OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 13 November 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 13 November 2019

CONTENTS

EDUCATION AND SKILLS COMMITTEE
30th Meeting 2019, Session 5

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Daniel Johnson (Edinburgh Southern) (Lab)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Iain Gray (East Lothian) (Lab)
*Ross Greer (West Scotland) (Green)
*Alison Harris (Central Scotland) (Con)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Gail Ross (Caithness, Sutherland and Ross) (SNP)
*Liz Smith (Mid Scotland and Fife) (Con)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Robert Dorrian (Who Cares? Scotland)
Alistair Hogg (Scottish Children's Reporter Administration)
Brian Houston (Who Cares? Scotland)
Lindsay Law (Connect)
Debbie Nolan (Centre for Youth and Criminal Justice)
Amy Woodhouse (Children in Scotland)

CLERK TO THE COMMITTEE

Roz Thomson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education and Skills Committee

Wednesday 13 November 2019

[The Convener opened the meeting at 10:01]

Disclosure (Scotland) Bill: Stage 1

The Convener (Clare Adamson): Good morning, and welcome to the 30th meeting in 2019 of the Education and Skills Committee. I remind everyone present to turn mobile phones and other devices to silent for the duration of the meeting.

The first item of business is our fourth evidence session on the Disclosure (Scotland) Bill. We have already heard from the bill team and a range of organisations with an interest in the bill. Today's panel consists of organisations whose focus is on young people.

I thank the attendees at the focus groups that we held last night and this morning. It has been very valuable for committee members to hear about participants' personal and practical experiences to help us to understand the impact of the protecting vulnerable groups scheme, especially on young people, both at present and in light of the bill's proposed changes.

I welcome to the meeting Alistair Hogg, head of practice and policy, Scottish Children's Reporter Administration; Lindsay Law, convener, Connect; Debbie Nolan, practice development adviser, Centre for Youth and Criminal Justice; Amy Woodhouse, joint acting chief executive, Children in Scotland; and Brian Houston, director of operations, and Robert Dorrian, member, Who Cares? Scotland.

The panel is large, and we are constrained for time because a meeting of the Conveners Group is due to take place at 12 o'clock. If panel members wish to answer a question, I ask them to indicate that to me, but they should not feel that they have to contribute to answering every question that is asked.

I ask the representatives of each organisation to give the committee a little introduction, setting out their experience and interaction with the disclosure scheme. Perhaps Lindsay Law could start.

Lindsay Law (Connect): Connect's main involvement with Disclosure Scotland is in advising parents and parent groups about the use of the disclosure scheme in school volunteering and parent-led volunteering. We also act as an intermediary body for groups that want to make applications through us.

Alistair Hogg (Scottish Children's Reporter Administration): I thank the committee for inviting the Scottish Children's Reporter Administration to attend the meeting. I am sure that committee members are aware of what the children's hearings system does and of the welfare-based nature of that system. Every day, the SCRA considers the situations of Scotland's most vulnerable children and young people, who are referred to it for a variety of reasons, one of which is that they might have committed offences.

The SCRA's wish is for all children and young people who are referred to it and who go through the children's hearings system to be considered in the same way, as their needs are all the same. That is one of the fundamental principles of the system that has been in place for more than 40 years. The decisions and options that are open to a children's hearing are the same regardless of the reason for a child or young person having been referred to it.

The SCRA supports the measures that are proposed in the bill, as it would do for any measure that would improve the life chances of the vulnerable children and young people whom it sees and whose situations it considers daily. The bill is part of a range of legislative proposals that we believe set a positive direction of travel and which we support. Some of them have already been enacted, including the Age of Criminal Responsibility (Scotland) Act 2019 and the Management of Offenders (Scotland) Act 2019.

The bill would significantly improve the current situation. It recognises that there is a difference between childhood and adult offending. It would end automatic disclosure and introduce a range of checks and reviews. Although the situation would still be complex, as I am sure everyone here would agree, it would be slightly less complex than the current one. The SCRA feels that some areas merit further consideration and could be further improved. We would be happy to contribute to discussion and thoughts on those areas, which include the language that is used in the bill, its complexity, the preparation of guidance, the clarity of tests that are used in review situations and the ability to provide context for situations in which disclosure might be appropriate.

However, none of those further considerations should detract from the fact that the SCRA welcomes the bill and recognises that it makes a significant improvement. In the consultation process, the SCRA set out its views and the principles upon which it felt that this piece of legislation should be set. We feel that we were listened to extremely well and that the bill now reflects the issues that we raised.

Debbie Nolan (Centre for Youth and Criminal Justice): I thank the committee for the opportunity to give evidence. I represent the CYCJ, which is a dedicated centre that aims to support improvements to youth justice that will contribute to better lives for individuals, families and communities.

We have had a long-standing interest in disclosure and advocating for change in the disclosure regime, especially in relation to children. We have been heavily involved in the pre-legislative consultation and the development of the bill, and we have facilitated a range of stakeholder engagement events and other events in the development process.

We are involved in supporting the implementation of the Scottish Government's youth justice strategy. The priority theme of the strategy is about improving life chances, and the issue of disclosure is a key component in that. Through our practice development service, we offer advice and guidance to people in the youth justice sphere, including young people, their families and practitioners. We regularly receive from them queries about disclosure, such as, "What do I need to disclose?", "How long do I need to disclose it for?" and, "Should I accept offence grounds at a children's hearing and what might that mean for us?"

I echo the comments that have been made by Alistair Hogg. The CYCJ considers the bill an opportunity for necessary reform of the disclosure system. We see it as offering a progressive step that would provide proportionality and a more individualised process. It would also balance the rights of people with convictions—including children with disclosable information, who should have the ability to move on with their lives—with the duty of public protection.

