing in equality of care. There is a disparity in the care that people receive if they go to the secure units or Polmont or if they are in the community. My specialty is forensic CAMHS; there is only one team in Glasgow that provides that service and there is no other provision in Scotland. There is the interventions for vulnerable youth project that goes across boundaries, but that is not a multidisciplinary project and it can only do consultation at the moment. If you are a young person in Aberdeen, you do not get the same level of service that you would get if you were in Glasgow.

That goes for secure care as well. I am sure that David Mitchell from Rossie Young People's Trust will tell you that there is inequality in the care that is provided. In Glasgow, we provide enhanced access to CAMHS for young people who are admitted to secure care, but NHS Tayside does not do that in Rossie, so young people there do not get as much service as we provide in Glasgow. There is scope to pull all that together to give a much more national picture, including Polmont, and more nationwide support for these very difficult at-risk young people, but that would take more of a steer from people and a willingness to do that.

Shona Robison (Dundee City East) (SNP): We have touched already on the issue of interagency communication and working. We have heard that there is a lack of information on the child, that that information is variable and that the information flow is not rapid. Looking at the communication between agencies and the needs of young people who require multiple interventions, is it your judgment—and from what Wendy Sinclair-Gieben has said, I suspect that it is—that the agencies, whether it is the prisons, the courts, the police, the NHS or the local authorities, do not work together as well as they could? If that is the case, what needs to happen to improve information sharing? Should there be, for example, some type of mandatory protocol with timeframes? What is the solution to make sure that, first, there is good-quality information and, secondly, it is shared and shared rapidly? Are there any data issues that could hinder that?

Wendy Sinclair-Gieben: Yes, there are. There is, inevitably, the general data protection regulation. It is a real issue, so there needs to be a consensus agreement between all the relevant agencies. There needs to be a framework that has a minimum data set that everybody signs up to, understanding what the minimum data requirements are and what the standards of that minimum data set are, so that you can do the assurance and accountability and say, "Are we meeting the standards of the minimum data set?" I think that it can be done electronically. I do not

think that it is an easy task. Every agency works with the best intent, but my overwhelming feeling is that it is very hard to make decisions unless you are fully informed.

At the moment, sometimes people are fully informed and sometimes they are not, but what surprised me was that some people come into Polmont with a comprehensive dossier of information and some, for whom there is a plethora of information out there, come in with none. We need a consensus agreement on what information we will provide, how it will be transmitted and what standards we will be measured against.

Shona Robison: What mechanisms could be used to ensure that that happens? Would it have to be made mandatory and have some kind of legislative underpinning? What needs to happen to allow us to go from where we are at the moment, when there is such variance, to what you describe happening as standard?

Wendy Sinclair-Gieben: Other countries use a consensus agreement. Rather than legislation, it is a kind of agreement that agencies will work together. If you look at the whole-systems approach, there is that combined agreement that everybody will work together and share information. It works very well, so it does not require legislation. I think that legislation can assist, but—

Shona Robison: Is that consensus agreement working anywhere at the moment? Has it been tried here?

Wendy Sinclair-Gieben: My understanding is that it is, but I would have to go back into the evidence review to confirm that. If you look through the evidence review, you will see that it is in there. There is a document talking about consensus agreements.

Daniel Johnson: I want to raise one brief and very specific point around information sharing. We know how overrepresented care-experienced children are, so should that include proactively asking local authorities whether the individual has experience of care? I understand that that is self-reported at the moment. Would you agree with that?

Wendy Sinclair-Gieben: Yes.

10:30

Liam Kerr (North East Scotland) (Con): I want to follow up on Shona Robison's line of questioning on the consensus agreement. I may have missed the answer to this question, but who will drive that agreement? Which agency says, "We need a consensus agreement and everyone needs to sign up for it"? On whom does the onus lie to put that in place from now on?

Wendy Sinclair-Gieben: That is a good question, but it is not one that I can answer for you.

Fulton MacGregor: I, too, want to follow up on Shona Robison's line of questioning with quite a specific question. Is there a joined-up approach to address the needs of children and young people when they make the transition perhaps from a secure unit to Polmont?

Wendy Sinclair-Gieben: That is a difficult question to answer. I do not have all the details to hand. My feeling was that there was not a joined-up approach. However, I know that the SPS has been proactive with the secure care people in developing a standard operating procedure around transition. I think that there is a joined-up approach now, but previously there was not.

Fulton MacGregor: Did you get a sense of how often such transitions were happening?

Wendy Sinclair-Gieben: No. Do you have a sense of that, Dr Smith?

Dr Smith: No. It might be best to ask the second panel.

Fulton MacGregor: Okay.

The Convener: You say in the report that the wellbeing opportunities are really good, impressive and cutting edge, but that take-up is low and that is compounded a little bit by staff absence. Can you elaborate on that?

Wendy Sinclair-Gieben: Sure. The SPS is under significant and compelling pressure at the moment. The population rise means that staff are hugely under pressure. When staff are under pressure, one of the side effects can be a high absence level. In the last four prisons that we have inspected, we have noted that there has been a very high absence rate; that was true of Polmont, as well. People certainly tried to protect the wellbeing opportunities; we found that Polmont was moving heaven and earth to try to get the kids out and up to the areas where they were doing the activities, but there were times when that was impacted by staff absence.

The Convener: Should that be looked at and contingency plans put in place, especially as there is a culture of not expecting anyone who is on remand to do anything? If we want to extend the opportunities, and at the same time the services that are available are not being taken up because of staff absences, clearly it seems an area—

Wendy Sinclair-Gieben: The number of places that were lost from staff absence was small, but certain specialisms would disappear. For example, if outside agencies such as the people who come

in with dogs to do the nurturing activity came in, staff would be moved around to make sure that the activity happened. However, staff absence could impact on, say, a group that was happening in the chaplaincy and that opportunity would be lost.

The Convener: Should there be contingency plans for that? People go on holiday, and people go off sick. If you are working with a skeleton staff or the bare minimum, it is clear that there will be a backlog.

Wendy Sinclair-Gieben: My understanding is that SPS has a contingency for that and that it uses it.

The Convener: Are you satisfied that that is sufficient? Would you suggest any improvements?

Wendy Sinclair-Gieben: No. I have talked extensively with Colin McConnell—I think that he is on the second panel today—and he might be better able to answer your question about staff absences and the population pressures, and the impact that those twin problems are having on the SPS.

I am fully aware that there are contingencies and that they are used. We saw those contingencies in action. For example, we saw people being called in on overtime; I think that it is called something else, but at the end of the day it is overtime. People were extending their shift. That certainly was happening.

The Convener: Before I ask my substantive question, I have a question for Dr Smith. When someone arrives, there is no assessment for eight days. Is that right? That is certainly sooner than it would happen in the community, but eight days still seems a very long time.

Dr Smith: When young people arrive in Polmont, they are seen by the reception staff and then they are seen privately by a mental health nurse, so there is, if you like, a screening appointment. If it is needed, the young person will be placed on a programme such as talk to me or substance withdrawal. If there is a further referral to mental health services, that happens in eight days. Every young person who comes into Polmont gets a screening appointment with a registered mental health nurse, which is excellent practice.

Wendy Sinclair-Gieben: That is not true of every prison, by the way.

The Convener: Would the action from the screening be to refer the young person to the assessment?

Dr Smith: The young person could be placed on the TTM programme, they could be given withdrawal support for drug substance misuse, or they could be referred for follow-up or further assessment by the mental health team.

The Convener: I ask the question because we know that the first 48 hours is a critical time.

There has been a comment that some services are subject to too many reviews; in particular, the type of review has been mentioned. The Council of Europe data seemed to present quite an upbeat picture, but I understand that Wendy Sinclair-Gieben's review looked at the Scottish centre for criminal justice research and that that positive finding was challenged. Issues were looked at around comparative analysis of prison suicide, different definitions of suicide and the varying quantity of data on suicide, all of which meant that the picture was perhaps not just as rosy as it seemed from the Council of Europe data. Can you comment on that?

Wendy Sinclair-Gieben: I can, yes. One of the things I discovered was that the University of Glasgow evidence review looked at one element of data—the collection of data. Even within its own review, it said that matching up how the data is collected and how it is analysed is very complex. We came to the conclusion that the ways in which the Council of Europe and the University of Glasgow collect data are different.

I looked at how the University of Glasgow arrived at its statistic of 125 per 100,000, or whatever the figure was, and it seemed that it was looking at the number of people who were in prison. The Council of Europe data looks at the number of people who go through the prison system. I am no statistician; I gave up. Given the very small numbers of suicide, the statistics can be misleading; that is why my recommendation is that it is really important that we have an analytic team that looks at the veracity of the data and how we compare with other jurisdictions.

It is easy to say that we do worse than England or whatever, but the numbers there are far, far larger. The other day someone quoted me the figures—I do not know how true this is—that although Iceland had one suicide last year, its rate is the highest because the number of people in prison there is very small, the number of suicides in prison is very small and one person equates to a very high number.

It is important that we unpick the statistics, because I can find no evidence to support either argument and the numbers are too small to extrapolate. If we look at the numbers over 15 years, we find that they go up and down like a sine wave; there does not seem to be a pattern of a rising trend, or a real concern over such a period. However, some statistics argue that there is and certainly the University of Glasgow argued that

there is; other statistics say that there is not. That is precisely why, as our report says:

"The review team recognise that some of the conclusions on suicide rates reached in the evidence review may be challenged"—

I would be one of those people challenging them—

"The review team is aware of the difficulties in interpreting potentially conflicting statistical data, including comparative suicide rates."

