



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 29 March 2023

Session 6



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CRIMINAL JUSTICE COMMITTEE

10th Meeting 2023, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Linda Allan

Alison Bavidge (Scottish Association of Social Work)

Sue Brookes (Scottish Prison Service)

Professor Lorraine Johnstone (St Mary's Kenmure)

Gerald Michie (Scottish Prison Service)

Jim Shields (St Mary's Kenmure)

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland)

Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 29 March 2023

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): A very good morning, and welcome to the 10th meeting of the Criminal Justice Committee in 2023. There are no apologies this morning.

Our first item of business is a decision on whether to take items 3 and 4 on today's agenda in private. Do members agree to take those items in private?

Members *indicated agreement.*

Children (Care and Justice) (Scotland) Bill: Stage 1

10:00

The Convener: Our next item is consideration of evidence on the Children (Care and Justice) (Scotland) Bill. I welcome to the meeting Mrs Linda Allan and Kate Wallace, the chief executive officer at Victim Support Scotland. I refer members to papers 1 and 2. I thank both our witnesses for coming to share their views on the Scottish Government's proposals. I intend to allow about an hour for this session, and I am aware that Kate Wallace needs to leave no later than 10.45 am, as I understand that she is also giving evidence to the Education, Children and Young People Committee this morning—so she has a busy morning ahead.

We will move to questions. I will open things up by asking Kate Wallace to provide the committee with a broad overview of the work that she is involved in with regard to children and young people.

Kate Wallace (Victim Support Scotland): At Victim Support Scotland, we support victims of any type of crime. That includes victims of crimes committed by adult perpetrators or by children and young people. We provide support to anyone who needs it, in the community setting and in the court setting.

We have had feedback from some of the people who we support about some of the key concerns that they have about the bill. One thing that we raised at the consultation stage, which has unfortunately not been picked up in the bill in the way that we anticipated, is to do with the provision of information. I know that others have given evidence to the Education, Children and Young People Committee about that, but I thought that this committee would be interested in the issue.

The reality is that people who have been harmed by children or young people are not entitled to the same information as if an adult had harmed them, as there is no victim notification scheme in place. Under the proposals in the bill, more children may be placed in secure care. Because there is no victim notification scheme, victims who have been subjected to a serious sexual assault are not told when someone is being released from secure accommodation, which therefore means that they cannot effectively plan for their own safety.

I realise that the committee did not ask that question specifically, but I want to raise the issue because I think that the committee will be interested in the topic. The reality is that people who have been harmed by children and young

people are not entitled to any information; they are entitled to ask for it, but they do not get any information about what has happened to a child who has offended against them.

The Convener: Members will be interested in that issue about victim notification and the differences between situations when the perpetrator is a child versus when they are an adult.

I want to pick up on the broad work that you do. Over time, have you seen changes in the number of children who you support or the profiles of the children who you support? I would like a general overview of how things are developing.

Kate Wallace: I have not looked at the figures in detail, but that is a component of the work that we do, for sure. For example, we support people where the adult process has been pursued first and then a decision was taken that the case will go through the children's hearings system. We have supported children and young people through that, as well as adults who have been harmed by children and young people—I know that other organisations have done so, too.

I have not seen any changes to profiles with regard to the types of crimes—sexual crime, violent crime and those kinds of things—although there are changes in terms of numbers that I can share with the committee. I have spoken to the committee in the past about the relationship between the adult system and the child system, and the issues and challenges that victims can experience in relation to that. For example, bail conditions might be put in place in the adult system but, if a decision is taken for the child to go through the children's hearings system, the bail conditions are dropped. They are obviously not relevant in the hearings system, but there is no alternative way of protecting safety at the moment.

We are involved in supporting victims in some pretty difficult cases with people at the higher end of being harmed by children and young people—committee members will be aware of those cases. Those complex cases can have challenges, such as children who have been harmed by other children being in the same school environment with them. I know that that issue was discussed in the Education, Children and Young People Committee last week, too.

I am not seeing any trends, but they have not particularly been looked for. I could do more digging around that and send any further information on that to the committee, if that would be helpful.

The Convener: Thank you.

I will come to Linda Allan. The committee is aware of the traumatic experience that you have

had with the criminal justice system, Linda. Are you able to articulate that experience to committee members and say how it has brought you to the work that you are undertaking now?

Linda Allan: We have not experienced trauma; we are experiencing it—it is not finished. Our daughter Katie committed driving offences in 2017. She was a first-time offender and was sentenced to a custodial sentence in Polmont young offenders institution, where she took her own life.

I am a researcher, and as part of coming to terms with and trying to understand what happened to our daughter in that establishment, I started doing some digging and collecting data, along with my husband, who is, helpfully, a data analyst. Together, we started collecting data on deaths in prison custody in Scotland, and we now have quite a comprehensive database going back to 2005. That led us to look at fatal accident inquiry outcomes and the role that they play in death investigation. With colleagues at the University of Glasgow, we have published some findings from that work.

Our personal experience is that we are still waiting for a fatal accident inquiry into our daughter's death and, on 4 June, it will be five years since our daughter died. The main reason for that is that we are pursuing criminal conviction, and it has taken the Crown Office this length of time to investigate, and it is still doing so.

The Convener: Thank you very much. I will open up the discussion to members.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. The provisions in the bill will ensure that no child under the age of 18 can be held in a young offenders institution or prison, either on remand, while awaiting sentence or having been sentenced. Linda Allan, what is your view on that?

Linda Allan: I do not think that it will be a surprise to the committee to hear that I do not think that it goes far enough. It is quite confusing in terms of the new sentencing guidelines that were published in 2022 and the robust research into neural development. They apply to people under the age of 25, so why would a bill be introduced that does not reflect that robust research?

I can only speak from our experience. Prisons are not therapeutic environments. Katie was probably a bit different from many young people who end up in custodial settings. It makes no sense that we, as a society, put traumatised and disenfranchised young people into traumatic environments to be strip-searched, despite the previous justice secretary saying in 2019 that no one under the age of 18 should be strip-searched.

They are still being strip-searched and isolated, particularly when they are on remand.

I had a quick look at our database before coming to the committee and found that two young people under the age of 18—Raygen Merchant and William Lindsay—have died since 2005. However, if we look at under-25s, the figure increases to 49, 70 per cent of whom took their own lives within the first three months. We are pursuing what we are pursuing because that is what we want to change. Young people should not be dying in prison.

Rona Mackay: I assume that you see the bill as a step forward because it refers to children under the age of 18, but you would like the age to be more in line with the Scottish Sentencing Council guidelines. You see that as an anomaly.

Linda Allan: Yes.

Rona Mackay: Thank you.

Kate, what is your view on that?

Kate Wallace: Victims have raised with us their concern about making sure that the problems that there are in young offenders institutions are not replicated in secure accommodation. It is about getting a real understanding of what has happened in there, and making sure that we do not put at risk vulnerable young people who have been placed in secure accommodation because of welfare concerns or because they have been a victim of crime and there are serious concerns about their safety.

The proposal in the bill is that all children up to the age of 19 would be placed in secure accommodation, regardless of the seriousness of the offence. Our key concern with that is about robust risk assessment and making sure that doing that does not have a detrimental impact on or increase the risk to other children and young people who are in secure accommodation because, as we have just heard, they might be there for their welfare or because they are fairly low-level offenders.

Rona Mackay: Are you saying that children under the age of 19 who have committed serious crimes such as murder or rape should be held in young offenders institutions?

Kate Wallace: We can see that there would be merit in not having such children in young offenders institutions, but only if they are put into secure care and if that care is different from and does not replicate what happens in young offenders institutions. We could look at how we can create something for children who have committed very serious offences so that they do not have as much contact with more vulnerable young people or those who have not committed such serious offences.

That is our concern. We are not against the bill per se, but we need to make sure that the problems in young offenders institutions are not replicated in a different institution.

Rona Mackay: Thank you.

Jamie Greene (West Scotland) (Con): Good morning. I thank Linda Allan for coming and for sharing her experience. It has been a horrific couple of years for you and your family, and it is brave of you to share that with the committee, because that is important. I am sorry to hear that the investigation is on-going.

I am trying to get my head round this issue. It is important that we take as wide a range of views as we can on the Government's proposed legislation. There are three places that someone can be sent to, either on remand or when they have been sentenced to be held in custody: secure accommodation, young offenders institutions or adult prisons. I am trying to see which is the right place for certain cohorts of people.

10:15

At the moment, the decision seems to be based on an arbitrary age cut-off. The bill proposes that, up to 19 years of age—effectively, while they are still 18—someone can only be held in secure accommodation, with an expectation that they would probably then move to a young offenders institution, depending on the length of their sentence. It would be unusual for that to be so long but, in the unlikely event that it was longer than that, they would then be moved to an adult prison at some point—perhaps at the age of 25 plus.

Are you comfortable with that set-up, and does it work? Is age the factor that should be taken into account, or are there other factors? How should the Government create rules to know which settings are the right ones for the people who are put into them? I am a bit confused by some of the evidence that I have heard so far.

Perhaps Kate Wallace could start, then I will come to Ms Allan.

Kate Wallace: As I mentioned, from our perspective, the two main criteria would be risk and the seriousness of the offence. Another would be the provisions that are in place to monitor supervised support, as regards the therapeutic interventions that have been discussed.

As I have said to the committee previously, victims mostly want to ensure that what has happened to them does not happen to anyone else, so it is about finding the most effective approach to that. They are also concerned about their safety and being able to plan for it. They are concerned about justice, but in my experience that

tends to come after ensuring that what has happened to them does not happen to anybody else. Therefore, we see the main criteria as being about the seriousness of the offence, and about risk management and risk assessment. The most appropriate setting can be decided from there.

Decisions might need to be made about timescales. I can think of some fairly high-profile cases where children might have had only six months and were moved out of a young offenders institution into secure accommodation and then back into a young offenders institution. As you say, for the small number of children and young people who have committed extremely serious offences, they might be moved into an adult prison.

There is a decision to be made about whether that is the right approach, given the level of disruption and, potentially, the risk to other children and young people, which I mentioned. More generally, though, we would say that risk assessment and the seriousness of the offence are the main criteria.

Jamie Greene: I guess that I am trying to work out what the role of our young offenders institutions is, because there seems to be opposition at both ends of the argument. Some think that people who are old enough to be in adult prisons can be in YOIs but that people at the lower end of the age spectrum absolutely should not be in them at all. It is difficult to see what their place in the justice system is.

To present a scenario, is it appropriate for a 24-year-old adult male who has committed a serious sexual assault or rape to be held in a young offenders institution? Equally, is it appropriate for an 18-year-old who has committed the same offence, and is of sound mind, to be held in secure accommodation? Are you saying that it would be okay as long as they are separate from children—or from other younger children? I guess that there is a moral and philosophical question about how we treat people. Everyone is an individual, and where they are in the system is unique. I am trying to get my head round how we can use arbitrary rules to deal with quite complex individual cases.