We especially welcome the measures in the bill that would enable a distinct approach to be taken to childhood conviction information, which would end the automatic disclosure of information for children aged under 18 at the time of the offence. Such information would now be listed separately, and there would be the right to review it.

We see the bill's approach as being evidence based, which is crucial and is also a key component in a child-friendly disclosure system that promotes children's rights and supports Scotland's whole-system approach to children, including those involved in offending. That is vital if we are to reduce the effects of disclosure of childhood conviction information, which we know are potentially devastating and destructive.

We suggest that more could be done in the bill. We welcome the childhood measures and a whole raft of other measures, but we think that further improvements could be made if we are to maximise the opportunity. I am sure that we will discuss those areas. In particular, they relate to the coherence of the different pieces of legislation; other relevant information, or ORI; the review process and how we can maximise the use of that process and the safeguards that are put in place; the suitability of lists in respect of children; and the complexity and support in the disclosure system.

Amy Woodhouse (Children in Scotland): I am representing Children in Scotland. For those of you who are not familiar with our work, we are the national network organisation for improving children's lives.

I have two different perspectives on the Disclosure (Scotland) Bill. One perspective is that of an organisation with staff who undertake regulated work and are members of the PVG scheme; the issue is how that works for us and for other organisations in the children's sector. The other perspective is that of an organisation that tries to promote and enhance children's rights considering the opportunities in the bill to further children's access to their rights. We will probably talk from that perspective in particular.

Like my colleagues who have already spoken, Children in Scotland supports the bill's intention and views it as a positive step forward in clarifying current processes and systems, which can be very complex for many organisations that are coming to grips with them, and in its opportunity to support young people with offending records to move on and have meaningful lives.

Likewise, we have questions and comments on a number of areas. I suspect that we will get into them, so I will not lay them out now. I will talk about my experience from Children in Scotland, the experience of our members and the bill's interface with other policy areas. For example, Children in Scotland is the secretariat for the cross-party group in the Scottish Parliament on children and young people. The issue of disclosure was brought up at a recent meeting of that group on what was then the Age of Criminal Responsibility (Scotland) Bill. We can draw in learning from that, as well.

Brian Houston (Who Cares? Scotland): I am from Who Cares? Scotland. We are an advocacy and influencing organisation that supports children, young people and adults who have experience of care. We are a membership organisation, so it is important for us to represent members' views. The Disclosure (Scotland) Bill has been a significant bill for them to discuss and explore.

We welcome the bill because it has the potential to remove assumptions and barriers in the current disclosure system. The disproportionate impact of

that system can be lifelong. It is important that we use the opportunity to explore the positive aspects of the bill and to recognise some of the hidden barriers that exist and reside in individuals. Whatever system we have—the existing one or the new one—there are barriers that young people or young adults apply to themselves. Their childhood convictions and the prospect of going through a disclosure process limit their opportunities in the future.

Although we welcome many elements of the bill, we want to have discussions and explorations in this evidence session that could improve it or clarify important bits of information.

We work with young people and adults who are aware that progressive legislation is being put in place but who have sometimes not seen the direct benefits of that as it has been implemented and interpreted. Although we understand the experience of the current system, it is important that we track that and see how the system benefits care-experienced people in the future.

10:15

Robert Dorrian (Who Cares? Scotland): As Brian Houston said, Who Cares? Scotland is a membership organisation. Before I begin, I note that the reason why I am here today is that I am a member of Who Cares? Scotland. I have care experience—I was in the care system from the age of four. I will talk a wee bit about that before I get into the purpose of today's meeting.

I have had three different care settings; that is, three different families, including a failed adoption in a scenario whereby they kept my little sister, but did not keep me. I experienced loss, fear and constant worry. Notwithstanding that, I think that I have made a good account of myself. I have three degrees; most recently, I graduated with a bachelor of law degree just this year. This summer, I worked five jobs and held three volunteer roles. On paper, you would probably say that I look pretty successful. However, if you go back just a few short years, I would be reduced to just one word: "admonishment".

I have experience of the disclosure process. I accrued an admonishment when I was 16. I have a very real interest in the bill, because it can effect change. There is a lot of conversation to be had about the intention behind the bill. My journey has been made more difficult than it had to be. Throughout my time, I have lost out on lucrative jobs, been passed over for consideration and have had to have more than one awkward conversation. That could and should have been avoided. Had the recommendations in the bill been enacted years ago, I might be in a different position from the one that I am in today.

Who Cares? Scotland wants a reality where every care-experienced individual can maximise their potential without being unnecessarily hindered by childhood or teenage criminal records. We know from our members that care-experienced individuals often self-exclude, which cannot be quantified or put in front of the committee as statistics. Because of the disclosure process, those individuals often self-exclude from volunteering roles, or roles that involve working with vulnerable groups. Our members have told us that childhood convictions have prevented them from moving on from their past. That needs to change, and the bill is an opportunity for that change. I look forward to the conversation that we will have today.

The Convener: I thank all the panel members for coming; we really appreciate the time that you have taken to be with us.

I will ask a quick question of Ms Nolan. You talked in your opening statement about

"the time of the offence".

My understanding is that it is the date of the criminal conviction that appears on the disclosure—is that correct? Obviously, when we are talking about young people, that can be a difference of a couple of years in some circumstances.