The data is conflicting. The report goes on:

"We therefore recommend that Scottish Government undertakes further work to better understand Scotland's position relative to other jurisdictions"

and also to look at the trends.

The Convener: I take on board your point about extrapolation, but it is clear that there is a challenge. I think that the committee would be very interested in that, because we understand that having meaningful data in the right context is important in addressing the issue.

Wendy Sinclair-Gieben: Yes; it is so important.

Liam McArthur: You mentioned in your opening remarks some of the work that you have done on the overlap between FAI processes and the DIPLAR processes. I am interested in finding out a little bit more about that. We have heard concerns around the delays in taking forward FAIs and the concerns that that gives rise to when it comes to learning lessons, as well as giving answers to family and friends, who clearly have questions outstanding. However, I also know that the parents of Katie Allan have expressed anxiety and concern about the fact that, even when FAIs take place, the recommendations are not being followed through. Has that informed or shaped your analysis of that interaction?

Wendy Sinclair-Gieben: I will say two things in response, one of which is that we absolutely ran out of time and were unable to look at the FAI determinations. That is a piece of work that I would love to do or to have done. I would love to see whether those determinations and recommendations match up to the DIPLAR review that happens and whether they are followed through and acted upon. We did not have time in the review to look at that.

Liam McArthur: Did you want to do that because concerns had been raised with you, similar to the concerns that Katie Allan's parents have publicly raised about FAIs or about all the recommendations of FAIs not necessarily being followed through?

Wendy Sinclair-Gieben: That was not raised with us. What was raised with us was the timeframe, or the length of time between the death and the subsequent FAI. I spoke to the Scottish fatalities investigation unit, which also has that concern; it is trying to set a target of 12 months, so that any death in custody is investigated within 12 months in order to overcome those difficulties.

Liam McArthur: That is helpful.

John Finnie (Highlands and Islands) (Green): Chief Inspector, given that we have you here, can you outline any potential challenges more generally with the Prison Service that you see in the months ahead?

Wendy Sinclair-Gieben: Good grief—that was a bit of a side blow. Yes, I certainly can. I am a simple soul, but I think that the unprecedented population rise is a huge pressure. We have approximately 700 extra people in prison at any given time, which is the equivalent of a large-sized prison. That pressure is no joke. I know that the SPS has no additional budget to manage those extra 700 people, which is a problem.

I do not think that we necessarily have the space for those people. The SPS has to put two people into rooms that are primarily designed for one—I think that the human rights people are going to be exercised about that.

I also understand that the unions are considering actions short of a strike, which is a pressure.

I think that the SPS is facing a population pressure, a budget pressure, a staffing pressure with sickness absence and pressure from the unions. Those are significant pressures.

John Finnie: The prison population is not just growing but ageing. Does that bring challenges, too?

Wendy Sinclair-Gieben: It certainly does. It has become clear to me that the issue is not just the rise in the prison population, but the increased complexity of the population. You have the difference between 400 and 1,400 legacy sex offenders in at the moment. That is a significant difference. Because they are legacy sex offenders, they are, of necessity, older and are therefore more likely to require social care. We have just inspected Glenochil prison. I was impressed with some of the social care facilities and the reconstruction of the prison there to cope with that issue. Nonetheless, prisons are predominantly built for youngish, fit-ish men, and we are asking very much older people, and a much larger older population, to be shoehorned into that.

We also have an increasing level of complaints about progression—people feeling that they cannot progress through and out of the system. That is a partly a consequence of pressure from increasing numbers. If you have 700 extra people competing for offending behaviour programmes, inevitably there will be some slowdown in the

system. As a nation, we are going to suffer a challenge on overcrowding and a challenge on progression.

10:45

John Finnie: I know that my colleague Liam Kerr wants to come in, but I will ask a final question. Have you considered the ageing staff profile in terms of the impact of retirements?

Wendy Sinclair-Gieben: Yes, absolutely. I have noticed that there is a bulge—a baby boom, if you like. In about 18 months, a significant number of staff are going to leave because they are due to retire. There is a combination of things, but one is that that retirement bulge has to be predicted in succession planning. I have talked to the SPS about that and I know it is fully aware of the issue and dealing with it.

Secondly, in terms of corporate knowledge and experience, we are going to be losing a bulk of well-experienced staff at the same time, and that worries me.

Fulton MacGregor: If the presumption against short-term sentences goes through, would it be beneficial and helpful in addressing some of the concerns that you have just raised?

Wendy Sinclair-Gieben: I think that it will be extremely helpful in dealing with recidivism. The evidence is that short-term sentences do not have the same powerful effect on recidivism as community orders, so I very much welcome the presumption. For me, it is another example of Scotland being at the leading edge.

However, when I looked at the statistics—and please bear in mind that I am not a statistician, so I always rely on other people—it seemed to me that the presumption will affect the churn, or turnover, in prison, but it will not have a huge effect, or the effect that I would like to see, in reducing the prison population. The issue is compounded by the legacy sex offenders, the long-term sentences, the longer terms for life sentences that people are getting and the impact of home detention curfew. We have an increased population that the presumption is not going to be able to significantly reduce.

Liam Kerr: I would like to give you the opportunity to elaborate on the issue of remand, which the committee has been very concerned about and about which you raise concerns in the report. Can you tell us how long, on average—which I accept is not a great benchmark—young people spend on remand in the system?

Wendy Sinclair-Gieben: I would love to be able to tell you that, but I would be lying, because I cannot remember. My apologies. It is something I should know off the top of my head, but I cannot remember.

Liam Kerr: Do you have any sense of the length of time involved? Are we talking about a long period of time, is it a matter of weeks, or do people come in on remand for a few days, and then off they go?

Wendy Sinclair-Gieben: There is absolute variation. Some young people come in for a long time because of the heinousness of their offence; some people come in for a few days, as you say; and some people come in for a significant number of weeks. However, because I do not know the average, I really cannot answer the question.

Liam Kerr: Is anyone capturing the reasons why remand is being used in the cases that you just mentioned? Indeed, is data on whether the use of remand is still appropriate being captured?

Wendy Sinclair-Gieben: One of the recommendations in the report by HM chief inspector of prosecutions was that greater use should be made of early and effective interventions. The inspectorate collects the data and has a look at the reasons for remand; we did not.

Liam Kerr: My next question is on a similar note. As you will be aware, the committee put out a report on remand roughly this time last year—it was in June last year, I think. Were you aware, when you were putting your report together, of whether the Justice Committee's report led to any concrete action that then fed into your conclusions?

Wendy Sinclair-Gieben: I am not aware of that. There are numerous reports. I look at the Health and Sport Committee, and I have looked at so many reports that my head spins. In reality, following up the recommendations was one of the issues that I mentioned earlier as being extremely hard to do. It is hard to find a centralised body that I can go to and ask, "How many of the 4,000 recommendations that these 17 reviews and reports have come up with have been followed through?" I would deeply appreciate that level of knowledge management being available.

Liam Kerr: This is my final question. One of your conclusions is that we should maximise support for those held on remand. I think that the committee would have sympathy with that, but what does maximising support for those on remand look like?

Wendy Sinclair-Gieben: There is a very simple rule, which is to follow the numbers. When young persons are on remand and access activities, the numbers are not collected. Data on those who are convicted or sentenced and attend activities or go to appointments and so on is readily available.

Data on remand prisoners—how many times they come out of their room, how many visits they have had, or what activities they have attended—is not readily available. First, we should do that needs analysis—we should collect that data and have a look. For instance, if you find that a young person is not coming out of their room or attending activities, that is a piece of data that can be looked at. You can then send in the youth team to work with that young person to say, "Let's get you out. You'll feel better when you come out."

Dr Smith: Brief mental health interventions could be made available to young people on remand, such as distress brief interventions or brief work on substance abuse. Mental health interventions could be offered.

Daniel Johnson: I will follow up Liam Kerr's questions, The use of remand in Scotland is at roughly twice the rate in England and Wales, whether we look at the incarceration rate or the prison population. About 10 per cent of the prison population in England and Wales are on remand, but the figure is about 20 per cent in Scotland. One thing that we cannot really get to the bottom of—I think that this lies behind some of Liam Kerr's questions—is why that is the case. Chief Inspector, given that you are coming to the issue with relatively fresh eyes—and I do not necessarily expect your answer to be based on statistics—do you have a sense of why we are in that situation in Scotland?

Wendy Sinclair-Gieben: I am not sure that I want my comments to be publicly recorded. I do not have the facts behind that, and without facts, I am unwilling to comment.

Daniel Johnson: That is an intriguing answer, and I look forward to following it up in the future.

Wendy Sinclair-Gieben: Definitely.

The Convener: Are remand prisoners in Polmont in a different section from the longer-term prisoners or, given the pressures on space and cell sharing, is there a mix that is not ideal?

Wendy Sinclair-Gieben: They are kept separately in Polmont—very comfortably so.

The Convener: Is the sharing of cells an issue?

Wendy Sinclair-Gieben: That is a really interesting question. When we talk to young people, some of them tell us that they feel the benefit of sharing a cell, particularly if it is with someone else they know from the outside. However, most of them prefer a single cell, and most of them are in single cells in Polmont, so it works quite well.

The Convener: That concludes all our questions. Is there anything that you would like to say in closing?

Wendy Sinclair-Gieben: I do not think that there is anything I would like to say, other than that I would like the committee to urge the concept of a mental health strategy that goes across Scotland. A lot of the problems that Polmont faces in terms of mental health provision relate to recruitment—when you read my report you will see that I have been quite rigorous in my responses; at times they are not polite, and they are very strong. There are national problems: Scotland has a problem recruiting mental health staff; it also has a problem with taking a combined mental health assessment approach, which is really difficult. The lack of a national formulary and the lack of electronic prescribing are also national problems—they are not just problems for Polmont.

