OFFICIAL REPORT
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DRAFT

Education, Children and Young People Committee

Wednesday 10 September 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 10 September 2025

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
25th Meeting 2025, Session 6

CONVENER

*Douglas Ross (Highlands and Islands) (Con)

DEPUTY CONVENER

*Jackie Dunbar (Aberdeen Donside) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Miles Briggs (Lothian) (Con)
*Pam Duncan-Glancy (Glasgow) (Lab)
Ross Greer (West Scotland) (Green)
*Bill Kidd (Glasgow Anniesland) (SNP)
*John Mason (Glasgow Shettleston) (Ind)
*Paul McLennan (East Lothian) (SNP)
*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Claire Burns (CELCIS)
Natalie Don-Innes (Minister for Children, Young People and The Promise)
Fiona Duncan (The Promise Scotland)
Maria Galli (Law Society of Scotland)
Lewis Hedge (Scottish Government)
Saskia Kearns (Scottish Government)
Sheriff David Mackie (Hearings System Working Group)
Roz McCall (Mid Scotland and Fife) (Con)
Kirstie McKerron (Scottish Government)
Fraser McKinlay (The Promise Scotland)
Katy Nisbet (Clan Childlaw)
Liz Smith (Mid Scotland and Fife) (Con)
Kate Thompson (Children and Young People's Commissioner Scotland)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 10 September 2025

[The Convener opened the meeting at 08:30]

Schools (Residential Outdoor Education) (Scotland) Bill

The Convener (Douglas Ross): Good morning and welcome to the 25th meeting in 2025 of the Education, Children and Young People Committee. We have received apologies from Ross Greer. I welcome Liz Smith and Roz McCall, who are joining us for part of the meeting.

The first item of business is an update on the Schools (Residential Outdoor Education) (Scotland) Bill. I welcome the Minister for Children, Young People and The Promise, Natalie Don-Innes. She is accompanied by Scottish Government officials Saskia Kearns, team leader for learning for sustainability and outdoor learning; Lewis Hedge, deputy director for curriculum and qualifications; and Kirstie McKerron, a solicitor in the legal directorate.

Minister, I understand that you would like to make an opening statement.

Natalie Don-Innes (Minister for Children, Young People and The Promise): Good morning. I welcome the opportunity to further discuss Liz Smith's member's bill with the committee and to set out the work that I have undertaken to consider the areas of outstanding concern that have been identified by the Government and, importantly, by the committee in its stage 1 report. I also welcome the opportunity to reiterate the Scottish Government's support for outdoor learning, including residential education, and the work that we are already delivering to improve provision and access.

We recognise the important role that is played by residential outdoor education in a young person's development. Our support for such experiences and for all forms of outdoor learning is reflected in our learning for sustainability action plan. Our Scottish outdoor learning strategic working group has worked over the past year to develop recommendations on how we and our education delivery partners can further strengthen inclusive provision and access. Part of that group's consideration included discussion around the valuable work that is under way by the Association of Heads of Outdoor Education Centres and the Scottish Advisory Panel for Outdoor Education, with the support of Education Scotland, to develop a new quality residential framework. The group is due to report to me shortly.

The curriculum improvement cycle, which is led by Education Scotland, is already delivering systemic change and ensuring that key themes and the context of learning, including sustainability and outdoor learning, are strengthened across the three-to-18 curriculum. Members of the national outdoor learning strategic working group have been informing that work. We are also funding partners to ensure the on-going delivery of specific learning for sustainability activities and outdoor learning programmes. We are providing resources to support practitioners, including the essential "Going Out There" guidance, which we have worked to maintain with the Scottish Advisory Panel for Outdoor Education. The guidance helps schools keep off-site visits safe for all children and young people, and, importantly, for staff. Education Scotland is working with the Association of Heads of Outdoor Education Centres and the Scottish Advisory Panel for Outdoor Education to develop a training resource for outdoor centre instructors and support staff so that children's experiences are impactful and enjoyable while also being tied to education outcomes.

All that work in the delivery of residential outdoor education in many local authorities is taking place—and will continue to take place—without any specific statutory requirements.

Liz Smith has been pivotal in raising awareness of the benefits and value of residential outdoor education for children and young people through her member's bill. Her leadership on the bill has brought to the fore issues that relate to inclusion, affordability and deliverability. I have been seeking to address those key issues since stage 1, liaising with members, key stakeholders—particularly the teaching trade unions—and the Convention of Scottish Local Authorities.

I am happy to take questions and to update the committee further on that work.

The Convener: To start things off by way of an update, will you outline what amendments the Scottish Government and you, as a minister, have drafted to Liz Smith's member's bill?

Natalie Don-Innes: As I confirmed during the members' business debate yesterday, I have not yet drafted any amendments to Liz Smith's member's bill. I discussed areas for potential stage 2 amendments with Liz Smith at our meeting on 1 July, at which she indicated that she would be open to a more targeted approach to funding and to changes in commencement provisions. However, I made clear to her at the time that, procedurally, we are not at the point where producing draft legal text of stage 2 amendments

is appropriate and that doing so would pre-empt the decision on the financial resolution.

The Convener: Do you recall the evidence that you gave to this committee on 11 June?

Natalie Don-Innes: Yes.

The Convener: You committed absolutely to bringing forward amendments during the summer—

Natalie Don-Innes: That was to discussing proposals for potential amendments.

The Convener: These are Liz Smith's words:

"Can I get it on the record that, at the same meeting, the Scottish Government will be doing the same",

that being "bringing forward … proposed amendments."

I can read you the whole quotation. Let us go back to what Liz Smith said:

"I will be bringing forward some proposed amendments. Can I get it on the record that, at the same meeting, the Scottish Government will be doing the same thing and proposing amendments, as the committee has requested?"—[*Official Report*, *Education, Children and Young People Committee*, 11 June 2025; c 68.]

Your response was one word: "Absolutely."

Natalie Don-Innes: If that was the impression that I gave, I apologise to the committee. I have been given advice that we are not at the appropriate time to be producing amendments, because of the decision on the financial resolution. If I gave the impression that I would be bringing forward amendments, it was with my intention to discuss potential proposed amendments.

The Convener: Do you accept that that is more than giving an impression? That is giving a cast-iron guarantee to a parliamentary committee that you would be doing that.

Natalie Don-Innes: I have given my answer to the convener. I apologise if that was how that came across.

The Convener: The committee was looking for those amendments, and we got your reassurance in June that you were going to bring forward proposed amendments. There is no ambiguity at all in the wording. It is very clear.

Natalie Don-Innes: I have given you my—

The Convener: You have, and I welcome that.

At any point after that meeting, did your officials tell you that perhaps the evidence that you gave to the committee was incorrect?

Natalie Don-Innes: No, but, as I say, I have received advice, which I am happy to bring legal officers in on, to—

The Convener: Okay. Mr Hedge, having heard—

Natalie Don-Innes: No—sorry—

The Convener: Sorry—Ms McKerron, having heard what the minister said on 11 June, do you now have concerns about the commitment that she gave that she would "Absolutely" bring forward "proposed amendments" to meetings with Ms Smith in the summer?

Kirstie McKerron (Scottish Government): My understanding of the process in bringing forward amendments at this stage is that we are not quite at that stage yet—

The Convener: My question is more about the wording—I can read it again—that the minister used on 11 June to this committee, which is a committee of this Parliament, that she would "Absolutely" bring forward "proposed amendments". Did anyone in the minister's team say, "Actually, what you've just said is not possible"? It is difficult for me, as convener of this committee, to find out months later that a commitment given was never going to be realised.

Natalie Don-Innes: I can bring in Lewis Hedge to provide further clarity.

Lewis Hedge (Scottish Government): I reinforce what the minister said: getting to a point of negotiating on specific language in amendments would have been stepping into that part of stage 2 at which we prepare for votes on amendments. That happens after a motion on a financial resolution is lodged. To get into specific legal texts would have been stepping beyond the financial resolution point.

The Convener: But the minister told us that she would do that.

Lewis Hedge: Our advice was: do not present legal text, but do—as the minister did—have a detailed conversation about areas where amendments would be discussed and considered. Those are the points that the minister flagged.

The Convener: That is very contrary to what the minister actually said in person to the committee.

I took great comfort from what you said, minister. I was very encouraged by what you said and how you said it. However, it seems that that was never the intention. Having previously served as a minister, I am concerned about that, because when I appeared in front of a committee, if I said something that was incorrect, my team would normally say, "Maybe you should write back to the committee because you misspoke. The impression that you gave was not one that is reflected in what you can achieve." Others may look into that.

I return to where we got to in the chamber last night with the financial resolution. We are now only a couple of weeks away from the deadline of 26 September. When will the Cabinet discuss it?

Natalie Don-Innes: I made clear last night that the matter is subject to on-going consideration and that the Government will consider its position by 26 September. I have made clear that the work that the member in charge has undertaken over recent months and has shared with me, as well as my own engagement and the work that my officials have been undertaking, will be used to inform that.

I should now make clear that this is not a Government-supported bill. There is no formal requirement on the Government to provide support. However, I have continued to engage with Ms Smith and to provide requested information, and I have continued to engage with key bodies. This will go through the normal Cabinet process. I am not able to give any further information on dates, but I assure the committee that the decision will be made and announced prior to 26 September.

The Convener: There must be only two or, potentially, three Cabinet meetings. Have you not been invited to present a paper to Cabinet yet?

Natalie Don-Innes: I cannot discuss those processes. As I said, if you would like some further information, I am happy to bring in Kirstie McKerron.

The Convener: As the minister responsible, you gave commitments to this committee to further progress this, and you will have to make a statement of some kind on whether a financial resolution should be agreed or not. Have you not yet been asked to present your findings and position to Cabinet?

Natalie Don-Innes: I cannot comment further on the ministerial decision-making process. I am sorry—I cannot give you any further information on that.

I am not sure whether Kirstie McKerron is able to provide further clarity.

The Convener: We will come to Ms McKerron in a minute.

Are you saying that you cannot because you are not allowed to, or that you will not? I am not asking what your decision will be, although I would like you to tell us, if you will. I simply want to know when the Cabinet is going to discuss this.

Natalie Don-Innes: As I said, I cannot comment. It is not that I am not willing to comment. It is part of the ministerial code that I cannot comment further on the decision-making processes.

The Convener: I am not sure that that is part of the ministerial code, actually.

Natalie Don-Innes: If I could seek further clarity from—

The Convener: Okay. Ms McKerron?

Kirstie McKerron: Could I consult my notes for one moment, please? In the interests of time, I would be happy to write to the committee.

The Convener: No. I am sorry, but this is quite an important question. We have maybe two Cabinet meetings left before 26 September. You could even take a 50:50 punt and guess which one it might be, but you are suggesting that, at the moment, there is no knowledge within your department of when the Cabinet is going to be asked to discuss the matter. My point is going to be to ask what discussions on that there have been at the Cabinet so far.

Natalie Don-Innes: That is not what I am suggesting, Mr Ross. I am suggesting that I cannot give that information to the committee just now. As I said, there is a date by which the decision must be made, and I am committing to ensuring that I inform the member in charge, the committee and Parliament about the decision that is taken. However, I cannot provide any more information about when that decision will be made at this moment in time.

The Convener: Do you know when, but you cannot tell the committee, or do you not know when?

Natalie Don-Innes: That is not what I am saying—

The Convener: I am just asking which it is.

Natalie Don-Innes: I am saying that I cannot comment further on the ministerial decision-making process.

The Convener: I think that you can. I think that being called before a committee gives you the opportunity to do that, and that is why members are asking these questions.

If we are not going to get an answer, other members will want to come in. Before they do so, I will ask briefly about the concerns that were raised last night about the undemocratic nature of the potential decision not to lodge a financial resolution. Do you understand the gravity of the decision that you would be taking not to lodge a financial resolution? It would be the first time in the history of devolution that the Government has sought to strike down a bill using that procedure, rather than listening to the will of Parliament, which overwhelmingly supported the bill at stage 1.

Natalie Don-Innes: I understand the significance of the situation, and I do not want to pre-empt any decision on the financial resolution. What I can say is that the financial resolution is a legitimate and important process that ensures that ministers can exercise our unique responsibility and accountability for the Scottish budget. As I said in the debate last night, that power is not unique to Scotland. The Welsh and United Kingdom Governments have similar powers. As I said, it is a legitimate and important process.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, minister and officials. I have to say that I am disappointed, although I do not think that that will come as a surprise to anyone, including the minister. The minister said last night that the process exists elsewhere. However, if I may say so, there is a mischaracterisation of the process. The process is there, in my understanding, not for the Government to block the will of Parliament, which has already decided that the bill should progress to stage 2. Rather, it is there for the Government to set out its understanding of what the cost of the legislation would be, so that Parliament can make decisions on amendments to manage the cost in one way or another and, ultimately, make a decision at stage 3. Not providing that information right now is a dereliction of responsibility and a complete disregard of the will of Parliament.

Natalie Don-Innes: As I made clear during the stage 1 debate and in my engagement following it, the Government and the committee have raised legitimate concerns about the affordability of the bill. Those concerns remain unresolved, which is why we need to consider the issue. As I have said, the process is in place to allow the Scottish ministers final control over the Scottish budget, so—

08:45

Pam Duncan-Glancy: Minister, I am sorry, but you have had nearly six months to make a decision about what you think the costs are. A financial resolution should not be withheld because the Government of the day considers that Parliament wants something but cannot afford it. The point of a financial resolution is for the Government to say that Parliament has said that the bill should progress, and if it progresses to stages 2 and 3, Parliament needs to be aware of the costs that the Government has attached to the bill. Again, there is a mischaracterisation of the process.

Natalie Don-Innes: There are costs attached to the bill that remain unknown. The process helps Parliament not to walk into unknown costs. Ms Smith has worked to bring the costs of the bill down, but there remain outstanding concerns about the unknown affordability of certain measures, such as the workforce implications, support for children with additional support needs and capital costs to improve the infrastructure. A number of matters have not been taken into account, all of which I have asked Ms Smith to address. Concerns remain outstanding. Parliament needs to be clear that we can gather data around the costs that have been put forward, but more time is needed for that and—

Pam Duncan-Glancy: I am sorry, minister, but the timescales that have been assessed as being appropriate have been in place since the Parliament was set up. As you have rightly pointed out, other Parliaments use the same process. Why has the Government not figured out the costs within six months, in negotiations with the member?

Natalie Don-Innes: I am sorry, Ms Duncan-Glancy, but it is not the Government's responsibility to figure out the costs of the bill. This is a member's bill, and the responsibility lies with the member to bring the final costs of the bill, and the implications of that, to Parliament or the Government, to help to inform our decision on a financial resolution. Liz Smith has worked to address some of those costs, but here has been no engagement by Ms Smith with the trade unions, for example, to hear their concerns about the workforce implications and the costs that could be attached to them. There are still a number of unknowns.

As I say, a legitimate process is in place to help to ensure that Parliament does not walk into a scenario of unknown costs. We have the costs that are attached to the bill at the moment, but our estimation is that those will grow rapidly, based on a number of the issues that remain outstanding.

Pam Duncan-Glancy: I have one final question and a comment. If I am honest, it is not necessarily the case that the Parliament has not already been asked, in this parliamentary session, to support a bill with unknown costs.

A commitment was made to the committee that consideration would be given to any costs associated with ensuring that pupils with ASN could enjoy the rights that the Parliament has intended them to enjoy as a result of the bill. Since then, what analysis has the Government done on that issue?

Natalie Don-Innes: I will bring in Saskia Kearns to speak to some of the further work that has been done.

We have engaged with stakeholders, and we know that supporting children with additional support needs in relation to residential outdoor education is a highly complex issue. There are a number of children and young people out there

with varying degrees of support needs. Some outdoor residential education centres are already well equipped to support those children, but that is not the case across the board. Initial analysis, and my engagement with the process, has shown us that some centres are not fully equipped to support children with a range of additional support needs. Again, this is variable, but we know that the costs attached to supporting children with additional support needs to attend residential trips can be up to £1,000 per child. More work needs done on that.

I know that Ms Smith introduced proposals and attached a £1.5 million figure to the cost of supporting children with additional support needs; however, I believe that that estimate was based solely on children in special schools and did not include those in mainstream schools. We know that there are a number of children in mainstream schools with additional support needs, so I believe that the cost would be higher than that.

There is also an issue about staff ratios to support children with additional support needs, because we know that, depending on a child's or a young person's needs, there might need to be more than one member of staff. Work has been done on that issue, but I do not think that the timeframe quite fits if we are to fully understand the implications around it.

Pam Duncan-Glancy: On the timeframe, will you complete that work within the next fortnight?

Natalie Don-Innes: No. Again, it would not fall on the Government to complete that work.

Pam Duncan-Glancy: It is a Government resolution—

Natalie Don-Innes: This is a member's bill. I have been clear about what the Government has done, and we have made efforts.

I will bring in Saskia in case I have missed anything.

Saskia Kearns (Scottish Government): I think that you have covered most of the main points, minister. One of the pieces of work from which the minister drew evidence was our earlier engagement in March this year with the national complex needs network about the implications of the bill, through which we had the anecdotal evidence that the additional costs for adjustments to be made could be in excess of £1,000 per pupil.

Other insights came through from those discussions to do with travel and the availability and capacity of the centres in Scotland to accommodate for pupils with complex and multiple support needs, who must sometimes travel down to centres in England to be able to participate in visits.

I think that, overall, the minister has covered the main points.

Pam Duncan-Glancy: The status quo really is not acceptable for pupils with ASN, which is why the legislation is crucial. I hope that, in the next 14 days or however many days we have for the Government to find a resolution, the advice that the minister puts to the Cabinet will include the fact that it is necessary to level the playing field for pupils with additional support needs.

The Convener: I bring in Liz Smith.

Liz Smith (Mid Scotland and Fife) (Con): Before I come to my question, minister, I would like some clarity. Throughout the stage 1 process, the Government assured me that its position on the bill was neutral. However, in an answer to the convener this morning, you said that this is not a Government-supported bill. When did you change your position?

Natalie Don-Innes: I am sorry, Ms Smith; by "not a Government-supported bill", I mean that we abstained on the bill. This is not a Government-led bill—it is a member's bill. Thereby, responsibility to work out the costings and affordability rests with you, as the member in charge.

Liz Smith: So, you meant "Government-led" instead of "Government-supported".

Natalie Don-Innes: Yes. I will bring in Lewis Hedge for clarity, because I do not want to say the wrong thing.

Lewis Hedge: The Government was neutral when it came to the vote at stage 1. If the vote had been in favour, there might have been a discussion about making the bill a Government-supported bill, in which case we would have mobilised resource to support the member in charge. However, that was not the case. Therefore, as the minister has said, it has not been extensively resourced from the Government side in the way that we might have done for a Government-led piece of legislation.

Liz Smith: Minister, you have told me—I do not know how many times—that the bill is not affordable. What is the total that the Scottish Government believes is affordable?

Natalie Don-Innes: Given the current financial context, I do not believe that I can sit here and tell you a figure that is affordable. Introducing any new duties to fund in the current financial context would force difficult choices about what to defund to accommodate new expenditure. That difficulty is compounded by the fact that, as I have already said, the total potential costs of the provisions are not clear, due to outstanding gaps in the available data. Even if I were to quote a figure, that figure would rise, because unknown costs would be

attached to it. It is therefore very difficult to produce any figure that is affordable.

Liz Smith: Is it correct that the Scottish Government is considering non-statutory proposals that cost £8 million and perhaps a little bit more?

Natalie Don-Innes: Sorry, but are you referring to the pilot approach?

Liz Smith: That has been suggested, although it has never been formally discussed with me as the member in charge of the bill, but I understand that it is on the public record that the Scottish Government is considering that. Is that the correct total?

Natalie Don-Innes: I believe that the total is £5 million to £6 million, but I could be wrong on that. However, it is clear that a non-legislative pilot would represent a significantly lower initial cost. The Government would have control over how and when any such financial implications would be incurred against the budget, so that would provide a greater level of certainty.

Also, a non-legislative pilot approach does not necessarily represent a recurring annual budget implication. Equally, it would give the Government time to learn. I have spoken this morning about the gaps in the data, which we are already working to overcome and want to overcome, and that approach would give us the necessary time to do so. Creating a new statutory obligation for what is, as I have said, an unknown total potential recurring annual cost is a significant risk that I and ministers have a responsibility to consider.

Liz Smith: The Scottish Government's policy of inclusion, as I understand it, is that we should be doing everything possible for every young person. How would that fit with a pilot, which would obviously address only one particular area, one particular school or whatever the Government came up with?

Natalie Don-Innes: If the pilot approach was the approach that was decided on, it would ensure that control. I agree that it would cover only a certain number of children and young people, but it would allow the Government to gather the necessary data so that, if a national roll-out followed, no children and young people were missing out.

I would put that point back to Liz Smith. I believe that the bill as drafted does not fit in with that policy, because there absolutely would be children and young people who would miss out on those opportunities under the bill as drafted.

John Mason (Glasgow Shettleston) (Ind): You heard what I said in the debate last night, minister. It seems to me that, compared with other bills, this one is all about money—money is central, whereas we sometimes have members' bills in which money is more at the periphery.

I am interested in the pilot, but we do not have time to go into that today. My question is whether there is room for compromise. If the Government has £5 million or £6 million available, could that money not be used to top up what is presently happening? Lots of parents can afford to pay and are paying for their kids to go. It seems to me that the real problem is whether we can get money to the families and the kids who cannot afford to go. That £5 million or £6 million would make a huge difference. I accept that it would have to be every year and not just for one year.

Could the Government make some kind of offer to put in £5 million to £6 million every year for 10 years or whatever, on the condition that Liz Smith pulls her bill?

Natalie Don-Innes: Obviously, I cannot speak for Liz Smith. I do not know whether that would be something that—

John Mason: I was just asking whether you could make that offer.

Natalie Don-Innes: To be clear, the Government does not just have £5 million or £6 million spare to put forward for this. Any funding or money is subject to the budget process. As I said, the Government has been working, alongside the work on the bill, on a potential non-legislative pilot approach. If that was taken forward, the budget for it would have to be negotiated and considered through the budgetary process.

Mr Mason makes relevant points, but they would need to perhaps pre-empt the financial resolution and could be discussed in relation to a pilot approach.

I am sorry, but I am not aware whether a bill could be pulled at this stage. I might need to seek further clarity around that.

The Convener: The bill will fall if you do nothing before—

Natalie Don-Innes: Sorry. Mr Mason asked—

The Convener: I know, but it will effectively be done.

