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Pàrlamaid na h-Alba

Official Report

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 16 March 2010

Session 3

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EQUAL OPPORTUNITIES COMMITTEE
5th Meeting 2010, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)
Willie Coffey (Kilmarnock and Loudoun) (SNP)
Bill Kidd (Glasgow) (SNP)
*Christina McKelvie (Central Scotland) (SNP)
*Hugh O'Donnell (Central Scotland) (LD)
*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Rhoda Grant (Highlands and Islands) (Lab)
Mary Scanlon (Highlands and Islands) (Con)
Margaret Smith (Edinburgh West) (LD)
*Shirley-Anne Somerville (Lothians) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Shaben Begum (Scottish Independent Advocacy Alliance)
George Burgess (Scottish Government Justice Directorate)
Hilary Campbell (Scottish Development Centre for Mental Health)
Adam Ingram (Minister for Children and Early Years)
Stuart Lennox (Association of Directors of Social Work)
Dr Donald Lyons (Mental Welfare Commission for Scotland)
Selwyn McCausland (Barnardo's Scotland)
Shaun McNeil (Advocacy Matters (Greater Glasgow))
Dale Meller (NHS Health Scotland)
Michael Proctor (Scottish Government Directorate of Children, Young People and Social Care)
Carolyn Roberts (Scottish Association for Mental Health)

CLERK TO THE COMMITTEE

Jim Johnston

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Tuesday 16 March 2010

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the fifth meeting in 2010 of the Equal Opportunities Committee. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely as they interfere with the sound system even when they are switched to silent.

Item 1 is to decide whether to take in private item 4, which is a review of the evidence that we will hear today from the Minister for Children and Early Years on female offenders in the justice system. Do we agree to take item 4 in private?

Members *indicated agreement.*

The Convener: We have received apologies from Bill Kidd MSP and Willie Coffey MSP. I will be pleased to welcome later Shirley-Anne Somerville MSP, who will attend as a substitute. She is attending another committee, but will arrive here at about half eleven.

Mental Health (Care and Treatment) (Scotland) Act 2003 (Post-legislative Scrutiny)

10:01

The Convener: Item 2 is an oral evidence session on the Mental Health (Care and Treatment) (Scotland) Act 2003. At its meeting on 9 February 2010, the committee agreed to focus its post-legislative scrutiny on the equalities principles of the 2003 act. This is the first of two round-table evidence sessions with stakeholders on the issue. The second will take place at our next meeting on 23 March, after which we will have an evidence session with the Minister for Public Health and Sport. It is worth reminding everyone that although the round-table format is less formal than normal, this is still a public meeting for which an *Official Report* will be produced.

I welcome all the stakeholders. To kick off, it would be good if we all introduced ourselves. I am Margaret Mitchell, convener of the Equal Opportunities Committee.

Shaun McNeil (Advocacy Matters (Greater Glasgow)): I am Shaun McNeil, managing director of Advocacy Matters (Greater Glasgow) Ltd.

Hugh O'Donnell (Central Scotland) (LD): I am Hugh O'Donnell, member of the committee.

Stuart Lennox (Association of Directors of Social Work): I am Stuart Lennox, representing the Association of Directors of Social Work's mental health sub-group.

Selwyn McCausland (Barnardo's Scotland): I am Selwyn McCausland, national participation co-ordinator for Barnardo's Scotland.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I am Malcolm Chisholm, member of the committee.

Dr Donald Lyons (Mental Welfare Commission for Scotland): I am Donny Lions, director of the Mental Welfare Commission for Scotland.

Elaine Smith (Coatbridge and Chryston) (Lab): I am Elaine Smith MSP, member of the committee.

Dale Meller (NHS Health Scotland): I am Dale Meller, manager for the mental health and race equality programme in NHS Health Scotland.

Carolyn Roberts (Scottish Association for Mental Health): I am Carolyn Roberts, head of policy and campaigns at the Scottish Association for Mental Health.

Christina McKelvie (Central Scotland) (SNP): I am Christina McKelvie MSP, member of the committee.

Shaben Begum (Scottish Independent Advocacy Alliance): I am Shaben Begum of the Scottish Independent Advocacy Alliance.

Marlyn Glen (North East Scotland) (Lab): I am Marlyn Glen, deputy convener of the committee.

The Convener: Thank you very much.

We have had written submissions from some of the stakeholders, but representatives will appreciate that some questions will be asked to get matters on the record in the formal meeting. You have experience in different fields. I will start by asking why you thought that a duty to promote equalities was necessary. Would anyone like to kick off? Perhaps you can give a practical example of something that you have come across.

Dr Lyons: One of the most important issues coming from furth of Scotland was the unequal use of mental health legislation in certain parts of England, particularly for people from certain ethnic minority populations. That gave cause for concern, especially its overuse among black African and black Caribbean communities. A number of issues about gender and age were specifically introduced into the Scottish legislation. As the attendees will see, we have produced quite a lot of written evidence about that, which is a summary of all the work that we have been doing.

The Convener: That is helpful. Would anyone else like to contribute?

Selwyn McCausland: I certainly agree with Dr Lyons. One of the key points for Barnardo's is access to age-appropriate mental health services, particularly for children and young people. A key issue that we have faced over the years is the number of young people who have to go through adult services because there are not services appropriate for their age. The 2003 act has been positive in that regard, although there is a long way to go.

Shaben Begum: Having worked in advocacy organisations in England, I support what Donny Lyons said. I was surprised that we did not collection information about age, gender and ethnicity in Scotland. Those features are fundamental to a person's identity and if services are to be person centred—centred around the needs of the individual—not to consider a person's ethnicity or their religious or cultural background is a huge failing.

Carolyn Roberts: I agree with all of that. Also, if someone has a disability, that can have a real impact on the treatment that they require. If someone has a sensory impairment, for example—if they are deaf or have a visual impairment—it is extremely important for them to get the adjustments that they need if their treatment is to have the outcome that we are looking for. That does not always happen in mental health services generally, so it was extremely important that the 2003 act introduced the duty to promote equalities.

Stuart Lennox: By definition, mental health is very cross-cutting in relation to the population, so a key underpinning principle is that we do not start to impose another discriminatory layer. The 2003 act is positive in that regard and its principles are good in setting a framework, but positive reinforcement is needed on mental health.

Elaine Smith: Selwyn McCausland from Barnardo's mentioned inappropriate services for young people. The SAMH submission indicates that admissions of young people to adult psychiatric wards are increasing despite the commitment to halve the number by 2009. Do any of the witnesses have any thoughts on that?

Carolyn Roberts: I will follow that up, as you have mentioned our submission. Donny Lyons will correct me if I am wrong, but I believe that the number of such admissions fell initially and has risen more recently. In some areas, there has been investment in children's and young people's mental health, as it has been an area of particular concern. We welcome the fact that there has been a lot of investment and hope that that will mean that there will be improvements. However, it remains wrong for a young person not to receive age-appropriate treatment if they are detained. We are very concerned about the impact that the lack of such treatment has on their education and likelihood of recovery.

Malcolm Chisholm: I noticed that Shaben Begum supported the principle of the duty but I think that she said that we were not monitoring age, gender and ethnicity. I may have picked that up wrongly and it may come up subsequently, but it seems like an important issue, which I think NHS Health Scotland raised in its submission as well.

Shaben Begum: Dale Meller and Donny Lyons would be in a good position to respond to that. I was a member of the group that undertook the limited review of the 2003 act. Our experience was that, although documentation asks for background information such as people's ethnicity, those parts are not always completed and the information is not monitored. Dale Meller will know more about that than me.

The Convener: We will move on to the nitty-gritty. I was asking a general question to find out why there was a need for the duty. If you do not mind, we will move on to consider how the duty has been implemented and monitored. The Mental

Welfare Commission for Scotland was established to monitor the act, so I ask for some views on how the monitoring has taken place, how the commission has implemented the principles of equality and non-discrimination and how it intends to do so in future. It would also be useful to have comments on the duty as it applies to others who are mentioned in the act: the Scottish ministers, local authorities, health boards and medical practitioners. I ask for a general overview of how the act has been implemented and monitored.

Before we move on, I welcome Hilary Campbell, who is standing in for Chris O'Sullivan, representing the Scottish development centre for mental health.

Dr Lyons: I will respond specifically on the issue of young people's care, because it is very dear to our hearts. Carolyn Roberts is right to say that there was a fall in the number of young people admitted to adult wards. Members of the committee will most likely be aware that that was part of the mental health delivery plan: there was a commitment to reduce by half the number of young people admitted to adult wards by 2009.

That seemed to happen at first but, unfortunately, the numbers have risen again. I point out specifically that the numbers have risen for young men, especially those who are aged 16 and 17—they tend to be admitted to adult wards, whereas young women of the same age tend to be admitted to adolescent wards.

For the record, the commission has never argued that a young person should never be admitted to an adult ward. Sometimes it is necessary, and may even be the best thing. For example, it is better for a young person in Inverness who needs a brief admission to stabilise a mental health situation to be nearer their own community than to go down to the nearest young persons' unit, in Dundee. There might be some benefit in that situation.

Our concern is that when a young person is admitted to an adult ward, they sometimes do not get age-appropriate care, treatment and services while they are there. That is particularly the case with regard to access to education, which is one of the commission's major concerns. We did a report on a young woman, which was entitled, "Wrong place, wrong time: Summary report of our investigation into deficiencies in the care and treatment of Ms Y", a year or two back, and that issue was a major feature.

About 20 per cent of young people do not get access to expert medical and nursing care when they are in an adult ward. Given that boys are particularly affected, and given that 16 and 17-year-old boys are not particularly mature, there is a gap in service provision. We are continuing to examine and report on that issue, and we are currently completing a round of visits. We will report on that aspect of young people's care in greater detail; the committee can look out for our work in the next few weeks.

The Convener: That is helpful. So you are saying that there is a common-sense approach rather than a blanket rule that young people should never be admitted to an adult ward, but that there is a definite concern that there do not appear to be appropriate services for these young people, and that they often end up in adult wards when it is not appropriate for them to be there.

Dr Lyons: There is serious concern that when a young person goes into an adult ward, they sometimes do not get the expertise applied to their care that they need.

Hugh O'Donnell: You illustrated why, in some cases, it is appropriate for young people to be admitted to adult wards. Are there many instances in which young people are moved to adult accommodation because the local juvenile services cannot cope? Are young people being moved out of their communities into other areas because the local facilities are inadequate? I have heard some anecdotal evidence in relation to such issues.

Dr Lyons: There are only three dedicated young people's in-patient facilities in Scotland, which are based in Glasgow, Edinburgh and Dundee. Health boards that do not have a special facility will contract for places in the specific dedicated facility nearest to the area that they cover. We have found that in some instances, it has been difficult for young people to get access, especially if there is some distance between their home and the in-patient facility.

To return to what I said earlier, it might sometimes be better for a young person to be admitted to a local facility for a short time rather than for them to make a long journey to a facility that is further away, which separates them from family, friends and community. A balance needs to be struck. We cannot say absolutely that on every occasion a young person in such a situation must be admitted to a dedicated facility.

