The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 22 May 2012

Session 4

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JUSTICE COMMITTEE
18th Meeting 2012, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (SNP)
*Colin Keir (Edinburgh Western) (SNP)
*Alison McInnes (North East Scotland) (LD)
David McLetchie (Lothian) (Con)
*Graeme Pearson (South Scotland) (Lab)
*Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kim Hartley (Royal College of Speech and Language Therapists)
Martin Henry (National Joint Investigative Interviewing Tutors Forum)
Kate Higgins (Children 1st)
Lynn Jolly (Cornerstone)
Dr Nancy Loucks (Families Outside)
Karyn McCluskey (Strathclyde Police)
Raymond McMenamin (Law Society of Scotland)
Claire Orr (Accountant in Bankruptcy)
John Swinney (Cabinet Secretary for Finance, Employment and Sustainable Growth)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 22 May 2012

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

Subordinate Legislation

Bankruptcy Fees etc (Scotland) Regulations 2012 (SSI 2012/118)

The Convener (Christine Grahame): Good morning and welcome to the 18th meeting in 2012 of the Justice Committee. I ask everyone to completely switch off mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. We have received apologies from David McLetchie.

The first item on the agenda is consideration of subordinate legislation. When, last week, the committee considered the regulations, it agreed to invite the relevant minister to attend this week's meeting and respond to our concerns. My colleague Jenny Marra has lodged a motion to annul the regulations, and we will turn to that motion after this item.

I welcome to the meeting the relevant minister—as he is called in my notes—John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth, and Claire Orr, executive director, policy and compliance, at the Accountant in Bankruptcy. Under this item, members will be able to ask questions about the content of the regulations before we move on to the formal debate. The official can contribute in this item but cannot participate in the debate itself.

Thank you for your response to the committee, cabinet secretary. I believe that you wish to make a short opening statement.

The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney): Yes, convener. Mr Ewing would have been here this morning but the readjustment of diaries proved to be less disruptive to me, so I am the relevant minister for the purposes of this discussion.

The Convener: We are delighted to have you, cabinet secretary. Whether you will be delighted at the end of all this is another matter.

John Swinney: I always get a warm welcome from you, convener.

The regulations consolidate and update the fees set out in the Bankruptcy Fees (Scotland) Regulations 1993 and subsequent amendments. Although it is normal practice for the fees order to be updated annually, the regulations propose to make the first increase to the debtor application fee since its introduction in 2008.

Ensuring that the people of Scotland have access to fair and just processes of debt relief and debt management is one of the Government's key priorities, and we have a strong track record in delivering against it through the introduction of the low-income, low-assets route into bankruptcy, the introduction of the certificate of sequestration and improvements to the debt arrangement scheme. Those three measures were developed to ensure that those in greatest need got the necessary help to resolve their debt problems and have been very successful.

Following the introduction of the Home Owner and Debtor Protection (Scotland) Act 2010, the Accountant in Bankruptcy took steps to address concerns that LILA applications were not subject to enough scrutiny. Such applications are now subject to a more rigorous process that involves routinely checking the information that applicants provide. Given the consequences of bankruptcy for those in debt and their creditors, that is a positive development.

The process itself has brought to light a certain number of people who, in applying through the LILA route, have attempted to conceal assets that could be realised to creditors' benefit and, in a number of cases, the Accountant in Bankruptcy has applied for bankruptcy restriction orders.

As the agency responsible for the bankruptcy process, the AIB operates within the principles of the "Scottish Public Finance Manual" and, as a result, follows the standard approach to setting charges for public services at full cost recovery. As part of its full cost recovery strategy, the AIB aims to ensure that it delivers efficiencies in its operational running costs. In the last financial year, it delivered more than £500,000 of savings by, for example, switching from putting notices of personal insolvency in the *Edinburgh Gazette* to advertising them electronically through the register of insolvencies, and it continues to actively seek cost reduction through efficiencies.

The fee increases proposed in the regulations are necessary, because the current fee does not match the cost of service delivery. The cost of delivering an application for bankruptcy through the LILA route has increased from £138 in 2008-09 to more than £200 based on projected volumes for 2012-13. That increase is related partly to the increased scrutiny that I mentioned.

The debtor application fee, which covers administration of an application to the point of making an award, has never fully recovered the

cost of making that award and has therefore been revised to £200, which I believe is realistic to meet the work undertaken. As I am sure the committee is aware, the Scottish fee is significantly lower than fees charged by similar agencies across the United Kingdom. Moreover, the AIB's debtor application pack makes it clear that the application fee may be paid by instalments, and money advisers are aware of that option.

In the past year, 9,000 applications were made for bankruptcy. In around 200 of those cases, individuals paid by instalments. The arrangement to pay by instalments will continue for the new fee level, and I hope that money advisers will make that facility known to their clients.

I am happy to answer questions.

Jenny Marra (North East Scotland) (Lab): I have a number of short questions.

Why has full cost recovery not been pursued since 2008? I put it to you that the Government subsidises many services in the name of the public good. The low-income, low-assets route is seen to be of immense public good for those people who are really struggling to declare themselves bankrupt.

As you pointed out, the number of people who have taken the low-income, low-assets route has been declining since 2008, so why is the fee being doubled now, when take-up is at its lowest point? Is it being doubled to make up for the shortfall in the number of applications?

My final point is probably the most powerful one. A number of loan sharks and pay day lenders are still being approached for the £100 that people need to be able to declare themselves bankrupt. Do you not think that that issue is definitely worth considering? An increase to £200 will put people in that position in a much more vulnerable situation with regard to loan sharks.

John Swinney: Ms Marra raises a number of questions.

On full cost recovery, the approach has been to gather the evidence base to determine whether it is being achieved. It has been clear for some time that full cost recovery is not being achieved. In considering whether full cost recovery is being achieved, it is necessary to give enough time to allow a pattern to be established. We have reached the point at which we consider that the arrangements around the LILA route have settled down to the extent that we can make a judgment about whether full cost recovery is being achieved.

My second point is about the decline in the number of LILA applications, which is pretty clear from the volumes information that the committee has seen and which the Government has made public. When the LILA route was introduced in 2008-09, there was always an expectation that there would be a spike in applications, because a number of people had been waiting for a vehicle to emerge that would enable them to apply for bankruptcy in a credible, orderly and sustainable fashion. The pattern that we now see is a move away from that spike.

