



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 11 June 2019

Session 5



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JUSTICE COMMITTEE

17th 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:

Peter Conlong (Scottish Government)

Karen Dyball (Glasgow City Health and Social Care Partnership)

Kirsten Hogg (Barnardo's Scotland)

Deborah Nolan (Centre for Youth and Criminal Justice)

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 11 June 2019

[The Convener opened the meeting at 10:00]

Decisions on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the 17th meeting of the Justice Committee in 2019. We have received no apologies.

Agenda item 1 is decisions on taking business in private. Do members agree to take in private item 5, which is a review of the evidence that we will hear today?

Members indicated agreement.

The Convener: Does the committee also agree to take in private at future meetings our consideration of draft reports on the draft Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 and on the impact of Brexit on criminal and civil justice and policing?

Members indicated agreement.

Subordinate Legislation

Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 [Draft]

10:01

The Convener: Agenda item 2 is continuation of our scrutiny of proposals to change the time period with regard to the presumption against short sentences. I am pleased to welcome to the meeting the Cabinet Secretary for Justice and his Scottish Government officials. David Doris is head of the community justice interventions unit, Peter Conlong is head of the justice analytical unit and Isobel Joiner is from the directorate for legal services.

I refer members to paper 1, which is a public paper, and paper 2, which is a private paper.

First, the cabinet secretary will make a short opening statement of up to two minutes.

The Cabinet Secretary for Justice (Humza Yousaf): In that case, convener, I will speak quickly.

Thank you for inviting me to speak to the draft order. We are seeking parliamentary approval to extend the presumption in question now that additional safeguards for protecting victims through the Domestic Abuse (Scotland) Act 2018 are in force, and as we committed to do in our programme for government.

The presumption is not a ban. We are not abolishing sentences of under 12 months, and the judiciary will continue to be able to impose custodial sentences where alternatives are not appropriate. Extending the presumption is not a silver bullet, but must be seen as part of a broader evidence-led, preventative approach.

The evidence is clear that short periods of imprisonment do not work. They disrupt the things that are most likely to help to reduce offending, such as family relationships, housing, employment and access to healthcare and support. People who are released from short custodial sentences of 12 months or less are reconvicted nearly twice as often as those who received a community payback order.

We have all heard community sentences being described as “soft justice”, but that is both misleading and damaging. In its written evidence to the committee, the Scottish Sentencing Council states that, in its view,

“community ... sentences are not a ‘soft option’, as is sometimes suggested.”

A recent Council of Europe report found that Scotland has the third highest correctional rate in Europe, at 548 people per 100,000, and committee members will know that we have the highest imprisonment rate in western Europe, with 150 people incarcerated per 100,000 of the population. Those are not statistics to be proud of, although we have taken bold action that has helped to cut crime by around a third over the past decade and to drive reconviction rates down to a 19-year low.

We need to get away from the view that justice is either hard or soft. Justice needs to be proportionate and fair and, above all, to be smart and evidence led. It needs to be tailored to the individual while ensuring the safety of victims, and it needs to provide the opportunity for rehabilitation while ensuring that those whose offending has harmed the community pay back for their crimes. We need community sentences in which sentencers, offenders, communities and victims have confidence, and that is why we have invested an additional £9.5 million in community justice services, bringing investment in community justice social work to over £100 million.

It is clear from the evidence that the committee has taken that there is strong support for extending the presumption provided that there are community-based interventions that are appropriate, resourced and effective.

During the committee's evidence-taking sessions, the issue of remand has been raised in recognition of the fact that its impact can be similar to that of short custodial sentences. Prisoners who are on remand make up about 20 per cent of the prison population at any given time, and the figure for women is 25 per cent. The number of people who are held on remand is at its highest level for more than five years.

Last year, following the committee's inquiry into the use of remand in Scotland, it made a number of recommendations and observed that, in summary cases, the conversion rate of remand to custodial sentences was relatively low. In responding to that report and in delivering our programme for government commitments on bail supervision, guidance and funding, we have taken action. However, we are open to considering on a cross-party basis further options that could help to respond to the high proportion of prisoners who are held on remand.

I hope that my opening statement has been helpful. I am happy to answer any questions on the proposed extension of the presumption against short sentences.

The Convener: Thank you, cabinet secretary. What evidence is there on the impact of the current presumption on sentencing?

Humza Yousaf: There are numerous pieces of evidence. Numerous articles have been written and numerous academics have researched the impact of short custodial sentences against the rehabilitative effect of community sentencing, and those academics are unequivocal in saying that short sentences are more disruptive and less likely than community sentences to help with the rehabilitation journey.

The independent United Kingdom-based Crest Advisory report on the impact of the presumption against short sentences endorsed the rationale for the presumption, stating:

"reconviction rates are particularly high for shorter custodial sentences compared to longer sentence lengths ... the reduction in reconviction rates correlates with the decrease in the use of short custodial sentences, as would be expected".

We know from the available figures that people who receive a short custodial sentence are reconvicted nearly twice as often as people who receive a community payback order. The evidence for the progressive reform is absolutely overwhelming.

The Convener: You will be aware that the committee took extensive evidence at last week's meeting, and it was said that the use of short sentences was falling prior to the introduction of the presumption against them, so it seems fair to say that the presumption has not had a significant impact on sentencing. In addition—this relates to something that you have reiterated—Professor Tata questioned whether the presumption against sentences of three months and the use of CPOs, since their introduction in 2011 alongside other reforms, have helped to achieve the 19-year low in reconviction rates. He said that the assertion that the presumption against short sentences has specifically led to the change does not stand up to scrutiny, given that so many other direct measures have been taken that have had an impact on reconviction rates.

Humza Yousaf: With the greatest of respect, it would be incredible if you could find evidence that showed that short sentences have the rehabilitative impact that community sentences have. You are absolutely right to say that we can argue about some of the nuances in relation to the impact of the PASS. I accept that there are some issues relating to control factors because, depending on the seriousness of the offence, people might be more likely to get a custodial sentence than a community payback order. We can argue about the nuances, but if—

The Convener: I think—

Humza Yousaf: I will just finish this point. If we take a step back and look at the issue that we are discussing, we find that the evidence is absolutely

unequivocal. That is why we have criminologist after academic saying that they support the presumption against short sentences. There is no doubt that community sentences address the root causes behind people's offending and are much more effective for rehabilitation than short custodial sentences are.

The Convener: Just to be clear, are you saying that the presumption against three-month sentences has achieved the 19-year low in reconviction rates?

Humza Yousaf: I am certainly saying that that is a part of it—I do not doubt that for a minute. The impact might well be moderate, but even a moderate impact will have a significant effect in ensuring that people are not victims of crime in future.

Let me give you the numbers. The proportion of individuals receiving a custodial sentence of three months or less has fallen from 35 per cent in 2010-11 to 27 per cent in 2017. That is around 3,200 individuals. Although that might be seen as moderate, it is still 3,200 individuals who will, we hope, be better placed on their journey of rehabilitation, which will, we hope, mean fewer victims of crime.

I am not asserting that the 19-year low in reconviction rates has come about simply because of that one measure. In my opening remarks, I said that what we are presenting is not a silver bullet but an important measure in a broader package of justice reform.

The Convener: The point was made last week that there is no evidence of a direct correlation between the two things, not least because of the use of the term "conviction" and the enormous growth in direct measures such as out-of-court offers of settlement, fiscal fines and so on. We heard that those alternatives have absolutely impacted on the drop in conviction rates.

However, you have answered that question, cabinet secretary, so we will move to a supplementary question from Shona Robison.

Shona Robison (Dundee City East) (SNP): With regard to the evidence, you mentioned academics and criminologists, but have politicians or ministers from elsewhere—say, the UK Government—shown any interest in the evidence with regard to the presumption against three-month sentences?

Humza Yousaf: Very much so. We can dance on the head of a pin and talk about specific nuances and so on—that is fair enough—but there is absolutely overwhelming evidence that short sentences simply do not work and that community alternatives are much more effective. The UK Government has made that point on numerous

occasions on social media and other platforms. Indeed, it has often lauded Scotland and looked towards us and what we are doing up here.

One of the Conservative leadership candidates, Rory Stewart—I do not know where he is in the pecking order or whether he has the backing of any of the Conservative members here—has come to Scotland to learn more about our approach to the presumption against short sentences. Moreover, David Gauke, who is the Secretary of State for Justice in the UK Government and someone I have a lot of time for, has been quoted as saying that we need to move away from the labels of hard and soft justice and look towards smart justice.

The UK Government is not just bringing in a presumption, but going further by proposing a ban on short sentences of six months or less. David Gauke has said:

"I want a smarter justice system that reduces repeat crime by providing robust community alternatives to ineffective short prison sentences—supporting offenders to turn away from crime for good."

Even those who might traditionally be seen as more Conservative and as not being associated with progressive justice reform can see that short sentences are not effective in dealing with the root causes of people's offending.

Daniel Johnson (Edinburgh Southern) (Lab): Focusing again on the evidence, I note that, since 2003, the number of sentences of up to three months that have been handed out has approximately halved while, over the same period, sentences of between one and two years have doubled and sentences of more than two years have risen by approximately a third. The displacement is not perfect but, nevertheless, one might infer from those numbers that uptariffing has taken place.

Do you agree that those figures are evidence of that? More important, what steps or measures will you take to ensure that an outcome of the presumption against sentences of 12 months or less is not that sentences are increased to just over that threshold?

10:15

Humza Yousaf: That is a really important point and I thank Daniel Johnson for making it. I hope that I can give a couple of reassurances.

One of the reasons why we went for 12 months as opposed to any other timeframe is that it fits with the maximum sentence that can be imposed for summary proceedings. There could not necessarily be an uptariffing in that respect. Daniel Johnson is right to say that that could be inferred

from the presumption as it stands, and we want to avoid that.

The broader issue that Daniel Johnson mentioned is also important, and the committee has taken evidence on it. We must ensure that the judiciary has confidence in the community justice landscape. There is clearly some evidence that sheriffs in some localities need that confidence and need to be persuaded about the merits of community-based alternatives and their robustness. That has to be part of the work that we do. I hope that the extension of the presumption will pass through committee, but we are still doing a lot of work on active engagement, and judicial confidence is a part of that.

Liam Kerr (North East Scotland) (Con): By way of clarification, I note that David Gauke said that he wanted to learn from the mistakes that had been made up here, such as CPOs not being enforced.

Cabinet secretary, I take your point about the effectiveness of three-month sentences, but the committee heard last week that there is shockingly poor data on the effectiveness of community sentences. That is an important nuance to pick up.