The Convener: Dale Meller may want to comment on the issue from an NHS Health Scotland perspective.

Dale Meller: I cannot comment on the age strand specifically, but I will link that point with the ethnicity question. The reason why we are able to consider the evidence and understand exactly how many young people are admitted to adult wards and where they appear in the system is because age is monitored effectively. That gives us good data, and means that we can hold this type of discussion.

By contrast, as Donny Lyons picked out in his report, we are not able to assess ethnicity, so we cannot have the same quality of discussion about overrepresentation or underrepresentation of black and minority ethnic individuals. My main aim today is to ensure that we get a good discussion about ethnic monitoring and find ways of raising the profile of such monitoring in respect of implementation of the act.

10:15

Selwyn McCausland: We need to have a discussion about age classification and who we class as a young person. Young people around the age of 17 who are still in education can access CAMHS but we have seen examples of people who are not in education who cannot. I do not know whether that is the case everywhere, of course, and it obviously depends on people's circumstances. That is a big issue for Barnardo's, which is concerned about the more vulnerable young people who might not be in education after the age of 16. That brings us back to the issue of age-appropriate services.

The Convener: That is an important issue to put to the minister when we speak to her.

The equal opportunity duty concerns a wide range of people and bodies, such as hospital managers, mental health officers, medical officers and local authorities, not only the Mental Welfare Commission for Scotland. Would someone like to speak from the perspective of the local authorities?

Stuart Lennox: I agree in general with what has been said about younger people's services. One of the key issues from a local authority perspective is the role of mental health officers. The service that they provide is an important part of the checks and balances with regard to the functioning of the act. My feeling is that there is increasing pressure on that service nationally—incidentally, I believe that the most recent survey showed that mental health workers are an ageing part of the workforce. There has been a significant increase in activity under adults with incapacity legislation and growth in the use of guardianships in Scotland, both of which have put additional pressure on mental health officers.

Marlyn Glen: How did the recent limited review of the 2003 act take account of equalities issues? What changes relating to equalities issues do you expect to be made following the review?

Carolyn Roberts: As I understand it, the review was not given a specific remit with regard to equalities; it was asked to concentrate on a number of other areas. It made some recommendations around making the notification of ethnicity statutory and allowing people under the age of 16 to appoint a named person, which is not allowed at the moment. In our response to the McManus review, we suggested that it would be useful to monitor equalities more widely. For example, along with ethnicity, we would like disability to be monitored more closely. We have not yet seen what will come of the McManus review—there has been no response to it, yet—so we do not know what will happen.

Selwyn McCausland: The issue about the named person has come up quite a bit for young people who use our services. The named person for someone who is under 16 is a member of their family, and some young people are not happy with that. We support the option of young people under the age of 16 having the power to appoint a named person themselves.

Hilary Campbell (Scottish Development Centre for Mental Health): On Carolyn Roberts' point about disability monitoring, we think that it is important that people with learning difficulties are identified and get appropriate treatment. The issue of disability is extremely important with regard to the tribunal, particularly in relation to communication difficulties. A patient who goes before a tribunal needs to know what is happening.

The Convener: Does Shaun McNeil want to comment on the issue from an advocacy perspective?

Shaun McNeil: Advocacy Matters (Greater Glasgow) is a local advocacy provider. We monitor the age, ethnicity and so on of the people who use our service. In 2007-08, 2 per cent of our referrals were from people who came from a black and minority ethnic background or were asylum seekers or refugees. In the following year, the proportion rose to 10 per cent. I report such information to our funding bodies. I support what panel members have said about the need to capture such statistics if we want an overview of the trends in mental health.

We try our best to be aware of the statutory requirement to uphold principles of equality and non-discrimination. We have limited resources, but we are fortunate to have appointed a new board member who is a specialist in equality and diversity, and we hope that that will have a big influence on our organisation—no pressure on him, then. In a small way, we are cognisant of the issue and are trying our best to get it right.

We hope that the national health service and local authorities record trends centrally as part of their monitoring of the implementation of the 2003 act, for example in relation to people who are detained under compulsory powers. Such an approach would help Government and service

providers on the ground to know where to focus their attention.

Dale Meller: The limited review of the 2003 act took representations from a number of people—including panel members—on improving ethnicity monitoring and consulted the black and minority ethnic group, through the Royal Edinburgh hospital. I am pleased that the review group recommended that professional interpretation services should always be offered in the mental health context, but I did not find in its published report a recommendation on ethnicity monitoring—perhaps colleagues will point me to that.

Carolyn Roberts: Perhaps I can speak to you about that.

Dale Meller: Thank you. I was not sure whether the issue had made it into the list of recommendations.

Elaine Smith: The monitoring of the age of service users has enabled SAMH to identify that the commitment to halve the number of young people who are placed in adult psychiatric wards has not been met—indeed, there has been an increase in such admissions. I take on board the point that Donny Lyons made, that it might be more appropriate for a young person in Inverness to spend a short period in an adult ward than to be moved further away. Of course, that leads us to ask why Highland NHS Board does not have facilities in which a young person can get age-appropriate care for a short time. Are we monitoring provision in different health boards? Do we need to discuss that with ministers?

The Convener: Does Donny Lyons have a view on that? The Mental Welfare Commission for Scotland has a general duty to monitor the operation of the 2003 act.

Dr Lyons: I understand the argument, but it is probably not logistically possible to have a young person's unit in each health board area. It might not be economically feasible to have a separate unit, especially in an area that serves a relatively small population. However, if a young person is to be admitted to an adult ward, it is important that they should be admitted to a ward that is designated for that purpose, where there can be greater input from professionals who work with younger people. That is what happens at New Craigs psychiatric hospital in Inverness. It would be hard to sustain the argument that there should be a young person's unit in each health board area.

A related issue is the need for secure care for young people. We have a big problem with that in Scotland, as we do not have secure care for young people with mental health problems, who often have to go down to England. In one case, had it not been for a clever bit of legal manoeuvring, it might not have been possible to get a 15-year-old out of an adult intensive psychiatric care unit in Scotland because of how the law stood. It was cleverly manoeuvred with some help from us—the person was bailed and then allowed to be transferred to an appropriate unit in England. Had that not happened, that young person would have been stuck in an adult IPCU for several months, which would not have been good. I am more concerned about the provision of secure care than I am about having a young person's unit in every health board area.

Shaben Begum: Although the review group did not have a particular remit to look at issues around equal opportunities, they influenced a lot of our discussions and debates. We talked about the obstacles and barriers to accessing appropriate levels of services that people might face. We also talked about disability, ethnicity, gender and age.

Marlyn Glen: That answers part of my question. As the committee's race reporter, I am pleased that you want monitoring for race. I would have thought that interpreting facilities were a basic necessity in giving people any kind of treatment or care. My question was going to be about the other equalities strands including sexual orientation, which you did not mention. Did you look at those?

Shaben Begum: We did not have a formal discussion about any of the equalities issues, but all the issues were discussed. The background of the group ensured that we all had lots of experience of working in different areas with different groups. Lesbian, gay, bisexual and transgender issues were raised, as people had concerns about service users' experience through the mental health system. We talked a lot about what the review group could do to remove some of the obstacles that people might face. Sometimes, people talked about interpreting and translation services; however, the important issue was that not all black people need interpreting and translation services. A lot of it is about changing people's mindsets and challenging assumptions. That applies to all the equalities strands.

Shaun McNeil: I agree with Marlyn Glen that translation facilities are a basic requirement. If somebody is in receipt of either NHS services or social work services, the NHS and local authorities are happy to pay for translation services. However, we deal with a number of people who are not in contact with either of those services and we have had to dip into our reserves to pay for translation services to make our organisation accessible to those individuals. The local authority will not pay for those services because the people are not in receipt of a social work service and the health board will not pay because they are not in receipt of NHS services or are not in-patients. In our desire to make our organisation accessible

and to give people the independent advocacy that they need, we must dip into our reserves to ensure that translation services are available to them, and I am not sure that that is right. We are funded by the local authority and the health board, and it should be their responsibility. We should not have to dip into our meagre savings to provide those services.

The Convener: So, if one of those bodies will not pick up the bill, you are left having to foot it.

Shaun McNeil: If one or the other will not pick it up, either we are left with it or we have to deny our service to the individual, and we do not want to do that—we want to make our service as open and accessible as possible.

The Convener: That makes sense.

Carolyn, in your written submission you highlight the position of people with a mental disorder who are in prison. The committee is particularly interested in that because, in many ways, that is what triggered our post-legislative scrutiny of the 2003 act, on the back of our report on women in the criminal justice system, particularly those in Cornton Vale. Can you elaborate on that?

10:30

Carolyn Roberts: Yes. We know that there is a high level of people with mental health problems in prison. A thematic review was conducted—over a year ago, I think—that looked in particular at mental health problems across prisons and found that a high level of people had such problems. The review used quite a tight definition of mental health problems; if that definition were to be expanded, we feel that an even higher level of mental health problems in prisons would be revealed. We also know that the NHS is taking on responsibility for mental health care in prisons, and we hope that that will present an opportunity to improve the situation. We are yet to see much about how that will operate, but we know that it can be difficult for people in prison to access the mental health treatment that they need.

The Convener: What is the timescale for the NHS taking on that responsibility?

Carolyn Roberts: I do not know. Dale Meller does not know, either.

The Convener: I think the feeling was that it might not happen for a couple of years, and that anything that could be done to hasten it would be all to the good.

Malcolm Chisholm: I have a more general question to ask about advocacy, but I wonder whether Shaben Begum could comment on the availability of advocacy services for people with mental health issues in prison.

Shaben Begum: Since the implementation of the 2003 act, we have been raising that issue with specific stakeholders. We are very concerned about that group of people not having access to independent advocacy, even though they are legally entitled to it. Along with other organisations, we have lobbied on the issue. We know of examples of people who use advocacy in the community, who have ended up in prison and who have, on an ad hoc basis, been able to access an advocate for a very short time while they were in prison. Generally, however, that is the exception to the rule.

I have had many conversations with people from the prison service who are interested not only in advocacy being available to people who are subject to the 2003 act, but in advocacy services having a wider remit. However, no funding has materialised for that. We have been given the explanation that the NHS will take over the provision of health care in the prison service, and that funding of advocacy services will be the Government's responsibility, but when I have tried to ask questions about the timescale, I have not been given any information on that. Access to independent advocacy by prisoners is generally non-existent

The Convener: The issue has been raised, but we still do not seem to be any further forward. We hope that this round-table discussion will be positive in highlighting the issue.

Hugh O'Donnell: Shaun McNeil mentioned the funding of translators. I think you said that the local authority and the health boards provide your funding—did I pick that up correctly?

Shaun McNeil: That is correct.

Hugh O'Donnell: Is it not the case therefore that, by providing your funding, they also indirectly provide money for translators? If they do not, do you need to ask them for increased funding to cover that provision, rather than have them providing funding in two places, if you know what I mean?