Kate Wallace: We think that risk assessment is key to that, as is a real understanding of the set-up in the different institutions that you have referred to, and what is in place. Others have given evidence to other committees about resources and what is required. It is difficult to answer your question on the basis of what is in place just now, other than to say that, from the perspective of Victim Support Scotland, a robust risk assessment is needed and that, as part of that, the seriousness of the offences that have been perpetrated need to be taken into account.

Linda Allan: It is a philosophical dilemma, but it is also a moral one. What we are doing just now is not wise, from a rights perspective or an economic perspective. My answer to your question is that no child or young person should be sent to prison. They should be sent to a therapeutic environment that reduces reoffending and keeps them alive. The facts, on reoffending rates and on the number of deaths in custody of young people, speak for themselves. All that we are doing is retraumatising young people. What we are doing just now does not work. We need a model that works. I am not an expert in secure accommodation, so I cannot comment on whether that would be the answer to the problem, but young offenders institutions are certainly not the answer to the problem.

Jamie Greene: What do you think their role is? I have grappled with that question over the past year as we have taken a lot of evidence on the issues. Do they have a role in Scottish justice?

Linda Allan: A broader question is: what is the role of prisons? We still have a Victorian model of retribution, and on top of that we stick a label of rehabilitation, and that does not work. We have one of the highest imprisonment rates in Europe. We have the highest deaths in custody rate, certainly in the United Kingdom if not more widely. Those are just facts. What we are doing—the Victorian model of retribution with a label of rehabilitation—is not working.

Jamie Greene: Finally, what would you like to see from the Crown Office? I am not talking about any live proceedings—that would not be appropriate—but five years is clearly an awfully long time to wait for anything to happen. You are not the only family that has been waiting that long. What improvements would you like to see in the Crown Office? What would be your big ask of the new justice minister?

Linda Allan: I would like our domestic law to reflect European law because, just now, it does not. We have no legal redress, because of Crown immunity in the Scottish prison estate. That is not the case with private prisons. If Katie had died in Kilmarnock prison, we would have legal redress, but we do not, because she died in Polmont prison. The Corporate Manslaughter and Corporate Homicide Act 2007 has not been used against any state organisation, let alone the Scottish Prison Service.

A very wise friend described it to me this way: if you went to a restaurant and you got food poisoning, there might be some discussion about it; if somebody else went in and died of food poisoning, there might be an inquiry; but if that happened every single week, there would be a root-and-branch inquiry and an investigation by the police. That is what is happening in our prisons.

Pauline McNeill (Glasgow) (Lab): Good morning. I want to explore this area of policy—Linda Allan, you have said that we should go further—and whether, if we were to explore it further, we are actually equipped to do it. Like Jamie Greene, I am trying to get my head around all this. Kate Wallace, earlier, you spoke about what your concerns would be, and you focused on the need for a risk assessment for secure accommodation. Does it all fit together in policy terms? In my limited understanding, for a start, we do not have enough secure accommodation, so that is a question that we will have to address to ministers. However, the principle of the welfare of the child is the overriding principle of the children’s hearing system. Therefore, regardless of any offences, we must look after the welfare of the child.

If we go beyond the age of 18, we need to explore how that would operate, because between the ages of 18 and 21, people are not children. Therefore, if we were to put them in secure accommodation, it seems to me that the pieces do not all fit together. As you were speaking, I was wondering whether, if we are serious about that, a bit of a redesign is needed.

I am reading through the briefing, which says that we are not going to hold under-18s in Polmont any longer, and we might go beyond that. There are also references to remand and how that can either be in secure accommodation or in a “place of safety” although I really do not know what that means. It just feels as though the policy does not really fit and there is going to have to be a wholesale change to the system.

My own view is that I do not think that a risk assessment of someone who committed a serious offence would be enough to satisfy victims or their families that simply putting everyone together in secure accommodation is a solution. If you want to respond in any way to that, I would be grateful.

Kate Wallace: The other challenge that you have raised is around balancing the rights of different people within the system. I go back to my earlier point about information provision. What we have at the moment is a system and an approach that prioritises the rights of children who have harmed over either adults or children who have been harmed, who are not entitled to and do not get any information about what has happened with their case. I note that that was discussed at the Education, Children and Young People Committee last week. Because of that lack of information, children who have harmed are being prioritised over the victim, who may be a child, and is not able to participate in proceedings as the United Nations Convention on the Rights of the Child would suggest that they should be able to. There is a set of challenges around that.

As I said earlier, the other challenge is around seriousness of offence. You could take the approach that deals with murder, culpable homicide, certain domestic abuse offences, rape and serious sexual assault as a group. In a way, you are right to say that we need to address some of those challenges and that is part of what I will say when I go to my next committee session. There was all sorts of discussion about that during the consultation process but it did not materialise in the bill.

Pauline McNeill: On that point, when you look at serious offences such as murder, culpable homicide and so on, are you thinking that perhaps there should be a separate element of secure accommodation estate? I am thinking about seriousness of offence and the age of the offender being between 18 and 25 and how the answer might lie in reorganising the secure accommodation estate. Might that work?

Kate Wallace: It might, yes. It is one of our suggestions, but I do not pretend to be an expert on secure care. We have to think about how we would protect the safety and welfare of children and young people who are in secure accommodation for other reasons.

Linda Allan: You are absolutely right; there needs to be a complete overhaul and review of the estate. If we had enough secure accommodation, William Lindsay would still be alive today. We do not have enough for the existing population of under 18s, let alone if we extended the upper age limit. There is a danger of recreating a young offenders institution by another name, but that is not what any of us would want.

I was reflecting on something that Katie said to me when she was in Polmont. She said, “Mum, there are three types of women here”—there are older women in Polmont who were moved there from Cornton Vale. “There are women like me, who have made a mistake and are here for the first time. There are women here who find this place to be safer than it is at home, so they will go out and reoffend to get back here because it is safer. And there are women here who are really unwell.” She did not describe any of the women who were with her in Polmont as criminals, murderers or whatever. If you look at it in that way, there is a solution to all that. Is it about forensic services? What is it about? The model that we have is certainly not the solution.

It might be interesting for the committee to find out whether, since the introduction of the sentencing guidelines, there has been a reduction in under-25s being sent to prison.

10:30

Pauline McNeill: Your daughter made a very astute observation. People will be divided on it, but with regard to sentencing, it begs the question of whether custody should be the first thought in such cases. I have no further questions. Thank you very much.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thank you, Linda Allan and Kate Wallace, for your evidence. Linda, it was very powerful when you spoke about your daughter's description of people who she was in Polmont with. That is why it is so important that we hear that sort of evidence. As others have done, I want to put on record my thanks to you for coming forward.

I was going to say that my question is a wee bit out of left field, but it is related to what we have been talking about. As Kate is aware—she has given evidence on it—and as you might be aware, Linda, through your research, the committee is also looking at the Bail and Release from Custody (Scotland) Bill. The purpose of that bill, which is now at stage 2, is to reduce the number of people who are on remand in the first place. There is debate about whether that will work, but that is the main aim of the bill.

Kate, how does that bill overlap with this bill? With regard to the Children (Care and Justice) (Scotland) Bill, we are considering children under the age of 18 not being placed in custodial settings, so do you think that there is an overlap between the pieces of legislation? How can these two pieces of legislation work together?

Kate Wallace: Again, it comes back to the point that I made to the committee before about the bail and release bill and the point that I have been making today about the seriousness of the offence and the risk that is posed. I have not looked at the statistics—Linda Allan probably has them—about who is on remand in young offenders institutions, what age they are and what offences they have been accused of.

However, with regard to the statistics overall, as I have said to the committee before, the Government's own figures showed that 60 per cent of people on remand were there because they had been accused of sexual or violent offences. As I said before, it is important to remember the purpose of remand. We have never been in agreement about an appropriate use of remand, but for some people it is the only way of keeping victims safe for a period.

On the interplay with this piece of legislation, I do not know enough about the figures for who is on remand and the crimes of which they have been accused. However, from our perspective, we would take the same approach. Victims would be

very concerned about their safety if the alternatives to remand did not keep them safe. We know that, at the moment, bail supervision does not do that.

I gave the figures to the committee last time: 11 people were convicted of a murder that they committed while they were on bail and nearly 200 people were convicted of an attempted murder and serious assault that was committed while they were on bail. Therefore, the concern from victims would be that the alternatives to remand must ensure their safety and be a proper alternative to remand. That would be the same for children and young people as it is for adults who have perpetrated these crimes.

Fulton MacGregor: Thanks, Kate.

Linda, in response to Rona Mackay, you said that you do not think that the bill goes far enough with regard to age, and I would probably agree with that to an extent; however, I am conscious of the seriousness of offences, which is an important part of it.

How do you think that the Scottish Government can make things better with regard to the appropriateness of remand, to use Kate's expression, either with this bill or with other legislation that I referred to, or that does not currently exist? How can we ensure that we are using remand at the right time and that we do not have situations in which people are on remand when they should perhaps not be there, which can make things more difficult for them?

Linda Allan: The difficulty is that it is the court that will make those decisions. The sheriff or judge will decide whether a young person is to be remanded. I do not know enough about the Bail and Release from Custody (Scotland) Bill to add much, but I do know that children and young people who are on remand are more likely to take their own life. I also know that, as of February this year, more than 60 per cent of the under-21s in Polmont are on remand, which is quite staggering.

Inspection report after inspection report has highlighted the difficulties with the opportunities that young people have while on remand and in young offenders institutions, including in relation to access to education and time out of their cell. They spend 23 hours a day in a cell. Covid restrictions are not all away in our prison estate; many of our prisoners are still spending inordinate amounts of time in their cells.

Russell Findlay (West Scotland) (Con): Hi, Linda. Thank you for coming in.

I cannot imagine what you have been put through these past five years. In that time, we know that more than 200 people have died in Scottish prisons, and many of them will be young

people who have died by suicide. You are still waiting for your fatal accident inquiry to begin, which has partly been due to the attempt to criminally prosecute people, which, in October last year, was rejected, I understand. Do you know whether that rejection was due to the Crown not being able to prosecute or is it entirely at its discretion?

Linda Allan: In respect of a prosecution under the Health and Safety at Work etc Act 1974, it is because it is unable due to Crown immunity. I do not want to say too much because it is an on-going case, but the Crown is unable to prosecute under the 1974 act despite what it believes is credible and reliable evidence for a successful prosecution. However, it cannot prosecute under health and safety legislation because the Scottish Prison Service has Crown immunity.