My question is a simple one. You talked about fewer three-month sentences being imposed. What does your modelling suggest? If you get the presumption against 12 months, what does the modelling suggest will be the outcome? How many fewer criminals will go to prison and will go into the CPO system instead?

Humza Yousaf: I take exception to what Liam Kerr said about David Gauke. I quoted directly from what David Gauke said on 4 June in response to Joanna Cherry MP when he was answering questions in the chamber. He said:

"I hope to be able to say more about the details of what we want to do in the not too distant future, but in respect of the approach that is being taken in Scotland, it is worth bearing in mind that it is already the case in England that a custodial sentence should be pursued only as a last resort, so there is already something approaching a presumption in the English system. I am interested in seeing whether we could go further than that, but I welcome the hon. and learned Lady's approach—our shared approach, I think—of scepticism about the effectiveness of short sentences."—*[Official Report, House of Commons, 4 June 2019; Vol 661, c 15.]*

When Rory Stewart was in his previous position as prisons minister, he did not come up here to berate the Scottish Government or the Scottish experience—he came to learn from it.

The modelling of the figures, numbers and statistics that we have in front of us is difficult to forecast. Ultimately, judges are the people who have the decision to make if there is a presumption. We can base the modelling on the existing presumption, but even that is riddled with

difficulty, so it will be very much up to the judiciary. I will bring in Peter Conlong, as he is the independent expert on the statistics and he works for the justice department's analytical services.

Liam Kerr touched upon the completion rates for CPOs. I note that fewer than a third of them do not complete. Liam Kerr's inference is correct that the Government has to work hard to increase the completion rates. I accept that, and we have done that. They have increased from 64 per cent to 70 per cent in the past decade, but we have to go further.

However, I ask Liam Kerr what he thinks the alternative is. I do not know whether he knows this, but if the alternative is to continue to give people short sentences, we need to consider the fact that 35 per cent of those who receive short sentences end up back in custody. They must commit a pretty serious offence to end up there. The fewer than a third who do not complete their CPOs might not have attended. That is serious and it will be dealt with, but is it really as serious as the more than 35 per cent who end up back in jail? I do not think that the alternative is much better—in fact, it is much worse.

Peter Conlong can give you a bit more detail on the statistics and the modelling.

Peter Conlong (Scottish Government): As members have heard, there was a reduction in the use of three-month sentences before the presumption against their use came in, so it is quite difficult to work out the exact impact of the presumption. There is therefore a limit to how much we can extrapolate from the experience to inform our views on a 12-month presumption.

We presented a few scenarios, to help partners to plan. One scenario was based on the fairly optimistic assumption of a 20 per cent reduction in the use of sentences of between three and 12 months, which roughly equates to a 7.5 per cent increase in the number of community sentences. That balances out the drop that we have seen in the past year, to some extent—

Liam Kerr: Forgive me for interrupting. What you are saying is really useful. For people who are watching, can you translate those percentages into numbers?

Peter Conlong: A 7.5 per cent increase would mean about 1,300 additional community sentences.

Liam Kerr: So, if the modelling is correct, 1,300 people who would have gone to prison will be on community sentences.

Peter Conlong: Decisions will be based on the individual circumstances, but a 20 per cent shift in sentencing would equate to 1,300 additional community sentences.

Humza Yousaf: And that is 1,300 people with a better chance of rehabilitation than they had previously.

Liam Kerr: If you deny Professor Tata's comment about the data—

Humza Yousaf: No, no, that is incorrect. I have met Professor Tata and I am happy for you to seek clarification from him. I do not think that you are denying that all the research—almost bar none—shows that community sentences are more effective than short custodial sentences when it comes to rehabilitation. I think that to deny that would damage your credibility, and if you are doing so, I would be happy to hear you do so on the record, because you would be isolated beyond your current isolation—

Liam Kerr: With respect, cabinet secretary, I am simply reflecting back what Professor Tata told the committee. He said:

"We have shockingly poor data".—[*Official Report, Justice Committee*, 4 June 2019; c 27.]

I am simply repeating the evidence that the committee heard.

Humza Yousaf: Okay. I appreciate that you guys are meant to be asking the questions, but I am really interested in knowing whether you think that community sentences are not more effective in terms of rehabilitation than short custodial sentences, because that is the inference that I take from what you are saying. If that is what you think, you are genuinely isolated on the issue.

The Convener: I think that the issue is the use and resourcing of custodial sentences. Professor Tata said that people end up on a short-term sentence by default, for one reason or another, and we know that they have absolutely no access to rehabilitation services. Therefore, what should we do? We should direct resources at the people who find themselves on short-term sentences by default. That does not happen just now. Even just three months means that there can be continuous work with someone, day by day, for 12 weeks. As a former teacher, I can tell you that a huge amount can be done during that time to signpost someone and sort out issues. Over 12 months, even more can be done.

I hope that that answers the cabinet secretary's question. We must move on.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I agree that there should be a presumption against sentences of less than 12 months, especially as a first step.

Cabinet secretary, you said that the UK Government is considering a ban. Did you consider such an approach at any stage before concluding that there should be a presumption

against sentences of less than 12 months? Whether or not the UK Government goes through with a ban, will we need to consider such an approach in future?

Humza Yousaf: Convener, I did not get a chance to respond to Liam Kerr. I am afraid that I must do. The evidence from the chief executive of the Scottish Prison Service was right: prison cannot do everything. Even if it could do everything, we know from the evidence and the data that community sentences are far more effective in rehabilitation than short custodial sentences. That is just undeniable.

We did not consider a ban, and I do not think that a ban is the right way to go, although I respect David Gauke as Secretary of State for Justice. In essence, the approach means that there is a ban and then a long list of exceptions to the ban, such as an exception for sexual offences. A ban very much restricts the judiciary, and the judiciary is best placed to decide who should be given a short custodial sentence and who should be diverted away from custody. A presumption against short custodial sentences is a much better approach.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I would like to ask about prisoner numbers. Given that we know that, for many people, prison is simply not effective and that Scotland has the highest imprisonment rate in western Europe, do you agree with the witnesses who said that any reduction in the use of short custodial sentences that the proposed presumption would result in would have a limited impact on overall prisoner numbers? What modelling has been done on what that might mean?

Humza Yousaf: I think that that premise is correct—I would not take issue with it. Based on the projection that Peter Conlong mentioned—the 20 per cent reduction in the use of short sentences that is forecast—the reduction in the total prison population will probably be between 200 and 300. Of course that will help to ease some of the pressure that we have seen in recent months, but we are talking about a relatively modest decrease.

The reason for the presumption is not to ease the prison population, although that is a welcome side-effect. We think that it is the correct progressive reform to make to ensure that more people are rehabilitated and that there are fewer victims of crime as a result. That is the hope, and that is what the evidence tells us. There will be a modest reduction in the prison population.

The important point, which I stressed in various interviews that I did yesterday, is that there might well be a disproportionate effect—in a good way—on the female custodial population. We know that 90 per cent of women who receive a custodial sentence receive a sentence of a year or less.

Rona Mackay: That is crucial.

You said in your opening statement that you had allocated £9.5 million more to community justice services. Do you agree that it follows that the proposed presumption will not free up resources that might be diverted to other prison or community sentences? What will the financial effect be?

Humza Yousaf: The question about how we prioritise the funding and what the profile of the spend will be in the future is a good one. In the short term, it is important that we have done what we have done, which is to protect the budget of more than £100 million for criminal justice social work for 2019-20. That includes an additional £9.5 million that will help local authorities with the alternatives to custody.

It is important to recognise that, nationally, the number of community payback orders has reduced by 8.3 per cent. We have increased the section 27 ring-fenced funding for criminal justice social work by 7.3 per cent and the number of CPOs has reduced by 8.3 per cent, so there is genuine confidence that the system can cope with the presumption. We will, of course, listen to each local authority on a case-by-case basis.

As far as the broader question of the transfer from the SPS to social work services over time is concerned, the member will completely understand that, in the short term, we need to keep our prisons running, so we must provide them with the necessary funding. In the long term, I would like our prisoner numbers to fall drastically. On the preventative side, as well as sending fewer people to prison, I would like us to invest a lot in rehabilitative measures so that we have a really dramatic reduction in our prison population. If such a significant reduction takes place—I am talking about a much larger reduction than the one that the presumption will result in—I can see no reason why, in the future, we would not reprofile spending, such that funding would move away from prisons to alternatives. However, I am afraid that we are not yet at that stage.

Rona Mackay: Do you agree that we are working towards a culture change in how we look at prison and how prison is used and a move towards the use of more effective methods in the community?

10:30

Humza Yousaf: We are in a unique position with the current profile of this Parliament and it is important that we do not waste it. Every political party in the Parliament—with the exception of the Conservatives—has a genuine understanding of the progressive reforms that we have to make to our punitive policy. That involves not just

politicians; it involves the judiciary, the third sector, schools, early intervention, social work and many others. Rona Mackay's reference to a culture change is right. There absolutely has to be a culture change, or a mindset change, in how we approach punitive policy. That high prison occupancy rate—the highest imprisonment rate in western Europe—is a stain on our conscience.

However, there is not a quick fix. I have spoken to previous Scottish Government and Scottish Executive justice ministers from different political parties to try to gain understanding from them. They have told me that the issues that I am talking about were issues that they grappled with when they were in my role. We have to take Parliament and the public with us on a radically different journey when it comes to our punitive policy.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): In relation to Rona Mackay's point about that culture shift, I would like to go back to some of the evidence that we heard last week from Dr Katrina Morrison of the Howard League Scotland, and Dr Sarah Armstrong, who said that if Scotland was an American state, its imprisonment rate would be comparable with Louisiana or Texas. During my line of questioning, Dr Armstrong said:

"I ... struggle with the paradox of why a country that is so committed to social welfare investment makes huge use of such an incredibly expensive resource as prison."—[*Official Report, Justice Committee*, 4 June 2019; c 24.]

I would like to get your thoughts on the record on how we got here. Why do we have such a high imprisonment rate? What cultural element do we have in Scotland that does not exist in other European countries?

Humza Yousaf: That is a good question. I will try to keep my answer brief; we could speak about the reasons why to quite an extent. There is not really one reason; there are a number of factors behind the high imprisonment rate. I could perhaps give you three, one of which would be judicial behaviour. We know that the punishment part of a life sentence has increased dramatically over the past decade. I do not know the exact figures, but I will give you an approximation from a decade ago. I look to Peter Conlong to keep me right, but I think that a decade ago the punishment part was approximately 12 or 13 years and now it is 18 to 19 years, so people are in prison for a lot longer for committing a similar crime. There is therefore less churn.