Shaun McNeil: Yes, absolutely. It seems perverse that they provide the funding, but when we require translation we have to make an application for them to provide that service. There is a caveat that, if the person is not in receipt of services from that particular authority, we pick up the bill. We do that from our funding, which comes from the health boards, but the local authority also contributes, so in some ways the local authorities are indirectly funding the service. In the past few years, there has been a large influx into our area of operation of people whose first language is not English, but there has been no recognition that the provision of translation services has become a

significant aspect of our business, and it is therefore not reflected in our funding levels.

I do not want to come along this morning and say, "We need more funding, we need more funding," because I am absolutely aware of the current environment, but I will pick up the point about prisoners. Our organisation operates in Glasgow, where Barlinnie prison is situated. I was involved in producing the 2003 act and I was one of those who fought for people to have a right of access to independent advocacy, which was a fantastic achievement.

However, one unintended consequence is that that right draws resources towards people who are subject to detention and compulsory powers under the 2003 act, which disadvantages other groups. Unfortunately, one such group is people with mental health problems who are in prisons. I cannot even go into Barlinnie prison to publicise our independent advocacy service for people with mental health problems, which some prisoners might want to access to support their point of view or to speak up for them, because we do not have the capacity to meet more demand.

As I said, I do not want to moan that we need more resources, but the reality is that, if we were expected to provide independent advocacy services to prisoners in Barlinnie prison, there is no way that we could do that at the moment. Without additional resources, I cannot stretch my advocacy workers any more than they are already stretched.

The Convener: You raise two issues in response to Hugh O'Donnell's question. First, you feel that your core funding to promote independent advocacy is sometimes used to provide an interpretation service. Secondly, by the time that you have dealt with the people whom you must deal with—a pecking order exists—you are unable to offer independent advocacy to prisoners.

Hilary Campbell: I have a point that is probably more general than the meeting's remit is. Andrew McLellan's report about severe and enduring mental health problems in prison was clear but, as Carolyn Roberts said, if the scope is broadened to bring in lower-level mental health problems—which, if untreated and not examined, will worsen—the problem is enormous. I understand that the handover from the prison health service to the NHS will take 18 months to two years, although much work on that is being done.

We are discussing with Andrew Fraser at the Scottish Prison Service mental health in prisons. I mention, while we are on the subject of monitoring, that we are also discussing ensuring that the system, which is okay at the moment, does not worsen after the transfer. I understand from evidence from England and Northern Ireland that the transfers there were a bit chaotic. We must ensure that the service level for people who are in prison with mental health conditions—whether they are severe or are lower-level depression and anxiety—is maintained. The committee might want to return to that.

The Convener: Rehabilitation is fairly fundamental. Should we talk just about the health budget or should we consider the criminal justice budget, too?

Hilary Campbell: The problem is that if the two aspects are not considered together, the system will not work. If a prison is understaffed and someone is off sick, basic security levels might be such that staff cannot be released for prisoners to attend a possible rehabilitation programme or receive mental health assistance. In a previous job, I tried to provide counselling in prisons. If a wing was one man down, nobody could take John to his appointment, so he did not see the counsellor.

An integrated approach is needed. That is always complicated when two departments and jurisdictions are involved, but that must be addressed, because much help could be provided—possibly by the voluntary sector—if the infrastructure were in place to support it.

The Convener: I am always amazed that the SPS does not seem to take account of the fact that people are sometimes off ill or on holiday. No contingency is made, which impacts on the ability to operate rehabilitation programmes. Even if prisoners are ready to undertake such programmes, the security issue prevents that. That is a huge issue.

Dale Meller: I return to the issue of specialist advocacy services, about which we have had some interesting discussion. Shaun McNeil spoke from the point of view of a mental health advocacy provider. Obviously, he makes great efforts to ensure that interpreters are made available. However, if someone wants not a mental health advocate and an interpreter but a bilingual mental health advocate—in other words, they do not want a three-way conversation between themselves, their advocate and an interpreter—we know that that can cause a problem. Such a service is not really provided. A couple of months ago, I was in discussion with Shaben Begum about someone who was looking for a bilingual mental health advocacy worker in one part of Scotland. The need was not met. I am sure that there are similar issues around specialist advocacy provision for young people. That added layer of complexity is part of the debate around specialist advocacy.

The Convener: Thank you—that is helpful. I call Hugh O'Donnell.

Hugh O'Donnell: Some of the questions around—

The Convener: I am sorry, but I have to stop you. My mistake; we are still on advocacy. I should have called Malcolm Chisholm.

Malcolm Chisholm: My question begins in a general way and then homes in on advocacy. Obviously, most witnesses addressed the question in their submissions, but I will put it again. What is the impact of the act on the care and treatment of the different equalities groups and how, in particular, have advocacy services developed following the provision of the right to advocacy? Dale Meller mentioned services for children; I am interested in that area, but the question is wider than that.

Shaben Begum: We have described the provision of advocacy under the 2003 act as a double-edged sword. Access to independent advocacy in Scotland is a positive step forward, but the focus of advocacy organisations, local authorities and health boards has become those in crisis—those who are at risk of losing their liberty, or who are facing a tribunal. Shaun McNeil mentioned that. Local authorities and health boards encourage advocacy organisations to ensure that they prioritise people who need advocacy where there is a legal context for that advocacy work. We know that authorities and boards are calling in advocacy organisations to tell them to provide advocacy to someone who has a tribunal hearing the following day. Organisations are being told that because advocacy is part of the legislation, they must ensure that it is made available.

I question the value of advocacy in such situations, particularly when no relationship or opportunity to establish one can be established. Advocacy organisations are finding that the focus of their work is being shifted towards service provision in that scenario, which means that they do not have the time and resources to raise awareness among service users in the community who do not face crisis. I refer to people who cannot live fulfilling and valuable lives in the way that they should and want to, because they cannot access advocacy services and advocacy services cannot access them. Some of our members tell us of extensive waiting lists for people who are not in crisis. Our members are being told not to prioritise those people and that they can wait a bit longer.

I turn to the issue of specific services versus generic services, about which we have some concerns. We publish the advocacy map on our website and highlight groups that we are concerned about—I refer to groups such as children and young people, people with physical disabilities, or deaf people—that are not accessing advocacy. The act is almost six years old, but significant groups still cannot access the right kind of services. Donny Lyons has been involved with deaf organisations to raise awareness of the issue. We are having the discussion whether advocacy should be provided by specialist services for specific groups, or by way of generic advocacy organisations such as the organisation that Shaun McNeil runs, which provide advocacy for all service users with mental health issues.

We cannot have hard-and-fast rules—we need to think about the specific needs of each group rather than use the framework of looking at the discrimination that people face in society as a whole. If a particular group faces additional forms of discrimination, I think that the people in that group might warrant a specialist advocacy organisation, because the relationship between the advocate and the advocacy partner is extremely important. If I cannot build a relationship with my advocate because they do not understand my English accent or the cultural issues that are affecting my mental health issues, that will have a detrimental effect on the services that I receive and on my care and treatment.

10:45

The Convener: Thank you for that full and comprehensive explanation of some of the serious problems that you face.

Dr Lyons: I back up some of what Shaben Begum said. It is certainly our experience that there is a skewing of the advocacy service towards people who are subject to the act. As Dale Meller knows, when I met the McManus committee, I entitled my evidence, "What happens in the 729 days between tribunals?" If an advocate is involved with someone who has a mental health problem, they help that person on a day-to-day basis.

I have two other points. First, advocacy services might be available, but it might be that a person's mental health practitioners are not assisting them to engage with advocacy, particularly if that person has dementia or a significant degree of learning disability. Such a person might not be able to say that they would like to have an independent advocate, even though they are, I would argue, probably more in need of advocacy than anyone else. That is a real issue. I compliment my social work colleagues, because we see some extremely good social work practice in helping people in such circumstances to engage with advocacy.

Secondly, we found that some mental health practitioners do not give advocacy its proper place in an individual's care and treatment. That led us to produce our guidance on how to work with independent advocates. Although there are codes of practice and standards for advocacy, nothing

was available for mental health practitioners on how to work with an advocate. We think that that guidance could be quite a helpful addition to the field.

Selwyn McCausland: I agree. We find that access to advocacy for children and young people is patchy throughout Scotland and that people are interpreting the term "mental disorder" in different ways, even though it is defined in the act. With some services, the focus is on young people who are subject to compulsory treatment orders, but in many areas the numbers involved are very low. It is a matter of trying to get the people who make referrals to have a better understanding of the role of advocacy and to increase its span. That is certainly a big issue.

From Barnardo's perspective, there is still a debate about independence and how "independent advocacy" is defined in the act, which is relevant to services for children and young people.

The Convener: Is it a question of providing more training—continuous training—for the people who have the relevant duty?

Selwyn McCausland: Yes. There is certainly a training issue for CAMHS around advocacy and referral, and, more generally, about the definition in the act of "independent advocacy" and what that means.

The Convener: I suppose that there is a feeling that the act was passed six years ago, so we should all know what it means, but of course that is not the case. You make that point well.

Shaun McNeil: I am not sure that there is a debate about independence. I think that we are pretty clear about what is and what is not independent advocacy.

I will give an illustration, from a practical service provision point of view, of the desperation of some groups that are not able to access advocacy. Professionals who refer people to my organisation realise that to access the independent advocacy that it provides, there needs to be an element of mental health problems, so they will say—because they are so desperate to get the service—that as well as having a physical disability, the person in question is depressed.

How we decide whether people can access our service has a bit of a moveable border, because we occasionally have to sponge up people at the periphery. I am thinking about people with an acquired brain injury or alcohol-related brain damage, people who might be described as having behavioural problems that are not diagnosed mental health problems, and people who might define themselves as being depressed or anxious, but who may not receive mental health services or medication for that. We constantly have to make decisions about whether we can provide services to people, signpost individuals or referring agencies to another advocacy service, or, sadly, whether we have to say, "Sorry. We can't provide you with a service and we don't know anybody who can." Obviously, the latter scenario is the worst possible one.

I share the concern about the gaps that still exist out there, even six years down the line, for people who are deaf, deafened or hearing impaired. There are still big gaps for people from BME, asylum seeker and refugee communities. We have already spoken about people in prisons. There are also big gaps for people who misuse alcohol and drugs.

I must speak up for carers, because I have been a carer. Carers should be entitled to advocacy services, but there is nothing out there for their advocacy. That issue is a big hot potato.

The Convener: That is a very good point, which was well put. Given the amount of money that carers, including unpaid carers, save the Government of the day, it makes sense to look after them and ensure that they have advocacy services.

Does Malcolm Chisholm want to pick up on anything, or is he quite satisfied?

Malcolm Chisholm: What was said about the tribunal was interesting. It is a pity that there is not somebody from the tribunal here. I think that I understand the point; I presume that it was not that people should not have someone, but that they need someone at a much earlier stage.

Shaben Begum: Yes—much earlier.

The Convener: Do you want to add anything to that?