Natalie Don-Innes: If a financial resolution is not produced, yes, that is the case.

09:00

Miles Briggs (Lothian) (Con): Good morning. I have to say that I have found this morning's session very disappointing. Anyone watching this or who watched the debate last night would get the impression that the Government is just running down the clock. I really hope that the minister will go away from this meeting and think again about

the powers that she has and about the Government's position.

I am concerned because, in relation to conversations about a non-legislative solution, the Government has not worked with Liz Smith on what alternative funding mechanisms might look like. Why has the Government dedicated time to that and not worked with Liz Smith?

Natalie Don-Innes: I am sorry. You are asking why the Government has dedicated time to—

Miles Briggs: You have outlined the fact that £5 million to £6 million could be provided for a non-legislative approach to the bill's aims through a pilot, but you have not worked with Liz Smith on costings for the bill that is in front of the Parliament and that the Parliament has supported. I find it very strange that that work is being done behind the scenes and that the costing work has not been done with Liz Smith.

Natalie Don-Innes: I have continued to engage with Ms Smith. I have had, I think, three meetings with her since stage 1, there have been more than 10 letters of correspondence between us, and I have provided statistical information to her when she has asked for it. We have tried to work with Ms Smith as much as possible.

However, given the significance of the Government's decision and the affordability issues that have been raised, I thought that it was appropriate to come up with another approach that could be taken, depending on the decision on the financial resolution.

A lot of the work on the pilot approach goes hand in hand with the work that is informing our approach to the member's bill. We have looked at a number of issues in relation to the pilot approach, and I will perhaps bring in Saskia Kearns or Lewis Hedge to talk about that further. A number of issues are helping to inform our decision on the financial resolution. I do not see the two things in isolation. The work on the pilot approach is helpful in informing the Government's final decision on the financial resolution.

Lewis Hedge: I will build on what has been said, but I might bring in Saskia Kearns to provide some of the detail.

On the question about why the Government is doing work on alternative proposals, that is part of our process of thinking through how we can make the bill that is in front of us work. A lot of the themes that have been shared in the context of a potential pilot relate to potential amendments that the minister has discussed with the member in charge of the bill. Such issues include phased implementation, commencement dates and a more targeted approach that would address young people with greater need. We also want to address the data gaps, which we will not solve through a six-month data-gathering exercise, because a bit more monitoring and evaluation are needed to provide the robustness that would support a strong business case. Therefore, there are similar themes in relation to how we can make the bill work, but there could be various ways of recognising the will of Parliament through non-statutory approaches if we were to end up in that position.

Miles Briggs: If I am hearing you correctly, detailed work has been undertaken on projected costs. Liz Smith has suggested amending the bill to target provision at those in primary 6 and 7. Are you telling the committee that the Government has costed that and that you have potential projections? Have you spoken to councils such as my own, in Edinburgh, which already has the policy in place? I do not think that we need a pilot; we can just find out what the City of Edinburgh Council, as one of Scotland's largest councils, is spending on delivering outdoor education for our young people. How detailed has the work been? Why have the costings not been shared with Liz Smith and the committee?

Lewis Hedge: I will say a couple of things, if that is okay with the minister.

The modelling that we have been able to do has been based on the information that has been provided by the member in charge of the bill. However, as the minister has highlighted, there are a number of known and potentially quite significant gaps in that information. There is no new data or analysis that we are not sharing.

On the point about the City of Edinburgh Council, which highlights the great practice that the minister talked about earlier, each local area will be different in relation to its composition, the needs of its young people and the accessibility of opportunities. That comes back to the fact that local government runs schools and the Government does not. We have heard about COSLA's position in that space.

Miles Briggs: I am not sure that I am clear about the detailed costings of all the potential alternatives. You have done that work, so they could be provided to the committee and to Liz Smith to get to that financial point—

Lewis Hedge: We have made some broad assumptions, caveated with the known unknowns about the total costs, if we were to target provision based on some of the factors that the minister discussed with the member in charge, such as linking provision to receipt of benefits, and what that might look like hypothetically. Again, that is based on data for which we do not have full assurance.

Miles Briggs: My final question is for the minister. What message would it send out if the bill were to fall, not only about the democratic will of Parliament but to the outdoor education community, which has put a lot of hard work into the bill? There is a huge amount of support and excitement out there for the bill. What message does it send if the Government allows the bill to fall in this manner?

Natalie Don-Innes: Again, I do not want to pre-empt a decision; however, I have been very clear about and emphasised my support for the outdoor residential groups. In my opening statement, I alluded to a number of actions that the Government is taking and a number of areas in which the Government is already working to support the residential outdoor sector.

I do not want to pre-empt the decision, but I emphasise my support for the sector and my understanding of the difference that residential trips can make for children and young people, which we discussed at length at the previous committee meeting. I will leave it there for now.

Jackie Dunbar (Aberdeen Donside) (SNP): Minister, you said in your opening statement that you had liaised with COSLA, local authorities and unions. Will you tell us how those meetings went and what the outcomes were?

Natalie Don-Innes: I met COSLA representatives, who had some grave concerns around the bill, specifically around the lack of data on affordability, and around supporting children with additional support needs. Probably the biggest concern of all was the workforce implications, which have not been addressed or costed.

In my meeting with the trade unions, I heard a lot of concerns around the workforce. It has been assumed that teachers will continue to do that work on a voluntary basis, but we know that, once something is put into statute, that might not continue to be the case. I have heard that directly from some of those organisations.

I believe that the committee heard that, at times, teachers are advised not to do things on a voluntary basis. That is an issue, especially if the bill becomes a statute. The teacher unions were very keen to engage with Ms Smith on that—not to discuss negotiations or anything like that, but to allay their concerns about the assumptions in the bill and the implications for the workforce.

Jackie Dunbar: Did they engage with Ms Smith?

Natalie Don-Innes: I am sorry, but I am not aware of whether they have. The last I knew was that they had not.

Jackie Dunbar: It sounds as though teachers are saying what they said to us during stage 1, which is that things are voluntary but not voluntary. I do not think that matters, including whether teachers have caring responsibilities, were addressed then. How would such issues be addressed? I am going off topic a little bit.

Natalie Don-Innes: That is a very important point. There might be teachers who are simply unable to attend week-long residentials—if they have young children and caring responsibilities, for example. The member raises a relevant point.

Jackie Dunbar: You said that COSLA has grave concerns about the cost of implementing the bill, and that it does not know what the total cost is. Coming from a local government background, I know that if the Scottish Government asks local government to do something, local government expects the Government to fund it wholly and not just partly. Would that be the case this time?

Natalie Don-Innes: That has not been decided on directly and, in a sense, that pre-empts the decision on the financial resolution. However, that is absolutely the case. Again, it brings us back to some of the unknowns about the costings in the bill. I appreciate that there are a number of avenues for funding this. For example, we know that pupil equity funding covers some of the costs for the children and young people.

We know that local authorities currently pay for children to go on residential trips, but that might not be the case if the bill becomes a statute. A prime example is that when the 1,140 hours was rolled out, there were hefty negotiations about the costings for that. It has to be a key consideration.

Jackie Dunbar: If we have to change teachers' terms and conditions to meet the provisions in the bill, which is what teachers told us would have to be done, do you have a rough idea of the cost attached to that? What would the process be for that?

Natalie Don-Innes: I cannot give a figure for the cost. I do not know whether my officials will be able to expand on that.

The process would be the regular process for negotiations between COSLA and local government with the Scottish Negotiating Committee for Teachers at a later date. However, I cannot attach a cost to the standard process for teacher contract negotiations.

Jackie Dunbar: I am sorry, but I did not quite catch what the process would be. Could you say that again?

Natalie Don-Innes: It is the standard process for contract negotiations between COSLA, local government and the SNCT. Lewis Hedge might be able to expand on that a little further.

Lewis Hedge: The SNCT is a tripartite body that is made up of the Government, COSLA and the trade unions to thrash out terms and conditions, pay negotiations and so on, on an annual basis. To explore the potential costings properly, that discussion would need to be started. The member in charge of the bill has made it clear that she does not have a formal role in that space.

Because the negotiations are tripartite, and because COSLA is the employer, there is only so much that the Government can do unilaterally without COSLA being on board.

Jackie Dunbar: So that will be another cost unknown.

The Convener: The issues with COSLA and the teacher unions are all clear in our stage 1 report, which is very balanced. They were highlighted in evidence and in the report, and the committee approved the general principles of the bill at stage 1, as did the Parliament.

All the considerations that you have just articulated to Jackie Dunbar are not considerations for your determination on the financial resolution. I presume that they were for whether you as an individual and the Government supported the bill at stage 1. They were not significant enough to make you vote against the bill at stage 1—you simply abstained. Surely, therefore, those issues have already been debated and discussed, and the will of the Parliament is that we should scrutinise the bill further at stages 2 and 3. Those issues are not a significant part of the financial resolution. We have done the bit about COSLA and the unions, it is in the stage 1 report and there have been two votes on it.

Natalie Don-Innes: I appreciate where the convener is coming from but I am clear that the principal focus of the decisions and deliberations about the financial resolution for the bill should be on the costs of provision. I am trying to show the committee that the costs of provision that have been detailed already are not the total costs of the bill and there is a number of outstanding concerns about increasing costs that would mean that the bill has a higher price tag. Although the concerns might not, on the face of it, seem to be about affordability, when we start to dig into the data that we have in the figures that have been provided and those that have not been provided for some of those aspects, we see that they relate directly to affordability and, therefore, to the financial resolution.

The Convener: However, in response to Jackie Dunbar, you said that you do not know the figures for teacher time, renegotiating contracts and so on.

Natalie Don-Innes: Does that not concern you, convener?

The Convener: It concerns me that, in a fortnight, you are going to make a decision without those figures. We have to go back to Ms Duncan-Glancy's point that you have had five and a half months to get to the stage and you are still telling us and members of your own party that you do not know what the costs are. Are you going to take a decision without having all the information?

09:15

Natalie Don-Innes: The Government could not possibly understand the costs that would attach to teacher negotiations in the process that I have just laid out. That will happen in due course. We could not negotiate for issues in teacher contracts that will arise from a bill that has not even been passed—that is still at stage 1, stage 2 or stage 3. That would have to happen afterwards. On that level, it is impossible to understand the cost. However, I reiterate that the committee should share my concern about the unknowns.

The Convener: But you will not have the information in two weeks' time.

Natalie Don-Innes: We will not have the information about the cost for the workforce in two weeks' time.

The Convener: So it cannot inform your decision. You will not have those numbers.

Natalie Don-Innes: You can look at it in that way if you want, Mr Ross. Alternatively, we can look at it as there being an unknown figure, so it is difficult to understand the full financial implications in order to produce a financial resolution. As I said, I do not want to pre-empt any decision. However, if you took that stance, I would oppose it and provide an alternative view for you.

The Convener: Miles Briggs has a supplementary question.

Miles Briggs: I do not understand why the minister has not asked the City of Edinburgh Council or Aberdeenshire Council about how such a negotiation is done, or what the costings are.

George Adam (Paisley) (SNP): Honestly, it is the same all the time.

Natalie Don-Innes: Sorry, Mr Briggs, I did not hear your question.

Miles Briggs: I am asking whether the team or the minister have asked the City of Edinburgh Council or Aberdeenshire Council for the costings that they put in place and about the negotiations with the unions, given that, basically, the policy is operational in those council areas.

Natalie Don-Innes: As far as I am aware, those teachers are working on a voluntary basis. I will bring in Lewis Hedge in a second to provide further clarity but, given the fact that the work is voluntary, I do not believe that those negotiations would have to take place. I therefore do not believe that local authorities would have any further information to share in that light.

In relation to engaging with local authorities, I have, as I said, engaged with COSLA on affordability concerns.

Lewis Hedge: Those great examples of Edinburgh, Aberdeenshire and other places will have worked up their resourcing plan for residential outdoor trips through the annual working-time agreements process that happens at school level. To come back to the earlier point, that is very much down to school leadership in particular local government areas. The extent to which anything that we would be able to learn from looking at those in detail is scalable across all of Scotland—recognising geographical differences, distances, the composition of communities and so on—is pretty limited. Again, that work would best be done systematically at a national level, rather than through basing too many assumptions on the council that, clearly, already succeed very well at making that provision.

Willie Rennie (North East Fife) (LD): I think that you will put a financial resolution forward. To do anything else would be an outrage and, given that your party that has stated repeatedly that it is a defender of the Scottish Parliament, I do not think that you would do that.

Throughout the process, you have come across not as neutral on the bill but as a critic of it. I will put it plainly. Unless you engage constructively with Liz Smith and come up with an alternative, non-legislative route that is more substantial than what is being aired, members such as I and, probably, Ross Greer will vote for the bill and you will be landed with a much bigger cost. I therefore suggest that you act much more constructively and openly, come up with the details and help the member to cost the bill so that we can have a financial resolution to allow us to scrutinise the bill and get the issue resolved one way or the other.

That was not a question.

Natalie Don-Innes: To provide some clarity, I have already made clear my enthusiasm for the outdoor residential sector—

Willie Rennie: But honestly, minister, you do not act in that way.

Natalie Don-Innes: There are valid points on affordability that would be of extreme concern to committee members and others if, for example, the bill was a Government bill.

I am trying to emphasise some of the areas that Parliament needs to consider.

If the Government does not provide a financial resolution, the bill will fall—that has been made clear.

Willie Rennie: I do not think that the Government will not provide a financial resolution.

Natalie Don-Innes: In that case, there would be no vote on it. I will communicate that decision to Parliament by the date that has been given.

Willie Rennie: I remind you that your Government is a minority Government. You do not command a majority. It would be an outrage if you did not put forward a financial resolution, so I think that you will. The question is how constructive you will be with the member. The alternative would be to have more sessions like this one.

Natalie Don-Innes: I should add that I am more than willing to engage with Ms Smith. I have proven that—I engaged with her throughout stage 1 and have continued to engage with her since then. I am more than happy to engage with her on potential approaches. When I raised the possibility of non-legislative approaches, she was not in favour of those—she preferred a legislative approach. However, I am more than happy to continue to work with her.

George Adam: Good morning, minister. You brought up an important point. You said that, if the financial memorandum was subject to the same level of scrutiny as the financial memorandums of Government bills are subject to, we would be hearing a completely different story from Opposition members. We are always told to follow the evidence, and when we do that, we see that the Convention of Scottish Local Authorities has severe concerns about the bill because of the costs that it would involve, which could lead to the reopening of negotiations with teachers.

Another issue is the fact that we heard evidence that many of the buildings that are used for residential outdoor education were built in the 1940s, some of them were built in the 1960s, and a number of them are in severe need of investment. I said that some of the buildings were falling down around people; other members said that I should correct that and say that they were in need of investment.

Is it not the case that the financial memorandum that is in front of us is, at best, a guesstimate and, at worst, complete fiscal fantasy? You are being asked to write a blank cheque. Surely that is not what you are here to do.

Natalie Don-Innes: Mr Adam puts the point perfectly. I have been very clear in what I have said. I appreciate the work that Ms Smith has done to bring down the costs of the bill if it proceeds to

stage 2. The targeted provision and the commencement dates are very welcome, but the issue is with the unknowns. As Mr Adam has said, in some areas, a blank cheque would, in effect, have to be written. That is a difficulty for, and a matter of real concern to, the Government, which is why our deliberations on a financial resolution continue.

George Adam: I agree that many of the groups that are involved in the provision of residential outdoor education do fantastic work. Although the residential outdoor education that I received as a youngster did not make any difference to my life, I know that it has been a good thing for some people.

However, there are other ways in which outdoor activities can be provided. The bill is very limited in its scope. I am thinking of activities such as ziplines and canoeing. There are many more ways in which children can learn about leadership. Surely a compromise could be reached whereby the aims of what the member is trying to achieve could be met by taking a different—and, in some respects, a more modern—approach.

Natalie Don-Innes: That is what the potential pilot approach offers—a greater level of flexibility. As I discussed with the committee the last time I was here, there are children in rural areas who might benefit more from urban trips to cities that allowed them to take in museums and so on, rather than traditional residential trips.

There are also children with additional support needs who would not necessarily benefit from a residential stay. I know that there are already organisations, some of which I referred to in yesterday's debate, that are actively involved in taking children with additional support needs on frequent day trips, because that is more suited to them.

It is important that there is flexibility, because we must ensure that what is delivered is what is needed by the children and young people. A week-long stay in residential accommodation is not necessarily right for all children and young people, although I understand the benefits that it brings for many.

George Adam: I think you are talking about the limitations of the bill as it stands, because when I think about my 10-year-old granddaughter Daisy, who is autistic, and her additional support needs, the idea of going away to this kind of centre would absolutely terrify her. She would be up all night worrying about going to such a place. Therefore, you are quite right: there are other ways in which we can deal with these kinds of situations.

Natalie Don-Innes: Mr Adam has raised an important point, because I believe that, according to some of the latest analysis and correspondence that Ms Smith has sent me, a new trend has been emerging in her discussions with stakeholders. Officials can correct me if I get the figure wrong, but I think that around 15 to 20 per cent of children and young people are not going on trips due to a level of anxiety about them. More work really needs to be done on that. A legislative proposal will not necessarily solve that problem, and I think that we really need to understand whether it is down to additional support needs or something else. Again, the non-legislative approach that I have been speaking to allows flexibility in that respect.

George Adam: Thank you.

Saskia Kearns: I should clarify that, according to the evidence that Liz Smith provided, 15 to 20 per cent of those who sign up to attend do not actually come on the day.

George Adam: From personal experience, I know that Daisy would think about going and then closer to the time would pull out, because the anxiety would be far too much for her.

The Convener: But nothing in the bill stops that. The bill provides a universal opportunity for people to be given the chance to go on these trips, but there is no mandatory obligation for them to go. I have to say, Mr Adam, that the bill is about a lot more than zip wires and canoeing. [*Interruption*.] Well, you might find that funny. I find that—

George Adam: I find your attitude to be the problem, convener. Your attitude is the problem.

The Convener: Okay, we will move to Pam Duncan-Glancy.

George Adam: Constantly.

The Convener: Well, I do not want it to be an issue—

George Adam: Well, it is an issue.

The Convener: We will move on to Pam Duncan-Glancy.

Pam Duncan-Glancy: I have to say, minister, that I am quite uncomfortable with the line of questioning that we have just pursued on the difficulties with meeting the requirements of pupils with ASN—and affordability with regard to pupils with ASN—and with coming to an agreement in the timescales. The fact is that Parliament agreed this legislation at stage 1 and agreed that all of these issues should be discussed, and I myself made it clear in committee, both to yourself, minister, and to the member in charge, that the issues for pupils with ASN would have to be considered very carefully.

For me, an important aspect of the bill is that pupils with ASN are able to access this sort of education, including the sorts of experiences that

have just been discussed. However, that was a discussion for stage 1. If the Government was so worried about that, the Government should not have voted for the bill. Did the Government abstain because it was not prepared to take the backlash for voting against a bill that not just the public but the Parliament quite clearly wanted?

Natalie Don-Innes: The Government abstained because we are neutral on the bill. As I have already said, the committee and the Government raised a number of unanswered concerns about it, and I wanted to work with the member over that period of time to understand some of those concerns and, hopefully, get some of them addressed.

I appreciate what the member has said about Parliament voting for the bill. I have been very clear about the process for the financial resolution. Of course, it is a matter for the Parliament's standing orders, and if this is something that the member or Parliament is not content with, it is absolutely something that the Parliament can consider.

Pam Duncan-Glancy: It is pretty clear that people are not content with the Government's position on this matter just now.

A number of the issues that we have raised are exactly the sorts of issues that members would like to pursue in amendments at stage 2, and then ultimately ask whether they have been addressed when we look at the bill again at stage 3. However, given the Government's position in abstaining at stage 1 and failing so far, with just two weeks—days—left, to produce a financial memorandum to resolve these issues, it is likely that if one is produced, it is going to be without some information that the Government should have collected and, if it is not produced, the parliamentary process will have been frustrated.

Moreover, with some of the stuff that we have just discussed about pupils with ASN, those inequalities are happening right now in the current status quo. That suggests to me that the Government should get its skates on, get the financial resolution published and allow Parliament to resolve some of these matters through stages 2 and 3, so that pupils with ASN can fully access their rights to outdoor education.

09:30

Natalie Don-Innes: There are a couple of points there. I appreciate what Pam Duncan-Glancy says about the current issues with children with additional support needs. I have alluded to the on-going work to support and bolster the Government's commitment to outdoor learning.

There are issues that could be resolved at stage 2, but I do not see how the member gets through the workforce implications issue at stage 2, and I would be interested in hearing her views on that.

Pam Duncan-Glancy: I am sure that the committee—because it picked up the issue—and members across Parliament recognise that, but we will never know if the Government withholds the financial resolution because it is not prepared to put its colours to the mast, to be honest.

Natalie Don-Innes: I have nothing further to add. I am sorry—I did not realise that there was a question there, Ms Duncan-Glancy.

Pam Duncan-Glancy: Finally, then, on pupils with ASN, what advice have you, as the minister in charge of the bill, given to Cabinet?

Natalie Don-Innes: I cannot give any further information on the ministerial decision-making process. I cannot provide you with the information that I have given to Cabinet.

Pam Duncan-Glancy: Can you say whether you have given it advice?

Natalie Don-Innes: I can say that I am following the normal process for bills.

Pam Duncan-Glancy: Okay. Thank you.

The Convener: I want to go back to the point about unanswered questions and queries. You are right that you stipulated those questions when you appeared before us in our stage 1 proceedings and in the stage 1 debate, but they were not of significant enough concern to you at that time to vote against the bill.

What Pam Duncan-Glancy just said is surely the crux of the issue. You could lodge a financial resolution for the bill in the knowledge that we may never spend a single penny of that financial resolution because the bill does not get satisfactorily amended at stage 2 or stage 3. Is not the best approach to give Parliament the opportunity to try to hone the bill into something that we can get majority support for? Therefore, lodge the financial resolution with the caveat that the Government, if it has enough support from other parties, can vote it down at stage 3 if the amendments at stage 2 do not suffice.

Natalie Don-Innes: I understand the convener's and the committee's views on that. I have heard them—

The Convener: Do you agree with them?

Natalie Don-Innes: I cannot comment on that, because to do so would be to pre-empt the financial resolution decision.