The Convener: Is the recruitment issue due to a lack of people who are available or a lack of people who are prepared to go into the Prison Service?

Dr Smith: Probably both.

The Convener: Would some work with colleges and universities help? Should there be an awareness-raising campaign that there is definitely a gap in the market, if you like?

Wendy Sinclair-Gieben: I think that there is another side, which is to check whether we have sufficient spaces in colleges and universities so that sufficient people who might want to go into the profession are trained.

The Convener: Thank you both very much. That has been a very worthwhile evidence session.

I suspend the meeting briefly to allow for a change of witnesses.

10:54

Meeting suspended.

11:00

On resuming—

The Convener: Item 2 is the second panel of witnesses on our new inquiry. I refer members to papers 1 to 3, and I remind members that we have a very large panel today, so I would be grateful for succinct questions. Equally, witnesses should not feel obliged to respond to a question. If you have nothing to add, please just say so. We will move straight to questions, starting with Jenny Gilruth.

Jenny Gilruth: Good morning, panel. My opening question is about the mental health needs of children and young people. As you might have heard, we heard from the previous panel about the impact of social isolation on mental health. We also heard a little bit about the impact of adverse

childhood experiences. Can you share some of your thoughts around those areas?

David Mitchell (Rossie Young People's Trust): Like some of the other centres, we have undertaken particular pieces of research into ACEs, given that we very strongly believe that young people who have had ACEs are overrepresented.

The current framework accounts for about 10 adverse experiences. We have had to add to that in our research, so we have done research on 13 ACEs. Some young people who have been admitted to secure care centres such as Rossie will certainly exceed 10. The import of that is that young people can have adverse and traumatic experiences and not actually have any mental health issues. It is important to say that.

We know that ACEs are likely to influence fundamental biological processes, so the timing of adverse events is important. They engrave what are called long-lasting epigenetic marks, which are non-genetic influences. It is like whatever your hereditary load is plus, on top, the ACEs.

As we know, ACEs impact on neurological systems, on behaviour, and on how our young people learn. We spend a great deal of time in secure care and have learned that, when we are accommodating and receiving young people, a lot of the time we are calming down what we call toxic shock, because these young people are so alert. They are hypervigilant at times because of the traumatic experience that they have encountered, and they are also significantly adversely affected by ACEs. That has implications for any system that admits young people. If you have awareness of that, you need to adapt your systems accordingly.

I know that Alison Gough would contend that we do not have a secure estate in Scotland but, as it is currently constructed, we have spent a lot of time in the secure estate in Scotland being trauma informed so that our policies, our reception and our admission processes are all informed by the fact that these young people are likely to be in survival modes of fight, flight or freeze. We need our systems to be able to cope with that and to provide predictability, safety, and consistency; we then begin to use the relational care that we all offer to make progress with the young people.

I am sorry; that was a long answer to a short question.

The Convener: I am going to stop you because I have been very remiss in not introducing the panel. Alison Gough is director of the Good Shepherd Centre; Audrey Baird is an executive director of education, learning and development with the Kibble Education and Care Centre; David Mitchell is head of operations at Rossie Young People's Trust; Carol Dearie is head of services at St Mary's Kenmure; and Colin McConnell is the chief executive and Lesley McDowall is the health strategy and suicide prevention manager at the Scottish Prison Service. Alison Gough was about to speak.

Alison Gough (The Good Shepherd Centre): I was just going to continue from where David Mitchell completed his opening comments.

What David Mitchell has been explaining was backed up by a survey that was recently undertaken by the centre for youth and criminal justice. That was a census of all children and young people who were in secure care at a certain point in 2018. Alongside lots of other studies that have been done in Scotland, including the work of the secure care national project, which was an independent review of secure care that explored the lives and backgrounds of children in secure care in Scotland, that research confirmed that children from our least privileged Scottish communities are hugely overrepresented among the population of children and young people who come into secure care. The majority of children arrive with significant psychological distress, numerous adverse experiences in their background, and often extreme abuse, neglect, trauma and exposure to significant levels of violence in their early years.

During the census, half of the children arriving at the Good Shepherd Centre, for example, had expressed thoughts about ending their lives and a third of young people had actually attempted to end their lives in the year prior to coming into secure care. A high proportion of young people had been diagnosed with a mental illness either previously or were receiving treatment, and exposure to and involvement in interpersonal violence was a significant feature.

The CYCJ census also confirmed several other recent studies that had been done UK wide, including the work of Heidi Hales down in England, which was an exploration of all children in secure settings, whether young offenders institutions, secure hospitals or secure children's homes. We know that these are some of the most extremely vulnerable and challenged young people with very difficult backgrounds. They will all have mental health and wellbeing needs, if not necessarily a mental illness.

Carol Dearie (St Mary's Kenmure): In Jenny Gilruth's question about mental health, she mentioned social isolation. It is really different for secure care. We do not have young people on remand who do not do anything other than participate fully in all activities and education and so on.

When it comes to any social isolation, a legal requirement is placed on us that means we have to fill in documentation if a young person goes to their room. If we have placed the young person in their room, we have to give a reason why that was done, and there are very strict criteria. Social isolation is not used a lot in secure care.

I do not suggest that Polmont is not therapeutic but, as David Mitchell said, our emphasis is on a trauma-informed approach, which is about relationships. It is about understanding the context of a child's life and the causation of some of their behaviour.

When it comes to the mental health provision, we work closely with forensic CAMHS and CAMHS. We also have a clinical psychologist who carries out an initial mental health screening that formulates part of the care plan. What we access is slightly different to the prison service.

Jenny Gilruth: I was quite struck by your submission. You say that a protocol on transferring from secure care to Polmont would be useful as it might lead to a consistent approach to transferring young people to the prison environment. In the earlier evidence session, we heard about inconsistency in how information is shared. Does the SPS want to respond on that point?

Colin McConnell (Scottish Prison Service): Yes. I will make a general comment and then, if the committee wishes, Lesley McDowall can pick up on more specific detail.

We are on an improvement journey but it would be crazy of me to suggest that we have everything nailed down. In fact, the Scottish Government has led on improvements in the dialogue between secure care and the Scottish Prison Service for planned movements from secure care into our care. Sometimes things happen that are not planned or come up at short notice, and we are more vulnerable in such situations than in what is becoming a better understood and better mapped-out set of arrangements for planned movements. My concern would be about where the vulnerabilities are for those movements that are not planned or that come around at short notice for some reason.

Lesley McDowall (Scottish Prison Service): Throughout 2019, we have been developing a safe operating procedure for planned and unplanned transfer from secure accommodation. If it is a planned transfer, the children and families directorate within the Scottish Government would notify HMP YOI Polmont that there was going to be a transfer. At that point, we would look to have an initial meeting about six months prior to the transfer. SPS would meet representatives from the secure accommodation and would be able to share information on that young person. Then, about a month prior to the transition, SPS would again meet representatives from the secure accommodation and our key partners, including the NHS. Social work would also be part of that discussion so that we have all the available information prior to the individual coming into our care.

When the transfer is unplanned, it is more difficult. However, it is more about an escalation. When we are made aware that a young person is coming, we ask to be alerted to the fact that that person might be attending court and then come into our custody, that our governor and deputy governor are made aware of the situation immediately, and that a multidisciplinary case conference is convened at the earliest possible opportunity with somebody from secure care so that we can get all the available information available.

Jenny Gilruth: Thank you for that. David Mitchell's submission talks about how custodial settings would benefit from taking a trauma-informed care lens to admissions during custody and transitions. Are you considering that at the moment?

Lesley McDowall: As part of our training development, we are looking at trauma-informed practices for staff within Polmont. We are looking to develop training and we are working with NHS Health Scotland.

Jenny Gilruth: Would that be part of admissions, though? I noticed that you said that that is within Polmont, but will it be considered as part of the admissions process?

Lesley McDowall: We would do that in partnership with the NHS because, although we assess an individual when they come into Polmont, the NHS also does it as part of its initial mental health assessment.

Jenny Gilruth: Does education also carry out an assessment?

Lesley McDowall: Not when the person first comes in, but if an individual wanted to access education, it would carry out an assessment.

Jenny Gilruth: Do they have to opt in? You said "if" they wanted to access education. Do they have to opt into it? Am I right that it is not mandatory?

Lesley McDowall: It is for certain age groups, but if the person is over 18, it would not be mandatory for them to access education.

Jenny Gilruth: Thank you.

The Convener: I know that John Finnie wanted to ask about transition. Do you still have questions to ask?

John Finnie: I have a very small point. Ms McDowall mentioned the multidisciplinary team. We have heard that education, social work and health might be involved. Is anyone else involved?

Lesley McDowall: They are our key partners, but it is not an exhaustive list. Anybody we felt was appropriate to be part of that individual's care could be part of the case conference.

John Finnie: Who might that be? I understand that it could be some of the other care providers.

Lesley McDowall: It might also be the family, if appropriate.

John Finnie: Okay. Thank you.

The Convener: Liam McArthur has a supplementary.

Liam McArthur: It is just for definitional purposes. Lesley McDowall talked about planned and unplanned transitions from the secure care sector to the prison sector. I assume that nothing is wholly unplanned, as any transition will have a degree of planning attached to it. What does an unplanned transition looks like. A planned one is probably fairly self-evident.

Lesley McDowall: Our definition of an unplanned transition is when a young person who is currently in secure care transitions after attending court. A planned one happens when a person reaches the age at which they would no longer be held in secure care, so we know that they will be coming to us. With someone who is attending court, the sheriff might determine that they should go back to secure accommodation, or that they should be held in custody in Polmont.