Ms Marra asked whether the fee increase has been designed to meet the shortfall in the number of applications. The purpose of the fee increase is to deliver full cost recovery. To enable that to be achieved, we must look at the steps that are taken to ensure that the work is properly undertaken. If we look at the detail that surrounds the process of considering a LILA application, particularly in light of the Home Owner and Debtor Protection (Scotland) Act 2010, a significant degree of intervention is required by staff to carry out specific checks, which might involve the land register of Scotland, credit reference records, hire purchase information or vehicle valuations. The assessment of that information to guarantee that the public interest is being served is an important and time-consuming activity, for which we have never achieved full cost recovery. We are now taking steps to achieve full cost recovery. Following the passing of the 2010 act, the stringency of those checks has increased.

Ms Marra also asked me about loan sharks. It is clear that a facility is available as part of the LILA approach that enables any individual to pay by instalments. That facility can be discussed with the Accountant in Bankruptcy and is clearly advertised, and the information is made available to money advisers who provide advice to individuals in such circumstances. People have the opportunity to avoid having to go anywhere near a loan shark.

I go back to the information that I gave to the committee in my opening remarks. In the past year, 9,000 applications were made for bankruptcy, and around 200 individuals paid by instalments. Therefore, there is clearly every opportunity for the instalment facility to be more widely used before anybody needs to think about going anywhere near a loan shark to meet the costs.

Jenny Marra: I do not think that you touched on one issue that I raised: the public good and the basic principle of welfare. Your Government delivers many services that operate without full cost recovery. The economy is particularly vulnerable at this time and many people are struggling, so it seems very insensitive to double the charge now.

John Swinney: As I said, the route has never delivered full cost recovery. Essentially, the Accountant in Bankruptcy is required to operate within the constraints of the "Scottish Public

Finance Manual", which requires full cost recovery for such services.

Ms Marra is absolutely right. A range of public services are provided free or with public subsidy, but the service in question has never been one of them. There has been a charge for it, and the charge should have been applied on a basis that delivered full cost recovery. No Government can provide all its services with public subsidy; some services need to be charged for. Given the fact that we make available the ability for individuals to pay the fee by instalments, sufficient support is in place to assist them in navigating their way through the difficulties that they face and arriving at a solution that is well supported by the legislative framework that is in place without putting an onerous financial burden on them.

Roderick Campbell (North East Fife) (SNP): Good morning, cabinet secretary. Some of my questions have been answered to an extent, but I want to make a couple of points.

First, the total number of debtor petitions did not change greatly between 2010 and 2011, but the new certificate of sequestration was a factor in that period. It would help me if you could give a brief guide as to why more people would have been persuaded to use the certificate of sequestration route. Perhaps Claire Orr could attack that point.

Secondly, if we are going to double the fee, would it not be possible to double the period of time by which instalments could be made—through, for example, the Royal Bank of Scotland? Would extra flexibility on the time periods for payment be possible?

John Swinney: I think that there will be every willingness to come to an arrangement with the individuals involved on the instalment payment period. Such facilities cannot go on for ever, but there is certainly a willingness to design the instalment regime to be as flexible as possible and to provide arrangements that suit the individuals involved. If the committee endorses the regulations today, clearly that opportunity will be available to us.

10:15

On the balance between the LILA and certificate for sequestration routes—Claire Orr might want to add to my remarks—as I said in my answer to Jenny Marra, essentially we are seeing the rebalancing of the routes that are chosen, given that there was such a spike in the LILA route in 2008 and 2009. People will make their choice about the route that they prefer. The LILA route is focused on supporting those with low incomes, which will determine the market that is attracted by that option.

Claire Orr (Accountant in Bankruptcy): The certificate for sequestration was introduced primarily as an acknowledgement that a number of people could not demonstrate that they would meet the LILA criteria and could not demonstrate apparent insolvency, which requires a creditor to have sent someone a charge for payment and for that to have expired. Creditors are perhaps not taking that action as often as they might have done in the past. The certificate for sequestration was designed to provide a new route in for people who did not fall into one of the other categories and it therefore broadened the debt relief support available.

John Swinney: To add to the point that I made to Jenny Marra, I should make it clear that the operation of the Accountant in Bankruptcy attracts a public funding contribution and does not operate entirely on the basis of full cost recovery.

Graeme Pearson (South Scotland) (Lab): Good morning, cabinet secretary. You have covered in your responses many of the points that I raised at the previous committee meeting. Many of us accept that those who can pay for public services should pay for them. The background material on the regulations indicates that those who access the bankruptcy service are probably some of the most fragile of our citizens because of a lack of finance and general support.

Two questions remain for me. I deduced from an earlier answer what one aspect of this might be, but can you outline for us the downside if the charge were to be removed for a service that is delivered to those on the margins of our society? Citizens Advice Scotland has lobbied you for a number of months to remove the fee.

Secondly, is it appropriate for the organisation that administers the fee to waive it when it identifies applicants who are at the end of their tether? It seems to me that even being able to pay by instalments might just push some applicants over the edge. I assume that the arrangements are intended to bring people back to some kind of stable financial existence.

John Swinney: Mr Pearson's last comment indicates exactly the purpose of the LILA route, which is to try to give people a credible and sustainable way of resolving the financial difficulties in which they find themselves. The entire purpose of the LILA route is essentially about people getting out of the difficulties that they are in. I think that it works well and has performed effectively for a range of our citizens. There is nothing that I want to do in taking forward the regulations that in any way undermines that important point.

A fee of £100 has been charged and literally thousands of people have opted to pursue that

particular route. The fee has not been an impediment or an obstacle to people resolving their financial difficulties in the way that Mr Pearson suggests. The fact is that the fee can be paid by instalments on which there is no time limit—the whole fee has to be paid before the bankruptcy award can be made, but there is no time limit on that.

The law would prevent us from exercising a fee waiver—it is a requirement of the legislation that a fee must be paid. Parliament has determined that to be the case. That has been a pretty widely held view across the Parliament simply from the point of view that, if an individual has got into financial difficulty, there must be a means of resolving that. Part of this was contained in my answer to Ms Marra's question. Not every individual in society gets into financial difficulty. Parliament has recognised in the legislation that there must be a mechanism of resolving the situation, and there must be a fee because Parliament has required that. The question is whether we should require that fee to be £100 or £200.

Mr Pearson asked what the implications would be of the regulations not being in place. I think that there would be two implications. First, the route that he correctly identified—the Government's objective of a credible and sustainable route for people in financial difficulty—would not be sustainable. Secondly, if the increase in the fee from £100 to £200 was not delivered, there would be a shortfall in income of about £460,000. Those are the wider financial implications—that is what the motion to annul would do.