Debbie Nolan: The provisions in the bill talk about the date of offence. For us, that is really positive; it is a real step forward and it is fundamental. As the convener alluded to, there can be lengthy delays in the process of a child committing an offence and actually being convicted of that offence. We do not deem that a child should be penalised owing to delays in that process. However, the Management of Offenders (Scotland) Act 2019 speaks about the date of conviction; that is, the provisions that are for under-18s are made only if the person was under 18 at the time that they were convicted, and not at the time that they committed the offence.

That is one of the anomalies in the potentially piecemeal approach that is being taken to reform of the disclosure system. There are three key pieces of legislation, all of which will impact on whether a child needs to disclose something. If those three pieces of legislation are not fully aligned, we run the risk of the benefits not being realised. The anomaly around whether we use the date of conviction or the age at the time of the offence is a prime example of that. It is a real anomaly. We strongly advocate that it should be the date of the offence and not the date of the conviction.

The Convener: Thank you. I will move to questions from the committee.

Daniel Johnson (Edinburgh Southern) (Lab): Obviously, the bill brings simplification. However, the flipside of that coin is that there are only two levels of disclosure and, potentially, a very broad range of different information that could be disclosed. We are therefore very reliant on the two tests of whether the information is relevant, and whether it ought to be disclosed. Are those tests sufficiently clear for the people who will have to interpret them—namely, Disclosure Scotland—and the people who will be the subject of that information? Is more clarity needed about how the tests will operate? I direct the question towards Alistair Hogg and Debbie Nolan in the first instance, but I am interested to hear anyone else's thoughts.

Alistair Hogg: Thank you. I think that I said in my opening comments that that is an area to which some clarity could be brought. The interpretation and application of the tests is crucial not just in terms of deciding when disclosure is appropriate, but in making the foreseeability of that clearer. Guidance on application of the tests will be critical; we need realistic examples to show under what circumstances the tests would be applied in one direction or another. It is crucial to have readily available and accessible guidance that people understand.

Debbie Nolan: I echo that: clarity is fundamental. It is really welcome that the bill enables greater individualisation of approach, particularly for children and young people. We know that flexibility and discretion are fundamental components of a rights-based system, so clarity is really important. If the tests are not entirely clear, we run the risk of making the situation more complex and less transparent. We agree that any further guidance or information about the tests that can be made available will be helpful in respect of what factors will be taken into account and how we will determine whether something is relevant and ought to be disclosed. We would like to see that in the bill or in statutory guidance, to enable greater weight to be given to that information, to make it clearer and to enable legal challenge, if required.

Daniel Johnson: I will go back a bit further. I am concerned that in case law, two of the key tests for proportionality are the seriousness of the offence and how long ago it was committed. That seems to me to be very subjective. It is certainly not intuitive to me—for example, after what length of time would the proportionality test kick in? Is it really possible to understand how the legislation will operate without seeing the guidance and the criteria and principles that it sets out? Is it an issue for the bill that we cannot test that?

Debbie Nolan: There is additional information in the bill about other factors that would be taken into account. However, there is a real need for guidance, and I agree that that should help to inform the decision-making process. Do we want to get into the details of that at this stage? We can consider the principles and the key components of the bill, but Daniel Johnson is right that guidance will help with the reality of implementation. I suppose that it is a question of sequencing and timing. Is it possible to consider the other measures without guidance, albeit that there is a clear commitment about what it will look like?

Alistair Hogg: I agree. I understand what you said about the subjective nature of applying such tests. It is impossible to articulate completely a set of rules and guidance that would lead to an inevitable conclusion; there has to be some subjectivity. Our belief is that tests need to be applied with the addition of contextual information, as I mentioned earlier. We need to think about how that could be introduced.

In terms of the importance of the guidance, one of the crucial areas will be understanding future risk. The guidance needs to acknowledge that such decisions involve application of a number of considerations, consideration of how those dictate future risk, and the striking of a balance between trying to assist the young person to move on with their life and the public interest. It is crucial that the young person who is at the centre of the process has clarity about how a decision is reached in order that they can determine whether they have a right to legal challenge. There is a right in the bill that relates to that, but only on a point of law. If the guidance is clear enough, the point of law might, if it arises, be clearer to that young person.

Debbie Nolan: On timescales, there is clear evidence that can inform the tests and help us to understand. The Howard League Scotland spoke at a previous meeting about the need to take an evidence-based approach. Research on time to redemption, for example, could really help to inform the tests.

Daniel Johnson: The tests become critically important in respect of looking at other relevant information. I think that it was the SCRA that pointed out that, under the Management of Offenders (Scotland) Act 2019, childhood convictions immediately become spent. However, there are no such provisions outside the bill for non-conviction information, while in the bill there are caveats and conditions for convictions that occur in childhood. Section 18 deals with provision of other relevant information—there are just two tests.

It strikes me that, under the bill, conviction information that pertains to a child would not be disclosable, but that other contact that a child might have had with the police, in relation to either convictions or other behaviours, could be

disclosed. Is that correct? Do members of the panel share that concern?

Debbie Nolan: Yes, I certainly share that concern. We appreciate the role of the provision on other relevant information, and we recognise that there is a huge wealth of case law that has enabled such information to be used. The bill changes the process around other relevant information, but—as you outlined—there are still some real challenges in that respect.

A really high bar must be set with regard to other relevant information being disclosed. For example, what other relevant information can be disclosed? How will it be monitored? Further information around the tests in general would be beneficial, so I certainly agree that additional information about the tests for other relevant information will be fundamental.

That leads to another challenge. We might have information that could be disclosed as other relevant information although it could not be disclosed by the state under the measures in the bill. There is an anomaly in the bill. The state might decide not to disclose certain information in relation to a child, but because self-disclosure is governed by different legislation, a child could still have to self-disclose. The benefits of the legislation would therefore be null and void.