Russell Findlay: So, October was not the final word. Is that process still on-going?

Linda Allan: We are challenging it, and we are also challenging the Crown's decision not to prosecute under corporate homicide legislation.

Russell Findlay: Although—

The Convener: I remind members to make sure that our lines of questioning are not about a specific case but about the bill.

Russell Findlay: I wanted to establish where we are just now in the background because we are talking about legislation.

Is there anything that you could see this bill doing that would help to address the issues of immunity from prosecution, for example?

Linda Allan: Yes. If we do not send young people to young offenders institutions, they will not die. It is as simple as that. Therefore, families like us—the Lindsay family, the Marshall family and many other people—will not be in the position that we are in.

Russell Findlay: Could the bill do anything about immunity from prosecution in such tragic cases?

Linda Allan: I believe that Crown immunity is reserved. I would be delighted if the bill could do something, but I believe that it is a reserved issue.

Russell Findlay: Thank you.

Kate, you spoke earlier about the prioritisation of the rights of those who have harmed other children over the rights of those who have been harmed. The *Daily Record* newspaper is running a campaign just now called "Our Kids ... Our Future", which talks about a large number of such cases, many of which are recorded on social media and are adding to the distress of those who have been attacked.

One such case involves a 12-year-old who was beaten severely. The incident was filmed and it has understandably had a profound effect on the individual's life. In the past two weeks, there have been developments in that case in that the victim believed that the alleged perpetrator was subject to bail conditions only to discover that that was no longer the case but it had not been communicated to them. The alleged perpetrator has also allegedly committed further offences.

That is a specific case but what measures could the bill take to give greater protection to victims?

Kate Wallace: From our perspective, it could address information sharing and the deficiencies that I described. Some of that was discussed in the consultation that preceded the bill. The bill is the place to do it. Information-sharing provisions are needed so that people are clear about what information can and will be shared with people who have been harmed by a child or young person.

The types of information that will be shared need to be spelled out. If you go through an adult system, you have rights to information about updates to do with your case. For example, if someone escapes or absconds from a prison setting, you are entitled to that information. If you sign up to the victim notification scheme, you are also entitled to know when that person has been released. None of those provisions apply when a child or young person has harmed you. That aspect of the bill needs to be considered and provisions need to be put in place on it.

In the Education, Children and Young People Committee last week, someone raised a point about the imbalance in rights if the person who has been harmed is a child as well. The child who has been harmed is not fully able to participate in proceedings in the way that the UNCRC sets out. There is a big bit of work to be done on that in the bill.

Russell Findlay: The children's hearings system is, in the main, private. Should there be any scope to have more transparency in its proceedings?

Kate Wallace: The bill needs to allow that to happen in the hearings system because that is the system that many children will go through. At the moment, people can make a request from the Scottish Children's Reporter Administration but the SCRA will not provide information.

Russell Findlay: Are more cases of violence committed by children against children ending up going down the legal route of the children's panel? The Crown still has the option to prosecute but, because that is the direction of travel, would it be good if there were more transparency around hearings?

Kate Wallace: Definitely. One of the biggest issues that comes to us for people in that situation is that they are really surprised by the lack of information. A lot of effort is put into explaining the process to them but they do not get any information about their own circumstances. Therefore, it is difficult for people not only to understand what is happening to the perpetrator but to safety plan for their own recovery. That becomes really challenging when you operate in a total information vacuum. We certainly do not want people to rely on social media because that is not the place where they will get factually accurate information.

Russell Findlay: For all the frustrations with the criminal justice system for adults, about which we have heard much, there is a complete vacuum in respect of children's hearings. If someone is a victim of crime, they do not get told about what is happening up until the point of disposal, what the disposal is or any details at all. There is no entitlement at all. Is that correct?

Kate Wallace: You just used the term "disposal". Remember that that is not how the hearings system works. It is not about that.

People do not get specific information about their own situation. Our experience is that they get information about the process but not about their own case.

The Convener: I am watching the time because I know that Kate Wallace has to leave. Thank you very much for coming. We will have a quick pause to let you leave the committee room.

We will continue our questioning. Rona Mackay has a question.

10:45

Rona Mackay: Linda Allan, you said that 60 per cent of the children in Polmont are on remand. Do you have any statistics on how long, on average, they spend on remand?

Linda Allan: No, but I am sure that Wendy Sinclair-Gieben, who is on the next panel, will be able to answer that question.

Rona Mackay: It would be interesting to have an average figure to find out whether it is a prolonged period.

Linda Allan: The length of time certainly increased during the pandemic, for obvious reasons. It is a big risk factor in suicide.

Collette Stevenson (East Kilbride) (SNP): Good morning, Linda. Thank you for coming along and sharing your story, despite the trauma that you are still experiencing. Your research is absolutely amazing, and it is heartening to hear that it might have an impact on young people who

are affected by the justice system in the future. Thank you for that.

You touched on the idea of therapeutic pathways for young people who go through the justice system. I do not know whether you had the opportunity to hear it, but we have had evidence from St Mary's Kenmure, which provides secure accommodation, about the therapeutic milieu in secure care. What could that look like? How can we check to see how well it is working for young people? Should it be regulated so that we can see how young people are progressing, especially in serious cases in which young people are transitioning to young offenders institutions? I would like to know your thoughts about what that should look like for our young people.

Linda Allan: Would you like to know what a therapeutic environment should look like?

Collette Stevenson: Yes.

Linda Allan: I will draw on my professional experience of 38 years in the national health service. We are incarcerating some of the most traumatised and disenfranchised young people in our society to re-traumatise them or to traumatise them more. I am sure that committee members are aware of the dearth of access to health professionals across the prison estate.

I do not think that any child wakes up in the morning and decides to go and murder or rape someone. What has led that child or young person to that situation? Was it a spur of the moment decision, or was it learned behaviour? What was it?

It is critical that a child has access to psychology services, but there is not enough of that provision across our prison estate. In my personal experience, and during the trauma that my family experienced, we did not have access to psychology services. Luckily, we had the resources to access such services privately, and we did so only in the past five years. A child who has had years of trauma, from their formative years up to the date of their offence, needs pretty intensive support from skilled professionals, but I do not think that that can be offered in a prison setting. That is not how our prisons function; it is not what they are set up to be.

Access to a range of skilled professionals is required, as is education, so that a child can be taken from their offence to feeling like a worthwhile individual with a place in society. That is quite a journey to go on.

Collette Stevenson: It is indeed. Thank you.

Jamie Greene: I have one or two more questions, based on things that struck me as you were speaking. I was struck by what Katie told you about life inside a young offenders institution and

the kind of people who are in there. I presume that she was talking about female inmates rather than the general population.

Linda Allan: Yes.

Jamie Greene: You mentioned the three cohorts of people who have been sentenced by a judge or sheriff for making a mistake in life. I presume that something serious would have to have happened for a custodial decision to be taken. There are people who are institutionalised, with patterns of offending, because they feel safer and more comfortable in that type of life, away from harm outside in the real world, and there are people who are very unwell. Do you mean that they have been traumatised by historical adverse experiences in life and have mental health issues?

Linda Allan: Yes. I am talking about people with serious and enduring mental health issues or personality disorders.

Jamie Greene: It is a difficult issue, because we do not have different institutions for different types of offences or different types of people. In that respect, it is very much a one-size-fits-all environment. This goes back to my previous question. If custody has to be the disposal that is used, could we make those places better, or could we use other places? Have you done any research into other national models, for example? Do you have any experiences that you want to share with us?

Linda Allan: I have not done extensive research, but I am aware of some of the Scandinavian models that seem to work.

I do not think that the prison establishment as it is can change. It is just not fair on prison officers to expect them to be experts in mental health or trauma. For prison officers to be such experts, we would need to reconsider what prison officers are trained to be. I include myself in that—I have given prison officers a very bad press because of our experience, but as you recover from your grief and trauma, you take a step back and think, “How can a prison officer deal with a severely mentally ill woman who displays challenging behaviour?” As I have said, expert health responses are needed in that situation.

I do not see how prison settings could be remodelled. We have tried to do that and tried to make them fit everyone. As Pauline McNeill said, there needs to be a root-and-branch look at the issue so that we do not try to fit things into the Victorian organisational structure that we have.

Jamie Greene: That is very interesting. Much of the prison estate is very old and antiquated and is not fit for what you suggest.

Another thing that struck me was the idea that the first three months are vital and key. We have

not explored that area. It is not covered in the bill as such, but the period of time when someone enters custody is vital, whether they are an adult or younger. At the moment, what is not happening when someone enters custody that should be happening? What could be done better to reduce the risk involved in those first three months?

Linda Allan: I gave some figures earlier. Among under-25s, there were 49 deaths—70 per cent were suicides and 65 per cent happened in the first three months of the person’s sentence. It is a well-established fact that, early in a sentence, there is a risk of someone taking their own life. The current suicide prevention strategy is not working. There has been a more than 40 per cent increase in the number of suicides across the prison estate since its introduction. Interestingly enough, there has also been an increase in death rates since the NHS took over responsibility for healthcare provision; you would think that the reverse would be the case. Something is not working in relation to assessment. Again, we are asking prison officers who are trained in the strategy but are not trained health professionals to look for cues and clues.

I go back to our own experience. My daughter had lost 95 per cent of her hair. She had lost weight. She had marks of self-harm. She was severely distressed. There were a lot of cues and clues. However, she was locked up, and she took her own life.

There are other things besides cues and clues. I am not a suicidologist, but I have read a lot of articles and research on suicide, for obvious reasons. Lots of people who are intent on suicide say that they are not suicidal.

Jamie Greene: In the committee, we have talked a lot about the differences between those who are held on remand and those who are convicted. I appreciate that there is a legal difference between the two states but, clearly, they come with differing approaches as to what people have access to, what their rights are and what can or cannot be asked of them or offered to them. Does that need to change, too?

Linda Allan: Absolutely. It should even be taken back a step to the court process, as the sentencing guidelines attempt to do. In our personal experience, there were no victim issues. In Katie’s case, the victim’s parents wrote to the sheriff and requested a non-custodial sentence. One issue relates to the power of the judiciary in Scotland.

The Convener: I thank Linda Allan very much for coming along to today’s meeting. We appreciate your time.

There will be a short suspension while we change witnesses.

10:56

Meeting suspended.

11:01

On resuming—

The Convener: I warmly welcome Jim Shields, service manager, and Professor Lorraine Johnstone, consultant forensic and clinical psychologist, St Mary's Kenmure secure care centre; Wendy Sinclair-Gieben, HM chief inspector of prisons for Scotland; Gerald Michie, governor at His Majesty's Young Offenders Institution Polmont, and Sue Brookes, interim director for strategy and stakeholder engagement, the Scottish Prison Service; and Alison Bavidge, national director of the Scottish Association of Social Work.