Graeme Pearson: Given the lobbying that Citizens Advice Scotland has done, it obviously feels that there is a real issue about those whom this avenue is designed to help. Some elements of that group cannot get access to it because of the current £100 fee. Has that point been fully considered? At the end of the consultations and discussions, do you feel that the current proposal is the best that is available to us at this time?

John Swinney: I think that the current proposal is the appropriate one at this stage. The Accountant in Bankruptcy has been undertaking a wider consultation, which has just closed, and further options that we can consider may come out of that. It would be premature of me to open up that prospect, but we are keen to understand and appreciate the suggestions that have been made as part of that consultation exercise. If there are other options that address the issue that Mr Pearson has raised, we will be happy to consider them and to discuss them further with the committee and with Parliament.

Humza Yousaf (Glasgow) (SNP): Good morning, cabinet secretary. I have a couple of questions. First, you mentioned in your opening statement the cost of the fee in comparison with the fee charged by the UK Government. What is that comparative fee and why is there a difference in the management of applications?

John Swinney: On a like-for-like comparison, the £200 cost in Scotland of the route that we have in front of us today would be £700 in England and Wales and £640 in Northern Ireland. The difference relates to the core fees that are charged by the Accountant in Bankruptcy and there are also elements of difference in relation to court costs, which are higher in England, Wales and Northern Ireland. The cost of providing such a route into bankruptcy for individuals is much lower in Scotland than elsewhere in the United Kingdom.

Humza Yousaf: Thank you for that. My other question relates to your answer to Roderick Campbell's question. You mentioned that only 200 people have taken up the instalment route. That number seems awfully low. Is enough being done, or can more be done, to get more people to take up that route?

John Swinney: The statistic that I quoted was that, among the 9,000 applications for bankruptcy, 200 applicants took up payment by instalments. The other, er, 8,800—

The Convener: I am glad that you got that right, as you are in charge of the finances. [*Laughter*.]

John Swinney: I am always wary of doing mental arithmetic in front of committees, convener.

In all those cases, the individuals must have been able to pay the fee without recourse to instalments, because they would not have got their award of bankruptcy without payment. The question that Mr Yousaf raises relates to Graeme Pearson's point, which is whether there is a perceived obstacle to someone who is in financial difficulty paying a £100 fee or a £200 fee, in that they might not be aware that the instalment route can be delivered as flexibly as we say it can be delivered. That is the key point.

I am committed to ensuring that there is wide awareness that the option is available. I assure the committee that we will look afresh at whether information on all the options is clearly available to advisers. It is important that there is wider knowledge to ensure that people are aware that the instalment option is available and that they can take it up to avoid the fee being an obstacle for them.

Humza Yousaf: That is the key. I do not think that we can necessarily assume, as you have done, that the fact that the 8,800 people were able to pay the fee means that they did not get themselves into further difficulty, perhaps of the sort that Jenny Marra mentioned. If you could come back to the committee with any information

on how wider awareness of the option can be encouraged among those who might go down that route, that would be appreciated.

My final question is to ask how the £460,000-plus shortfall that you talked about would be made up.

John Swinney: It could be made up only by an alteration to other fees or by an increase in the public funding contribution to the Accountant in Bankruptcy. I should point out, however, that if the motion to annul the regulations is agreed to today—that is the proposal that you have in front of you—the shortfall will be £1.5 million, because various other changes are implicit in the regulations.

Humza Yousaf: Thank you.

The Convener: Jenny Marra wants to come back in.

Jenny Marra: Cabinet secretary, you said in your answer to Graeme Pearson that the £100 fee is not an impediment. I would be interested to know what evidence the Government has to support that. According to Citizens Advice Scotland, only 19 per cent of people who go down the low-income, low-assets route can afford the £100 fee. It seems counterintuitive to double the fee for people with low incomes and low assets, especially if less than 20 per cent of them can afford to pay the £100 fee.

My final question is on the proposed no-income, no-assets route. Why are we raising the low-income, low-assets fees before the no- income, no-assets route is established?

John Swinney: My point on the affordability of the fee is essentially evidenced by the fact that, in 2011-12, nearly 4,700 people were able to pay it. That is the number of individuals who came through the LILA route and paid the fee.

The point relating to Citizens Advice Scotland is, I think, from a survey that it ran. If we look at all the points that were made, people gave various other answers.

The survey asked:

"Would you be able to afford the £100 fee?"

The full collection of answers is as follows. Nineteen per cent said yes; 13 per cent said yes, but I would have to stop making some repayments to get £100; 28 per cent said yes, but I would have to save up over time—that is my instalments point; 30 per cent said no, but I could source £100 from elsewhere; and 12 per cent said no. We have to look at all the information in the Citizens Advice Scotland survey in that respect.

10:30

My point about the move from the £100 fee to the £200 fee is that, in essence, the law requires that we undertake a certain amount of scrutiny of the applications that are being made to guarantee that the people who are using the LILA route are people with low incomes and low assets, and not people who could come to better arrangements with their creditors—people who have more assets than the entitlement in the LILA route allows. We have found that, in a number of cases—this is why some of the checks had to be strengthened—people who have more assets than are allowed under the LILA route are trying to get in through that route. We have to ensure that the routes that are available to people are used appropriately in our society.

For those reasons, it is important that we carry out the checks on the applications and ensure that they are subject to appropriate scrutiny, and that gives rise to the necessity for full recovery of the costs involved in the process.

Jenny Marra: Why are we doubling LILA fees before NINA commences?

John Swinney: We must ensure that the people who are using the low-income, low-assets route are the appropriate individuals to do so. That requires us to undertake certain checks, which requires us to ensure that we get full cost recovery for those services, and that is why the fee has been set at £200.

The no-income, no-assets option is one that the Government is considering as part of the consultation exercise that I referred to in response to Mr Pearson. We currently provide the low-income, low-assets route, under which we require certain checks, and those checks have to be paid for.

Jenny Marra: Could you delay the LILA fee increase until the NINA route has commenced?

John Swinney: No, because the regulations essentially require that the fee arrangements be put in place to deliver the financial sustainability that the Government requires.

The Convener: That ends the discussion. I move on to agenda item 2, which is the formal consideration of a motion to annul the regulations. I invite Jenny Marra to move motion S4M-02953.

Motion moved,

That the Justice Committee recommends that the Bankruptcy Fees etc. (Scotland) Regulations (SSI 2012/118) be annulled.—*[Jenny Marra.]*

The Convener: The question is, that motion S4M-02953 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: I thank the cabinet secretary for attending.

As a motion to annul was moved, we are required to report to Parliament on the regulations. That will have to be done this week. Does the committee agree to delegate to me authority to sign off the report? I will put the report round today to let members see it before it goes. I assume that it will be a short, routine report that simply highlights the main points raised during this morning's discussion.