The Convener: It is not about the financial resolution or spending in future. It is simply about

taking a vote at stage 1 in the chamber of this Parliament, where an overwhelming majority of MSPs voted in favour of a bill progressing. We agreed the general principles, and we voted for the bill to progress to stage 2, which this committee can do. We could get you and the member in charge back in to discuss Government amendments and backbench amendments, and then we could have another debate at stage 3 and decide that it has not changed enough, that we have not met the threshold for the improvements that are needed and that therefore the bill will fall at stage 3. Parliament and parliamentarians would then have been given that opportunity. If you fail to lodge the financial resolution, there is no such opportunity.

Natalie Don-Innes: I understand that. I do not want to say whether I agree or disagree with the process. As I have said, the financial resolution process is an important process to ensure that Government and ministers have control over our budget, but I hear what the convener is saying to me.

The Convener: The member's approximate cost for the bill is £30 million, and with some changes it could cost £50 million. We have also heard a £5 million figure today. If £30 million is too much for a financial resolution, what figure could the Government live with?

Natalie Don-Innes: I was very clear to Ms Smith when she asked me the same question earlier—I cannot give a figure that is comfortable for me to deal with. Any figure that I give to you has to be defunded from somewhere else in my portfolio. The member and the committee are aware that there is very important work under way in my portfolio around the promise, transitions and a number of different things, and it would be for me to consider where to take money from to fund the bill, so I cannot give you a figure that is acceptable to Government.

The Convener: Because any figure is too much?

Natalie Don-Innes: Because, due to the financial climate that we are in, the Government does not have a pot of money lying around that we can just take from. Significant decisions have to be made when thinking about new spending allocations.

The Convener: It goes back to Mr Rennie's point that, although you state that you are neutral on the bill, it sounds like you are against the bill at any cost.

Natalie Don-Innes: I am merely highlighting the Government's concerns. That is the line of questioning that you are giving me, convener.

As I have already said, the process is not unique to Scotland. The Welsh Government has it, and the UK Government has used it. We are not in a unique position here. I hope that the committee would be graceful given the fact that we are considering the matter fully. We appreciate that the 26 September deadline is near, and I have committed to ensuring that a decision is communicated by that date.

The Convener: Do you know what day 26 September is?

Natalie Don-Innes: Apologies, convener, but I do not.

The Convener: That is okay. It is a Friday, which is a non-sitting day. Will you at least give us a commitment that the response from the Government will be made on a sitting day—at the very latest, the response would be made on 26 September—and that you would make a statement to Parliament on the outcome of your decision?

Natalie Don-Innes: I can give that commitment.

The Convener: Thank you very much.

Jackie Dunbar: Sorry for butting in, convener, but would the matter of a statement not be up to the Parliamentary Bureau rather than—

The Convener: Of course it would be, but I think that a request for a minister to give a statement will often be agreed to by the bureau.

Jackie Dunbar: Well, you just never know, and I just do not want that to be—

The Convener: I think that we would be in a very strange situation if a minister had given a commitment to a committee of this Parliament that she is happy to give a statement for that not to be accepted. That commitment is very welcome.

We have gone over time. I appreciate your time, minister, and that of your officials. I will briefly suspend to allow for a changeover of witnesses.

09:36

Meeting suspended.

09:38

On resuming—

Children (Care, Care Experience and Services Planning) (Scotland) Bill: Stage 1

The Convener: Welcome back. The next item of business is evidence, over two panels, on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. I welcome our first panel. Sheriff David Mackie is chairperson of the hearings system working group, Fiona Duncan is independent strategic adviser to The Promise Scotland, and Fraser McKinlay is chief executive at The Promise Scotland. Thank you very much for joining us today. I apologise for our lateness in getting to you—I know that you sat through the previous session.

I will kick off the questions, which I will direct to Sheriff Mackie first of all. There are positive points in your submission on the bill, but there are also some criticisms—that is a theme throughout the submissions. Your criticisms are quite stark. You speak about the bill lacking ambition. You state:

"Some … provisions seem unnecessarily complex to the point of being, at times, unintelligible and inaccessible to anyone who is not a lawyer."

You also speak about the bill being a "Lost opportunity".

You can talk about some of the positives if you want to, but I particularly want to look at what we as a committee need to scrutinise and what deficiencies you see in the bill.

Sheriff David Mackie (Hearings System Working Group): Good morning. There are positive aspects to the bill and elements that are very welcome, such as the discretion that the bill proposes to give to reporters to send cases in which the grounds for referral are opposed directly to the sheriff, which would avoid a grounds hearing.

Much of my criticism centres on the treatment of grounds hearings. The bill provides an opportunity to meet the desire of the young people whom we listened to during the working groups that fed into the preparation of the "Hearings for Children" report. We understood from them that the experience of a grounds hearing can be demeaning, embarrassing and, sometimes, traumatic. We found a way of suggesting that, in the many cases in which the grounds for referral are unopposed, we could deal with the grounds without a hearing. We displayed that ambition, but it has not been met in the bill.

Instead, I think that there has been a well-intended endeavour to modify the current process so that we will still have grounds hearings but make them easier—I might be oversimplifying, but, essentially, I think that that is the aim. I am afraid that, as a consequence, there is some really complicated language. I am not ashamed to say, as a lawyer of many years' standing, that I find proposed new section 90 of the Children's Hearings (Scotland) Act 2011 impossible to read. There are so many double negatives and cross references that is impossible to retain them in an ordinary reading of the provision.

Those are the highlights of my criticisms on grounds. There are others, which I would be happy to expand on, but that gives you a flavour of it.

The Convener: I am particularly interested in proposed new section 90. You have looked at legislation from the Parliament before. Have you seen that approach in the past, or is it particularly bad in this case? You said that there are

"so many cross references and double negatives that they are impossible to retain in an ordinary reading"

of the provisions. Surely it is pretty crucial that we resolve that issue before the provision becomes law.

Sheriff Mackie: Absolutely. In a year in which we have incorporated the United Nations Convention on the Rights of the Child into domestic law, the legislation should have the ambition to recognise that we should produce law that has language that is simple and clear enough for a 12-year-old child to understand and, certainly, for an 18-year-old, a lay convener or parents of children who are being referred to the children's hearing to understand. The measures should not be so complicated that we need the dense language that has been produced in the bill.

The Convener: Could that have been resolved if there had been better discussion and deliberation beforehand? You suggest that there was insufficient consultation prior the bill's introduction.

Sheriff Mackie: It might have been resolved. It is a pity that there was not more engagement.

The Convener: Why do you think that there was not?

Sheriff Mackie: I do not know. In recent days and weeks, there has been a markedly increased level of engagement, which I welcome. Some elements might have benefited from discussion. For example, there appears to be some resistance among officials and in the Government to the suggestion that grounds might be dealt with without a hearing. I have not yet received any rational explanation of their concerns. I can make a guess, which I mentioned in my submission, but I do not know the real reason for the opposition to

the suggestion. It would have been much more helpful had I had the opportunity to hear the concerns, so that I could have either agreed with them or addressed them, and we could have reached a consensus on how we should move forward.

The Convener: You said there has been a marked increase in engagement in recent days and weeks. Is that from Scottish Government ministers or officials?

09:45

Sheriff Mackie: Both, in the run-up to this committee meeting.

The Convener: Your report made a number of recommendations. As you say, some have filtered through, but the majority have not. How do you feel about the work that went into producing the report, given that the bill is an opportunity that was not taken to encompass that?

Sheriff Mackie: At the heart of our work in the working group and in considering the bill was listening to the voices of young care-experienced people. We really did listen to them, which led us to develop an imagined role for the chair of a children's hearing that would be much greater and more weighty than it is now. We imagined a chair conspicuously avoiding any suggestion that they should be a member of any particular profession, but a chair who is nonetheless legally competent, especially in relation to human rights. We imagined a chair who can understand the impact of decisions of the children's hearing not only on the child but on the parents and other relevant persons, and who has the confidence to say to those people, "We have heard from you and understand your concerns, but we now want to hear from the child on their own."

I heard just this week of a case in which a mother found herself in a hearing room with the man who had abused her horribly and who had spent 20 months in jail for an assault on her. She was traumatised by the experience. In the room, she put on a brave face and everyone thought that she did fine, but she did not want to share her personal experience or personal information with him in the room. She did not want to rock the boat in case it upset him and led to some kind of reaction. She did not represent herself anywhere near as well as she might have done. In such a situation, a chair should have the confidence, first of all, to recognise the subtleties of domestic abuse and the impact of trauma. They should understand the role of an inquisitorial process and have the confidence to say, "I am leading this inquiry and the panel are supporting me in it. In recognition of the difficulty around the domestic abuse in the background here, we require the man"—the husband or partner—"to leave the room or to not be in the room at the same time as the mother." That situation can be managed, but only by somebody who has real confidence and understanding.

We also imagined a chair who would write a full reasoned decision and not the abbreviated type of decision that is currently the norm at children's hearings. We imagined someone who could bring together the views of panel members to produce a cohesive decision and deliver it. Furthermore, we imagined the chair having a role after the making of a compulsory supervision order, not as a supervisor or another boss for the social worker, but to receive expressions of concern if compulsory supervision orders were not being properly implemented, or if the mental health service that the panel expected to be available was not available and the order was not being implemented. The chair should have the discretion, faced with such concerns, to call for a review hearing outside the normal pattern of statutory reviews, every three months or once a year.

Two things emanated from that. One was that that role for the chair was really the product of hearing from the stakeholders across the whole children's hearing community. We listened especially to the voices of care-experienced young people and heard about their personal journeys through the hearings system. We found ourselves devising a role for the chair that was quite an expansion of the current role. That, in turn, led us to recognise that, especially if the chair was going to be a consistent presence in that child's journey through the hearings system, it would be difficult for that role to be fulfilled by somebody who was not doing it as a job.

That is a very brief outline of the process that we went through at the working group, which produced the recommendations in our report. What is lost in the bill is the cohesive structure of the chair's role in particular and the issues around grounds hearings, which would have produced the transformational change that we imagined.

The Convener: Thank you very much—that is extremely helpful.

Ms Duncan and Mr McKinlay, I understand that there are positives, and please feel free to speak about those if you want to. However, I want to pick up on some of the points that you made in your submission. You said that

"this Bill as currently drafted does not fulfil the vision of the Independent Care Review when it concluded in 2020".

You also spoke about a lack of engagement. I have particular concern about the part of your submission that said

"Concerns have been raised about the process to develop this Bill",

and that there was an

"absence of engagement before it was laid in June."

That is quite damning of a Government that has known that the bill was coming.

I would have expected and assumed that there would be pretty good engagement prior to the bill's introduction. However, you suggested that that was not the case, Ms Duncan.

Fiona Duncan (The Promise Scotland): We have a record of all the engagement that we have had on the bill, the conversations that we have had and the information that we have provided. Our experiences are similar to David Mackie's. With greater conversation during the process, we might have had a different product and a different bill.

The bill is a critical step in keeping the Promise. We are at the midpoint in the 10-year timeframe that was laid out by the independent care review when it concluded in 2020. The bill presents an essential step forward, but your reflection on what we said, convener, is absolutely right.

We applied four tests. The first is how anchored the bill is in the conclusions of the independent care review. Secondly, the bill certainly offers opportunities to speed up the pace and improve performance, but how likely is it to get us over the line in 2030? It is fair to say that we will need further legislation.

There are two other tests that Fraser McKinlay can speak to better than I can. One of those is whether the bill goes far enough in getting rid of some of the barriers that are in place, and whether that would possibly benefit from legislation or building on some of the bridges of good practice and changes to the system that have taken place.

There is another test. As many of you will remember, the care review involved 5,500 people, more than half of whom were care experienced. However, from all the papers and briefings that you have seen, you will know that the Promise has been made to more than 200,000 people. Many of the people who did not take part in the independent care review have come forward to talk about some of the challenges that they see in relation to implementation. It is important for this committee and for everyone else that we listen to the new voices that have emerged.

I have a final point that builds on Sheriff Mackie's experience. He was appointed by The Promise Scotland—by me—to run a redesign based on the conclusions that the care review had come up with on the hearings system and what it needed to do. The care review produced "The Promise", which was the main report, and "The Pinky Promise", which was the one that was designed for children, as some of you may remember. I would like to see the bill pass the pinky promise test and, as David Mackie has said, for children and young people and the people who rely on the legislation to understand what their rights and entitlements are. I would like them to be able to read it and to recognise what is going on and what it means for them.

I do not know whether Fraser McKinlay wants to add anything.

The Convener: I will bring Mr McKinlay in, but your evidence is that the bill will add to the complexity, which is not particularly reassuring in relation to passing the tests that you have just spoken about.

Fiona Duncan: When the care review concluded, we had identified 44 pieces of primary legislation, 19 pieces of secondary legislation and three international conventions that govern this thing that we call a care system. Since the conclusions landed and got cross-party support in the Parliament on 5 February 2020, there has been more welcome legislation. However, the risk at the moment is that a new layer of legislation will add more bureaucracy and reporting requirements on to an already exhausted workforce that is struggling with vacancies but which is committed and determined to keep the Promise. Five years on, I think that there is more support for keeping the Promise, as people understand their roles and responsibilities.

I have come to the conclusion that there are opportunities to streamline some of the reporting and reduce some of the bureaucracy through guidance and in other ways. My view is that, before we get to 2030, there will need to be a process of streamlining the legislation, because it is incredibly complicated.

In some ways, that shows a maturing of this Parliament in terms of what it does as a Parliament with the whole legislative landscape. So many pieces of legislation overlap with one another, and there are multiple pieces of legislation that refer to a single group of people. There is a risk associated with that, but I think that it could be mitigated by actions from officials.

Fraser McKinlay (The Promise Scotland): I will add a couple of comments in relation to your questions, convener, around engagement and what the review might have envisioned back in 2020.

Engagement has been frustrating. I am sure that the Government will explain to you why it felt that there was no room for engagement on the specifics of the bill. We are in touch with officials all the time about things to do with the Promise. A

lot of activity to progress the Promise is, quite appropriately, being taken forward outside legislation—legislation is by no means the only vehicle for effecting change.

In May 2024, The Promise Scotland sent a briefing to Government officials that set out a long list of things to consider for inclusion in the bill. We had various bits of engagement following on from that. We published all that information on our website so that everyone could see what we had been saying.

In speaking to colleagues who have experience of being involved in legislation in previous years, I found that everyone was struck by how locked down this bill was. It was locked down for reasons that we do not fully understand. Any legislation is all about the detail, and I would argue that that is the case with this bill in particular. It was only in the middle of May that I was given a confidential verbal briefing that set out only the headings that would be in the bill. We had no indication of the details until the bill was published on 18 June. As can be seen from a lot of the responses to the committee's call for evidence, that has had a direct impact on how people are engaging with the content of the bill. It has landed quite cold. There is a sense that some of the things in it were consulted on officially, as the Government did four formal consultations, but that others have not had any consultation at all, and even came as a bit of a surprise to us. As Sheriff Mackie said, there has been a significant uptick in engagement since the bill was introduced. That is very positive. The Government held an engagement session this week. However, that means that a lot of engagement and stuff needs to be figured out between now and spring if the bill is to pass.

In terms of what the care review might have envisaged, Fiona Duncan has mentioned a key thing, which is the sense of decluttering a very busy legislative landscape. To be fair, officials were quite clear early on that that was unlikely to happen in the bill, but we have progressed work on it anyway. We commissioned somebody to do a thorough review of the legislative landscape and come up with options for how to simplify and streamline it—we are not giving up on that. If a decluttering of the legislative landscape is not in the bill, we think that the Parliament will need to come back to it in the next session.

The other thing that became clear through engagement towards the end of 2024 was that the scope of the bill was unlikely to cover areas of the Promise that could be described as being a bit further away from the core care system, if I may use that phrase. Much of the Promise touches on education, criminal justice and health, but they are not covered in the bill because its scope broadly focuses on what people would recognise as this thing that is known as the care system. It is important that there are other opportunities progress the work in those other areas, which, as we have said to the committee in the past, are critically important to keeping the Promise.

The Convener: We want to get into a lot of those areas.

We will move to questions from committee members.

Pam Duncan-Glancy: Good morning. I thank the witnesses for the evidence that they submitted in advance of the meeting and the questions that they have answered so far. I will ask about the parts of the bill that are specifically on aftercare, but, before I do so, I will pick up on a couple of issues that have been touched on.

Fraser McKinlay, you highlighted one of the issues that I heard about when I spoke to young people with care experience and others who support them in the sector, which is about access to housing and access to education. The education outcomes have just been published, and they are not where they need to be. What are the main issues that care-experienced young people face today, and will the bill address any of them?

10:00

Fraser McKinlay: I think that it will address some of them. It is striking that many responses from the organisations that work alongside care-experienced children, young people and families welcome a lot of the provisions in the bill, such as those on aftercare and a right to independent advocacy.

As you know better than I do, really important things are being done in this place, particularly in relation to access to housing through things such as the Housing (Scotland) Bill. The idea of giving the virtual headteacher approach in education, from which we see real benefit, a legislative basis has been discussed. That group of virtual headteachers is facilitated by CELCIS, and you will hear from Claire Burns later. Although there is a debate to be had about whether that is the right approach, it is not in the bill and there is no doubt that it is really important that the Government, in particular, is able to articulate how all the things that are not in the bill are being progressed and whether they are being progressed through other routes. For example, Daniel Johnson's Restraint and Seclusion in Schools (Scotland) Bill might be one vehicle in relation to restraint, but we think that the issue of restraint needs to be considered more widely than only in schools. As I have said, there might be non-legislative approaches to change, and that is certainly the case in some of the hearings system work.

In the absence of a really clear articulation of what the bill will deliver and how the other things are progressing, it is quite hard for people to judge the package in the round. We can help with some of that, but it is incumbent on the Government to set out what the bill will do and how it is progressing everything else.

Pam Duncan-Glancy: Let us move on from that discussion. Fiona Duncan, you mentioned that we will need another bill to get us to 2030. Is there a reason why everything could not have been done in one bill?

Fiona Duncan: Yes, there is a fair reason why it could not all have been done in one bill. With a 10-year change programme, you bump into things that get in the way as you make changes. As we are in year 5, we are starting to identify where a legislative change could speed up the pace.

Fraser McKinlay just mentioned restraint, and children can be restrained in care settings, education settings, justice settings and health settings. If you deal with education legislation, you will ensure that children are not unnecessarily restrained in an education setting, but, for some children, the care setting and the education setting are the same place. Therefore, to ensure that Scotland becomes a nation that strives not to restrain its children, the approach to ending restraint is through scrutiny. It is about having a single definition of restraint and a single reporting approach that reports in real time on the child who is restrained, the staff member who is restraining and a whole bunch of other complexities that we do not have time to get into.

We are getting to the point where we recognise what that would mean and what that would look like. As we get close to 2027-28, it is about having a final piece of legislation that really cements the work, so that the Promise is not something that a committee talks about as a special thing that Scotland is striving to keep, but just the way that we do business. Scotland is keeping the Promise to all children and families in and around the care system, as well as care-experienced adults.

Pam Duncan-Glancy: Do you think that there are potentially opportunities to amend the current bill to do some of that?

Fiona Duncan: I am really determined to make the bill the best that we can get it and to ensure that it passes. Some amendments are necessary in order for that to happen.

Pam Duncan-Glancy: Similar to the conversations that we have had, a number of organisations have said in their submissions that the aftercare provisions could go further. Others have raised concerns about estimated costs—I know that other members of the committee will ask about the financial memorandum. How do you think that the provisions on aftercare could be improved?

Fiona Duncan: Both of those things are true: the provisions could go further and there are concerns about the estimated costs. I should say that I hate the expression “aftercare”. How many people say to their children, “This is after the point I care for you?” One issue that came out of the care review was the use of stigmatising language. I would quite like us to have a think about an appropriate expression to use in the legislation, so that we are not telling young people, “This is the point after we care for you.” However, that is not the answer that you are looking for, so I will hand over to Fraser McKinlay to address the detail.

Pam Duncan-Glancy: That is helpful.

Fraser McKinlay: There is no doubt that the provisions in the bill as they stand go some way towards addressing one of the big issues that the care review identified, which is the cliff edge that exists at various ages and stages of a young person’s life. At the moment, someone needs to be technically looked after on their 16th birthday to be eligible. If they were looked after before that, they are not eligible. That is an important thing to fix. Also—I am sure that we will come on to this and it will be a recurring theme—the implementation, resourcing and planning are absolutely critical.

On how the bill might go further, I should perhaps have said in response to the earlier question that I suspect that some people think that the bill overall and the individual parts of it are already too much and will add complexity and expectation on a system that is already creaking. However, lots of people might say that the bill does not go far enough and is not ambitious enough. I suspect that that was always going to be the case with the bill.

The Promise talks about a right to return to care. There is a sense that, if the state has been your family and you have had a corporate parent and you want to return to that care, that should be available in the same way as it is for children in any other family. The bill does not provide for that at the moment, and people would have similar concerns to those that have already been raised about the implications of that, the resourcing of it and all those things. However, the right to return to care is in the Promise and we would have liked to see it in the bill.

Sheriff Mackie: I defer to Fiona Duncan and Fraser McKinlay on the wider issue around aftercare. I share Fiona’s dislike of that expression, but it is what we are using.

I want to highlight the relevance of the issue to the children’s hearings system, especially given that, next year, we will have 16 and 17-year-olds

coming into the children's hearings system and, with them, an increased number of offence-based grounds and possibly more serious offences, especially sexual offences.

The children's hearings system has always been faced with the conundrum that, at the end of childhood, a compulsory supervision order cannot continue, so we have that same cliff edge. Therefore, the measures around aftercare, although not directly made for children's hearings, will have a very important impact in giving continuity of services and support, and possibly the introduction of children to adult services at the crucial point when they are moving on from the children's hearings system into an adult system.

I just wanted to highlight the importance of those provisions in that context.

Pam Duncan-Glancy: Thank you. I appreciate that. I had not considered that in any great detail, so it is helpful for the committee's consideration.

Do the panel members have any views on capacity? We have heard about the need not to pile additional bureaucracy on an already stretched workforce. I suppose that the same is true of the hearings system. What changes might be needed in capacity in the system to enable this to be done properly?

Fiona Duncan: There are a couple of things to mention. I would like to acknowledge the work of Who Cares? Scotland and Jasmin-Kasaya Pilling, who brought the petition on the issue and enabled a wider discussion about it. The bigger question for the bill is how to plan the implementation to ensure that the resources are available so that the workforce are not overwhelmed and can meet their duties and work with, in this case, young people who are planning to leave their care setting.