I intend to allow about an hour for this session so, up front, I ask for questions and responses to be as succinct as possible, so that we can get in as many questions as possible.

We move directly to the questions. I will open things up with a general question for each of you. From your organisation's perspective, will you briefly give a view on the provisions in the bill that set at 18 the cut-off point under which children will not enter the criminal justice system, and on whether that is appropriate? I will go from my left to my right, starting with Sue Brookes.

Sue Brookes (Scottish Prison Service): The Scottish Prison Service supports the provisions of the bill. I am a previous governor of Polmont, and I am sure that Gerry Michie will echo this: a custodial setting is not the best environment in which to work with children. Something age appropriate is wanted. Our clear view is that 16 and 17-year-olds are best managed in a different setting.

Gerald Michie (Scottish Prison Service): I repeat that. We fully endorse the ambition of the Promise that no 16 or 17-year-old child should be in our care. Morally, it is absolutely the right thing to do.

The Convener: That is nice and succinct.

Professor Lorraine Johnstone (St Mary's Kenmure): I absolutely endorse the principles of the bill, but I expand on that by saying that 18 is a rather arbitrary cut-off. We know that the development of the brain continues far beyond that. We also know that the cohort of young people who enter the justice system have significant speech and language deficits, cognitive limitations and neurological difficulties, so that their chronological age is very different from their developmental age. Therefore, although we might talk about the age of 18, a lot of our children present in a much younger way in reality.

Similarly, post 18, into the ages of 19, 20 and 21, they are not stereotypical or prototypical adults. The bill is a phenomenally good first step, but it is definitely not the finished article. I hope that it is just the building blocks.

Jim Shields (St Mary's Kenmure): I concur that it is welcome progression and a definite move in the right direction. However, we are not yet aligned with the sentencing guidelines—we are looking at a chronological age, when we really should be focusing on the research and what we now understand about the developmental age of a child and the vulnerabilities that come with that.

Alison Bavidge (Scottish Association of Social Work): Likewise, I welcome the bill as it is in line with so much of what Scotland is trying to do for its young people. This is a knotty problem. I listened to the previous panel trying to get definite answers to really knotty issues around development age seriousness. For that reason, we want to be thinking about brain development, what we know about neurological development and the experiences of young people who come through the justice system. When children come into conflict with the law, that is a symptom—as Lord Kilbrandon said long ago—of things that have gone far wrong, such as adverse childhood experiences or traumatic experiences. How do we as a nation move that forward into something that is much more progressive?

The bill is welcome. There are questions that I will come to later, particularly about resourcing and implementation, but I absolutely support the direction of travel.

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland): I wish that I could be so succinct. I could quite happily say that I agree with all of you. As you know, we produced a proposal some time ago that made the point that age 18 should be a first step. Scotland is to be applauded for looking at that, as it is really important. In future years, I would like to look at an individualised approach: if someone who is 23 and has a mental age of nine, it would be inappropriate for them to be in an adult prison; whereas if a 17-year-old has committed a serious and heinous offence and is clearly very mature, perhaps an adult prison is more appropriate for them. I would like to see that possibility built in to the bill. We are a rights-based organisation, so the important thing for us is that you are meeting article 1 of the United Nations Convention on the Rights of the Child. Hold on to that, because that is the justification.

The Convener: So, the panel broadly welcomes the bill as a fairly good start, but with some caveats. On that note, I will move straight to members' questions.

Collette Stevenson: Good morning. You are all in agreement about not having young people in young offenders institutions or adult prisons, which is good to hear. I will touch on secure accommodation and what the definition of it is. Why do you feel that secure accommodation is better than putting somebody into a young offenders institution? Are they secure and what should that environment look like, ideally? Pauline McNeill has alluded to the fact that there are not enough of those places.

I have six people to choose from and do not know who to start with. Does anyone have a strong opinion on that?

Sue Brookes: I will start and share my perspective.

The prison service has travelled some distance in trying to become more trauma informed in providing more training for our staff. However, as Wendy Sinclair-Gieben said, fundamentally, we take the view that the issue is about children's rights and that taking decisions that are in the best interests of the child is the right thing to do. By their very nature, prisons are custodial environments and are not purpose built for that age group, and they can be quite busy places. The staff to young people ratio in secure units is much higher and there is a greater depth of skills around subjects such as child development and attachment. For those reasons, we think that secure accommodation is more appropriate.

Gerald Michie: We were at the Education, Children and Young People Committee a little while ago and a very similar question came up. We talked about the physical environment of a prison. By their very nature, as Sue Brookes has said, prisons are large establishments. Polmont has a design capacity of 800 and it has large cellular halls.

Today, there are seven children in our care in Scottish prisons, including five young men. They are in half a gallery, which has 44 single cells, and they have young offenders below them and above them. Prisons can be quite noisy and busy places, so we do our best to soften the environment in which we keep the five young men and two young women in the prison setting. However, prisons are, by definition, big and busy places. Also, you can see a child in a Scottish prison; they are not difficult to identify.

The Convener: I will let Jim Shields and Lorraine Johnstone come in from the secure care perspective.

Jim Shields: The secure care environment exists to care for children. That is not to say that prison guards do not care, but the primary role in secure care is to provide care and protection. The vulnerability for young people in secure care

broadens beyond the criminogenic need, which is what we have really been discussing today. We support children with their welfare needs.

The demographic of young people in secure care is broadening at both ends, so we are looking at the 16 and 17-year-olds possibly going on to 19, and we are seeing traumatised children as young as 12. That is where the skill set lies and that is the environment that we respond to. Secure care, as it is just now, has an advantage over YOI; we are prepared for the young people who are coming through and we are familiar with them.

However, there is still a journey for secure care to go. If we are going to work around vulnerabilities and risk management with the really critical few, we need support to do that. We are best placed to do it, in that we work in smaller environments in line with the Promise and what is expected from the Promise. We adopt a residential care approach and a family-type environment within the constraints. It is definitely focused on care, but we recognise that, although we are there for risk management and for the safety of the young people, we are also there for the broader safety of the community. There is a broad responsibility on secure care and it is about to broaden.

Professor Johnstone: I will try to be succinct, but I have to be honest and say that I have probably spent 20 years thinking about an answer to that question. Secure care definitely has the potential to do something transformational for children, but you need to have the right physical environment, the right relational environment and procedures that are trauma informed, child informed and family informed.

For me, the vision is not really that complex. You have a purpose-built facility that resembles a community resource. It is a house or small units with a kitchen, a sitting room and a bathroom, and it has access, within the perimeter fence, so to speak, to education and socialisation opportunities. You normalise it as much as possible, in contrast to a prison setting, where we often remove the opportunity to build the skills that we require people to have to reduce recidivism rates, so to speak. We have that.

However, what is absolutely critical important is staffing. Their skills and knowledge are absolutely critical. At the front end—I was listening to the previous panel—you have individualised assessments and formulations. That incorporates risk, and you work with and tolerate the risks and their complexity, but, across time, when you do assessments on the children, you tend to find three or four pretty common trajectories.

There are the children who have lots of adverse childhood experiences. There are the children with

really complex neurodevelopmental profiles, who are not quite at the threshold to get into health services or whose social circumstances do not allow that—they might have moved around the country. Then there are delinquency-type profiles, by virtue of socialisation—perhaps they come from criminogenic families—so that is a pathway. Finally, there are the critical few, which I would articulate are the unusual presentations. There is a low base rate but they have a major impact: they are the ones who define your case law thereafter.

Therefore, for someone coming into secure care, you need to have an environment that is healthy and conducive to child development and opportunities that promote socialisation, but you absolutely must have skilled staff who can recognise what trajectory the kid is on and wax and wane to meet that need.

11:15

Big assessments and formulations are needed. By no stretch of the imagination are those time intensive—we do ours within a fortnight. I have a health service background. I worked in child and adolescent mental health services for many years. We are lean, because we know that we need to get it right. We have a small window of opportunity to engage the kids. They will work out quickly whether you are part of their in-group or their out-group; they will test you. We work really intensively to get as good an understanding as we can of them, to work out what their needs are, to get them on board and to deliver.

There is an approach in England called the secure stairs approach. One of its straplines is, “Every interaction matters”. That includes the smile that you give the young person as they come through the door, how you react to them when they are high risk and how you recognise when they are distressed or when they are just being teenagers and pushing the limits.

I have probably spent most of my career thinking about the question that you asked. What is being sought is absolutely achievable and I think that it can produce good outcomes, but there is a real issue with investment and resourcing. Secure care has to be seen as part of a pathway. It gets maligned quite a lot. I would say that we are a necessary evil. I would be happy for my role to become obsolete, but it is part of a necessary pathway.

With that in mind, there are lots of principles, research, evidence and experience across our own country and the world that we can draw on to make something quite transformational.

Collette Stevenson: I have a quick follow-up, if that would be all right, convener.

The Convener: If you are quick.

Collette Stevenson: Thank you. My next question was going to be about preparing the young person and the trajectory and pathway for that. Do you think that, depending on the sentence or disposal that they get, we would be setting them back as far as their transition is concerned by putting them in a young offenders institution?

Professor Johnstone: Possibly. I think that Wendy Sinclair-Gieben’s comment is absolutely right. We need to individualise care planning. The ideal would be that we would have a suite of resources that we could use to meet need on an individualised basis from the first formulation. From a professional point of view, there is nothing more frustrating than getting through two thirds of a care plan and somebody being moved to some other organisation. With the best will in the world, the transition will not happen.

The reality of working with young people in secure care is that you might have to play Connect 4 with them for four months before they will speak to you, and two months after they are brave enough to speak to you, they will be moved. It would be good if it were possible to envisage a future in which there was a needs-led, care plan suite of options. Some young people need to go into the criminal justice system; it is the right place for them. However, some young people need much more bespoke, low sensory, high support interventions. Some people need trauma-informed places where they can heal and recover as their brain allows that to happen. Therefore, I absolutely agree.

The Convener: There is a lot to cover. In the spirit of time keeping, I will bring in Wendy Sinclair-Gieben.

Wendy Sinclair-Gieben: For me, the primary consideration is the victim of the offence. I am not arguing that children are not victims—they frequently are—but, at the end of the day, that person will be released back into the community, and what we want to do is reduce the risk that will be presented by their going back into the community. That is the primary consideration.

Let us look at the difference between how prisons and secure care are funded and resourced. Prison staff have about 12 weeks’ training, and then extra bits are added on. Staff in secure care have full social work training and have to be accredited by the General Teaching Council for Scotland or the Scottish Social Services Council. That is a big difference. Prisons are inspected once every four years. Secure care is inspected every year. The staff to child ratios are completely different—they are so much more in favour of the child in secure care.

