OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Education, Children and Young People Committee

Wednesday 17 September 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 17 September 2025

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE

26th 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:

Stephen Bermingham (Children's Hearings Scotland)
Jo Derrick (Scottish Throughcare and Aftercare Forum)
Duncan Dunlop
Matt Forde (NSPCC)
Alistair Hogg (Scottish Children's Reporter Administration)
Roz McCall (Mid Scotland and Fife) (Con)
Lynne O'Brien (Aberlour Children's Charity)
Laura Pasternak (Who Cares? Scotland)
Margaret Smith (Partners in Advocacy)
Natalie Williams (The Fostering Network)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 17 September 2025

[The Convener opened the meeting at 09:00]

Subordinate Legislation

Teachers' Pensions (Remediable Service) (Scotland) Amendment (No 2) Regulations 2025 (SSI 2025/197)

The Convener (Douglas Ross): Good morning and welcome to the 26th meeting in 2025 of the Education, Children and Young People Committee. I welcome Roz McCall, who is joining us for today's meeting. The first item on our agenda is consideration of the Teachers' Pensions (Remediable Service) (Scotland) Amendment (No 2) Regulations 2025 (SSI 2025/197). The instrument is being considered under the negative procedure. As no member wishes to make any comments on the instrument, is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

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

09:00

The Convener: The next item of business is evidence from two panels on the Children (Care, Care Experience and Services Planning) (Scotland) Bill. I welcome our first panel. Stephen Bermingham is senior policy and standards manager for Children's Hearings Scotland; Matt Forde is partnerships and development director for NSPCC Scotland; Margaret Smith, who is joining us remotely, is the services manager for Partners in Advocacy; Alastair Hogg is head of practice and policy for the Scottish Children's Reporter Administration; and Laura Pasternak is policy and public affairs manager for Who Cares? Scotland. Welcome to you all. As you can see, we have a big panel, with five of you on it, so there is a lot to get through with members' questions and your answers.

Looking at all your briefings, I see that you are largely supportive of some areas in the bill but there are some areas in which you would like to see change. Could you briefly describe what you like about what is in the bill and what you would like to see improved during our scrutiny at stage 1, and at stages 2 and 3 if the bill progresses? Mr. Hogg, I will start with you.

Alistair Hogg (Scottish Children's Reporter Administration): I was hoping that you might come to me last.

The Convener: You were opening your book, which drew my eye.

Alistair Hogg: We like that this is a step forward towards meeting the Promise. Focusing particularly on the hearings redesign element of the bill—I know that there are lots of other parts, but that is our particular focus, as you will understand—there is a lot that we like about what is proposed. There is not a lot that we do not like or do not think should be there. However, we think that some elements might benefit from some changes or tweaks that might make things a bit better for us.

We like the progressive move to remove and switch around the obligation on the child to attend a hearing, which therefore would give the tribunal the power to require the child to attend rather than put an obligation on the child.

We like the intention to strengthen the chair of the hearing. We can see that the parts in play in the bill are to allow for the separate role of the chairing member and to allow the national convener to remunerate the chair. We like what would flow from that and the thought that it might lead to the recruitment of chairs with particular competencies, skills, experiences and qualifications.

We like the flexibility that some of the legislation brings. Although we have some reservations about the single-member panel hearings, we would, in principle, be supportive of them. We think that we need to be careful about procedural decisions, what we mean by the term "procedural" and when such decisions would be appropriate.

We like the flexibility that is introduced in the bill in relation to interim orders. We like the promotion of the offer of advocacy, which is introduced in various places through the bill, and that duties would be placed on different people to ensure that children are aware of what is happening and what their rights are in that regard. We need to work through the changes to the criteria for referral to the reporter, but we hope that the change will be a positive one.

We like the changes around the ability to exclude people from hearings in certain circumstances. We think that that is a progressive move, which would allow greater flexibility and power in the hearing to take more control in certain situations.

We like the provisions around the removal of relevant person status in certain distinctive circumstances.

We also like the principle of trying to improve the process of establishing grounds for referral. The proposal is quite new and relatively complex, so there is a lot to try to unpick in that regard, but we support the principle of changing that process. We heard a lot of evidence that that is an area of people's experience of hearings in which they would like to see change, and that resonates with what our staff told us.

Way back at the beginning of the redesign process, there were two main things that our staff told us that they wanted to be changed—they wanted the role of the chair to be strengthened and they wanted the grounds process to be improved. Both of those are present in the bill, but, as I said, there might be some elements that would benefit from changes that would make it even better.

The Convener: We will get into a number of those elements through our questions.

I come to Mr Forde. If there are elements of what Mr Hogg said that you agree with, you do not need to repeat them. Which areas of the bill do you think are good, and which do you think that the committee and the Parliament should focus on with a view to improving?

Matt Forde (NSPCC): Thank you for giving us the opportunity to speak about the bill.

Our strong interest is in ensuring that what we do in the bill helps the hearings system to be as good as it can be for all the children who need it to be there for them. In the past 20 years, there has been a seismic shift in the hearings system. It is now the case that 27 per cent of referrals involve children under five, 34 per cent of hearings involve children under five, and a third of the hearings system's business involves children under five. Given that a much larger proportion of the children in the system first came into it when they were under five, we are strongly focused on the extent to which the bill addresses the need to take account of the unique interests, needs and vulnerabilities of babies and infants.

There are aspects of the bill that we think are very positive. We appreciate the overall intent of the bill and where it comes from. We think that there are some positive elements that, if they were strengthened further, would allow the hearings system to start to fulfil the aspiration that we all have for it, which is for it to be a world-leading child welfare-based system for ensuring that children's needs and welfare are paramount.

Among the positives in the bill are the proposals to strengthen the role of the chair and to allow for a remunerated chair. We are calling for aspects of those proposals to be further strengthened. We are calling for it to be the default for the chair to be consistent throughout a child's case. We want a duty to that effect to be put in place, however that is fulfilled. That could perhaps be done through the national convener. The chair must have sufficient capacity, authority and judicial competence to handle the complexity that comes with the serious and life-changing decisions that are made for babies and infants.

We very much support the idea of the creation of the role of a specialist panel member, but we think that there needs to be an extra specification whereby, if the case involves babies or infants, the specialist knowledge must be in that area. I am glad to say that we now have more capacity in that respect in Scotland.

The expansion of the right to advocacy is hugely positive, and we support it. However, as the bill stands, there is a glaring absence of any measures to provide for infants' voice and experience to be represented. If I get the chance to, I will explain why I think that that is important. As things stand, the group that needs to be understood most, because the stakes are highest, is the group that does not have the automatic right to independent representation. Babies and infants cannot put up their hands to say, "I need advocacy," or "I want advocacy." Their experience is what they have experienced in their short lives, and how they are now needs to be understood by those who make the decisions. Understanding that requires specialist skills.

More thought needs to be given to timescales overall, but particularly from the perspective of infants. We have had two decades of a lack of progress on improving the length of time that it takes to achieve permanency for children, which takes two and a half years. It took two and a half years 20 years ago. There have been numerous attempts at reform, system improvement and practice improvement. We have referred to relevant, up-to-date, comprehensive and rigorous research that unpicks some of that and shows that that delay is embedded in the process of the hearings. It is partly about the complexity of dealing with infants and making life-changing decisions when there are so many competing voices. It is a difficult matter, but some of the grounds processes need to be capped. We need a limit on the grounds process. We agree with Sheriff David Mackie, who argued that, as it is presented in the bill, the process is overly complex and we very much support his assertions on that. We think that there should be a three-month timescale for the grounds process. That alone could take a year out of the process for some children, which could be life-changing for an infant.

The final point that I would make about timescales is that, if we take the opportunity that the bill presents to modernise and bring up to date the process for babies and infants, that will involve understanding that we do not have all the answers on that yet. The next bit, after getting the grounds and the child into a process of decision making about whether they stay with their parents or go back to be adopted, is very difficult. There is a balance to be struck there. We have to give parents adequate time to engage with therapeutic care to see whether they can become the parents they want to be while, at the same time, complying with the child's timescales and needs for timely decisions about their permanent care, so that they will know where they will be for their next birthday, because those are their forever parents. We are calling for a trial to legislate for a safe baby specialism within the hearings system that would test out exactly how to deliver for babies and infants.

The Convener: Ms Smith, we will come to you now.

Margaret Smith (Partners in Advocacy): Thank you for the opportunity to speak to the committee this morning and for allowing me to do so virtually. Some of what I will talk about has already been brought up; it is good to hear that we are in agreement on some of the issues.

Partners in Advocacy welcomes and supports a lot about the bill. We support the proposal for lifelong independent advocacy, because we like a few things within that, but there are a few things that need to be brought to attention. As I say, we like that the bill seeks to enshrine the right to lifelong advocacy in legislation, and especially that there will be a continuation of advocacy support for those young people who are care-experienced.

We are keen to ensure that the practice of independent advocacy is protected and properly defined within the bill. We support the Scottish Independent Advocacy Alliance's definition of independent advocacy and the practice around it, working alongside the principal standards and codes of practice. That is important to protect the practice of independent advocacy and to define it correctly.

With the increase in lifelong independent advocacy, we are keen to ensure that it is adequately resourced. Current demand for independent advocacy exceeds capacity across Scotland. In order to provide meaningful independent advocacy, adequate resources, structure and finances need to be considered. That is important.

Some access to independent advocacy is bound by criteria. A lot of people across Scotland who need independent advocacy are not able to access it. It is a matter of ensuring that that is considered when offering independent advocacy, to protect the practice and make sure that it is flexible and meaningful.

09:15

We would like to consider providing independent advocacy for care-experienced people who are also parents—often they are young parents. Advocacy provision is needed to support parents who have care experience, with children's hearings as well as in all those aspects of their life for which they need independent advocacy. As I said, we support and welcome the proposal to increase the right to independent advocacy and enshrine it in law.

Laura Pasternak (Who Cares? Scotland): Thank you for having me here. I want to say at the outset that I am looking forward to the session that the committee will have with us and our members on the evening of 7 October. That will be an exciting opportunity to hear directly our members' views on the bill.

I think that most of you know what Who Cares? Scotland is, but I remind you that we have more than 1,700 members. We are a professional independent advocacy provider. We work one to one with care-experienced people to help them to have their voices heard in decisions that affect them.

Our response to the committee's call for views on the bill is an example of the collective advocacy that we also provide. The response was shaped heavily by our lifelong rights campaign and our action on advocacy campaign, which were developed using evidence from our advocacy and from participation by our members. The action on advocacy campaign is also supported by a number of partners, which are mentioned in our response to the call for views.

We are excited—we are delighted—that the bill answers the call from 93 per cent of the care-experienced people whom we surveyed for independent, relationships-based lifelong advocacy. We think that a few tweaks need to be made to ensure that that commitment is included in the bill. That issue echoes back to the independent care review, in which 5,500 experiences related to care-experienced children were heard. Children and adults need to have the right to and access to independent advocacy at every stage of their care experience and beyond.

It is also worth reminding everyone—although you all know about this, as you are on this committee—that the principle of independent advocacy is all about upholding for children and young people article 12 of the United Nations Convention on the Rights of the Child.

We also need to hark back to The Promise Scotland's logo—the heart in the middle represents voice. Although this is called a children's bill, I see it as a keeping the Promise bill in some ways, too.

We welcome the inclusion of a right to independent advocacy. We look forward to engaging more closely to make the tweaks that we think are necessary to ensure that advocacy is truly independent, as Margaret Smith laid out, and is of the highest quality possible.

I have mentioned a few examples of consultation with the care-experienced community. For more than 50 years there has been demand for independent advocacy. That has been expressed through what care-experienced people have said directly, through our Speak Out member magazine since 1977 and through 14 abuse-related inquiries that have called for independent advocacy. A resource on that is in the appendix to our response to the call for views, which highlights information on those decades of demand for independent advocacy and for the voice of care-experienced people to be at the heart of decision making.

The demand is also echoed by care-experienced children and young people's peers at the Scottish Youth Parliament, which has recently published a manifesto that calls on the Scottish Government to

> "enshrine a right to independent advocacy for Care Experienced people of all ages".

That was a product of the consultation of almost 5,000 young people, who backed the demands of their peers.

We feel that, to date, the bill is the first really big and necessary step towards keeping the Promise.

We do not think that the bill can keep the entirety of the Promise—and there are a lot of things that did not make it into the bill. However, the bill has the potential to bring about greater accountability in relation to keeping the Promise. Advocacy is a way to keep the Promise for individuals. We see that day to day from our advocacy workers who are on the front line with our members.

Moving past advocacy, we were also excited to see the section of the bill on extending rights to aftercare for care-experienced people who come off their care orders before their 16th birthday. That issue was raised by our member Jasmin-Kasaya Pilling, through her petition to the Scottish Parliament, which was the product of seven years of her personal campaigning on the issue. I met her on Sunday; she has just had twins—she is doing really well and they are thriving. She wanted me to pass on her thanks to the Government for answering the calls in her petition. She worked collaboratively with care community services and organisations for seven years to get to this stage, and she thinks that it is essential that there is a collaborative approach to delivering that section of the bill.

Harking back to the process of that petition, I highlight that the Citizen Participation and Public Petitions Committee held an informal session with our members and with advocates to talk about why it is so important to ensure that there are rights to aftercare for those young people and to make sure that eligibility is linked to as universal as possible a definition of care experience.

On things that we would like to see being made stronger in the bill, I mentioned that it is important to have the definition of independent advocacy in the bill. I can talk more about that later—I think that there will be questions about that.

In the section on children's hearings, we welcome the earlier offer of advocacy, but, given the complexity of that section, there are certain circumstances in which there must be an opt-out offer of independent advocacy, as is the case in England and Wales. That is in relation to children and young people who are subject to offence grounds and deprivation of liberty orders, because of the severe rights interferences that those measures cause.

There are also certain sections of the bill that we need to ensure are brought within the scope of the United Nations Convention on the Rights of the Child, particularly the sections on aftercare and on the foster care register. We must ensure that people are able to make a challenge if their rights under those sections are not being met, using the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

As I said, the bill is a massive opportunity to bring about more accountability in keeping the Promise, which our members have been calling for since the Promise was made in 2020. One of the things that always sticks in my head is when someone said, “There’s been so much talk, Where’s the action? That is why our campaign is named “Action on advocacy—It’s time”. It would be helpful to amend the bill to include a section on accountability.

The best course of action is to make sure that there are post-legislative scrutiny measures and streamlined data collection, reporting and planning, to ensure that the provisions of the bill are fully acted on and that the legislation is kept in focus during the next session of Parliament. This is the second session of Parliament that has committed and signed up to the Promise, with overwhelming cross-party support. We cannot bind the hands of a future Government, but we need to make sure that that commitment is sustained. Accountability for keeping the Promise must be rooted in primary legislation, as opposed to policy, rhetoric and freedom of information requests. That is not good enough for our care-experienced community.

Stephen Bermingham (Children’s Hearings Scotland): Children’s Hearings Scotland welcomes the provisions in the bill. Like the SCRA, we have a particular focus on children’s hearings—that is the area of our interest and attention. One strength of the hearings system since it was established in the 1970s is its ability to evolve and adapt, and we see several of the provisions in the bill as potentially making a significant improvement to both the experience and the outcomes for children who attend children’s hearings. In particular, there is recognition that those have changed exponentially over the past couple of decades.

We are continuing our journey to “shrink and specialise” in order to meet the aspirations of the Promise. We welcome the acknowledgement that we need an enhanced role for the chair. Hearings and the legislative landscape have become increasingly complex, with the number of people who are attending hearings and the number of papers that a hearing, as a legal tribunal, needs to consider having grown exponentially over the past couple of decades.

Our anchor recommendation of a new, enhanced role for the chair will bring a number of key benefits. It will bring consistency to the system, which children and young people have asked for. It will also bring continuity. Children and young people have told us many times that they do not want to meet a new panel every time that they attend a children’s hearing and have to retell their stories to three strangers. We know that the provisions on the enhanced role of the chair will bring continuity to the hearings system.