Liam McArthur: In that case, the turnaround time can be very short.

Lesley McDowall: Very short.

Rona Mackay: Good morning. I have visited three of the units represented today—all barring the Good Shepherd Centre, I think. I am hugely impressed with the caring work that you do and the ethos in each of the units. I wanted to put that on record before asking my question.

Do you think that the upper age limit for young people being held in secure units should be raised? Could there be some sort of hybrid model between the SPS and yourselves to enable a young person to stay in the secure unit rather than go to prison?

11:15

Carol Dearie: I have already been involved in some discussions with Wendy Sinclair-Gieben about the need to look at some sort of hybrid model, as you say. One of my concerns, and I am sure that it is shared with my colleagues, is that more emphasis is put on age than on vulnerability, in my opinion. What magically happens when a young person reaches the age of 18? A young man who was doing exceptionally well serving his sentence in St Mary's was recently moved to Polmont with only a few months to serve. I am really uncomfortable with that.

Years ago, when I first started on this journey, a young person who had only a short part of their sentence left after the age of 18 resided in the secure unit. That somehow changed. I am not sure whether any of my colleagues can shed any light on why it changed. I do not know if it happened because of demand for places at that time, but we suddenly saw our children and young people being moved away from relationships—including relationships that were often formed over a period of years, particularly if they were sentenced as kids. They were suddenly taken away and put in a prison environment, which has a very different structure.

I do not know the answer, except to say that I sincerely hope that the committee considers seriously why we put so much emphasis on age. Vulnerability, ACEs and poor mental health should all urge us to say that age is a much lower priority. We should be looking at vulnerability. You will see from my submission that I think that there is a need to look at a hybrid model.

I am sure that the question about secure places across borders will come up and we will answer it in due course. The reality is that, while Polmont's numbers were going up for people between the ages of 16 and 18, we were sitting with secure places that take people up to the age of 18. I have my own view and I am happy to share that when the question comes up.

There is certainly an urgent need to look at the age limit for secure care. If it needs to go further than the age of 18, it needs to go further than the age of 18. If we can prevent our young people from going into a prison environment and instead put them in a secure environment that is enshrined in children's legislation, why would we not want that for our kids?

Rona Mackay: Thank you. Would anyone else like to comment?

Audrey Baird (Kibble Education and Care Centre): Kibble's experience and research to date suggest that there is a need in the United Kingdom to provide alternative provision for the children with mental health needs who are currently being placed in the Scottish Prison Service. It is clear that children are being placed in a prison environment that is not suitable and does not meet their needs, regardless of their mental health difficulties. There are also children with acute mental health needs who are being placed in

secure, locked placements that are not meeting their needs.

What is needed is not just a hybrid model between the secure services and the Scottish Prison Service but a model that considers the therapeutic needs of young people and takes a trauma-informed approach. Kibble is in the process of developing such a service, which will take a much more holistic approach to meeting young people's needs—and not in a locked environment. It is about providing intensive support, through care and education services and the clinical input that might be required, to make the required interventions for children and young people, not in a locked environment.

We deal with young people who have complex mental health needs. Some are receiving medication and require constant care, some present a high risk to themselves and others, some require medical intervention and perhaps hospitalisation, some demonstrate high-risk behaviours that require a multi-agency response, and some have been rejected by systems and have a history of placement breakdown. It is really important that we do not place some of those young people in locked environments, whether they are prisons or secure units. Those young people need a therapeutic, trauma-led approach to meeting their mental health needs.

At the moment, in Scotland—and probably nationally and internationally—that type of facility does not exist. We have to develop such an approach. Kibble is looking to do so and has done research. Because no such facility currently exists in Scotland for children, we have been looking at facilities such as the Prince and Princess of Wales hospice at Bellahouston park in Glasgow and Maggie's centres, which do not necessarily deal with children but develop therapeutic, trauma-informed and trauma-led approaches to specific clinical issues and take a holistic approach, in terms of education, care, psychiatry, psychology and so on, while not operating in a locked environment. A locked environment can retraumatise a young person who suffers from mental health difficulties.

We are also looking at drug and alcohol misuse, anger and irritability, depression, anxiety and sleep disorders. We are looking at suicidal ideation, thought disturbance and the traumatic experiences that young people have experienced throughout their lives. We need to look beyond a hybrid model that involves locking a young person up. We need to look at models that are about not locking young people up but meeting their need for intensive support in an open environment.

Daniel Johnson: Wendy Sinclair-Gieben talked about a lack of consistency between health boards and the lack of strategic integration of the services that health boards provide and the services that are available in context of the work of this panel. Is that a point that panel members recognise? If so, what can be done in the secure care sector to improve integration?

David Mitchell: As Dr Smith said, the Glasgow secure care centres have access to a jointly co-designed secure care pathway, which meets the needs of the young people in the three Glasgow centres and the secure care centres in the geographical area.

We do not have that in Tayside. Members might have read a bit about my background. I was a psychiatric nurse in Fife before I moved to social work and then, through various twists, found myself as head of operations at Rossie Young People's Trust. When I came to Rossie 12 years ago, having been a mental health officer in Dundee—an MHO is a social worker with training in mental health—I thought that I would have a significant impact in that area.

We used to have a project called Rossie/Elms, and Dundee used to have some secure care beds. That shared facility gave us what we needed and still need, that is, a consultant adolescent psychiatrist who was interested in our client group and undertook inreach work to review cases, along with two project officers. At the time, the project officers happened to be a social worker and a nurse; they were primary mental healthcare workers who operated in Rossie and in the unit in Dundee. The service was funded via intensive support moneys, and when those moneys came to an end in 2008—despite the service evaluating very well—the consultant psychiatrist and two primary mental healthcare workers were subsumed back into NHS Tayside.

Since then, despite the levels of adversity, trauma and need relating to mental health that exist in secure care, which colleagues on the panel have described, we have been able to access that service only via a referral process. The referral is made either by a member of our specialist intervention service, which includes a forensic psychologist, a general trained nurse and some specialist intervention workers, or by our GP.

I want to be balanced in my account to the committee—I read Mr David Strang's interim report on mental health services in NHS Tayside, in which he makes brief mention of CAMHS. The balance bit is that where the system works—and there are examples of it working—it works very well. Where it works well, we are getting that inreach so that a multidisciplinary team operates around the child.

Where the system does not work or meet the needs of young people is when we make referrals

to the service; we have very mixed response times. Before I came away yesterday, I picked out three cases. In one, a young person was referred on 22 August. There was a follow-up consultation by telephone in September, and there was a telephone consultation on 18 December to advise us that the young person was still on the waiting list. The young person remained on the waiting list until their discharge date in April 2019. That means, unfortunately, that I must report that, over a timeframe of nearly eight months, that young person, who had extensive mental health needs, was not seen, despite our referring them to a service that we believed that we would get for them.

We are currently dealing with a young person who was referred for a medication review. She was admitted, and she was taking a number of psychiatric drugs that needed to be reviewed. Some drugs that are provided in relation to ADHD come with a requirement for regular blood pressure checking, and aripiprazole and some of the mood stabilisers, such as lithium, require regular bloods to be taken, to check toxicity levels and therapeutic value. The young person was referred for a meds review in January 2019, and we have not received that service. Nor have we had any confirmation that the referral was received.

There are clearly geographical disparities. Certainly, in Angus we look with jealous regard to the secure care pathway that is being created by Dr Smith and the centres in Glasgow. It is clearly a better system: it ensures that there are key points of contact for referral; waiting times are short; and there is active inreach by the consultant psychiatrist into centres, alongside CAMHS and forensic CAMHS staff.

In essence, a key reason why I was keen to come to this meeting was so that I could highlight to the committee exactly what that disparity looks like for some of our most vulnerable young people who are currently accommodated within Rossie.

Daniel Johnson: Thank you for that substantial answer. I will not ask anything further but I make the point that what you describe sounds a world away from an eight-week wait for services. To my ears, that sounds wholly intolerable.

David Mitchell: Yes.

Liam Kerr: Very briefly, I would just like to clarify with Lesley McDowall something that she said earlier. I think that I heard you say that a judge can determine whether somebody goes into custody or stays in secure care.

Lesley McDowall: That is correct.

Liam Kerr: Does the judge determine that against any particular criteria? Are the reasons for particular decisions captured, so that they can be analysed?

Lesley McDowall: I can speak only from my experience of young people who have come into custody instead of going back to secure care. In one instance, a young man had committed an extremely violent act in the secure accommodation and, therefore, it was felt that he was best placed in Polmont. On the second occasion, his social worker requested that he go back into secure accommodation, but there was no place available, so the sheriff decided that he would come into custody.

Liam Kerr: I see, but is anyone able to draw down the sheriff's decision to be able to say why that decision was come to?

Lesley McDowall: I do not know, sorry.

Shona Robison: We have touched already on some of the issues around the interaction between the penal system and secure care. In the previous session, which I believe you were present for, I picked up issues around protocols and information sharing. The transition process was described, I believe, as being variable in terms of what information comes with the young person between agencies and at different stages, including between the penal system and secure care.

How soon would agencies begin to interact if a vulnerable young person was due to be transferred from secure care to Polmont? What assessments are undertaken? How could that be improved? One of the suggestions from the previous panel around interagency communication was the idea of a consensus agreement. It would be helpful to hear from Lesley McDowall and Colin McConnell, in particular, what their view of that is. Could it be helpful in ensuring that information is good, accurate and quick?

11:30

Lesley McDowall: We have an information-sharing protocol between the Scottish Prison Service and the nine health boards that have responsibility for the delivery of healthcare in prisons, which gives us a framework for agreeing what information can be shared and by which routes. That is certainly a very helpful tool for the Prison Service, health boards and practitioners on the ground. Having something in place with secure accommodation and social work that set out clearly what information could be shared and with whom would certainly be very helpful.