Daniel Johnson: Do any other members of the panel have points to raise that pertain to the tests?

Brian Houston: A key aspect concerns the detail of how the measures are implemented, how clarity is achieved and how decisions are communicated to care-experienced people, in particular. We have heard in testimony and evidence from care-experienced people that they are anxious about the current system and are not sure about the situation in respect of disclosure, so they avoid it. There is enormous caring intent within the care-experienced population: they want to give something back by working in caring professions, but they self-limit and exclude themselves from doing so. It is really important for them to understand the changes and the benefits that will arise from the bill.

Clarity on the guidance and around self-disclosure is important for young people as they develop into adults. They have experienced situations in which they did not know that they needed to disclose information, then found out that they needed to do so, so the view that was taken, because they did not disclose immediately, was to be suspicious of them. Important and detailed discussions need to take place about how it is communicated to people that they might benefit from the bill. That is fundamental if we are to liberate people to feel that they could play a part in the caring professions.

10:30

Lindsay Law: I echo the point about the need for clarity. The message that we get from parent groups is that they are not clear about when they need to get volunteers through disclosure and that schools do not make that clear to them. All parent groups are made up of volunteers; they do not necessarily have experience of disclosure and PVG in other parts of their lives.

Some people have asked why it matters when a parent group says that everyone needs to have PVG checks. The issue is that care-experienced people and people who have experience of being in the criminal justice system might simply not volunteer to support their children at school, or they might withdraw from the system.

It is important that parent groups and schools are clear about when they need to ask for disclosure and about the types of work and roles that require it. We are keen to avoid parent groups and schools taking a broad-brush approach under which anyone who wants to volunteer in a school must go through disclosure, because that will not engender a situation in which the school is the hub of its community.

Amy Woodhouse: We share concerns that have been raised by members of the committee about other relevant information. They have been echoed by other organisations in the sector, including Clan Childlaw and the Centre for Excellence for Children's Care and Protection. The issue needs to be resolved. If the bill is to proceed, further detailed and considered discussion is needed about the high threshold.

Iain Gray (East Lothian) (Lab): Through the questions from the convener and Daniel Johnson, we have drawn out two contradictions between the Management of Offenders (Scotland) Act 2019 and the Disclosure (Scotland) Bill. First, one uses the date of conviction for under-18s, while the other uses the date of the offence. Secondly, the requirement for state disclosure and the requirement for self-disclosure are different. For the avoidance of doubt, I want to check with the panel whether they prefer the measures in the Disclosure (Scotland) Bill to those in the 2019 act. Is it fair to say that you are pointing to flaws in the 2019 act?

Alistair Hogg: Yes. The SCRA favours the approach that is taken in the Disclosure (Scotland) Bill.

Debbie Nolan: In relation to age, the CYCJ has the same perspective. In relation to the anomaly between state disclosure and self-disclosure, our concern is more about closing that loophole, particularly for under-18s.

Iain Gray: One way of closing the loophole would be to move to the approach that is taken in the 2019 act, but that is not what you are arguing for.

Debbie Nolan: No.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I agree with Brian Houston's point about communication being key.

I have a technical question about ORI. CELSIS has stated that its understanding is that

"the default position and the policy aim is *against* the disclosure of childhood information"

but that that is not set out in the bill. In its submission, the SCRA also suggests that the presumption should be that childhood conviction information should not be included, unless that is justified. I appreciate that this is a broad question, but can you say what justification there might be for including such information? Can you give examples of what relevant information should be disclosed?

Alistair Hogg: Does your question relate to other relevant information?

Rona Mackay: Yes. Can you give a general benchmark? I know that it is a difficult question.

Alistair Hogg: We agree with what has been said about the need for a very high threshold for disclosing other relevant information. However, if I have picked it up correctly, your question is whether other relevant information should ever be disclosed. Is the question about the general concept itself?

Rona Mackay: Yes—but you are saying that the caveat is that such information should not be included unless that is otherwise justified. That assumes that there would be justification for such disclosure in some cases. What might they be?

Alistair Hogg: The SCRA considers cases of children who have not just committed offences, but have engaged in seriously harmful behaviour. There are some situations—I stress that they are highly exceptional situations—in which the behaviour that has been exhibited is of such a concern that it might point to potential future risk, including risk to other people. The SCRA wants young people to be able to move on from very difficult circumstances in their childhood. You have heard a very enlightening account today from Robert Dorrian, which was absolutely intense. There is a body of research—you will have access to all of it through the CYCJ—that can direct us in how to assess that risk.

The concept of "other relevant information" is understandable, but disclosure of it, particularly in relation to behaviour that has happened during childhood or adolescence, needs a very high threshold. I recognise that the bill introduces a whole range of checks and reviews, which will hopefully lead to other relevant information being disclosed only in exceptional situations in which that is genuinely necessary. The bill mentions "relevant police information". The first review is by the chief constable, then there is review by the independent reviewer, then there is an appeal on a point of law, so there is a three-step check.

Rona Mackay: That sounds like a very thorough process. That was a helpful response, thank you.

Liz Smith (Mid Scotland and Fife) (Con): Mr Hogg, you made the interesting point that you feel that other relevant information is an understandable concept. I think that most of us would accept that, but that is very different from applying the practice. Some of you have suggested this morning that there is confusion—or some doubt, to be more accurate—about interpretation of the guidance. Would it help if the bill clarified in law some of the key issues, specifically on the two tests of what is relevant and what might be relevant?