Shaben Begum: Yes. I reiterate the points that Shaun McNeil made. As far as we and most people are concerned, there is no discussion about independent advocacy and the definition of independence. Most people are clear that the definition of the term "independent advocacy" has been enshrined in legislation for the past six years, but that definition has been around for much longer than the legislation. It could be said that the Millan committee and the legislation adopted the definition of the term that was already in place from the advocacy movement.

Shaun McNeil mentioned various people. There is a long list of people—those who use alcohol and drugs, BME groups, carers of different age groups, parents of looked-after children, people with autism and older people—who cannot access advocacy.

Hilary Campbell: I reiterate the carers issue. The underlying mental health problems of carers, which result from stress, are a major concern. They need support, particularly around tribunals.

The Convener: We will certainly follow up the carers issue with the minister when the strategy is published.

Selwyn McCausland: I want to return to specialist advocacy for children and young people. I am pleased that the Scottish Government recently laid a report that considers advocacy provision for children and young people throughout Scotland; that clearly highlights the gaps in such provision. People have disagreed that there is a debate about independence, and I take that point. However, it has been said that Barnardo's and other children's charities are not independent because we are service providers for children and young people. We provide services for children and young people, but we are independent when it comes to advocacy for them. I raised the issue about the debate because those are the issues from our perspective.

The Convener: Okay. It looks like there will be disagreement on that.

Malcolm Chisholm: It is important to be frank about the controversy, but I wonder how it can or ought to be resolved.

Shaben Begum: We have launched an updated version of the guide for commissioners with which Malcolm Chisholm was involved originally. We plan to work with commissioners and funders of advocacy organisations from local authorities and health boards. The definition of "independent advocacy" has been clarified and I know that other stakeholders who are here share that definition and have a shared understanding of the term. There is a specific issue for a couple of organisations that provide services for children and young people, which we believe is really important—we welcome the expansion of independent advocacy for children and young people and support it whole-heartedly. I repeat that we are clear about the definition of independence and it is important that it is not muddied.

The Convener: In answer to Malcolm Chisholm's point, the president of the tribunal will be part of next week's round-table discussion. You will have a chance to raise your points, which we will put to him when he gives evidence. I hope that you are satisfied with that.

We return to Hugh O'Donnell.

Hugh O'Donnell: Take two, I think.

The Convener: It will be better this time.

Hugh O'Donnell: We have covered fairly comprehensively many of the children and young people's services. If I have understood correctly, the consensus is that services are patchy and tend to focus on firefighting. A couple of organisations and some local authorities, such as North Lanarkshire, have introduced a counselling service into all secondary schools on the basis that early intervention in what might be regarded as low-level mental health issues can be addressed in that way. An organisation in Edinburgh called the Place2Be provides counselling services to primary school children. Are such services generally available throughout the country and is there a need for them?

Stuart Lennox: I am not aware of the general spread of such services, but there has been significant development across a range of issues in education through initiatives such as peer support, and a number of initiatives in Glasgow to develop a work programme on mental health issues that is delivered in schools. I positively support that approach as a definitive way forward for us. In some ways, this area mirrors the discussion that we just had about advocacy, in which there is an absolute pressure on services that get drawn into areas of compulsion and so on. Perhaps that takes away some of the capacity from the community involvement approach. We need to be careful about that with regard to children and young people. Although we need a better spread of resources, we also need to invest at an earlier stage and get into prevention much sooner and more constructively. I definitely support some of those initiatives and know that there are a significant number of them throughout the country.

The Convener: Carolyn Roberts raised that point in her submission.

Carolyn Roberts: Yes. Hugh O'Donnell asked about early intervention services. We think that there is a need for them, but I do not know how much they relate to the 2003 act. You are right that such services are preventive and at the other end of the process. You will be aware of the Health and Sport Committee's report into CAMHS that touched on the availability of early intervention and preventive services for children. All schools should now have a mental health contact who can link them with, or provide, services. However, that person might cover a very wide area.

One of the really positive developments has been that there is now a health and wellbeing outcome in curriculum for excellence. However, we do not know how much training teachers are getting and that is a significant issue for us. It might be in the curriculum, but are we giving teachers the tools, knowledge and skills to deliver that outcome? We would like to see more on that.

The Convener: That is a different angle altogether.

11:00

Shaun McNeil: If I may, I will take off my hat as manager of a mental health advocacy organisation and talk about the mental health problems that I have experienced since I was a teenager. Eleven or 12 years ago, I spoke to kids in the first and second years of secondary school about terminology around mental health problems in an effort to destigmatise those problems and give the kids a vocabulary that would allow them to talk about their emotional health and wellbeing. Given my own personal stake, I would welcome any developments in that area.

Of course, as has been pointed out, the irony is that mental health advocacy organisations used to play a promotion and prevention role by, for example, holding sessions in the community and getting involved in health promotion work. Unfortunately, we no longer have the capacity to do that work and the requirement to do it has had to be shifted on to another organisation.

The Convener: That useful contribution backs up Carolyn Roberts's comments. It is all very well to make clear what we should be doing, but what practical steps are being taken to ensure implementation?

That, of course, brings me right back to Donald Lyons.

Dr Lyons: What? [*Laughter*.]

The Convener: You represent the Mental Welfare Commission, which, no doubt, monitors all these new developments. We have identified things that we know we should be doing, by which I mean the role of advocacy in curriculum for excellence, the need to get to young people in schools and the focus on prevention rather than on the firefighting that so much effort has been channelled into. How can the commission ensure that all that is being implemented effectively?

Dr Lyons: There is only so much that the commission can do. One of our duties is to monitor the operation of the 2003 act. However, monitoring mental health services' input into schools is actually beyond our specific remit, so I am not sure that I can comment on that matter. We see young people in secure care who have significant mental health problems, and we are concerned not only about the level of support and advocacy for them but about how their transition to adult services is being supported.

I am not sure what I am being asked. If I am being asked about what the commission is doing about mental health provision in schools, the answer is nothing.

The Convener: It was advocacy that was mentioned. At this point, I bring in Christina McKelvie, who, as a member of the Education, Lifelong Learning and Culture Committee, which is also looking at this issue, might be able to tell us whether we are on the right track.

Christina McKelvie: I will go in a slightly different direction. Obviously, we are all interested in the health and wellbeing outcome in curriculum for excellence and want it to work. How are guidance, training and other such issues being balanced? Who is responsible for striking that balance? Is it all written into curriculum for excellence? Is there any engagement with services as far as guidance is concerned?

Dr Lyons: I am sorry, but that does not fall within our remit.

Malcolm Chisholm: I accept Donny Lyons's point that the commission's remit covers only the operation of the 2003 act. Interestingly, however, that act also covers advocacy. I spoke to him before the meeting about this but one issue that will come up next week in the Parliament's consideration of the Public Services Reform (Scotland) Bill is the commission's role in monitoring the advocacy aspect of the legislation. Put crudely, the debate is about whether the commission should monitor the act's operation, which would seem to include advocacy, or the act's 10 principles, which, strictly speaking, do not include advocacy. I ask Dr Lyons to comment on that because it is relevant both to our discussions this morning and to the forthcoming debate on the bill.

Dr Lyons: I am happy to stick with the issue of advocacy rather than the issue of general provision of mental health care and services to young people in schools or wherever. Whenever we see somebody when we visit any kind of unit—whether it is a hospital, a care home or secure accommodation for younger people—we always ask about the provision of advocacy services. If advocacy services are not being provided or if people do not have the right of access to them that we think they ought to have, we take that up and make recommendations about it. We duplicate what Shaben Begum does; she did very well in producing an advocacy map of Scotland, and we direct people to that. We know where the gaps are and will report on them and make recommendations about them.

To respond to Malcolm Chisholm, advocacy is important in its own right, but it is also important as a principle. One of the principles behind the 2003 act is that of taking the patient's views into account. Advocacy is an important way of getting that principle recognised.

The Convener: I will bring in Marlyn Glen, because it is important that we tease out for our understanding where the commission's responsibilities under the 2003 act lie.

Marlyn Glen: When people talk about budget cuts, it is particularly important that we look at the most vulnerable people in society and ensure that they are protected. I was interested in SAMH's view that

"the implementation of section 26 has been patchy across Scotland."

Whose remit is it to monitor that? What is the point of it if nobody knows anything about it, or if things just happen? We can follow up the point about curriculum for excellence, but this is much bigger than that, is it not?

Carolyn Roberts: Yes. Thanks for the opportunity to expand on our submission. The implementation of section 26 has certainly been patchy. In particular, we are now seeing cuts to the lower level and preventive services that promote wellbeing, social development and employability, and much more of a shift to funding for acute services and changes in eligibility criteria, so that free services are available only to those who are judged to have the most acute needs.

You asked whose job it is to monitor the implementation of section 26. I suppose that I can only reflect on our experience of monitoring local authority expenditure on mental health care services generally. We find that that is tracked through single outcome agreements, which, as you know, go to the Scottish Government for sign off. However, there is no follow-up if the SOAs are not fulfilled. I do not think that the commission has a responsibility to monitor the implementation of section 26—Donny Lyons will tell us whether it does.

Dr Lyons: We do not monitor that, whether we have responsibility to do so or not. Malcolm Chisholm referred to possible changes to the 2003 act. It is a very big act, but section 26 covers one of the issues that we must deal with. Our duties under the act are largely related to safeguarding the individual, but the problem with those general duties and the duty to monitor the operation of the act is that we cannot possibly monitor all of it. We cannot possibly monitor everything that happens at tribunals, for example. We cannot monitor advocacy services, except in so far as to see whether they are available to the individual. We cannot monitor the services that are specified in sections 25 to 27 of the act, except in so far as to see whether such services are being provided to individuals. If the commission were asked to monitor all of that, it would have to be at least double its size, but, like everybody else, we will be facing budget constraints.

The Convener: Stuart Lennox is next, because he has a particular interest in this issue, then Shaun McNeil. Does Hugh O'Donnell want to add anything first?

Hugh O'Donnell: We are getting slightly out of the order that I had envisaged, but as the issue is getting wider, it might be appropriate for Stuart Lennox to round off the discussion. Section 26 has been mentioned, but we all know that the same issue is covered in section 25 all the way through to section 31. We have just heard that we do not seem to know who is monitoring implementation, so I wonder what the position is of the local authorities and directors of social work, although I recognise that the issue is broader than just being a social work issue.

Stuart Lennox: That is a key point: it is much broader than just being a social work services issue. That has been part of the problem of variable practice across the country. There is a danger that the 2003 act is seen as the domain of health and social work services, but of course sections 25 to 31 show that social inclusion is a broader corporate agenda for everybody. The critical issue for local authorities is how to embed that in a community planning framework

To pick up Carolyn Roberts's point about how to monitor spend, the trick is to ensure that we do more than monitor spend on mental health services. I was involved in the work that produced the document "With Inclusion in Mind", which is a very good document against which to audit services. However, it is probably true that the use of that document has been variable. The trick is to consider how we can get the agenda embedded corporately in a community planning framework so that it does not relate only to health and social care services.