Shona Robison: What about beyond that, though? There is a protocol between the Prison Service and the health boards, as you have said. What about something at quite an early stage of a young person's placement? Who might lead on

something like a consensus agreement? Would you see yourselves leading on that to make it happen?

Colin McConnell: First and foremost, we must recognise that while things have undoubtedly improved over recent months, as the chief inspector and Dr Smith have indicated, we have a long way to go yet before any of us could be satisfied with either the level of information sharing or, for that matter, the detail of it.

In terms of who is responsible, I suppose that this might seem like a slopey-shoulders job, although it is not intended to be, but there is a broader issue here that has to be tackled, which is that this is a multi-agency, multispecialism policy. Whether one individual agency could take it on is a matter for debate. However, we should be clear that the SPS is right at the end of the pipe on this, as we are on many other issues associated with care or, for that matter, justice. We absolutely understand that. We would most certainly be prepared to act as the generating point or the coalescing point—the driving force, if you like—if other organisations and agencies were comfortable with that.

It is important to point out, of course, that there are commentators who might view the SPS taking responsibility for generating a protocol or a series of arrangements like that as not being in the best interests of all parties given that we are a large, nationally funded organisation. However, in the absence of any other clear volunteers, willing parties or, for that matter, a determination being made, certainly the Scottish Prison Service would be prepared to act as that sort of coalescing body.

Shona Robison: That is helpful.

Audrey Baird: I should just point out that in 2017, the Scottish Government initiated some meetings between Polmont and the secure care providers. A meeting took place at Polmont to look at ways in which we can improve transitions for young people. I believe that those discussions are on-going.

Colin McConnell: That is exactly the point that I was making earlier. It would be wrong for the committee to be left with the impression that no progress has been made; quite the opposite. Again, to be fair to our Scottish Government colleagues, they certainly have picked this up and the situation is much better now across the landscape than it was. We absolutely recognise that, given the vulnerable group of young people that we are dealing with, there is much more both that needs to be done and that we would want to see done.

Liam Kerr: I will stick with Colin McConnell and Lesley McDowall, if I may. We were looking at the report on Polmont earlier on, which makes a number of recommendations and actions points specifically relating to the SPS. What is your view of the report and its conclusions? Do you accept all the action points that relate to the SPS?

Colin McConnell: Just to be clear, there were two reports published on Polmont. One was on the chief inspector's inspection of Polmont and all the aspects that go along with the operation of Polmont, and then there was the wider commentary in her report on mental health provision at Polmont and more generally across the system.

Liam Kerr: The report that we were looking at this morning makes a number of recommendations on the SPS. Does the SPS accept the terms of that report and all the action points in it?

Colin McConnell: I can see where you are going with that question but, of course, the report is not directed at me or the SPS; the report is directed at the Cabinet Secretary for Justice. The cabinet secretary has been very clear that he welcomes the report and that he will be commenting to Parliament on the views in it, I think before recess.

Liam Kerr: Let me perhaps rephrase the question, Mr McConnell, because you will forgive me but that sounded like quite an evasive answer. I am looking at the key messages right here and the report says:

"An enhanced approach should be developed, by the Scottish Prison Service, for the Talk to Me Strategy".

That is one of three examples. All I am asking is whether you accept the recommendations that are specifically directed at the SPS. If so, will you be actioning them?

Colin McConnell: I am sorry that you think that I am being evasive but I have to be clear. I will answer your question more directly, Mr Kerr, but I am absolutely stating a fact in saying that the report is to the cabinet secretary, who has already made it clear that he will make a statement to Parliament before recess. That is the Government's position on it.

As far as the SPS is concerned, we welcome any recommendation that can help us to improve our practice towards anybody who passes into our care. I will leave it to the cabinet secretary to make a broader judgment on each of the recommendations in due course.

The Convener: I wonder if I could press you a little bit on staff absences. The issue was covered this morning. Do you have any comment on it?

Colin McConnell: Yes. Staff absence in the SPS is troubling. We have near enough 4,500 people in our workforce and they suffer the same

illnesses and afflictions as anybody else in the general population; our staff are not immune to being ill.

On the chief inspector's commentary about the relationship between population pressures and staff absence, undoubtedly there is a relationship, but I think that it would be unfortunate if the committee were left with the impression that staff absence in the Prison Service was driven simply by population pressures. That impacts, but it is not in itself the determining factor.

Because staff absence levels are high, that does impact on our general ability to deploy staff in and around the system. I heard you, convener, quite rightly asking the chief inspector about whether the SPS has contingencies for such eventualities. Yes, we do and, in fact, the calculations that underpin the number of staff that we have available in any prison establishment are informed by assumptions that staff will take annual leave, will be off sick and will have to go on training. It is fair to say that the absence levels have gone above that allowance, so additionally we are covering those shortfalls with what we call ex gratia payments, which the chief inspector referred to as overtime payments.

The Convener: Yes, I think that the chief inspector made it clear that the Prison Service will go that extra mile, but she also referred to the ageing population of prison staff. Is there anything that you would like to factor in for the future to help the pressure?

Colin McConnell: Yes, I am really grateful that you raised that. In some ways, I was left betwixt and between when the chief inspector quite rightly outlined the baby-boom bulge that we undoubtedly have. The majority of our staff are 40-plus, which is young to me but not to other folk. I only wish that the chief inspector was right in saying that they would be retiring soon. She has every reason to expect that that would be the case, but when the United Kingdom Government—probably about a decade ago now—changed the pension rules on when public servants could retire, prison officers were disproportionately affected. Currently, they have to work until they are 67 and in due course they will have to work until they are 68.

We have discussed here this morning some of the really complicated cases that pass our way, whether people coming from secure care or, for that matter, people coming directly into our care, and the changing nature of the prison population, which the chief inspector and Dr Smith referred to, which itself is becoming more complex, more challenging and more aged. Then we have the prospect of 67 and 68-year-old prison officers turning out daily on the landings to try to deliver a personalised service in prisons that, let us not get away from it, can be violent places, although thankfully not all too often. I do not think that that is a prospect that Scotland should welcome. So, yes, our prison officer cadre are getting older, but by golly they are not going to be able to retire, because the UK Government has determined that they cannot.

The Convener: So the issue is not that the actual bodies will not be there, but their ability to do the job.

Colin McConnell: Yes, it is a combination of issues, including the fact that as we get older we tend to suffer from more chronic conditions. If you just work with the imagery that I have set out for the committee, you see that the prospect of older prison officers having to engage with sporadic violence, some of it extremely violent and confrontational, and being able to, in a sense, take that on the chin, recover from it quickly and get back to work is something that we should be really concerned about.

Daniel Johnson: I will ask a couple of supplementary questions. I understand your reticence to give a formal response on the report until the cabinet secretary has responded. However, I think that the report makes some broad points. I will characterise them as, first, a broad point that needs to be addressed about the strategic fit of your agency with others. There is also a point about maturity: when we look at the talk to me strategy, for example, and the approach to induction at Polmont, there is good practice but it is not necessarily bedded in. There is talk of tick boxes and what actually happens thereafter. Is that broad characterisation correct, and could you get going on some of those things before you hear from the cabinet secretary?

Colin McConnell: I will answer that in two ways. First, as I said to Mr Kerr, we welcome any direction that will lead us to improve the services that we deliver to the people who pass into our care. Please take that as a given. That is the SPS embracing the positivity of the report. At the end of the day, we will embrace anything that can make our services better and we will get on with it.

In the meantime, a number of things have been happening specifically at Polmont to improve the general awareness and capability of our staff as well as the availability of services to those who pass into our care. I say that specifically to address Mr Kerr's concerns that I was being defensive. It is quite the opposite. I am being very clear about the position vis-à-vis the SPS and the cabinet secretary's statement and, secondly, I want to give the committee an absolute assurance that we are a progressive organisation and that we will take every step that we can to improve the services that we deliver.

11:45

Daniel Johnson: I will ask you about one specific step. I was slightly surprised by the point in the report that staff desired greater training in specific mental health conditions. ADHD, ASD and borderline personality disorder were specifically named. I am surprised that that training does not already happen, given the overrepresentation of some of those conditions within the prison population. Is that specific training for your staff in Polmont something that you could progress in advance of any statement or intervention?

Colin McConnell: I will let Lesley McDowall comment on that in a minute, but your question is really helpful in reminding us and the committee of the complex challenge that we face in caring for some extraordinarily vulnerable and traumatised people who pass into our care, whether in the secure community or, indeed, the Scottish Prison Service. You have helpfully set out the scale of the challenge that we face.

I would not want to try either to create the impression or to pretend that prison officers in Scotland can become experts in those issues. We simply do not have the capability or, for that matter, the recruitment approach to deliver that. We rely on our colleagues in the NHS, and more broadly in other support services, to help us to provide that wide range of services. Do we want to make sure that our staff are able to pick up on the indications that people have limitations or suffer or have needs? Of course, and I think that we will want to try to make sure that when our staff are able to be sensitised to that, that they are able to signpost quickly to the best sources of help that we can provide. Lesley McDowall might want to comment more specifically.

Lesley McDowall: For some of the conditions that Mr Johnson mentioned, some training has taken place, on an ad hoc basis and in partnership with the NHS. Some awareness-raising around ADHD has taken place, but that would have been with key staff. We have now secured training through Scotland's mental health first aid: young people course for key staff within Polmont—I think that they are going through that training just now. We have also started working with NHS Health Scotland to develop a training package for our officers on mental health awareness and, exactly as Colin McConnell said, that is more about identifying the signs that somebody might be struggling or have a mental illness and then signposting them.