Another reason is no doubt the nature of the offences that come in front of us. Victims of rape and sexual offences, and even victims of historical sexual offences, have more confidence than they have ever had before about reporting them. That is a good thing. However, the nature of those offences means that they often have a custodial sentence attached to them. We are therefore

seeing more and more people being imprisoned for sexual offences, rape, attempted rape and historical sexual offences.

Undoubtedly, the decisions that we choose to make also have an impact. The home detention curfew is one of the most obvious examples. At one point, we had 300 people out on HDC, then a review took place. The number of people out on HDC has been reduced to between 55 and 65 and there is a belief that perhaps the pendulum has swung too far in the other direction. We are not having the churn in people going out on HDC that we would have had previously.

Those are just three reasons; there are many more, but it all goes back to the fact that there is not a silver bullet. If we are going to have a radically different approach to our punitive policy, we have to bring in all the other stakeholders. I am working on doing some of that and some of my conversations with many people around this table have been effective in giving me good ideas on how to do that.

We have to take a radically different approach, because the evidence that the committee has received is absolutely right. For some reason, this policy is a punitive policy. The policy is at odds with the progressive country that we are rightly proud of being.

Jenny Gilruth: In giving evidence last week, Professor Tata told us that prison is still used to this day as some sort of “penal welfarism” when nothing else has worked. Do you agree with that assertion? We are talking about people with serious mental health problems, whose life might have collapsed around them. A number of different things might have happened to them and it gets to the stage in the system at which there is nowhere else for them to go, so prison is a last resort. Is that still the case?

Humza Yousaf: I do not disagree with the general premise. As one academic described it to me, there is a very wide door into prison and a very narrow door out. It is pretty easy for people to end up in jail and, in some instances, very difficult for them to get out and to avoid the revolving door that brings them back in. The academic said that we have to turn that on its head: there must be a narrow door into prison and a very wide door out through rehabilitation. That is absolutely correct.

As the Justice Committee well knows, a large number of people in prison, especially among the female population in custody, have serious mental health problems and issues relating to substance abuse, homelessness and poverty and inequality. We have to think about how we do things in a radically different way, but there is no easy answer. It is hugely important that we take the public with us on this journey. As I have mentioned

a few times in the committee, I get frustrated at the paradigm of hard justice versus soft justice, because that tries to simplify an issue that is actually very complex. If we are going to do this, we must ensure—regardless of who is justice secretary five, 10, 15 or 20 years down the line—that we take the public with us.

The Convener: We have supplementaries from Daniel Johnson and Fulton MacGregor.

Daniel Johnson: Is it not my main line of questioning?

The Convener: I thought that you wanted to come in on the resourcing of custodial sentences.

Daniel Johnson: I already asked a supplementary about sentencing on the back of your questions, convener—apologies if I have caused confusion.

The Convener: That is fine. Does Fulton MacGregor want to come in?

Fulton MacGregor: I am in the same boat as Daniel Johnson.

The Convener: What about Liam McArthur?

Liam McArthur (Orkney Islands) (LD): I very much welcome the measures that have been brought forward. As the cabinet secretary said, the evidence is overwhelming in relation to not only the rehabilitative opportunities through community-based measures but the move away from custodial sentences, which have such a disruptive effect on housing, employment, relationships and all the rest in a way that interferes with efforts to rehabilitate individuals.

As Daniel Johnson and other members mentioned, the issue of resourcing is key, and that has come through strongly in the evidence that the committee has heard. I was struck by James Maybee’s evidence last week. He said:

“the Scottish Government has made some resources available to assist criminal justice social work to prepare for the presumption against short-term sentences, but we are playing catch-up, and many of those resources are going into trying to maintain the status quo, rather than building new capacity.”

He went on to say:

“we are running to stand still with the demands on the service and the complexity of the work that we are doing. Very recently, Community Justice Scotland did some work that looked at the prison population on up to 12-month sentences, and the anticipation is that if some of those individuals come on to community sentences, they will bring much more complex needs, particularly for mental health support, as well as for other services.”—[*Official Report, Justice Committee*, 4 June 2019; c 2.]

The message from Social Work Scotland is that, yes, additional resources have been put in, but those are effectively plugging gaps and simply allowing the service to provide for those who are

currently on community-based measures. If there is any sort of uplift in the number of community-based sentences that are issued—we hope that that will be the outcome of the new provisions—the resources are not in place to meet not only the expansion of need overall but the more complex needs of certain individuals who fall within that group.

Humza Yousaf: I thank Liam McArthur for his, and his party's, support for these progressive reforms. I know that, more generally, he has for a long time been an advocate for alternatives to custody as opposed to short sentences. I will try to give him some reassurance.

I take what James Maybee said, and what Social Work Scotland says, very seriously. I looked at his evidence in great detail—there were one or two things missing, which I will flag up to give Liam McArthur some reassurance.

James Maybee spoke mainly about the core grant that is given to Social Work Scotland. However, he did not refer to the additional investment from the offenders service budget line that we are putting on to the agenda. It is probably for us to look at budget lines and how they can be brought to the surface more clearly. I also return to my response to a previous question: the number of CPOs has fallen nationally by 8.3 per cent, but the funding has been protected. I like to think that there is resource, although that does not take away from the point that Liam McArthur and James Maybee made about those people potentially having very complex needs. We can have an open conversation with Social Work Scotland to evaluate some of the impact on it, and we will monitor that.

If those people were in prison, we would be spending NHS resource on tackling their complex mental health issues. It is important that we address those root issues to help them on their rehabilitative journey. That does not take away from what has been said.

The other nuance to throw in—I think that I have mentioned it—is that if the legislation on presumption is agreed to, we think that there will be a moderate impact on the number of those people who would previously have received a short sentence of 12 months or less, and who will now be given an alternative to custody, certainly in the short term. The system will not be overwhelmed.

I was interested to read in a Dundee City Council report of 3 June:

“Based on calculations of possible increases in the number of CPOs if PASS is extended, it is anticipated that the service is well placed to respond to any increase in structured community alternatives to custody.”

Some local authorities feel that they are in a good place. Others—for example Scottish Borders Council, in a recent inspection report—have highlighted challenges. I am not complacent about the issue and we are investing. I will work closely with Social Work Scotland to make sure that we can give it as many reassurances as possible, and, where necessary, help it in relation to resource.

The Convener: We are moving on to resourcing of community sentences. Is Liam McArthur's question on the current issue?

Liam McArthur: It is, but I am happy to come back to it later, if need be.

The Convener: Is Liam Kerr's question on a different issue?

Liam Kerr: I am keen to pick up on what the cabinet secretary said about our needing to take the public with us. I understand his point, but I want to explore the subject briefly. Last week, we heard from victims groups that say that if you put a criminal in prison, they are being punished and the public is being protected. If we instead put offenders in a system in which—as the cabinet secretary said earlier—a third of orders are never completed and a quarter have no work element, surely he can understand victims saying that that is not protecting the public or delivering punishment. Does the cabinet secretary recognise that?

Humza Yousaf: I refer to the evidence that the committee took. You asked for very targeted evidence and submissions from victims groups, from academics and from professionals who work on the rehabilitative agenda. Of all the organisations that submitted evidence, only two are opposed to extension of the presumption against short sentences.

On orders that do not include unpaid work, some really good projects are included—

Liam Kerr: I do not dispute that. I am simply putting it to you that victims will look at what is going on and say that, in prison, there is an element of punishment and an element of public protection. Do you accept that victims would have a legitimate concern about those not being mirrored in the alternative system?

Humza Yousaf: I was coming to exactly that point. It is incumbent on all of us—Government and Opposition—to present a true picture of the alternatives, and to give reassurances to the public and not engage in scaremongering about the alternatives.

10:45

An example of an alternative that does not include unpaid work is the excellent Caledonian system. If Liam Kerr has not already visited it, I commend it to him. The project is successful in rehabilitating people who have committed domestic abuse offences, which is surely better for the victim than the offender being given a short sentence with no rehabilitative opportunity.

Liam Kerr will know this perfectly well, but I will say it to him anyway. We are talking about a presumption, so every sheriff and judge will still be able to give short sentences when they are needed. Domestic abuse cases are a case in point: a short sentence might often be given because protection of the victim is paramount. Extension of the presumption will not affect that.

The Convener: As you have mentioned that issue, I have a question on it. Should domestic abuse cases be excluded from the presumption? Scottish Women's Aid is critical of the plans. In its written submission, it says that it is

"not convinced that current practice around the use of community disposals is safe in cases of domestic abuse".

It goes on to say that it considers that

"there is significant risk that some women and children will be endangered by extension of presumption *in domestic abuse cases*",

and calls for domestic abuse cases to be exempted.

Humza Yousaf: I hold Scottish Women's Aid in the highest regard, but I do not agree with it on that. Such decisions should be at sheriffs' discretion. There is a presumption, so of course they can send to prison, even for a short sentence, people who commit domestic abuse offences. We specifically waited for the Domestic Abuse (Scotland) Act 2018 to come into force, and for training of the judiciary and police officers to have taken place, before we brought the presumption order to Parliament and before—if it is agreed—bringing it into force. Under the 2018 act, non-harassment orders can be applied for.

I do not believe that we should create exemptions to the presumption. Courts are best placed to make decisions on sentencing. The vast majority of stakeholders, including the Scottish Sentencing Council, agree with that.

The Convener: Victim Support Scotland has told the committee that

"communities have no faith in community sentencing. That is because ... it takes too long for someone to be found to be in breach".

Is it wrong about that?

Humza Yousaf: Did you quote Victim Support Scotland exactly? Did it say that it has "no faith"?

The Convener: It said that

"communities have no faith in community sentencing. That is because ... it takes too long for someone to be found to be in breach".—[*Official Report, Justice Committee*, 8 May 2018; c 39.]

Humza Yousaf: As I said in answer to Liam Kerr, there is genuinely a job for us to do in continuing to increase CPO completion rates: we will absolutely do that. If we are to take the public with us, we should present to them the evidence that shows that we should, if we want fewer victims of crime, rehabilitate more offenders. If we rehabilitate offenders, there will, of course, be fewer victims of crime. There is no doubt—the evidence speaks for itself—that community alternatives are much more effective in the rehabilitative journey than short sentences are.

The Convener: Victim Support and the victims organisations collaboration forum Scotland said in their written submissions that, right now, under the presumption against three-month sentences, protection of victims and their families is inadequate, but we are talking about extending that.

The police have also said that fewer registered sex offenders will be subject to notification requirements after the order comes into effect. That does not give victims or the community at large confidence that the presumption should go ahead.