Alistair Hogg: That could help. It would bring greater clarity, and clarity brings a greater opportunity to understand and then, if necessary, to challenge. It could bring that benefit.

Liz Smith: Is that a common view among the panellists?

Amy Woodhouse: I do not have a specific opinion on that. I defer to others on the panel.

Liz Smith: Other witnesses have put it to us that there will potentially be quite a lot of scope for legal challenge if the bill is not clear about exactly what those two tests refer to. The committee must therefore make a judgment on whether we can enhance the bill by including some legal clarification to help with that. It is all very well to have good guidance, but if it comes down to a point of law—as two of you have mentioned this morning—that could be a complicating factor. Before we decide about some of the concerns and anomalies in the bill that you have mentioned, and before we take a step back to ensure that there is that clarification, I am keen to know whether you feel that it would be helpful.

Debbie Nolan: It would be helpful, because the unpredictability is a huge issue. It makes it hard to inform people of what might be disclosed if there are what-ifs, buts, maybes and questions about whether someone will decide that something is relevant within the timescales or that something ought to be included. Those are tricky concepts to explain to anyone, and they are very tricky concepts to explain to a child, particularly as we know that children who are involved in serious and persistent offending are more likely to have

experienced adversity, trauma and loss, and they might have additional support needs. It is not good to have to say to someone who has had that raft of experiences, "Today, you are applying for a disclosure for this purpose, and that experience might be included or it might not be. Tomorrow, you will be applying for a different purpose, and the experience might be included or it might not be."

As Who Cares? Scotland explained, there is a risk. We either overdisclose and we are penalised because we have given people too much information or we underdisclose and we are penalised because we have not given people enough information, and the person is considered a liar anyway. We are putting people in a no-win situation, because they cannot understand the system or what is going to be disclosed and what might or might not be disclosed. Coupled with that, there is a lack of support to help people to understand the system and navigate it. It is no wonder that people decide to self-deselect and say that they will not go down that route.

Liz Smith: That is a pertinent point. Would that increase the amount of work that groups have to do to ensure that they are giving accurate information for disclosure? Would it increase the burden of paperwork on you?

Debbie Nolan: It would not necessarily increase the burden. However, people do not know where to go to get accurate information. Numerous agencies are reluctant to give the information because, if they give the wrong information, it can have a detrimental impact on people's life chances. At present, it is hard for people to know where to go.

There are some amazing organisations out there that are doing phenomenal work to support people with conviction information to understand the process and go through the system, but we need a much more rounded support package. At any stage in the journey, people should be able to access support from whoever they want to get it from, which means that we need to upskill those who support children and people who have convictions in general to understand the system. The bill will reduce some of the complexity of the system, which should make it easier, but there is still a grey area around where people can go for support and how we can ensure that good quality support is consistently and readily available to everyone.

Liz Smith: That is helpful. Thank you.

Brian Houston: We have concerns about other relevant information because of the process that young people experience in the hearings system. If there are offence grounds, the thoughtful discussion and careful consideration that happen in the hearing are about welfare. We want to get beyond the discussion about the offence to understand the context and the circumstances that created the conditions for it to occur. To get to that discussion, the young person is asked whether they accept the offence grounds. In that moment, we ask the young person for an admission of guilt when they do not have the normal supports that any citizen of this country would expect to have at such a time.

The rich discussion about the context of the offence then gets dislocated, and the conviction is carried forward with the young person. As they become an adult, the contextual discussion dissolves and is left behind. Our concern is that the information that will be introduced at that point will be other relevant information from someone else. Other relevant information relating to care experience might be about the young person's actual experience—their trauma and difficulty—and how that expresses itself within their life. If there is no balance in that, and no re-engagement with the context, there are real and significant risks.

Ross Greer (West Scotland) (Green): I am interested in the witnesses' thoughts on the changes to the scheme in relation to under-16s' membership. Under the provisions in the bill, anyone aged 16 or over who takes part in regulated work and does not have a PVG will be committing an offence, but that will not be the case for under-16s, because they will not be able to join the PVG scheme.

There are two lines of argument. One is that removing under-16s from the scheme is about proportionality, because it is not proportionate for someone who is under 16 to undergo the full checks and, under the getting it right for every child approach, if anyone's behaviour poses a risk, they should already be on social work's radar and so on. The other argument is that anyone who engages in work with vulnerable groups should undergo a full check. What are your thoughts on the proposal to remove under-16s from the full PVG scheme?

10:45

Amy Woodhouse: In my organisation, we have discussed who should and should not do regulated work. What I have to say might not apply to all organisations. I agree that people who are under 16 could do some things that we consider to be regulated work. However, Children in Scotland as an organisation does not give them those roles. That is not because we do not think that they could do them; it is because of the responsibilities that come with those roles. We do not think that it is fair for people in that age group to assume those responsibilities. They can perform a wide

variety of roles in our organisation and our partner organisations, but we do not think that it is appropriate for them to take on roles in which there are elements of safeguarding. I appreciate that, as I said, that might not be the case in other circumstances, but that is our position.

Debbie Nolan: The only thing that I would add is that we need to recognise that the disclosure regime is part of a package of safeguards and measures that are in place. It is risky to try to boil the issue down to a particular part of the system.

Ross Greer: We have had submissions from a number of voluntary organisations. Plenty of organisations support the proposal while others raise concerns along the lines of those that Amy Woodhouse set out. We have heard concerns that fewer organisations will offer volunteering opportunities to under-16s because there will be a perception that people who want to take part in this broad area must be at least 16. Does anyone have thoughts on that?