The other thing is that in the national "Mental Health Strategy: 2017-2027" and in the "Suicide prevention action plan", the Scottish Government gave a commitment to review mental health training for front-line staff. Again, we are working with NHS Health Scotland. We commented on some of that training and we have also said that we would be happy to pilot any training that comes out of those two strategies.

Daniel Johnson: Can I clarify that when you say mental health, you include neurodevelopmental disorders and learning difficulties. Or is the scope of mental health restricted to anxiety, depression and those sorts of issues?

Lesley McDowall: Yes, it is. However, another piece of work has gone through the national prisoner healthcare network advisory board. Research has been done on learning disability in prisons and on head injury.

The draft report certainly recommends that prison officers are trained in learning disability and head injury. We are awaiting the final report before we action that recommendation.

Daniel Johnson: We have just heard that 50 per cent of the prison population, at a low estimate, has some sort of learning difficulty. I totally accept that your staff will not become mental health nurses or professionals, but they must have insight, information and expertise because such a high proportion of the people you work with have those conditions. I simply put it that that training is necessary for them to be able to do their jobs.

Colin McConnell: I agree 100 per cent, and I would go further. Your point is well made in that, while we are of course focused on particularly vulnerable and needy young people, that concern could be broadened out across the whole estate. I entirely accept your point, but the concern and need are not just about Polmont. People move on and they take those needs and vulnerabilities with them.

Liam McArthur: I have a couple of supplementary questions, one of which is on the point about staffing levels. Mr McConnell, you had what was probably a quite legitimate go at the UK Government on pensions reform. I would be interested to know what the figures are of those aged 65, 66 and 67 who are operating on the wings and are potentially at risk of encountering violent situations, and how that differs from the situation prior to pensions reform. Presumably, you manage your staffing in accordance with risk and in accordance with the skills and abilities and so on of the staff.

Colin McConnell: I do not have the figures here, but I can write to you and give you that breakdown, if that would be helpful.

At the moment, we have a relatively small proportion of staff approaching 65, 66 or 67, but that number will grow. That was my point about the chief inspector's observation, which is

absolutely spot on. Because of that previous recruitment bulge, the age profile of the staff is moving to the right and that will become more of an issue for us.

There is a requirement for prison officers to perform the full duties. We have only limited opportunities or facilities to deploy fully trained and fully remunerated prison officers into non-front-line roles. We absolutely require the maximum capacity of our prison officer cadre to be deployable on a day-to-day basis. It is a concern for me, as chief executive officer, that we will potentially encounter a situation, as that group of staff move into their early, mid and late 60s, in which that capacity will be seriously reduced.

Liam McArthur: Prior to pensions reform, what was the upper age limit of staff?

Colin McConnell: Staff were retiring at 55, maximum 60.

Liam McArthur: Okay. Let us turn to the issue of FAIs. The chief inspector alluded to a concern that she did not have the time to go into any great detail and expressed the hope that she would be able to do so in due course. We know that there are concerns around delays in FAIs. That has been accepted by the cabinet secretary and, indeed, by the Lord Advocate. What is almost as concerning is the concern that has been raised by Katie Allan's parents that, even when FAIs have taken place, the recommendations—or some of the recommendations—from those FAIs have not been taken forward. Has that concern been raised with you? Are you aware of the details of those concerns?

Colin McConnell: I am aware of those concerns. It would be helpful if the specifics of those recommendations were set out. I would be very willing to have a look at what a sheriff has determined that we have not followed up on. As I have said before, I give the committee an absolute assurance that, if a sheriff makes recommendations in his or her determination, the SPS will certainly follow them through, as we do for reports and recommendations from the chief inspector or from any other independent body. If we have not followed something through, I want to know what it is.

Lesley McDowall: Between 2016 and 2018, 68 fatal accident inquiries into deaths in custody took place, only two of which resulted in recommendations from a sheriff. Others presented formal findings only.

Liam McArthur: The concern relates more to the prison estate. I do not know whether that concern has been expressed to you or whether it is shared by the other witnesses.

David Mitchell: It is quite helpful for us that, although there are secure care standards—I think would be the best descriptor for them at the moment—pending, there are health and social care standards that apply within the secure estate. The specific attention that is given in the section titled "How good is your staff team?" reflects the vulnerability of the young people we are working with. In essence, it guides leaders and managers in secure care to ensure not only that they are meeting the registrable minimums of staffing for X number of young people but that they have the right people with the right knowledge in the right places at the right time.

There are a variety of systems through which we do that. There are very clear mentoring systems that ensure that people are actually exhibiting some of those behaviours and picking up the knowledge as they go through their careers as residential care workers. Throughout all the centres, there are also well-established reflective supervision and appraisal systems that check that those things are in place.

The Care Inspectorate's clear drive, though, seeing through the young person's lens, is to have consistent, predictable staff providing the care. As an agency, we keep a really close weather eye on whether we are using too many sessional staff or too many staff on part-time contracts, who may be there for three out of a set of six shifts, because we know that the young people need consistent care from predictable staff. We are relational-based agencies, and we are also informed by trauma and attachment theory, which means that we work hard to get the right people with the right skills in the right place at the right time.

The Convener: Before I bring in Colin McConnell again, do you want to add something, Alison?

Alison Gough: David Mitchell has just said everything that I was going to say.

Colin McConnell: I will try to be helpful in answering Liam McArthur's question about sheriffs' determinations.

As I understand it—I am not legally qualified—when a sheriff makes a formal determination and a recommendation associated with that, the SPS is duty bound to write back to the court in relation to that recommendation, confirming that we have followed it through. Again, I am not aware of any circumstances in which we have not done that.

Liam McArthur: How would that be distinguished from formal findings? How would you expect to follow those through?

Lesley McDowall: Formal findings do not give any recommendation from the sheriff. However, we read all the FAIs and, even when there is only

a comment, we may take an action that we have not been formally requested to take. As I say, there have been only two occasions in the past three years when the sheriff has formally made recommendations and we have had to formally respond and act on them.

Liam Kerr: Let me put this question to Colin McConnell again, please. You say that you would welcome any direction. Number 3 of the key recommendations in the report says:

"A bespoke suicide and self-harm strategy should be developed by the Scottish Prison Service".

My question is simply this: do you agree with that statement? If so, do you intend to do that?

Colin McConnell: Convener, I am being boxed in here. However, in order that Mr Kerr does not accuse me of being defensive again or avoiding the issue, I will say that, of course, we would totally embrace the recommendation as it is set out and we would look to move forward on it, to the satisfaction of the chief inspector, in due course.

The Convener: That is helpful. Thank you.

Liam Kerr: I want to be absolutely clear, because I think that there is something I am missing here, Mr McConnell. Is there a reason why you, as the chief executive, will not comment on the report's recommendations without having heard from the cabinet secretary?

The Convener: I think that we have covered the specific issues that you have asked about, Liam, and Mr McConnell has given his response. I do not think that we are going to move any further than that.

I apologise to the rest of the panel for the fact that it is a very big panel. Ideally, we would have heard from the SPS separately and from the secure care places on another panel. Time constraints have not allowed that, but we are very keen to hear from all of you.

The chief inspector suggested that the question about the varying quality of data on suicide would be best put to Colin McConnell or Lesley McDowall, given that there is variation between the Council of Europe's research, which suggested that things were looking quite good, and research from the Scottish Centre for Crime and Justice Research, which said that that positive finding challenged an alternative analysis that indicated that Scotland may have one of the highest rates of suicide. The witness qualified that statement—quite rightly—by mentioning the difficulty of extrapolating, given the small numbers.

Lesley McDowall, how would you address the specific matter of the varying quality of data on suicide? It is important that we get the best data in order to understand the extent of any potential problem.

12:00

Lesley McDowall: We analyse the data that we have, but we use the total number of people coming into custody over a year, not on one specific day. We then bring in an independent auditor to verify our figures. Whereas the Council of Europe said that the figure was 125 per 100,000 in 2017, it was actually 41.4 per 100,000, and in 2018 it was 44.5 per 100,000. We used the number of people coming into custody annually rather than the number of people coming into custody on one day, which is where we think the figure of 125 came from.

Our suicide rate tends to be fairly static, and, because the number is small, we look at a three-year rolling average rather than at a single year. One death can make a difference of 20 per cent, which is why we analyse the data over three years. The figure has tended to sit between 8 and 11 per cent over the past 10 years on a three-year rolling average.

The Convener: That is helpful. The fact that there are differing definitions of suicide has been highlighted. Have you come across that?

Lesley McDowall: We wait for the formal findings from a fatal accident inquiry before we determine whether a death is suicide. We talk about apparent suicide; the fatal accident inquiry will determine whether a death is suicide.

The Convener: That is a very sensible answer. Do you think that that is sufficiently clear? Is that how you would address the matter, to be absolutely sure?

Lesley McDowall: That is how we do it. We have an external database that is accessible to the public. Within that database, we state that we wait for the formal findings, because experience has shown us that our own thoughts about the reason why somebody has died and the formal determination have, on occasion, been different.

The Convener: That is very helpful.

Rona Mackay: I would like to ask about the funding and sustainability of secure care in Scotland. Could you explain the structure? I note from the submissions that St Mary's is different. Perhaps you could explain your funding structure, Carol, and say something about placements and referrals.

Carol Dearie: It is no different in the sense that we are part of the secure care framework, which came in when we had to go out to tender in, I think, 2009.

Audrey Baird: It was 2011.