Humza Yousaf: Again, I disagree. If you were to say to the public that people who are given short sentences are more likely to commit another crime than those who are given community alternatives, people will say that we should deal with the root causes and make sure that the community alternatives are robust. I accept all that, but they would also say that they feel reassured by that and would prefer that approach to the revolving-door approach, with people going in and out of prison.

People who are convicted of sexual offences and sentenced to community protection orders that have offender supervision requirements are required to comply with the sex offender notification register for the duration of the offender supervision requirement. If an offender is still assessed as posing a significant risk of sexual harm to the public at the point at which their CPO ends, the police can apply for a sexual offences prevention order, which includes the same notification register requirements. We are also introducing legislation, in the form of the Management of Offenders (Scotland) Bill, that will allow electronic monitoring of SOPOs. I hope that that gives some reassurance in relation to sexual offences.

I genuinely think that victims organisations, which want to see fewer victims of crime, will understand that that aim will be helped by the presumption against short sentences.

The Convener: I think that they will want to ensure, above all, that protection of victims is adequate.

Fulton MacGregor: I want to ask about a specific point that relates to the judiciary having faith in the community alternatives that we have spoken about. There is evidence that they have faith in them, but I want to ask about community payback orders and whether any work is going ahead to review any aspects of them.

The cabinet secretary knows that a community payback order needs to have in place a supervision requirement, apart from in orders involving stand-alone unpaid work. In a situation involving, for example, unpaid work with a mental health requirement, a supervision requirement needs to be in place. That creates a situation in which sentencers might have to set a requirement that they do not feel is appropriate—by which I mean a supervision requirement. That is the only situation in which they might have to do that. I assume that that would happen in only a small number of cases because, for example, they could not give unpaid work with a mental health requirement and a fine—they would need to add a supervision requirement to that. Has any thought been given to that aspect of community payback orders?

Humza Yousaf: Fulton MacGregor has articulated the position fairly well. The unpaid work element has been successful. Some 7 million hours of unpaid work have been done in communities. Every member's region or constituency will have been affected positively by that. Of course, it is for the judge to select what type of CPO a person should be given. As the member rightly articulated, supervision might well include specific requirements on treatment of substance abuse—alcohol or drugs—or treatment to tackle mental health issues. It could include a requirement to participate in a programme such as the Caledonian system, which deals with domestic abuse offenders.

CPOs are robust and credible community sentences. They are not about only payback to the community: some are about addressing root causes of offending behaviour.

Rona Mackay: I would like to add some context to what the convener was saying about breach. Some 75 per cent of CPOs in 2017-18 did not involve any breach applications, and the percentage of terminations is low, at consistently around 18 per cent.

Humza Yousaf: I recognise that. In response to Liam Kerr, I said that we must and will do as much as we can to increase the completion rate for CPOs, but the non-completion rate is not an argument against them. The alternative is short prison sentences, but more than a third of offenders who are given them are reconvicted and given further custodial sentences. They end up back in jail for much more serious offences than breaching a CPO by failing to attend, for example. That is serious—but not as serious as the crimes that are committed by the 35 per cent who end up back in custody.

The Convener: When someone breaches a CPO, prison is often the option that is taken because the court has run out of alternatives such as fines, fiscal fines and work programmes. As we heard last week from Lord Turnbull, there is sometimes no alternative to imposing a custodial sentence on someone who has refused to comply with a CPO. In such situations, resources and ensuring that people get help in prison could help; they get no such help, now.

Humza Yousaf: If I heard you correctly, you said that people who breach a CPO are often given a custodial sentence. I am not convinced that that is correct. I may have misheard you. If a CPO is breached, the sheriff—it is, in general, a sheriff—decides what action to take from a range of actions, which could include custody.

The Convener: That is accepted, but the court can run out of alternatives. When I asked Lord Turnbull whether people get a second chance, he said that they do and that they might get a third chance, but if there comes a point when the view is that the person is refusing to comply, the only option is a custodial sentence.

Humza Yousaf: Sure. That is why we have a presumption and why we have the discretion of the independent judiciary. I do not argue with that, but there are alternatives.

As I said in response to Rona Mackay a moment ago, of those who are given short prison sentences of a year or less, 35 per cent end up back in jail for much more serious offences. It will be for members to vote on the presumption, but those who intend to vote against it should understand that they are voting for short sentences, for which the facts and figures about those who end up back in prison are much starker than they are for those who do not complete CPOs.

Daniel Johnson: A number of members have touched on resourcing. It is important to understand the implications of the proposal, especially if we want it to succeed. You referred to increases and the total spend on community justice. I understand that the spend on community

justice programmes is £13.6 million and on community justice services is £10.1 million, which comes to £23.7 million for delivering community justice programmes. For custodial sentences, we spend £35,293 per prisoner per year. What is the equivalent figure for those who are given non-custodial sentences? What spend do you expect per person sanctioned and for the total budget to deliver community sentences?

Humza Yousaf: I might ask David Doris to elaborate on my answer. I do not have the exact figures in front of me, but we know that custody is much more expensive than community sentences. As I said in an answer to Rona Mackay, as we radically explore and examine our punitive policy and shape it in a different direction, we hope to reprofile some spend from custody to community alternatives.

11:00

Our additional investment in criminal justice social work over the past few years is based partly on forecasting, which is not, of course, an exact science. If it turns out that the demand for community alternatives is greater than we have forecast for, I will have to have that conversation with criminal justice social work. Any decisions will be taken year to year as part of our spending review.

Perhaps I did not quite get to the nub of the question, but I am happy to explore it further.

Daniel Johnson: The nub is that we will see a reduction in the spend on prisons only when we start to close institutions. Even if it is an average, the costs are largely fixed, and although we might see a shift, the likelihood is that, at the very least, there will be an interim period in which we will have to spend an increased sum on community sentences—on the 1,300 a year that we just heard about—while still spending the same amount on prisons. In that case, what will be the likely impact on the overall justice budget? How much more money will be spent in the interim or medium term on community sentences?

Finally—and I guess that this is the key point—the per prisoner figure is useful as a benchmark for what is actually being delivered, and it would be useful to have a similar benchmark for what is being delivered to people who are given community sentences. The question is not just about the overall cost impact but about how we are going to monitor the policy and how it is being delivered.

Humza Yousaf: I will ask my colleagues to come back to Daniel Johnson on that figure via the convener. In any case, he is right to suggest that the benchmark figure might be quite helpful;

indeed, it may well exist already, but—forgive me—I do not have it to hand.

Daniel Johnson is also right to point out that there will be a period in which we will have to keep our prisons well resourced while simultaneously investing greater amounts in community alternatives. That will have an impact on the justice budget, but that issue will be covered in the conversations that we have year to year as part of the spending review. Indeed, that is why the criminal justice social work budget has been increased, and it is part of the conversation that I have to have with the finance secretary every year. As Daniel Johnson might well know, there are other pressures on the Prison Service, but these are, as I have said, conversations for the spending review.

That said, it is my hope and desire that in the longer term we would be able to reprofile spending from prisons to community alternatives. However, Daniel Johnson is absolutely right: that would require a shift in the numbers that was so significant that we would be in the position—a position that, I have to say, I hope to be in—of closing, not building, prisons.

Daniel Johnson: One of the other critical success factors is what happens in community sentences. There are essentially two reasons for the 35 per cent recidivism figure that you quoted for short sentences, the first of which is, as you have implied, the suitability of the prison setting for those who have been sentenced for a short period of time.

However, the other critical element is the lack of rehabilitation services for short-term prisoners. Do we not need to do much more to ensure that rehabilitation is an essential component of whatever sentence of whatever length of time that people receive, including community sentences? Indeed, instead of having such a presumption, would it not be more to the point to look at the sentence that is actually being handed down? In that respect, I would highlight the example in Northern Ireland of enhanced combination orders, in which judges are explicitly required to set out the rehabilitation and other services that might be needed, as well as the punishment element. Would such an approach, which gives much greater clarity, not be better? At the very least, should it not be a requirement to ensure that the proposed measure is successful?

Humza Yousaf: I am not averse to looking at what other jurisdictions are doing and how they are doing it, and I am happy to look at any example that might help improve matters, particularly with regard to the rehabilitative journey that we want offenders to be on.

I will pick up a couple of points. The 35 per cent figure is not the recidivism figure; it is the figure for those who end up back in custody. My understanding is that many more will reoffend, but perhaps not end up back in custody.

The point about addressing complex needs and having associated budgets is hugely important, which is why the Government is so keen to work across portfolios. The health and justice collaboration improvement board is a key element of closer collaboration and cross-portfolio working, and the health secretary, her officials and I are involved in trying to deal with some of the root causes of crime.

With the preventative agenda, we aim to get to people before they commit an offence. However, if someone commits an offence, where is the best place to deal with that? Prison cannot be all things to all people. I respect the point about whether there should be a greater focus on rehabilitation in short sentences, and in an ideal world the answer would be yes. However, in Daniel Johnson's previous question, he—rightly—asked me about the budget pressures that I already face. The realpolitik is that we have challenging budgets, and prison cannot do everything. That is not to say that we should not look at whether we can do rehabilitation better in prisons, and throughcare support is an important part of that, for example.

If we can deal with issues in the community—preferably before somebody offends, but even after they do—that would be more effective than perhaps dealing with them in prison.

Daniel Johnson: I have been asking questions about how much money will be spent, because that is an important issue. I have also been asking about what the money will be spent on, because, again, that is important. The other point is how the money is made available. Time and again, people in the sector who deliver the programmes and those who are involved in sentencing tell us that one of the biggest factors holding back the use of community justice sentences is the absence of multiyear budgeting. Sentencers simply do not know from one year to the next what services will be available and what sentences they are able to hand out. Will you commit to changing that system, so that the consistency and certainty that sentencers need is available? Ultimately, is that not what is required to make the policy successful?

Humza Yousaf: I say this not to take away from Daniel Johnson's point, but we are often restricted because we get single-year budgets from Westminster. That is not to say that we cannot do multiyear budgets, because we are able to do that in some areas with some level of certainty.

Daniel Johnson touched on an important point that I do not think has been raised in the discussions so far. Third sector organisations, which we fund, are an important part of the puzzle and a vital component in helping us to deliver community alternatives. Although I will certainly give a commitment to explore the use of multiyear budgets, I am not able to give a commitment to enact them. I take seriously what the member says on this agenda—he makes a good point. My officials and I will explore multiyear budgets in relation to community sentences. Again, I will come back to member with an answer.

Liam McArthur: I return to our earlier exchange. In his evidence to the committee, James Maybee referred to several social work authorities receiving support from their local authority in addition to the core grant for criminal justice social work simply to maintain services at the current level. Therefore, there is a funding issue that needs to be looked at.