Shaun McNeil: I am worried that Christina McKelvie's point got a bit lost. Ten years ago, when we realised that we had to withdraw from schools, we tried to enable the guidance staff to deliver what we were delivering. We also went to the health promotion department of the local NHS board, where we found out that there was only one half-time member of staff for mental health promotion for the whole of Lothian—I have named and shamed it. She said that she did not have the necessary capacity, given how many schools there were. I apologise for harking back, but I did not want Christina McKelvie to feel that nobody was saying anything about the issue that she raised.

The Convener: We will ensure that she gets another shot.

Christina McKelvie: I am interested in Shaun McNeil's comment because his initial contribution triggered some of my thoughts, and what Stuart Lennox said crystallised them a bit. It is about getting the balance right between justice and care, especially with children. Some children will present with disruptive or risky behaviour, and they will perhaps go through the hearings system. If the mental health issues are not picked up early enough, they will end up going down the criminal justice route, rather than a care and protection route. My question is specifically about kids who are in secure accommodation, are looked after and accommodated or are from backgrounds where there are real challenges. What are the panel's feelings about the balance between justice and care and whether we need to tip the balance towards care? How do we achieve that balance in schools or in facilities for kids who are looked after and accommodated?

Carolyn Roberts: The questions about where the balance should be and how people are identified as needing support in the first place are good ones. We have been taking a real interest in the Criminal Justice and Licensing (Scotland) Bill, given that the community payback orders seem to offer just what you are suggesting, although for adults only. On how people are diverted into appropriate health care, it comes back to early intervention services, which we have been discussing. People need to be able to access not just health care but more general support at an early stage. I am moving the discussion away from the 2003 act somewhat, but there is a need for people to be able to ask for, and to be offered, some support at an early stage before we decide that justice should perhaps be involved.

Selwyn McCausland: I certainly agree with the point about early intervention. There is no doubt that the earlier we intervene, the more chance we have of addressing some of the issues. There is a big issue around access to information for young people. It is vital that we increase the ways in which we make connections with children and people at all levels. Some of the services out there certainly try to build relationships. One of the key parts of advocacy for children and young people is building trust and relationships, because doing so helps children to access some of the services. Quite often, they have to go through adults to access the services. We have to consider what we can do to address some of those issues. I certainly agree that we should tip the balance back towards the care side rather than go further towards the justice side.

The Convener: Donald Lyons is correct that the issue of how local authorities take account of equality issues in the implementation of section 26 duties is huge. I do not want to pre-empt the decisions that we will take as a result of our evidence taking, but we might consider passing over the whole issue to the Local Government and Communities Committee to consider in depth. It is a vast area.

11:15

Hilary Campbell: I want to pick up on the point about transitions, which is important. I do not know whether the Mental Welfare Commission has discussions with the Scottish Children's Reporter Administration, but there is an issue about the change point—the point at which someone is too old for the children's hearings system and immediately goes to adult services. I know that the issue was covered to an extent by the Health and Sport Committee's review of CAMHS.

The transition issue is also crucial at the other end. When someone who has an underlying mental health condition is 65, should they remain with the mental health services that they have been using, where people know them, or must they immediately move over to geriatric care and be seen by an entirely different set of professionals? One big issue for people with enduring mental health conditions is that, if they move to geriatric services, those are often geared up to deal with dementia, but they are not particularly well geared up to understand long-term mental health conditions. Some people who are over 65 are in entirely inappropriate circumstances because of the emphasis on dementia services, important as they are. That is because the transition was not handled well. The transitions issue is important.

Dr Lyons: The opposite also applies: young people with dementia who present to general adult services might not get a particularly good deal. We favour a model that concentrates more on the needs of the individual, rather than on whether they happen to be 64 or 66. The same can be said of the transition from being a young person to adulthood. We know of some adolescent services that will happily keep an individual who is well known to them beyond their 18th birthday if the service is more appropriate for that young person's needs.

Hugh O'Donnell: My question is specifically for Stuart Lennox. More generally, how are local authorities addressing all the equality strands in relation to section 26? How are they tackling that, and what is the impact on resources and other issues?

Stuart Lennox: All local authorities have an equalities framework. The point that I was trying to make earlier was that the issue with section 26 is how to get that work embedded in those frameworks, rather than seeing it as sitting outside the frameworks and as being to do with social care

or health services. It must be seen as being at the core of the social inclusion agenda, which covers a raft of corporate provision in local authorities. At the moment, that work perhaps sits a bit outside.

I am not sure whether that answers the question.

Hugh O'Donnell: It perhaps gives us a line of questioning for the panel that we will hear from next, more than anything else.

The Convener: With that, we move on to our final question, which is from Elaine Smith.

Elaine Smith: I am probably moving back to the beginning. I seek opinions from the panel on the constraints that exist in fully realising the equalities principles of the legislation.

Dale Meller: Fairly obviously, my main point is that the lack of equality and diversity monitoring is impinging on our ability to analyse meaningfully. We have good data for age and gender, but we do not have good data for the other equality strands. My main point is on improving our monitoring.

Carolyn Roberts: I agree entirely with Dale Meller. We said in our written submission that the main barrier is that we just do not know what the situation is because we are not monitoring most of the aspects. The equalities principles state that people will not be discriminated against on the grounds of physical disability, age, gender, sexual orientation, language, religion and so on. However, we do not monitor most of those aspects, so how do we know whether the principles are being fulfilled?

Shaun McNeil: Speaking for the advocacy organisation that I manage—I hope that I am speaking for other advocacy organisations, too—I do not think that it is a lack of knowledge, expertise or desire that is holding us back but the pared-to-the-bone, insecure and insufficient funding levels that the sector receives, which create a problem that is exacerbated, in many areas, by a drive towards commissioning independent advocacy services by competitive tendering, which is forcing down the funding levels for independent advocacy and lowering the quality of what is available. That means that we are much more focused on firefighting. We know that we should be paying more attention to the equality and diversity agenda, but that is the sort of thing that slips off the page of the agenda of every meeting that we have.

Dr Lyons: I am going to get on my monitoring hobbyhorse.

There are two aspects to monitoring. One is quantitative data. We can report quantitatively on what is reported to us via the forms that are distributed under the Mental Health (Care and Treatment) (Scotland) Act 2003, the content of which is specified by the Government but which are designed by us. We can give you good data on age and gender, and we hope to be able to give you better data on ethnicity as a result of an on-going project. There are issues about how ethnicity data are captured. For example, ethnicity is reported to us at the point of entry to mental health care, which is the point at which someone is likely to be at their most mentally unwell and, perhaps, least likely to co-operate with attempts to describe their ethnicity. The project that is currently under way will, we hope, address that.

I argue that it is unreasonable to expect quantitative monitoring of every diversity strand, and I would challenge anyone to ask an acutely mentally unwell person what their sexual orientation is, at the point of entry into the system.

Marlyn Glen: However—

The Convener: Marilyn, Dr Lyons has not finished.

Dr Lyons: When we go out and see people, we are alive to diversity issues and will comment on and take action on anything that we think is discriminatory. In the written submission, I have highlighted a few examples. Learning from those individual examples is an important way of challenging attitudes to diversity issues in mental health services.

Marlyn Glen: No one is saying that someone who is acutely mentally ill is going to be asked to fill out a monitoring form. However, how they answer questions could be crucial to their care later on. I think that the issue is serious.

The Convener: I think that the key phrase is "later on". The submission suggested that monitoring should not be done at the point of crisis but should definitely be on the tick list for later on.

Dr Lyons: I do not disagree with that. The issue is that we can report on only what is reported to us, via the mental health act forms.

Hilary Campbell: Monitoring is essential and should be as wide as possible. We should, perhaps, take advice from mental health professionals with regard to when it should be done and the best way in which to do it. However, it needs to be done.

Marlyn Glen: Because Tayside has been picked out, I would like the witnesses to say why they think that the use of compulsory powers differs so much between various geographical areas.

The Convener: That is a good point.

Dr Lyons: We report on that every year, but have not yet come up with an answer to Marlyn Glen's question.

It is remarkable that the difference between a high-using area, such as Tayside, and a low-using area, such as Lanarkshire, is more than twofold. That is quite consistent across the piece, for a number of reasons—it is not just down to geography and deprivation indexes. Generally speaking, one finds greater use of mental health legislation where there are large inner-city communities, because of the drift of people with severe and enduring mental illness to large, deprived inner-city areas. However, that does not explain all of the difference.

All that we can do is ask the health boards to look at the data and to explain what is happening, but I can give a couple of pointers. In areas where not as much is invested in community mental health care and lots of resources are still tied up in hospital care, it is likely that there will be greater use of mental health legislation, especially for hospital admission. For example, in the NHS Borders area—NHS Borders was Scotland's Trieste, in that it closed its large mental health hospital and became very much a community-oriented service—the use of mental health legislation is continuously quite low.

On the other hand, other areas might show a very low use of mental health legislation because people are persuaded to stay in hospital. That might happen to the point of using excessive persuasion, which we might call de facto detention. In other words, knowing that they will be sectioned if they leave hospital, the patients decide to stay put. There is a big question over how coercive such persuasion can be. I am not saying that that is what happens in NHS Lanarkshire or that NHS Tayside is not investing in community services, but I am saying that the health boards need to look at their own practice on that.

Shaben Begum: On the issue of the barriers that people face in accessing the appropriate levels of service, I want to flag up the fact that competitive tendering, which Shaun McNeil mentioned, is really problematic for the advocacy movement because of the unfortunate emphasis on pushing down funding levels. That seems to fly in the face of the principles of independent advocacy, which is supposed to be about allowing members of the community to decide that they will need and benefit from advocacy. Up until the end of the last calendar year, there were two BME advocacy organisations working in Glasgow, but both of them—for different reasons—lost their funding. That has resulted in a huge loss on a much bigger scale, because those were the only two organisations that worked exclusively with people from black and minority ethnic backgrounds. Those organisations no longer exist.

The Convener: Was that as a result of competitive tendering, or had those voluntary organisations come to the end of their three years of funding?

Shaben Begum: I think that there was a mixture of issues and reasons.

The Convener: I am certainly aware that organisations that do excellent work and have the necessary expertise and flexibility can come to the end of their funding and suddenly find that things have moved on to something new. That is a problem that the Parliament has wrestled with for many years, but it is good to raise it again.

Selwyn McCausland: On the issue of persuasion that Dr Lyons highlighted, we certainly find that pressure can be put on children and young people to agree to voluntary treatment before they are moved on to compulsory treatment. We have had numerous examples of young people saying that they felt under pressure. Obviously, that could skew the figures on the use of compulsory treatment orders.

The Convener: The clock is ticking, so contributions must be kept brief. I will go round the table and ask each person to say one thing that should result from our discussions.

Shaun McNeil: Picking up on the issue of three-year funding programmes, I think that our organisation has been on a year-to-year funding programme ever since it was established. I am really looking forward to the security of a three-year funding programme.