Carol Dearie: Yes, it was 2011. The secure unit closed and, from that point on, we have been in a contract with Scotland Excel, which requires that, year on year, we put in a fee negotiation uplift for anything we want to do with the services for our young people—whether that involves therapeutic services, bringing in additional mental health services, pay increases for staff, and so on.

Rona Mackay: Can you explain what "fee negotiation uplift" means? Is that like a projection?

Carol Dearie: I apologise. The contract says that we are allowed to ask for slight increases in bed rates. Across Scotland, we all have different bed rates, and we are not allowed to know what each other's bed rates are. That is not permitted. I have no idea what rates the Good Shepherd Centre or anybody else has.

Every year, I put forward a presentation to Scotland Excel. I might say, for instance, that Scottish Excel will be aware that teachers have received a significant pay increase. Unfortunately, when we negotiated our pay increase on our bed rate, it had already gone in by the time that that increase was agreed. We also have to go before a panel of people. We asked—I will be honest about this—for a 3.2 per cent increase this year, to cover additional therapeutic support services and to include a 3 per cent pay increase for staff, which was to introduce one or two new posts that were going to enhance the outcomes for our kids.

Every year, in total isolation from each other, we go to these panels and we are asked various questions. A decision is then made as to whether or not we will get the increase we have asked for. If we do not get the increase, there can be serious consequences for the service for our kids. This year, we were not successful. We received a mandated offer of a reduced percentage, which means that I have to cut the budget again—I hope the committee appreciates that that is as honest an answer as I can give.

I had to look at where I could make savings, and I made them on some things around the building. St Mary's is the oldest and the largest secure unit in Scotland, and, by its nature, it requires a lot more upkeep to keep it fit for purpose. I had to tweak that so that I could keep my kids getting what I believe they need in order to have a quality experience while they are with us at St Mary's.

If the pressure continues, I am not sure that I can get the bed rate uplift that I want. The next decision will have to be about either reducing staff levels or reducing the quality of the service. It is a very challenging model to be part of. I can safely say that my colleagues, too, feel that the fee negotiation is a bit like Oliver Twist with his bowl asking for more, and what we get depends on the response.

It is difficult. Our kids' care has been commoditised, and our salaries are not the greatest. You have heard that our staff often work with some of the most complex kids in Scotland. I try to put forward a budget that is balanced and that keeps the kids at the centre of the decisions, but whether we get the funds is up to other people, which is very difficult indeed.

I was at a Scotland Excel conference where I shared a table with people who tendered for car parts, toilet rolls and confectionary for the Prison Service, and I was sitting there, talking about the quality of the service for my kids. There is something just not congruent about that.

Rona Mackay: Will you talk a bit about placement and referral and how they affect your funding and your service?

Carol Dearie: Our placements are spot purchases. We get a call—a referral—to ask whether we have a bed available. We say yes or no, and we get that kid in. We often get the kid in with virtually no background information; it is an emergency placement.

We have seen an increase in the number of 16 to 18-year olds who go to Polmont instead of coming to us, because the funding for remand is held at local authority level. Up until 1996, local government paid for remand. The beds are spot purchases and we are a national service for 32 local authorities.

There was a significant decline in the number of beds being used in Scotland, hence the reason for our using cross-border placements. That kept us in business; without cross-border placements, I would not be sitting in front of you today as the head of St Mary's. It might be safe to say—although I will leave that to others—that one unit, if not two, would definitely have closed without cross-border placements, which have allowed us to stay in business, although I hate to use that word.

We have recently seen a significant increase in the number of referrals from Scotland, but the difficulty is that a lot of placements are taken up by cross-border kids to whom we gave a commitment to provide a bed. I do not know about the rest of the panel, but I am not prepared to open the door and just say, "No, thanks very much". They are still children—and children in my care. There are challenges. If I said that we would have only Scottish young people, I could sit for two weeks without getting a referral from Scotland, and that would be a significant financial loss to St Mary's, because St Mary's currently offers only secure provision, which makes things more difficult for us.

Rona Mackay: Thank you, that is helpful. Would anyone else like to explain how the system works for them?

Alison Gough: I would like to make a couple of additional comments.

As I read through the 299 pages of papers for today's committee meeting, I was quite distressed by some of the business language that was used to refer to secure care centres; we seemed to be regarded as a market, with children's lives almost equated to a supply-and-demand situation. I found that very difficult. We are all not-for-profit organisations, with a long history of delivery of residential school care for troubled children and children in need, and that is how we operate. We are underpinned by charitable values and missions in legislation, and we are governed by Office of the Scottish Charity Regulator regulations. I hope that committee members will bear that in mind as they read some of the submissions that have come from other partners.

Particularly in relation to health and mental health, are members aware of how the spot purchase contract framework that Carol Dearie described works? The NHS is not a partner in the process. The commissioning of secure care services for Scotland's most vulnerable children is an agreement between the 32 local authorities. They commission our services via Scotland Excel, which is the purchasing agency—if you like—that brokers the arrangements with the Scottish Government, for young people who are placed on sentence and in certain other situations, and between the 32 local authorities, for children placed on remand or placed through the children's hearings system. The vast majority of Scottish children who come into secure care come in through the children's hearings system.

Given all the emphasis on a trauma-informed approach, the NHS Education for Scotland national trauma training framework, which we are all implementing across our secure care centres, getting it right for every child, and the whole agenda around holistic approaches and corporate parenting for these children and young people, it seems ironic that health is not part of the commissioning process.

We end up in the strange situation in which each secure care centre is negotiating with the host NHS health board and with 13 other health boards, depending on where children are placed from. There is no national agreement that sets out a framework on the level of service that must be provided, by saying, for example, that there must be the equivalent of 0.5 of a consultant psychiatrist, clinical and forensic psychology, a community psychiatric nurse, or someone who specialises in cognitive behavioural therapy or another form of therapeutic intervention and treatment. That is something that the secure care centres have developed themselves. The secure care sector led on and drove that process; it has not come from the statutory services.

The Convener: We are moving on from the cross-border issue to procurement, which was to be Fulton MacGregor's line of questioning; do you have anything to add, Fulton? I know that John Finnie and Liam McArthur have supplementary questions.

Fulton MacGregor: On the referral process generally, do the panel members feel that referrals for secure placements from local authorities have been increasing or decreasing over the years?

Audrey Baird: The number of referrals fluctuates over the years. Currently, Scottish referrals are on the increase.

Fulton MacGregor: Can you comment on the children's hearings process? I declare an interest: I am a former social worker. I worked with children and families for 12 years and I was often involved in referrals to secure placements and so on. The children's hearings system played a very big role. In my experience, when I started in about 2004 the children's panels were quite often keen to recommend secure placements, but that changed over time, perhaps around 2007 or 2008, when directors of social work became more involved.

Audrey Baird: Certainly, the children's hearings system can make a secure care authorisation. Whether that secure care authorisation is taken up by the chief social work officer is another story. Quite often, young people who require that level of intensive support within secure care do not reach a secure care centre and are looked after in the community. Quite often, the young person's behaviour escalates to quite a high degree, and then it becomes an emergency situation and they have to be placed in the secure care setting.

12:15

Alison Gough: In terms of thresholds, there is no commissioning model. There is a commissioning model around procurement, but it is not a commissioning cycle and it certainly does not look at the commissioning of individual placements in terms of hierarchy of need.

Secure care centres in Scotland have been pretty much full for several months now. That can lead to very distressing situations, when local authorities, social workers and placing officers phone round the secure care centres that are part of the national contract, desperate for a placement for a vulnerable young person. There is no centralised mechanism for the management of that; nobody is screening that and nobody has a national overview of the data. The same person could be phoning round all the centres about the same young person over the course of several

days, but there is no mechanism for mapping that and looking at rising levels of need. The secure care centres are monitoring the issue themselves.

Fulton MacGregor: I have one more question, convener.

The Convener: A supplementary supplementary.

Fulton MacGregor: Yes.

We talked a bit about cross-border secure placements. Do people feel that there has been a rise or a decline overall in Scottish children coming to placements in Scotland as opposed to other parts of the UK? I ask that because I remember, from my experience as a social worker, having to travel down to a place in north-east England, just outside Newcastle—I cannot remember the name of it now—on several occasions, because there were no placements in Scotland. It seems now to be the other way round. Do you have comment on that?

The Convener: I must ask you to be succinct, Fulton.

Carol Dearie: It is important to inform the committee that there was a massive drive to look at alternatives to secure care. We understand the reasons for that. The decision to lock up a child should be a very difficult one to make, and the Children's Hearings (Scotland) Act 2011 says that a lot of alternatives must be considered before secure care. We think that a lot of those alternatives mean that young people are out in the community for a lot longer and are then presenting to us with much more complex needs.

On the other side, in England, secure care is used much earlier. Social workers in the local authorities in England tell us they are in absolute awe of the secure units in Scotland and they have never seen anything like them. There is a rise in secure referrals to Scotland—this is my opinion—because people are accessing a service that does not exist in England, while in Scotland there is a decrease in referrals, because alternatives to secure care are being pursued.

However, those alternatives are not working, so we are seeing a rise in Scottish referrals again. St Mary's gets a consistent number of cross-border referrals. I think that David Mitchell said this morning that he had nine referrals in two days. Equally, I could get 20 or 25 cross-border referrals in a week, because there is absolutely nothing like this—their words, not mine—in England. That is one of the reasons for the rise in cross-border placements.

Fulton MacGregor: Convener, may I just say that that was my main line of questioning, not a supplementary?

The Convener: Your supplementaries took quite some time, which is why I brought you in to continue your main line of questioning. You confused us wonderfully.

John Finnie: My question has largely been covered by Fulton MacGregor, and, indeed, by what Ms Dearie said, but might I clarify one point?