Members *indicated agreement.*

The Convener: I suspend the meeting for two minutes to allow the next group of witnesses to come in.

10:34

Meeting suspended.

10:39

On resuming—

Criminal Justice System (Young People's Communication Needs)

The Convener: The next item of business is speech, language and communication needs of young people in the criminal justice system. This is an evidence session on the difficulties that are experienced by children and young offenders with speech, language and communication needs in the criminal justice system—how they get into it, what happens to them once they are in the process, and what happens to them when they come out. This is a one-off fact-finding session aimed at gathering evidence to inform future work.

Our seven witnesses are interspersed among members around the table, to encourage more open and informal debate of the issue. In particular, witnesses are welcome to address each other directly, if somebody makes a point that they want to add to or challenge. However, I would be obliged if witnesses would do that through the chair, and not with fisticuffs across the floor—not that anyone is going to do that.

It is a good idea if we go round the table and say who we are, starting with Jenny Marra.

Jenny Marra: I am an MSP for North East Scotland and deputy convener of the committee.

Kate Higgins (Children 1st): I am policy manager at Children 1st, which is one of the founding members of the justice for children coalition.

John Finnie (Highlands and Islands) (SNP): I am an MSP for Highlands and Islands.

Lynn Jolly (Cornerstone): I am community justice services manager for Cornerstone.

Roderick Campbell: I am the member for North East Fife.

Dr Nancy Loucks (Families Outside): I am chief executive of Families Outside.

Martin Henry (National Joint Investigative Interviewing Tutors Forum): I am chair of the national joint investigative interviewing tutors forum. We present the training and development programme for social workers and police officers who are conducting investigations with child witnesses and victims.

Colin Keir (Edinburgh Western) (SNP): I am the MSP for Edinburgh Western.

Raymond McMenamin (Law Society of Scotland): I am from the Law Society of Scotland. I am a criminal defence lawyer, solicitor advocate and part-time sheriff.

Humza Yousaf: I am an MSP for Glasgow and a part-time troublemaker. [*Laughter*.]

The Convener: We would say full-time.

Karyn McCluskey (Strathclyde Police): I am co-director of the violence reduction unit.

Alison McInnes (North East Scotland) (LD): I am an MSP for North East Scotland.

Kim Hartley (Royal College of Speech and Language Therapists): I am Scotland officer for the Royal College of Speech and Language Therapists.

Graeme Pearson: I am an MSP for South Scotland.

The Convener: I am the MSP for Midlothian South, Tweeddale and Lauderdale, which I think is the longest constituency name in the world.

We have apologies from Kathleen Donegan, governor of HM Young Offenders Institution Polmont, who has urgent business. I am sure that she would be here if she could.

I am going to throw something in the ring to start you off, so that you can integrate. If there were one thing that you could say to the committee that needs to be done now to improve the lot of young people who have communications needs in the criminal justice system, what would it be? That is your starter for 10.

Raymond McMenamin: Scots law should be introduced into school curricula. It is no use having people coming into courts when they do not know where they are, what courts do, what lawyers do or the way that lawyers speak. That is my suggestion.

Kim Hartley: We should set up a means of simply and consistently identifying the speech, language and communication competencies and needs of children and young people going through the justice system at the earliest opportunity, before they get into offending, so that diversions from offending can be mediated in a way that meets those needs. If they do get into offending, the system—from the interviews, to the courts and the disposal and rehabilitation—should reflect their comprehension and expressive language skills. At the moment it does not.

Dr Loucks: There should be awareness raising among criminal justice staff, but also earlier, among staff in schools, so that they recognise speech and language difficulties for what they are, rather than as bad behaviour.

Martin Henry: All the processes in the criminal justice system should be realigned to recognise these children's abilities, as well as their disabilities and inabilities.

The Convener: Could you explain what you mean by "realigned"?

Martin Henry: I mean amending existing processes so that they are capable of hearing the voices of these children in a way that is effective and immediate. There are things such as training systems and the technology that is employed that require special measures to get access to. These children should have better and easier access, in the same way that children who do not have these needs currently have. It is also important that people understand that these children are not dominated by their special needs. They are real children, with real experiences and real voices. The system has to be able to see them in that way first and foremost, which may mean a bit of a cultural shift in the criminal justice system.

10:45

Lynn Jolly: As someone who works for an organisation that primarily supports people with disabilities—and key to that are learning disabilities—I learned early on in the process that we all have communication difficulties of one kind or another, so we need some way of educating criminal justice professionals. It was a bit of a light-bulb moment for me to realise that, however articulate we think we are, we, too, have communication needs.

Kate Higgins: If we are talking about improving the lot of children and young people, and improving their engagement, I entirely agree with the point about a central hub for awareness raising and training for all professionals involved in the court system. The other side of that coin is to invest in a kind of therapeutic service that prepares children for what they are about to go through, so that they know what to expect and can be supported through that process.

Karyn McCluskey: Going back to the issue of preventative spend and early years, I would change the general practitioner contract and the GP outcomes so that we measure communication skills in the early years, before they get to this stage, and can intervene early.

The Convener: If the panel wants to develop that, please go ahead. Interact a bit, if you like.

Graeme Pearson: On the earlier point about the criminal justice system focusing on the offender—let us describe it that way—what is your experience of the children's panels, where the child is central to the whole debate? Do the panels go about their business in a way that helps for later life? Do they focus on these shortcomings or are they just ignored by the whole system, whether it is criminal courts or the panel environment? Do you have any experience to tell us about that?

Kate Higgins: Children 1st worked alongside a number of other children's organisations to influence the Children's Hearings (Scotland) Bill in the previous parliamentary session. That was primarily because we wanted to try to re-establish the voice of the child at the heart of the children's hearings system. Our experience, in supporting children and young people who go to panels and hearings, was that, over time, the panels and hearings had become less child centred. We needed to refocus on that.

The purpose of the hearings system, with its focus on needs as much as deeds, is absolutely the right way to go. However, we had lost sight a little of the development and implementation of the need to ensure that the child's needs were always at the centre of the hearings process. Some of the measures coming through as a result of the Children's Hearings (Scotland) Act 2011, for example the right to advocacy and the training measures, will help to re-establish that. They should create a better environment generally for children going through the hearings system who are offenders but who are also victims.

Kim Hartley: There is general awareness that there are challenges in communication between services and children, young people and parents who might have speech, language and communication difficulties, perhaps as a result of impoverished language environments. However, the issue of standard training, and identifying the communication competencies of a child or a family and the skills of the people on the children's panel to adapt their communication to meet the needs of that child or family, has not really been flushed out.