The other thing that has to happen has been touched on already. There are multiple systems that are operating simultaneously and that are not adjacent. Housing is not an adjacent system to the care system, but children and young people often experience those systems simultaneously. In the planning, there is therefore a need to understand what the requirement would be in other parts of this thing that we call the care system and to ensure that the implementation is ready for that.

There is a risk here. I know that we will probably talk about advocacy later, but I think that the advocacy provision is really important. In my experience, first of chairing the care review and, since then, in my engagement with children and young people, I have found that, as the Promise has been kept, advocacy is often about ensuring that children's and young people's rights are realised and having an on-going discussion about how they can access them. It would be great to get to a point where that was about a smooth transition rather than a battle for a safe home to live in.

That is part of the challenge for the workforce. It is not just about how and when all of this is implemented; it is about ensuring that all the other parts are lined up, sequenced and organised so that the system can deliver what it wants to deliver for families and children in care and for care-experienced adults, which is the Promise being kept.

Pam Duncan-Glancy: I brought—or tried to bring—a bill to Parliament on transitions, as they are a key aspect of people's lives, and one of the things that I found, not just through my own personal experience but through the evidence that I gathered, was that people tend to have to be project managers in their own lives. Very often, they are the only people who know what the system is doing. Do you think that there is a role for somebody to help people with that? If so, who would that be?

Fiona Duncan: In many ways, that is what sits behind the advocacy work—you have somebody who is rooting for you, helping you to plan your life and ensuring that you get what you are entitled to and what you need. That is the thinking in the hearings system with regard to having a chair who is dedicated to you and your family.

Part of the challenge is that, if you are experiencing multiple systems at any given time, you might end up with multiple advocates. The worst thing would be people having to ask, "Can you talk to my advocate about housing? Can you talk to my advocate about mental health? Can you talk to my advocate about care?" We do not want to get to the position where, instead of having somebody supporting you to project manage your life, you are project managing all the people who are supporting you in managing aspects of your life. I think, therefore, that there is an opportunity to do something thoughtful in how we legislate.

Pam Duncan-Glancy: Thank you.

Fraser McKinlay: On that last point, about 18 months ago, we produced a report for the Scottish Government that set out a four-stage approach to scoping out lifelong advocacy. It is good to see that feeding into some of the thinking in the bill. However, Fiona Duncan has made a critical point about ensuring that we do not have multiple advocates as we compartmentalise people's lives in line with policies. It would be good if we could reflect how people actually live their lives.

I understand people's concerns, given that, at the moment, only 48 per cent of those eligible for aftercare services are receiving them. It is another element of the bill on which we already have quite a lot to do under existing duties and entitlements,

and there is a bit of concern that, when we are struggling even to do those things, we are adding more. The answer to that question is, I think, not to row back on doing the right thing but to figure out how to implement it properly. That would be our starting point.

I do not underestimate the challenges in that respect. However, they are the same as those that the committee talked about when we were last here—whenever that was—and relate to the workforce, to training and development, and to recruitment and retention. All of those things will, not just in social work but across the children and families workforce, help with this aspect as well as everything else. It is the same issue that we need to grapple with.

Therefore, I do not think that not progressing with a good bit of legislation is the answer. A whole bunch of stuff that we need to do to fix those problems will help to deliver this, too.

Sheriff Mackie: There is one point that I would not mind drawing to the committee's attention, and it is about something that might already have been impacted by the question of capacity. One of the most challenging engagements that I had during my work on the working group was with chief social work officers—and a more hard-pressed, dedicated and worried group of people I have never met in my life. It was in the context of discussing the child's plan. In the working group and in our report, we identified the plan as being, in an ideal world, a sort of golden thread that would run through the child's journey through the care system, from start to finish, ensuring that, on entry into the children's hearings system—if that became an appropriate pathway for that child—the same considerations would be borne in mind in making decisions on that child's life as had already been made. The plan would run as a continuum through the children's hearings system and possibly into adulthood.

10:15

I sense that that approach has been completely lost. When I heard from those chief social work officers, many of them said that most children do not get a child's plan and that they do not have the capacity to provide one. They should have plans and we want them to have them, because that would provide continuity and consistency in the decision making in their lives, but it is just not possible. That feeds into the workforce issue and everything that surrounds it. It is only one example of how capacity issues have an impact.

Another aspect is the salaried chair, which the Scottish Government said an outright no to at the very beginning of the process. However, remuneration was kept as a concept and it has reappeared in the bill, so there is a stand-alone provision that allows the national convener to consider remuneration for panel members. The vision for the report was to have a chair whom the child could identify as a reference point—not as a friend, but as somebody they could know and trust as a reliable source of decision making and guidance throughout their hearings system journey.

It might be that we can get good outcomes by other means, such as through the management of panels and chairs. A huge amount of good work is on-going in some areas of Scotland, especially up in Elgin, where they are achieving good outcomes already. However, to get a consistent, solid process inevitably requires capacity in the system and the personnel to do the work.

Pam Duncan-Glancy: Thank you. I appreciate that.

The Convener: You were already a good witness, Sheriff Mackie, but, by mentioning Elgin, you have just gone up even further in my estimation. Well done on that.

Paul McLennan (East Lothian) (SNP): I want to build on some of the discussions that we have had about advocacy services and to delve a little bit deeper into that issue. Having been a councillor for 15 years and having spoken to families and care-experienced children, I know that that is really important, but it is now complex.

Section 4 of the bill mentions

"rights of access to care experience advocacy services."

It is a complex area, as we know, and there are also advocacy services for children's hearings, which are covered in section 18 of the bill. Several organisations, including The Promise Scotland, have commented to an extent on the new rights of access to care experience advocacy services that will be shaped by secondary legislation. What will those services look like in practice? Secondary legislation will be an important part of determining that. How will those services interact with section 18 of the bill, which covers advocacy in the hearings system? Given that we have started to discuss the system, it is an important point.

Fraser McKinlay: I suspect that I do not need to rehearse why independent advocacy is important and good. As I said, we produced a report for the Government and subsequently published it. We set out a four-phase approach in recognition of the fact that the issue is complicated, but we need a plan for progress. Having set out some of the principles in the bill, I hope that the regulations address some important questions, such as how you phase the provision of such services, how you implement them, how you roll them out and, crucially, how you avoid the risk

of having multiple advocates for different things, which is an issue that Fiona Duncan mentioned.

That issue is really important, because advocacy crops up in different places and in different bits of legislation—mental health is one of the obvious areas. There is absolutely a need—as there is in relation to many public services—to figure out how we fit the approach to advocacy around the needs of children, young people and families rather than around the needs of the system, which is how it currently works.

You will have seen some responses from the likes of Who Cares? Scotland, which has been campaigning on the issue for some time. We have to be crystal clear about what we mean by independence, because it can be quite contested territory. That is not to say that children and families do not have lots of other people in their lives who are, to use Fiona Duncan's phrase, rooting for them and speaking on their behalf, but independent advocacy is a very specific and important part of the system. In an ideal world, you would have a person or an organisation that could do that for you across multiple areas. That is the stuff that we want to see in any subsequent regulations and guidance.

It is one of those areas where there is a judgment to be made about how much is put in primary legislation and what is left to come later. In the preparation for this bill, some areas have not had much engagement until now, and the Government says that there is inevitably more to come. Advocacy might be one of those elements. I would argue that more work has been done on advocacy by us and by Who Cares? Scotland, in particular, but I am sure the others will come to consider other elements. For example, the profit limitation elements are still pretty unknown, so there is a lot of work still to be done in that regard.

I do not know whether that answers your question.

Paul McLennan: It does. Before I come to David Mackie to ask about the hearings system, I want to highlight a key point that I discussed when I met Who Cares? Scotland. As someone who represents East Lothian, which is a mix of urban and rural, I think that it is probably easier for someone to access an advocacy service in Edinburgh or Glasgow than it is for someone in the Highlands. There is not a one-size-fits-all approach to provision.

What are your thoughts on that? Independent advocacy is important, but provision needs to be as universal as possible across the whole of Scotland, and that will not be as easy in remote areas.

I will get your thoughts on that and then come to David Mackie on the hearings system.

Fraser McKinlay: To be fair, that is probably why, on this occasion, leaving some of the detail to regulations make sense. There is a fundamental importance in enshrining a right in primary legislation so that people have that right regardless of where they live. That is one of the reasons why Who Cares? Scotland has been campaigning on advocacy. At present, provision varies enormously depending on where someone happens to live and how different local authorities and other organisations have chosen to invest, or not, in advocacy. Having that right enshrined is important, but the way in which it is delivered in different places will inevitably look different; that is the same for a lot of things. That is where the more detailed work would need to happen.

Paul McLennan: I come to David Mackie on the hearings system specifically, and then I will go to Fiona Duncan.

A key point is how we measure the effectiveness of advocacy. It is one thing to have it in place, but how do we measure its effectiveness? Advocacy in the hearings system is important, so I would like to hear your thoughts on that.

Sheriff Mackie: Advocacy is hugely important—you are quite right. The vision in the "Hearings for Children" report is that children should have access to advocacy services from the very beginning—from the very first intervention by social work, police or whichever agency it might be. That is to enable them to understand what is happening and have someone there who can translate for them what is happening around them, what the process will be and what they can anticipate. It means that someone can be with them when important things happen during the process.

The Our Hearings, Our Voice board heard frequently about the point at which children receive the papers for a hearing. Sometimes, they would receive a bundle of papers that contained a huge amount of information that they knew nothing about, detailing all the bad things that had happened in their parents' lives. That was the beginning of the creation of a stigma. The child has done nothing wrong—life has happened to them—but they are caught up in the system because of what happened to their parents. An advocate can highlight the good things in a child's life, and highlight what the child is able to do and not what the child has been a victim of in their life, in order to create a balance.

I could go on, but I am probably just preaching to the converted. That highlights the importance of advocacy. Sometimes legal advocacy is necessary in a children's hearing because important legal points arise and have to be properly pled and argue.

The structure of that remains to be seen. At present, independent advocacy services seem to be fragmented, but they are becoming unified, and there is now a national association. Many of those services are very small local charities. It might be only one or two people making themselves available to accompany people to hearings or to court or whatever, but I sense that there is a growing momentum behind the development of advocacy services and, with that, training and resources.

It is well beyond my role to say more about that, but what I can say from years of experience of working with third sector organisations is that we should not leave it to the third sector, as it will be too big a burden to place on that sector alone. However, the sector has an important role to play in the provision of advocacy services, so how it will be supported will be the key issue.

Paul McLennan: Fiona Duncan, I will just come to you to talk about the points that Fraser McKinlay and David Mackie have made. I am an advocate of advocacy services and, having seen them work in practice, I know that they can make a huge difference to where children are in a process that can be an extremely troubling for them. What are your thoughts on that? Perhaps you could come back to the point about how we measure the effectiveness of advocacy.

Fiona Duncan: You are right that advocacy can have a huge impact, and it is easy to get it wrong. The point about independence is interesting. During the care review and since, there have been conversations about who the advocate works for. They are paid by one organisation, so do they work for me or do they work for the organisation that pays them?

That comes back to funding, which I am sure we will get into. It would be great if the Government could co-design an advocacy service with members of the care community and many of the organisations that are involved, and be clear about the skills and experience that an advocate needs to have. If an advocate comes via a local authority or the local authority commissioner and only one or two people are appointed, and they do not have the right skills and experience to help a young person to travel through their life, that advocate might not be quite as useful as they need to be.

There is also a question about how much advocacy needs to be face to face. Does it have to be local? Some children and young people might need support with a specific issue, but they might not need to meet somebody for that. Others might need somebody to walk into their hearing with them.

There is a whole pipeline on measuring effectiveness. Do children understand their rights? Do they know what that means? Are they able to access their rights? Are those being upheld? Are they getting what they are entitled to in legislation and are statutory duties being delivered? Do they have a buddy? If those things are happening, we see an uptick in a whole series of other data sets that we have touched on in education, housing and mental health for children young people, and families—we are keen that families also get access to advocacy that is separate from the advocacy support for their child, in case they do not agree on issues. Are they seeing an improvement in those associated data sets? That would be the type of information that we would want to see.

I do not know whether Fraser McKinlay might want to say something about the Promise progress framework or any of those data sets.

Fraser McKinlay: Not especially. Not just now, thank you.

Paul McLennan: That is helpful, thank you.

The Convener: Mr McKinlay might have pre-empted what I was going to say. You are giving us detailed and valuable answers, which is what we need. However, there are a lot of committee members, so, although we are at fault for starting late, it would be good if we can constrain some of the answers, because we have a second panel. However, do not limit what you want to get across—it is vital.

We will move to questions from Bill Kidd.

Bill Kidd (Glasgow Anniesland) (SNP): Thank you, convener, and thank you all for what you have given us so far. I am probably going to go over some of it again to a certain extent.

Sections 5 and 6 of the bill deal with the guidance for public authorities and other organisations that exercise public functions in relation to care experience. Submissions to the committee have stated that there is a need for further clarity to ensure that the bill's proposal for guidance in relation to care experience is effective if it reaches the people it requires to reach. The Promise Scotland and the Children and Young People's Commissioner Scotland raised concerns about the privacy of care-experienced people in relation to the whole proposal.

Do you have concerns about how the proposals might be improved as we go forward, or are they working reasonably well?

Fraser McKinlay: As you know, the independent care review thought hard about the definition of care experience. I have been in this job for the past few years and I have certainly learned that you will get as many different views of what that should be as the number of people you

talk to. We should never lose sight of the fact that it is a very personal topic.

10:30

The independent care review was clear that the term “care experience” is something that a lot of people can identify with and that it should be as broad and inclusive as possible. We welcome the fact that, in the bill, the Government is attempting to provide a definition of the term. We also welcome the other stuff that it is doing on language. Loads of great work has already been done through practice and learning, as part of initiatives such as the each and every child initiative, on how to destigmatise the language of care. That work is happening, but it is helpful to enshrine some of that in legislation.

However, as you said, the big question is what is done with the definition. That is still a big unknown for us. In places, it is a bit unclear what it will be used for. In the policy memorandum, the suggestion is that eligibility will not change as a result of the definition, which leaves me wondering, “What does it do, then?” There is more work and a bit of teasing out to do as the bill progresses to enable us to properly understand the extent to which any further regulation and guidance on the definition of care experience will apply when it comes to eligibility and getting access to stuff.

We have been recommending to officials for quite a while that an exercise should be done to identify the different rights and eligibilities that arise through someone’s life. Rather than taking a legislative approach to rights and eligibility, that would involve thinking about the various entitlements that arise as someone who is brought into the world engages with the care system, and what that would mean for guidance.

I feel as though I might not be answering your question. We think that it is good that we are going down this route, because it is good to have a broad definition of care experience, and the stuff around language is also good, but there is a lot of teasing out to be done in relation to what the guidance on the definition of care experience will be used for.

Bill Kidd: Without going off on too much of a tangent, are you suggesting that, as well as thinking about the guidance for public authorities and other organisations, we must remember that it is the human experience of the people who receive the care that matters, so that they do not feel isolated or different from other people?

Fraser McKinlay: Fiona Duncan will be much better placed to talk about that, given her experience of the care review, but, in my experience, there is always a tightrope to walk in this area, because the Promise recognises that those in and around the care system have particular needs and that they experience particular things in their lives, which means that they require different kinds of support. At the same time, we are absolutely clear that we must avoid stigma and everything else that comes with that. That can sometimes be a fine balance to strike.

I think that the consultation that the Government did on definitions probably gave it the answer that we would have expected, which is that lots of people have lots of different views on the matter, so I am not surprised that it found it difficult to pin down a definition in the bill. As I said, the downside of that is that we are left asking, “What practical implementation will we see through the regulations?”

Bill Kidd: Thank you. Would Fiona or David like to add to that?

Sheriff Mackie: There is nothing that I can usefully add to that. I agree with everything that Fraser McKinlay said.

Bill Kidd: Thank you very much for your comments, Fraser. That was worth our while.

The Convener: That was perfect. I have never had witnesses respond so positively to my polite suggestions for brevity.

We will move on to questions from John Mason.

John Mason: I will start with a question for Ms Duncan. If you want to refer it to anyone else, that is okay.

I want to discuss the whole issue of excessive profits in the sector, especially when it comes to residential care. Do you think that excessive profits are being made? Do you think that what the bill proposes, which I think is to give Government the power to do something, not to actually do something, is reasonable?

Fiona Duncan: Yes, I think that excessive profits are being made.

I am conscious that brevity is my friend. The care review heard from lots of children and young people who knew that decisions that were taken about their lives were based on limited budgets. We were very careful, right to the very end when we were finessing the final wording, to be clear that the issue is about making profit from children and young people, families and care-experienced adults; it is not about the status of the organisation. You can have organisations that are registered as companies but are not making a profit, and you can have organisations that are registered as companies and are making a profit. We were careful to talk about not the structure of the organisation but what the organisation was

doing with the money that it was receiving in order to look after children and young people.

To answer your question, I think that the bill is a positive step, and that it will increase transparency. As Fraser McKinlay noted, we have read all the other submissions and we know that some concerns have been expressed, in particular by organisations in the voluntary sector, which worry that their ability to realise surplus from some of the contracts that they get from the state and to use that surplus in their missions might be seen as involving excessive profit. We think that there is a lot of work to be done so that we are clear about how the proposal would work in practice, what is meant by excessive and what would happen as a consequence of excessive profits being made.

John Mason: So, you are not against profit to some extent; you are against excessive profit.

Fiona Duncan: I suppose that it depends on what you mean by the word "profit".

John Mason: Yes, and that does not appear in the bill or in other relevant documents yet.

Fiona Duncan: That is correct. I should also say that lots of the not-for-profit charitable organisations that I have spoken to would argue that they do not make profit; they make a surplus that is dedicated to achieving their mission.

In terms of first principles, the bill represents a good place to start, in order to increase transparency, but a lot of work is still required so that we can be clear about what is meant by the proposals, how the legislation will work in practice, which organisations it refers to and what is meant by "excessive".

John Mason: Is there evidence, either in Scotland or in England or Wales or elsewhere, that private organisations that are run for profit give a lower level of care than charities?

Fiona Duncan: Evidence on that point has emerged over the past few years from the Competition and Markets Authority, which published a report on where that profit goes. The issue that you raise is a concern. In terms of the quality of care, it is difficult to compare two residential care providers, such as children's homes, on the basis of whether they are a for-profit organisation or a voluntary sector organisation. It comes back to what Mr Kidd said: it is about the children's experiences and outcomes, so how the organisations choose to deploy the money that they have is important. However, we are aware of situations in which a low percentage of the fee that is charged is being spent on the children and young people while other slices of that money are paid out as shareholders' dividends or go into offshore accounts and so on. Those sorts of things are worrying, especially when we have limited public funds.

Fraser McKinlay: This is a fascinating subject, but I will try to be brief. It seems to me that we are talking about one part of the Promise that is really simple and really complicated at the same time.

The simple principle that the independent care review identified is that it is just not right for people to make money from looking after some of our most vulnerable and traumatised children. That is an important point of principle here, and if you accept it, a number of things follow. I get a wee bit concerned sometimes—

John Mason: Can I just interrupt you? Surely that is true of the whole public sector. No company—whether it is building a bridge across the Forth or anything else—should be making excessive profits, because that also takes money away from kids, schools and so on.

Fraser McKinlay: The point that I am trying to make is that the independent care review did not take a view on excessive profit; it just said that there should not be any profit made, full stop. To be specific, by that, the independent care review and The Promise mean people—shareholders and owners—taking money out of the business of caring for children as profit, which is quite different from a third sector organisation making a surplus and reinvesting it in the delivery of care. That is the starting point.

John Mason: So, in a sense, you are arguing that what happens to the profit is more important than whether there is a profit or not, and that a non-profit-distributing or charity model is better.

Fraser McKinlay: The principle is that any money that is taken out of the business of caring for the children and becomes what I think that most people would recognise as profit—let us not get into a debate about the definitions of profit and surplus—

John Mason: Sorry, but I think that those definitions are a key point in this.

Pauline McIntyre: I can tell that Fiona Duncan is desperate to come back in on that.

Fiona Duncan: There is a finite amount of money available for a child's care. The care review happened because campaigners were saying that children and young people who grow up in and around the care system were not getting the best experience and the best outcome. Fundamentally, the argument is that all of the money that the state dedicates to the wellbeing of a child, family or care-experienced adult should be dedicated to them and that, therefore, using that money to pay dividends and so on is not the best use of those funds. The best use of those funds is ensuring that children and young people get the very best start

in life, that families are supported to stay safe wherever possible and that care-experienced adults go on to thrive. That is the fundamental principle.

John Mason: Yes, and I am certainly on board with that.

Sheriff Mackie, do you want to come in at this point?

Sheriff Mackie: This area is well outwith my scope of expertise, and I defer entirely to Fraser McKinlay and Fiona Duncan on it.

From a horizon-scanning point, in the world of adoption, Scotland does not do very well. Our adoptions take much longer and are much more expensive than adoptions anywhere else in the United Kingdom, and possibly in Europe. That can be a traumatic experience for the child and for the adoptive parents.

Coming down the road, there will be a big change. Practitioners know, especially following the research around the New Orleans model, that the ideal system is, first, one that has foster carers who are potential adopters. We have dual registration in Scotland in certain areas, and that is happening in practice, but that is a change that I expect to see develop more widely.

Secondly, the research disclosed that an ideal system has judge-led processes with a statutory time limit. The time limit itself, whether it is three, six or 18 months, does not matter, but a time limit for decision making is a crucial factor.

From that, my only submission to the committee is that we should avoid creating an environment in which vested interests can develop. We should disincentivise vested interests in keeping fostering in multiple placements; any incentives should be towards the creation of an environment in which a child can anticipate having a single foster carer in their life who might become an adoptive parent or long-term foster carer.

That is all that I wanted to say—it is just a factor that is at the back of this.

John Mason: There is clearly an overlap here. I am interested in the financial side in particular, but there is obviously the care side, too.

The Convener: Does Fraser McKinlay want to come back in?

Fraser McKinlay: Briefly—it is just to finish the point that I was making to Mr Mason. The reason why I tried to remind the committee of the principle is that there are loads of gigantic questions about how one would go about what we are discussing. I understand people's concerns about it—in Scotland, the level of private provision is 47 per cent, so it needs to be managed incredibly carefully.

In answer to Mr Mason's question about the evidence of differences in quality, the CMA report identified some of that mainly in England, where the scores seemed to be a bit lower for private provision. I think that the evidence is less clear in Scotland.