You talked about potentially easing some of the pressure on NHS delivery of mental health support to the prison population. Can you offer a reassurance that what is needed in terms of provision is a greater focus on the prison population, irrespective of what is happening with community-based measures? I would not like the resource there to be redirected to community-based measures. All the evidence suggests that we need more community-based measures for mental health support and more support in relation to mental health than is being provided for the prison population in the prison estate.

Humza Yousaf: On Liam McArthur's first point, I reiterate that I take what James Maybee and Social Work Scotland say seriously. I also reiterate that the increase in ring-fenced criminal justice social work funding is in addition to increases in revenue funding. Notwithstanding that, we will listen to what Social Work Scotland has to say. When the extension to the presumption comes into force, we will keep in close contact with SWS, local authorities and the Convention of Scottish Local Authorities to see the real-life impact of the policy and where there might be resourcing and budgetary implications.

Liam McArthur's broader, more substantial point is well made. I had a frank conversation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came to look at a number of male and female custody units in our prison estate and which presented a challenge to the Government on how we provide mental health services in our prisons. The recent report, "Report on an expert review of the provision of mental health services for young people entering and in custody at HMP YOI Polmont", from Her Majesty's

inspectorate of prisons for Scotland and Dr Helen Smith, also presents stark challenges to the Government and the NHS on how we provide mental health services in our prisons. There is a lot for us to consider, and I will make a statement to Parliament on the expert review next week.

However, I am open to looking at wider issues on how we deal with some of those complex health needs in the prison estate. It is not just about resourcing, although I appreciate that that is not what Liam McArthur was saying. Resourcing is an element, but issues such as information sharing are also important. Information sharing between various public bodies—or even within the NHS, between prison health workers and health boards—is not as good as it should be. There is a lot for us to do to address some of those complex needs in the prison population.

Shona Robison: We have touched a little on the variation in the use so far of the presumption against sentences of three months or less. You might have seen the evidence that Lord Turnbull provided, in which it was clear that some areas were using more community alternatives than others. For example, Alloa seems to have had a lot of success. We discussed at length what might lie behind that, and we touched on trust and confidence in or awareness of the alternatives, for example. What are your views? Can more be done? In particular, when we move to a presumption against sentences of 12 months or less, we need to make sure not just that the disposals are there but that sheriffs are aware of them and that they are confident that they will work.

Humza Yousaf: Judicial confidence, as well as resourcing, is absolutely key to making the policy a success. You are right to focus on that issue. Across the country, the confidence of sheriffs and judges can be patchy. That is why Community Justice Scotland is doing a power of work to instil a greater degree of confidence and reassurance in our judiciary.

11:15

Community Justice Scotland often holds events, mainly for sheriffs but also for judges, at which they meet providers of community justice and community sentences almost in exhibition style and have very frank conversations. Some of the feedback from the judiciary has been that, when they give somebody an alternative to custody, the feedback loop is missing. In other words, they do not get feedback on whether that person has been successful in addressing some of the underlying issues and so on. Sheriffs tell us that if they had that feedback, they would be more predisposed to give those community alternatives.

We are working hard with Community Justice Scotland to bring everybody involved in community sentences up to a good standard. Some sheriffs are real advocates for community alternatives and we hope to persuade them to be ambassadors for community sentences. That will clearly depend on the work that Community Justice Scotland does to make sure that robust alternatives are in place across the country.

Shona Robison: That brings me to my second question. The collection and analysis of the data on community sentences is really important, is it not? I know that the Scottish Government is working with Community Justice Scotland on that. Lessons on what works, evidence of that and the feedback about what actually happens will be really important in persuading the sceptics. Do you accept that there is an issue in building the case as we go forward and that we need to make sure that, as well as having the trailblazers, we have underpinning evidence that speaks for itself?

Humza Yousaf: I accept that not everybody is at the level that we would like them to be at. There are examples of close collaboration between the judiciary and community sentence providers, but that is not standard practice throughout the country. We need to elevate everybody to that standard.

I visited a good project near Arbroath—the Glen Isla project—where they said that the sheriff is excellent. The project is for female offenders, and the sheriff often sends women there and visits it regularly. He has a good rapport and relationship with the staff and is really invested in the rehabilitative journey—if I can put it that way—of the offender. I am not sure whether I should repeat this, but I was told by the Glen Isla project that, during the sheriff's annual leave, the replacement sheriff did not have the same understanding of the project and diverted many more women to custody. When the sheriff returned from leave, he was upset that that had happened. Building those relationships is key and is part of the work that we and Community Justice Scotland are doing.

Shona Robison: That is an important point. A few projects have been named, such as the Tay project in Dundee. A sheriff who is familiar with a project and who knows about it is more likely to refer offenders to it. Lord Turnbull mentioned a potential training role for an organisation—the Judicial Council for Scotland, I think—in raising awareness of such projects and perhaps building those relationships. Would you encourage that?

Humza Yousaf: It is probably the Judicial Institute for Scotland that he was referring to. I see a role for all those stakeholders. To be frank, it can sometimes be tricky from my side of the table. Members of the judiciary fiercely guard their independence, which I completely understand,

and being told what to do by ministers and politicians does not land well with them.

It is fair to say that, if they felt that they could, the vast majority of sheriffs would give an alternative to custody as opposed to throwing people into jail. There is a power of work for us to do in that regard, and we are doing it. The Judicial Institute for Scotland and the Sheriffs Association will perhaps be part of that conversation, as will many others.

The Convener: Some members of the committee had the opportunity to meet the Judicial Institute. They were very impressed with the work that it is doing to make all sheriffs aware of alternatives to custody and to talk about current issues that will improve the criminal justice system.

John Finnie (Highlands and Islands) (Green): On the issue of resources and the question of impact assessments, I checked the various impact assessments that normally cover legislation and, primarily, they all say the same thing—that the proposal is an extension of existing policy. We have talked about judicial awareness of local options. Given that we do not have an islands impact assessment, what consideration is given to the particular features that are unique to the four island sheriff courts, and, indeed, the mainland sheriff courts that deal with residents who are from islands? For example, the Caledonian project—which is by no means unique—needs an optimum number of people to participate in a programme to make it effective. As a result, is there a danger that there is a reduced range of options for those who are convicted in island sheriff courts?

Humza Yousaf: John Finnie raises a good point. Obviously, he knows about the island-proofing concept. However, he has a point about secondary legislation and doing things through orders, which I will—absolutely—take back to my officials.

I know that evidence was received from the Orkney and Shetland Islands councils, and we have to be aware of such nuances, which we also encounter in dealing with those who are in custody. There are nuances in island communities and issues around community alternatives, such as the stigma that is associated with them. Those nuances and issues are not necessarily unique to island communities—they can also exist in rural communities, and we have to be aware of and alert to them. However, having looked at the evidence from the island councils, I think that we will be able to meet the challenges of those nuances.

If there are particular conversations that John Finnie thinks that we need to have, I am all ears. He knows that I have a good relationship with our

island councils from my previous portfolio. We do not want those in island communities to be disproportionately negatively affected; we want them to have the full range of opportunities for community sentences that anybody else would have.

John Finnie: I am grateful for that response.

On a number of occasions, the cabinet secretary has mentioned sums of money that have been allocated, using terms such as increases in “ring-fenced” funding. Is there sufficient flexibility within criminal justice social work budgets in island—and, indeed, rural—areas to facilitate the participation of individuals in disposals that involve groups?

Humza Yousaf: It is my understanding that there is flexibility within that money. Although it is, as I said, ring fenced and protected, there is nonetheless flexibility within that. Of course, if island communities or councils feel that there are specific issues or particular challenges for their communities that they would like to raise with me, I will do my best to address them. I am absolutely open to that.

Liam Kerr: Throughout today, a lot of the case has been founded on the idea that community sentences are much more effective in preventing reoffending. However, last week, the committee heard that making a straight comparison of reoffending rates between those who are given a short custodial sentence and those who are given a community sentence can be somewhat misleading because of the difference in the extent of previous offending in the two groups. I am interested to know whether the cabinet secretary accepts that argument. If he does, is it not challenging to make the change without further analysis and understanding of what is going on?

Humza Yousaf: It is not, as Mr Kerr describes it, an “idea”—research bears it out. As I have said to Mr Kerr and the convener, if they would like to present an alternative to that overwhelming research, they will find themselves really isolated. It is very much borne out by the evidence.

However, the point that Mr Kerr makes is correct and has been made by others. The profile of those individuals who are diverted away from custody might well be different from that of those who are given a custodial sentence—I accept that. My colleagues in the justice and analytical services division have looked at the issue, and it is possible to control for those differences. If that is done, the gap might well narrow. The figures show that those who are given a short custodial sentence are reconvicted nearly twice as often as those who are diverted away from custody; however, even if those factors are controlled for and the gap narrows, there is still a statistically significant

difference in reconviction rates. The difference in the rates might be different, but there is still a statistically significant difference between the reconviction rate of those who are given a short custodial sentence and that of those who are given a community sentence.

The Convener: What types of cases might attract custodial sentences of up to 12 months, given that, if we consider the possibility of a discount of a third of the sentence for an early plea, offences that attract a sentence of 18 months might be covered?

Humza Yousaf: That would be for the judiciary to decide. I know that Lord Turnbull gave evidence to the effect that an early discount could bring an 18-month sentence down to one of 12 months, thereby bringing it within the ambit of the presumption. However, I go back to the point that it is just a presumption, which means that, even if the person falls within the category of having a short sentence of 12 months or less, it is up to the sheriff to decide whether they should go to jail. It will still be possible for the sheriff to send someone to jail if they think that that is the most appropriate place for them. For the more serious offences in that category, that might well be what a sheriff decides to do.

The sheriffs with whom I have engaged are very intelligent. You mentioned that you were impressed by the work that Sheriff Duff and his team at the Judicial Institute have done in training the judiciary. They will be very aware that the presumption has come into force, if that is what happens, and will bear that in mind. Lord Turnbull was sceptical on that point, but one would think that they would take that on board.

Ultimately, the answer to your question is that we are talking about a presumption against short custodial sentences, not a ban on them. Therefore, someone who is given any such sentence—whether it be for 12 months, 10 months or five months—could still be sent to jail. That will be up to the discretion of the judiciary.

The Convener: Lord Turnbull told the committee:

“Offences that might be in that category could include causing death by careless driving; causing death while driving while disqualified; possession of indecent photographs of children and, possibly, the distribution of lower-category images; possession of offensive knives and weapons; assaults; and, perhaps, some drug supply charges, sexual offence charges and charges of multiple housebreaking.”—[*Official Report, Justice Committee*, 4 June 2019; c 40.]