We also receive Comic Relief funding, which is for three years. That funding was provided to support the recruitment and supervision of volunteer advocates to try to help both to mitigate the huge demand on the organisation and to reach minority communities. However, although volunteering is great for the volunteers and for our service users who need a service from us, it is not free. The Comic Relief funding supports our volunteer development officer in recruiting, training and supporting those volunteers, but we are concerned about what will happen in two years' time when that funding runs out. We are concerned that our volunteer programme will collapse, as has happened in other advocacy organisations. We might then be back to a situation in which we have a massive amount of demand and not enough paid staff to be able to meet that demand.

11:30

Hugh O'Donnell: I thank all the witnesses for their contributions. They have certainly given us some food for thought. The next evidence-taking

session will tease out some of the issues that we have begun to address today.

Stuart Lennox: Given the current economic climate, it will be interesting to see how we maintain the balance between positive intervention across a diverse range of groups—I go back to the point that mental health is a cross-cutting issue—and support for people who are experiencing compulsory treatment. We need to balance prioritising resources at the sharp end, if I can use that expression, and positive intervention at an earlier stage.

Selwyn McCausland: I agree that funding is a big issue; there is no doubt about that. However, on a more general point, I am also really keen to ensure that we focus on children's rights. The right to advocacy is a key point in that.

Malcolm Chisholm: It has been an interesting evidence-taking session and I thank all the witnesses for coming. It is difficult to pick out one issue. I would like the monitoring of data to improve, but there are many other issues.

Dr Lyons: To pick up on that, clarity around statutory notification of diversity issues under mental health legislation would be helpful for the commission.

Elaine Smith: Like other committee members, I thank folk for coming along and giving us an interesting discussion.

On monitoring and the provision of advocacy, if we do not know what people's needs are, we cannot meet them. That could affect their treatment and chances of recovery. I cite as an example people with communication difficulties.

Dale Meller: I am aware that there are some sensitivities around collecting equalities information in the context of mental health care and treatment but, on a more positive note, NHS Health Scotland is involved with a number of initiatives to support NHS staff, and staff more widely, in equalities monitoring. When staff feel confident to ask the questions, there are really not many barriers. I would be interested in exploring that further with others.

Carolyn Roberts: It is impossible to know whether we are fulfilling the equalities principles when we do not know the equalities data. It is not beyond the ingenuity of those involved to find ways of collecting those data. SAMH would welcome more data on disability in particular.

Hilary Campbell: I reiterate the point about support for carers. However, my main point is that we need to have full and effective monitoring, otherwise we will not know whether we are achieving our aims. That point could be extended to the appointment of general tribunal members. What percentage of general members are carers or people with lived experience of mental health problems? Are general tribunal members simply, by default, a few more lawyers and psychiatrists?

Christina McKelvie: I thank the panel of witnesses. It has been a very interesting discussion. For me, some of the main points concern children and young people, the children's hearings system, the balance between justice and care, and curriculum for excellence.

The services for people who seek sanctuary in Scotland were touched on only briefly, and I will examine those issues a bit myself. I am concerned about the lack of referral from the United Kingdom Border Agency. The matter has become quite acute in the past week or so. It has proved to be the case that, if asylum seekers are not referred to mental health services, their asylum applications are not delayed and they can be deported much more easily. I have already started looking into that issue, which Shaun McNeil touched on briefly. We have not managed to investigate it, but I hope that, through other things that we are doing in the committee, we will be able to do so.

Shaben Begum: I reiterate the fact that accessibility is one of the four core principles of advocacy. Advocacy organisations work hard to ensure that they are available to as many people as possible, but we still have a long way to go.

Marlyn Glen: I thank everybody who took part in the discussion, which has underlined the need for such discussions and exchanges of views. I do not want to pick out any issue. It has been a really good evidence-taking session, and we should do it again.

The Convener: It has been a very worthwhile evidence-taking session. There are many issues that we can raise in the round-table discussion that we will have at our next meeting and with the minister. I thank all the witnesses very much for attending.

We will suspend the meeting until the next group of witnesses is seated. The Minister for Children and Early Years is due to appear at 11.30, so we are four minutes behind.

Marlyn Glen: He is outside.

The Convener: He is here. That is good.

11:34

Meeting suspended.

11:39

On resuming—

Criminal Justice and Licensing (Scotland) Bill

The Convener: Item 3 is evidence on the Government's response to our report on female offenders in the criminal justice system, to inform our approach to the Criminal Justice and Licensing (Scotland) Bill. I welcome Adam Ingram, Minister for Children and Early Years. He is accompanied by Scottish Government officials George Burgess, who is deputy director in the criminal law and licensing division, and Michael Proctor, who is the protection of vulnerable groups programme manager. You are all welcome. Minister, do you want to make an opening statement?

The Minister for Children and Early Years (Adam Ingram): Yes, please, and I apologise for its length. This is a complex area, in which a number of pieces of legislation interact, so it would be useful to set out the situation in detail.

First, thank you for inviting me to the meeting. I am grateful for the chance to provide more information about the Government's thinking on the issue that you raised in paragraphs 162 to 164 of your report on female offenders in the criminal justice system, which was published in November. In your report, you asked

"why women convicted of prostitution would pose a threat to children and vulnerable people",

and you sought clarity from the Government on the issue. The Cabinet Secretary for Justice provided an explanation in his response of 14 January. However, during the parliamentary debate on the report on 11 February the convener said that the committee was not content with the cabinet secretary's explanation. That led the committee to consider lodging an amendment to the Criminal Justice and Licensing (Scotland) Bill, which would amend the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. The wording for the proposed amendment was provided at your meeting on 23 February. I know that the committee recognised the complexity of what it was considering and thought that a further contribution from Government would help its deliberations.

Disclosure Scotland is an executive agency of the Scottish Government. It carries out criminal record checks under part 5 of the Police Act 1997, for the purposes of recruitment and other purposes, such as licensing. Three levels of disclosure are currently available: basic, standard and enhanced. The 1997 act does not operate in isolation but interacts with the 1974 act and the Protection of Children (Scotland) Act 2003, which provides for the list of individuals who are disqualified from working with children. The list is held by ministers.

Under the 1997 act, a person who is convicted in Scotland's courts of any offence will find that their conviction appears on any level of disclosure that is issued thereafter, irrespective of the type of work that they are seeking. Under the 1974 act, if the person is not convicted again during a period of time, which depends on the sentence that was received at the time of conviction, the conviction will become spent. That means that if the person is asked at interview whether they have any convictions, they can legitimately answer, "No". Spent convictions will not appear in a basic disclosure. The time period that must elapse before a conviction becomes spent depends on the sentence. However, if the sentence is imprisonment for more than 30 months, the conviction can never become spent.

The prostitution offence under section 46 of the Civic Government (Scotland) Act 1982 carries a maximum penalty of a fine of £500. The 1974 act provides that after five years have elapsed from the date of conviction, where the disposal was a fine, the conviction can be regarded as spent.

The 1974 act provides an order-making power that ministers use to exclude certain types of occupation, employment and work from the provision that I described. The effect of an occupation being included in such an order is that spent and unspent convictions must be revealed if they are asked about during the recruitment process. Child care work is included in the current order, and consequently a spent prostitution-related conviction—or any other conviction, for that matter—must be revealed. The committee heard that the disclosure requirement is having an adverse impact on the ability of former prostitutes to get employment.

When the 1974 act was enacted, it was realised that employers should be able to ask different questions about previous criminal convictions and that the type of work being offered would be the differentiating factor. For that reason, an order-making power was included in the 1974 act to exclude its provisions from certain occupations.

11:45

An order to do that was first made in the United Kingdom Parliament in 1975. In making the order, a balance was sought between the rights of a now law-abiding ex-offender to live down their past and the rights of a prospective employer to know as much information as possible about a potential employee. The current order for Scotland is the

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.

When the Police Act 1997 was enacted, the UK Parliament followed the principles established in 1974 and 1975. It decided that for basic disclosures only unspent convictions under the 1974 act would be provided, and that for standard and enhanced disclosures spent and unspent convictions would be provided. That general principle remains in place today.

The amendment that the committee is considering strikes at the heart of that principle by seeking to separate out a particular offence for particular work. The consequence of that could be far reaching, and the Government is concerned that such a change might lead to other special interest groups calling for similar amendments to be made.

Let me put the impact of the amendment in context. In 2008-09, Disclosure Scotland received 313,714 applications for enhanced disclosures for work with children. Some 21,157 of the disclosures that were issued included conviction information, in which prostitution convictions appeared on only 28 occasions.

In addition, the amendment will not entirely remove the possibility of a prostitution offence being revealed on an enhanced disclosure. That is because a chief constable can provide information for inclusion on the certificate on a case-by-case basis if he or she thinks that the information might be relevant to the post. An amendment to the 1997 act along the lines proposed for the 1974 act would be needed to guarantee that that could not happen.

The committee has recognised that the lifestyle of some prostitutes and some former prostitutes can be chaotic. That means that some who are in particularly challenging circumstances might be unsuitable for child care work, but that decision should be made on a case-by-case basis by an employer who has a full picture of the person's past. It is Government policy that employers that offer child care work should have that full picture, and we are not persuaded otherwise.

Furthermore, while a former prostitute may well be suitable to care for young children, there is a real question whether it would be appropriate for her to work with, say, vulnerable teenage boys. In addition, it may not be appropriate for a former prostitute to work with some groups of vulnerable adults. For example, some people with learning disabilities display highly sexualised behaviours. Would it be appropriate for a former prostitute to work with them? How could a potential employer make that decision without all the facts of a person's conviction history?

The protection of vulnerable groups scheme similarly is founded on the principle, learned painfully from the lessons of the Soham murders, that all the relevant information about an individual should be brought together and considered in deciding whether they are suitable to work with vulnerable groups. Choosing to remove one piece of that jigsaw risks unintended consequences. A prostitution-related offence, in itself, is unlikely to lead to someone being barred from working with vulnerable groups, but taken alongside the rest of that person's conviction history it may lead to a different judgment.

Lastly, I should add that Disclosure Scotland is preparing to provide the protecting vulnerable groups scheme, which will be introduced later this year. The PVG scheme will end the use of enhanced disclosures for child care work and work with protected adults. So, the proposed amendment will become redundant as that legislation becomes redundant and is taken over by the PVG scheme.

I can write to you with more information about the changes if that would be helpful. I apologise for the length of my opening statement.

The Convener: Thank you for that lengthy and detailed statement, minister. As you said at the beginning, the situation is complex. The more the committee has investigated the issue, the more we have realised the full complexity of it and the potential unintended consequences to which you referred. That is why we are taking evidence from you today with a view to deciding how to proceed or not, as the case may be.

You said that this had all come about because of paragraphs 162 to 164 of the committee's report, which detail our meeting someone in the 218 centre. We were given to understand that they were excluded from certain work—they said retail and child care—and it seemed to us that prostitution was being singled out. However, we have since realised that that is not the case. The committee is aware that the situation is not confined to women or to particular offences but reflects the length of sentence. We also recognise the need to protect vulnerable groups.