The provisions will also bring improved accountability in relation to the enforcement of orders by involving chairs in a child’s case and in making sure that local authorities are implementing the orders and that the professional bodies that are responsible for supporting that child are doing what they are compelled to do by the legal tribunal, which is the hearings system.

The provisions will also result in a reduction of “drift and delay”. We do not want children coming into the hearings system. Over the past couple of decades, we have seen a promising reduction in the number of children who have done so and in the number of hearings—it is a shrinking, specialised agenda. There is also an opportunity to amplify the voices of children and young people. A lot of what we say today will, I hope, reflect the views that we have heard from children and young people leading up to this bill.

Overall, we welcome the bill. We think that it will bring a step change in the children’s hearings system. However, in relation to your question, convener, there are aspects of the bill that could be improved. They are illustrated in our response to the call for views, which you will have seen and which we can come on to in more detail, if required.

I will briefly run through the five areas where we think there is room for improvement. The first is about bringing clarity to how the reporter and the chair of the hearing work together. We must ensure that they are working together to convene the hearing in a way that best works for the child, for example, with information being shared and the hearing being scheduled at a time and place that works for the child so that the child wants to attend.

Another area, which perhaps does not relate to the primary legislation, is that there should be a review of the grounds hearings. As I said, the strength of the hearings system is in its ability to evolve and adapt.

Some of the language on grounds is quite antiquated, and as we change the legislative landscape—particularly as we bring 16 and 17-year-olds into the children’s hearing system through the Children (Care and Justice) (Scotland)

Act 2024—we think that it would benefit from a review, particularly one that involves the views of children and young people. We initially found the new provisions on grounds hearings quite complicated to understand, but we have managed to get our heads around them. A challenge will be to ensure that the sector and those involved in it, particularly children and young people, understand the new provisions on the role of the reporter with regard to the grounds.

We would welcome a new reporter-led grounds procedure, because we think that that would remove the need for grounds to be in front of a three-person panel. That would be beneficial, but timescales would need to be attached to that provision to avoid the risk of drift and delay.

Finally, we have asked for the removal of the requirement relating to the gender composition of the panel in the Children's Hearings (Scotland) Act 2011. As it stands, a panel should, so far as practical, be made up of three people, including a man and a woman. Although that was designed with the best intentions, it was designed at a time when there were concerns arising from the Kilbrandon report that panels would predominantly be made up of men. It was, at that point, a welcome provision. However, Seventy-five per cent of our panel members are now women, and we do not think that gender should be a consideration in making a decision in the best interests of the child. That will be particularly pertinent for us as we move to the chair having an enhanced role and some remunerated posts.

That is an overview of our position, and I am happy to explore those points as we go through this morning's evidence session. Broadly speaking, we welcome the bill and we see it as a step change in the children's hearings system.

09:30

The Convener: Thank you all very much. That was a good overview, and a number of the points that you have highlighted will be picked up by other members. However, I have to say that we have taken 30 minutes for one question. It was my bad by asking a very open question, but we will not be able to repeat that with every question. I am sure that Pam Duncan-Glancy will be more direct with her questions and that you will be more direct with your answers.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you, convener; that is noted. I will get straight to it because of time.

Laura Pasternak, you said earlier that there were some things did not make it into the bill. Can you give us some idea of what those might be? Obviously, should the bill get through stage 1, there will be an opportunity for amendments at stage 2.

Laura Pasternak: How long is a piece of string? I am sure that you will have read The Promise Scotland's briefing on what could have been in the bill—it was initially framed as what could be in the bill—earlier this year, and there was a lot in that.

We need to acknowledge where we are in the parliamentary session: the priority is to be strategic and think about what we need to ensure is in the bill to make care-experienced people's lives better, given the time that we have to pass it. The priority needs to be how we make sure that the bill makes care-experienced people's lives better, and to acknowledge that we will not get everything that could have been in the bill into the bill.

Having said that, there is an opportunity to introduce an accountability section that includes a provision on streamlined reporting for corporate parents, which would mean that local authorities would not have to have separate corporate parenting plans and Promise plans or to rejig the corporate parenting plans to cover the Promise such that there would be no consistency in the issues that are covered. Requirements need to be simpler and more streamlined so that corporate parents know what data and information they need to provide in their corporate parenting reports, in line with the commitments in the Promise, to bring about better accountability for the Promise. That includes areas such education and exclusion.

Earlier this year, we published a report that showed that care-experienced people are six times more likely to be excluded from school. Obviously, a full section on education in the bill would be welcome, but if we ensure that there is an accountability section in the bill, it will give the opportunity to make sure that we collect the data that will improve outcome setting and planning around education.

Similarly, we need more data on and monitoring of restraint. I would like to see better reporting on and a better understanding of that area across corporate parents.

More data collection around equalities for care-experienced people would help us to move beyond the helpful data that was in the Promise; we need to look at whether some of the stats on inequalities have moved on—I might refer to those later. If an accountability and transparency mechanism is not built into the bill, we could be in the same position when it comes to 2030. We need to make sure that we are more organised about that.

Pam Duncan-Glancy: I appreciate that. I will move on to ask some detailed questions about advocacy. Laura Pasternak, I will start with you and then go to Margaret Smith.

The advocacy provisions in the bill, which are mainly in section 4, is shaped by a lot of secondary legislation. Some of the responses that we have had highlight the potential for confusion with section 18, which relates to information on advocacy in the hearings system. Is there anything that you think absolutely needs to be in the bill? Margaret Smith talked about a definition of independent advocacy. Should anything else on advocacy be in the bill? How does it relate to information on advocacy in the hearings system?

Laura Pasternak: On what should be included in the bill, we think that section 4 needs to be amended to define "independence" as meaning separate to, for example—to use the language of the bill—the lead children's services planning bodies and any care provision contracted by them within the local authority area in which a care-experienced person resides, or "is placed" within a residential or secure setting.

The inspiration behind that is the definition of advocacy that has been in the national practice model for the children's hearings system since 2020—we have five years of a really well-established legal definition of "independence", but it is actually rooted in the Mental Health (Care and Treatment) (Scotland) Act 2003. Our definition was inspired by that definition and we have seen that it can help to bring about a more independent voice for the young person that avoids conflicts of interest. If somebody is trying to uphold the young person's voice but at the same time is employed by the local authority—if they are, for example, a children's rights worker for the local authority—potentially, there is only so far that they can go to uphold the child's rights. That is why we think that that "independence" definition is crucial.

It is also a necessary safeguard against what we have seen since 2020. Unfortunately, despite the commitments around advocacy, across the board, we have seen cuts to the provision of independent advocacy as opposed to investment in it. Obviously, that varies from area to area. However, in some areas there is no longer any provision of independent advocacy for care-experienced people and the only provision that is provided is non-independent. I have not asked why that is, but my presumption is that it is to save money. When we are looking at the areas in society where we need to be saving money, children and young people in the most vulnerable situations is not the area where we should be starting. It is not a useful starting point. Therefore, independence-wise, that is the solution that we have proposed.

I also point to the Scottish Government's advocacy guidance from 2014, which states that

> "Individuals who have a legal duty to act in the best interests of the child or young person, such as Social Workers, Panel Members and Safeguarders, should not also act as the child or young person's advocacy worker."

We need to bear that in mind when it comes to developing the regulations around not only that provision for the section on lifelong advocacy but for the CHS section. We might talk about that a bit more later.

Pam Duncan-Glancy: On the lifelong advocacy point, do you think that we need further information in the bill about when someone has access to advocacy and who has access to advocacy, or do you think that regulation is the space in which to do that?

Laura Pasternak: There would be greater clarity if there was more specificity included in the bill. However, legislation is harder to update than regulations. We know that the definition of care experience has evolved and it is likely to continue to evolve. It could be quite advantageous to have those specifications in regulations, which would be the product of further consultation. Having said that, I think that it is important to keep the word "lifelong" in the bill.

The bill could be further developed by including the term "relationship-based", to guide the regulations that will be developed. That is such an important principle for independent advocacy for our members. They trust their advocates and they want to ensure that there is a continuity of relationship and that they are not met with cliff edges in terms of age and eligibility when ageing through the services for care-experienced people, and onwards into adulthood.

On the question around the CHS, something else that we think needs to be in the bill is the opt-out provision that exists in England and Wales. As I said earlier, the line in the sand has to be care-experienced people who are subject to offence grounds or deprivation of liberty orders. Advocacy would really help to guide care-experienced people through the hearings process—which is complex, even with the changes proposed by this bill—and to understand the rights from the outset, the consequences of agreeing to grounds, for example, and the lifelong impact that that could have on their record and disclosure checks. We must ensure that that safeguard is in place from the outset.

Pam Duncan-Glancy: Thank you. On that, do you think that it should be independent advocacy or legal advocacy?

Laura Pasternak: Both. There needs to be an opt-out for independent advocacy and independent legal advice. In terms of the relationship between the two services, the child's advocate is trained—our training is lawyer led—to know when to refer for legal representation. In certain situations, the representation is then provided purely by the solicitor, or, if the child would prefer, both adults can be in the room. It is very much down to the child’s view.

Pam Duncan-Glancy: Thank you, Laura. Before I turn to you, Margaret Smith, I will ask Matt Forde about how the role of advocacy could work for infants and babies.

Matt Forde: Our focus is to bring into our thinking that babies and infants need advocacy. It is not a well-established part of our system. As I said in my opening remarks, we have fairly radically changed the nature of the children’s hearings system, but we have never scrutinised what that means for those children.

It would involve a whole new set of provisions. The first thing to say is that it seems daunting to people to understand how we can represent independently the views and experiences of babies and infants who cannot speak. The answer to that is that there is a unique set of skills and specialisms—thankfully, we have a growing group of them now in Scotland—that are capable of eliciting the views and experiences of children in such a way as to help to make the right decisions about their future.

I will give a clear example, which is quite difficult to think about. Babies or toddlers who have been abused or neglected commonly adopt a strategy of not signalling their distress or their needs. What you see is somebody who seems compliant or happy, but they have learned not to convey their inner distress, because it is so frightening and terrifying when they do so. You need quite specialised skills to get behind that and to realise that, for example, this is a child who really needs recovery. Therefore, the first point is that it requires someone who is skilled and attuned to the task.

On the question of independence, we are not experts on advocacy per se across the board, and I appreciate that there are important considerations about independence. The parallels with adult mental health and adult mental health tribunals are helpful in that regard. Quite often, people without capacity need representation that is adequate for their advocacy needs. It is the same new ground that we need to break for infants and babies. The primary criterion would be the availability of sufficient skills that are attuned to the needs of the infants so that the hearing panel members and decision makers have confidence that it is a robust and reliable process.

Pam Duncan-Glancy: Is that what you mean by an infant safeguarder?

Matt Forde: Yes. That involves providing an extra safeguard for the infant, recognising how challenging that is within a complex system.

We are looking to shift to a new default when it comes to how we think about the hearings system. At the moment, by default, every discussion about the hearings system involves people thinking about an adolescent speaking their mind. We need to change our way of thinking, so that, routinely, we accept that we do not understand what is going on in that child’s life and that we need more independent scrutiny of the situation and an acknowledgement of additional perspectives if we are to competently deliver what the child needs.

09:45

Pam Duncan-Glancy: Laura Pasternak, how would that approach interact with an approach involving independent advocacy?

Laura Pasternak: We think that there is a complementary relationship. It is important that the two roles are distinct, as they each play a different part in the hearing. A safeguarder makes recommendations around the best interests of the child, and, as part of that, considers the child’s view. In situations involving specialised non-instructed advocacy for babies, younger children and children with complex communication needs, where that is a form of supported decision making, the safeguarder’s sole purpose is to ask questions about the rights of the child and to make observations around their behaviour. That is a specialised role and requires specific training, as has been said.

We do not think that, especially in situations involving infants and babies, there is any benefit to reducing the number of adults in the room, because the recommendation is that infants and babies should not be present at the hearing anyway. We think that the greater the protection around the children’s rights, the better. That would be in line with the current guidance for the children’s hearing system.

I also think that we need to be careful that we do not lose that element of independence. Some of the responses to the call for views recommended that there should be a guardian, as is the case in England and Wales and Northern Ireland. However, such a guardian could be a social worker, a solicitor or an individual who has been given permission by the court to represent the child, so there might not be that element of independence if that non-instructed advocacy role is lost. We need to ensure that there is as much support around infants and babies as possible.

On specialist training, the Scottish Government expert reference group is currently developing what an advocacy qualification should look like in terms of skills and training, and it will be rooted in what is already in the national practice model for the children's hearings system.

We need to make sure we consider infants and young children separately and in their own right, but we also need to not over-pathologise them. There have been amazing recent studies around the voice of babies. Earlier this year, Starcatchers organised a conference at which a lot of evidence was shared about how we can understand what a baby's views are and how they can exercise their rights. Similarly, Together recently published the "Tiny Rights Detectives" report, which talked about why it is really important to make sure that, wherever possible, we involve babies in complaints mechanisms, for example. We need to be ahead of the curve, which is relevant to what Matt Forde was saying about specialist training, and think about how we can listen to what babies and young infants think.

My last point is that we also we need to make sure that we maintain the role of non-instructed advocates in order to uphold the public sector equality duty for children with disabilities, the requirements of the Equality Act 2010 and—looking ahead to future human rights developments in Scotland—the UN Convention on the Rights of Persons with Disabilities. We definitely need to ensure that those two roles complement one another.

Pam Duncan-Glancy: Thank you. I know that we are tight for time, but does Margaret Smith have anything to add to what we have already heard?

Margaret Smith: I echo the comments on the need for a clearer definition of independent advocacy and for an understanding of non-instructed advocacy as a model of independent advocacy that can help those young children who do not traditionally verbalise their views. That is an important model, and it requires understanding, a clear definition and investment.

Miles Briggs (Lothian) (Con): Good morning to the witnesses. I thank you for joining us.

I have a couple of questions. I will start now and continue later in the session. My first question relates specifically to aftercare, which we heard some organisations' views on last week. Who Cares? Scotland stated in its submission that the aftercare provisions in the bill could go even further—I agree with that—and others have raised concerns with the committee around estimated costs. How might those provisions be improved, and how can the Scottish Government ensure that they are adequately resourced?

I mentioned Who Cares? Scotland, so I ask Laura Pasternak to start, and then anyone else can come in.

Laura Pasternak: As I said earlier, we were delighted to see that the call in Jasmin-Kasaya Pilling's petition had been answered.

We need to ensure that the provision is brought within the scope of the UNCRC and that the rights are restated in the bill so that they can be subject to challenge under the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

With regard to the implementation of aftercare, we need to think about how eligibility is not overly restricted. That can potentially be developed as a result of the section in the bill on guidance in relation to care experience, as the guidance will look at the definition of care experience and how people who have received informal kinship care or have been in situations of adoption breakdown can access aftercare or other support if they need it.

With regard to financial investment, the financial memorandum talks about the costs being in a steady state, so it does not look to provide more funding to expand the capacity for aftercare. That appears to be an oversight, so we need to get some assurances around the funding that will be required to ensure that aftercare can be provided.

I think that local authorities will be particularly interested in that, given the patchy provision of support across Scotland—which we have spoken about—for care-experienced people. Regardless of where people live or where they have been moved to, they need to be able to access aftercare. There should be no restrictions that say, for example, "You can't receive aftercare here because you were in care in another local authority when you were growing up." We need to move past those restrictive eligibility requirements.

Miles Briggs: Thank you for that. Does anyone else want to come in on that point?

Matt Forde: We would highlight as a particular challenge the transition points in the lives of people who have experienced multiple adversities. Care-experienced people too commonly face a cliff edge in relation to aftercare, and we would want to put a name to that. During pregnancy and parenthood, care-experienced people all too often rapidly find their relationship with care services flipped, because they are subject to child protection activity, with scant provision of therapeutic care.

We have certainly had an insight into that through the research that we did on children who were removed into foster care. Vulnerable parents were quite often left without support while the processes were unfolding. Aftercare should be trying to address those specific pinch points. That is crucial to taking a compassionate, lifelong view in helping those who have been so vulnerable that they required the care of the state at a vulnerable point their lives, so that there is not a cliff edge and they are helped through that transition.