The children's hearings system and the court system are an important aspect of the justice pathway for children and young people. However, we need to remember that the issue is how we get children off that pathway. Rehabilitation is important. If the statistics tell a story, it is that the young people who end up in Polmont have not been helped by the system and have, unfortunately, stayed on that pathway. The consensus figure is that 60 per cent of the young people not only in Polmont but in the young offenders systems in Scotland, England and all over the place have speech, language and communication needs. Something is obviously going wrong. Why do 60 per cent of the young offenders in Polmont, who have hit the end of the line with a custodial sentence, have such difficulties when on average they affect 5 per cent of children in the general population?

Picking up on what Karyn McCluskey was saying, I point out that, aside from that 5 per cent, 50 per cent of children from deprived communities turn up at primary school with speech, language and communication delays. A Canadian study found a 30 million-word exposure gap between children from impoverished or hard-to-reach communities and those from other communities. That does not mean that they have 30 million fewer words in their vocabulary; it just means that people have talked to them an awful lot less and they do not have as much experience of language and, in turn, interacting, dealing with authority, negotiating, playing reasonably and dealing with fear and anxiety. As a result, they start school at an enormous disadvantage. The violence reduction unit has done a lot of work on this issue and has found that, if those children are tracked, they turn out to be the same kids who drop out of secondary school and cannot get work because they cannot read. They have not been able to learn to read because verbal comprehension and expression skills are fundamental not just to learning in general but to learning high-level communication skills such as reading and writing. The story that the statistics tell is that we are not getting things right way down the line.

Raymond McMenamin: But if the problem is as profound as that, it is a social and cultural issue that might be almost impossible to remedy through legislation. I am not saying that we cannot do things to ease the passage of people, particularly the young and the vulnerable, through the justice system, but we are not going to be able—to use Martin Henry's expression—to realign such a system to accommodate the kind of deficiencies that Kim Hartley has just outlined. That is an impossible task, especially just now.

For what it is worth, my recent experience of cases involving young or vulnerable people and sexual cases is that the system and, indeed, the Crown are struggling to process them and that the vulnerable witness measures that have been put in place are not always used because of the level of work going through and the lack of resources and personnel, particularly in the Crown Office, to make them work. Indeed, over the past two or three years, the Crown Office has got rid of a lot of young trainees who would have been the prosecutors of the future. In certain areas, it cannot staff courts or meet requirements for dealing with vulnerable and child witnesses.

The Convener: Could you expand on that and suggest, for example, where the system might be letting down vulnerable young people? Of course, you should anonymise your examples.

Raymond McMenamin: I was recently asked to represent and advise a woman who had been giving evidence in a sheriff and jury trial. The trial had been adjourned and she had been warned by the sheriff about the quality of her evidence and told that contempt of court would be considered. However, I suggested to the court that she fulfilled

all the vulnerable witness criteria; for a start, the quality of her evidence was going to be affected because she was terrified of the accused and his cohorts who, throughout the trial, were sitting at the back of the courtroom. I was assured by the Crown—and the Crown openly assured the court—that the suggestion would be looked into.

The case was called on another day and the woman was to come back and give evidence. I found out that nothing had been done for her. She had been spoken to by a member of the procurator fiscal's office in a public section of the court, not in a private area. She was asked how she felt and she said, "I feel really worried." She was told, "That's not good enough. You'll have to go and give your evidence." She gave her evidence. It was appalling, because she was terrified. She was put to the cells by the sheriff for a day.

When the woman was brought back out, I explained that the court had been told on a previous occasion that she was vulnerable and that the Crown had not done anything in advance of the second day of her evidence. The sheriff accepted that and commented that it was a pity that nothing had been done. He made no order and she was released. She had spent an entire day in custody. In fact, she had spent a night in custody as she was kept in custody from one afternoon through to the following morning. That seemed to be needless. I know that the court and the Crown were under pressure but, nonetheless, a vulnerable young woman spent a night in custody.

Humza Yousaf: As with many such matters, the issues can be split up into long-term, short-term and medium-term issues. I am inexperienced in the legal system, but I know that, when a young offender allegedly commits a crime, a police officer will be their first point of contact. Karyn McCluskey might be best placed to answer this question. When someone is detained by the police, are any checks or assessments done? Is anything done at that stage? That is the first contact. If nothing is done then, I worry about whether anything will ever get done. Is anything done by the police during the interview and detainment stage?

Lynn Jolly: From my experience of working in partnership with the police and for the police, the answer to that question is generally no. However, Cornerstone has been doing some partnership work with Strathclyde Police to develop training and information materials for police officers who, in the circumstances that you describe, come across people who may have a learning disability or difficulty. We have developed those materials because there is a commonly identified gap. In effect, the police came to us and said, "We recognise that we don't do anything at this point and we need some guidance." The general answer to your question is that, in my experience, nothing happens.

Karyn McCluskey: That was a very obvious case, but we deal with a huge swathe of young people who have really poor language skills. To be honest, that is what we expect, so the answer is probably no.

Kim Hartley: I do not want to drag it out, but the answer is no. Picking up on Lynn Jolly's example, I know that there are speech and language therapists who work collaboratively with the police. Although there is an awareness that there is a problem and there are lots of examples of good practice, why is everybody not doing that? It depends where someone commits a crime and which officer happens to pick them up.

Humza Yousaf: It is a postcode lottery—or not even a postcode lottery, just a lottery.

Kim Hartley: It is a constable lottery.

Humza Yousaf: Yes. To follow up on that thread, the next person that the young person comes into contact with might be—

The Convener: Before you go on, does anyone else want to come in on front-line policing? What about John Finnie, with his expertise?

John Finnie: I have a related point. I am interested in the panel's views on how the agencies work together. In the philosophy of getting it right for every child, it should not depend on the constable—

The Convener: I was going to ask you whether, given your police background, you had any comments about training police to identify or deal with speech and language difficulties.

John Finnie: My experience of the operational side was some time ago, but I am sure that training picks up on such matters.

There is the philosophy of getting it right for every child and there are health visitors and a role for education, which should feed into the criminal justice system. My question is particularly for Mr Henry. Is there a child-centred philosophy for joint interviews, for example? I imagine that there is still the dimension that existed historically of the social worker and the police officer having slightly different agendas.