That said, it nevertheless seems that there is a potential conflict between the Government's aim to provide women with routes out of prostitution and the current situation whereby the prostitution offence must be disclosed not only when someone applies for work in child care. I was overwhelmed when I read schedule 4 to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 and saw the full list of occupations, professions and employments that are potentially covered. If we can tease out that issue, that would be extremely helpful.

Adam Ingram: Certainly. My colleague George Burgess can perhaps respond.

George Burgess (Scottish Government Justice Directorate): The 2003 order is quite daunting and the list of professions, offices, employments and occupations is lengthy. I do not think that anyone has ever calculated exactly how many individuals would be covered by it, but a lot of the individual items that are listed in it could be a single post or a small group of people. There are some professions listed, such as medicine and teaching, that cover large numbers of people, but the order looks more daunting than it is and looks as though it covers more people than it does in practice.

The Convener: I struggled to think of an occupation that was not covered by the provisions. That is an indication of how lengthy the list is. To get back to the fundamental point, how does that play against the Government's efforts to provide women with routes out of prostitution?

Adam Ingram: As the minister for children, with responsibility for the protection of children and the implementation of the PVG scheme, my primary focus is on the protection of children, young people and vulnerable groups. The notion of allowing any group of people who have been convicted of a particular offence to opt out of the process is anathema to me. Everyone must be covered by the same regime. Once we start unpicking that regime, it will be extremely difficult and it could be the thin end of the wedge, with other special interest groups coming into play. The whole fabric of our protection scheme would be unpicked.

My ministerial role does not cover the issue of routes out of prostitution, so I turn to my colleague, who can give the committee a clearer exposition of the Government's approach to that particular matter.

George Burgess: This Parliament, and Parliaments before it, have grappled with the issue of prostitution for a very long time—indeed, your colleagues on the Justice Committee, in the room across the way, will shortly be dealing with some further amendments in relation to prostitution. The Parliament previously considered prostitution in great detail back in 2007, during proceedings on the Prostitution (Public Places) (Scotland) Act 2007.

In tandem with that act, which was intended to tackle the purchasers—the kerb crawlers—the then Scottish Executive prepared guidance for local authorities and community planning partnerships. The guidance was accompanied by funding to the four main cities where there was a recognised issue with prostitution. It covered all the issues: challenging demand, preventing vulnerable people from becoming involved in prostitution, minimising the harm and risk that is experienced by those who are involved in prostitution, and—of particular interest to the committee—assisting those who are involved in prostitution to leave.

I am not sure whether the committee has that guidance; we can certainly make copies of it available to you. It is quite comprehensive: the section on leaving prostitution in particular recognises that individuals who have been involved in prostitution can find it difficult to find employment, and it discusses the effect of the 1974 act and the importance of employer attitudes towards women who have been convicted of soliciting.

It also refers to the support that is available through organisations such as Apex Scotland to help ex-offenders to get back into work. It refers as a matter of good practice to guidance prepared by Glasgow City Council, and encourages staff who are involved in the recruitment process not to dismiss from consideration those who might have a prostitution conviction on their record.

The Convener: We will move on, as Elaine Smith wants to come in. I appreciate that we are considering employment in child care, as per the amendment, but we have also raised wider issues about employment, given the length of schedule 4. We can come back to that issue, and the committee would welcome further consideration by the minister on that point, because it might be at the heart of the routes out of prostitution legislation and the question of where a potential conflict might exist. Meaningful work could be done on that.

Elaine Smith: I thank the minister for coming, because we are discussing a complex issue. Before I go any further, I believe that we must make it clear at the start of our discussion that prostitution has been firmly viewed by the current Scottish Government and all through the previous Scottish Executive as being on the spectrum of violence against women. Most women who are involved in prostitution—the majority of prostitutes, although not all, are women—are vulnerable, and many have been abused.

Will the minister expand on his point that it might not be appropriate for women who have been involved in prostitution to work with young men or people with disabilities? We need to know exactly he means by that; I am slightly concerned. There is a view that prostitution involves a Belle de Jour/femme fatale type of person, rather than that it is violence against women, but that is not the reality.

12:00

Adam Ingram: I was trying to make the point that every individual must be considered on a case-by-case basis, along with the range of information that is available about a particular individual. I do not want to speculate on what would and would not be acceptable.

You propose to remove the information on convictions for prostitution, which is a significant piece of information that, interacting with other information, would lead somebody to determine whether the person was suitable to work with children. Under the new protection of vulnerable groups scheme, all that information will be taken in the round. If it was deemed that the person was not unsuitable or should not be considered for listing, information would be passed on to the employer that that person was not unsuitable for working with children or vulnerable adults. However, if all the information taken together led to the conclusion that the person should be considered for listing as unsuitable to work with children and young people, we should not brush aside or suppress that information.

Elaine Smith: Convener, we do not have time to check the *Official Report*, so I am reliant on the minister explaining again what it was that he said in his opening remarks about prostitutes working with young men or people with disabilities rather than children.

Adam Ingram: I was saying that each individual case has to be considered on its merits. I would not be willing to say, as you appear to be saying, that anyone convicted of prostitution should not be ruled out from working with children or vulnerable groups.

Elaine Smith: I am saying that anyone convicted of prostitution should not be de facto ruled out. That is the point that I am trying to make. Perhaps I misheard you. There is no way of checking that until we get the *Official Report*.

Adam Ingram: I am not saying that at all. I am saying that each individual case must be considered on its merits. You need to be able to gather and collate all the information that is necessary to make a considered decision.

Elaine Smith: That was not my understanding of the minister's previous comments, convener, but I will obviously have to leave it there.

The Convener: We can look at that later, but the minister has made his point that it is done on a case-by-case basis. With that, and mindful of the fact that the minister mentioned the Soham murders as a case that demonstrated that every single piece of information, even those that might not seem relevant at the time, is a piece of the jigsaw that should not be overlooked, we will move on and see how that plays out.

Christina McKelvie: Can you explain how the PVG scheme will operate and how it differs from the current arrangements? You referred to matters being dealt with on a case-by-case basis. I am interested in the provisions in the scheme that give guidance to potential employers on how to determine risk.

Adam Ingram: I introduce my colleague, Michael Proctor, who is responsible for putting this legislation together.

Michael Proctor (Scottish Government Directorate of Children, Young People and Social Care): At the moment, the process is that if an employer applies for an enhanced disclosure, all the information that is either there in respect of convictions or that the police hold and consider might be relevant to the post is gathered together and put on a disclosure, which goes out to the employer.

Under the protecting vulnerable groups scheme, anyone who seeks to work with children or protected adults will apply for membership of the scheme to work with that group of clients, rather than for a disclosure. As part of that process, any relevant information that is known about the individual will be considered in deciding whether their past behaviour suggests that they pose an unacceptable risk to work with the client group. If the decision is taken that the person poses a risk, they will be barred from such work and they will commit an offence if they seek to work in that field.

About 7 or 8 per cent of the people who apply for enhanced disclosures have some conviction history, but the vast majority of that information is not relevant to the decision whether a person is a risk. That might be because the person committed a driving offence or a minor breach of the peace when they were a teenager, whereas they are now in their mid-40s and have had a blameless record since, or because nothing suggests that the individual poses a risk.

The information about a very small proportion of applicants is sufficiently serious to raise a concern. If that is the case, the person is placed under consideration for listing and all the information about them that can be gathered is brought together. At that point, every such individual has the opportunity to make representations, which gives someone who has a bad history but who has made significant inroads into turning their life around the opportunity to present their situation. That is all taken into consideration before a decision is taken about whether the person poses a continuing risk.

What is critical about the decision is not whether what the person did in the past was morally wrong

or bad but whether, if they were allowed to work with vulnerable groups, the person would pose an unacceptable risk in the future to the wellbeing of such groups.

Christina McKelvie: How would the individual in the case study in the committee's report access the opportunity to make representations?

Michael Proctor: When all the information about an individual has been gathered from criminal history systems, employer referrals as a result of dismissal or other employer sources, it is made available to the individual whose listing is under consideration. They can then make written representations themselves or via anyone whom they choose to appoint as a representative. All that information is taken only in writing and is considered on that basis. When the Protection of Vulnerable Groups (Scotland) Act 2007 was passed, a deliberate decision was taken that personal interviews and face-to-face representations would not be used, because that would involve more of a tribunal setting rather than a consideration of evidence.

An important point about how the legislation is framed and the scheme is implemented is that the individual's representations carry equal weight to that of all the other evidence that is gathered. The final judgment is on whether a person poses a risk and not on whether we cannot let them join the scheme because we need to punish them for what they have done in the past.

Christina McKelvie: You mentioned listing and barring arrangements. What impact will the PVG scheme have on them? Will it change those arrangements?

Michael Proctor: The first point about the barring arrangements is that Scotland has no list of people who are barred from working with vulnerable adults; we have a list only of people who are barred from working with children. People are put on that list in two ways. The first is through referral by the court on the basis of its judgment that an individual whom it has convicted of an offence poses a risk. Anyone who is referred by the court is added automatically to the barred list. The other way for someone to get on to the barred list is if an employer makes a referral having sacked an individual on the basis that they have caused harm to a child or have put a child at risk of harm.

There are more routes under consideration under the PVG scheme. At the moment, someone could be referred by a court on the basis of a conviction. If the individual had committed the offence before the 2007 act was implemented, they would not be barred on the basis of that offence. The significant additional piece of information that is considered under the PVG scheme is the conviction history.

It is important to emphasise that among the things that the consideration team in the protection unit will look at is the length of time since the previous conviction. Aside from very serious convictions, those that took place more than five years previously are unlikely to lead, on their own, to the person being listed. However, if the convictions are there along with serious allegations by the police of some other type of offending behaviour that had not led to a conviction, it is important to consider all that as a whole, rather than just looking at part of the picture.

Marlyn Glen: I will reverse the order of the questions that I was going to ask, in order to follow up those last points. How exactly are decisions on which individuals are unsuitable to work with vulnerable groups made? Will it depend solely on information relating to convictions and previous convictions?

Adam Ingram: No. A panoply of information is gathered on individuals. As Michael Proctor has indicated, there might be information from employers, regulatory bodies and other such organisations, which can refer someone to what will be the new barring unit for consideration for listing. There is more than one route into being considered for listing.

Marlyn Glen: I wish to consider the problem from a different point of view. I appreciate the need for consistency in the law, and I very much welcome the idea of examining individual cases, which is important.

George Burgess was talking about the guidance about attitudes that was issued by, I think, Glasgow City Council. It is important for that to be made more widely available. Members would like to see it, for a start. If it could be put on record, that in itself would be a step forward.

As Elaine Smith was saying, I think that it is now accepted that prostitution is part of the spectrum of violence against women. I am not suggesting that all the people who are used in prostitution are victims, but at least some of them form a very vulnerable group. The statistics indicate that some of them are drawn in at a frighteningly young age. The matter comes under the auspices of the minister.

I appreciate and welcome the move that the Parliament has made to challenge the demand for prostitution. We are now trying to move that forward. There will be suggestions from some people that we should decriminalise prostitution, but that has not been particularly successful in various countries.