My point is that there are a lot of debates to be had about financial transparency that apply across the board to any provider. There are clearly issues about quality of care that apply across the board, and I do not think that there is an obvious "third sector good, private sector bad" conclusion to be drawn. Nonetheless, that is why reminding ourselves of what the principle is about is quite important, because there is a risk that we conflate some quite separate issues.

John Mason: I will probably explore that with other witnesses in the future.

We are dealing with the idea that the fostering agencies would definitely be a charity, whereas we would need to look at residential care a bit more. Is that a reasonable approach? Should the two be treated more similarly?

Fraser McKinlay: Interestingly, that is one of the areas that we have had the chance to explore a bit more since the bill was published, because we had exactly the same kinds of questions.

My understanding—Government will be able to tell you this itself—is that the bill's approach recognises where the different markets are; I will use the word "markets" for these purposes. Currently, there are around nine independent fostering agencies that are not charities—it is a much smaller number—and there is already a requirement for fostering agencies to operate as not-for-profit organisations. That aspect of the bill is about tightening up some potential loopholes, whereas the conversation around the residential care market is a much earlier conversation, with much bigger consequences. That is why there are different approaches.

John Mason: It is helpful to understand that.

I will ask a round-up question, because I do not think that anyone is asking about the financial memorandum as a whole. It says that, once things settle down in 2029-30, we are talking about between £20 million and £23 million a year. A big chunk of that is aftercare—I accept that you do not like that term—and some of it is for chairing and running the hearings; the third aspect is advocacy. Do you think that, overall, that is a reasonable figure, or it is seriously over or under the actual cost?

10:45

Fraser McKinlay: I think that it is almost certainly light. I am led in that regard by some of

the submissions that you have seen, and which I am sure we will see—the Finance and Public Administration Committee is looking at the financial memorandum specifically—from organisations that are much closer to the detail of the numbers, including Who Cares? Scotland on advocacy, and Social Work Scotland on the cost of social work.

To be fair, it is not the case just with this bill but, historically, we have a habit of underestimating in a financial memorandum the amount of work that needs to go into preparing for change. The fact that financial memorandums work on the basis of a steady-state cost at a certain point often underestimates, particularly in areas such as aftercare provisions, how much would be required to get us to that steady state in the first place.

I would certainly acknowledge the comments in a lot of the submissions that I have read that the figures appear to be a bit light, and that some of the assumptions that underpin them will probably need to be looked at again.

John Mason: We will follow that up as well. Did you want to say anything on that, Sheriff Mackie?

Sheriff Mackie: No.

Miles Briggs: Good morning to the witnesses, and thank you for joining us today.

I will touch on a couple of issues, the first of which is the register of foster carers. A number of respondents to the call for views were supportive of a register in principle but felt that further detail was required on how it would work in practice. We have touched on this already, but a lot of what is in the bill will be set out in regulations at a later date. What is the potential impact of having the details set out in guidance, and how might the proposals in the bill be improved? Is there anything specific that you want to highlight to the committee in that regard?

I will come on to a couple of other questions after that.

Fiona Duncan: To go back to the care review, we were definitive. We felt that this was something that needed to be looked at, for reasons that are similar to those that we have touched on, including how children and young people found their care, the lack of consistency in what foster carers were offering and what they felt able to offer, and the fact that, as David Mackie touched on, some foster carers could not remember the names of all the children they had looked after because they had looked after so many over such a long period of time. However, for children—Ms Duncan-Glancy touched on this—going into a family home and then going into another family home was a really significant transition. Sometimes, it meant that they had not spent time in their school or seen their friends.

We feel that there are opportunities in creating a national register. David Mackie's point was that, if it was a register of children's care—not just fostering but adoption—it would help to ensure that some of the transitions for people who move from being a foster carer to an adopter were easier. We think that there are opportunities, but we also think that it needs more discussion and more thought. Like you, Mr Briggs, we have been looking at the other submissions and at what other people have said and why they have said it, and we are conscious of some of the concerns and opportunities around this.

Miles Briggs: We have privately discussed some of my concerns in recent times about the lack of foster carers who are coming forward, specifically here in the City of Edinburgh Council area. Have concerns around whether there might be unintended consequences of the bill, including people not coming forward, been addressed? Are there concerns about whether the provisions would mean that local authorities would have to retain their registers? What value would a national register represent?

Fiona Duncan, you outlined earlier the need for the bill to reduce bureaucracy and not just add more layers. Will you outline some of those concerns, especially in relation to where we are currently with the bill?

Fiona Duncan: There are other issues at play here. Lots of people are finding that their children are staying longer than they expected, and therefore they do not have a spare room. Maybe 20 years ago, children were leaving home earlier, so more families had spare rooms. People are retiring later, so they do not feel as if they have the time. There are lots of societal reasons why the number of foster carers is shrinking. Some feel that they are getting too old to support children and young people and, as I said, we are not necessarily getting younger people through.

A number of issues are at play here and they will not be solved simply by the introduction of a foster care register, but it will create the conditions for a different conversation about what good foster care looks like, and what the optimum number will be in 2030 and in 2035. A series of conversations needs to be had.

Fraser McKinlay: This is a classic example of needing to be very clear about what else is happening in relation to foster care and fostering. As Fiona Duncan said, the creation of a register and the requirement for fostering agencies to be charities will not fix the foster care crisis. The recruitment campaign and everything else, such as the vision for foster care that the Government

put out, are very important. The Fostering Network and other fostering representative groups are saying that the creation of a register might make it more attractive for people to become foster carers. Equally, other people would tell you that it might put some people off. To some extent, it is one of those situations where you pay your money and you take your choice. We can certainly see potential advantages in the wider context of other things.

Miles Briggs: Children 1st circulated a thorough briefing and highlighted some of the missed opportunities to strengthen the legislation. It pointed specifically towards family group decision making and improving the consistency of financial support for kinship carers. It seems that kinship carers have been left out of the bill. I do not know whether the Government is looking, as we have touched on, at another bill that might include them in the future, but I thought that that was a stark missed opportunity, as Children 1st has highlighted. What are your views on that at this stage of the bill, and on potential amendments at stage 2?

Fraser McKinlay: The short answer is yes. We think that there are some areas where kinship care in particular could be strengthened, and that is a conversation that we will have with the Government as we progress.

We have been working closely for some time with Children 1st on family group decision making. We think that there is an opportunity to tighten up the existing legislative provision around FGDM or family group conferencing—or whatever else you want to call it—because we think that the evidence is very strong that it makes a big difference. It is also an important part of the work of the hearings system working group.

Sheriff Mackie: I agree with that. There are a number of ways in which families can be engaged in their own decision making, but family group decision making—or group conferencing—has been identified, and the evidence is there to show that it stands out as the optimum means by which families can be engaged. We should not lose sight of just how important that is. Most importantly, it gives the children and families involvement in their own decision making. In a rights-based world, that is important, but there are practical benefits, too. Families who can find a resolution with the support of a social worker—or somebody acting as an intervener—can avoid getting into the formalities of the children's hearings system and some of the formalities of the care system, so we should not underestimate the importance of that. It is a bit of a missed opportunity. There may be opportunities later to bring that in, but we should be at the point where we think of family group decision making as a right and an entitlement. One day, somebody in their early 20s will challenge all of us and ask, "Why was I not given that opportunity? I went through a care system and now I know that I could have been involved in the process, but I was not. Nobody told me that I could do that." That is what we should bear in mind.

Miles Briggs: Thank you for that. I am not sure that I could say that the bill captures the principles of good transition, so I hope that there is an opportunity to strengthen that area. I have highlighted to the committee some of my concerns about CSOs being removed when the young person turns 16, and I am not sure that the bill would necessarily prevent that practice within local authorities. Maybe I will come in later with regard to that.

Jackie Dunbar: Good morning and thank you for coming along.

I will ask about the proposed changes to children's hearings. Responses to the suggestion that single-member panels be introduced have been split. Some people are for them and some are against. What are your views on the proposal and on what level of decision a single-person panel should take?

Sheriff Mackie: It is a welcome provision. We should not be scared about entrusting single members with certain decisions. Substantive decisions that might result in a compulsory supervision order or measures directly relating to a child should be taken by a three-member panel—I have no hesitation on that—but there are many procedural decisions that are capable of being taken by a single member.

The bill introduces the notion of a single member dealing with grounds hearings. I have no difficulty with that, although we should perhaps think about leaving that to chairs rather than single members—we might come on to the difference between chairs and ordinary members. Sometimes, even in cases in which the grounds are unopposed, some difficult issues of evidence arise, such as drawing inferences from forensic evidence in determining whether an injury is deliberate and addressing the criminal standard of proof against the standard of the balance of probabilities. It is not always that difficult, but some consideration might be given to restricting the pool of members who deal with grounds hearings. However, we should not be scared of the proposal.

I understand the concerns that are expressed in some of the submissions and by some of the organisations about undermining the concept and integrity of a children's hearing but, if I go back to the beginning, you will look in vain in the Kilbrandon report for any rationale for choosing a three-member panel. We do not know why the

Kilbrandon committee did that. We think that it was influenced by the Scandinavian model of youth panels and youth tribunals, but there is no particularly strong argument in support of having three-member panels for every decision and, of course, there is a balance to be struck between the level of a decision and the administrative and bureaucratic challenges of convening a panel of three for what might be a simple procedural decision.

Jackie Dunbar: I am not trying to put words in your mouth, but are you saying that a single panel member with the relevant experience would, in some cases, be better than a three-member panel?

Sheriff Mackie: I would not say "better than". I am saying that there is no reason not to have that. For example, the establishment of grounds is the highest level at which I could imagine a single panel member making decisions. That decision is, in essence, based on fact and assessing information. It stops short of addressing the child's needs and making decisions that will impact on the child in the future. That is the point at which we should draw a line. Any decisions that will introduce services or change the child's status or place of residence are the important ones that need the whole panel's input.

Fiona Duncan: For many children, young people and families who are in and around the care system, the delays in decision making can increase anxiety. The proposal that David Mackie outlined would speed up some of the processes.

Jackie Dunbar: You touched briefly on this, but what are your views on whether remuneration or paid allowances should be introduced?

Sheriff Mackie: By the journey that I described earlier, the working group arrived at the recommendation that chairs should be remunerated. We realised that we were building a role for a chair, and especially an expectation that that person would be there on a regular basis to be the chair at as many of the child's hearings as possible. Alternatively, there might be one or two chairs who the child would become familiar with.

11:00

That was to meet the concerns of young care-experienced people. The thing that troubled them most was having a panel of different people at every hearing making decisions on their lives, as that meant having to repeat their story. We imagined that role for the chair, which is what led us to realise that we were creating a job that somebody should be paid for. We did not introduce the notion of remuneration for its own sake—that is how we got there.

Having established that notion, we wondered whether the other panel members should be remunerated. That got us thinking that, as a matter of fairness, perhaps they should. We did not put too much weight on that, but we realised that the remuneration of panel members could have an impact on the diversity of panels. At the moment, the only people who can be panel members are those who can afford to be. There are an amazing 3,000 or so people who commit a huge amount of their lives to doing the job, but the fact is that the only people who can be panel members are those who can afford to do that.

The young people wanted panel members to whom they could relate. They wanted younger panel members who might have the same career aspirations and backgrounds as them. I hesitate to categorise people, but panel members who might have a care experience would be good. Interestingly, that was not as important to the young people as having somebody who they could relate to. The sort of younger people that the care-experienced young people who were advising us were talking about might not be able to afford to give up their time. They might not be able to afford childcare to cover for their absence or a day off work.

We saw a combination of remuneration for panel members and flexible timing of hearings, so that they can be outwith business or school hours, as a means of improving the diversity of panel members. We cannot get away from the fact that the children's hearings system is calling on an ever-diminishing group of volunteers. Through that process, we might expand the pool of potential volunteers to act as panel members.

I would still call them volunteers, whether they are paid or not. If they do not want the remuneration, they do not need to take it. I was encouraged to mention this, because I have never mentioned it since I started this job, but I was offered remuneration for the job and I said, "No, thank you—I do not need it or want it." I am doing it because of its importance to me and to the children who we support.

The panel members who can afford not to have remuneration are at liberty not to take it, but let us not obstruct the opportunity for others by withholding any financial support.

Jackie Dunbar: I absolutely understand what you say about the chair being the same for each person, where possible. This is going off my topic a little, but might it be beneficial if the other panel members remained the same as well, so that the child or young person had stability during the decision making?

Sheriff Mackie: Absolutely. We realised that, in the real world, having the same three panel

members throughout is a practical impossibility, but we thought that we could do that with the chair. I know that Children's Hearings Scotland, from which you will probably hear more about this, is endeavouring to find constructive and imaginative ways of managing panel members so that, as much as possible, the same panel members continue to be involved in hearings that involve the same child. That is certainly an aspiration, but it is not one that we should legislate for.

Jackie Dunbar: Fiona Duncan or Fraser McKinlay, do you have different opinions, or would you like to offer up anything else? If not, I will pass back to the convener.

Fiona Duncan: I agree with David Mackie.

Fraser McKinlay: Yes. I agree with him, too.

Jackie Dunbar: See, convener—I am quick.

The Convener: Thank you. Given that we are on the topic of hearings, I will delve a little further into that with you, Sheriff Mackie. Your working group recommended that the obligation on a child to attend hearings should be replaced with a presumption that they will attend. The bill removes the obligation but does not replace it with such a presumption. What do you think of that and what concerns do you have about it? Should there be a difference in the types of hearings at which there should be either an obligation or a presumption on a child to attend?

Sheriff Mackie: Removing the obligation is a constructive change. In a world in which people can attend in numerous ways, either personally or virtually, we should explore those as much as possible.

Although the bill removes the compulsion to attend, we need to balance that with recognising the importance of the child's attendance, if at all possible, because if the child does not attend, their voice will not be heard—it will be lost.

Alongside the withdrawal of the compulsion to attend, there should be a form of encouragement to attend—an expectation that they will attend, with support put in place to enable them to do so. To a certain extent, that links in with the provision of independent advocacy services, and it should be repeated at every stage for a child. There might be some hearings and processes that the child is not interested in, but some that they are interested in. However, they need to be informed and reminded about what is happening.

The Convener: Do you think that that is an area in the bill that should be strengthened?

Sheriff Mackie: Yes. I think that it would benefit from being strengthened with the provision of support and encouragement to attend, and a presumption that the child will attend.

The Convener: The group also recommended the abolition of grounds hearings. From your evidence, and from that of The Promise Scotland, it seems that you are still of that view. Will you explain where the bill does not go as far as you would like it to? What would be the difficulties if the bill remained as it is? Should the provisions on grounds hearings be strengthened as well?

Sheriff Mackie: The starting point is that grounds hearings are difficult, as I touched on before. We heard from families and children that they wanted grounds hearings to be taken away from children's hearings. We realised that that could be done in cases in which the grounds for referral are not opposed; we saw no reason why there had to be a hearing at all in such cases. In practice, those cases are, to a large extent, a formality and are nodded through. It would not be difficult to find a means of allowing those cases to be processed administratively, probably by the chair being given the relevant papers and making an assessment as to whether the facts supported the grounds for referral and making a determination. It would not be a rubber-stamping exercise—if the chair was not satisfied with the evidence, they could say so. They could refuse to hold grounds as established or they could call for additional evidence. Those processes are embedded in our judicial system, so that approach would not be difficult to incorporate.

That would avoid the need to have any hearing at all, which would mean that the child's first experience of a children's hearing would be a substantive hearing in which they were discussing what is to happen. The grounds would be referred to only to the extent that they had to be referred to in order to have that discussion.

The bill stops short of doing that. In many ways, it reinforces the grounds hearings system by requiring a grounds hearing in every other case. There are ameliorations in the sense that the bill introduces the possibility of grounds being accepted by relevant persons only if the child is incapable of understanding what is happening, is not in attendance or does not engage. That is a benefit and a good way of approaching it.

The bill introduces an opportunity for the chair to have a discussion with the child and the family before the grounds hearing. The policy thinking behind that is to allow for a more truncated grounds hearing, which would make it less traumatic.

I have reservations about that, because you cannot get away from the requirement for the chair to have the child know and understand the facts and the grounds for referral and to tell the parents

and other relevant persons whether those grounds are accepted. Although there has been an attempt to make the grounds hearing a better experience, it will still take place, and I do not think that the bill addresses the need to dispense with the grounds hearings altogether, which we tried to address in the report.

Pam Duncan-Glancy: The evidence that you have provided is really helpful and clear. Do you imagine that a greater proportion of cases will go to a sheriff in the absence of a grounds hearing, or do you not see that as a concern at all?

Sheriff Mackie: I do not see that as a concern at all. Cases in which the grounds are opposed will still go to the sheriff; we have no reason to expect that that number will change. The set-up in the bill will pretty much maintain the status quo as far as that is concerned.

Willie Rennie: Your evidence about the extra measures that should be in the bill has been compelling and convincing; you have set them out in a very positive way. Does the fact that they are not in the bill not tell us something about our progress on delivering the Promise?

The third sector organisations, charities and other bodies that I meet are pretty underwhelmed by and feel flat about the bill. They were hoping for a lot more, whether it was family group decision making, the kinship carers aspect or the child's plan, to which you referred.

Some have talked about the fact that community alternatives to police custody are not in the bill. Is that not an admission by the Government that it is not on track to deliver the Promise? Is the fact that it has not included those measures not an acknowledgement—which it has refused to make until now—that it is just not on track?

Fiona Duncan: As you know, we are five years into a 10-year programme. Until the Promise is kept every day to every child, every care-experienced adult and every family everywhere—until that is the situation in Scotland—the Promise will not be kept. The bill is a step towards keeping the Promise but, as you have articulated and as you have seen in the submissions, it does not capture everything.

It is not only about the things that are absent and that would help to speed up the pace. The oversight board's "Report THREE" said that we are on the right path but behind on progress. The bill does not necessarily speed up progress everywhere. As we talked about earlier, it is also about the reduction in bureaucracy and making it easier for the workforce.

There are a series of things that we would have liked to have seen. You will expect this from me: I remain committed to ensure that this is the best bill that it can be, that we get it over the line and that we do everything that we can to speed up the pace and improve performance. However, more definitely needs to be done.

Willie Rennie: Sheriff Mackie, you told the story about your engagement with chief social workers and talked about how overstretched they are and the lack of capacity in the system. Is the Government not acknowledging for the first time that, if we carry on as we are, we will not deliver the Promise on schedule?

Sheriff Mackie: That is not my impression. What I find difficult about this process is that, from the period of consultation to the drafting of the bill, decisions have been made to leave certain things out and to include certain things—even, in the consultation, to introduce something utterly unexpected in the form of the legal member, although we do not have time for me to talk about that.

Decisions have been made on that level of detail. My impression is that those decisions were not taken by the minister but, somehow, decisions have been made. Things like family group decision making and some of the other elements that you have touched on are simply not there for us to discuss—they are not on the agenda.

What troubles me is that I do not understand how that decision-making process has taken place. I do not know what has influenced those decisions and what has been the driving force behind them. I have the possibly naive notion that, now that we have the report and the Government has accepted most of our recommendations with or without conditions, we should roll up our sleeves, get on and do the whole lot, and I am wondering why we are not just doing that. However, I am speaking as a passionate champion for young people, not as a politician.

11:15

Fraser McKinlay: The point about chief social work officers is well made. You will have seen Social Work Scotland's response, which is very thoughtful. As I said to Social Work Scotland, we agree with a lot of the analysis in its response; we have just ended up with a different conclusion, which is that we would like the bill to progress and pass. Social Work Scotland is suggesting that parts of it should be paused, and I completely respect that view.

To some extent, as I said earlier, there would always be people who would think that the bill is not ambitious or wide-ranging enough, and there would always be people who would say that, even in its current state—with all the stuff that is not in it—the bill still has the potential to tip the system

over. Maybe this is the Government's response to that.

I also come back to what I said earlier: it is important that everyone is clear about what else is happening to deliver some of the things that are not in the bill. In the same way that there is a risk with the way in which the children's hearings system bit of the bill is framed, there is a risk that we lose sight of the vision that the hearings system working group set out for the children's hearings system: that the inquisitorial foundation of whole-family support is critically important, and that all the other things that the report said are needed must be in place for that to work.

The same applies to the bill and to the Promise overall. There is a risk that we lose sight of what the Promise is saying overall and how things can contribute to that. Some things are very specific and good in their own right, but part of our job is to ensure that everyone remembers what the entirety of the programme needs to look like.

Willie Rennie: Okay, thank you.

George Adam: Good morning, everyone. I was struck by what Fiona Duncan said earlier, because I am an emotional guy. She said that you do not stop caring for your children at 16 and that there is language used about stopping caring for children. I get that, because my daughter is 32 today and she is in Edinburgh, and I am currently trying to negotiate for her to come visit her old da at his work, which is proving difficult. I agree with the point about language.

However, that has nothing to do with what I was going to ask about. Sheriff Mackie, you said that the bill is most notable for what is not in it. We agree that engagement was not great, but it has got better since the bill was published. As Fraser McKinlay said, not everything will be in legislation and in what we want to achieve with the bill. Fiona Duncan said that the bill is part of the process and that there might be another bill down the line or there might be other ways of doing things. As a back-bench MSP scrutinising the bill, what are the key things that you want me to look at during stage 1 and stage 2? How can we make this part of the process better?

Sheriff Mackie: Legislators are always resistant to having simple declaratory provisions in statutes. However, there is one that merits a place in the bill, which is some kind of provision identifying the children's hearings system as an inquisitorial, non-adversarial process. Those two expressions are interchangeable in modern jurisprudence, but the importance of that point cannot be underestimated.

Such a provision would provide the chairs of children's hearings with a foundation of authority that they could use to administer hearings and which would allow them to take a rights-based approach that would give them strength in the hearings. It would also give everybody else engaged in the hearings an understanding that the inquiry was being led by the panel and the chair, and that it was not an adversarial process in which one party was trying to get a result against another.

If it were a contest, everybody in the room would have to hear every single word that the other party said, otherwise the fairness of the tribunal would be lost. In an inquisitorial process, that does not happen. As I have suggested, the chair can say to people, "We know all that we need to know about your position, we understand that our decision will affect your life and we don't need to hear any more, but it will help us if we can hear from the child, or this other person, on their own, so we need you to leave the room." Chairs can do that already—the 2021 rules of procedure on children's hearings give the chair that power, but at the moment they lack the expertise on human rights law and the sense of personal authority and confidence to actually use it.

I have already mentioned family group decision making, so I do not need to say any more about that—I think that that was an opportunity lost. I have also mentioned the child's plan. I will not enunciate the reasons, as I have talked about them already, but those are key elements that should, in my view, be in the bill. I know that advocacy is in the bill, but in a different context, and I would like the provision to reflect the need for independent advocacy to be available to children within the children's hearings process at the earliest possible stage of intervention.