Miles Briggs: Thank you for that answer. We have heard about the removal of compulsory supervision orders as an example of such a cliff edge.

George Adam (Paisley) (SNP): Good morning, everyone. I want to ask about the corporate parenting aspect of the bill, because that has come up quite a bit in the evidence that we have received. Corporate parenting is one of those things that I had never heard of until I became a councillor, and then, all of a sudden, I became evangelical about it and how we go forward with it.

Some of the organisations that have given us evidence, especially Social Work Scotland, have argued that extending the corporate parenting duties to those who have experienced a small part of their life in care would create some human rights issues. Do you agree with that argument?

I understand why the provision is there; it is because anything could have happened in those young people's lives, and they will probably still need support and care. However, it is quite concerning that Social Work Scotland is saying that.

Who would like to answer the question first?

Laura Pasternak: I am happy to talk about that. It makes sense that the corporate parenting section of the bill reflects the previous section on extending aftercare, and it also makes sense for corporate parents to consider the young people who come off their orders before their 16th birthday.

The concern about rights was helpfully articulated by the Children and Young People's Commissioner Scotland, who gave evidence on the need to respect the privacy rights of a care-experienced individual when they present to services and explain that they are care-experienced in order to access those services. The wording in the bill includes "identifying", which I think was the word that the children's commissioner recommended be amended—excuse me if I am misrepresenting them, but I recall that that was the issue regarding rights.

When I read the Social Work Scotland response, there was some terminology that horrified me. It makes me feel quite emotional to quote the response, which said that there is a concern that we "incentivise being in care" by creating more support. I thought that, by 2025, we would be past the stage of questioning the motives of care-experienced people who access support. The response also spoke about using care experience as a "passport" to access services.

We need to think about how we can address the concerns about rights that the children's commissioner has about that part of the bill. However, to look more positively at the section, there is a question of how much further its provisions could go. We heard from Matt Forde about the experiences of care-experienced parents, and we know from "The Promise" that two out of three of the care-experienced adults that we surveyed had had a negative experience of leaving care. Eighty per cent of the care-experienced adult participants we spoke to also wanted extra protection in law for their rights. Could we do something more, in the regulations or in guidance around this section, to encourage corporate parents to provide more support to care-experienced people throughout their lives?

According to the financial memorandum, the resources for the bill are quite limited, even for the aftercare section. We also know that the corporate parents that most often engage with our training and that fully take up our offers of support are the ones that are most likely to have removed upper age limits and widened their support to those requiring all types of care.

We have recommended that there be a duty on ministers to produce guidance to ensure regular renewal of training for corporate parents, particularly the senior leadership. Our experience is that there needs to be buy-in to the radical, amazing practice that supports care-experienced people throughout their lives. That positive approach—

George Adam: I get that, because I bought into it when I was a local councillor. We were given what is probably the perfect example of a child who had been in foster care and was adopted by the time that they turned five. The local authority had a duty to support and care for that child until they were 26. That is an almost perfect scenario, but we know that life ain't perfect and that that will not be the experience of the vast majority of young people who are going through the system. How would their experience compare to the example that I have just referred to?

10:00

Laura Pasternak: We need to remember that the corporate parenting duties include being alert to matters that may or may not adversely affect the wellbeing of care-experienced people; promoting their interests; taking action to ensure that they access opportunities; assessing their needs, which is the basis of providing support; and considering how the exercise of those functions could be improved in relation to care-experienced people.

It is important for anyone who has been in foster care or who has gone through an adoption process to be on the radar of a corporate parent, not so that the state can overstep its intervention, but because they should present themselves to their local authority for support, particularly when adoptions break down. We have amazing and empowered members who talk about their experience of adoption breakdown and how they want to ensure that they are eligible for more support. Including them in the relevant part of the bill would be a welcome way forward.

George Adam: Matt Forde, you look keen to respond.

Matt Forde: I echo the last point. I am not a member of Social Work Scotland and I do not speak on its behalf, although I am a social worker. Its submission raises a concern about extra demand at a time when there are already concerns about the capacity of the system. Two points came to my mind, the first of which relates to what Laura Pasternak just said. We are considering adapting and improving the whole children's hearings process. Our research shows that, currently, it is very costly and wastes resources, including those of local authority children's services, because it is a lengthy, drawn-out legal process. Much of the resource that should be used for care and therapeutic support is being used to administer the system. Social Work Scotland has concerns about more than the noble intentions behind the aftercare and corporate parenting provisions.

Secondly, in order to understand the stakes for children and young people, we need to appreciate that decisions are made when children have been in care only for a number of days and the fact that the decision has been made to place a child in care means that something was seriously wrong. For a child to not be with their birth family for any spell of time, a serious life event would have had to have taken place, which is likely to have been a proxy for much more serious life events prior to that.

Laura Pasternak's example was powerful. For a child who was adopted at the age of five, the chances of the adoption breaking down are increased significantly compared to the chances of that happening to a child who was adopted at the age of three or at the age of one. I can think of many adoptive parents who would echo what Laura Pasternak has said about the need to recognise the support needs of children who, on the face of it, are no longer in the care system but may have come from that system and have those experiences.

George Adam: I like Laura Pasternak's answer, and I am glad that I used my example, because it looks perfectly reasonable when you read about it on paper, but, when you look into the detail of it, as Laura said, there are other concerns. It really makes a difference.

Paul McLennan (East Lothian) (SNP): My question is on some general points. Who Cares? Scotland, The Promise Scotland and the Children and Young People's Commissioner Scotland commented on the drafting of sections 1 and 2, on aftercare. Laura Pasternak, you mentioned that issue, as well as the issue of section 10's amendment of the Children (Scotland) Act 1995 in relation to the register of foster carers. Of course, the 1995 act is pre-devolution UK legislation that falls outwith the scope of the UNCRC, as you noted. What are your views on how that section has been drafted, and what might be done at stage 2 to bring it into scope?

Laura Pasternak: I understand that rights in the pre-devolution acts can be restated as freestanding rights in this bill. Given that the Government is committed to a maximalist approach of incorporating the UNCRC, it should do that in order to rectify the bill at stage 2. In the past year, we have supported more than 900 under-16s with independent advocacy, helping to uphold around 5,500 individual rights. It is clear that this bill is a mechanism to ensure that UNCRC rights are upheld, because there are stronger protections around direct and independent advocacy, but we still need to make sure that the legislation falls within the scope of the UNCRC. It would be ludicrous not to amend it in that way.

Paul McLennan: Submissions to the committee have called for clarity around proposals for guidance on care experience. Are the proposals effective enough? The Promise Scotland and the Children and Young People's Commissioner raised concerns about the privacy of care-experienced people in relation to the proposal. You mentioned the number of care-experienced people you have supported, and the issue is also relevant to my professional background and that of some of my colleagues. What are your thoughts on the issue, and how might the proposals be improved?

Laura Pasternak: I think that I covered the privacy point earlier.

We think that the guidance could be strengthened by being made into regulations. We already have guidance, so it would just be more of the same.

Paul McLennan: Do you think that the regulations should be set out in the bill?

Laura Pasternak: The bill should include a duty to develop regulations that define care experience and explore the concepts that are already in the bill around defining stigma in relation to care-experienced people. It would be stronger if that was a duty that was set out in regulations as opposed to just being a bit of guidance. That would make it binding and allow greater accountability. It would also be easier to update regulations than guidance. As I said earlier with regard to the definition of care experience, we want to make sure that the definition does not reduce eligibility for supports. We also want to be aware of the fact that thinking around the definition of care experience will evolve.

It would also be useful if the regulations contained a "due regard" duty on public bodies that could be applied consistently across local authorities and would promote rights-based practice in those regulations. Also, it is important that the regulations are inclusive of all care types that were referenced in the Promise in relation to care experience, including informal kinship care, for example.

There was a missed opportunity to encourage the promotion of rights-based practice. We need to make sure that we do not have policy areas and silos where we have things about the Promise and care experience on the one hand and things about equality and rights on the other. We need to streamline care experience across those areas.

Jackie Dunbar (Aberdeen Donside) (SNP): I will be short and sweet and concise, too.

I go back to the comments from Mr Hogg and Mr Bermingham in response to the convener's opening question regarding children's hearings and their views on the proposal for single-member panels. Mr Hogg, you said that you were broadly supportive of the proposal but that you had some reservations. Could you go into a bit more detail about that, and say what further exploration you feel is necessary?

Alistair Hogg: I am happy to do that. First, we have not tested the single-member panel proposal, so I guess that we are in the dark as to what benefits it will bring. We have to try to assess logically what we think those benefits might be.

There are some hints in the policy memorandum around the perceived benefits, and we ourselves can see that there are potential benefits, such as saving on panel member capacity. We do not think that that alone should be a good reason for making the change, but we see the potential impact in that respect, as capacity is a real issue; Stephen Bermingham will undoubtedly say more about that.

We can see that, in some respects, having one person making the decision could bring a simplicity to certain decisions.

Jackie Dunbar: Can you expand on that? When would you feel that it would be appropriate to have a single-member panel? Up to which level? I am not sure whether that is the right word to use.

Alistair Hogg: That is quite difficult to define. I think that you are asking what one might view as a procedural decision and what might be something more substantive. More procedural decisions would, on the face of it, appear to be relatively straightforward and we would currently consider such matters in a pre-hearing panel. An example would be whether to excuse somebody from attending a hearing.

However, pre-hearing panels can make other decisions that might on the face of it be fairly straightforward but are not always so. Those might include questions around deeming, or un-deeming, someone to be a relevant person, which can be complex. Some of those decisions might be better suited to having three minds and three decision makers, rather than one.

In our submission to the committee's call for views, we identified that the area that raises the most questions is the proposal that a single-member panel could make decisions on issuing an interim compulsory supervision order. Those are some of the most challenging and impactful decisions that a hearing can make—that was mentioned earlier by one of my colleagues on the panel. Therefore, we would need to consider the proposal carefully. It would benefit from more considered and detailed thought and development, as well as testing and evaluation of that testing—that would be a way forward.

10:30

There might also be some implications in relation to the overall perception of decision making in hearings. The Government's policy memorandum references that the optimal decision-making forum would be to have three panel members for substantive decisions. That may open the question why decisions under this proposal are suitable for only one person to make. It is not necessarily about the competence of the decision maker; it is more about, as the Government points out, the thoughts of three people who can collectively reach a view about a decision.

Although we can see the benefits that single-member panels may bring, we would like to see the proposal properly tested and evaluated to discover where that line that you described might lie.

Stephen Bermingham: We have considered the single-member panel decision-making model carefully and there are several aspects to it that we are broadly supportive of. The key one is about removing the procedural legal burden on three-person panels. Over the past 20 years, legislation has been layered and layered, which means that the technical competencies that are required to make legally binding decisions have become more and more difficult. That is why we want there to be a legally competent chair who can digest that information.

As Alistair Hogg alluded to, the substantive decisions in making compulsory supervision orders would still lie with a three-person panel. However, the policy memorandum describes some of the more procedural aspects. At the moment, those relate to the pre-hearing panel, the relevant person status, decisions about appointing safeguarders, attendance excusal, whether people can attend by electronic means and urgent interim compulsory supervision orders—moving a child to a place of safety.

As we specialise, it is necessary to have chairs who are qualified and competent to take some of those more procedural decisions. One of the challenges with the current model relates to the increase in legislation, because each bit of legislation introduces new complexities. For example, on a purely voluntary basis, we require our panel members to undertake mandatory training in relation to the Children (Care and Justice) (Scotland) Act 2024. It is quite a big ask for 2,200 volunteers to give up their time. If we really want to shrink, specialise and develop the expertise in the hearings system, we need people who have the time and the resources to develop those skills.

There are also safeguards in place in relation to the procedural decisions that are being taken. For example, there is the right to legal representation. The national convener also maintains the option to default to a three-person panel if practice guidance is needed to support a decision.

Those aspects relate to the procedural points. They mean that the panel members from the community who give up their time to support children and make decisions that are in the best interests of children can focus their attention on doing that and not on some of the legal technicalities that have come into the system as it has evolved and developed over the years.

Jackie Dunbar: You have already answered my second question, which is about the remuneration of the chairs. In response to the convener's question, you also said that you are supportive of the enhanced role of the chair and of having one chair throughout the process.

I will ask Mr Forde too, because he also spoke about it. Are you supportive of there being specialist panellists and do you think that they should be paid or remunerated for travel and so on?

Stephen Bermingham: I think that the new enhanced role of the chair will bring in a level of specialism because of the skills, competencies and qualities that will be required for those positions. They will need to understand the legal competence of the children's hearings system and children's rights, and they will need to have experience of managing conflict in difficult situations.

We are supportive of having specialist panel members, although—

Jackie Dunbar: Should it be every time, or only when needed?

Stephen Bermingham: It should be less than 5 per cent of the time—that is, used sparingly, when required. At the moment, several provisions exist in the children's hearings system for which specialists can be brought in. For example, a panel can decide to appoint an independent report writer who has experience in the early years. There is also the option of safeguarders. There are a number of options at our disposal at the moment.

However, as we expand the remit of the children's hearings system, there might be certain cases in which we will need to bring in particular specialists. They would be panel members first and foremost, but they would be expected to have specialisms. For example, in an area such as additional support needs or the criminal exploitation of children, if there is a level of insight that that three-person panel needs in order to take the decision, we want there to be the option to bring in a specialist. We anticipate that that option would be used less than 5 per cent of the time. It is a way to help to future-proof the hearings system as we continue to shrink and specialise.

Jackie Dunbar: Mr Forde, do you have anything to add to your previous comments?

Matt Forde: First, in relation to babies and infants, I reinforce the general observation that every procedure or step on the way matters in the life of an infant or baby. The consistent provision of skilled, legally competent chairs is as important as the number of those who make the decision. Secondly, if there are decisions that rest on understanding what is best for the child in the context of their experiences and needs, there needs to be adequate specialist input to the panel.

Jackie Dunbar: You said earlier that specialist panellists would be good for baby and toddler panels—do you mean every time or, as Mr

Bermingham said, as and when needed, albeit that it is important to have that oversight?

Matt Forde: We are calling for the legislation to allow for a trial of a safe-baby approach to managing those cases, and, then, to determine a framework for delivering a consistently high standard for all babies and infants.

Willie Rennie (North East Fife) (LD): Good morning. A lot of people are pretty underwhelmed by the bill. They think that it is an indication that the Promise is not going to be kept, because some of the original measures that were floated for possible inclusion in the bill are not in it. Some people believe that that means that we will not meet the Promise by the target deadline. Do you think that that is the case?

Alistair Hogg: Overall, it is a pretty huge commitment—and a pretty huge task—to meet the Promise. We are a little more than half way to the target of reaching it. The bill is definitely a step in the right direction. There are a lot of different elements to the bill and a lot of questions are being asked about various sections it. The part that I am most focused on is the hearings redesign part.

To some extent, I understand the use of the word "underwhelmed", but I am so integrated and involved in the system that I see the proposals for the hearings redesign as being pretty significant.

There are two main changes that would be made. The proposal to remunerate chairs, and what may flow from that, is a pretty significant development; and the changes to the grounds process—albeit that there is a lot of detail around that—is the other major area that we identified as needing some improvement.

What is in the bill around the hearings redesign is a pretty significant change. We can see that what is in other sections of the bill will also bring quite significant change, but does it fully meet the Promise? No, it does not. Last week, you heard from people who said that further provisions would be required in the future; however, I think that the bill is a progressive step towards meeting the Promise.

Matt Forde: On the question of meeting the Promise, we have approached our submission through the lens of babies and infants. We see that approach as fundamental to the whole system and to addressing the issues that the Promise uncovered, because babies and infants in the hearings system become the older children, adolescents and young adults who require the aftercare support that we are talking about in order to achieve their rights that being care experienced has compromised.