By any stretch of the imagination, those are very serious offences, which will be covered by the presumption.

That being the case, do you consider that the risk assessment is fit for purpose? Last week, James Maybee of Social Work Scotland told us that its risk assessment relies only on what the offender tells the social worker, not the evidence in court.

Humza Yousaf: Yes, I think that our risk assessment is solid and robust. In the justice portfolio, it will never be possible to reduce the risk to zero. Even when somebody is in custody, they can commit crimes, including, unfortunately, the most heinous crimes—people have committed sexual crimes and murder within the prison estate. Regardless of whether someone is in custody, it is not possible to reduce the risk of their committing a crime to zero.

11:30

I will make two points on the list of offences and your quote from Lord Turnbull on it. First, discretion lies with the sheriff. The individual sheriffs and judges have the discretion to say whether the seriousness of the offence merits a custodial sentence or a community alternative, regardless of whether it falls into the presumption against sentences of less than 12 months. Secondly, I, as the justice secretary, and the convener of the committee have to believe in people's ability to rehabilitate. I have to believe that people have that ability regardless of the crime and—this is perhaps the controversial bit—whether they have committed the most heinous of crimes. Some people will, of course, be beyond that, but I have to believe that the overwhelming majority can rehabilitate.

The convener is right to call the offences on the list serious offences, but, even if they have committed those offences, I have to believe—and I do believe—that people have the ability to rehabilitate. If I believe that—as I do—I have to ask myself what the evidence demonstrates is the most effective way of rehabilitating somebody. Is it a short sentence or is it a community alternative that addresses the root causes? As I have said throughout this meeting, it is undoubtedly community alternatives. Judicial discretion is important, but we cannot take away from the fact that the rehabilitative impact of community sentences is far greater than that of short sentences.

The Convener: Cabinet secretary, we have to pass legislation that protects the public. It has been your choice to extend the presumption to 12 months. The Law Society has asked why it should not be six or nine months. Of course, we all believe in rehabilitation, but, as the Wise Group has told us time and again, rehabilitation has to be properly resourced, and it has not been for the three-month presumption. There must be a

question about how extending the presumption to 12 months is a sensible way forward.

Humza Yousaf: I do not agree that rehabilitation under the three-month presumption has not been properly resourced.

I thought that I said this in an earlier answer, but perhaps I did not. The 12-month period was chosen for good and legitimate reasons, to avoid the issues around uptariffing because of summary sentencing limits.

You quoted Lord Turnbull, and it is also worth mentioning that Lord Turnbull said that community sentences are recognised as robust and not a soft option. Those are important points to put on the record.

The Convener: I do not think that anyone is disputing that, cabinet secretary, but the situation is as I have outlined.

Shona Robison: The *Official Report* will show that, immediately after reading out the list, Lord Turnbull went on to say that he had faith and confidence that, if the crime was of a serious enough nature to merit a custodial sentence, that is what would be given. It is important to put that on the record for completeness.

The Convener: That concludes our questions.

Item 3 is formal consideration of the motion on the affirmative instrument. The Delegated Powers and Law Reform Committee has considered and reported on the instrument and had no comments on it.

The motion will be moved, with an opportunity for a formal debate if that is necessary.

Motion moved,

That the Justice Committee recommends that the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 [draft] be approved.—[*Humza Yousaf*]

The Convener: As no members wish to speak, I reiterate what I have said earlier. I am not convinced that this is a sensible way forward for protecting the public, and, for that reason, I am not in favour of it.

Cabinet secretary, do you wish to wind up?

Humza Yousaf: I will say only that I am disappointed with that, convener, but I am pleased that the evidence is robust. I hope that the order is passed so that more people can be rehabilitated and there will be fewer victims of crime.

The Convener: The question is, that motion S5M-17438, in the name of Humza Yousaf, be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Green)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 Robison, Shona (Dundee City East) (SNP)

Against

Kerr, Liam (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Motion agreed to.

The Convener: Next week, we will consider the final report on the basis of today's result.

I thank the cabinet secretary and his officials for attending and suspend the meeting for a five-minute comfort break.

11:35

Meeting suspended.

11:41

On resuming—

Secure Care for Children and Young People

The Convener: Agenda item 4 is the continuation of our inquiry into secure care for children and young people in Scotland. I am pleased to welcome to the meeting Kirsten Hogg, head of policy, Barnardo's Scotland; Deborah Nolan, practice development manager, centre for youth and criminal justice; and Karen Dyball, head of children's services (north west), Glasgow city health and social care partnership. I thank the witnesses for their written evidence, which the committee has found really helpful in advance of our hearing from them in person, and I refer members to paper 3, which is the public paper, and paper 4, which is a private paper.

The committee has heard about the complex health issues and needs that many children and young people present with when they enter secure care. Have those issues and needs changed over time? If so, have our responses managed to keep up with developments?

Who would like to start?

Karen Dyball (Glasgow City Health and Social Care Partnership): From my perspective, the numbers of young people coming into and going out of secure care have fallen over the years, but the fact is that we have put quite a focus on alternatives in Glasgow. The situation in the rest of Scotland might be different, but in Glasgow, we have a number of effective interventions through which we try to support young people in staying in their own communities.

As I have said, the numbers in Glasgow have changed; at its height, the figure might have been 35 young people in secure care, whereas today we have 10. That is because the focus in secure care has shifted from sentencing to welfare provision, and we are very much focusing on the community and on trying to support young people in staying with their families. I know that you have already taken evidence on social isolation, and in Glasgow, we are clear that, to address that problem, we want children and young people to stay in their own homes and for that to happen in the widest sense.

People talk about the secure context as a way of fixing young people and their mental health issues. However, although we can try to reduce the worst effects, we are not fixing young people, and we need to look at solutions that focus on what happens before and after their period of secure care to ensure that we get the best possible outcomes.

Kirsten Hogg (Barnardo's Scotland): We absolutely agree with the evidence from Her Majesty's chief inspector of prisons for Scotland on the complex needs of the young people whom we support through our services in HMYOI Polmont, and we would also add to the evidence that you have heard about the greater incidence of mental health need and the fact that that is not necessarily manifesting itself as a greater incidence of diagnosable mental health conditions. In some cases, the issue is not that needs are changing or increasing but that we have a greater understanding of those needs, particularly the impact of adverse childhood experiences, developmental trauma and so on.

That is not to say that such experiences are deterministic; after all, not all young people who grow up in adversity will go on to develop symptoms of trauma. However, many of them will, and very many of the young people whom we see in the prison population of Polmont have different experiences of trauma, bereavement and loss that need to be supported. That is certainly an area that should be focused on. Such interventions do not always have to be complex; all that might be required is a simple focus on these young people's relationships.

11:45

Deborah Nolan (Centre for Youth and Criminal Justice): We would echo those comments. The data and information that we have on secure care and the number of young people in custody show a reduction in the numbers. However, although there has been significant reduction in the number of young people in custody, we have been hearing of a massive increase in the complexity of those young people's needs. Last month, we had an average of 38 under-18s in our young offenders institution, but the information that is available suggests that they have much more complex needs, with a much higher level of adverse childhood experiences, which often manifest themselves as trauma; high levels of mental health and emotional wellbeing needs; and a high prevalence of, for example, learning disabilities and substance misuse.

The children who are in secure care, which is our most restrictive form of care, will often present with very high—indeed, extreme—levels of need and vulnerability. As has been mentioned, although there has been real change and an ongoing fluctuation in the number of young people in secure care, they are presenting with an extremely high level of need.

Need is actually the crux of this issue, and perhaps the crux of a lot of the discussion that we will have today is how we most appropriately meet the complex range of needs of those children on

the basis of those needs rather than through a service-driven response.

The Convener: Although the term “adverse childhood experiences”, which Kirsten Hogg and Deborah Nolan have both mentioned, has come more into vogue, what it describes is by no means a new thing. Children have, as we know, been having these experiences for decades now—and I am thinking in particular of victims of childhood sexual abuse. Is enough being done to ensure that people can disclose such things in a safe environment—say, a school—and that interventions can be put in place early on? As we know, the vast majority of perpetrators of such abuse are in a position of trust; indeed, they are often family members. Is enough being done to tackle that issue?

Kirsten Hogg: The ability to disclose is obviously a very important first step. However, in their report “The right to recover”, which was published perhaps a year ago, my colleagues at the NSPCC identified a gap in the support services in Scotland, with a real lack of specialist support for people once they come forward and make a disclosure.

The Convener: That is helpful. Does anyone else wish to comment?

Karen Dyball: There is a genuine commitment to creating as many opportunities as possible. In Glasgow, for example, some of the pupil equity fund money has been used to increase counsellor time and availability, and there is a commitment in the city to ensuring that every school has a counsellor and every young person access to counselling. There are also a number of bespoke services to support children and young people.

There is a growing understanding and awareness that people need to be able to seek support. That support might come not necessarily from statutory services, but from a range of opportunities that has been created through partnership with the third sector and which allows children and families to take the approach that feels comfortable for them.

The Convener: That is very important. We need to ensure that these young people do not feel that things are out of their hands and are growing arms and legs, and that they are comfortable with the way ahead.

Jenny Gilruth: Good morning, panel. On social isolation, which has already been mentioned, I note that the report on Polmont by Her Majesty’s chief inspector of prisons for Scotland says:

“Social isolation, as a key trigger for self-harm and suicide, should be minimised, with a particular focus on those held on remand and during the early weeks in custody.”

What are the panel’s thoughts on the impact of social isolation on young people in general?

Deborah Nolan: The evidence from the mental health review and the Scottish centre for crime and justice research about suicides was very clear about the detrimental impact of social isolation on children. The broadened definition of social isolation in the review was helpful, as was what it said about the factors that contribute to it, particularly for children who are in custody.

The report identified remand as a huge factor in the isolation of those children. It has given us an important opportunity to think again about our use of remand for children and how to ensure that, if they are remanded, they are enabled to have the maximum benefit of that time in custody. The report made it clear that opportunities are not available for children during that period. That echoes the findings of work by us and partner organisations with young people in custody, which showed that it is inherently difficult for children on remand to get access to services.

Kirsten Hogg: As well as seeing social isolation as a factor in itself, if we look through a trauma lens, we can also consider it as a layering factor. Trusting relationships that have built up over time can be very beneficial to young people who need mental health support because of their experiences of trauma. Social isolation prevents them from getting the support that they need.