Lindsay Law: We need to take a step back and ensure that we have clarity on regulated work, protected roles and what are currently called regulated roles.

To address what Amy Woodhouse said, I would say that people who are under 16 might not be in a position to perform the full suite of functions in a particular role, so they might not do things for which disclosure is required. Voluntary organisations need clarity on that, because some things do not need to go through the disclosure system. For example, it would be bizarre if somebody who was attending school as part of a normal school day had to undergo a disclosure check if they went to a primary school to read to other young people, but some schools are imposing that on parents and young people because they are not clear about the difference between regulated work and volunteering that is supported by someone who is doing regulated work.

Amy Woodhouse: The point that I was trying to make is that young people take part in our organisation in lots of different ways and they have lots of different responsibilities but that, with regard to regulated work, there are some additional issues that we need to consider for that age group. It might not always be appropriate for them to take part in regulated work.

Ross Greer: Lindsay, how aware are schools of the fact that, as Debbie Nolan said, the PVG scheme is not the only thing on the table? Is it seen as the be-all and end-all of the protection system?

Lindsay Law: I think that schools are aware that it is not the be-all and end-all, but when we talk to parent groups, we often hear people say, "Do you have your PVG?" or "Oh, just go and get a PVG," as if that is where the responsibility of parent groups stops with regard to after-school activities that they run on behalf of schools.

Like other organisations that are represented on the panel, Connect views the disclosure regime as part of a suite of measures. It should certainly not be viewed as something that someone has to go through if they want to volunteer with a parent group at their child's school. That perception can bar people from participating, because they opt out of doing anything. We want every parent, carer and family to play a full part in children's lives, and we do not think that the barriers that are imposed, albeit by well-meaning people, deliver what those well-meaning people intended them to, which is, ultimately, to ensure the safety of vulnerable groups.

Amy Woodhouse: There is a need for clarity in the process. We know that the issue is a matter of concern in the wider voluntary sector. Indeed, we often ask whether posts in our organisation involve regulated work—we do that all the time. There is definitely a need for clarity, and a move towards talking about the roles rather than the work might help with that.

The Convener: I would like to follow up on that. Last night, when we spoke to a focus group panel, we heard the view that a move to talking about the roles rather than the activities might result in more confusion. Will you explain why you think that it would be a better idea?

Amy Woodhouse: I suppose it will depend on what we end up coming up with in terms of the description. There is quite a lot of work to be done in that regard.

As an organisation, we have struggled with the situation where regulated work forms a proportion of somebody's job rather than their full job. Currently, one of the criteria for going through an application involves the regularity of the work. The idea that it is the functions that are undertaken that make the application necessary might be more helpful than some of the current ways of defining it.

The Convener: The committee has heard examples of people who have one role, such as classroom assistants, having various functions across local authority areas, so we are concerned that there might be less clarity if we go down the route that you suggest. Do other panel members have an opinion?

Brian Houston: We have two focuses in that regard. Normally, our focus would be the concerns and wishes of members, but we are also an employer and we want to employ care-experienced people, including ones who might have had convictions. We also have points of

contact with young people across the organisation. It might not look as if some of our roles involve contact with children, but they do.

It is important to recognise that what we are trying to do with disclosure and protection is not something that happens only at one moment. A false sense of security comes from thinking that a check is all that we need to do. If there is a focus on the check and there is an assumption that everything is okay because we have done the check, it misses the point that the assessment of what is happening is dynamic—it is in front of us every day.

It is important to have clarity on people's roles and what we are asking them to do with people and vulnerable groups. As Debbie Nolan says, a suite of things promote protection, and the check is only one part of that.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): The bill contains two lists of offences—list A and list B. Do members of the panel have views on the lists? Should they apply to adult and childhood convictions?

Alistair Hogg: The SCRA has some concerns about the lists and the things that are contained in them, as well as the fact that they apply to adult and childhood convictions. Our reason is that some of the offences on the lists—today is not the time to go through them in detail—are offences in relation to which young people are frequently referred to the children's reporter, and they should be seen differently, through the lens of childhood convictions.

One of the most pertinent examples is wilful fire-raising, which I think appears in list A. As children's reporters, we see that offence quite frequently, as young people are referred to us for it. It is reflective of childhood behaviour and reactions to difficult circumstances, rather than being an offence that needs to appear on a high-tariff list. We have concerns about some of the offences on the lists. In previous committee meetings, there have been discussions about whether a separate list is required. We would be happy to contribute to a discussion on whether that idea has some merit.

Debbie Nolan: I echo those real concerns. If we are trying to move to a more proportionate, individualised approach of structured decision making on a case-by-case basis but we still have the implementation of lists, particularly for children, it becomes problematic and challenging. The two approaches do not go together. We would prefer a situation where a small number of offences were considered for children, rather than the wide range and the lists. That is our first issue.

Our second issue—this builds on what Alistair Hogg said—is that some of the offences are really common offences for children. I know that section 38 offences have been moved to list B, but it still covers numerous offences that are committed by children. We have done a lot of work on the unnecessary criminalisation of looked-after children, and we know that many of those offences fall into that section 38 category. That is a prime example of something that flies in the face of our ability to improve the system for children.

Our third point about the lists concerns the timescales. We appreciate that there will be shorter timescales for children but, when we consider list B, they would still have to disclose the information for five and a half years, which is a significant proportion of a child's life. The timescales appear to be based on those in the Management of Offenders (Scotland) Act 2019. There is concern that they are not based on the evidence that is available in the time-to-redemption research, which has been mentioned. There has been some improvement, but there are still issues with the list process.