By getting it right in the early years, we will help to keep the Promise for older children. We found out 20 years ago that the persistent young offenders that we were concerned about at that time were children who had first been known to the system when they were under five. If our proposed amendments were to be brought in, that would go a long way to meeting the Promise for babies and infants.

There is an opportunity. It is about strengthening the provisions around the authoritative chair, around advocacy, so that babies and infants are independently represented, and around specialist panel members; and it is about being bold enough to test a completely new approach for babies and infants in the hearings system. We see a huge opportunity here.

Willie Rennie: I will come to Laura Pasternak in a second, because I want to ask her an additional question. Mr Bermingham, what do you think?

Stephen Bermingham: On the redesign of the children's hearings system, I think that the bill meets the aspirations of the Promise with regard to shrink and specialise. That is the bit that is within my purview.

On the wider aspects of meeting the Promise by 2030, we must acknowledge that the children's hearings system is only one point in time for the child in their journey, and implementation of the orders is reliant on services at a local authority level, or services that are commissioned through a local authority.

I think that the redesign meets the Promise, but the really challenging bit of the Promise will be the children's services and what that means at a local level for the child in their everyday life. That is my view.

Margaret Smith: The bill is significant in relation to providing lifelong independent advocacy for care-experienced people. That is a positive and will help to meet the Promise. It demonstrates that the views of the children and young people will be listened to. Earlier, there was a comment about young people becoming independent advocacy workers themselves, and we think that it is a significant step to invest in independent advocacy and listen to what care-experienced children want and need when it comes to shaping their future and shaping services.

Willie Rennie: Okay. Laura Pasternak, I was struck by what you said earlier. You thought that there might be circumstances in which young people were encouraged to stay in crisis in order to access, in this case, independent advocacy. That is what you feared might happen.

Laura Pasternak: No, that is what Social Work Scotland fears is happening. That is not my position.

Willie Rennie: So, you do not think that that is happening.

Laura Pasternak: Absolutely not.

10:45

Willie Rennie: I have heard of instances where that is happening and where young people have been encouraged to say that they continue to be in crisis, in order to access the level of support that they need, with the idea being that they will be back in crisis again if they do not say that. Are you saying that that is not happening?

Laura Pasternak: Our experience is of young people not being sufficiently informed about their rights, which is where advocacy comes in. For example, they are encouraged to come off their orders before their 16th birthday to save 10 years of aftercare funding.

It is wrong to suggest that in this day and age. We just need to listen to the experiences that were recorded by the independent care review to understand that there is no incentive to go into care. I actually do not even understand why I am having to answer that question.

Willie Rennie: I am not advocating for that to be the case. I am saying that, because services are so underfunded and staff are so stretched, young people have to say that they continue to be in crisis or they will otherwise get nothing. That is my point.

Laura Pasternak: I understand your point, but I would not say that it is something that is—

Willie Rennie: You have not come across that.

Laura Pasternak: No, absolutely not. We see the opposite. Our members are struggling to access support and are experiencing cliff edges of support on all sides, whether that is on the grounds of eligibility or whether that is due to decisions that are being made as a result of stretched resources or the discretion that is being applied.

Willie Rennie: I think that we are saying the same thing.

Laura Pasternak: We are on the same page.

Willie Rennie: My concern is that if we improve the offer, including by offering independent advocacy, there might be a danger that we will end up back in the same place because the overall provision will not be sufficient and people will have to say that they are in crisis in order to get even a basic level of support. Do you not fear that that might be the case? Does that make sense?

Laura Pasternak: No. Advocacy is an early intervention. The whole point of advocacy is for someone to be informed about their rights to ensure that they are able to claim them and that those rights are not breached.

Willie Rennie: If services are so stretched that they are available only to those who are in the most extreme circumstances, could we be promising something as an early intervention only to see it becoming a crisis provision?

Laura Pasternak: I think we are talking about two separate things. Our response clearly echoes many of the concerns that came from Social Work Scotland or that are highlighted in reports from the Promise oversight board, which are that there is a need for more investment in family support or in addressing the crisis in social work staff recruitment. Those concerns are valid and they stand, but that is completely separate from ensuring that the rights of care-experienced people are strengthened by the bill.

People have written in their responses or said to this committee that there are a number of tests that the bill should go through. For example, some people say that the real test of the bill is whether it will make it easier for the workforce to deliver and others say that the real test will be whether the bill keeps the Promise in its entirety. For me, the real test of the bill is whether it will make care-experienced people's lives better and ensure that their rights are upheld. The answer to that should be yes, because of what is proposed in various areas such as children's hearings, advocacy and aftercare.

That links back to your previous question about people being "underwhelmed" by the bill. The implementation of the Promise has been challenging and the pace of change has not been what was hoped for. The system is not without problems, which is why it is really important to take action on advocacy to ensure that there is a commitment to support keeping the Promise for every care-experienced individual.

We also need to think about the fact that the Promise was made five years ago and that there was an expectation that things would be better by now. Many children who have moved out of advocacy services would have expected to have greater and earlier access to their rights. We must look at the system and at investing in the resources that are required to implement the bill while looking at what the next steps will be for the next Government. That is why I think that more accountability measures should be built into the bill, so that we really put down a marker for the next Government.

Bill Kidd (Glasgow Anniesland) (SNP): Twenty-two, please—that is just my age. If someone could laugh, that would be nice, thank you.

I have a couple of questions about the proposal in section 22 that integration joint boards should join with local authorities and health boards on the list of bodies that will lead children's services planning. It has been suggested that further guidance would be required for that to take place. NSPCC Scotland has said that the rationale for extending the responsibilities to integration joint boards is not clear. Matt Forde, do you have concerns about that?

Matt Forde: It is not so much that we have concerns as it is that, from our point of view, the heart of the matter is how well we are serving children in a timely way. That involves co-operation on the part of public bodies in the making of integrated and coherent strategic plans to deliver that. We are not convinced that a redesign of the public service system is what is needed here. The issues about the children's hearings system process and the associated practice issues—that is, what happens in the local authority—are the most significant matters with regard to the bill. If those integration measures could assist in rationalising the process, that would be all to the good, but I am not convinced that they will.

I used to work as the head of children's services in an integrated health and social care partnership that was later unwound because it did not achieve its aspirations—it was reformulated long after I left—and I can say that efforts to integrate planning structures are not new in Scotland in the post-devolution period. As I say, our concern really is how the system is going to work better and in a more timely way for children, especially when they most need it, which is when they are youngest. If the proposals on integration of the planning bodies assist that, that is all to the good.

Bill Kidd: Stephen Bermingham and Alistair Hogg both look interested in this issue—I do not know why; maybe they are involved. Stephen, do you have anything to say?

Stephen Bermingham: I do not have a view on that.

Alistair Hogg: I do not have a particular view on it. I would say only that children's services planning is much wider than simply the children's hearings system. However, I do not feel able to comment on the issue that you raise.

Bill Kidd: No problem. Laura Pasternak, would you like to come in?

Laura Pasternak: We welcome the proposed changes, because integration joint boards are corporate parents, and we feel that it makes sense for them to have that role to play when promoting the health and wellbeing of care-experienced people in their area.

Bill Kidd: Margaret Smith, do you think that the inclusion of integration joint boards would be beneficial for advocacy?

Margaret Smith: When we look at the commissioning of independent advocacy, we should consider previous models. At the moment, 10 providers are responsible for independent advocacy at children's hearings, and the management of that funding comes from the Scottish Government. We need to consider whether that should remain the model, or whether it should be the responsibility of the health board to commission independent advocacy services. We must look at what has worked in the past.

There are independent advocacy organisations across the country, some of which are commissioned by the health boards. The bill proposes to complement those existing services, so that aspect would need to be considered when it comes to the commissioning and administration of independent advocacy in relation to the bill.

Bill Kidd: From what is being said, it sounds as though people are not terrified by the idea of integration joint boards, but they believe that more work needs to be done if they are going to be introduced.

The Convener: We move to questions from Ross Greer.

Ross Greer (West Scotland) (Green): Thank you, convener—I was almost going to say good afternoon; it feels like that, but it is still morning, so, good morning all.

I want to tease out some issues. There has been quite a lot of consensus this morning, but in the SCRA's written submission there were definitely points of difference. In particular, a lot of other organisations have welcomed the enhanced role for the reporter, but the SCRA flagged up issues to do with power imbalance.

We have touched on that a little bit already, but perhaps Alistair Hogg could draw out some of those concerns for us.

Alistair Hogg: We are broadly in favour of having the option of a meeting with the reporter; we can see a lot of benefits from doing that. It is something that can, and does, happen now, but we would be happy to expand on that, and we can see the motivation and the intention behind the proposal.

We have also gone on a bit of journey with regard to whether that proposal should be placed in statute. On balance, we think that it probably is a good thing to have it in statute, for a number of reasons, not least that it would give a legal justification to have such a meeting.

We have some concerns about what flows from that meeting, and the expectations around it. We had imagined that such a meeting would be quite informal and would be at the discretion of the reporter. We would assess the situations and the families as to where such engagement would be helpful and appropriate, and sometimes as to whether it would be safe. However, the bill proposes to be fairly detailed around what that meeting should discuss—

Ross Greer: It would be quite formal, rather than the softer approach that you are indicating.

Alistair Hogg: The issue is the fact that the bill stipulates the matters to be discussed, and also makes it a duty on the reporter that can be dispensed with only if holding such a meeting was felt to be inappropriate or ineffective. We would need to be clear on what comes under that definition.

Our concerns also lie around some of the potential consequences that may flow from what takes place in that meeting, or from the fact that the meeting may not take place at all, because a family would not be required to engage with it; that would be entirely voluntary. However, the requirement that the reporter would then have to prepare a report for either the hearing or the court—whichever route the reporter chooses to go down in relation to the grounds—creates a sense of formality.

We believe that we would have to be very careful about managing perceptions of what takes place in that meeting; that is where we get into the areas of concern around potential perception of conflict of interest. The children's reporter is the independent officer who has initiated the process. We believe that the child requires compulsory measures of supervision and we have framed grounds that we believe are evidenced and are required, so we have a vested interest in establishing those grounds. We want to ensure that there is no sense of pressure on the family, and on the child in particular, to feel that they have to give a certain response to the grounds.

We were a little bit concerned to see that the report might then be used in the hearing to record whether the child has understood the grounds or is capable of understanding them. We think that, rather than that being determinative for the hearing, it should simply be something that could be taken into account by the hearing. We believe that, because of the sense that the meeting feels more formal, some kind of record would need to be kept, and people's rights would need to be protected in such a meeting. Then, you would need to consider the provision of advocacy and legal representation, and how to give people the option for those.

We are in favour of the concept, but we think that it could be developed more to meet some of the concerns that I have outlined.

11:00

Ross Greer: That is helpful, specifically what you said about the report. It points to the wider issue that you indicated: there is a lot of detail about how the meeting should take place but there is more ambiguity about what impact it will have on the rest of the process. Would it be helpful for the legislation to go into further detail about the purpose of the report and what it can and cannot be used for?

Some of what you said makes me think that we need amendments to clarify what the point of the process is and what the product is. There is a tension between that and your point about the preference for an informal approach, because the more detail we put in legislation, the harder it is to take an informal approach.

Alistair Hogg: To answer your question, there would be benefit in looking at that. It would be helpful to understand what is envisaged to be contained in the report and what level of detail would be expected. We think that the best way is for such a report to be very factual and quite high level, to avoid some of the issues that I highlighted. It would be helpful to clarify what its purpose is and what it would be used for.

Roz McCall (Mid Scotland and Fife) (Con): My question follows on from those of Mr Kidd and Mr Rennie. Their questions were about the situation as it stands, utilising the IJB workforce and concerns about social work. For me, the best way for us to achieve the Promise that we are heading towards is the implementation of that, especially in relation to workforce planning and capacity.

We know that IJBs are struggling across the country and that a lot of them are borderline broke. Does the bill provide the right avenue to achieve the implementation and workforce planning that we are looking for; is there adequate funding for that; and, given the different sectors that you are in, can you tell us about any unintended consequences that you see as glaringly obvious in the bill as it stands? That is three questions rolled into one: is it the correct avenue as far as workforce planning is concerned; is there funding; and are there any unintended consequences in the bill?

The question is for everybody, but we will start with Margaret Smith, who is not in the room.

Margaret Smith: I can only speak from an independent advocacy perspective on the workforce development. We spoke about the demand for advocacy and the current capacity. Some of the funding that is set aside for independent advocacy needs to go into workforce development and training. Laura Pasternak mentioned the Scottish Government expert reference group, which is developing a qualification for independent advocacy. All of that needs to be considered in order to skill the workforce and to provide specialist support for babies and infants. We need to invest in non-structured advocacy and to provide a definition and clarity for that in order to provide a model of independent advocacy, so that the offer of independent advocacy is available and accessible to all.

Roz McCall: Do you think that there is adequate funding provision to achieve that?

Margaret Smith: I was asked that earlier, and I echo what Laura Pasternak said: more funding would be required. We should learn from the children's hearings, which have an independent advocacy scheme in which the initial 10 per cent uptake has doubled—or, at this stage, the need for independent advocacy may have trebled.

Roz McCall: Are there any unintended consequences that you can see in the bill?

Margaret Smith: Is that from an independent advocacy point of view?

Roz McCall: If you cannot see any, that is okay.

Margaret Smith: I do not want to repeat myself continuously, but the model and the definition of independent advocacy need to be followed. Independent advocacy also needs to be properly resourced and sustained to ensure that it is realistic for care-experienced children across Scotland from birth onwards.

Roz McCall: That is helpful—thank you.

Mr Bermingham, I will bring you in and then we will work our way along the line of witnesses. Is this the right avenue and the right funding, and could there be any unintended consequences?

Stephen Bermingham: I do not have a particular view or remit in relation to the point about the workforce. One of the potential unintended consequences that we have some concerns about relates to the change from an obligation to a presumption in the attendance for children's hearings. We want to caution against the child and the child's views not being at the centre of their hearing. We do not want to sleepwalk into a position in which children do not routinely attend their hearings. We know from feedback by panel members and children that there is much better decision making and that there are better outcomes for children when they attend and participate and when they are supported to participate.

On the point about workforce, we need to make sure that our colleagues across social work departments and advocacy providers are empowered, supported and resourced to ensure that the views of children are fed into the hearings system, and that we do not end up in a place in which children are not attending hearings. That is the only unintended consequence that I have identified.

Laura Pasternak: Workforce planning is obviously not our area of expertise, but I reiterate what we said in our response, which is that there needs to be sufficient investment in services to ensure that the bill can be implemented effectively. We need to test some of the assumptions that are in the financial modelling and get some reassurances at stage 2.

When the bill is passed, we have recommended having a measure for post-legislative scrutiny so that we can evaluate the implementation, analyse the need that will be presented and increase targets accordingly as we head towards 2030.

On unintended consequences, I echo what Margaret Smith said about ensuring that we get the word "independent" into the bill so that the definition of independent advocacy is clear and well understood, and that it is separate from service provision. Another unintended consequence is that it would be a missed opportunity if we do not future proof the bill by having a section on accountability. The bill would benefit from having that kind of future proofing to ensure that we are on the right track in keeping the Promise.

Matt Forde: The risk is that, if the bill proceeds as it stands without being strengthened in the areas that we have spoken about, we will not address the drift and delay, nor the human and financial costs of that. If that happens, we will find that, despite our best efforts, chronic drift and delay will characterise too many childhoods. If the system cannot adapt itself in the ways that we have discussed to meet the needs of those infants, we will miss this opportunity.

There is a whole host of associated issues with regard to the workforce. Some important steps have been taken in recent years in expanding specialism in the early years workforce, which need to be consolidated and supported. It should be high on the agenda of IJBs to continue to invest in those areas, because prevention will help more than anything else to keep the Promise for those who end up in the system.

Finally, we should all bear in mind the fact that there will be real harm to real children if we do not provide them with what they need when they need it. That could be an unintended consequence of the bill failing to grasp the nettle.

Roz McCall: Absolutely. That is a strong point. Mr Hogg, do you wish to add anything?

Alistair Hogg: On your first question, about whether the bill is the right avenue, are you asking whether the bill has the right focus?