I will stop there. There are other points that I could make, but those are the headline aspects that I think that we need.

Fiona Duncan: I would probably take a step further back. We have given you some detail on this in our submission, but the questions that I hope that committee members would be asking themselves are, "What's the bill for?" and "Who's it for?" Indeed, that brings me back to the point that we should not lose sight of who this bill is for.

We are at a critical moment—we are at the mid-point of the Promise being kept—so the question is, "What do we need now?" We have laid out the four tests that we think the bill needs to be assessed against. First, is it in keeping with the independent care review's conclusions and the work that has followed since then? Secondly—and this comes back to Mr Rennie's point—will it get us over the line by 2030? Thirdly, will it help overcome the barriers and build new bridges in terms of the work that has been done over the past five years? Finally, are you finding all the opportunities that you need to listen to the voices

of the people to whom the Promise was made? I am thinking of people who were perhaps not involved in the care review but who have come forward since and who have identified some really deep-rooted challenges with current delivery.

I would just ask you to do whatever is needed to make this the best bill that it can be at this point, and to get it over the line. Again, I come back to the point that Mr Rennie made. The 2030 horizon is a challenge, but without the bill, it will be even more challenging.

Fraser McKinlay: On that last point, we all recognise that there are no guarantees about what legislation might or might not come forward in the next parliamentary session. It is important to bear that in mind.

As Fiona Duncan has said, we have laid out in our submission some of the things that we think should be considered, but I will mention only two of them, because they have not really come up today. The whole issue of early help and support for families is critical to the keeping of the Promise, and a lot of work is happening in Government on whole-family support. We think that there is an opportunity to strengthen and enshrine some of that in the bill.

The other thing that I really should mention—and which I am sure that you will be hearing much more about from your next panel—is that at least two bits of the legislation are currently not compliant with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, because they amend acts of Parliament that predate the Scottish Parliament. As many others have said, we would like those to be looked at and ways to be found in which they can be brought within the purview of the UNCRC act.

George Adam: Thank you.

The Convener: I call Roz McCall.

Roz McCall (Mid Scotland and Fife) (Con): First of all, thank you for all the evidence that you have given; it has been very detailed, and I appreciate it.

I will zoom back a bit, if that is okay. All three of you have been there from the start, with the vision, and have been involved right from its inception and all the way through the process. We know where we are, and where we are trying to get to, but key to all this will be how the provisions are implemented and enacted. I have a very general question. Does the bill provide the correct avenues to achieve the aims? Does it have the money attached to do that? What unintended consequences do we need to be mindful of as we go through the process?

I am happy to hear from all three witnesses. Fraser McKinlay, your microphone light is on, so I will start with you.

Fraser McKinlay: So it is—thank you for that. I think that the bill provides the correct avenues up to a point. We have been saying to officials for some time that we need to learn lessons from previous pieces of legislation, the most obvious being the Children (Care and Justice) (Scotland) Act 2024. From watching that bill pass through Parliament, my sense was that the majority of people supported its principles but that, in the end, some people did not feel that they could support the legislation because they were not convinced about the implementation part of it. Subsequently, we have seen some of the challenges that have come with that. There are definitely lessons to be learned in that regard, which takes us back to what I said about the financial memorandum. That requires more interrogation, and others will be better placed to do that than I am.

As I mentioned earlier, it is about implementation and sequencing—and that does not just relate to what is in this bill but, importantly, what is still to come into effect from other pieces of legislation. We already mentioned one aspect in relation to the children's hearings system and increasing numbers of 16 and 17-year-olds coming into the system. Various aspects of other pieces of legislation are either progressing or waiting to be commenced that will have knock-on implications for what is in this bill. That is an important point.

My final point is that, assuming that the bill passes, when we get into some of the detailed work on guidance, regulations and other things, the process for that will be critical. It must be properly engaging, and it must properly hear the voice of those who are most affected by it. There must also be confidence that there will be resources to support the legislation, because that is still a concern that many people have and which I share.

Fiona Duncan: There is one thing that I am sure that the committee will want to do, which Fraser McKinlay touched on a moment ago. If you look at The Promise Scotland's submission and Social Work Scotland's submission, you will see that we looked at the same information and did the same analysis but reached different conclusions. Therefore, on your point about unintended consequences, it is really important for the committee to scrutinise the submissions alongside one another and to be clear about who fell down where and why.

Roz McCall: Do you want to comment, Sheriff Mackie?

Sheriff Mackie: I have nothing to add, except to say that Fraser McKinlay's point about improvements happening without the need for legislation is important. That is especially the case in relation to the children's hearings system. Alongside this legislation, we have the children's hearings redesign board, which is doing incredibly important work to develop changes in practice in the children's hearings system, and it would undoubtedly benefit us all to have more vision on what is happening with that. That level of engagement is definitely happening, and good work is taking place, but, very soon, we will begin to see the implementation of changes in that regard, and it will be important to keep sight of that, alongside the legislation and thus avoid unintended consequences of any clash.

Roz McCall: That is very helpful. Thank you very much.

The Convener: Sheriff Mackie, may I take advantage of your being here to tease out a couple more things in relation to your evidence? We have already discussed some of the language that is used and said that it is difficult to follow. Is it the case that the principle around the language is correct but that it just needs redrafting, or are the problems more significant? Is it simply a case of changing some of the words and how things are written, or is there a more fundamental problem, particularly in relation to section 90 of the bill?

Sheriff Mackie: Fundamentally, I think that section 90 is unnecessary. I have reached the conclusion that it makes little change. It reinforces the hearings system but introduces unnecessary complications. We have possibly lost sight of the level of discretion and authority that the chair of a panel already has to do what is necessary. The biggest change is that of allowing reporters to refer direct to the sheriff.

However, there is a point to be made here: the obligation in relation to the United Nations Convention on the Rights of the Child devolves to legislators, too. I do not blame parliamentary draftsmen at all—they have a very difficult job to dot all the i's and cross all the t's. In this case, that has led them down a tunnel of impossible language that they have had to produce. I do not particularly blame them, because they are following their normal practice, but this is the result. It does not need to be like that. If we challenged ourselves to write laws that were clear and simple, we could show to the wider world that that can be done. I am told, although I have not seen it yet, that Slovenia did something like that in relation to adoption, so I will search for that. That is a challenge that we should all take on, especially our draftspeople.

11:30

The Convener: I think that a number of us will be searching for that information, so, if you find it first, please inform the committee.

The committee had quite a lot of responses to the call for views that were supportive of the provision to expand the circumstances under which the relevant person could be temporarily excluded from a hearing. Sheriff Mackie, you raised potential difficulties with assessing whether someone was causing "significant distress" to a child, and you suggested that a more rights-based approach could be adopted. Could you briefly explain how that would work?

Sheriff Mackie: Thank you for raising that. The provisions in the bill place on the panel a very subjective judgment as to whether a child is unduly affected—I have lost sight of the phrase that is used in the bill. It is a very dangerous judgment to offer the panel to make. I have already mentioned the case of a woman who is a victim of severe domestic abuse. Before the panel, she was composed, she spoke and everybody thought that she did okay. However, on the inside, she was like jelly. Children act in the same way. It is well known—there is lots of evidence—that children will come into a room and smile at the parent who abused them. Outwardly, they will appear in the way that people expect of them. Therefore, I am very reluctant to give the panel members such an important judgment about distress.

If a rights-based approach were taken, it would work like this: that woman might let it be known that she cannot be in the same room as that man at the same time, and the chair would then be able to manage that. The panel has existing powers for that—it does not need new legislation. The chair could say, "Okay, we'll manage it, so we'll have one person in the room at a time." That can be done. I have done shuttle diplomacy with child welfare hearings in the same context in court. A child can let it be known at their get-to-know meeting with the chair ahead of the hearing that they do not want to be in the same room as some person or that they do not want to be there without somebody else. Again, the chair can manage that, and they already have the powers to do that.

The Convener: May I just confirm that, although some people think that the provision is important, you think that it would cause undue difficulties to assess whether someone is causing distress—and that, in any case, there are existing powers that allow a chair to carry out that function.

Sheriff Mackie: Yes, there are existing powers to manage that. It comes back to the importance of recognising that this is an inquisitorial, non-adversarial process. The job of the panel is to

ensure that it has all the information that it needs to be able to make the decision. It is not balancing one argument against another. That might be part of the job, but that is not the essence of the job. The job is to make the decisions about what is in the best interests of that child and to take cognisance of the impact on other people who have article 6 ECHR rights. That is the rights of family members, usually. The panel can do that in a more fragmented way in an inquisitorial process than it could if it were an adversarial process. That is why I highlighted the importance of that element.

The Convener: That is very helpful. Our questions have been wide ranging, as have your answers, which shows the scope of the bill. We appreciate your time. If we have not covered certain points, we certainly have the information in your written evidence, which was comprehensive and very much appreciated by the committee. It will help to form our conclusions on stage 1.

Thank you all for staying beyond the allocated time. I will briefly suspend the meeting to allow for a changeover of witnesses. We will be back in 10 minutes.

11:33

Meeting suspended.

11:42

On resuming—

The Convener: I welcome our second panel of witnesses today and reiterate my apologies that we are running behind—I am grateful that you have been patient with us. I think that you can remain for the session.

I formally welcome Claire Burns, director of CELCIS; Kate Thompson, policy officer for the Children and Young People's Commissioner Scotland; Katy Nisbet, head of legal policy at Clan Childlaw; and Maria Galli, convener of the child and family law sub-committee at the Law Society of Scotland.

We will pick up on a lot of what we heard from the earlier witnesses. One of Fraser McKinlay's final points was about how some of the legislation adds to the Children (Scotland) Act 1995, which, because it is pre-devolution is outwith the scope of the UNCRC and the ability to appeal. What are your concerns? We have certainly had a lot of submissions and that is one of the big issues that has come up in responses to our call for evidence. It has been highlighted by a number of people and, as I say, Mr McKinlay mentioned it towards the end of the earlier session. Would anyone like to explain their concerns about it and what can be done to resolve those concerns?

Kate Thompson (Children and Young People's Commissioner Scotland): We have some concerns about scope. Sections 1, 2 and 10 of the bill have been drafted in such a way that they lie outwith the scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, which means that the exercise of those functions cannot be challenged when they are incompatible with the UNCRC. We are concerned that that gap was not identified in the supporting documentation, including in the child rights and wellbeing impact assessment, and I might speak more about that at a later stage. Essentially, that was a drafting choice.

11:45

Our understanding is also that the drafting guidelines have not been updated since the since the 2024 act came into force. If those guidelines were stand-alone sections and they did not amend the older legislation that is outwith the scope of the UNCRC, that could rectify that. There is a range of ways in which that could be done, and it is quite a complex procedure.

The issue does not just affect this bill; it also affects other bills, including the Housing (Scotland) Bill, which is at stage 3. There are on-going discussions about some of the provisions in that bill and what can be done to rectify the situation. However, we are at real risk of undermining the intention of the 2024 act and leaving children without enforceable rights in key areas, such as their experience of care.

The Convener: As the Housing (Scotland) Bill is at a more advanced stage, are there any lessons that we can learn about how that issue was approached at stage 1 and stage 2, or is there still further work to be done?

Kate Thompson: Further work still needs to be done. We are involved in some of those discussions and happy to continue with them as they relate to the bill. The slight difference with the Housing (Scotland) Bill is that it was drafted before the 2024 act came into force, and this bill was drafted after.

We hoped that the drafting guidance might have changed in the interim, and we are concerned that that does not appear to have been done. Also, in the CRWIA process, that gap was not identified as an issue.

The Convener: Ms Galli, because you are joining remotely, I would like you to indicate if you want to come in. The Law Society has an interest in this point and your sub-committee has been looking at the bill. Do you have anything to add?

I understand that you also want to make a brief opening remark about where you are giving evidence from today.

Maria Galli (Law Society of Scotland): I thank the committee members for the invitation to give evidence. I am doing so on behalf of the Law Society of Scotland, as you have said, convener.

As I am dialling in from Sydney, and it is customary for anyone making any public speeches or giving evidence anywhere to begin their presentations with a short acknowledgement of country. I would like to do that by acknowledging the traditional owners of the land here in Australia, from where I am speaking, and the elders past and present.

In foreseeing the bill, the Law Society has been concerned from the outset about exactly the point that you have raised. Kate Thompson has clearly outlined the major difficulty. In effect, it means that children and young people do not have the justiciable rights. If we are creating new rights, they would not be able to exercise their rights to access to justice or an effective remedy under the 2024 act. It seems to be folly to proceed on that basis.

We were concerned that, in addition to not meeting the vision of the Promise, the provisions in the bill, particularly those that fall outwith the scope of the 2024 act, will not be met and upheld, and they will not fulfil the commitment that was made by the then cabinet secretary in November 2023, when she indicated that, in order to ensure that the scope of the 2024 act would be as wide as possible in protecting rights for children and young people, primary legislation rather than secondary legislation would be considered in the first instance.

The other gap that we are concerned about is in various other commitments. Fiona Duncan talked about the streamlining of the legislative framework and how commitments were promised and made for really good scrutiny and audit of the existing legislative landscape, and Fraser McKinlay indicated earlier the extent to which that was identified in the care review. That audit and assessment of where the legislative gaps exist has not been done.

Katy Nisbet (Clan Childlaw): I will reiterate what has just been said. We have concerns about the fact that a bill has been introduced subsequent to the passing of the 2024 act without any attempt to ensure that all parts of the new bill are within the scope of the 2024 act so that children can enforce their rights when those are breached.

It is particularly concerning because, as Maria Galli alluded to, there was an undertaking that there would be an audit of out-of-scope legislation, with a view to proposing some sort of plan to begin bringing things into scope. Not only have we seen no evidence of that, but new legislation is coming through without any attempt, even on a piecemeal basis, to ensure that rights can be fully protected by keeping within the scope of the act.

Claire Burns: We at CELCIS would agree with that. We are also concerned that the bill does not fall within the scope of the UNCRC and that we must look at ways to remedy that. You have far greater legal minds than mine here and they might come up with that. I reiterate Maria Galli's point about clear concern in the sector that the legislative landscape is cluttered and complicated, but where are the attempts to remedy that?

I take Fiona Duncan's point that there are good things in the bill, but there must be greater attention to the alignment, co-ordination and phasing of legislation.

The Convener: How have we got to a point where so many respondents have highlighted that concern? I presume that the Government knew what it was doing. It has engaged in some ways and was aware of similar issues with other bills. Is it your understanding that the Government took a decision and that the situation is not merely a consequence of it not fully understanding what would happen here? Can anyone answer that? We will certainly put it to the minister.

Claire Burns: It is difficult for us to know.

The Convener: Given what you said, Ms Thompson, there should certainly be an awareness of what happened with the Housing (Scotland) Bill.

You may not be able to answer my second question, but you may have some ideas. Is there a way of resolving that issue? Will we have to wait until we come to stage 2 amendments, or could the Government say something when ministers come to the committee to discuss the bill ahead of the stage 1 vote?

Kate Thompson: I would have hoped for an awareness prior to the drafting of this legislation and within the drafting team. I cannot comment beyond that about why the bill has been drafted as it has.

Regarding resolving the matter, it is likely that that would have to be done through stage 2 amendments. The process for the Housing (Scotland) Bill is on-going. No suitable amendment was lodged at stage 2, but we have put forward what we think is a suitable amendment for stage 3 and know that that is being considered, although it has not yet been lodged. That resolution could be explored.

One way of doing it could be for the sections could be re-enacted as stand-alone sections of the bill itself, rather than trying to mend old legislation.

One issue with that, however, is that it would add to some of the problems that the earlier panel discussed. There is a complex legal and legislative landscape for the care system, and adding another act would create more places for people to look in order to find the right provisions. However, that is a wider issue and we would certainly say that it is fundamental that any new legislation should be within the scope of the UNCRC.

The Convener: I will make ask some final questions before I turn to other members. Can you imagine any reason or rationale for the Government deciding to do that? What do you think the Government's response will be? What would you say to any suggested counterargument against what you are unanimously saying, which is that the bill takes the wrong approach? The Government has probably thought about it and decided to go down that route. Can you imagine any counterargument that the Government would come up with, or do you think that it will have to make changes at stage 2?

Kate Thompson: It needs to make changes at stage 2. I know that a counterargument was made and I can only compare the situation to what happened in the process for the Housing (Scotland) Bill, in which there was a layer of misunderstanding about the scope when stage 2 proceedings were happening and we were beginning to have discussions about the matter, which is rather complex and requires legal analysis. There was a level of misunderstanding and I hope that, after those discussions, that misunderstanding is somewhat cleared up and the process for this bill might be smoother.

The Convener: I am sorry to dwell on that matter so much, but there have been quite a lot of responses to our call for evidence on it.

Pam Duncan-Glancy: Good morning—I think it is still morning. I feel like I have been here so long that I am wondering whether it is still Wednesday.

I appreciate the witnesses' answers so far. I will ask a general question before I move to general questions on aftercare and, potentially, advocacy—the convener can keep me write this to which area I should focus on.

A number of submissions pick out the issue with the UNCRC. We have just been really clear on the record about what that issue is. However, further to that, the Children and Young People's Commissioner Scotland submission says that the bill has the potential to have a negative impact. Kate Thompson, will you set out a little bit more for us about what that negative impact could be and whether there are ways to mitigate it?

Kate Thompson: You are asking about a negative impact on children's rights more generally from the bill. Those comments relate to issues surrounding the children's hearings system and the potential for harm to be done to children's rights if mitigations are not put in place.

I referred to the CRWIA, a copy of which I have among the papers that I have with me. The purpose of the CRWIA is to consider whether the impacts of a new policy or law will be positive, negative or neutral on children's rights and, where they have the potential to be negative, that should be mitigated against. The purpose of analysing and identifying that is so that we can look through the mitigation.

The CRWIA that is available does not do enough to critically analyse the potential negative impacts. Some of the proposals on children's hearings have the potential to uphold children's rights and some have the potential to impact them negatively. There is a specific section in that CRWIA that talks about negative impacts—I think that is section 9—and it just says "N/A", which leads us to feel like there is a bit of a gap there.

One of the obvious examples relates to the child's attendance at the hearing. We might touch on that in more detail later. Taking away the obligation for the child to attend in the current format potentially poses significant issues with interference with article 6 rights under the European convention on human rights or article 40 rights under the UNCRC if the child's views are missing from the hearing or if the hearing is considering offence grounds or the potential deprivation of liberty. We do not find a critical analysis of those scenarios in the CRWIA or sufficient mitigation to ensure that children's rights are properly protected in those scenarios.

Pam Duncan-Glancy: Does there need to be an amendment to the bill on that and does something need to be put on the record about the omission from the CRWIA?

Kate Thompson: Yes. There would be benefit to further acknowledgement about some of the children's rights issues that I raised. There should be an amendment to the provision on the child's attendance at the hearing. I think that The Promise Scotland agreed with that as well. Alongside that, we need meaningful and robustly resourced plans and guidance on how children's rights will be upheld if there are going to be situations in which they are not in attendance at a hearing.

Pam Duncan-Glancy: Earlier, Sheriff Mackie made the point that the provision was removed but the presumption that they would attend was not added. Would adding that resolve the problem?

12:00

Kate Thompson: In part, it would resolve the problem in the legislation but, behind the legislation, there must be robust plans in place to address the issue in a range of complex scenarios. We have raised concerns about the impact that the provision could have on children with disabilities or children who are disengaged from professional support services. There could be guidance on that. The CRWIA could imagine the scenarios and consider what types of children's rights might be affected and how we could mitigate that. There could be more assurances about how the issue would be addressed.

Specifically, there is potential for an amendment on the situations regarding offence grounds or where a hearing is considering the potential deprivation of liberty of a child. We do not think that it would be rights compliant for such scenarios to involve an excusal of attendance of a child. We do not agree that those processes could be fairly heard without the presence of the child. Making a finding that an offence has been committed has a significant impact on the child that is different from the impact of a finding on welfare grounds. Obviously, there is potential for deprivation of liberty. There are other scenarios that can involve quite severe interference with children's article 8 rights, such as if they are to be removed from the care of their parents.

Hearings deal with a lot of complex scenarios, with the potential for infringements of rights. Before we could support the provisions in the bill, even with amendments, we want there to be a thorough consideration of some of those issues.

Pam Duncan-Glancy: Does anyone else want to come in on that point?

Katy Nisbet: I echo what has been said. We have a particular concern about the onus to attend being removed and how that will impact on certain groups of children—in fact, it will impact on all groups of children—in having their voices heard and their right to a fair trial. That is particularly pertinent to children who have been referred on offence grounds. We already think that the children's hearings are breaching their obligations under the UNCRC because they do not automatically provide access to a lawyer in those circumstances.

Acceptance of those charges can have on impact on someone in their future life—it is in effect treated like a conviction, and there are disclosure implications—and you are now saying that a child who has offence grounds does not even need to turn up, regardless of whether they have a lawyer. In our view, that cannot happen—we have real concerns about that. Our concerns are broader than that, but that is a specific concern of ours.

Pam Duncan-Glancy: Convener, in the interests of flow and time, is it your expectation that I will move on to questions of advocacy or aftercare?

The Convener: It is aftercare, and then advocacy, after Mr McLennan.

Pam Duncan-Glancy: Perfect—thank you. I just wanted to be clear on that.

A number of organisations said in written evidence that the aftercare provisions are welcome, but that they could go even further. Others have raised concerns about some of the costs. How might the provisions be improved? How can we make sure that they are adequately resourced?

Katy Nisbet: We have a considerable concern about the aftercare provisions as drafted, although we appreciate and are supportive of the attempt to extend aftercare to a broader group of children. Primarily, if any 16 or 17-year-old child is without a home or cannot live in a family environment for whatever reason, they should be in a care placement and should be fully supported on a relational basis in that setting. I appreciate that there are some situations in which that is not appropriate for or desired by the child. We should also remember at the outset that aftercare is a safety net, and, particularly for 16 and 17-year-olds, that should not be the primary focus.

The bill seeks to extend the reach of aftercare beyond those looked-after children who left care before their 16th birthday, which is the current limit. The access that is being mooted in the bill is to discretionary aftercare, which is quite significant.