As part of our youth work support in Polmont, our youth workers go out to young people like those whom you heard about in the previous evidence session, who simply do not feel able to come out and just want to stay in their rooms. Our youth workers go in and try to develop close relationships with those young people to help and support them to feel confident about coming to smaller group work or something along those lines. There is support, but resource issues come into play, as always. There is a limit to the amount of time that can be devoted to trying to break down barriers and develop trusting relationships.

Jenny Gilruth: The centre for youth and criminal justice points out that there is no requirement for individuals on remand to undertake work or educational classes, and many young people on remand refuse offers to do those things, thereby exacerbating the problems of social isolation. You spoke about your colleagues having to go into cells to get young people to engage with educational opportunities. If young people cut themselves off while they are in custody, should there be a choice or should the undertaking of educational opportunities be enforced?

Kirsten Hogg: All the services and support that we offer are available to young people on remand,

but they are very highly subscribed. In contrast to the reports that you heard in the previous evidence session about services that young people do not want to engage with, we find that our youth work service and our here and now service, which specifically helps young people who have experienced trauma, bereavement and loss, are massively oversubscribed.

The resource element of what you have suggested would be very important. If all young people on remand were asked to access our services, they would not be able to, because we are full to capacity. Young people are saying, "We like to come to work with you—we like the relationships that you build with us and like that you trust us." That has come through in a number of reports, including the chief inspector's report.

Even if there were to be compulsion, I imagine that there would still need to be choice. If the services that people want to access are oversubscribed, that would be part of the dynamic.

Karen Dyball: From the perspective of statutory service provision, I would say that a focus on developing good relationships with young people is a conduit to encouraging them to participate. The relationship with the third sector, and investment in services that have the capacity to build those relationships, is the way forward, in custody and outwith custody, and we should develop those services.

Lots of young people choose not to take the services that are available pre-custody. We need a shift in service provision so that we are clear that we are providing the right services, in order that young people feel that they can engage safely and build relationships, pre and post-custody—and, I hope, avoid custody.

Liam McArthur: You have identified that although the numbers have reduced, the complexities of the issues that the children and young people are dealing with are more significant. Is it fair to say that, across the secure care sector and custodial units, the provision of child and adolescent mental health services and other support for mental health issues is patchy, or is it consistent?

Deborah Nolan: It is important to differentiate secure care from custody. Our submission refers to the risks that arise for young people when the two environments are equated. The environments are very different; we might well come on to discuss that.

Significant concerns have been raised in both environments about health service provision and the in-reach of services. I know that at the previous evidence session for the inquiry, the committee discussed the challenges of access to mental health services for secure care providers,

such as who has responsibility, the lack of a clear pathway for children who are in secure care to access health services, and equity of access. Through the secure care national project, concerns were raised about the interface between the health board and local authority that place a child and the health board and local authority that host the child and the secure centre. There are challenges in access to services for our children who are in secure care.

As I am sure the committee is well aware, there are numerous concerns about the ability of children who are in the community to access mental health services. The picture is complex and is magnified for our children who are in secure care.

National standards for secure care have recently been developed. They very much build on the calls for action that came from the secure care national project and they give a focus to how we ensure that young people gain the health support that they require. The standards will be launched in due course, which should assist with the situation, but health boards must be on board as key partners in that.

Liam McArthur: My next question might be unfair. Given all that, what priorities need to be focused on—not as a silver bullet, but as something that would make a significant difference to addressing the concerns?

Deborah Nolan: We must fully meet the health needs of our children who are in secure care, which needs a partnership approach. Secure care centres provide a high level of mental health support, programmes and interventions, but a much more holistic focus is needed on what the whole system can provide to children while they are in secure care. That needs a partnership approach with community partners to provide the in-reach and the continuity of care when children leave secure care centres and return to their home environment.

Karen Dyball: I echo Deborah Nolan's points. Even young people who have access to CAMHS and forensic CAMHS in the community find that, as soon as they move, they must shift who delivers their services. That is an issue even though we have the hospital that is based in Irvine because, if someone's service is delivered from Glasgow, the service will be delivered by someone different in Irvine.

A thread throughout the evidence has been the importance of relationships. When someone goes into secure care, which the law describes as a last resort, they have the further challenge of a complete change in caregiver, which includes the mental health service provider, even when the provision was good.

In the best case, we can use services that are available to us. In Glasgow, we are fortunate to have forensic CAMHS, which allows us to have a formulation for young people. We can describe the challenges for a young person and how the caregivers should meet their needs, regardless of where they go. It is important to build on that to get the best care for young people.

Liam McArthur: Deborah Nolan and Karen Dyball have talked about the importance of continuity—we got that message from the panel two weeks ago. Concern has been expressed that the funding structure can rub against that, because who will provide services over the longer term is uncertain. Do you share the concern about the need to build in more visibility of funding and certainty about who will provide services?

12:00

Deborah Nolan: I am not entirely sure of the question. I am not sure whether you are referring to the model of funding for secure care and secure care services.

Liam McArthur: I am.

Deborah Nolan: The evidence indicates that there are various concerns about our current approach to commissioning secure care services for our children. Those concerns have been illustrated on multiple levels, referring to the market approach and the lack of a national commissioning model. However, we should still be able to provide a continuity of care for our children, because health boards will have a responsibility to children throughout their journey. Likewise, local authorities are responsible for children while they are placed in secure care, and they will still have that responsibility when the children transition out of secure care, by virtue of their position as the lead professional. There are structures in place to support continuity, but the question how they are currently working forms part of the challenge.

Liam McArthur: Is that view shared in Glasgow?

Karen Dyball: Yes, and the situation is further complicated by the placement of children from English local authorities. At any given point over the past couple of years, that has been between 30 and 50 per cent. That dilutes the local knowledge and expertise of CAMHS, as they are delivering services that are not developing the themes around Scottish children with different needs and different placement times. That further complicates an already complicated picture.

Kirsten Hogg: When we are talking about how the mental health supports in Polmont or those that can be accessed in secure care interact with services in the community, it is really important, as

Debbie Nolan said, to put that in the context of the challenges that are faced by young people who are trying to access mental health support in the community.

We have examples of young people whose mental health needs have been properly addressed for the first time upon their entry into Polmont. That is the first time that they have been able to access such support. That is by no means the norm for everyone, but the challenges around accessing mental health support, particularly for young people who are looked after—given the instability of their lifestyle and the instability caused by a system that can move them between placements—might mean that it is not possible for them to access CAMHS services. Young people whom we know who are using drugs and alcohol as a coping mechanism for their mental health problems might not be able to access CAMHS services because of that. Sometimes, people with a diagnosable mental health condition, including some of the young people we have worked with who have not been able to access CAMHS services to support them in the community, have been able to access such support once they have come to Polmont.

Liam McArthur: There is evidence that their behaviour is as much concerned with trying to put themselves in a position where they will get support from services that they are not getting in the community. There can be a pattern of offending behaviour in order for them to put themselves back into secure care or indeed back to Polmont.

Kirsten Hogg: I do not think that the numbers that we work with are great enough for me to be able to make that sort of assertion.

Daniel Johnson: The point that the panel made regarding partnership working is key, and an important element in that being successful is ensuring that the practitioners, whether in secure care or in Polmont, have the relevant training to be able to identify and refer. That point is made clearly in the HMIPS report on mental health services at Polmont. The same report indicated that 50 per cent of people at Polmont may have some form of diagnosable learning disability or difficulty, so I was concerned when I discovered that the mental health training that was being provided did not cover neurodevelopmental disorders. That seems to be an oversight. What are the panel's thoughts about delivering training and what the content of the training should be? In particular, should there be a focus on neurodevelopmental disorders?

Deborah Nolan: We need to equip our workforce to meet the identified needs of the children to whom they will be providing care. Any

training input would need to cover the broad spectrum of need.

We have spoken about adversity, trauma and the high level of young people with learning disabilities or speech, language and communication needs. Perhaps 50 to 90 per cent of the young people in young offenders institutions have speech, language and communication needs. We are developing our understanding of the impact of traumatic brain injury and its high prevalence, as well as diagnosed and undiagnosed mental health needs. It is important to equip our workforce to understand those needs and how best to support children with those needs and that we recognise the distinctive nature of child development and what children need as children, because, first and foremost, they are children. We must ensure that our training is tailored to an understanding of children; often, we use programmes or training courses that have been developed by working with adults and try to apply that to working with children. We know that that does not work, because it is based on an understanding of a different cohort. Training is important, but the culture and environment that we provide for the children are also important. Relationships are important. Well-trained staff and specialist interventions are important but the cultural environment that the children live within is also important and it will shape their day-to-day experiences.

There has been a lot of discussion about how we can make trauma-informed environments. We have to be realistic about how challenging it is to do that in facilities that are often set up with punishment as a key component. There was a lot of discussion about that at last week's committee meeting. CYCJ and Barnardo's Scotland have worked in conjunction with Polmont to support it on its journey to become trauma-informed. That is a good and admirable intention, but we must be realistic about how difficult it is to achieve in practice. One of the complicating factors about providing a trauma-informed environment is resources, such as staff availability, time and staff support. We must train, supervise and care for our staff so that they can care for the children. The physical and cultural environments can be barriers to the ability to provide trauma-informed care to the children in a young offenders institution.

Daniel Johnson: For clarification, did you say that 50 to 90 per cent of young people have speech and language needs?

Deborah Nolan: There are wide estimates but, for young people in young offenders institutions, the estimates are within those ballpark figures. If we flip it on its head, the majority of children who are in a young offenders institution will have speech, language and communication needs. We

should tailor our approach so that we provide communication-inclusive environments for all children, because most of the children will present with those levels of need.

Karen Dyball: From our perspective, yes, it would be better to have training for the staff on the current provision, but is there an opportunity today for us to think about a different service provision to the as is, and to envision what we would like for Scottish children beyond Polmont and the existing secure care delivery? Could we be doing something different?

Daniel Johnson: I will ask briefly about variability. The HMIPS report stated that, typically, in Polmont, it took eight days for a young person to be referred to CAMHS. The panel subsequently reflected that that was much better than what was experienced in the secure care environment. More broadly, how do referral times and levels of training vary between Polmont and secure care and within secure care?

Deborah Nolan: I cannot comment on the referral timescales, but I know that a lot of work has been done on that. I can comment on training. To echo my previous point, it is important that we ensure that our training is child-focused and tailored to the needs of the child and, because we know that people change and move on, that we have a rolling programme of training within both environments.

The Convener: If anything else occurs to you after today's evidence session, you can always follow up in writing.

Rona Mackay: I will be brief because your comments have almost answered my question. I do not want to labour the point about training, but the HMIPS report stated that

"no NHS staff with training in adolescents, and none of the clinical staff have undergone the Essential CAMHS competency training that would be routine in staff appointed to a CAMHS service."