We have the human rights pathways, the standards and all the wonderful things that prison and secure care share but, from the point of view of straight facts, are we more likely to reduce the risk if we concentrate intensely on the child at the early stage of their offending, even if it is a serious offence, or are we more likely to do that if the child is in a prison? I think that the answer is clear: secure care offers that opportunity.

Pauline McNeill: Good morning. Some of you said that what the bill does is a good first step, which implies that we should go beyond the age of 18. I am interested in exploring that, because I am open-minded about that, but as you might have heard earlier, I am struggling to understand how we would organise the prison estate. Kate Wallace said that we do not want to reinvent a young offenders institution.

Professor Johnstone, you are talking about children, and we have this bill because we are signed up to the UN Convention on the Rights of the Child, which says that someone is a child up to the age of 18, but it does not cover people up to the age of 21. I understand all the research about young people up to the age of 25, which has implications for lots of policy areas. However, if we were to extend this approach for young people beyond the age of 18, how could we make it work with the current configuration of the prison estate? Would extending that approach to people up to the age of 25 mean that we were arguing for the abolition of young offenders institutions? Perhaps we could hear first from the SPS.

Sue Brookes: There are a number of interesting issues about how we manage transitions. I will provide some factual information first. It is important to note that the children who come to us are often close to their 18th birthday, and the majority of them are on remand in any event. I certainly echo the issues that people have raised about the background of abuse, trauma and victimisation that they have experienced.

However, of that very small number of children who come to us, many of them have committed really quite serious offences and, happily, lots of alternatives have been explored before they get to us. It is absolutely right that children should be in an age-appropriate secure unit setting, but at the moment, the pathway would still bring them to us at some appropriate point. That is why we think that it is important that the age range in the bill allows for flexibility around that—

Pauline McNeill: Therefore, is it your position that you are content with the bill as it stands? You would not go beyond the age of 18, which is what I am—

Sue Brookes: No, I was going to come on to that. It is important that there is flexibility, because

maturity is quite different at different ages. My view is that we can see exactly the same issues that we see with the children reflected in the slightly older population—certainly those aged 18 to 21—and that is partly why we keep some of them in Polmont up to the age of 23.

In recent years—I know that you know this and that some members have visited Cornton Vale—we have done some fabulous work with the women's population on engaging in discussion about what a different model of custody would be in that instance. That has led to some really innovative work and the opening of the community custody units and—in the summer—of HMP Stirling.

I suppose that I do not have a specific view either way, except to say that I would agree with Wendy Sinclair-Gieben and others that there is room for a discussion around what it would mean to go beyond the age of 18, based on the evidence, because the 18 to 21-year-olds have a very similar background to those under the age of 18. Many of them have been in care and they have all sorts of learning difficulties—

Pauline McNeill: Yes, but they are not children. That is what I need to pinpoint: they are not children, and that is the whole basis of the bill. I do not want to sound as though I am against extending that approach beyond the age of 18, but I want clarity. We are not talking about children, so if we support a different policy, I want to be clear about that.

Sue Brookes: There are obviously issues about the balance of rights between people who offend and victims. I understand that and I understand the definition of a child versus the definition of an adult. Therefore, I am not necessarily saying that the model should be continuation in secure care. What I am saying is that there is space for a discussion around the needs of the older age group and that we could engage in that discussion together.

Pauline McNeill: Gerald Michie, do you want to come in?

Gerald Michie: I have nothing further to add.

Professor Johnstone: We have to start somewhere. You have to take a pragmatic decision at some point, and I think that 18 is in line with the UNCRC, but I echo the point that that is okay as long as we do not think that that is the issue sorted. There is another cohort. The 18 to 21-year-old cohort is particularly vulnerable. That is often when pregnancy starts and children are born. There are lots of risks. It should just be part of a pathway that is much more sensitive to a person's developmental stage.

Jim Shields: I share that opinion. As part of a pathway, you need to draw a line somewhere. However, the 18 to 21-year-olds are a vulnerable group. There is an increased level of offending in that group, but there are other discussions that we need to have on that. Some of those discussions have taken place around the sentencing guidelines, and they need to continue around assessment prior to sentencing, during sentencing and remand periods, such as the formulation model, and around transitions.

The discussions take place, but they need to be broader. We need to have a line somewhere, for the purposes of law.

Alison Bavidge: One of the most obvious issues—let us get back to resources—is how much we spend on people in prison and how much secure care costs. We have heard some of the really good reasons for it.

By having any age limit, we have a cliff edge. That is partly the way that we arrange our prisons. You heard from Linda Allan and from people on this panel that prison is not a therapeutic environment; it is a custodial environment. Work has been done on health and social care in prisons. One of the big gaps that we know exists is around the capacity for anybody in prison to have the same kind of social care and social work assessment—adult social support assessment—as people in the community.

There are options for how we smooth transitions, not only by not having hard edges but by looking at what comes next. If we could get more effective support into prisons for adults, we would, as Wendy Sinclair-Gieben said, assure victims that people who go into custodial environments will return to the community in a better place than when they left. They do not at the moment. Let us be very clear about that. Our throughcare is not strong enough, supportive enough or resourced enough.

That requires us to think about the whole system and the custodial lifespan. As people are saying, we have to ensure that transitions are smooth and that we do careful and minimal transitions.

In relation to secure care, nobody has said a word yet about our brains. Particularly when we are young, but all the way through our lives, our brains need nurture and love if they are to repair and improve so that we become secure, attached and able to have relationships and manage difficult events in our lives in a way that does not harm our mental health or mean that we need to resort to substances.

That is my message. Whatever cut-off we have, we also have to think about what comes next, how we reduce the transitions and how we adopt a

social model, which is what secure care is trying to do. It looks at the person, not just what they have done. It looks beyond them at their family, education, hopes, aspirations, talents and how they spend their days. That is what makes it different.

On behalf of The Promise Scotland, I would like to talk about love, attachment and relationships through the bill, and not having a hard edge. There are things that we can do.

Wendy Sinclair-Gieben: It is a brilliant first step. Let us get legislation on getting under-18s out of prison, in line with the European convention on human rights, and let us look at transitions and individualising the system a bit afterwards.

Pauline McNeill: I thank the witnesses for those answers. I am clear that that discussion is one that we need to have, but that there are a lot of things that we need to work out—namely, the transitions and flexibility. I note that, up to the age of 19, the services have some flexibility. It is helpful to know that, in Polmont, you have some flexibility beyond the age of 21.

Russell Findlay: This might be a fairly obvious question. What is the current provision of secure accommodation in Scotland? Is it just St Mary's or are there a number of facilities?

Jim Shields: There are 84 beds across Scotland. There are four charity-run secure centres and a six-bed centre in Edinburgh that is run by the local authority.

11:30

Russell Findlay: Is St Mary's the largest of the centres?

Jim Shields: St Mary's has capacity for 24 children.

Russell Findlay: In secure accommodation, what restrictions are there on the people you care for? Can individuals leave at any point?

Jim Shields: No. There are three different ways in which children are secured. They can be secured by the court, whether that be through remand or sentencing. They can be detained through a children's hearing process, which gives responsibility to and puts the onus on the local authority. Alternatively, they might be a cross-border case, and I know that such cases are being considered as part of the discussion that is taking place around the bill.

Children can work towards what is traditionally described as mobility, but their day-to-day care is in a secure environment. They are detained; it is a locked campus at night—the doors are locked. We speak about a trauma-informed environment, but

we understand that there are traumatising aspects to it. It is very much detention for young people.

Russell Findlay: We frequently hear from the police that high numbers of children abscond from such facilities. Is that a particular problem?

Jim Shields: Not really. We are involved in the respect programme, which works with children who abscond from care arrangements. That is not necessarily reflective of secure care. In my time in secure care, I have not known anybody to abscond from a secure campus. We might have somebody try to abscond during a transition, perhaps during a hospital visit or when leaving or arriving at secure care.

Our security—our environmental security—requires improvement, and that requires resources. We are a 23 or 24-year-old service and we have to improve the environmental safety for young people, particularly with regard to the intentions of the bill. However, absconding—or, for want of a better expression, breaking out of secure—is not a common occurrence. It does not happen regularly with us, and I know that it does not happen regularly across the other centres, either.

Russell Findlay: There was also evidence from St Mary's about a lack of funding—it said that the provision of secure care

“is uncertain, underfunded, and largely undermined”.

Jim Shields: There is a very simple starting point. If you are looking to move from a prison service that is, essentially, Government funded to charity-run provision that requires beds to be full to maintain the level of service, it is clear that there is a precarious resourcing issue around secure care.

Russell Findlay: If the bill is passed, do you expect more people to use your service?

Jim Shields: Yes.

Russell Findlay: You have projected what that might look like and the funding that will be required, and have said that that needs to be funded by Government.

Jim Shields: There needs to be certainty.

Professor Johnstone: We currently operate with what is referred to as a bed rate. An amount is allocated to us from Scotland Excel for our bed rate; that is what we get per child, so to speak. We have to have a percentage occupancy for the facility to be viable, because we obviously have to have a certain number of staff for X number of children and for X number of resource. If an organisation falls below its occupancy rate, it will start to run in deficit. For us, it waxes and wanes. However, more recently, there have been cross-border placements, as you have heard from other witnesses. At times, we have relied on cross-

border placements to ensure our financial sustainability so that we can meet the needs of our Scottish children.

We need to invest in the buildings. We want to have trauma-informed security; we do not want to have cameras in children's dining rooms or bedrooms. It has to be discreet, and these things cost money. We also need to have highly trained staff. We have to recruit and retain staff, and the current bed rate does not allow that to happen.

Russell Findlay: The written evidence said that authorities elsewhere in the UK are willing to pay more than the set rate in Scotland.

Professor Johnstone: Yes. This is just an anecdote, but we have had a lot of success with one particular local authority in England. Crime changes. Children are criminally exploited, and sometimes we need to interrupt gang affiliation, so coming to Scotland is a good option for them. We have delivered well for them. They pay significantly more for a bed than Scottish local authorities, and we are one of their preferred providers because of the work that we do.

Russell Findlay: How much more would they be paying in percentage terms, roughly?

Professor Johnstone: Do you know the precise figure, Jim? Is it in the thousands?

Jim Shields: You are looking at an uplift of at least 35 per cent on the Scotland Excel rate from English providers.

Russell Findlay: So, whatever happens with the bill, that will need to be looked at.

Jim Shields: Yes, that certainly needs to be looked at. The cross-border arrangement means that we can be more bespoke and assessment led, because we can determine the level of need and support and the staff and resources that are required to meet individual needs and risk. We do not have that luxury within the Scottish arrangement.