11:00

Martin Henry: That is true. Our problem as joint investigative interviewers is that the children whom we talk to have experienced things in life that most of us—thank God—have not. Those experiences have an impact on their communication style and their capacity to talk about them. That is the first

obstacle. Even if there are no overlying issues, the run-of-the-mill child is already disadvantaged in the system because of the nature of what they have to talk about and the fact that they have to talk to adults, which is one of the challenges that we try to address in training police officers and social workers.

On the point about the early response, unless a child has an extreme need—by that I mean a need that is obvious—social workers and police officers are probably ill equipped to amend their communication style to talk to somebody who does not have the vocabulary or understanding that the rest of us have. Extreme examples are children who obviously are disabled or have learning difficulties. Usually somebody from the outside is called in to provide expert help and support for such children.

However, my view is that that is probably not good enough and that we need to enable people to rediscover and improve their core skills, which are about communication. Our job is about communication, but it should not be about expecting to communicate with so-called normal people all the time; we should expect to communicate with people with varying communication needs and abilities and adapt our communication styles accordingly. I do not think that police officers have got that—nor have social workers, to be frank.

Kate Higgins: There are children with specific communication support needs, and, indeed, adults with speech and language difficulties. However, we often work with children and young people who have been victims of sexual abuse or serious physical abuse and have been referred to our recovery from abuse and trauma services. We end up supporting them all the way through the court process. The trauma of what has happened to them can have the same impact on their ability to engage as the matters that Martin Henry outlined.

Another aspect is how physical evidence is gathered from children in the situation that I described and the health service's role. We know of instances when children have had to travel upwards of 100 miles or more in order to have a physical examination and for physical evidence to be gathered by people who do not know how to engage with the children. Their parents cannot go with them and, in order not to contaminate evidence, there is a strong presumption against giving other support. Indeed, the advice from the police or the Crown Office and Procurator Fiscal Service is often not to start therapeutic work to enable the child to recover from the trauma of their experience.

We appreciate that that is a difficult situation, but all of that compromises children's ability to give best evidence when they have been the victim of serious crime. Our central contention is that the process from start to finish needs to be much more child centred not only when children have specific communication support needs but generally. We need to think about how to engage with children all the way through the process.

Kim Hartley: There is evidence that children with communication support needs or speech, language and communication difficulties are at higher risk of abuse because they are less able to report it or understand it when it happens.

I will pick up on the point about whether we are making information connections between the agencies. Last year, a study looked at all the young people who were referred for assessment for speech and language therapy and communication needs in the prison service. Only three of those 32 young people had been known to speech and language therapy services beforehand. According to the speech and language therapist who provides the little bit of speech therapy in Scotland's justice system, in Polmont, it is only for a tiny proportion of the young people who are referred to her and need services that it shows up anywhere on their records that they have had speech and language therapy. Therefore, something is breaking down. Having identified needs, we are losing track of people or are somehow deciding that the factor is not a significant one that needs to be passed on to other agencies.

The general awareness of speech, language and communication is not something that one can have or not have. It is not like being able to play football or not being able to play football; it is fundamental to everything that we are trying to do with services. However, although it is fundamental, there is no strategic tracking of people who have difficulties and no strategic approach to ensuring that people who have difficulties receive equitable treatment.

Given that that awareness is fundamental, the problem may feel like an enormous one that is impossible to address, but there are many examples of things that we can do at a universal level to make services more inclusive in their communication. Obviously, those things are not just for people with hearing and visual impairments. In general, we can do things to develop the skills of those who deliver rehabilitation services and work in the court systems so that they can identify their communication and adapt it in a fairly broad way. Given the impact that offenders have on our community and the impact that the justice system has on individuals, families and communities, there is a particularly special case for dealing with speech, language and communication needs in the justice system. In fact, there is evidence that

shows that we can make a difference quite quickly in all the different parts of the justice path. There are examples of good practice. The task seems to be enormous, but it is not impossible.

Jenny Marra: I have a couple of questions about points that have been raised. First, I have a question for Karyn McCluskey. Are the police trained to work with young people? Is there a module on that in their training? Is there any specific training that helps them to communicate or deal with young people, especially from deprived communities?

Karyn McCluskey: There is no specific module. There is a range of training, and Tulliallan is very good on dealing with young people in particular. However, we are dealing with complex issues. Yesterday, I was in Shettleston, and I think that every person with whom I came into contact had real poverty of speech. They had real difficulties. We deal with that population day in, day out. Trying to identify people who have a clinical need and people for whom such behaviour is normal is really difficult. The police are expected to do quite a lot on first contact, particularly in light of the fact that they come into contact with many people.

From my limited knowledge, the answer to your question is that there is no specific module on that, but communication is what we do. That is what policing is about. However, some will be better at communicating than others.

Jenny Marra: Yes. I am sure that the police are like any organisation in their personnel and strengths. Does any bit of police training cover specific communication and communication difficulties? That applies not only to young people.

Karyn McCluskey: I would have to go and look at the national probation training, unless Graeme Pearson or John Finnie knows any better.

Dr Loucks: Following the Vulnerable Witnesses (Scotland) Act 2004, vulnerable witness officers with specialist knowledge and a specialist role in local police divisions in raising awareness, training and acting as a central point for advice and information on vulnerable witnesses were piloted, so there has been that role. That followed guidance from the Scottish appropriate adult network about how the police can work with vulnerable witnesses. I do not know whether that has been rolled out. The pilots were conducted in certain areas in 2008, but I do not know whether they have been continued, although the legislation is in place to enable that to happen.

Jenny Marra: And that training would be specific to when people reach the criminal justice system.

Dr Loucks: Yes—once people have gone as far as the police.

Martin Henry: It seems pretty logical that people who work in the criminal justice system should come in with an expectation that those people to whom they will be talking may have what Karyn McCluskey described as a poverty of language. We should see that as the rule rather than the exception.

Standard training should be all about giving people those core skills. We should not just give them a lot of skills in another area, so that it comes as a surprise to them when they bump into people who cannot communicate or understand. The baseline must involve that type of training.

I teach at the Scottish Police College, and many of the specialist courses are knowledge driven rather than skills driven. People are told how important it is to be able to understand people who have special communication needs, but nobody helps them to develop the skills to do that. That deficit must be addressed.

Jenny Marra: Thank you—that is really useful.

Graeme Pearson: I have a number of comments, first with regard to those individuals who have identified special needs. There are systems in the police service for appointing an appropriate adult, who will act as a key point of communication between officers and the suspect.

I am saying these things only so that the witnesses can tell us whether we have a grip on reality. We are talking about speech impediments, communication and so forth. Although we may judge some people as having limited abilities in that regard, they will in their own communities be adept at conveying their knowledge to each other, and they can certainly impart information across their own groups. However, they encounter difficulties when they come to communicate with the authorities—adults who are focused on other things—so their needs become subservient to the system's needs.