I speak as a former councillor. The newspapers talked about taking children back into the local authority area. I would like to think that that was entirely driven by the needs of the child, but I suspect that the bank balance was a factor in play. You said that you are now finding that emergency admissions are for young people who are at a more advanced stage of complex needs than may once have been the case. Is that correct?

Carol Dearie: That is my opinion. Young people coming into secure care now are much more complex. When you look at their histories, you can see that had they had some intervention much earlier, we would have seen less of that. In my opinion, certainly the young people coming into St Mary's are far more complex, far more challenging and, in most cases, a lot more violent than what we have ever been used to. We are seeing some incredible levels of violence. I do not know that anybody on the panel would say that they have an answer to that situation, but clearly a pattern is developing of young people who are much more challenging and complex coming into secure care from Scottish referrals.

John Finnie: Can you say that there are people who are being housed in local authority residential accommodation who would be better placed in secure accommodation?

Carol Dearie: Are you asking whether I have any evidence of that?

John Finnie: Yes.

Carol Dearie: No, I do not, but it is my view, formed over a number of decades of experience in this work.

I am not saying that we should not be pursuing alternatives to secure care, even though I am the head of a secure service. The vision is for a Scotland that does not take liberty away from young people, but when we do so, we need to make sure that it is very therapeutic. There are young people in residential placements in Scotland who we know are on secure orders. I know of two such young people out in their communities who are on secure orders because they have been charged with attempted murder and murder and bailed by the High Court. There certainly are concerns about the housing of such young people. The legislation says that secure care is the last resort. That is what the legislation calls us—the last resort. There is much more

emphasis on doing things in the community before coming to us.

John Finnie: It is very good that it is the last resort to put somebody in secure accommodation, regardless of age. However, I am concerned that business parlance seems to come in when we are talking about procurement and the like in relation to the commendable work that all your institutions do. Are you concerned that there are people who should be in your care but who are not, simply because of local authority funding?

Carol Dearie: Yes.

Audrey Baird: Local authorities can determine whether young people who are on remand are placed in Polmont or in secure care services and, obviously, the difference in cost between sending a young person to Polmont and sending them to one of the secure services is significant. That was not always the case. Previously, the Scottish Government funded remand placements, in which case the local authorities did not have that responsibility, but when a local authority is faced with budgetary constraints, it has to take these things into consideration when it has a young person who is on remand and has to decide whether to send that 16-year-old child to a secure unit or to a prison. That is a difficult decision to make anyway, but if we add to that problem the fact that the young person has mental health difficulties, what decision is the local authority going to make? In considering a young person of 16, who is still a child, and who has mental health difficulties, does that local authority send the young person to Polmont, where the child to staff ratio is, I believe, 12:1, or to secure care services, where the ratio is at times 3:1 but more often 2:1.

Liam McArthur: Ms Dearie, you were saying that south of the border they do not have the equivalent of our secure care services. Does that imply that the cross-border placement process is working only one way, or are we still seeing evidence of local authorities seeking to place young people in units south of the border?

Carol Dearie: It is working in one direction. It is from across the border to us in Scotland. What we also find is that young people in secure care have an average stay of 15 weeks, but cross-border placements are nine months and the transition arrangements for the young people on leaving secure care are much more stringent, robust and effective, whereas a lot of our young people leave secure care to end up in homeless accommodation. There are clear differences in how cross-border placements are utilised compared with Scottish placements.

Liam McArthur: You are saying that what is available by way of secure units in Scotland is far better than what is available across the border.

Carol Dearie: Far better.

Liam McArthur: And you are saying that the process of transitioning through that is also better.

Carol Dearie: The transition is also better.

Alison Gough: At the moment, there are differences in the proportion of young people placed from England in the different secure care centres that are part of the national contract. The overall trend is that there has been a significant increase in referrals and placements of Scottish young people in secure care. At the Good Shepherd centre, for example, we have a very small number of young people from England in our secure care centre now, whereas last year over half the young people in secure care were placed there from England.

The Convener: Clearly a lot depends on the procurement process. If there is anything that you have not mentioned that you want to write to us about, in addition to your submission, please feel free to do so.

Rona Mackay: I would like to ask about the pathways and destinations of young people leaving secure care. I think that I am right in saying that the new legislation for looked-after people does not extend to people leaving care. Is there a satisfactory structure for them?

Carol Dearie: We let our young people down seriously. There is a massive issue to do with robust and effective transition. One of the best ways to give evidence is to give an example. I have a young girl who has carried out a two-year sentence and is about to leave, early in June; the only place that is being considered for her is a homeless hostel. She is 17. Anybody who tells me that that is an effective transition is not only letting that kid down but letting their country down. Our kids deserve better. They are the most vulnerable and yet time and again—I would happily speak for ever on this point—we see our kids leaving our secure environment, which is very nurturing, to go to environments where they are vulnerable and exposed again. It is a disgrace.

David Mitchell: I endorse the points that Carol Dearie has made. I think that that would be the shared view of all of us here.

The Convener: On that very concerning note, can I thank all the witnesses for attending? This has been a very powerful and useful evidence session. I will suspend briefly to allow the witnesses to leave.

12:26

Meeting suspended.

12:29

On resuming—

Petition

Judiciary (Register of Interests) (PE1458)

The Convener: Our final item is consideration of petition PE1458. The petition is from Mr Peter Cherbi and asks the committee to consider the merits of establishing a register of interests for members of the judiciary. I refer members to paper 4. Since we considered the petition last time, we have received additional information from Mr Cherbi and also from Moi Ali. We have also received a letter from the Cabinet Secretary for Justice. I invite members to comment on the correspondence and say whether they wish to make any recommendations or suggest further action.

John Finnie: It is very helpful to have all this information here. There are a number of suggestions. I, for one, cannot understand what the problem with having a register would be. The more people tell me that there is no issue, the more I am convinced that there is a need for a register. The submission from Moi Ali is very helpful. She refers to a letter of 23 April 2014, which is now a bit old.

We have also been provided with extracts from news coverage. I do not agree with the idea that anyone connected with the Scottish judiciary could have any role whatsoever in the United Arab Emirates. I looked yesterday at the Human Rights Watch world report, which does a country by country breakdown. The United Arab Emirates is a country that is intolerant of criticism, which has played a leading role in unlawful acts in Yemen, and whose treatment of migrant workers' rights and women's rights is shocking. It is a country that permits domestic violence. I do not think that any reasonable examination of the role of a public official—and I get the point about the separation of the judiciary—would say that involvement in such a country is acceptable. I believe that we need to do something and I am not content with the cabinet secretary's response, which is just playing out the same line as before—that there is nothing to see here and we should move on. I do not think that this issue will move on until we have the openness and transparency that people rightly expect of public office.

Daniel Johnson: I would like to speak in support of what my colleague John Finnie has just said.

The Nolan principles are 25 years old this year. They are principles that have guided public life very well, in particular integrity, whereby

"holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties";

openness, which I think is self-explanatory; and honesty, whereby

"holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest".

That is pretty clear. Although the cabinet secretary may well not view that there is a problem, that is not to say that this is not a positive step towards ensuring that we have a judiciary that is open and transparent and whose integrity is beyond question. I absolutely believe in the independence of the judiciary, but I think that in order to maintain that integrity and independence, this step has merit in terms of transparency. The committee should think about taking some further evidence, certainly from Moi Ali, which is the suggestion from the petitioner. This is something that we should progress and seek to move forward.

Liam McArthur: I echo what Daniel Johnson has said and much of what John Finnie has said. In reference to the United Arab Emirates, although I might share many of his concerns, I think that the point is that a register would be illuminating and, if there is a justification in engaging in order to improve the way in which judicial procedures operate in a third country, at least we would all know what the purpose of that engagement is.

I very much concur with what has been said about the need for transparency and the underpinnings of the Nolan principles. I see from the Scottish Courts and Tribunals Service the details of the accountability report. I am not sure that that is a massive leap away from what the petition is seeking, and therefore this may be a bit of a journey that it is on, but I certainly agree that it would be worth the committee continuing to pursue this, and to take further evidence from Moi Ali. That would seem to be a logical next step, as John Finnie suggested. The earlier evidence was in written form. It was a number of weeks ago. I believe that it would probably benefit us all to hear what she has to say and cross-examine that a little further. I would be very keen to keep the petition open.

Liam Kerr: I am pretty much in the same place on this. I can see the argument for why we would take this further and hear more. I have looked at the response from the cabinet secretary and the reference to the previous cabinet secretary, whose view has been that there is nothing particularly to examine here. Having considered the force of the argument in favour of exploring it further, I am not convinced that it is good enough to say, "There is nothing here. Don't worry about it." For that

reason, I think that we should look at this in more detail.

Fulton MacGregor: I echo what others have said. John Finnie in particular made a very compelling argument for doing something further on this. Some people have commented on the cabinet secretary's response. It is not my take on it that he is saying that there is nothing to see here, but I think that we should take more evidence and information in order to work out where to go from here. I agree with what has been said.

The Convener: If there are no other views, I will summarise. The committee is keen to hear from Moi Ali. Her letter was dated in 2014, but she has said that it is still relevant. It would be good to get an update. The Nolan principles are 25 years old, so perhaps it is time to take some evidence from Lord Carloway, if he is prepared to give a view, and certainly from the petitioner, and to give the cabinet secretary an opportunity to respond more fully than he did in his letter. If there are any other witnesses, we will be looking to do this in September. Are we agreed that that is how we will move forward?

Members *indicated agreement.*

The Convener: That brings the meeting to a close. Our next meeting will be on 4 June, when we will begin our consideration of the statutory instrument setting out the Scottish Government's plans on a presumption against short sentences.

Meeting closed at 12:36.

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