Professor Johnstone: Another important piece of learning from the English cases is that we generally agree a care plan. Sometimes those care plans will be for nine months, and they will not be interrupted, so we get to start and finish the job, so to speak. That is not always the case with our local authorities in Scotland.

Russell Findlay: That is interesting—thank you.

I have a couple of questions for Alison Bavidge, one of which is an extension of what Professor Johnstone said a moment ago about exploitation of young people. The proposal suggests that anyone aged 16-plus who is in police custody can nominate an adult other than their parent to be notified of their situation. Has any consideration been given to the risk that vulnerable children in

that situation could be contacting people who are exploiting them, whether through organised crime or something else?

Alison Bavidge: That is one of the issues that need to be worked through. It is also an issue with vulnerable adults beyond the age of 18. We need to give children the opportunity to exercise some control, but that can be done with good support from the police and good relationships with the local social work departments. There are definitely risks, but all these things need to be balanced quite carefully.

Russell Findlay: I have a final question. Earlier on, Victim Support Scotland talked about children who have been harmed by other children having no right to any information whatsoever. There seems to be a complete vacuum of information for them. Your members represent or assist families on both sides of cases. Should the bill address that and, if so, what should it do? Should there be a lot more transparency around children's hearings? What should be done?

Alison Bavidge: It depends on what we mean by transparency. Does that mean greater understanding of how the systems work, or is it about looking at the type of information that victims receive? From what Kate Wallace said earlier today, it is very clear that there is a significant gap in information for people who have had crimes committed against them by children. We are talking about balancing people's rights, and that is where things get knotty. Depending on the situation of the young person who is a victim or the young person who is a perpetrator of a crime, the balance of both those people's needs and their ability to grow up in safety, with as much anonymity and psychological safety as we can give them, is important.

It will be interesting to look across the border at what is happening in the children's courts in England as things open up and there is a bit more reporting on how that is being managed. I am afraid that I am not able to give you a lot of detail on that, but perhaps we should look at that and other models where there is a greater level of transparency and understanding among the general public of how things work for children. It is not that children are getting off, if you like—that is the wrong way of putting it. We need to reframe how services support children who have been victims and who have committed crimes to live safe and positive lives in the future.

Russell Findlay: That is great—thank you very much.

The Convener: Before I bring in Rona Mackay, I would like to let members and witnesses know that I can extend the session. We are covering a lot of important ground, and I am keen that as

many questions and responses as possible can be heard. On that basis, assuming that our witnesses are able to stay a little bit longer if required, I will extend the session. If need be, we will reschedule our final agenda item to just after Easter recess. I take it that that is acceptable.

Rona Mackay: Good morning. I will address my questions to Jim Shields and Lorraine Johnstone. St Mary's Kenmure is in my constituency, and I have visited it many times over the past seven years. I am always impressed by its ethos and caring aspect. I think that the work that is done there is fantastic. That said, do you think that it is a place for young offenders who have committed very serious crimes?

Professor Johnstone: Yes, I do. Well, I think that it has the potential for that, but there needs to be a reality check around what that might look like. Some young people come to us with terrible index offences but they are actually very easy to manage because the offence arose from a sort of criminogenic or cultural need; it happened when they were with peers and intoxicated, and none of those situations really present themselves in the secure estate. Therefore, in general terms, for most young people who present serious risk, the answer is yes.

There are the exceptional cases, however, and that is where some thinking needs to happen—for example, in cases that involve a child murderer or something else that is unusual but very, very concerning. Those cases present another type of risk, too, because some of the other young people will take great umbrage at that person being there, so it introduces a whole new set of risks to managing the secure unit.

You get those rare cases of low frequency but high impact, but you also get some young people who are incredibly distressed, which I call being at acute risk. They might be suicidal and really dysregulated and in need of a period of stabilisation. Within the campus, we have spoken about the probable need for a space that allows for that young person to be there for a period of weeks to get the relational security that they need to stabilise. Then we can think about how to reintegrate them. We would need some physical modifications to enable that to happen, but that, again, is about care planning, and it is not about defining a care plan by the offence that they committed. The offence might be the top line, but then it is about focusing on what their risks are, what their vulnerabilities are and what the risk to them in the secure estate is, and managing that. With some environmental restructuring and training for our staff, I think that we would be in a better position to balance that tension.

Rona Mackay: That is interesting. As you say, it is very rare. I think that Kate Wallace intimated

some concerns about that in the earlier evidence session. Jim Shields, do you have anything to add to that?

Jim Shields: We are familiar with working with young people who have committed the most serious offences, but, as Lorraine Johnstone has said, they are not necessarily the young people who are the most difficult to manage. In answer to your question, then: yes, secure care is, and can be, the environment in which to do that.

What you need professional input on is the harm that they can have on the therapeutic environment for the other young people. I spoke about the broad demographic of young people in secure care, and there can be cross-contamination of vulnerabilities. That can be resolved through vigilance, good care and professionalism. What we would want as an outcome of the bill is to increase the professionalisation of secure care to give it the status that the critical few merit, so that we have the status and ability to deliver that care, the environmental safety and the professional approach.

11:45

Professor Johnstone: I would like to add something, which builds on what was discussed with the previous witnesses.

We have psychology support, and we have very considerable access to it compared with what you might get in the community. Some of our high-risk people will have one or two sessions a day. I do not mean for an hour; I mean that there will be really intensive co-regulation modelling to them and to the staff. That is the type of resource that is required.

There is the environmental part, but it is also about having child-informed specialists, and there being no risk, and having access to that really intensive modelling at the front, where you get to understand them, and then regulating them back into normalisation. We would need a facility to manage that really acute and high risk.

Rona Mackay: What is the average—if there is an average—length of time that a child would spend in your secure care?

Jim Shields: It varies. Bear in mind that, as I have mentioned, there are three methods—or three journeys—that young people can take to come into secure care, and we have such a broad variation of need. There are young people who will need care well beyond secure care and for whom we are formulating, supporting and creating safety and stabilisation. We are making it a shorter journey by supporting the people who are going to take the care into the community. There are other young people who will need a much more

intensive level of support over a longer period of time.

Then we have to talk about community safety. There are young people who have a criminogenic need, or who are a risk to others, and they require a level of supervision that perhaps only secure or a YOI can offer.

Professor Johnstone: On my point about secure care being maligned—and it probably should be in lots of ways—we have young people who absolutely do not want to leave us.

Rona Mackay: Do they become dependent?

Professor Johnstone: Yes, because it is the first time that they have had an environment where they are safe and there is predictability, and where they are loved, nurtured and educated. We have had young people very clearly say to us, as soon as they go out, “I will not be out for long” or, “I will see you on Friday”. We know that they are going off and will either put themselves at risk or will cause harm, and that they will come back to us. We have got one young person who is in, I think, their third admission with us.

Jim Shields: Without being case specific, that was previously referred to as being institutionalised. It involves young people establishing a core belief that this is the only environment that can keep them safe. Through assessment and intervention, we need to shift the notion that it is bricks and mortar that keep them safe to the belief that it is people and relationships; we need to keep them believing in their assessment and understanding. It takes a very skilled workforce and a lot of trust to develop that, to go back to the points that Alison Bavidge made.

Rona Mackay: I repeat that I have seen only skill and care whenever I have visited. It is quite astonishing.

Finally, I go back to the cross-border issue and the issues of capacity and finance. Is it the case that there are some young people in Scotland who cannot get a place because of your need to take in people cross-border for financial reasons?

Jim Shields: Not currently.

Rona Mackay: Has it been the case in the past?

Jim Shields: I understand that it has been the case in the past. We have the pilot with the Scottish Government just now for the purchase of last bed. That has been in practice for only three months, and it has been hugely successful. The impact of that has meant that all our recent admissions over the three-month period, with the exception of one, have been Scottish.

Rona Mackay: Sorry—will you explain what purchase of last bed means? I am not sure.

Jim Shields: I am not sure where it stands with Edinburgh, but the Scottish Government has an agreement with the four secure centres that the last bed is purchased so that it is available as a Scottish bed for a young person who requires secure care, whether that comes from the court, a children's hearing or, initially, social work authorisation. That bed should be available—there should be four beds sitting across the centres. However, we are now at capacity, so our last bed is no longer available.

I think that we can predict that we might be coming back to a point of saturation. We are seeing an increase in youth offending and we are seeing the fallout from Covid. We have a cohort of young people who have missed universal services and opportunities for socialisation, which indicates that we are going to get a spike in delinquent and antisocial behaviours. We are also seeing an insurgence of criminal and sexual exploitation. We can expect that there will be increased need for secure care as a result of the time that it will take the country to get a handle on that and respond to it.

The Convener: I want to pick up on a point that Lorraine Johnstone made earlier. Lorraine, you said that secure care centres could potentially accommodate young offenders who have done something serious, but that restructuring and training would be needed. Are you aware of whether there has been any of that, or have you had any engagement with the Scottish Government about the potential for it and what additional resources would be necessary?

Professor Johnstone: We hosted a meeting, so we have had discussions about it, but we certainly have not put together a well-thought-out and detailed proposal, which would be needed.

To clarify, what I said was that we can manage core delinquency; that is what we do, so it is not an issue. The additionality would be for the low base rate, high-impact crimes that hit the media and are very emotive, and also for high or acute risk cases. Although, we are actually very good at managing acute risk.

Additional training is needed around the criminogenic risk need and the tension of balancing risk on one side with children on the other. Some people struggle to see a child as risky, whereas other philosophies see the risk, so there is a bit of work to be done to bring people on both sides into the centre so that they hold the risk in mind and work with the child but do not get pulled in either direction. That is quite a common dynamic in closed settings, so a bit of training is needed. We have communicated that to the Government, and it would be helpful to sit down and look at that.

Jamie Greene: I am going to start with a question for Gerald Michie. Gerald, you said that there are seven children in the prison estate.

Gerald Michie: Yes.

Jamie Greene: How do you define "children"?

Gerald Michie: Sixteen and 17-year-olds are defined as children.

There are two females and five males in the estate at the moment. One young man committed an offence in Scotland and was bailed, but he has an English recall, so he is waiting to be transferred back down to the English estate. We currently have one of the females at HMP Grampian, which can legally hold female children.

All of the young people in my care at the moment have come into custody since 3 January; the latest came in on 23 March. There are four 18th birthdays during the next half a dozen weeks and, when those children have their 18th birthdays, they will transition into the YOI part of the establishment.

Jamie Greene: Which part of the establishment will they transfer from?

Gerald Michie: We keep young men in residential and sleeping accommodation that is separate from the rest of the young offender population.

Jamie Greene: How many of the 84 beds in secure accommodation, which is designed to cater for 16 and 17-year-olds under the current legislation, are available or were available at the time when those people were placed in Polmont? I am trying to understand why you have them at all.