Given that prison staff are dealing with very vulnerable children daily, has the report resulted in a positive change in training for staff, outwith the specialist CAMHS services? Is that actually happening?

Deborah Nolan: I do not think that we can answer that question. It would be for the Scottish Prison Service to advise the committee on what it has done. I understand that some commitments have been made. The inspection report that went alongside the mental health review showed that some commitments on training and staff support had been initiated. However, it would be for the SPS to give the committee a clear breakdown of its intentions on the back of that point.

Rona Mackay: Would you agree that it is critical for the children in Polmont that the staff that they see every day are properly trained?

Deborah Nolan: Absolutely. There is a raft of complicating factors in ensuring that that happens, but it is absolutely necessary.

Fulton MacGregor: Deborah Nolan touched on this briefly—I am sorry if it came up more fully earlier and I missed it—but I wanted your comments on the interaction between secure care services and Polmont at the point where a young person moves over. Is that process working well?

Deborah Nolan: That is a very welcome question—it is important that we focus on transitions. We know that transitions for young people are often major, traumatic life events. That can apply to children entering secure care or custody from the community, as well as moving within establishments and returning to the community.

Under the whole system approach, the Scottish Government policy framework and national approach to working with children at risk of or involved in offending behaviour, there is a raft of guidance to support young people making the transition and to inform practice. There are various pieces of guidance to inform practice. We also have a raft of evidence from young people as well as stakeholders about what can work and what can aid those transitions most effectively. In addition, we have lots of examples of extremely good practice to support young people making that transition.

However, there are a couple of complicating factors in making such transitions. First, when such moves are carried out on an unplanned basis—for whatever reason—it can make it extremely difficult to ensure that they are managed appropriately or done in the best possible way. It can make it difficult to ensure that good practice and guidance is implemented if the young person is moving on a crisis basis. Where young people are moving on an unplanned or crisis basis, it is important that we reflect on the reasons that led to that, what we did during those periods and what we could do more of in future in order to prevent unplanned crisis moves or where they happen, to ensure that we are able to manage them as effectively as possible.

The inspection report and the mental health review have highlighted that, at times, those transitions are not handled as well as they could be and that, at times, the flow of information can be troublesome. That links back to what we said about continuity, and how important it is that we address all those factors.

Fulton MacGregor: Picking up on that last point, do any of the panel members have

information on the impact of those transitions, whether they are done well or not, on the young person's mental health?

12:15

Deborah Nolan: A wealth of evidence talks at length about the impact—at the initial and subsequent transitions—of depriving a child of their liberty. Colleagues down south in the beyond youth custody programme have done a lot of work on that and spoken at length about a young person's transition from the community to a custodial or secure environment and back, the detrimental impact that that can have on their mental health and how challenging that period can be. A lot of evidence indicates how challenging those experiences can be for a child.

Kirsten Hogg: We would also draw attention to the transition out of secure care or, indeed, Polmont. We know that symptoms relating to trauma in particular spike before people transition out of that support and that the first six to eight weeks back in the community are critical; we also know that that is where it is really difficult to find a support service.

For a while, our here and now trauma, bereavement and loss service had a transitions worker who particularly tried to work with young people who were due to be released, to make sure that they had support in the community. In some local authority areas that was possible; in some local authority and health board areas that was not possible—the support just was not there. Focusing on the transition out of secure care is very important, too.

Karen Dyball: We have two staff dedicated to Polmont, to support young people to make the transition back out. It is enormously difficult to get the right route for young people who are coming out of secure care. It becomes a really big challenge getting the right package for them, post-secure care. Sometimes, there is a reluctance across providers to take young people whose profiles include going into and coming out of secure care. It takes a lot of planning to get the right resource and, wherever possible, to support that young person to go back to the placement that they have come out of—the secure placement is an additional placement, and that again adds trauma to a young person's profile.

Deborah Nolan: Last week, the committee discussed children being moved at the age of 18, which means that children who have been in secure care have an enforced transition into a young offenders institution, even if they have a short period of time left during which they could remain in secure care. That highlights the legal barriers and the challenges to taking a needs-led

and developmentally led approach, to ensure that we care for children in the best possible facilities that meet their needs.

Fulton MacGregor: Has any work been done on collating what children or young people who have made the transition have said is the difference between secure care and young offenders institutions?

Deborah Nolan: We have worked with children in young offenders institutions, some of whom had previous experience of secure care. We detailed that in our report called “‘Just a wee boy not cut out for prison’: Policy and reality in children and young people’s journeys through justice in Scotland”. The phrase

“Just a wee boy not cut out for prison”

is what one young person said about someone he had seen remanded to custody. To him and some of his peers, that was very evidently the case.

The young people involved were able to reflect back on their experiences of being in secure care. They told us that, in comparison with custody, the relationships that they had with staff were particularly beneficial, they had much easier and beneficial access to family contact, their educational opportunities were better and they were prepared much more for their return to the community. To caveat that, only small numbers of children were involved in our report. However, it is very important that we hear from those children.

Other work that we have done with young people is captured in our “Secure Care in Scotland: Young People’s Voices” report. Young people who had previously been, or were at the time, in secure care reflected back on their experiences. Although many of them said that there were things that they would like to be different, they also said that secure care was the right choice for them at that time and that it provided them with positive help and support. Indeed, some of them said that secure care had changed or saved their lives. Likewise, in our “Just a wee boy not cut out for prison” study, some of the young people told us that custody had prevented more serious harm coming to them or someone else, because they were able to say that they needed to be removed from the community at that time.

Fulton MacGregor: That takes us on to when secure care should be used, but I believe that another member will take that line of questioning.

The Convener: If it is not covered, we can come back to it.

John Finnie, your line of questioning has been covered.

John Finnie: It has.

Shona Robison: We have touched on this issue but, to be clear, as you are probably aware, the HMIPS report talked about

“The systemic interagency shortcomings of communication and information exchange across justice, that inhibits the management and care of young people entering and leaving HMP YOI Polmont.”

Do the agencies—the prisons, the courts, the police, the NHS and the third sector, although that list is not exhaustive—work well together? The report suggests that they do not work as well together as they could. Most importantly, what could be done to improve interagency communication, whether around an unplanned or planned change? Sometimes, when it is unplanned, a change will be last minute and, as we heard in previous evidence, there might difficulties in sharing communication. What could be done to improve that?

Karen Dyball: In our previous experience with difficult outcomes, as a local authority, we have tried hard to get the right information. Historically, the well-recognised complexity for us is that the whole secure care population is so complex that it is difficult to pick and choose particular young people with needs because those needs will be reflective of the needs of the entire population.

We have had some examples in which we have been very clear. Obviously, although a young person may self-report that they are okay, there is also a social worker at court who can also be clear that that should be overridden by the available information to the contrary. The need for the report to be fair is recognised. Everybody concerned is committed to doing the best for young people, but sometimes communication gets lost. The reports on young people who go into secure care and custody, and on whom we focus most, are available to us in localities. It should not be difficult to improve that communication and set up systems through which we are able to share—as far as possible—some of the concerns and needs of those young people.

Deborah Nolan: There are many occasions on which agencies work extremely well together, but there are challenges to do with the consistency of joint working, which is a challenge in itself.

On the whole-system approach, the fact that 32 local authorities do things slightly differently causes challenges with consistency. There are very clear processes and structures in place to enable information sharing, although clearly evidence could be improved. For example, for children entering into custody, there is clear guidance on what information should be shared and when, and on arrangements for an initial custody review to be held within very short timescales, to ensure that the team around a child

come together to share information, discuss need, risk and support, and ensure continuity of support.

The review report said that setting minimum expectations of what information should be shared might be beneficial, but monitoring and accountability also matter. If breakdowns are identified in a timely manner and addressed, we do not end up in circumstances in which people are asked to provide care for children without information on need and risk.

Shona Robison: Okay.

The Convener: Deborah Nolan, you said that there is a lack of uptake of education and work—it is not clear whether it is just education—by children on remand. Could you comment on the isolation of children on remand and on the increase in the number of suicides?

Deborah Nolan: I would only echo what was in the mental health review report, which is that there are significant challenges for children on remand.

For children in custody, as was mentioned, there are issues with the availability and uptake of services, and about their ability to access services, which can contribute to isolation.

For children on remand in general, there are differences that relate to whether a young person is in secure care or custody during their period of remand. At times, legislative and financial imperatives can be a factor in the decision-making process, rather than the decision always being based on the needs and best interests of the child. That can prove challenging.

The Convener: Finally, the submission from Barnardo's Scotland comments on the uncertainty of one-year funding relationships and the resulting impact, which I know is an issue across the board. Perhaps the whole panel can comment on that.

Kirsten Hogg: Absolutely—that brings me back to my previous point about the importance of long-term trusting relationships and their restorative and healing impact for young people who have experienced trauma. Building those relationships is a key element of our services, but short-term funding can—in spite of our best wishes and intentions—make that difficult. Staff have lives to lead and if they do not know whether they will have a job next month, they may need to go out and look for another one. One small thing can have a big impact on young people with whom staff have been working over a long period of time. The member of staff may not want to leave—they may want to continue those relationships and that way of working. That is a challenge across third sector services, but it is writ large in this area.

Karen Dyball: We have been doing a lot of work in Glasgow to try to shift the relationship. We are trying to release funding that will be our money

to spend over much longer periods of time so that we can achieve sustainability in this context and in a much broader context.

We are clear that third sector colleagues are sometimes in a better position than statutory agencies to form those kinds of relationships, and we need to think about how we can fund that. In Glasgow, we have been quite successful in shifting some of the high-cost out-of-city placements by bringing those young people back into the city, and spending the money and thinking about how we invest. We are investing in an intensive service to avoid young people coming in. That involves giving the funding to third sector partners, and thinking about doing so over a five-year period to ensure that there is sustainability so that we can guarantee relationships over time and build up quality services.

The Convener: Does Deborah Nolan have anything to add?

Deborah Nolan: No—I would just echo what has been said.

The Convener: I thank all the witnesses for their evidence. This session has been really worth while, and the committee will look in depth at the evidence that you have presented today. Thank you for attending.

Before we conclude the public part of the meeting, I note the reports in the media that the chief executive of the Scottish Police Authority has resigned. Should those reports be confirmed, it is disappointing that the committee was not informed. If the committee agrees, I will write to the SPA chair to seek more information. Do I have members' agreement to do so?

Members indicated agreement.

The Convener: That concludes the public part of our meeting. The committee's next meeting will be on 18 June, when we will consider two draft reports.

12:28

Meeting continued in private until 12:48.

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