Roz McCall: We are all agreed on the focus of the bill as another step towards realising the Promise, which we are all signed up to and we all agree on. However, from your perspective, is the bill going down the right avenues to get it to where it needs to be? Is it financially viable? Do you think that there will be any unintended consequences that your organisation might be concerned about?

Alistair Hogg: I echo what Matt Forde said about the focus on early years and providing support when families need it. That is what the Promise said—it is about providing people with the right support at the right time and in the right way. I know that there is a lot of focus to come in relation to that. The ability to provide parenting support and support for good decision making in families would be helpful, and we would wish to focus on that in the future.

As the bill progresses and amendments come through, I do not doubt that some of them will impact on funding. We have heard some proposals today about different roles that might be introduced into the hearings system and that would come at considerable cost. There are also resource implications in finding people who can undertake that work. I was encouraged by what Matt Forde said earlier about seeing that some of those people who have those skills are already being developed.

My general point about unintended consequences is that a lot of the provisions on the hearings redesign require to be tested, and that is where we will find out where the unintended consequences might come.

Roz McCall: That is helpful.

The Convener: That concludes our evidence session with our first witnesses today. I thank you all for your time, your answers and your contributions. It is much appreciated.

Before we moved to our next panel of witnesses, I will suspend the meeting for 10 minutes.

11:12

Meeting suspended.

11:23

On resuming—

The Convener: I welcome our second panel of witnesses: Lynne O'Brien, chief officer for children and families at Aberlour; Duncan Dunlop; Natalie Williams, head of policy and campaigns at the Fostering Network; and Jo Derrick, chief executive officer of the Scottish Throughcare and Aftercare Forum. I thank them all for their time today and for their submissions.

I began with a very open question to the first panel and it took half an hour to get through that, so I will try to be a bit tighter with my questions. Although there are positives in your submissions, I am really keen to hear about where you think the bill needs to be improved and developed and about what is missing, and I know that other members will also come to that. If you want to talk about the positives, please do so, but the committee really has to scrutinise where the bill can be improved.

Ms Derrick, I will start with you. Are there any areas where the bill could be improved that you would like to focus on?

Jo Derrick (Scottish Throughcare and Aftercare Forum): Understandably, the area that I, as the Scottish Throughcare and Aftercare Forum representative, have most to say about is aftercare provisions.

The members of my organisation and the young people who have been involved in our work particularly want to highlight the importance of early planning. Although it is absolutely right that the bill supports the extension of aftercare provision, we highlight the need for planning at an earlier stage and for more consistent planning approaches across Scotland. We also recognise the importance of the relational approach that must underpin the implementation of the bill.

I am happy to stop there because I am sure that others will want to expand on some of those points.

Lynne O’Brien (Aberlour Children’s Charity): Likewise, there is a lot in the bill that Aberlour would support. The key areas that we want to see being strengthened have already been covered by witnesses on the earlier panel. The main one is alignment with the UNCRC. We are members of Together Scotland and agree with Together that the bill should uphold the UNCRC rights of children and young people.

We would also like to see clear guidance coming from the legislation. The point about the cluttered landscape of legislation for children, young people and families in Scotland has been well made. The bill should ensure that duty bearers understand the rights and entitlements of children, young people and families and that upholding one set of rights or entitlements does not create barriers for others.

We would like further clarity about the not-for-profit principle, to ensure that it upholds something that the independent care review was really clear about, which is, as has been said before, that no one should make a profit from children’s care. We support that but we want further clarity about what is meant by “profit” and what is meant by the idea of reinvesting surpluses into children’s care in Scotland. I am open to further discussion of that point, which we want to come back to.

Natalie Williams (The Fostering Network): The Fostering Network really welcomes the provisions in the bill for a register of foster carers. We have been campaigning for that for a long time and think that it would have a lot of benefits for children and for foster carers. I am sure that we will come to questions about that later.

You asked what we think is missing from the bill. The majority of foster carers and fostering services in Scotland are members of our network, and they are concerned that the issue of foster carer finances is missing. We know that that is not why carers come into fostering, but improving that area is key to retention and there is nothing in the bill about foster carers’ allowances or fees, so we would like to see amendments dealing with those and with allowances for the extension of continuing care for young people.

Those are the areas that we want to highlight.

The Convener: Before I turn to Mr Dunlop, I can say that it is useful to get that overview and that other committee members will delve further into those issues.

We heard from some of last week’s witnesses that they felt that there had been lack of engagement in advance of the bill being published, although there was more engagement after that. Do you have similar concerns? Could some of those issues have been addressed if there had been improved engagement between Scottish Government ministers or civil servants and all of you, or have you been satisfied with the engagement that you have had on the bill?

Natalie Williams: We have had a lot of engagement with the Scottish Government. We worked together to hold 10 consultation events for foster carers and fostering services across Scotland, so there was a lot of engagement on the fostering aspects of the bill.

As I said, there are some bits that we understand are in the bill because they are part of parliamentary procedure—for example, the register is in there so that it is in legislation—but we understand that some other areas will be in the fostering strategy. The consultation on future foster care was really wide ranging and covered a lot of different areas, and we understand that some detail on that will be coming later, but I have highlighted a couple of areas that our members have raised with us and that we think are missing from the bill.

Our experience of consultation may have been slightly different from that of others.

Lynne O’Brien: It is widely recognised that there has not been full engagement in relation to the bill, but we would want to do all that we can to contribute positively to the process, ensuring that it goes forward.

11:30

Jo Derrick: We have had quite active engagement with the Scottish Government throughout the past couple of years, because we have been leading on the “moving on” change programme. A number of the findings from that have informed some of the work that led up to the bill. I acknowledge that members were involved in a number of consultations, which also led towards some of that. There is a sense across the sector that there may have been more opportunities for engagement.

The Convener: Mr Dunlop, I have deliberately left you until last. You are not a big fan of the bill. The other witnesses have a number of positive points to make, with a few areas where they would like to see improvement. I read over your four-page submission and saw there was very little that you liked about the bill. Is that a fair assumption?

Duncan Dunlop: Yes.

The Convener: Tell us more.

Duncan Dunlop: Thirteen years ago I brought care-experienced people into this committee room. It was the same committee, but with different people around the table. That is when the need for love in the system was first talked about. That cut right through the Promise, the care review and our rhetoric. The care-leaving age was changed pretty quickly under the Children and Young People (Scotland) Act 2014, so that people could continue to be cared for until 21.

It was nearly nine years ago when the then First Minister said in front of thousands of people that we would “rip up” the system if we needed to do so. The promise was made to us that things would change from that juncture onwards. We had that commitment, but what have we had since? The Children (Care, Care Experience and Services Planning) (Scotland) Bill is meant to be the marquee bill. It does not have “Promise” in the title, but it was meant to represent the transformation of children and young people's care.

I was trying to think of an analogy to help us to understand what we are doing here. The current care system does not work, and I will come on to why when I consider the outcomes for care-experienced people. Where do they end up in life? It is not just about how they are doing today. It is like a car that is broken down and sitting on bricks in the yard. The passengers in that car—the kids—have no option: that is where they are put. The state brings them into care and tells them, "That's your vehicle." It will make the difference in their life.

People are trying to do their best. Social workers—very well-meaning people—are doing their best in trying to drive that vehicle. Too often, they get burned out and leave the profession too soon. The bill represents fixing a hubcap on that burned-out car. What we need is an aeroplane across the road—that is, a communities bill—which can be flown by someone who will hold the child's life, provide love and care and give them a sense of belonging for ever. It should have the freedom and flexibility to go where it needs to go. The Children (Care, Care Experience and Services Planning) (Scotland) Bill is literally like a colander, if we consider the current care system. It has a load of holes in it, and the bill will plug one gap in it. You can talk about the different bits of it, but will it deliver for those young people who have been kicked aside in this country? We think that, globally, we are leading, with care-experienced people at the fore. That is not the case. If the bill is as far as we are getting by way of transformation, it is a sham.

Why this matters lies in the data and the stats. Look at the outcomes for care-experienced people, all of whom are your constituents. We have had inquiries about Grenfell and Hillsborough—about the deaths in those situations. I guarantee that, in the past nine years, more people who are care experienced have died prematurely, with completely avoidable deaths, because we have not transformed the care system. I know that that is the case. Yes, they end up on the street, rough sleeping and homeless. Yes, they end up with severe, debilitating mental health problems. Yes, they end up in our youth justice system—and, yes, they end up prematurely dead within it.

I know that we are meant to use more progressive language now, but I will not, because we have not got a grip on this yet, as a society. The solution lies in our communities, in all your political parties and in the Government. We need to take the matter seriously and say, "Hang on a minute: this isn't good enough yet."

The Convener: All the political parties have signed up to the Promise and are supportive of it. You mention in your evidence that it is 3,256 days since Nicola Sturgeon made that commitment and got cross-party support. Why do you feel that we are at the stage that we are at now, and that the bill that has been produced by the Scottish Government lacks any of the ambition that you would expect? There is political will, and that is surely the biggest thing that the Government needs behind it. It has the political will and consensus across the Parliament. Why has it not gone further through the bill?

Duncan Dunlop: Because we do not have the detail. No one is going to complain about the intent behind the promise that was made—children need to be loved. We talked about that 13 years ago, but where is the plan? We need to say, "You need to do this by this date; you are the person who will do it; and it will cost this amount." A civil servant told me that very early on in this process—look for those indicators. When you have that at broader strategic levels and down to the level of operational plans at various stages, you can then set out points in the journey at which you will need legislation to change X, Y and Z over a 10-year plan. We have never got to that. We have a website that tells us where the change will be made. That is not acceptable—it really is not, when you look at the absolute human cost of the system and all the other social issues that we deal with and which you care about in your constituencies. That is what comes out of what goes wrong with care. We could do this differently and better, and it is time for a reboot.

The Convener: Thank you. There is a lot to get into in relation to the bill with the witnesses today. Pam Duncan-Glancy will ask the next questions.

Pam Duncan-Glancy: Duncan Dunlop, your evidence is really compelling, as is the way that you have just articulated it. There are a couple of measures that you have said would bring about real transformation. One is to guarantee every care leaver a job in the public sector. Does what you have outlined need to be in the bill or are there other ways to do some of those things?

Duncan Dunlop: When I think about one of the main people who did something about getting care-experienced people jobs, I find it quite ironic. This person used to employ a lot of care-experienced people—particularly in their first jobs. The young people were not necessarily work ready, but an employability scheme that just put them through another training scheme—which we classify as a positive destination—was not going to work, and these first jobs enabled them to become work ready. It teaches them the culture of work, and it works in that way. The person who did this—I think that it was Dame White—ran John Lewis. She did a huge amount on that.

Why is it that we expect the private sector to look after our kids? These are our children. We decide that they cannot be looked after and loved within their own families alone, so the state brings them into its care. We own 20 per cent of the jobs in this country, but the best that we see is, yet again, social work teams or other charities that focus very much on this difficult situation, based on the young people's trauma, offering them jobs. Yet there are thousands of jobs—one of the best jobs that I got for someone was in a recycling depot and it really suited him. There are jobs in education and there are jobs in this building. We need aspirations. The UK Government takes that approach in the civil service—it has a fast-track scheme for care-experienced people.

Where is our ambition to say, "We want to give care-experienced people jobs—let's give them jobs"? We are the parent of these children. We need to say that we will give people housing, jobs, education and opportunities. Further and higher education is the one area where we have made progress—I give credit for that. It is certainly something that we should do. It is the level of ambition and will that matters. If we say, "Oh, we're worried about this" or "We're worried about the resource and the cost implication" that ambition will go—and we know about the life costs and then the financial costs if we do not do this.

Pam Duncan-Glancy: To go back to the original question, do we need amendments to the bill to achieve some of those things in education, housing and employment?

Duncan Dunlop: Yes; the bill does not cover many of those areas at all.

Pam Duncan-Glancy: Do you have suggestions on the specifics? Who should we engage with and how should we engage? The committee's job is to look at the bill, to consider the evidence that we have heard and, potentially, to recommend amendments, should the bill pass stage 1.

Duncan Dunlop: You can think back to what has been talked about in the past. As I said, what the bill covers and what it does not cover is quite arbitrary. There is tonnes of stuff that could be included. In 2012, we were looking at the right to return to care, but we did not go for it. We said that we would do that later, and then we said, "No, we will review the whole system", but that is still not in bill. We are talking about advocacy for those who have left care, but what about advocacy for those who are in care? How can we look at that differently in order to give them a voice? The bill could cover so many things, but as it stands, it lacks ambition—it lacks the ability to be transformative.

The Promise will have the detail and the knowledge about how we could do some of those things, but it seems not to have been engaged in the bill's development. I do not understand that, because fewer civil servants will have written the bill than are being paid by the Government to scrutinise it. Why do we not get them all in a room and say, "Come on, let's be more ambitious" and at least get something across the line before the of the parliamentary session next May?

Pam Duncan-Glancy: Thank you—I appreciate that answer. I will move on to advocacy. Several organisations have commented on the extent to which the new right to access advocacy services for care-experienced people in section 4 of the bill would be shaped in secondary legislation. The committee also heard that there could be confusion between that provision and section 18 on advocacy in the hearings system. Respondents, including the Fostering Network, called for a definition of independent advocacy. Natalie Williams, can you talk about your understanding of advocacy, and what needs to be in the bill and what can be left to regulation?

Natalie Williams: Independent advocacy is an important provision for so many young people in care and so many who are supported by foster carers. We welcome the introduction of the right to independent advocacy and generally echo the views that Who Cares? Scotland expressed in the evidence it gave earlier. We support its view that independent advocacy should be defined in the bill, and we believe that leaving the definition to be set out in secondary legislation might delay the realisation of that right for care-experienced young people and risk the definition being diluted so that advocacy is not truly independent. As we said in our written evidence, the Mental Health (Care and Treatment) (Scotland) Act 2003 already has a definition, so there is no need to delay on the wording.

It is not our main area of expertise, so that is probably all I have to say for now.

Pam Duncan-Glancy: If you do not mind, another point on advocacy relates to section 4(4), which you have said should be amended to ensure that the right to advocacy can be only expanded, rather than limited, by secondary legislation. Will you expand on that?

Natalie Williams: The definition in the bill could be more inclusive and contain at least some of the categories that were set out in the Scottish Government consultation on a definition of care experience, which were supported by the majority of respondents. The definition should therefore include anyone who has been looked after, including at home, in formal or informal kinship care, in foster care or in residential care. That would ensure that such people were able to access their rights. At the moment, the definition is quite narrow. It should be expanded to include those things, and that should be set out in the bill.

Pam Duncan-Glancy: Thank you.

Lynne O’Brien, you said in your evidence that many professionals who are already involved in young people’s lives will consider themselves to be advocating for the young person. Do you see a distinction between some of those professionals and an independent advocate?

Lynne O’Brien: Yes, absolutely. We agree with the points that have been made by other organisations such as Who Cares? Scotland and colleagues in the Fostering Network. There is a need for independent and special advocacy to ensure that children’s rights are upheld.

However, we also recognise that some young people have a lot of adults in their life—a point that Fiona Duncan made in an earlier evidence session, I think—and therefore have to project-manage and navigate different people. We therefore think that children and young people should have a choice but that people in the sector—our workforce and duty bearers—should be better informed about the rights and entitlements of children and young people, so that the system is not one in which we have to outsource independent advocacy to ensure that rights are upheld, and so that, across the sector, we uphold rights and entitlements wherever we can, at all points of care and support to our children and families.

What independent and specialist advocacy is and does should be made clear. However, support and advocacy go hand in hand—they are not either/or, if that makes sense.

Pam Duncan-Glancy: Does that need to be in the bill or in regulations?

Lynne O’Brien: I would not be that specific. It is up to the legislators to make it clear where that sits. We just need to ensure that we do not have a two-tier system in which support and advocacy do not align, as that would make children and young people confused.

Pam Duncan-Glancy: Thank you.

Jo Derrick, in your response, you call for considerable additional funding for advocacy services, to ensure that they are effective. Can you tell us a bit about the capacity in the current system and as you think it needs to be?