I appreciate that we are short on time, but I will take you through a case example of how that might work and what the effect of those changes would be, as opposed to extending the mandatory cover. Let us say that there is a 15 or 15-and-a-half-year-old who has been taken off their CSO. They attempt to reconcile with their family and live at home, but that does not work and, at the age of 16 or 17, they are not able to live in the family home. What happens then? Presently, they would have no right to aftercare at all. That child, if they did not want to be in the care system, would simply go into the adult homelessness system and be placed in adult temporary accommodation. The needs assessment for the suitability of that accommodation is very different from that of a placement under aftercare or from support that is provided through aftercare.

However, if the child was on a CSO when they were 16, and then reconciled with their family but it

did not work out, they would be entitled to aftercare. The aftercare is mandatory at that point, and means that the local authority must carry out a pathways assessment. In doing so, it must consider all the needs of that child—that is, not just their accommodation needs but their health, mental health, educational and employment needs. After the assessment is carried out, an aftercare worker should be supporting them to make that transition and ensuring that they are in accommodation that is suitable for those needs. They are then supported through that process. They are also entitled to financial help through the children and families social work provision. That assistance is covered in section 30 of the Children (Scotland) Act 1995, and changes to that section are proposed through the bill.

What is being proposed now is that someone who is 15 and a half and is not on a CSO any more who goes home but that reconciliation does not work is then out. It is not mandatory for the local authority to conduct a pathways assessment. The young person can request that that assessment is carried out, but, for a start, they would need to know that that is something that they can do and that that support is available to them. I would query how, given the very inconsistent implementation of the current aftercare system, that would come about. That needs to be given a lot of thought.

A needs assessment will take place if one is requested, but the needs that are being assessed in that situation are eligible needs, which, according to, section 29(2) of the Children (Scotland) Act 1995 are needs that cannot be met through other means, effectively. Irrespective of how it is supposed to work, what we see in practice is that we request the pathways assessment for a child, that assessment happens and they are allocated a pathways worker. That is all positive and better than what is currently supposed to happen. However, in general, the needs in relation to accommodation, for instance, can be met through the homelessness system. That means that the aftercare worker will support the child to make an application to the homelessness system and they are then in the adult homelessness system. They are in adult homelessness temporary accommodation and the needs that are being considered there are not the broad range of needs that would be considered under the aftercare system.

We support the extension of aftercare, but, for the changes to be effective, all 16 and 17-year-olds need access to the mandatory aftercare regime. That is where we have difficulty with the bill.

Pam Duncan-Glancy: Thank you. That detailed answer helps to clarify where we could amend the bill to improve that. Do others have a view on that?

Claire Burns: In principle, we really support this aspect of the bill, because it attempts to respond to some of the challenges as well as to some of the feedback that the Government has had from the sector and from children and young people about the aftercare provisions. It was felt that the point in time at which you became a care leaver—that is, on or after your 16th birthday—was really arbitrary, and that lots of young people who had been in care for a significant period of time were missing out. I think, therefore, that it is an attempt to remedy that inequity and, as Katy Nisbet has said, to try to increase the number of people accessing aftercare.

However, the concern that you have raised is a very real one; we do want to ensure that we prioritise the children and young people who need aftercare most, but it does open up eligibility, and we have been one of the organisations that have said that there must be an assessment of need. It is good that we will have that assessment, which will probably be done by specialists in social work, but there are real concerns about the impact on their resources. They might not have known these children and young people for a while, so the work involved in getting to know them will be more significant. There is also a general concern that the costings in the bill, which are based on assessments for children's hearings, are outdated, which leads to a real and legitimate concern about whether the right resources and finance are in place.

I also come back to Katy Nisbet's point that this is not the only cost. We might say that it is a steady cost, but we also need a communication strategy that lets children and young people know what their rights are and ensures that they understand them. There are other costs that we need to take into account.

Pam Duncan-Glancy: Do you get the sense that the Government and the sector have done any preparatory work to scale things up or at least to bring capacity up to the level that will allow them to deliver what the bill proposes, even if the system envisaged is not mandatory and falls short in the way that you have just described?

Claire Burns: We cannot deny that there has been some focus on the issue and that there are organisations such as STARR that have been consistently advocating for children and young people with local authorities. Indeed, the very reason that we have this part of the bill is that those organisations have been advocating really strongly for children and young people.

However, although that might be the case, there is still the context that we are working in. I would point out that, when it comes to an issue such as housing, which was discussed with the first panel and is fundamental for our care leavers, the fact is that many local authorities have announced a housing crisis.

Pam Duncan-Glancy: Correct me if I am putting different words in your mouth, but I think that you said just a moment ago that some of the costings were unrealistic. What would be more realistic?

Claire Burns: What I think—and you will hear this from Social Work Scotland, too—is that if it has the primary responsibility for doing the assessment, it will want to have a negotiation on what those costings might look like. I apologise for reiterating this, but it is an important point: the financial memorandum is based on costings for an assessment for a children's hearing, which is not necessarily the same thing. Moreover, some of the numbers that we are using are not up to date, and therefore, there is a question about how accurate the costings are.

Pam Duncan-Glancy: Thank you. I appreciate those responses. Do any of the panel members want to come in before I move to my final question on aftercare?

Kate Thompson: Just to say that I am in agreement, and that a lot of the points that we would have made have been covered.

Pam Duncan-Glancy: Thank you. That was really helpful and is much appreciated.

The Law Society notes in its submission that

"no consideration has been given to ... those who have been adopted ... Children subject to voluntary measures of supervision and support (under ... the Children (Scotland) Act 1995)"

and

"Children from outside the Scottish jurisdiction, who have been placed"

in care elsewhere

"whilst under an English Care Order".

Can you say a bit more about that? Is it your view that the bill should contain specific aftercare provision for those particular people?

Maria Galli: Yes, certainly. Our concerns arose when we started to unpick the financial memorandum and the proposals, bearing in mind everything that has already been said by the other witnesses about the scoping and the cost benefit analysis that have been undertaken and all of the financial implications of implementation. We looked at the groups of children and, perhaps more important when it comes to aftercare, the groups of 16, 17 and over 18-year-olds who will be entitled to these rights—which is great—and started to ask, "How much is this going to cost, and are any groups missing?"

We identified that people might not know whether they are care experienced if we have that common definition, which I know is in dispute, too. There is a concern that there could be many more people who would be entitled to rights under the new provisions—and rightly so—but who will not be aware that they are entitled to them. There is also a concern that there will simply be insufficient resources to meet those needs.

12:15

Pam Duncan-Glancy: Thank you. Someone else will probably ask questions on definitions, but is there a need to amend the legislation in that respect, and/or do we need more guidance and communication regarding who is covered?

Maria Galli: If the intention is to ensure that the definitions are wide and cover everyone who has had experience of care under any circumstances, as Fraser McKinlay was talking about earlier, then absolutely, yes. That is the case whether or not the definition is contained in guidance or whether, as many other things are just now, it is up to local authorities—public authorities are generally providing services with clear understandings of who falls within their umbrella.

As Katy Nisbet indicated earlier, in reality, many children and young people fall between the gaps, particularly 16 and 17-year-olds. They do not know what they do not know. If they do not know that they have these new rights or, indeed, that they were even care experienced, children and young people and perhaps adults who were adopted or children in kinship care—"I live with my granny"—might not appreciate that they, too, would be entitled to the same rights, protections and supports that are being offered here. An analysis needs to be done. That should have been done in the CRWIA in order to identify the people whose rights are most at risk and how we mitigate any risks to those rights.

In relation to the earlier questions, in doing the children's rights impact assessment, there needs to be a greater understanding of adult human rights generally as well as children's human rights. It is all very well to talk about whether provisions are within the scope of the UNCRC, but many of the people who will benefit from these new provisions and who have been involved in the whole process around the Promise will be over 18 and therefore not entitled to the protections of the UNCRC. As Scotland considers further human rights implementation across the board, there will, with regard to aftercare, be a large number of people who would potentially not have a clear and

accessible remedy if those rights were brought into force. There needs to be a wider human rights impact assessment for the groups of young people who will be most affected.

Pam Duncan-Glancy: Thank you.

Paul McLennan: I want to touch on advocacy, which I know that Pam Duncan-Glancy was going to move on to. I do not know whether you heard the evidence in the previous evidence session. My background is 15 years as a councillor, during which I dealt with situations involving kids with care experience; advocacy was a really important part of their journey, not only for them but for their families. Section 4 of the bill talks about new

"rights of access to care experience advocacy services",

with that right shaped by secondary legislation. What would that secondary legislation look like?

The other key thing is that this is almost an urban versus rural discussion, because advocacy services are probably much easier to access in urban areas than in rural ones. When we spoke to the sheriff in the previous evidence session, we found that this also related to section 18, which is on advocacy in the hearings system. Is there confusion on that point? What are your thoughts on that?

Claire Burns, I will come to you on that question and then open it up to anybody else who wants to come in.

Claire Burns: Kate Nisbet can probably say something more specific about what that secondary legislation would look like, but in general, we are absolutely supportive of independent advocacy. It is a central plank of the Promise. It is particularly important for the children, young people and families whom we are talking about, because they are involved in so many legal processes. Making sure that their rights are upheld and that they are clear about what their entitlements are is something that, as a society, we should support.

Other things that we should consider include, first of all, ensuring that this is not just a one-off offer to children and families and that those offers are available throughout their care journey, because such things could be not important at one point and important at another. Secondly, there is an issue about making the required process of proving, for advocacy, that children are care experienced as trauma informed and as simplistic as we can. Thirdly, we must safeguard against going down the road of assuming that people are asking for access to their records along with advocacy. We need to separate those two things.

Finally—and I think that you picked up on this point with the previous witnesses, Mr McLennan—the service is quite precariously funded at the moment and centralised in the central belt. Therefore, if we are to put this in legislation, we need to consider the fact that, for a lot of third sector organisations, the funding is year on year and can be very precarious. If we are going to do it, we will need to look at that aspect, too.

Paul McLennan: Thanks, Claire. Does anybody else want to come in on that point?

Katy Nisbet: We, too, are supportive of advocacy. Anything that enables a child's voice to be heard is a positive thing. Given the remit of the organisation that I work for, we are very much focused on children, and those children tend to be in the children's hearings system. I think that your question was about what should be in the regulations and how they would work. In that context, there must be a real focus on when in the process advocacy comes in.

A lot of the changes proposed in the bill are very complex, and a full understanding of the process will be critical if children are to be able to give their opinion and have their voice heard. It echoes what Sheriff Mackie was saying: there should be an offer of advocacy at the earliest point, and there needs to be legal advocacy at some point, too—by which, I think, he was referring to lawyers. At the moment, advocacy training is legally supported in the children's hearings system, so that advocates know the point at which the rights breaches are significant and require a lawyer to ensure that the child's rights are being upheld in the system. Training is key, as is the point at which advocacy is offered to the child.

Paul McLennan: I do not know whether Maria Galli or Kate Thompson wishes to come in.

The Convener: I think that Ms Galli wants to come in.

Paul McLennan: Very briefly, before she comes in, how do we measure how effective the advocacy process has been? I think that we asked our previous witnesses about that, too. It is fine to have access to that, but how do we measure its effectiveness?

The Convener: We will go to Ms Galli first, if that is okay.

Maria Galli: I do not want to take up too much time, but I want to echo what has already been said, particularly Katy Nisbet's comment on legal advocacy. As you will be aware, our long-standing position is that this is absolutely not an either/or situation and that, given that this is a legal tribunal and given the impact, and the implications, of the legal decisions that are made—often in relation to very complex needs situations for children—there is a really important role for advocates at the earliest stage in the proceedings.

I understand your concerns, which many of your respondents have raised, about how advocates will be monitored and assessed, how the service will be measured and funded and everything else. However, there must be a greater understanding of the absolute human rights requirement for children to be able to access legal advice and representation at the right time, not as some tokenistic default position. There will be many children's hearings where children will not require legal representation or advice beforehand, but there will be many more who will potentially require both, especially in those very difficult situations. Therefore, we invite the Government to give us a much clearer understanding of why none of those considerations has been brought forward to strengthen the system with both lay and legal advocacy.

Kate Thompson: We agree with everything that has been said. We are very supportive of the advocacy proposals, because they are important for upholding children's article 12 rights to express their views and participate, particularly in hearings and other proceedings. However, it is not just limited to children's hearings matters; it also relates to aspects of education, housing and benefits. Advocacy is important, but it is not, as I think that we would all agree, a substitute for legal advice and representation.

One point that might not have already been raised is the availability of appropriate legal representation and lawyers who are able to carry out legal aid work, particularly those who have sufficient experience to deal with children's rights in a child-friendly manner. There are particular difficulties with the provision of such solicitors in the area of housing, for example.

The Convener: I go back to Pam Duncan-Glancy, who has questions on the same topic.

Pam Duncan-Glancy: Thank you, convener. I have just two small questions.

In some of the evidence that has been submitted to us, it has been suggested that those involved in delivering services should not be involved in advocacy. What is your view of that? I suppose that it speaks to the question of independence.

Katy Nisbet: Advocacy, whether it be lay or legal, should absolutely be independent. Beyond that, I do not have a view.

Claire Burns: I would say yes, advocacy needs to be independent. However, children and young people also tell us that their existing relationships are important to them and there might be other people who they feel could support them in those settings, such as their social worker—although I get that there could be a conflict of interest there—or their foster carer. Advocacy could be another of those relationships, and there is always a balance to be struck with regard to the choice that children and young people are given. Independent advocacy should be there for them, but we should not deny the role that other people and their families or their network might play.

Pam Duncan-Glancy: That was helpful.

Kate Thompson: I totally agree with those comments. Children will differ when it comes to those whom they tend to rely on or those whom they want to speak for them, and the quality of those relationships will differ, too.

Yes, advocacy should be independent, but I would add that such measures are always publicly funded. That is where the funding comes from, and independence is worked out within that system.

Pam Duncan-Glancy: Do any of you have a view on whether further detail on advocacy should be in regulations or in the bill, or should some be left to regulations, with more in the bill? What should the balance be?

Katy Nisbet: I do not have a firm view on that specific point. I am concerned about the bill's being framework legislation, with a lot left to regulations. I do not know whether that is appropriate in the context of the provision of advocacy, but I am concerned about the level of scrutiny that many of the bill's provisions will get, because they will have been delegated to secondary legislative processes.

Pam Duncan-Glancy: Should any aspects of advocacy provisions be in the bill?

Katy Nisbet: I do not have a view on that.

Claire Burns: I do not feel informed enough to answer that.

Pam Duncan-Glancy: That is fair.

The Convener: We will now move to questions from Bill Kidd.

Bill Kidd: Thank you, convener, and thank you all for your clear answers, which will be very helpful to us. I do not think that it will take very long to answer my question, because it was asked of the previous witnesses. I am not sure whether Maria Galli was around to watch that—she might have been.

Sections 5 and 6 of the bill deal with guidance for public authorities and organisations that exercise public functions in relation to care experience, and my question, which I asked the previous witnesses, is about care-experienced people's rights to privacy under the bill's proposals. Do you have concerns about how those rights might be presented? Can that be improved in the proposals in the bill? Care-experienced

people do have a right to privacy about their upbringing, development and so on, but they should not be ashamed of those things. Do you have any points to make about that?

12:30

Kate Thompson: It is definitely important. If we are talking about coming to a definition of "care experience" or framing it in legislation in that way, we have to acknowledge that, although the term has become more widely used in attempts to use less stigmatising language—and although that is important—it is still a choice and not something that everyone who has been in that situation will identify with. That is why, in the provisions on aftercare or advocacy, those have to be opt-in services, not things that are sort of mandatory, and it is also why privacy must be respected.

More generally, on the issue of defining the term "care experience", we responded to the Scottish Government consultation on that, and we mentioned the issue in our response to the committee's call for evidence on the bill. We are unclear as to what benefits an overall definition might bring. As was touched on with the previous panel, if there is to be a definition, it needs, somehow, to be linked to eligibility. There are a lot of different supports or benefits that care-experienced people can apply for, whether they be Student Awards Agency Scotland bursaries, support for throughcare or aftercare services, or, indeed, universal credit, which is not a devolved matter. However, they all have different criteria.

As we have pointed out, the bill also has different criteria for accessing supports. Bringing in another definition would create quite a confusing landscape, and we do not want to create unclear or false expectations for children and young people that cannot be fulfilled. What if someone who fitted the definition of "care experience" could not get universal credit? It would be a very confusing situation. It is also important that, if a universal definition is to be introduced, it does not lessen entitlements that a care-experienced person might already have.

Bill Kidd: Does anyone else have anything to add?

The Convener: Ms Galli wants to come in.

Maria Galli: Thank you, convener. I actually wanted to come in earlier—I am sorry about the time delay that we have here. If you do not mind, I will respond first of all to the question that Ms Duncan-Glancy asked.

Like Katy Nisbet, we are concerned about the use of regulations and whether advocacy rights should be set out in the bill. Absolutely, the law making needs to be clear and concise, and the law itself should be coherent and accessible. However, our greatest concern is about implementation. A number of advocacy provisions with regard to children's systems have already been legislated for, both in private and public law proceedings. The stark example that we mention in our written submission, and which others have picked up on, is, of course, section 122 of the Children's Hearings (Scotland) Act 2011, which took nine and a half years or thereby to be implemented. If we are not going to implement and actually give effect to the rights that we legislate for, we must give serious consideration to whether making regulations is the way to do that.

Thank you for allowing me to come back on that point. On the question about the definition of "care experience", we would concur with the views expressed with regard to potential risks to privacy rights, especially for adult care-experienced people.

Bill Kidd: That is very important. Thank you all for your answers.

John Mason: I will move to asking about money, profit and that side of things. Ms Burns, you made the longest of all the contributions that I saw on that issue.

Claire Burns: Is that a compliment?

John Mason: I should add that you were thorough, so I will start with you.

First, do we have enough data? Do we know what profits are being made? What are your general thoughts on that? Are profits always bad?

Claire Burns: No, we do not have enough data. To go back to a question that you asked earlier, the element of the bill that deals with profit came in late and was not consulted on. There is still a lot of work to do on the issue with the sector to reach a clear position.

John Mason: Can you expand on that? Do we know why the provision suddenly appeared after not being spoken about beforehand?

Claire Burns: I do not know.

John Mason: Is it something that came from Wales or England?

Claire Burns: I know that there are moves afoot in England and Wales to minimise profits, which may have been the driver for looking at what is happening in Scotland. However, there has been no time to unpick that.

To take a step back, I agree with Fiona Duncan and Fraser McKinlay that we absolutely should look at the area and that no one should be profiting from children's care. However, there is an important distinction between excessive profits

and profits that are reinvested. We should look at that.

Another key point is that there is a lot of work to do to understand the landscape in Scotland. What does the evidence tell us about the link between profit and outcomes? Fiona and Fraser said that there is some evidence that private organisations do lower-quality work, but that is evidence from England, which has a far larger independent population, and we would have to look at the Scottish context.

John Mason: Are all residential facilities inspected?

Claire Burns: Yes.

John Mason: Someone knows which facilities are good and which are bad.

Claire Burns: They do, but I do not think that has been triangulated with ownership models. There is a lot of work to do on getting a shared understanding of what we mean by "profit". Do we mean profit that is excessive or profit that is reinvested? That work has to be done and CELCIS would say that that it is all really important.

One important thing that has not been raised today is that we must be careful not to destabilise the resources that we already have and that any work must be done in a planned and phased way. We all know about the implications of the Children (Care and Justice) (Scotland) Act 2024 for secure care. I think that everyone would accept the principle that we should not have 16 and 17-year-olds in prison, but we have now seen the implications of shifting one part of the system really quickly.

It is important to understand the sector and to know what worries us. Fiona Duncan spoke about that. If venture capitalists are taking money out of the system, that should really concern us, but should we be concerned if organisations are reinvesting money? That might be less of a concern.

John Mason: Should the committee be worried if no research has been done, and should we say that that bit should be taken out of the bill? If we leave it in, Government ministers would have quite a lot of power and decision-making ability once the research has been done. How would you see that working?

Claire Burns: The caveat in the bill is that the Government will give itself powers to act. You will understand that better than I do, but I think that that caveat means that the Government does not know enough and is making provision so that it can act if it feels that that is necessary after the work has been done.

John Mason: I will come to you next, Ms Galli. You can probably give us the legal angle.

You, too, said in your submission that there should be no profiteering. Can you talk about that and explain whether the bill gives the Government too much power?

Maria Galli: Our position is that the provision seems premature. The Government is currently consulting generally on that very issue. The Competition and Markets Authority has had long-standing concerns and has written numerous reports providing evidence, albeit primarily, as Claire Burns said, about the English and Welsh systems.

The vision in "The Promise" is that there should be no profiteering from children's care. Profiteering is very much the situation in England at the moment, and it is being denounced publicly. The issue has even touched Scotland—we gave the example of cross-border placements, and specifically placements for deprivation of liberty orders made by the High Court in England and Wales. We feel that, if we are going to legislate in this area, there needs to be much greater scrutiny and assessment of and evidence on what we are concerned about, as Claire Burns said. Where do the profits go? As "The Promise" said, we need to follow the money, because—

John Mason: I am sorry to interrupt you, but are you recommending that we take the provision out of the bill until the issue has been studied more, or can we just go ahead with it?

Maria Galli: I am not sure that I can answer that specifically, but I note that 6 October is the end date for the consultation on the bill's financial implications. Allowing the Scottish Government to come up with responses to that consultation would at least be a start. Once we know what it is thinking, we might be able to take the next step forward.

John Mason: I turn to Ms Nisbet or Ms Thompson. I have to say that I am getting worried by some of these remarks. We will have to wait for the Government to respond to a consultation that closes on 6 October, but the parliamentary session finishes at the end of March. Things are getting quite tight, are they not, Ms Nisbet?

Katy Nisbet: I would just echo, and adhere to, the view in "The Promise" that there should be no profiteering. Beyond that, I have no comment.

John Mason: What about you, Ms Thompson?

Kate Thompson: I am in the same position. As for the question whether the provision should be kept in the bill, it is important for progress to be made on delivering on these aspects of the Promise, so I would be reluctant to see it taken out.

John Mason: Fair enough.

A linked issue is that of foster care and the idea that the organisations involved in that work should be charities, which is a slightly different approach. Again—and this is perhaps a question for Ms Burns—is it sensible to have a different approach for fostering?

Claire Burns: As Fiona Duncan said, that makes sense in some ways, because we are dealing with independent fostering organisations, only a small number of which are not charities. Therefore, the approach seems to be a pragmatic way of shifting things. Foster care is being moved into charitable status in Wales, too, and there is quite a lot of evidence to look at there. I think that it is a helpful way forward.