Dr Allan: Someone on the panel—forgive me; I forget who it was—suggested that offences that were committed when the person was under 18 should be listed separately, with a right to review. If that is your view, how should that work? It does not have to be the person who said that who answers.

Debbie Nolan: We want a smaller number of offences to be considered for children, with a different approach to timeframes and the factors that are taken into account in determining whether something should extend beyond the arbitrary timeframe. In the current list situation, we say, "It's been this length of time since you committed the offence," and it is either on or off. We would like a more nuanced approach. That links back to our earlier discussions about tests and principles. A lot of what you have heard about the bill in the evidence sessions that you have held and the written evidence gives a really clear platform as to what should be part of that decision-making process, what should be part of those tests and what those principles are. If that information is brought together, it could have a real benefit in answering your question.

Dr Allan: Mr Houston, you said there is room for improvement in the bill for care-experienced people. I would be keen to hear from any of the panel, particularly Mr Dorrian, what you feel that room for improvement is. What would you like to see in the bill that is not there when it comes to care-experienced people?

Robert Dorrian: I think that the room for improvement in the bill concerns the issue of clear intention with regard to what the bill proposes to do. We were talking about lists previously, and when you put that in the context of what should be

included in the bill, those two positions jar, as Debbie Nolan said.

The current system puts the onus on a child or young person to come to grips with an often overly complex process. We need to put their care experience into context. If we think about a child who might be in a residential setting, has to engage in a children's panel or has alternative school arrangements, is it surprising that the context leading up to any convictions that they pick up is forgotten about in the process?

11:00

We were talking about contextualisation. We spoke earlier about other relevant information and when or whether it would be appropriate to include that. We need to talk about the training for the people who make the decision on what is considered to be other relevant information and the mindset that they have when they consider what information to include.

Particularly with regard to the independent reviewer role, the bill has scope to simplify the manner in which a person can challenge information on their certificate. It also has a provision for an assumption against disclosure of offences that were committed prior to the age of 18. However, the language that is used around that is still ambiguous—we spoke about that early on in today's discussion.

The bill has a limited ability to enable the detail behind the conviction to be discussed. That is where a lot of the discussion on what we want to achieve needs to be based. The bill does not consider either the stress that the person was under at the time or any mental health issues. As someone who has experienced care, I might have those discussions, but someone making the decision about other relevant information might not have any experience of care and might not consider it appropriate to do so. We need to balance that with whether it is appropriate. More detail is needed.

However, the contextualisation part needs to be clearly set out. A conviction should be disclosed only when absolutely necessary. There is more work to be done on the language in the bill, as well as on the support and guidance that we spoke about earlier, with regard to how that is structured.

One of my concerns is that, should there not be a statutory framework behind the process, the use of the phrase "other relevant information" leaves a lot of ambiguity and scope for different interpretations by different people. That could lead to challenge. It does not make it easy for someone who is engaging in the process but nor does it make it easy for organisations who are helping and supporting someone through that process.

Brian Houston: One of the other key elements that we need to consider is that care-experienced young adults are just migrating out of a system that has processes, some of which they have not had trust in. The disclosure system—and its associated processes—is just the next thing that they might encounter.

If we do not provide clarity on the information that is held, when it will be disclosed and what the implementation looks like, we will not promote confidence in the system. We will deny ourselves the resource that comes from that group—the caring intent that is provoked in them when they receive care. There is a more fundamental thing here about how we lift a barrier to young adults who might want to give something back.

As an employer, I interview a lot of staff who want to work with us and I am always interested in their motivation to work with children and young people. I do not mean, "Why do you want the job?"; it is much deeper than that. I am interested in what has compelled them to work with children and young people. I am always more reassured by care-experienced people when they articulate that. They are a lot clearer about it. There is an enormous potential for our country to tap into that caring resource. We need to get the technical aspects of that correct, so that we can communicate with simplicity what the new system looks like. That will generate confidence and trust among a group of people who have not had either in significant amounts. That will be better for us as a country.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Some of the points that I was going to raise have already been covered. Brian Houston has spoken about simplifying the process and trying to get the message out there, particularly to care-experienced young people, for a variety of different reasons. As we have heard, things can be particularly confusing for care-experienced young people, whose corporate parent is the state.

Is there a need for some sort of national campaign to raise the profile of the disclosure system or to develop an education programme to explain to people in a bit more detail or in more simplistic terms how it works—just to get the message out there, given the disconnect that exists?

Brian Houston: There are two key audiences, and we represent both of them. First, there are employers. You really need to give them clarity and confidence about the potential in the bill, and to take them beyond the natural response that might be generated when they see a conviction or read something. That is not the way to recruit people. It is one element, but the way to recruit people is to understand all the skills and abilities that they could bring to a job.

The other key audience is the care-experienced community. There is something really powerful that happens in that community. Those young people talk to each other, and they may be telling each other that a given field is not a caring profession and that they might not be able to work there.

There are invisible barriers here, which Robert Dorrian touched on earlier, and they are really hard to quantify. They involve word of mouth, with people saying, "I don't think you could work there," or "I don't think you'd be able to do that job." Some of that is simply not accurate. If we progress to something that is much more embracing, then we need to communicate that very strongly to groups of people who may not be part of the system, but who will be able to apply for things with the same level of confidence that anyone might have, as it will be about their skills and abilities, not something that happened in their childhood.

Robert Dorrian: To add to what Brian Houston has said, you raised a point about corporate parenting, Ms Gilruth, referring to the responsibilities there. For me, a pragmatic approach would be to have provision for independent legal advice set out in the bill itself. There are elements where that would not be available. To have a clear point of contact for tailored advice or even an online platform for experience would make things simpler and more accessible for people who have to navigate an often complex process. There will still be barriers in place, but anything that we can do to break them down would be helpful.