Jo Derrick: We recognise that, for young people, the relationships are important—that spans throughout. For the young people whom we support, understanding their rights and entitlements is also absolutely key. That does not necessarily happen consistently right now. We suggest that, given what the need for advocacy is now and what the additional need will be, provision has not been costed well enough.

Independent advocacy is about being able to have rights and entitlements. A big part of our submission was about raising the voices of young people with care experience who are also in conflict with the law. They look at support and seek to understand their rights from a legal perspective, as well as their rights in throughcare and aftercare. That can be very challenging for them if they do not have information about their rights and entitlements.

We are strongly support ensuring that there is one person who is the young person’s biggest fan or ambassador for their rights and entitlements. That role can be supported and complemented by a throughcare and aftercare workforce and others who have holistic corporate parenting responsibilities. To some extent, I am echoing what Lynne O’Brien said about needing more than one person to be an advocate, but we strongly believe that having the right to an advocate would be supportive because relationships are key to people being able to navigate a challenging system.

11:45

We also know that, as well as young people, it can be challenging for our workforce to know what those rights and entitlements are. There is therefore something about still taking a needs-led approach for young people and them having a range of support, particularly in that crucial period of life which is the transition to adulthood.

Pam Duncan-Glancy: Do you have a view on whether that should be opt in or opt out?

Jo Derrick: I cannot say that I have heard a view on that from our members so I will need to come back to you on that.

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

Duncan Dunlop: I ran Who Cares? Scotland, which is an advocacy organisation, and I was also an expert adviser to the English care review, which did a lot on advocacy. The role of advocacy should be extended—it should be independent, relationship-based and opt-out.

A way to think about it is, if an adult has a problem at work or within their relationships, they get a lawyer. A child who is in care and going through one of the biggest and often traumatic transformational changes in their life—being removed from all that they know—does not necessarily have anyone alongside them. Yes, social work is working in their best interests, but who is really making sure that their voice is heard?

If the advocacy is relationship based, it will stick with them right through their journey, or, at least, the organisation will do that with them. There should be complete continuity from when someone enters care right through into adulthood, and we should not worry about when it ends. Naturally, the child will not want that support to continue if they are given the support of a loving and stable relationship, but the offer should be opt-out and they will have to understand what that means. Children and young people can often balk at what the system gives them.

If we give advocacy far more primacy and importance in the system it can declutter the relationships between the child and the system. You could look at the role of social work reviewing officers, because an advocate would be properly independent and that will mean that a child's voice and their interests are heard when any decision is made about them, from whether they live with a brother or sister to how they get on at school. It is an important role, and the bill should go much further in that respect than it does.

Pam Duncan-Glancy: Thank you.

Miles Briggs: I know that you were listening to the earlier panel and I want to ask a specific question about aftercare again. In response to our call for views, the Fostering Network said that the provisions in the bill on aftercare could go further. What would that look like, and how could the Scottish Government adequately resource that? I will bring you in first, Natalie.

Natalie Williams: We support what is in the bill on the extension of aftercare to young people who leave care before the age of 16, but they should not have to apply for it. We recommend amending section 1(2) to create a duty on local authorities to assess a young person's need for aftercare up to age 26 to meet any needs identified. We agree with others about the resourcing that might be needed to do that, and we know that many young people already do not get the support that they need from aftercare.

I want to take this opportunity to highlight the absence of continuing care in the bill, and the particular focus for the Fostering Network. As Duncan Dunlop said earlier, we would support a right to return to continuing care being in the bill. The Promise supports that. We know that it is a particular issue for young people in foster care who go to university that, during the holidays and after finishing, they are not able to go back to their foster carers. Other young people would be able to move back in with their parents.

Linked to that, we support extending the upper age limit for continuing care to the age of 26. At one of the most important points in their life, young people are potentially losing the support of their foster carer, who is an adult with whom they have a trusted relationship and who matters to them. We also support extending the age so that they have a right to return.

We are not suggesting that foster carers should necessarily keep a room open for a young person who was in their care who might have gone to university, but if the young person wants to return and the room is available, the local authority should be required to support them in continuing care, and that option should be available for them.

The bill extends a lot of things to age 26, but not in some of the key areas in continuing care that matter. Those provisions should also mirror that.

Miles Briggs: How would you see that working in practice?

In some of the casework that I—and probably most colleagues—have had, it is about that point at the age of 16 when a CSO can be removed, and when a young person will often either be encouraged, or want, to get out of services. However, the aftermath of that is that they are not able to take a step back into services. Do you see that working as an appeals process or as being a right that the young person has, according to the principles of good transition, to be able to go back into services if they want? It is not clear in the bill whether it is an appeals process or how it would function. That was a long question.

Natalie Williams: An appeals process could add another complication to the system and it would need a lot of resourcing. Young people should have a right to go back and that the system should be built around that in relation to transitions and in creating the longer transitions for young people. Young people should have access to services at those points and the system should support that, rather than there being a cut-off point after which young people would need to appeal, and having to create all the mechanisms that would go around supporting that kind of appeal.

Duncan Dunlop: I do not know whether you have children, Mr Briggs. However, if you do, when they left home, they did not leave their family; or, when you left home, you did not leave your family. The problem with our current system of care is that you do not just leave home, but you leave your family. That is a fundamental flaw. Aftercare is a symptom of a failed system.

To a large degree, in most local authorities, aftercare ends up being about emergency aid and care—we are literally trying to keep a kid going in respect of accommodation or food, whatever else is happening.

I know that it is uncomfortable for Government, but there is a way that we could transform care, and it would not cost us more money—not in the medium term. North Yorkshire, for example, has a policy that says, "We are always here. There is an open door and if you need us, we are here". It is therefore up to the child or young person to dip in and out when they want the support, and they do not always come back in relation to negative issues or in dire need. They also come back to be celebrated and to maintain relationships, because it moves their psychology towards, "I matter to somebody"—even if it is a local authority.

Miles Briggs: Thank you for that. Last week, we also heard that the use of the word "aftercare" in this is problematic.

Jo Derrick: I would echo both parts of what has been said: the recognition around the element of continuing care and also a child's right to feel as if they are a part of a family, no matter what age they are. That is what we have all been working towards. We need a loving system and corporate parents that recognise that, having made a massively significant decision to remove a child and place them within a care system, they have a responsibility for life. That is part of why we are calling for guaranteed lifelong support.

The right to return is also key. We see in trends in everyday life that more and more people are experiencing circumstances whereby they may leave home, and then return home. We have all done that, or know somebody who has done that, and it should not be any different for those young people.

We see across Scotland some good examples of support that is working well in relation to aftercare, continuing care and that right to be able to return. The issue is that it then becomes a bit of a postcode lottery, which we have talked about for years within the work that we do. It is important to have something nuanced so that local communities can meet the needs of local people within their areas, as well as having an approach that recognises that we should have a minimum standard for what we would expect in relation to the lived experience of the young people who we are caring for.

I do not have a specific view on whether that support should be enshrined in law. However, if we leave it open to interpretation, it will become one of those things that becomes resource led once again. If we address and mitigate against the resource-led approach, we can move towards responses being more needs led and personalised, rather than having to make decisions around creating the right to something. However, without that right, a young person needs to know what their entitlement is and what they should and can expect in relation to both aftercare and continuing care.

Miles Briggs: I have a few more questions, but I will come back to them later.

George Adam: I am glad that Mr Briggs has stopped, because he was verging on the questions that I wanted to ask.

My question is about corporate parenting, and it is for Natalie Williams from the Fostering Network. With our own 16-year-old kids, we do not just say, "There's the door—out you go into the big, bad world." If issues happen at 26, it is a whole-of-life experience. We have already spoken about this, and we heard evidence on it last week. Can you talk to me about that and how we can get to that place if we travel down that road?

Natalie Williams: On corporate parenting?

George Adam: Yes.

Natalie Williams: The bill's provisions on extending corporate parenting to cover formerly looked-after children and young people up to 26 are really welcome. We would support Who Cares? Scotland's calls for an even more ambitious approach, which extends corporate parenting duties to cover care-experienced people's whole lifespan. There are already a lot of bodies in Scotland that have corporate parenting duties, including a duty to be alert to matters that might affect young people's wellbeing. However, we really need to enshrine in legislation that that support is there for the duration of those young people's lives, and up to 26.

George Adam: In a lot of cases, corporate parents, organisations and others are involved. How do we get to a place where corporate parents understand their obligations?

Jo Derrick: I am happy to talk about that. There needs to be national guidance, awareness raising, a training programme and a flexible but responsive approach across Scotland. Corporate parents across Scotland have an understanding of some of their responsibilities, but they need to be held further to account. One way of doing that is through stronger guidance and corporate parents being able to demonstrate those responsibilities in action. I do not think that a massive amount needs to change in that respect—it is about being able to see those responsibilities being put into effect.

George Adam: I am a former councillor, and we got the corporate parenting aspect right from day 1. I would find it strange if organisations that have corporate parenting responsibilities were not getting the message. I do not know what your feeling is across the board.

Jo Derrick: There are inconsistencies across the board, and that can be within one local authority area. If I were to speak on behalf of throughcare and aftercare teams, I would say that they cannot find time in their own organisation and are having to bring people alongside from other parts of corporate bodies to understand what the requirements are.

There is still too much stigma. I am sure that we will all have experienced that. Young people are still facing too much stigma around being care experienced, yet corporate parents have a responsibility for their welfare and wellbeing. There is still inconsistency in how corporate parenting responsibility is raised and kept at a high level. Some of that might be in relation to reporting, and demonstrating where best practice can take place. However, there is still too much inconsistency among corporate parents in their understanding of their responsibilities and evidence of how they have put those responsibilities in place.

George Adam: I am almost scared to ask Duncan Dunlop about that, in case he starts shouting at me again. I know that you are passionate about this issue, Duncan, because I think that I was on the committee when you were here with Who Cares? Scotland all those years ago. You have no doubt got plenty to say about this.

Duncan Dunlop: I am sorry, George—I do not mean to shout. I am passionate about it.

George Adam: I appreciate your passion for it.

Duncan Dunlop: It is frustration and passion. It is a major issue, which is why it needs to cost our country more. The thing that we have missed is this: who, outside of this room, and other than the people who work with care-experienced young people, knows what care experience is? I do not think that very many people do. There have been more than three public announcements from the Government that it would do something in public education on care experience, way beyond corporate parenting.

Think of the seismic changes that have happened when an issue has cut through—for example, on racism, following the George Floyd incident, or even the Post Office scandal, which was suddenly the focus of attention. Going back a few decades, that happened in relation to homelessness with "Cathy Come Home". What is going to be done on care experience that will cut through to the public? We are talking about an attitude. We can legislate for corporate parenting—such legislation is already there—but how many of the plans are followed through, and how many people check that they are complying with what is written down?

12:00

George Adam: Do you not think that it is sometimes down to the individuals who are involved in the corporate parenting organisation?

Duncan Dunlop: Yes, I do.

George Adam: You and I buy into it, but others who have gone down the same path might not have bought into it as much.

Duncan Dunlop: Yes. There are a number of issues with that, but a good example of why attitude really matters is what has happened in further and higher education. There was a bill on widening access that said that we needed to get more people engaged and that one of the groups that that needed to happen with was care-experienced people. There was a bill, and a tranche of money was provided—I give credit to the Government for this—to invest in bursaries for care-experienced people.

That landed because people with authority and power in universities, colleges, the Scottish Funding Council and so on said, "We can make this happen—we can make a difference." They have been really open-minded about changing their internal policies and treating care as a protected characteristic to make sure that people with care experience get year-round accommodation, support and—if they need them—emergency grants, and to make sure that, if people with care experience miss classes and so on, they are understood. The attitude came from the university and college principals, if that is what they are called these days. There has been a huge uptick in that area as a result of policy and funding and the institutions having the right attitude to make it happen. Attitude is key here, and that is why public education, on which it does not feel as though anything tangible is happening, really matters.

My final point is that I would get rid of the word "corporate" and talk about "community parenting". We are all part of a community and, if we care about the issue, it is the community hat, rather than the corporate hat, that matters.

George Adam: I think that you make a valid point, because "corporate parenting" sounds cold. That is not what we are talking about. We are talking about love.

Duncan Dunlop: Yes.

The Convener: Hearing you talk about love suggests that there is a different side to you that I have not seen before, Mr Adam. [*Laughter*.]

George Adam: You were not involved, convener.

The Convener: I know—it definitely wasn't directed at me.

Paul McLennan: I am not sure how to follow that.

I have a more general question about the UNCRC, which Lynne O'Brien touched on. Several respondents have commented on the drafting of sections 1 and 2, on aftercare, and section 10, on the register of foster carers, which amend the Children (Scotland) Act 1995. As that is pre-devolution UK legislation, it falls outwith the scope of the UNCRC.

What are your views on that small but important point? Significant issues could be created if we do not get that aspect right. I will come to Lynne first, as she raised the issue.

Lynne O'Brien: We endorse the proposal that Together Scotland made in its submission that the bill should be amended to ensure that it is compliant with the UNCRC and does not refer only to the 1995 act. That relates to the bigger point about our ambition to uphold and promote the rights of Scotland's children. There must be alignment and connectivity with children's rights at all points throughout the bill.

Paul McLennan: Jo, do you have any views on the point about the UNCRC in the context of aftercare?

Jo Derrick: I do not have anything to add to what is in the Together response.

Paul McLennan: I do not know whether anyone else wants to address that point, which is an important one.

The Convener: I would like to come in before you move on to other points.

Ms O'Brien, is your concern at such a level that, should the Government not accept what has been said in various responses about the need for compliance with the UNCRC to be incorporated in stand-alone parts of the legislation, you would be unable to support the bill as a whole? Are your concerns so significant that, if people do not have that right of appeal through the UNCRC, support for the bill overall could be under threat?

Lynne O'Brien: Our legal colleagues who spoke in an earlier session were much more expert on the technicalities, but we support the position that the bill needs to be compliant with the UNCRC. My understanding is that that could be dealt with through an amendment.

The Convener: I accept that. That is a legal question, which we will definitely put to the minister.

The minister has already taken a decision to frame the bill in such a way that there are elements that are outwith the UNCRC, because it refers back to the 1995 act. If that is not rectified, would that be a significant enough concern for you to say, "We shouldn't support this bill"?

Lynne O'Brien: It would be a significant concern that we would share with other people. We would need to see the detail of that and consider the children's rights implications. I think that it was Maria Galli or Kate Thompson from the children's commissioner's office who said that the issue of a child rights and wellbeing impact assessment should be explored again. We would need to consider whether there was a massive implication for children's rights. We believe that there is a restriction in relation to the right to appeal for children and young people; therefore, rather than move forward with a bill with that restriction, we should ensure that it is compliant.

The Convener: Thank you. Mr McLennan, back to you.

Paul McLennan: I will move on, and I will ask Duncan Dunlop to respond to this question first. Some of the submissions to the committee said that there needs to be clarity on the bill's proposal for guidance in relation to care experience to ensure that it is effective. You touched on that earlier. There was also a range of views about who should be included in any proposed definition.

How can the Scottish Government ensure that the provisions have a positive impact on care-experienced people, and how do you suggest work to decide on a definition—

Duncan Dunlop: I cannot hear you, sorry, Paul.

Paul McLennan: How can the Scottish Government ensure that the provisions have a positive impact on care-experienced people, and how do you suggest that work to decide on the definition should be progressed? Like George Adam, I was a councillor for 15 years, and as an MSP, I have met care-experienced youngsters and those going through transition. There is a real issue around what support they have and how much they are listened to as care-experienced people. Some of them have been in the system for a year, some have been in the system for five or 10 years, but they gave strong feedback that they are not being listened to more broadly.

You mentioned earlier broadening out the definition of care. From your experience, what lessons can be learned, and what are your views?

Duncan Dunlop: I would not have aftercare being age bound. We need to get rid of that threshold, which is a psychological barrier. As for not listening to children, it comes back to what I said earlier about advocacy. They do not feel listened to because maybe they do not know how to communicate. They come into formal meetings but they are not necessarily articulate and do not use language in the way that we like to think about language. That is why they have an advocate who is there to represent what they need so that they are properly listened to.