Gerald Michie: Young people can arrive with us in two ways. There are 16 and 17-year-olds who transition from secure care to the prison estate, and that is a well-planned, well-orchestrated and supportive journey between secure providers and us. Often, we have up to six months to plan for that, and the transition includes site visits, personal officer visits and relationship building as they move across.

We do not take children from the hearings system; we take children from the criminal justice system. They often come to us unannounced and at very short notice, and the majority are on remand.

Jamie Greene: Okay, so none of the people that you have in Polmont is there as a result of a lack of capacity in secure accommodation.

Gerald Michie: I do not know the answer to that.

Jamie Greene: Who made the decision to put them in Polmont?

Gerald Michie: The sheriff.

Jamie Greene: Does the sheriff assign people to specific institutions or just to be held in custody? Who decides where people go?

Gerald Michie: Polmont is the national holding facility for male young offenders and male children in Scotland. Female young offenders or a female child would normally go to HMP Cornton Vale. Once opened, they will go to the new HMP Stirling. In the north-east of Scotland, given the distance that is involved, HMP Grampian can also legally hold a female child.

Jamie Greene: Okay. However, you do not think that they should be there.

Gerald Michie: In the prison estate? I do not. The Prison Service agrees with the ambition of the bill.

Jamie Greene: The problem is that, if the bill were passed tomorrow, we could not move those people to secure accommodation because there is no capacity. Capacity is being used up by people from authorities in other parts of the UK that are paying more. There would need to be a pretty substantial change to secure accommodation in order to accommodate that direction of travel.

Gerald Michie: No.

Professor Johnstone: There is capacity.

Jamie Greene: So you could immediately accommodate a substantive change to how and where people are placed.

Professor Johnstone: Yes. There are vacancies.

Jamie Greene: Okay. That is good to know.

Professor Johnstone: There is a website that is updated daily with the number of beds that are available across the secure estate, and there are currently vacancies.

Alison Bavidge: There are about 11 at the moment. That was the number when I last looked. However, you have hit on a really important point about capacity and the wider system. We cannot necessarily plan for or articulate what future demand is going to be, because there are so many decision points in the variety of systems that we have.

If the bill is to work—we all want it to, and it definitely goes in the right direction—we will need to ensure that we have the required capacity in the secure care estate. What will happen if that is full? Where will young people end up? We need to think about that. Beyond that, however, you will have heard from others that we have more people coming through the hearings system and more people having social work and social care support

for much longer, and there is a big capacity issue there.

I sit on the board of Social Work Scotland, which says in its submission on the bill that we will probably need about 176 social workers. That is no small number given the current pressures on the workforce and the struggles to recruit and retain. We are already working on crisis management. What will happen to the preventative and supportive work that we all know is needed in order to, hopefully, prevent people from coming into the secure estate?

We need to use the whole-system approach as a programme methodology rather than seeing it as a particular piece of work, and we need to look at all the steps in the bill. It will quite rightly push children to community services. That is absolutely the right thing to do but, if we are to hold them and support them and their families—in keeping with the UNCRC, the Promise and the rest of it—there will be significant resourcing requirements for social work, social care and local authorities, and also capacity requirements in the residential and secure systems.

Jamie Greene: I really appreciate your feedback. All of that will be noted and considered when we look at the implications of the financial memorandum to the bill.

As you might have picked up from my questions to the previous panel, I am trying to get my head round what people believe the role of young offenders institutions is. If there is general agreement that they are not the place for 16 and 17-year-olds—and perhaps not even the place for those who are older, depending on the direction of travel of the bill—what type of people ought to be held in YOIs in Scotland? Is it about age, the nature of the offence or the perceived risk to the public or victims? It is quite hard to get your head round what sort of environment YOIs should be.

That might be a question for the Government because, ultimately, it controls which institutions we have, but do you have any comments?

The Convener: I know that Sue Brookes wants to comment on a previous question. Do you want to address Jamie Greene's question as well?

12:00

Sue Brookes: Yes. There are a couple of things that might help with the issues around numbers and variability. I will then come on to the other issue.

The statistical average of the number of 16 and 17-year-olds who are with us is about 14, although that has gone down year on year. Currently, as Gerry Michie said, we have only seven. On annual throughput, around 60 young people experience

that kind of custodial environment, and there is some variability. From time to time, we might have no girls and maybe only two boys; at other times, we have up to seven or eight—in fact, post-January, we were up to 12, I think. Although there is overall capacity, we need to be able to manage those variability issues. That is something to think about.

On the question of what prison is for, I go back to the discussions about 18 to 21-year-olds. As I said earlier, we have gone for a new model of custody for women. That was informed by a comprehensive evidence base and a broad consultation with lots of people—specialists from across different sectors. I do not think that there is an easy answer on exactly what that would look like for the slightly older age group. As people have rightly identified, there are competing rights issues. We need to stand back and create a space in which that discussion could take place, based on the evidence.

A couple of folk have commented on the fact that, in many respects, it is a system issue, not just a prisons issue. Therefore, we would need to take account of lots of different perspectives in order to get to a position where we agree on what is most effective, what is most appropriate, and what balances the competing rights.

I do not know whether that helps.

Jamie Greene: It does. Thank you very much.

Gerald Michie, you are in that environment day in, day out, and you will have a lot of experience of the types of people who come in to be under your care. You may have heard the feedback from our previous witness about what she thought the different cohorts of people were. From your experience, do you believe that a young offenders institution as an environment is the right place for the types of people who are being placed into custody there, or would you like to be able to do more in certain areas, but you are perhaps restricted by people's legal status, for example?

Gerald Michie: Anybody who is committed by the courts comes into the care of the Scottish Prison Service. At times, we have a very difficult and challenging journey with some of those people.

The previous panel session was very emotive regarding personal experience. Undoubtedly, we have a number of women in our care in particular who are extremely unwell, whether that is to do with physical or mental health issues. Along with our providers, such as NHS mental health services, we do the absolute best that we can.

Women's environments can be more traumatic, noisier and more difficult than some of the male environments. That can be quite distressing for

people who come in to custody for the very first time. Young men are very active. They are quite loud and boisterous, so their prisons have quite a buzz about them.

It is quite interesting that a lot of people who transition to us from secure are ready and able to make that journey—in fact, some of them see it as a natural stepping-stone in their life journey. However—secure care providers will experience this—we often receive admissions at 8 o'clock, 10 o'clock, or even 2 o'clock in the morning of young people committed on a warrant. Our job for the next 24, 48 or 72 hours is absolutely to keep them safe and well, and to see to their immediate needs. That is incredibly difficult for us. We lose people—as colleagues have said, they go back afore we can even make a dent. We have numerous overnighters who arrive at 5 or 6 at night and go back to court the next morning.

I did some number crunching just yesterday. Apart from one young person who spent seven months and eight days with us, the average time is 11 days. In thinking about how much of an impact we can have on that person, we concentrate on their immediate needs, including a care plan, safety and security, family contact, physical health and nutrition.

Jamie Greene: There has been quite a lot of criticism. It is not directed at individuals; we know that all prison officers are under a huge amount of pressure and stress. Nonetheless, there are some stark statistics on suicides among young people in custody. Do you have a view on that? Are they preventable or inevitable? Do you think that the situation could be improved but that that would require a huge amount of further investment and resource?

Gerald Michie: Any death in our care is absolutely tragic. The SPS as an organisation, and we as a society, should attempt to prevent any death in custody from happening. Following the expert review on mental health that took place a couple of years ago, we have worked behind the scenes with the chief inspector's office and the Children and Young People's Centre for Justice on developing new strategies and so on to support those in our care.

Lorraine Johnstone and Jim Shields talked about training staff. We train prison officers, and there is also specific training for staff depending on the population with which they are working. For example, they might get specific training on working with young people or women in custody, or trauma-informed training. That applies from the chief executive of the organisation down to the support staff.

There is also training on mental health first aid, and even a trauma-informed approach to

physically laying on hands. We no longer search by laying on hands—we are able to bring people into the establishment without traumatic searching and so on. We continue to work hard with our partners to make prison a safer and more trauma-free environment.

Jamie Greene: I appreciate that there are efforts in that respect. I have a final question, which is for Wendy Sinclair-Gieben.

The Convener: I was just going to bring in Wendy Sinclair-Gieben on the previous question.

Jamie Greene: Okay—that is perfect timing.

Wendy, I was intrigued by a comment that you made at the start of the session. The bill takes quite a prescriptive, black-and-white approach, with age-based parameters. However, I get the impression that other factors could, or should, come into play in determining where the best place for someone might be. Alternatively, is a one-size-fits-all approach, in which people progress from one institution to another and so on as they age, the only way of dealing with the matter?

You painted a scenario in which it would be entirely inappropriate for a 24-year-old with serious developmental issues to be in an adult prison but, equally, it would be entirely inappropriate for a 24-year-old who is of sound mind and who committed a very serious offence of assault, murder or rape to be in a secure environment among children.

Can you expand on that, and say how legislation could perhaps be better used to deal with those scenarios?

Wendy Sinclair-Gieben: It is a difficult one, because it is much easier to have an arbitrary age that everybody can work to. Nevertheless, I think that there is room for legislation to allow for a discretionary appeal—for example, if a 17-year-old or an 18-year-old who was not quite 19 had been assessed as very high risk, and was likely to be spending the rest of his sentence in an adult establishment anyway and could no longer benefit from everything that the secure estate offers. At that point, a multidisciplinary team could recommend that it has the discretion to move that person into the prison estate. I think that that should be a possibility.

Equally, there could be a 22 or 23-year-old in Polmont who clearly has massive immaturity issues. Is there room to consider whether an 18 or 19-year-old is able to move to the secure estate without having to go back to the court? I think that there is such a possibility.

I am quite happy with the age in the bill being 18 at the moment. That is a massive first step. I know that all the evidence indicates that brain

maturity does not happen until 25, and I know that work is going ahead for children who have experienced care so that they can be supported later. People are looking at that in relation to the sentencing guidelines. Let us just get the first step done and stop 16, 17 and 18-year-olds going into prison. We hear from the Scottish Prison Service that prison is not a therapeutic environment. It probably could be, but that will require considerable resources, whereas those resources already exist in the secure estate.

Jamie Greene: You probably listened quite a lot to the work that we did on bail and release from custody—I am sure you followed that. One of the comments that was made was that political decisions often come down to what the public appetite is for risk. Do you think that there is a public appetite for the direction of travel whereby 21, 22 and 23-year-olds who have committed serious offences would be deemed to be children in the eyes of the judicial system?

Wendy Sinclair-Gieben: No, I do not think that there is at the moment, but I would not be able to answer that—I would have to look at any evidence on public opinion. However, I think that there is a public appetite for including those up to 18.