To contextualise that, the stereotypical person engaging in the disclosure process may have had one or two moves, but what about the person who has had 14 or 16? The onus is on them to know about those changes, to know where they were at what time and to know about the support mechanism that is in place.

Disclosure Scotland and a number of other organisations have an opportunity to adopt a practice that recognises the role of corporate parents in ending secondary discriminatory practices against care-experienced people. I do not mean direct discrimination; I mean discrimination that is almost a by-product of the system that we are in. There is an opportunity for all corporate parents to take that into consideration as you consider and implement the bill.

Gail Ross (Caithness, Sutherland and Ross) (SNP): We have touched on the interactions between the Disclosure (Scotland) Bill and the Management of Offenders (Scotland) Act 2019. I want to go a little bit further into the interaction with the minimum age of criminal responsibility, referring in particular to the Children in Scotland submission that we received. We know from our consideration of the bill during its passage through Parliament that the Government has committed to looking at raising the age further, to 14 and possibly 16, however that plays out with the evidence that is taken on that. The written evidence from Children in Scotland says:

> "This would have implications for proposals within the Disclosure (Scotland) Bill."

Can you explain to us how the two pieces of legislation will work if the minimum age is put up further to 14, or indeed to 16?

Amy Woodhouse: Others may wish to comment on this, too. We are supportive of a further increase in the minimum age of criminal responsibility, in line with the recommendations of the United Nations Committee on the Rights of the Child, which has said that the age should be a minimum of 14, if not even higher. In some countries it is 16, and it can be even higher than that.

We view that as a change that might still come—certainly, lots of children's rights organisations are advocating for a further increase from the recent one that raised the age from eight years to 12.

In discussions about the bill that became the Age of Criminal Responsibility (Scotland) Act 2019, there was a lot of conversation about whether that age might be increased to 14 straight away rather than going to 12 first, and the implications that that might have for other areas of legislation such as this one. Legal organisations raised questions about the complexity of doing so, and the feeling was that a lot of work would be required to bring other pieces of legislation into line.

Other panel members might have more specific comments on the technical details, but at that point that idea was viewed as a barrier to raising the age higher than 12. We and other children's rights organisations did not agree; we were firmly of the view that we could go straight to 14, if the work that was required to enable that to happen was done. All of us should still have that as our aspiration and should continue to push for it where we can.

Debbie Nolan: The CYCJ would echo that. We would welcome a commitment to consider increasing the age further, and would like to be involved in work on that.

Linked to that is the fact that we can learn from the incremental approach to the age of criminal responsibility that we have adopted. I know that, in its previous evidence session, the committee heard a lot about provisions for under-18s, such as those on childhood convictions, and facilitating the extension of an individualised and more

proportionate approach to adults. There might be scope for using that as another example of an area in which we might take an incremental approach and say, "Let's make this change for children at the moment, but let's keep it open for review." A fundamental part of such an approach would be to articulate and understand the impact that the bill would have if it were passed, what the effect of its implementation would be for people and what their experience might be. We should explore the data on those points to see what we can learn from it, because, clearly, there is learning to be had from such an approach.

Alistair Hogg: I agree. I am grateful to Debbie Nolan for introducing the point about the age of people to whom the bill extends, which I had been hoping would be raised at some point today. At the moment, the bill clearly articulates that it is 18, but the Age of Criminal Responsibility (Scotland) Act 2019 provides a template for how we might view that. We should monitor, evaluate and review it, and then consider whether the age might be pushed further than 18, to 21 or—as Clan Childlaw suggested—as far as 25.

Your question was about the implications of a further rise. Clearly, if the Age of Criminal Responsibility (Scotland) Act 2019 were to be reviewed and amended to increase that age, the act that the disclosure bill would become, should it be passed, would also require to be amended. The technical implication appears to be that, if the age of criminal responsibility were raised to, for example, 14, any offence—or "harmful behaviour" as it would then be called—committed by a child under the age of 14 would fall into the same category as one committed by a child under the age of 12 currently does. Any disclosure would relate exclusively to other relevant information.

Iain Gray: I have a specific question for either Brian Houston or Robert Dorrian, or both. The Who Cares? Scotland submission says that the bill should

"Recognise corporate parenting duties ... and legally enshrine the need for the new disclosure process to take these into account."

Will you say a little more about exactly what you would be looking for to achieve that?

11:15

Brian Houston: Our experience of engaging with Disclosure Scotland, which is a corporate parent, has been very positive. We have been trying to employ people who might have had childhood convictions, and we have always viewed the discussions that we have had and the explorations that have happened with Disclosure Scotland on a case-by-case basis as being constructive and progressive. It has also adopted its corporate parenting responsibilities very clearly and robustly. Therefore our operational experience of how the disclosure scheme is being implemented has been positive. I consider Who Cares? Scotland to be an informed employer, which wants to push into the system so that we employ not only more people with experience of care but more people who might have had childhood convictions. Our main concern is that that should translate into the wider population of employers so that they see the benefits of the approach.

Iain Gray: I am asking exactly how you would like the bill to be amended in order to reflect that.

Brian Houston: I have no further information to add.

The Convener: I am looking around the table in case anyone else wishes to speak, but I think that that concludes members' questions.

I thank all the panel members for coming along to represent their organisations, and especially Mr Dorrian, who has attended as a representative of Who Cares? Scotland. It has been greatly appreciated.

11:16

Meeting continued in private until 11:43.

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