If you miss something early on in their journey, they stop listening and acting because they are stuck. They might say, “You never listened to me about wanting to be with my brother, and I am not with him. That really mattered to me. My dog mattered and my football team mattered, and you did not listen”. Therefore, they start to lose faith in what is happening, and we stop hearing one other.

It is really important that the children are able to understand the machinery of care that goes around them and that there is someone there to make sure that their voice is represented.

On the ending aftercare bit, just get rid of it. It will not have the resource implication that we are scared of at this stage, if we have a proper system in which we are committed to making sure that people are claimed and loved and that they belong to somebody.

Paul McLennan: Jo Derrick, what are your thoughts on the aftercare point that Duncan Dunlop has just made? I asked also about the definition of care experience, but the aftercare point is also really important. I know that we have had previous discussions about that, but what are your thoughts on the bill and on that point?

Jo Derrick: Our members would say that if we are able to support children and young people at an earlier stage, the line of correlation will mean that there will not necessarily be the same level of need, which will affect what aftercare looks like.

Therefore, there are aspects of the scaffolding that is in place at an earlier stage to consider. That is one of the reasons why we call for planning, when it comes to transitions to adulthood, to happen earlier and in a way that is needs led, and for it to be applied consistently across Scotland.

We can use the term “aftercare” or not; the whole point is that the young person who has care experience has a relationship with those who are responsible for them, and who will care for and love them, and that we meet their needs as they transition into being an adult. We are finding that that is not happening currently. That is the main concern.

When we look at the provisions of the bill, we see that the intent is absolutely clear, and we would support broadening the definition of care experience. However, it is important to be clear about that definition, because when it becomes open to interpretation, we start to see entitlements and rights not being expressed in an appropriate way so that young people can understand them. They need fewer people around them to provide the support if they have been supported to learn and to do things themselves—but not at too young an age, because we expect too much of children and young people at times, based on cliff edges and age responses.

We acknowledge that it would be useful to have it mandated in the definition of care experience, but we should recognise that we have to acknowledge that aftercare is not working as well as it could and should for young people. Therefore, any extension to the provisions for aftercare or additions to it that are being explored must recognise that the scaffolding, including the teams delivering care and the support that they have, must be more fully in place. As things stand with the aftercare provisions, eligibility might have to be looked at, which could mean that stigma is created and that we move away from relationship-based practice and into transactional practice.

Pam Duncan-Glancy asked Duncan Dunlop about the guarantee of a job in the public sector. Although our members do not have a view about whether that should be included in the bill, I believe that if we can support young people with their finances and their ability to earn so that they are able to lead a life with financial security and wellbeing, it will have a significant impact on their lives as well as their support needs as they transition to adulthood. We need to acknowledge that there are other things that need to be, and should be, in place if the bill is going to be effective in its ambitions.

Paul McLennan: Duncan Dunlop has mentioned advocacy and Jo Derrick has spoken about aftercare, and both have made important points. I previously used an example of kids who are about 15 or 16 who were ready for the transition. They had issues with housing and concerns about what their next step in life would be, and very little support was provided. Getting that start in life could have made a huge impact on them.

There is another question about geographical differences. The care that someone will be provided will be very different in rural Aberdeenshire or the Highlands and Islands compared to urban Glasgow and Edinburgh. We have not really discussed that, but we need to ensure that the level of care, support and advocacy is not impacted by geography.

Lynne O’Brien: We are members of the Scottish Throughcare and Aftercare Forum and wholeheartedly support what Jo Derrick has said. Duncan Dunlop made a broader point about the cost of care. The “Follow the Money” report makes the cost of failure very clear. There are some limitations and restrictions when we get into who is entitled to care and who is not. However, if, as a nation, we are saying that we want to do the very best that we can for children who are in our care and who are looked after, then that is what we should do. We already know what good looks like and what children, young people and their families have asked for. There is a cost if we go down a reductive route and close down the restrictions whereas, if we are much more ambitious, we can enable children and young people to have better outcomes and we would reduce the costs. We already know that the cost of failure is significant for our children and families.

There are a number of points about the postcode lottery, which goes back to the corporate parenting provisions. There needs to be a real understanding of the issues. Our corporate parents should have connectivity and proximity to the children who they are responsible for and who they should love and care for, but there is a variation across Scotland. We need to celebrate and talk about when corporate parenting is done well. As Jo Derrick was saying, there are good examples, so we should look at them and discuss the strong evidence.

We know from some of the evidence that is emerging that we are looking after fewer children and young people in residential care and more children in the community. We should consider what that looks like when it is done well, and what it looks like in a rural setting or an urban setting. We know what good corporate parenting and good parenting looks like. We should just do it and help others to do it to.

12:15

Duncan Dunlop: If you look at any human beings, but particularly kids in care, you see that they need health, education, a job or another purpose, and housing. The one thing that will hold that together is a relationship, and what very much matters about that relationship is that it is with someone who the person really believes is committed to them.

One thing that is not a good idea for children and young people in care is a universal basic income, as in Wales, because they really need purpose. They should not be given a universal basic income at 18, unless that is directly related to them getting a job, with them being hand held into that. If they do not have the social skills and practical skills to do it, give them the job and work backwards from that. If we all get our sleeves rolled up to make that happen, it would be a good place to start.

We do some odd things for kids in care; for example, we give them a flat. Not many 18-year-olds get their own flat. Again, we have distorted the situation away from being ordinary, so how can we achieve that? The main thing that we need to do is get a relationship around that.

Paul McLennan: That is a really important point, and it goes right through this issue. Natalie, do you want to add anything?

Natalie Williams: For us, it is about some of the points that I made earlier on the importance of continuing care and the possibility of extending that. Many young people in foster care want to stay with their former foster carers but are not able to. In our recent state of the nations survey, 57 per cent of foster carers in Scotland who responded said that they are worse off financially if they go into a continuing care arrangement, which is a major disincentive for those young people being able to stay. The foster carers want them to stay and the young people want to stay, but they are just not able to.

On relationships and the support that foster carers provide to young people as they transition, there is, as we have said, an important impact on the outcomes of young people from being able to stay in care, as well as long-term outcomes that will benefit them—for example, they are a lot less likely to end up homeless if they stay with a foster carer. We would really like there to be a statutory allowance for continuing care, but, at the moment, there is no statutory allowance for foster carers for continuing care.

John Mason: Ms O’Brien, you said that you wanted to talk about profit, and now is your chance. Your submission says a few things. It says:

> “organisations should not profiteer from children’s care”.

It also says:

> “The ability for a Minister to put a profit limitation requirement on services could have catastrophic impact on our ability to deliver high quality ... care”.

Do you want to expand on that?

Lynne O’Brien: As I said earlier, there is a really important distinction to be made here. The care review was really clear that no one should profit from children’s care. Organisations that provide care and support for children need to be financially stable and sustainable in order to do that, but we must not conflate two issues: the level of profit and/or surplus, and profiteering. The care review made its recommendations specifically in relation to profiteering—the extraction out of the system of money that goes straight to stakeholders in the form of dividends from private companies.

On the issue of organisations generating a surplus, we do not want to get into a situation in which organisations are heavily scrutinised and restricted, because that will reduce their ability to respond in the best way to provide children’s care and support. Aberlour is an organisation that provides residential care and support for children, community support to enable children to stay at home with their families, foster care and more, and every penny of Aberlour's income is reinvested in those models of care and in children and families. Even greater than that, Aberlour's primary purpose is to improve the lives and life chances of children and families in Scotland, and every penny that is generated in income for Aberlour goes to serve that primary purpose, which is very different from that of some private organisations, which are profit driven. I am not saying that—

John Mason: That suggests that everybody should be a charity, as we are talking about with fostering. Would that be an answer?

Lynne O'Brien: That is one answer, but there is a wider discussion to be had. There are some private providers that provide high levels of quality care in Scotland, and they, too, reinvest money in children's services. I do not want to name any organisations—

John Mason: Do you accept that it is hard to get the sort of balance that you are describing into legislation? On the one hand, we want to give organisations freedom to invest where the need is, but, on the other hand, we do not want to let them make too much profit.

Lynne O'Brien: I am not a legislative expert, but, from my perspective, I do not think that it is about making too much profit. I understand the non-profit principle and the principle that we must do all that we can to deliver the Promise and to improve the lives of children and young people. That distinction must be well made in the legislation. If money is being extracted from children's services in Scotland, that is the area that we need to focus on.

John Mason: Do you think that the bill is too vague? I am not sure if you were here earlier, but I read out the provision that says that the regulations

> "may specify ... how the level of profit made by types of person ... is to be determined",

which seems quite vague.

Lynne O'Brien: We need to be really clear about what we mean by that, so that the legislation actually delivers on its purpose.

John Mason: Mr Dunlop, you said that profit is a distraction and that we want love, but we cannot put that in the legislation, which must deal with things such as profit. Is that fair?

Duncan Dunlop: I said that profit is a distraction because I do not agree with it. I certainly do not agree that people should make money that is siphoned off to various hedge funds. Quite a lot of people make quite a lot of money out of care. It is not just hedge fund managers and private care homes that do that—if you scrutinise the accounts of some of Scotland's larger charities, you will find some quite eye-watering payments going to charities that deliver care in this country.

John Mason: When you say "going to charities", do you mean going to chief executives?

Duncan Dunlop: Yes. I hasten to add that I do not mean any of the people around this table. None of us is in that boat.

I find the focus on profit an annoying distraction. People mean well when they say, "Let's focus on profit," but I would rather focus on the type of care.

John Mason: Do you accept that we cannot do that in legislation? That comes down to the culture and the relationships that you were talking about earlier, but the committee is looking at legislation.

Duncan Dunlop: You can do that in legislation. I am telling you that I do not believe that we should have institutional care. The care review and the things that came out of it do not talk about residential care. There are only two pages on it, which are in fairly big text. The review does not talk about that, but 11 per cent of kids in care are in residential settings.

That is a huge issue for me. When you have a staff rota of 20 people trying to care for and look after children, that costs a lot of money. Even the public sector is spending between £300,000 and £400,000 per child per year to keep them in that type of institution, but they are not held in loving relationships when they come out, which is a huge problem.

Regardless of whether a profit is being made, the cost is huge and it does not work. We must look at the type of care that we are offering. If we are going to get people to love and hold a young person, and make them belong, they are not going to do that for the payment. They need to have their costs covered and there are other ways in which their lives might benefit from that, but they are not doing it for payment. That is why we must look at the fundamentals of where we have gone wrong with what we are doing to transform care.

To my mind, it is a distraction to look at the profit question when we should be looking at what we are actually delivering. If we looked at the fundamentals of who is trying to care for these children and how we can enable and support them to care for and love them, the profit question would diminish, because no one would be able to make money out of that.

John Mason: We could probably debate that for quite a long time.

Would either of the other two witnesses like to talk about the profit element?

Natalie Williams: The Fostering Network agrees with the Promise that there is no place for profit in children's social care in Scotland. As others have said, our primary concern is the quality of the care that children receive.

John Mason: I am sorry to interrupt you with a question that I also asked the previous panel. Is there evidence about whether care is better in the charity sector or in the for-profit sector?

Natalie Williams: There is evidence on both sides. As others have said, it is concerning that money is being diverted outside the care system rather than being spent on providing high-quality care for children, so we support the strengthening of the not-for-profit principle. We have been quite involved in the work in Wales on the eliminating profit agenda, and we support the proposal for independent fostering agencies in Scotland to become registered charities. We would like that to go further than it has in Wales, where such agencies will simply be not-for-profit bodies.

We think that that should be introduced in a phased way to allow enough time for services to transition, although we know that some of our members are already thinking about how they can do that. However, introducing enhanced financial reporting requirements will not be enough to address some of the lack of transparency around how IFAs operate financially; at the moment, there are loopholes that can be exploited.

That is what is happening in Wales, but we agree with Aberlour that charities should be able to reinvest their surpluses. Indeed, that is a key component of how charities operate; the Fostering Network is itself a charity, and that is how we manage to operate with short-term funding grants. It enables charities to be sustainable.

John Mason: Do you see the fact that we are dealing with fostering agencies differently from residential care as a problem, or is that okay?

Natalie Williams: We would support Scotland going further, as they have done in Wales, and requiring residential care to become not for profit. I would say that the proposals in the bill are quite weak with regard to the requirements in that respect.

John Mason: I note that Ms Derrick has not responded so far. Did you want to come in on any of this?

Jo Derrick: Just briefly. As with others, our membership did not have a consistent overarching view on the issue either way, but it is always about quality of care for the child and support for the carers, whether they be foster carers or whatever workforce or form of care we might be talking about.

We would also recognise that, when it comes to children in our care system, there is already a shortage of carers, if we are thinking about foster care. There are roles for organisations to play, but the fundamental question is still how we provide the best outcomes for children. As I have said, though, our membership did not have a strong view on the bill's position with regard to profit.

John Mason: I take your point about providing the best outcomes for children, and you said in answer to a previous question that the process should not be resource led, but do you accept that we have to live within a budget?

Jo Derrick: Absolutely. Everyone—including the other organisations—has to live within a budget. There is also the issue of long-term financial planning, which brings us back to the question of how certain services are supported and have the capacity to deliver, so that we can move away from some crisis interventions and ensure, in turn, that some of the services that are accessed in the sector are able to respond.

John Mason: You wanted to come back in, Mr Dunlop.

Duncan Dunlop: If we are looking at having a values or ethics-based care system, why would I want to place a child in a profit-based institution? I would use Aberlour, which is a charity, or use my own provision. The question, then, is this: why are we not investing in choosing where we place kids and why are we choosing to place them in those institutions? I do not see why we have to focus on the profit issue—it should not be part of our system anyway. Why are we focusing legislative time on that issue, when we should be focusing on so many other issues that can have an absolutely transformational impact on children's lives? Yes, it is an issue, but why are the commissioners of care not choosing different options?

John Mason: I think that we are in danger of going over the same ground of discussing the culture as opposed to the legislation.

I want to come back to fostering. Ms Williams, you say in your submission that the average payment is £13,579 and that it varies by £34,696. It sounds as if, at the top end, it is quite a lot, but the average is—

Natalie Williams: I am sorry—are you talking about payments for a fostering place?

John Mason: Yes.

Natalie Williams: Yes, so there is—

John Mason: The payments vary a lot and you would like there to be a standard rate.

Natalie Williams: Yes.

John Mason: What would that standard rate be?

Natalie Williams: I would have to work that out and come back to you.

John Mason: Because your submission does not say. It gives the average and the variance, but it does not actually say what you want the payment to be.

Natalie Williams: Okay. Obviously, our point is about profit potentially being taken out of the system and that money not being used for children's care but going towards profit making instead. Therefore, it is all about keeping the payments as low as possible so that local authorities can keep their costs down and provide good care to children. However, we can come back to you on that.

John Mason: That would be helpful—thank you.

Finally, on the financial memorandum as a whole, I see that we are expected to get to a figure of £20 million to £23 million in 2029-30. Is it your overall feeling that that figure is reasonable? Is it a bit too low, or a bit too high?

Jo Derrick: Specifically from an aftercare perspective, our concern is that the figure that has been calculated for the aftercare provisions is unlikely to be enough. Indeed, the fact is that the existing support is not enough.

Other submissions—I am sorry; I cannot remember which ones—have questioned where the data for the calculations has come from, and we would support that view. I do not have a figure for this myself, but our general sense is that the figure in the financial memorandum is probably not enough for the ambitions that have been set out.

12:30

John Mason: That was going to be my next question—what would you like the figure to be? It is going up to £7.4 million in 2029-30. Should it be double that, or half again? Do you have any idea?

Jo Derrick: I would also have to come back on that, rather than guessing today.

John Mason: Does anyone else want to say anything about the financial memorandum as a whole?

Lynne O'Brien: I support the point that we need to be more ambitious for our children and families in Scotland.