The issue was consulted on in the consultation on foster care, but there is still a bit of work to do to understand the implications. Some providers have told us, "We might not be able to deliver in Scotland any more if the rules get stricter." Again, we just have to be very clear about the implications and whether such a move would reduce capacity and destabilise things in any way. I am not saying that the issue of profit making is not important; I just think that we need to fully understand the impact on the sector and the provision that we have already, particularly at the moment, with the reduction in the number of foster carers and in provision overall.

John Mason: How do we overcome the risks? Is it simply by just moving very slowly?

Claire Burns: Yes. We need to engage with stakeholders and the sector. The Scottish Government has consulted on whether the issue of profits in foster care should be covered by the bill, and I think that people agree that no profit—or, at least, no excessive profit—should be made. In fact, the situation is almost the same as that in residential care. Do we understand the landscape? Do we have the data? Which providers might come out of the sector if this were to happen? We need more engagement with the sector to understand the landscape.

John Mason: The previous panel seemed to feel that we were further on than that and that we actually knew more about the fostering side of things than we did about the residential side.

Claire Burns: That might be the case, as we are talking about a smaller sector of provision, but I suspect that we still have some work to do to be really clear about the implications.

John Mason: Okay. My final question is about the financial memorandum as a whole. On the specific point about profit limitation in residential services, I see that there is a cost to the Scottish Administration in 2026-27 and 2027-28—and then nothing at all after that. That surprises me a little bit, because surely there would need to be on-going supervision. What are your feelings about the financial memorandum? Is it a bit light, as I think the previous panel suggested? Is that your feeling, too?

Claire Burns: Yes. We tend to err on the side of optimism with the financial memorandum. We think about things—for example, a communication strategy for telling young people about their rights and entitlements—as not having a cost to them when they absolutely do. We should always assume that there is probably more cost rather than less.

12:45

John Mason: Ms Galli, do you want to comment? The others are nodding but I could not see you.

Maria Galli: Yes, I am nodding too.

The Convener: Ms Burns, your submission talks about the comment in the financial memorandum that "All costs are steady-state". You are perhaps more concerned than previous witnesses that the memorandum is a bit light. You are worried about that statement and say:

"This is a concern and warrants further consideration."

Claire Burns: Yes. It mostly relates to the point that I just made, so I apologise for repeating myself. Even where it feels like there are no costs, money and resource are involved if we are going to let children, young people and families know that they have entitlements and rights. On aftercare, the financial memorandum focuses on assessment. There are other costs that need to be taken into account.

The Convener: That is helpful.

Willie Rennie: I like the level-headed advice that we are getting. It is very refreshing.

I have a question on private providers and profit limitation. It is particularly for Claire Burns because of her experience. Are there good providers who might be spooked by the proposal for profit limitation, particularly because there is a lack of substance behind it? For instance, some providers whose service is good might be securing a small profit and might look to expand. However, they might decide to put expansion on hold until there is absolute clarity about what the provision means. Is that a possibility? Do you have any evidence that that might be coming down the track?

Claire Burns: I do not have the evidence yet because the proposal is relatively new to people but it is a possibility. We need to be really careful about where there might be some destabilisation of the sector. Often, the organisations that provide

bespoke, specialist services to children and young people are private ones and we need to be careful that we do not unnecessarily take that specialist service out of the system.

Willie Rennie: That is excellent. Thank you.

Miles Briggs: It is not good morning but good afternoon—and probably good evening for Maria Galli. I thank the witnesses for joining us.

I will ask a couple of questions about the proposed register of foster carers, which Claire Burns has touched on already. By and large, there has been support for the proposal, but are there any issues with it that the witnesses want to outline to the committee?

Claire Burns: We are broadly supportive of it in principle. It would be helpful for the Scottish Government to be clearer about the problems that it is trying to solve with the register. However, we can see clear benefits to it.

I looked at the really strong responses from foster carers, who said that a register was important for them and that it was about their status and place within the service provision, which is important.

There are potential benefits to having a national picture of foster care and national learning and development. Some people also say that the register could help the matching process for foster carers, particularly with the numbers coming down. We are a wee bit concerned that we might end up moving children and young people away from their local communities, so we need to be careful about that.

The register also has the potential to improve some aspects of safeguarding, but we need to be careful because it will not cover all aspects of safeguarding. It will only tell us who has been deregistered in some areas.

As you will have seen from our submission, we know from the adoption register that some of the data protection questions need more detail. Who would hold the information? Who would be compelled to give it? What would be done with it?

However, the proposal has the potential to support the foster care sector.

Miles Briggs: If no one else has anything to add, I will, in the interests of time, move on and put another question to you, Claire. I raised with the previous panel the issue of family group decision making, including in relation to kinship care, which is part of the bill. Do you wish to make any points on that?

Claire Burns: I would probably separate kinship care from family group decision making. There has been some disappointment about the lack of focus on kinship care. I am not saying that things are not happening, and it must be seen in the context of the other things that are being done, such as the work on parity of payments for kinship and foster carers, which is hugely important; the Scottish Government's work on its vision for kinship care; and the kinship care collaborative. I would just urge the committee to make it clear that we need to keep the threshold for legislation high. Other things are being done and improved on outwith legislation.

On family group decision making, I probably take a slightly different view to those on the earlier panel. There was, I think, a view that the evidence was overwhelming in that respect, but I think that we need to look more critically at the issue. The evidence says that family group decision making works really well when we are very clear, and have a consensus in the sector, about how and when it is used. Some of that work still needs to be done.

In Scotland, we—by which I mean not just those in Parliament but those in the sector—often want to get things into legislation and ask the implementation questions afterwards. There is a real opportunity for the committee to think about whether family group decision making is something that we want to do. It is already happening in a number of local authorities, but we need to ask the implementation questions now. How much will it cost? What will we have to disinvest from in order to prioritise it? Who is the workforce who will deliver it? Where and when will it happen?

Yes, the approach has real potential. We are involved in work to support family group decision making, which is about strengthening the practice and making it more explicit. Again, it is not that there is nothing happening—I would just urge us to ask the implementation questions now and not after we put this into legislation.

Miles Briggs: That was very helpful. Maria, did you want to come in on any of that?

Maria Galli: I would not add very much more, except to say that we have expressed concern about missed opportunities in a number of areas. Those are two issues that could have been considered more.

Miles Briggs: Finally, the Promise includes a national lifelong advocacy for care-experienced people. Having spoken to older care-experienced constituents of mine, I am not sure where advocacy support for them will come from, because it does not currently exist. Indeed, I do not think that many people necessarily know about that potential opportunity.

I know that your organisations work predominantly with children and young people, but if we are going to have this wide definition of

national lifelong advocacy, where will the support come from? Will it have to be established, given that most services that I know of are over capacity?

We have also discussed local government and changes to CSO. Do you have any views on that? Coming back to Ms Burns's point, I wonder what that means when it comes to considering and getting ahead of those issues before legislation is passed.

Kate Thompson: The remit of my office is defined in legislation, and it covers young people up until they are 18; for care-experienced people, the age limit goes up to 21. Therefore, we are not in a position to offer any comment on that.

Katy Nisbet: I know from working in the children's sector that advocacy services are oversubscribed at the moment. There might be a difference in how an advocate works with a child and with a care-experienced adult, so there might well need to be consideration of different skill sets and ways of working.

I am a lawyer who works with children, and we do that in a very child-centred, specialist way. Things would be different if we were dealing with an adult. I suspect that it will be the same in lay advocacy.

Miles Briggs: I will just put on the record that the Government made an apology to forced adoption individuals—to the mothers and fathers involved, and to those children, who are now adults. Despite that, the situation with getting advocacy and being able to access services has, for many of those people, not changed. For a lot of people, it then becomes an exercise in expectation management.

Jackie Dunbar: Good morning to the witnesses, and thank you for coming along. I want to ask you basically the same questions that I asked the previous panel. What are your views on having single-member panels in certain circumstances? Regardless of your opinion on that, I would like to know the level at which decision making would happen if single-member panels were to come into force.

Kate Thompson: We are not opposed to single-member panels, but we are cautious about them and about the potential, as with other aspects of the hearings amendments, for interference with children's rights. Certain preliminary decisions could be decided by a single-member panel, but we think that such provision should be drafted in a narrow way to ensure fairness. It is very important for such a decision to be decided on a case-by-case basis. For example, we would not say that a single-member panel would be capable of deeming or undeeming a relevant person in every case, because that would depend on the aspects of the particular case. As a result, some sort of assessment would need to take place.

The same is true with interim CSOs. There is potential for serious interference with children's rights, including the potential for secure conditions to be imposed. That will create another layer of decision making. That role is being left to the national convener, who will probably be the most appropriate person; however, in order to make that decision, they will need information from the reporter's office, and that will mean work for the reporter. There are also privacy rights involved in relation to what information is shared and whether that is anonymised, which will be another role for someone. Therefore, there are some resourcing issues that do not seem to have been completely ironed out. Obviously, in time, the Scottish Children's Reporter Administration will also have an input to make.

We can see single-member panels having the potential to streamline decision-making processes and some routine decisions being made by a single member. However, more thought will be needed to ensure that particular children's rights are upheld.

Jackie Dunbar: So, that is a cautious yes—as long as more detail is provided.

Kate Thompson: Yes.

Katy Nisbet: We are probably all pretty much aligned on this question. Although we see potential benefits, we are looking at all the amendments through the lens of whether they improve the experience of children and ensure that their rights are being upheld. For us, there is a question mark over the types of decision making that could be left to a single-member panel. Again, this is an example of the detail being left to regulation. Without that detail and without fully understanding the nature and scope of the decisions that could be made, we find it difficult to come to a conclusive view.

Maria Galli: Katy Nisbet is absolutely right. We are aligned on this question, and the Law Society, too, is aligned on it. In our submission, we said that our primary concern is, for all the reasons that the other witnesses have mentioned, that this has not been thought through and that there is a risk to the rights of children and young people, particularly around privacy. Yet again, it is why we have submitted that serious consideration needs to be given to making the structure of the panel a legal chair and two lay members. That is our position on the matter.

Jackie Dunbar: What are your views on the remuneration of chairs and panel members? Do you see that as a good thing or not?

13:00

Kate Thompson: The bill provides for the ability to remunerate panel members in general but does not talk specifically about the chair or about the role that the hearings review envisaged, which was to have something like a chairing member. We are interested in those proposals, but they are not specifically in the bill and have not been mapped out enough for us to be able to carry out a full child's rights and wellbeing impact assessment. We can see that there could be benefits to the expanded role.

There is also a separate recommendation on the introduction of specialist panel members, who would not take the chairing role. However, without further analysis or detail, we have not seen any strong evidence to suggest that that would support children's rights. The CRWIA gave quite speculative information about the positive impact that that could have, but there has been no trial or pilot and there could be significant cost and operational implications that might create an imbalance within the hearing and lead to further complexity. A number of specialists are already involved in children's hearings, so adding a specialist member could bring another layer of specialism and cause more confusion. There are also operational implications for the resourcing of different areas. After all, it might be easy to get access to specialists in Edinburgh or Glasgow, but not in more rural, Highland or island settings.

The general question about remuneration is whether it would create a power imbalance in a panel that has two unpaid members and one paid member who is more qualified than the others. We must think very carefully about whether that model will work in practice and ensure fairness.

Katy Nisbet: What would be the purpose of remuneration in that context? If remuneration of the chair is accompanied with specialist training on trauma or on human or children's rights and leads to continuity in chairing, that would be positive. However, the question is: what is the purpose of payment, and what would come with that?

I am unclear about the purpose of specialist members. Would a specialist be the third panel member or an addition to the panel? If they were paid, would that create a power imbalance? What weight would be given to their views and who would decide what sort of case required a specialist member? The lack of detail makes it really hard to come to a conclusion on whether that would benefit an extremely vulnerable child in a hearing or whether the specialist would be just another person whom the child had to tell their history and life story to. There are probably more questions than answers. That is our position.

Claire Burns: I totally agree with what everyone has said. No one denies that Sheriff Mackie and his group were driven by a desire to make things better for children and families. They heard about drift and delay and about inconsistency, and I have no doubt that that was what drove them in this case.

Our response, and the responses of a number of others, show that we are not convinced about remuneration, as it would come at a massive cost. We need scrutiny of where it would provide added value or shift the system enough to be worth what we would have to pay for it.

Roz McCall: Claire Burns, you mentioned implementation. I had real concerns about that when the Children (Care and Justice) (Scotland) Bill was going through Parliament. I guess that this question will be for everybody but, from your point of view, Claire, are the avenues that the Government has chosen to make this work and to implement the changes—including the financial and workforce planning aspects and so on—the right ones to achieve the outcomes that we are trying to get to?

Claire Burns: That is the million dollar question. Some aspects require a change to legislation—we had to look at aftercare, because there was too much feedback about its not working. In relation to other aspects, developments are happening in the sector alongside the bill; in relation to yet further aspects, we are not convinced that the bill adds value or has teeth, for want of a better word.

A good example of that is the definition of "care experience". Although having that would be really helpful, as it would provide consistency across organisations and help other corporate parents understand what care experience means, we are not clear what added value it will ultimately give to children and young people. I would question whether it has met the threshold for legislation.

There are other aspects in relation to children's hearings where we are saying that those are legal proceedings and, as such, this level of scrutiny must be the avenue for that. It is a bit of a mixed picture.

Roz McCall: That is very helpful.

The bill will go through stages 2 and 3, and there will be amendments and so on, but can you flag up any unintended consequences of the bill as it has been drafted, from a legal perspective?

Kate Thompson: Possibly not beyond what I have already mentioned throughout my evidence, which are the unintended consequences of potential breaches of children's rights, especially in relation to children's hearings. A lot of those provisions have been drafted with the hope—with the speculation—that they will be beneficial;

although we see that there is potential for that to be the case, there is also the potential, without further work and consideration, to undermine children's rights. That would be my concern, along with resourcing, which we have already talked about, and about further complexity being added to the care landscape. I repeat the concern that, without further work done on it, the bill might undermine the rights that are set out in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

Roz McCall: I thought that that would be the answer. I thought that privacy would be in there too, but that is fine. Anyone else?

Katy Nisbet: We have concerns. I come back to aftercare. We think that the changes that are proposed through the bill will not do what people think that they might do and might give comfort to decision makers in the children's hearings system that a child who comes off their order before they are 16 will then have recourse to aftercare, and that that will offer a good amount of support. However, a child who comes off of their order prior to 16 will not be able to access continuing care. Allowing a person to stay in their stable, settled care placement up until the age of 21, if they so wish, should be the gold standard here. There is a concern, particularly in relation to the way in which the bill is drafted, that the rights are not great and not comparable to those of other children who are 16 and 17, who are getting mandatory aftercare.

We have a general concern about the complexity of the proposed changes to the children's hearings system, particularly in relation to the post-referral discussion, which we have not really spoken about. There is a risk of power imbalances there. We question the purpose of children going into that discussion and of a possible negotiation taking place on their grounds, for which they have not had advice. We would say that they would need a lawyer at that point, because it is a strange informality that masks quite a formal situation and there is potential for huge rights breaches.

Some things need to be thought through. The appropriate safeguards that require to be put in place need to be thought about now—they might well have additional costs, too. The implementation of all that requires to be looked at as well. There are probably other things, but that is it for now.

Roz McCall: Please feel free to let me know what those are. Ms Galli, have you got anything else to add?

Maria Galli: I echo what has been said. However, I think that the biggest unintended consequence as a result of the very valid attempt to try to declutter the landscape of care, as referred to by Fiona Duncan, is the much greater, exacerbated uncertainties and complexities. It is the children and young people and their families who are most affected by that, because, as Sheriff Mackie said, many of the provisions and their impact are unintelligible and inaccessible, and there are insufficient answers on how they can be implemented. Unfortunately, those unintended consequences will come to bear if the provisions continue in the current format.

Roz McCall: That is wonderful—thank you. I have no more questions, convener.

The Convener: I have a couple of final questions. Section 3 of the bill extends the corporate parenting duties, and CELCIS has been arguing that extending the duties to those who have experienced more limited state involvement in their lives—for example, being in a very brief period of care as a baby—might raise human rights issues and contradict the principle of minimum state intervention.

Are you able to tell us a bit more about your concerns around that, Ms Burns?

Claire Burns: Sure—those concerns are expressed in a number of the written responses. In some ways, we are not quite sure why the extension to corporate parenting was included in the bill. What problem is it trying to solve? We see that as quite distinct from our support for the expansion of the eligibility of aftercare.

The issue around corporate parenting is that the bill proposes that, if you have ever been looked after at any point in your life, the local authority, as your corporate parent, has to pay regard to you throughout your life. For example, in corporate parenting plans, the authority would have to say how it would respond to the needs of a huge population of people. The example that we gave in our response—and a number of people have given the same example—is that the duties could include somebody who was looked after in foster care for the first two years of their life and then adopted. At that point, someone else took on parental rights and responsibilities, yet the extension of duties might ask corporate parents to make plans and have due regard to that group of children and young people.

I am not quite sure what the rationale was for the expansion of the duties. The expansion could be helpful. We know that there are groups of children and young people for whom we do not have a legal duty to support. We are much clearer about the lifelong needs of people who have been adopted or for whom there is adoption breakdown, but it is about whether extending corporate parenting duties would be the lever to support them, because those people require specialist services.

There are a number of concerns, but the infringement on private life and family is the one that we are most concerned about, and I think there is consensus on that point in the sector.

The Convener: Finally, section 14 of the bill proposes changes to the process of establishing grounds. Both CELCIS and the commissioner's office have raised issues to do with the enhanced role of the reporter in the bill. What could be done to ensure that the concerns that you have raised are addressed and that children's rights are upheld when establishing grounds? Can you provide any more details or information about your concerns around the enhanced role of the reporter?

Kate Thompson: This area echoes some of the things that I have said with regard to our potential concerns about other provisions. The issue of the engagement with the reporter has also been outlined in The Promise Scotland's submission. Originally, there was intended to be wider availability of the opportunity to request an interaction with the reporter at early stages. What is now in the bill is a mandatory offer to families and children who are involved in that process, which is different from what was suggested and from what is already happening in practice in some areas. That was much more of a discussion about the reporter's role and what will happen during the proceedings, rather than a discussion about establishing the grounds or the understanding of the children and young people.

There are resourcing issues. I was previously a children's reporter, so I know that my former colleagues will see a few aspects of the bill that will put pressures on their role and on the system. The accommodation of the changes will have to be properly resourced.

You might end up with a situation where you have to arrange separate meetings with different relevant people. Those relevant people might not be two parents; they could also be grandparents or foster carers. It might not be appropriate to meet the family as a whole. There could be domestic abuse situations, in which case there would have to be separate meetings, as well as separate meetings with the child. What potential exists for there to be an infringement of rights if undue pressure or influence is exerted, not on purpose by a reporter, but simply through the process, which might seem formal? That might take away from the idea of not putting grounds to children and young people in the way that has been done, because if those are read to them in a meeting, that might still seem like a formal process. That will add another layer to the complexity of the process.

13:15

What has not been addressed—I think that Katy Nisbet will comment on this, too—is what the role is of legal representation here, especially in complex cases. Will legal representation come in at an earlier stage in the process to provide advice and also be involved in the post-referral discussion?

With regard to the process of establishing grounds, grounds have to be formally put to the child and to relevant people to make sure that they understand what has been said and, at some point, someone needs to conduct an assessment of that understanding. That person could be a paid chair, as Sheriff Mackie envisaged, or the role could be performed by legal representation, but it does not seem appropriate to us for it to fall to the reporter. That is not something that the reporter does at the moment. The role could be akin to that of a prosecutor. Would we want a person who, in bringing grounds that might contain allegations of criminal offending against a young person, is a representative of the state to be the person who assesses whether those grounds are understood and have been established fairly? That needs to be further ironed out, and consideration needs to be given to the realities of how the system functions at the moment. In many cases where there are more complex issues, legal representation is involved.

Katy Nisbet: That is the point that I was alluding to in response to Ms McCall. We are very concerned about the post-referral discussion, which is a mandatory discussion. The reporter who has looked at the evidence and decided that there are grounds for compulsory support and has drafted those grounds and the statement of facts is being asked to have a discussion with all of the relevant people and the child. There is no detail about whether that discussion will take place with all of the parties together or each of them separately. From the point of view of time resource, that could add a huge amount.

We are concerned about the imbalance of power, the nature of those meetings and the pressure that might be put on a child when, as far as we can see, the bill does not provide for any access to legal representation. We could be talking about offence grounds. I always come back to that, but that is the more extreme end of the scale. In effect, that would involve the child being asked to talk to the prosecutor without having any legal representation or any real understanding of what the purpose of the meeting was. The child does not have to attend that meeting, but could that have an implication? The reporter has to prepare a report, and they also have to decide which route the grounds referral should take. Should it go straight to the sheriff, as Kate

Thompson said? Has everybody understood that it will never be agreed that it should go to the sheriff? There are numerous other routes. SCRA has a very good flow chart that underlines the complexity of that decision making.

If a child does not attend a grounds hearing, the only source for the child's view might be the report that the reporter has drafted off the back of a meeting with them. The process needs to be thought out. There are numerous layers of potential human rights breaches going on, particularly for the child, but also for others who are involved in the process. Once the process has started, there is a need for a lawyer and for advocacy to have a role at that point.

Kate Thompson: When it comes to offence grounds, there would be a concern about incrimination. If a young person said certain things in the context of that meeting and a referral was forwarded on offence grounds, they could incriminate themselves, which could cause evidential issues at a later stage.

The Convener: Do you wish to comment, Ms Burns?

Claire Burns: No.

The Convener: Ms Galli, would you like to speak before we finish?

Maria Galli: Yes, please. I will keep it very brief, because I agree entirely with what has already been said.

Like Kate Thompson, I was a children's reporter; before that—under old money—I was a reporter to the children's panel. I certainly agree that there are significant concerns about potential conflicts of interest for the reporter. The reporter is the assessor of the evidence and, as Katy Nisbet said, they are like a prosecutor. The reporter is also the person who, midway through the process, might take on the case, on behalf of the state, against the child in a proof hearing, and might lead evidence and so on. Therefore, issues around potential incrimination abound.

We are concerned about the compatibility with human rights of the introduction of this new layer of decision making.

The Convener: Thank you all very much for your time. That concludes today's evidence on the bill. I appreciate the information that you submitted before today's meeting and the answers that you have given.

The committee will now move into private session to consider its final agenda item.

13:21

Meeting continued in private until 13:29.

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Room T2.20
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