That is obviously what happened in the court case that Raymond McMenamin outlined, which involved the mismanagement of a case rather than an inability to understand a person's needs. I think that everyone would have recognised that person as hugely vulnerable, but no one could identify the means to address the vulnerabilities that she presented on that day. She needed protection, but there was no protection available.

The Convener: Mr McMenamin may want to comment on that, because I think that he said something slightly different.

Raymond McMenamin: Yes—I am not so sure that that situation involved the mismanagement of a case. It seemed to me that there was a general lack of recognition of what was required. That is

not the only instance that I have come across of that happening in this year alone.

I am not being super-critical of the Crown, because it does a lot of good work. Its officers are interviewing people and assessing their needs all the time. However, my impression is that the scale of the problem sometimes runs away with those who are trying to do something about it.

I agree very much with Martin Henry's comment about the need for standard training in communication. From what I have seen, some of the problems arise from communicating with individuals. If they are not very good at expressing themselves, they are young and vulnerable, and they are overawed by the court system and by speaking to someone in a suit who they perceive to be a bit alien, they will not be very good at expressing their own needs and requirements.

Overall, we must be aware of the need for training, particularly around the way in which we speak to children and try to elicit information from them, as it is absolutely crucial in that setting.

The Convener: Is there much training within the legal profession? It is a long time since I trained, but I got no training on communication. Fortunately, I was previously a teacher, so I had some background in communicating, but I do not remember that there was any such training, even in the legal profession.

Raymond McMenamin: Certainly not—there is none. People can go on courses: the Law Society has tried to arrange things in the past few years, and the Faculty of Advocates provides training that incorporates some of those aspects for their devils who are training to be advocates. However, my personal opinion is that we are sadly lacking in quality training for members of the legal profession.

11:15

Kim Hartley: Mr Pearson made the point that people communicate effectively in their communities, but have difficulties when they abut with public services. There is something about the way in which services communicate that means that they do not speak the same language as people in our communities.

I agree that awareness and skills are important to enable services to respond effectively to people with speech, language and communication difficulties on a day-to-day basis, or just on a passing basis. The witness box is not the first place in which someone appears in the court. First, they appear outside the building and, before that, they have to read the letter in order to know where and when to turn up.

Yesterday, I read various bits of advice and information on the Scottish Government's website, particularly on rehabilitation. On that site alone, a diverse range of communication competencies is required to access the advice.

A good example is the no knives, better lives campaign. It has been picked up that quite a lot of the young people who might end up being involved in knife crime cannot read, so the posters have symbols—for example, there is a symbol of somebody with their hand on a knife, and then other symbols such as a PlayStation controller and a football. What is visually presented to those young people is, "This is your choice." They do not need to read because they can see the difference.

However, when someone moves on to the information on what to do if you have a drug problem and where you can get help, they see a page of text. Apart from anything else, if they have a drug problem, they will possibly not be able to read because they are under the influence of drugs. Also, there is a link between substance abuse and being socially isolated, possibly because of speech, language and communication delay as a result of life circumstances. Such people are probably not going to read a page that has more than 10 words on it.

It is not just about training. It is also about fundamental communication—the sign outside the court house and the letter that tells you when to turn up at court. How accessible is that information to people? Communication is fundamental from the moment the process starts right through to the end, when we hope people will reintegrate into the community and start to contribute positively. We can never say, "Communication is not important at this stage." We must think of it throughout.

The Convener: I was just reflecting that people with communication difficulties often conceal them. I did CAB work in the evenings in my previous life, and somebody came along with a complaint to appear in court the next day. It was only in the middle of our conversation that I realised that they could not read the letter, because they were not letting on that they could not read it. In such cases, you have to do a bit of detective work. It is to do with the training of professionals, but we should remember that there is concealment. Even if the person understands a little, there can be concealment of how little it is. You have to take time to find out the exact level that you are working at.

Dr Loucks: One reason why I was interested in coming along today is that, before my life at Families Outside, I was involved in the no one knows research, which was a three-year programme of research on people in the criminal justice system with learning difficulties and learning disabilities. In that research, the

concealment that you mentioned—people hiding their difficulties in order to cope—was extremely common. Concerningly, it came up when people were being arrested and told what they were accused of. They did not understand what they were accused of. They just agreed in order to get the people away and get to the next stage.

Such concealment happens throughout the criminal justice process and into prison. We had a situation at Families Outside in which it took three months for someone to be willing to seek help with filling out a visit form. Their family thought that they had died as they had no idea where the person was. The burial of difficulties is intense and it exists throughout the process.

Graeme Pearson: It is often said that the profile of prisoners in Scotland today is much the same as the profile of prisoners in Victorian Scotland as far as a lack of numeracy and literacy is concerned. Is that just one of those fables that are trotted out? Are we having any effect on the number of prisoners who suffer from such a lack? Is it going down, is it stable or is it going up? Do you have any notion of that?

Dr Loucks: Kim Hartley might be in a better position to respond than I am. The estimates are fairly consistent in showing that about two thirds of prisoners have significant literacy difficulties, about half of which are the result of their having a specific learning difficulty or learning disability, as opposed to their just not having been to school. Kim Hartley probably has more recent information.

Kim Hartley: We are identifying literacy difficulties in some cases, for example when people enter prison, but one of the ways that we have of identifying literacy difficulties is asking people to fill in a form about their literacy.

With people who do not have speech, language or communication difficulties, it is not until they get to the age of nine, 10, 11 or 12 that they are proficient in reading and writing. A great deal of speech, language and communication development needs to go on before we get anywhere near being able to read and write. When we identify literacy difficulties, we are identifying difficulties with the top level of communication skills. There are many skills that have to be acquired before human beings get to that highly complex way of communicating. That is the bit that we are missing.

The Convener: We appreciate that but, as the Justice Committee, we are looking to find areas in which we can take action. We are thinking about difficulties that might be identified once someone is in prison or while they are going through the prosecution process, and which are not being dealt with.

I fully appreciate what you are saying. I used to be convener of the Health and Sport Committee, and one of the most telling pieces of evidence that it received was about the failure of mum to communicate with her child, which led to the child not knowing how to read expressions and, as a result, getting into behavioural difficulties. The issue was not even a language difficulty; it was an inability to read body language.

I would like to keep people on track. This is a fact-finding exercise. In the very limited time that we have for inquiries, we are trying to find out—although we can make no promises—whether there is something that we might be able to get to grips with.