How can we move forward? How will prostitution-related offences—and only those offences—be treated under the scheme? I expect you to say, "In the same way as everything else." However, if everybody had a copy of the guidance that has been mentioned, if we were moving on and if there were more plans to continue the important work of Routes Out of Prostitution, it would feel much more like we were making progress.

12:15

Adam Ingram: Clearly, the PVG scheme is designed for a specific purpose, which is to protect children and young people. However, it is probably fairer than the current system, because it will establish whether an individual is unsuitable to work with children or vulnerable groups. A person with previous convictions can, and for the most part probably will, become a PVG scheme member. The employer will therefore get not only information about previous convictions but information that the person is not unsuitable to work in child care or with vulnerable adults. Of course, in the end, the employer must make their own recruitment decision, which should not be entirely down to what appears on somebody's disclosure certificate. We obviously have a job to do in educating employers in line with the kind of approach that the committee wants taken with vulnerable folk.

George Burgess: I will add something about the guidance. The main guidance to which I referred was guidance from the Scottish Executive of the time to all local authorities and community planning partnerships across a range of elements: protecting vulnerable people, challenging attitudes to prostitution and tackling demand. It is quite comprehensive guidance, which referred to examples of good practice such as Routes Out of Prostitution and to Glasgow City Council's guidance on the employment of people who may have a conviction for prostitution. What I can certainly do is ensure that the committee has access to the Scottish Government guidance, which contains references to the Glasgow City Council guidance and to many of the other projects and bits of guidance that are available.

Marlyn Glen: Okay. That would be helpful—thank you. I was also concerned about private employers. If someone came for a job who was a vulnerable person and had a conviction for prostitution, they would open themselves up to the possibility of exploitation. Is that a possible scenario?

Michael Proctor: This partly goes back to the earlier question about what risks someone who is a former prostitute might pose if they worked with teenage boys or a protected adult who displays sexualised behaviour. If the woman herself is vulnerable, there is a risk to that individual as much as there is a risk to the client. Abusive types of relationships could be established that would not necessarily be the fault of either the vulnerable woman in the post or the client who received the service. However, if the employer was completely blind to the woman's past, they would not know that she might need help and support to succeed in her work. Removing such information from what the employer is entitled to know might not be in the best interest of a woman who has a troubled history of prostitution.

The PVG scheme provides a rounded picture, and there are good examples of employers employing people with troublesome histories relating to a variety of types of inappropriate behaviour. We certainly had a lot of discussion during the passage of the Protection of Vulnerable Groups (Scotland) Bill about how such things as past drug convictions would be dealt with. Would the fact that someone had a serious drug problem as a teenager prevent them from working with children in the future? The answer to that must be no, in the same way as it would be for someone with a past history of work as a prostitute; they would not necessarily be unsuitable to work with vulnerable groups in the future. The key thing is that the information is known and understood, and that any residual risk is properly understood.

It is equally important for an employer to know that the person has had problems in the past and might therefore need some additional protection. That would protect the individual as well as the client. I can foresee a situation where someone with a history of having worked as a prostitute is put into a situation with teenage boys and, for whatever reason, their history becomes apparent. In such a situation, I think that the individual employee would be at quite a high risk of abuse from the clients with whom she is working. If that history is not known to an employer, you can imagine the story appearing on the front page of *The Scotsman*. I do not think that that is a position that employers would want to be in, nor indeed is it the position that the committee is trying to drive towards.

Marlyn Glen: That is helpful. What if the employer—I will say "himself"—was not quite as enlightened? That is one of the scenarios that bother me.

Michael Proctor: Yes.

Adam Ingram: Are you suggesting that the employer might abuse their position?

Marlyn Glen: Yes.

Adam Ingram: That would be a criminal act, which would need to be reported to the appropriate authorities and the police.

Marlyn Glen: That sort of scenario needs to be looked at. When information is given when an individual takes up employment, that individual needs to be protected, too, because they could be hugely vulnerable.

Adam Ingram: There are confidentiality rules about what appears on disclosure certificates, are there not?

Michael Proctor: Yes. There are rules to which employers who use Disclosure Scotland services have to sign up. There is a code of practice about the information that they get, what they are allowed to do with it and what they are not allowed to do with it. Compliance with that is tightly controlled. The scenario that you gave, in which somebody uses the information on a disclosure certificate to exploit and abuse the individual employee, is much more difficult to control. As you said, that could happen with a range of other offences. The employer could discover that the individual was previously a pickpocket or shoplifter or had been involved in financial fraud and they could seek to exploit that information in criminal ways. All we can do is say that they are likely to be exceptions. We need to make it clear that the police could and should take very strong action in any case in which such issues are raised.

The Convener: There are obviously a lot of scenarios. The PVG scheme and the guidelines seem to cover quite a lot. The committee might be reassured to an extent if the minister would take the point that we are raising, which is on another aspect altogether, and perhaps look at trying to strengthen the protection for the vulnerable person—the person with convictions under section 46 of the Civic Government (Scotland) Act 1982—who could be prey to an employer that sought to use the information in a way for which it was never intended or to take advantage of the employee. It might be good to re-emphasise some of the ethos and guidelines around Routes Out of Prostitution. To say to any potential employer, "This person is on the map and there will be checks and balances," or at least to imply that, might just give a degree of extra protection, which might be helpful. If the minister would consider that, the committee would be very grateful.

Adam Ingram: We will respond to that.

Hugh O'Donnell: Some of the contributions thus far have indicated the danger of taking a generalised approach to this type of situation. Some of the stereotyping, or potential stereotyping, makes for uncomfortable listening, but the PVG scheme gives me some confidence, because it will operate on an individual basis. It strikes me that, in the rehabilitation of female offenders—of any offenders, for that matter—a person-centred approach is much more constructive than a broad-brush approach. I wanted to put that point on record.

I suspect that my more formal question is more appropriately asked of Mr Ingram's justice colleagues, but perhaps not. Do we have any evidence that organisations that work with former prostitutes are finding it difficult to get them into employment—into another lifestyle, if you like—because of the operation of the current disclosure schemes? What is the Government's strategy for their rehabilitation?

Adam Ingram: I have pointed out some of the statistics that we have. The number of former prostitutes who are applying for child care positions or others in the list in the schedule that the convener mentioned is small.

George Burgess: I do not think that there is any specific evidence that would link difficulties in getting former prostitutes into employment with the operation of the Police Act 1997 or the disclosure scheme. However, in the Scottish Executive guidance that I mentioned, the starting point was that individuals with a history of prostitution will almost inevitably find it difficult to get into employment. When such a conviction is still quite fresh, it will be disclosed even in basic disclosures. There is also evidence that people with such a conviction on their record often have a history of abuse, with them as the victim. Misuse of alcohol and drugs is commonly involved, too. It is unlikely to be a prostitution conviction on its own that creates a difficulty for someone getting into employment.

As I said, services are available through the likes of Apex Scotland to help ex-offenders to present themselves as well as possible and to help them back into employment. There is also the other activity that I mentioned in Glasgow and elsewhere to work with employers and encourage them not to take a stereotypical approach to someone with such a conviction.

Hugh O'Donnell: Thank you.

Elaine Smith: Perhaps the minister could help us in our deliberations on how we intend to progress. One reason why we considered lodging an amendment was as a probing amendment because, as the minister knows, we raised the issue in our report. It seems that we have done some of that probing, and we know that the issue is complex. The committee will have some options to think about after this evidence session, but if we were not to go ahead with a probing amendment, would it be possible to get a Government commitment at this stage—we cannot come back to you as we will make a decision on the amendment today—to have further sessions with us to pursue the issue?

Adam Ingram: If we are leaving aside disclosure issues, my justice colleagues would need to be engaged in the exercise, so I hesitate to commit them to doing that. However, I can certainly feed back to my colleagues that the committee has a desire to investigate the issues, and I am sure that justice ministers would engage.

George Burgess: Without wishing to commit the Cabinet Secretary for Justice—

Hugh O'Donnell: Go on, I dare you. [*Laughter*.]

12:30

George Burgess: I can say that the operation of the Rehabilitation of Offenders Act 1974 needs to be revisited now that we have the PVG scheme. We have proposed some amendments, which I think the committee is aware of, to the Criminal Justice and Licensing (Scotland) Bill to provide protection, which is currently absent altogether, on certain disposals that are less than a court conviction. There is a strange anomaly in how the law operates at present.

In about 2001, the Home Office did work that led to the report, "Breaking the Circle: A report on the review of the rehabilitation of offenders". There is a widespread view that the rehabilitation periods are rather on the long side. There is a private member's bill at Westminster, which is sponsored by Lord Dholakia, that seeks to shorten the rehabilitation periods.

The United Kingdom Government's position has been that the 1974 act and how it operates need to be revisited in the light of PVG developments and legislation. The Scottish Government has accepted that position and we have lodged a legislative consent memorandum in relation to Lord Dholakia's bill, whose provisions would extend to Scotland. The Scottish Government's position is therefore on the record. Both the UK and Scottish Governments say that the 1974 act, and rehabilitation periods in particular, need to be revisited in the light of PVG and other developments during the past couple of years.

The Convener: When will the PVG scheme be introduced? Will that happen towards the end of the year? The information that we have is quite vague.

Adam Ingram: We hope that the operation of PVG will go live towards the end of this year. We must lay a series of Scottish statutory instruments, so committees will no doubt have to pore over those. Perhaps the Equal Opportunities Committee will not have to do that, but I am sure that the Education, Lifelong Learning and Culture Committee will have to deal with the instruments, which will set out, for example, the offences that will automatically lead to listing or consideration for listing. The detail of such issues will need to be approved by the Parliament. We will do that work during the next few months.

The Convener: There might be an opportunity for the Equal Opportunities Committee to follow up with the Cabinet Secretary for Justice some of the aspects that we have discussed with you. The committee would be satisfied with such an approach. Do you want to make a final comment?

Adam Ingram: I do not think so. We have gone over the ground fairly thoroughly. As I said, the issue is complex, given the interaction between various pieces of legislation.

I assure the committee that we are aware of the issues that members raised in relation to convictions for prostitution. We want to ensure that every case is considered on its merits and that a particular group is not singled out for adverse treatment. I hope that we have got that message over to the committee.

The Convener: We are reassured that the PVG guidelines and provisions will be helpful and that a case-by-case approach will be taken. However, we might want to clarify outstanding issues with the Cabinet Secretary for Justice. We will keep open the option of doing so, given that there seems to be a consensus that such an approach would be welcome. Thank you for appearing before the committee. This has been a worthwhile session.

As we agreed, we will review the minister's evidence in private.

12:33

Meeting continued in private.

12:46

Meeting continued in public.

The Convener: The committee has considered the minister's evidence on the protection of vulnerable groups scheme. We have agreed not to pursue a probing amendment to the Criminal Justice and Licensing (Scotland) Bill, but we will pursue the issue by monitoring the impact of the PVG scheme. We are likely to take further evidence from the Cabinet Secretary for Justice on the matter.

Meeting closed at 12:47.

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