John Mason: On the aftercare and the advocacy?

Lynne O'Brien: On all of it.

Natalie Williams: As has been said, there are key financial elements that are not in the bill and, potentially, the amounts are not set out for them. The finances need to be set aside for foster care allowances and continuing care allowances; at the moment, local authorities are not paying well. They are paying the Scottish recommended allowance, but we at the Fostering Network have calculated rates for what we think that the fostering allowance should be, and the current rates are 50 to 100 per cent lower than what we calculated that foster carers need for a child in their care. A third of foster carers tell us that their allowances do not fully meet the costs of caring for children in their care. We would like the finances for those allowances to be included as part of the bill.

John Mason: Do you have a final word, Mr Dunlop?

Duncan Dunlop: No—I will not add anything more.

Miles Briggs: I will return to the register of foster carers, which the bill proposes and which is to be set out in regulations at a later date. What is your assessment of those proposals? How do you think that they can be improved?

Natalie Williams: As I said, the Fostering Network is really pleased to see the provisions for a register. We welcome the fact that it is a pilot, because that will allow some of the detail to be tested and worked out, particularly—we hope—in consultation with our members and other organisations. At the same time, the fact that it is a pilot means that there is still a lot of detail that has not been worked out. Essentially, we are talking about a concept and what we think that it can do.

In the Fostering Network, just over half of foster carers have said that they support the proposals to create a national register. We think that it would have four key benefits for foster carers in the care system.

First, a register could improve safeguarding of children. That is something that the Scottish child abuse inquiry outlined. At the moment, when someone applies to foster, we do not know whether they have been deregistered for safeguarding reasons from another fostering agency. The register would enable that to be checked. That is a serious safeguarding risk to children at the moment, and we know from our members that it can happen.

Secondly, a register could improve matching and solve some of the issues that we talked about earlier by allowing local authorities to have easier access to foster carers who foster for neighbouring local authorities and IFAs. It would be able to provide accurate real-time data on the number and spread of foster carers in Scotland, which would help with sufficiency planning for placements—the Care Inspectorate's data is always a couple of years out of date.

Services could use the register to help to find carers for children who they might be struggling to place. Sometimes, there are foster carers with vacancies but we do not know where they are. In our most recent state of the nations survey, 44 per cent of foster carers said that they had had an unfilled space for a child in foster care in the past 24 months. At the same time, we are saying that there is a fostering crisis and there are not enough foster carers—when, in fact, there are potentially some foster carers who have a vacant placement. The most common reason for a vacancy that they told us was that they were waiting for a suitable match. A register could help to facilitate some of that matching.

We also think that, importantly, a register would help to keep children more local to their family networks, friends and schools, which the Promise says is so important to children's stability and knowing where they are.

Thirdly, a register could help foster carers to transfer more easily between different services. Currently, services use different transfer protocols, which are not mandatory. That can cause delays if they want to move. A register could help to standardise that.

Fourthly, we think that a register could go some way to improving the status of foster carers by giving them greater professional recognition in the children's social care sector and among the general public. Foster carers are the only people who provide formal care for children but who do not have to be registered with a central body.

In our state of the nations surveys, foster carers frequently tell us that they feel that they are not respected in the team around the child when they go to meetings. By contrast, childminders, for example, are registered. That perpetuates a lack of respect and recognition of foster carers' commitment and skill. Foster carers look after children 24/7.

Miles Briggs: That is a helpful and thorough answer. In the previous part of the meeting, the committee heard from Who Cares? Scotland about the potential for a complaints function. Would you support that?

Natalie Williams: Do you mean, would we support a complaints function against foster carers being included in the bill?

Miles Briggs: Yes.

Natalie Williams: If the function were on behalf of children, it could potentially be included, particularly at an independent level.

Miles Briggs: Does anyone else want to add anything on the register?

Lynne O'Brien: We broadly support the register proposal. However, further consultation is required to consider the detail and implications of the secondary function. We agree that the safeguarding role should be the primary function. For the latter parts, such as the complaints aspect, we need to fully consider the implications, so we suggest that there should be further consultation on that.

Miles Briggs: That is helpful.

Jo Derrick: From a membership perspective, the register of foster carers would not be specifically impactful, given the nature of adult placement providers when it comes to continuing care. We acknowledge that a significant number of carers in Scotland are extending and changing their registration in order to support children and young people as they become young adults. They are doing so in a way that focuses on relationships and supports the young people's needs, which are often very different from when they started. That might need to be explored further as we talk about a register of carers, which will potentially have an age cut-off.

Miles Briggs: I have raised the issue of children and young people in kinship care with ministers and on panels. To go back to Duncan Dunlop's point, the bill is not ambitious enough for that group of young people. What are your views on children in kinship care arrangements? Given that we will be able to lodge amendments at stage 2 on the issue, how could it be corrected?

Duncan Dunlop: Children 1st has written that kinship carers should have the right in statute to family group conferencing or its equivalent. Before we use stranger care, which is what most foster or residential care becomes, anyone who has a relationship with a child must be considered as a potential caregiver. An example of where we get the approach wrong is in the plethora of mentoring schemes that are out there now. Mentors build quite strong relationships with young people most of the time, but they are not considered to be caregivers, which ought to be a matter of course.

Another way to strengthen the bill is to give carers co-parenting rights. Foster carers are seen as quasi-employees, which is a fudge. We could do the same as we do in kinship care. If a child has been in care for over a year and the placement is stable and settled, the carer should have co-parenting rights.

Miles Briggs: Thank you.

Jackie Dunbar: Good afternoon. I have questions regarding the children's hearings part of the bill. The hearings system working group has recommended that the obligation on a child to attend a hearing should be replaced by a presumption. The bill removes the obligation for the child, but it does not include the presumption. The Fostering Network has suggested that that could cause issues as it would erode a child's right to attend and the safeguarding of their rights. I want to hear what Natalie Williams and Duncan Dunlop think should be in the bill on that. Should the obligation for a child to attend simply be removed, or should the bill add a presumption?

Natalie Williams: As we set out in our written evidence, we support the removal of a child's obligation to attend a children's hearing and believe that it should be removed in all cases. We do not think that children should be forced to attend a hearing against their will.

Jackie Dunbar: In all cases?

Natalie Williams: Yes. We think that the presumption that children will attend should remain, except for babies and very young children. We are concerned that removing that could erode children's right to attend.

More generally, foster carers tell us that they are often excluded from children's hearings, although they are people who spend a lot of time with the children. We think that the principal reporter should be required to seek children's views on who they want to be involved in their hearing. Foster carers can provide a great deal of insight into children's needs. They can apply to be deemed relevant persons, but many do not know how to do so, so they do not realise that that is an option.

The principal reporter should be required to ask children who they want to be involved in their hearing, and that might increase the likelihood that foster carers are involved where appropriate, if the child wants them to be.

Guidance should be produced to support everyone who is involved in the hearings system to help them to better understand the role of the foster carer and communicate with them about the process of being deemed a relevant person.

Duncan Dunlop: I would say that, if there is relationship-based independent opt-out advocacy, that will help to cover some of that. If someone is there to properly represent the child's view or perspective in that space, it is better if there is a presumption that the child will attend the hearing rather than there being an obligation to do so.

Another point is that it is interesting that we are stuck with the children's hearings system. I know that we have not gone for the paid chair as was initially recommended by the working group. The family drug and alcohol court system in England is resource-intensive, but the judges who run it and are in charge of it are really skilled and they achieve good outcomes in terms of reducing the number of children and young people who need to enter care.

We must recognise that the children's hearings system was set up in the 1960s, following the Kilbrandon report, mainly to deal with situations involving offences, and now it focuses on children and young people who are in need of care and protection. It is a different set-up. I know that we are not looking at that issue—addressing that would involve a transformation of the system—but if we are going to have the system that we have, it must be in combination with relationship-based independent opt-out advocacy.

Jackie Dunbar: A fair few folk who responded to the call for views are supportive of the possibility of removing relevant persons from a children's hearing, and we have got the ability to do so. You said in your response to the call for views that the bill does not go far enough and that children should be at the centre of the decision-making process regarding whether a relevant person gets to come in. Can you say a bit more about that? Does what I have just said make sense?

Duncan Dunlop: No. Could you say it again please?

Jackie Dunbar: Yes; I didna really make much sense. You said that you are supportive of the provisions in the bill relating to the removal of relevant persons from children's hearings and that the bill does not go far enough towards centring children's views in the decision-making process regarding whether relevant persons should be there.

Duncan Dunlop: I am not sure that that was in my evidence, but I tend to agree with the fact that there are certain issues with different people being present in the hearing at all times, particularly if there has been domestic abuse. We need to focus on the fact that the hearing is for the child.

The process by which a child comes into care is important, which is why we are always looking at the children's hearings system. We need to look at how we make sure that the child is safe and that they can be heard. I go back to the advocacy element in that space. I know that more and more lawyers are coming into the hearings system, and it is becoming more conflictual, like a court-based system, which is not what it was ever designed to be.

Jackie Dunbar: Last week, we heard from Sheriff Mackie that the chair already has the ability to remove a relevant person. Am I hearing correctly that you would like the child's advocate to be able to say in advance to the chair that the child has some concerns?

Duncan Dunlop: Yes. The advocate is an extension of the child’s voice and they can represent the child in formal or adult proceedings, so yes, the advocate should have that ability.

Jackie Dunbar: Do any of the other witnesses have comments on that, or on the remaining provisions in the bill relating to the children’s hearings system that have not been covered?

The Convener: If no one has any comments on that point, we will move to Bill Kidd.

12:45

Bill Kidd: Thanks, everybody, for everything that you have covered so far. I will ask a question that I asked the previous witnesses—if you were in the room, you will have heard it already, and this is your opportunity to respond.

The bill proposes that integration joint boards will join local authorities and health boards on the list of bodies that are required to plan children’s services. I know that STAF has said that a review of the existing guidance should take place before any changes are implemented, and that nationwide support should be standardised. Jo Derrick, would you like to say anything further about that, and about the involvement of integration joint boards, in particular?

Jo Derrick: Beyond what we have said in our submission, it is a matter of bringing things back to the lived experience of people in the system. Therefore, when we are talking about the unified national framework, it relates to young people understanding what is available, what they are entitled to and what their rights are, and involves an attempt to reduce the different lived experiences based on where people live. It also supports the workforce. There are still too many people who do not know what their rights and entitlements currently are.

That goes alongside ensuring that the bill is empowering for children and young people. We have been talking about them, but the bill is ultimately about the empowerment of young people, so that they are informed in their own lives and have the ability to flourish. The guidance that comes under the bill and the implementation of anything that is passed in the bill will be key to successful outcomes.

Let us be clear about this. There is a lot that is already well known and already there. There are things that need to happen now for young people, and we should not get caught up in what other things might happen.

Bill Kidd: So, basically, consultation with those who are most affected is the most important thing to begin with, before we consider all the other elements.

Jo Derrick: There is consultation, and there is movement into co-design. That is a big element, which sits underneath the work regarding the Promise and all the organisations that have been involved in that. If we can ensure that those whom the bill impacts the most are involved, we will get to better solutions.

Bill Kidd: Natalie Williams, you looked as though you wanted to say something.

Natalie Williams: No.

Bill Kidd: Sorry—I beg your pardon. Duncan Dunlop, do you want to add anything?

Duncan Dunlop: This is one of the major areas where we have missed the boat for eight years. Nobody has talked about who should deliver care and who should be responsible overall. We have had no conversations about that at all. Why does it sit with the local authority? I was an expert adviser for the English care review—I did that in New Zealand, too—and I often heard that the finance director of a local authority has a lot of power in this regard. They either get it and prioritise this area, or they do not. Look what they are in charge of: flowerbeds, potholes—oh, and children in care. That does not make sense. Why is power being held in that way at that level? There are issues around local authorities being efficient administrative bases.

Again, this is about the culture and about emotion. We can try to get the community to own these children and young people. It goes to high school level and general practice surgery level. We need to think about how we organise and deliver care, and how we get the community involved. If care is administered at too broad a level, it is too detached from the people who can really understand the child and care about them—the family and those who are around them.

Bill Kidd: That makes sense—thank you.

Lynne O’Brien: We did not make a huge point about that area of the bill, but this relates to the earlier point about the culture. The structure will only take us so far, but the culture will take us further. I would rely on experts to comment further on that area of the bill.

Bill Kidd: Thank you all very much.

Willie Rennie: Duncan Dunlop, I will direct my questions towards you. You have expressed your frustration—verging on anger—about how things have progressed. I would quite like to know what we should do next. We will be considering stage 2 amendments—we will not be able to go back to the beginning; we have to deal with the bill before us. I would like you to set out, from your experience in England and here, precisely what you think that we should do. You might not have all the answers now, so perhaps you could make a submission later. We get how frustrated you are, but what do we do next?

Duncan Dunlop: In the past couple of years, the committee has taken evidence from care-experienced people in a closed session. I have issues around that. My background is in youth participation, engagement and lived experience, and I have a problem with the phrase “co-design”. A lot of activists who are care-experienced and work in different places in the sector say that there is a real problem with that approach—they feel that they are being used as tools to prop up the status quo and that there is a failure to deliver change. Their job is to say, “This is my experience, and I’m not enjoying it. It’s not good enough”, or, “This was my experience, and I didn’t enjoy it. It wasn’t good enough and this is what I should have had.” They wonder why they are being asked to design what the system should look like and how it should be different.

There are two examples given by leaders. One is from Jonny Hoyle, who said, “If you give me lasagne for my tea every night, all I’m ever going to ask for is lasagne, because I do not know what else is out there.” The other example is about being on a train. If I get on a train from Edinburgh Waverley to Glasgow and it does not run on time, or it is uncomfortable, too hot or whatever else, I will say, “That was a rubbish experience. It was too hot, it was uncomfortable and I didn’t get what I wanted.” I would expect somebody who has the relevant expertise, knowledge and know-how to fix it. When they say that they have fixed the carriage, I can say, “Yes, that’s it”, or, “No, that’s not it.”

We are trying to say that everything is about care-experienced people and that they are designing the system, so it is all okay. However, it is not okay. That approach has become a smokescreen that enables us to not scrutinise enough what is happening. We can hear the raw experience of care-experienced people regarding what is going on for them today, and we can use that to guide what is happening. This committee can do that in its future iterations.

As for what you can do, one thing comes to mind. You can have some marquee proposals. You can get rid of an age limit on aftercare. Just say, “We should always be there for these kids. We’ve taken them into care.” People always say that we cannot legislate for love, but by heck, we legislate to say, “You’re unable to love your child and we can remove them.” If we can do that, we should be able to say, “How do we create the best conditions for you to be loved, supported and cared for?” It will never be a fail-safe system—we will never get it right for 100 per cent of children—but we can do a hell of a lot better with it. We can say, “We didn’t get it right for you, and therefore we’ll keep giving you advocacy for life and provisions to help with college or university, because you are our child.” If we could recognise the need to say, “You are our child and we won’t leave you. If you want to leave us, that’s okay, but we are always here for you”, that would be a very good mindset with which to look at the issues.

If you want specifics, I have written some down, but I can go away and give more thought to it. We need to be far more ambitious, and lift our heads up and say, “We’re in the weeds dealing with the provisions in the bill. Let’s get ambitious with what we can do with this.” It might feel like a risk, but it is not. It will send a really strong message to care-experienced people that they absolutely matter, and not just the few who we hear from. It will send a message to those who are living their lives on a daily basis and do not necessarily want to wear their care identity on their sleeve.

Willie Rennie: I would appreciate it if you were able to send us some suggestions, if you have others. We have to deal with this bill, and I want to make it the best that it can be. Let us work together on the issue of the age limit.

Duncan Dunlop: The right to return to care should have come in in 2012—I regret that we did not do that—and there is stuff around employment. I can give you the issues to consider, but I would not be as vague as the bill, which just randomly selects things.

The Convener: Thank you all very much. That concludes today’s evidence session on the bill. I am grateful for your time, insight and contributions to this important part of parliamentary scrutiny.

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

12:53

Meeting continued in private until 13:12.

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