Katy Clark (West Scotland) (Lab): I want to pick up on quite a few of the points that Jamie Greene has raised and get a better understanding of why we now have 16 and 17-year-olds in the prison estate. I appreciate that you have said that it is down to the courts. To what extent are there children on remand in secure units now?

Jim Shields: Currently, we do not have any children on remand. That is not representative of the whole secure estate but, right now, we do not have any children on remand.

Katy Clark: So they tend to be convicted children, or those referred by the children's panel.

Jim Shields: The majority are referred by the children's panel. There is an anomaly that the bill should resolve concerning 16 and 17-year-olds who have had a short escalation within criminal justice and who have not benefited from a children's hearing or services that are dedicated to, or that identify, their trauma and vulnerabilities throughout their life. I hope that the bill will resolve that and allow 16 and 17-year-olds to access those.

The existing remittal provision for remitting people back to a children's hearing is not always exercised. We might find that the provision of a children's hearing is not open or readily available to a young person who has been art and part or involved in a serious offence without necessarily having a pattern of offending. Those young people are perhaps the ones who are in for seven or 11 days, and people will try to resolve that situation.

They do not have the legal framework or an established pathway in place. That is where we might find some of the short journeys.

Katy Clark: Do you ever have children on remand? Have there been in the past?

Jim Shields: Absolutely—yes.

Katy Clark: It is just that you do not happen to have any at the moment.

Jim Shields: Yes.

Katy Clark: Right—I understand that.

Another issue that is raised by the bill relates to children being detained in police custody—children being kept in cells. Have you considered that? Are there ever circumstances in which that is just a necessity? What is your view on that issue? Potentially, somebody who is arrested on a Friday could be held until the Monday. Does that happen? Is that something that you are aware of? Is there a different provision for those short-term situations?

Jim Shields: That should not happen. Such occasions are rare now. Children who are subject to compulsory supervision measures should not be held in police custody any longer than possible. That responsibility generally sits with the local authority, which should provide an alternative place of safety, to use a legal term, using provision that would satisfy the police and satisfy the risk.

Katy Clark: Do you envisage that, in future, children in that position, who have risks associated with them because of the nature of the offence, are likely to be taken to secure units for short periods of time? Is that your understanding of the policy going forward? Is that what is being suggested, as far as you understand it?

12:15

Jim Shields: Yes. Currently, the barrier to that is largely financial. If that barrier did not exist, the question would not be being asked. A desk sergeant does not want a 16-year-old to be in his care because they are in custody for the night when they do not have the provisions in place to address that child's trauma, the risk around them and the impact that their presence might have on other people who are there.

People are pushing at an open door on that question, but the problem is the financial barrier that is in place. A local authority could be held accountable, at short notice, for a child who is not on its radar, but it will have to make decisions about them against a background of financial constraints.

Katy Clark: Much of the debate is about resources, including how we should shift them. We

have been given figures on the cost of keeping someone in prison, which we are often told is around £40,000 per year. However, there is huge variation among prisons, and the newer prisons are a lot cheaper than the older ones. Do we have data on the average cost of keeping a child in a secure unit? I am just trying to get a feel for the resource issues.

Professor Johnstone: It is about four times as much as it would cost in prison. Our children are out and about all the time, so we rely much more on relational security than prisons perhaps have the opportunity to do.

Katy Clark: That is helpful. Gerald, would you like to add to that?

Gerald Michie: I was just going to say that we have examples of children who go through the criminal justice system who will go into police custody, spend a night there—or multiple nights if it happens at a weekend—and then be committed to prison.

The Convener: Would anyone else like to come in before we move on?

Alison Bavidge: I stress that, as Wendy Sinclair-Gieben said, we are all agreed that this is a good bill. When it comes to implementation, however, there is always the risk that there is simply not the capacity in the system to be able to respond to the newness. It takes time to train staff—for example, it takes between two and four years to train social workers—and to get the places of safety and ensure that local authorities have the financial and physical resources to be able to do all that.

I stress that, although the bill represents good legislation that goes in completely the right direction—there is no problem with that—its implementation could be quite risky in terms of having the right resources in the right places.

Professor Johnstone: I echo that. One of our difficulties is recruiting and retaining the right care staff. These are high-risk environments in which staff can be assaulted. We need to make the sector one that people feel proud to be part of and in which they feel supported and kept safe. The need for resilience is just the norm, and that takes an incredible amount of investment, too.

It might sound as though I think of this as a panacea, but I reiterate that it requires the investment of money. I believe that we should spend to save. Although we require resources, there is a real risk that, as Alison Bavidge said, we will pull resource away from other sectors. We need to ensure that that does not happen, because we would recruit from the same pool of people.

Fulton MacGregor: The end of that response—although it has been a theme throughout our conversation—leads on nicely to my line of questioning, which is also about resourcing. I will split it into two parts.

In my previous life as a social worker working with children and families, I often visited young people who were in secure accommodation. I have to say that it was almost always a positive experience. I visited St Mary's several times, although that was several years ago now. I thought that it would be good to put that on the record. For the benefit of my colleagues, I point out that such accommodation is very much a secure environment from which, as Jim Shields highlighted earlier, the risk of absconding is extremely low. It also provides a therapeutic environment that can lead to good results, so the idea of more people accessing it makes sense.

My question is for Lorraine Johnstone and Jim Shields. What more can be put in by way of resource, if the aims of the bill are to be met? Is it about bolstering what is already there in the four or five centres, or is it about creating more? Would you like the state, either through the Scottish Government or local authorities, to replicate what you have, or is it about bolstering what is already in place?

Professor Johnstone: It would be good to sit around the table and do an options appraisal, because every type of model has pros and cons.

At the moment, the contracts for secure care are arranged in such a way that providers compete against one another. There are lots of positives in that, but it inhibits collaboration.

It would be useful to explore and map out what the options would look like. On the one hand, a centrally funded national service would, potentially, be the answer. It would involve equity of distribution. However, there is a lot of expertise in secure centres. They have been going for a long time. There are pockets of expertise that we might not want to fall away.

It is therefore not an easy question to answer. There are different ways to do it. The opportunity to explore that has not taken place in the way that it should have.

Fulton MacGregor: I have another question for Jim Shields, before he comes in. How does the sector engage and interact with the facilities that are run by local authorities? I have not visited the one in Edinburgh that you referred to.

Jim Shields: The Scottish Government facilitates regular conversations between the five centres, and we have interactions.

I can probably add a little to what Lorraine Johnstone said. My initial response is that we

should bolster what we have, because a lot of experience is there, in people who have been on the journey over the past 25 years, in effect, since the secure estate was developed in Scotland. That would be with a view to creating what Lorraine Johnstone has described as an options appraisal: a discussion about a shared way forward.

The value base and intention are pretty similar across what is commonly referred to as the secure estate. There is a pretty clear consensus on the morals—what we believe in and what we are looking to achieve for children—and the management strategies. Not many people are pushing against that. However, the competitive nature of the current financial structure prevents us from making the best of it and maximising it.

The bill can probably support us with that, as can the Government, because, ultimately, although we are talking about the secure service, we should be talking about the children. We talk about their not going into the YOI and not returning to secure care. There should not necessarily be a standardised approach, because we want innovation; we want people to learn more and develop; and we want growing research provision. However, we also want all of us to have a shared purpose, which needs to be child centred. We need to look at the children and focus on how we prevent them from being in that revolving door of having prolonged periods in secure care and then prison.

Fulton MacGregor: On that basis, would you like there to be a change in who makes the decision? I certainly remember that the chief of the social work department or whatever in a local authority makes that decision. As I think you referred to, previously, it would not be every nine months for some of the cross-border cases; it would perhaps be every four to six weeks.

Would you like a change in who makes the decision? Obviously, there can be a lot of variance between local authorities. Should it be somebody more central, or is it more about training for local authorities?

Jim Shields: I was not prepared for that question, Fulton, so thanks for that.

The chief social worker decision is tested. It is a 72-hour authorisation and then there will be a children's hearing, which will have a bearing on that and will make a decision, albeit that the chief social worker has the option not to take that direction.

I will not answer your question directly but, in line with the bill, I would like a greater professionalisation of the children's hearings process so that there is informed decision making and support. I would not want to disrupt the Kilbrandon approach, because it sets us apart in

Scotland and we are very proud of it. We have maintained a child-in-need approach longer than most—we are ahead of the curve on that. However, given that we are looking to remove children from YOIs and that we are working with the critical few, we need a professional eye on it.

The children's reporter cannot be somebody who is there to administer legal confidence. We would be looking for the insight of a sheriff. When we were discussing sheriffs, Jamie Greene made a point about their having a level of autonomy around sentencing options. They also have a wealth of experience. They have seen the young people who have progressed and the revolving doors. The bill presents an opportunity for increased professionalism in the children's hearings system and the decision making process for detaining children.

Fulton MacGregor: I have one further question, which is for Alison Bavidge. It is about the other side—the resources, which you mentioned right at the start. What can the bill do in terms of making use of other resources, at community level, to prevent people needing secure care in the first place? I know that that is the million-dollar question. You have touched on it through some of your answers, but I want to give you a chance to expand on that.

Alison Bavidge: There is a range of things. There are a lot of things in children's policy: we have the Promise, getting it right for every child and children's hearings—I have a whole list of them somewhere. For me, all those things need to progress in alignment and be sequenced very carefully to ensure that we know where we can move resource. However, I am a bit sceptical that there is resource to move because, if it was that easy, we would already have done it.

There is an issue about resource, and we need a grown-up conversation about that if we want to make that change. You have heard how much more it costs to have a child in secure care than in prison, and quite rightly so. However, the resourcing is not simply going to shift. We need to take all those things—the children's hearings system and re-imagining secure care—and work out where there will be savings in future.

There will be savings if we prevent children from needing secure care and provide early support, but that will not happen straight away. There will be a time during which things will probably need to be double funded as that shift happens and our staff and the environments in which we work move to a model of early support and preventative family support.

The bill is definitely part of that direction of travel in Scotland, so I suppose that my plea would be around good implementation. It is about

understanding what is in the rest of the environment, which is not just the bill but how it interacts with all the other things in the children and families policy arena, and anything that is going on in youth justice and support for younger adults. We need to think very carefully and be prepared, in the short term, to do some double resourcing, on the basis that we really believe that putting in early support will reduce costs in the future. We know that that is the case.

I am afraid that I did not really answer the question, but it is wider than the bill.

Fulton MacGregor: Yes—that is agreed.

The Convener: We are coming up to half past 12. I admire our witnesses' staying power and patience, and I think that I speak on behalf of members when I say that it has been a really helpful and informative session for the committee. Thank you all very much for attending.

12:29

Meeting continued in private until 12:58.

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