Graeme Pearson: To follow up on that, is there something that we should be looking to the Scottish Prison Service to deliver that is not in vogue? Given that, with the prison population, we have a captive audience for a limited time, are we overlooking something that should be delivered?

Lynn Jolly: At Cornerstone, we are initiating a new service for people who have been identified as having a learning disability while they are serving a short-term custodial sentence before they reintegrate back into the community. The most recent research that we did on the need for that service told us that about 7 to 10 per cent of the current prison population will have an identifiable learning disability. That does not include all those people who might fall outside the category of meeting the clinical psychology definition of learning disability, so the proportion of prisoners who are affected in that way is still highly significant.

From my experience of researching whether there was a need for that service and of implementing the service, I would say that there is a clear gap in the SPS provision even when it comes to identifying who has such needs, which include speech and language needs.

Kate Higgins: I would like to respond to Graeme Pearson. Bill Whyte is one of the foremost experts in this field. When I heard him speak recently, the most recent statistic that he had was that the average reading age of the male prison population in Scotland is 11.

In addition to what Nancy Loucks and others have said, low literacy skills continue to be a huge problem. I encourage you, in looking for the solution, to engage with Bill Whyte, as this is his area and he knows a lot about it.

A considerable amount of work is also being done on restorative justice and a specific working group has been set up by the Scottish Government to look at youth justice. It is called the national youth justice advisory group—NYJAG—and is looking at the provision of better support for

young offenders in that area. It would be worth bringing that into the inquiry.

Kim Hartley: The literacy strategy talks about working specifically with young offenders and we keep focusing on reading and writing abilities. I know that we talk about literacy in the broadest sense, but the fundamental needs of speech, language and communication are not being met.

In defence of the Scottish Prison Service, it is the only part of the criminal justice system that has a dedicated speech and language therapy service—a whole 21 hours for everybody in Scotland's justice system. The SPS is ahead of the game in some respects. Unfortunately, there is a problem in that, when we think about literacy and numeracy we say, "Let's provide more literacy classes." That kind of misses the point, unfortunately. We would like to prevent people from getting that far, so I suggest intervention as early as possible to ensure that people develop speech, language and communication skills as well as making everyday, universal communication meaningful for people. I think that that is the way ahead.

Jenny Marra: If it is okay, I would like to return to a point that was raised earlier in the debate by Raymond McMenamin. You talked about a specific case in which the witness's needs were not met. I was struck by the briefing from Children 1st regarding the situation in courts. I have seen with my own eyes children's needs not being met and their being left for long hours waiting to give evidence, which makes them increasingly nervous. They often then bump into the accused in the toilets or in a public room. For many years and in many different roles, I have been told that the facility for all sorts of witnesses, both children and adults, to give evidence across a screen—what is the word that I am looking for?

Raymond McMenamin: It is a screen.

Jenny Marra: They can be in a different building or whatever. I have been told that that facility is very underused in our court service. The facility exists—the screens and the other buildings are there—but I have heard that, in many courts, it is never or very rarely used. Where might the responsibility for such issues fall? Is it the Scottish Court Service? Is it the Crown? Is it the individual management of courts?

Raymond McMenamin: It is a mixture. To implement vulnerable witness measures, there is an onus on the prosecution or the defence—whoever seeks to lead the witness—to investigate and identify which measures are required. The court also has a power to implement measures as it sees fit during the course of a trial. If those measures involve a closed-circuit television link from elsewhere within the courthouse or from a remote location, one must ensure that the equipment is working. In my experience and that of many of my colleagues, the equipment does not always work or work well. That is a big problem, as it enhances the stress and trauma that is experienced by the witness who is giving evidence.

11:30

The Convener: I suggest to Jenny Marra that, instead of concentrating on vulnerable witnesses, we go back and focus on the accused in court who do not have communication skills, how they got there and all the rest of it. A vulnerable witness might be vulnerable for other reasons rather than their lack of communication skills, but it is those skills that I want to focus on. Will a screen have any impact in that respect?

Raymond McMenamin: The legislation states that screens cannot be used for an accused person. However, an accused person can be considered vulnerable and is therefore entitled to the same measures that apply to vulnerable witnesses.

The Convener: So they get to give evidence behind a screen as well.

Raymond McMenamin: No, but if they are called to give evidence and if it is felt that the quality of that evidence might be diminished because they are, say, scared of certain people sitting at the back of the courtroom, they can give evidence with a supporter sitting beside them or via closed-circuit television. The vulnerable persons measures apply as much to accused people as to witnesses for the prosecution or the defence—apart from the provision of screens, but there is a reason for that.

The Convener: If an accused is deemed to be vulnerable because certain people sitting at the back of the courtroom will do them in if they spill the beans, why can they not have protection?

Raymond McMenamin: They can get protection but, as I said earlier, it very much depends on who applies for it. In the case of the accused, the onus will be on the defence to identify what needs, if any, have to be met and the best way for that person to give evidence. Certain aspects of vulnerability were tackled in the Vulnerable Witnesses (Scotland) Act 2004 but, as you have made clear, we are discussing communication this morning and I think that that is a much tougher nut to crack. It goes way back before the stage at which people come to court; indeed, it is worth pointing out that a person's first contact with the court is not when they stand up and give evidence, but when they get the documents and turn up at the court. Having listened to the discussion so far, I think that if you

are trying to tackle such issues in the courtroom you are simply slamming the stable door after the horse has bolted. Work has to be done long before you get to that stage.

Traditionally, our courts are not user-friendly. They were set up in an era when no one really wanted to help the vulnerable, the young or those perceived as being criminals, whether they were witnesses or accused persons. Frankly, I believe that the courts were set up and used for the benefit of lawyers presenting, hearing and prosecuting cases. However, the whole dynamic has to change and, indeed, that is the direction in which we have been heading over the past seven or eight years.

Humza Yousaf: Raymond McMenamin talked about the horse having bolted. I suggest that we might be missing a trick with regard to school exclusions and, after talking to a range of people from those in Sacro right through to those in Polmont, I have to wonder whether enough is being done with children at the point at which they are excluded from school. After all, the statistics show a real correlation between the young people in Polmont and school exclusions. In that respect, do local authorities' approaches to addressing the language needs of excluded children vary across the country? Are certain local authorities doing that sort of thing well?

Kim Hartley: Provision of universal targeted or specialist speech and language therapy for secondary-school-aged young people is pretty minimal across Scotland. A few years ago, I surveyed speech and language therapy service managers, 90 per cent of whom said that they did not have a secondary school service. In other words, once you leave primary school, that is it—it is all over. Karyn McCluskey might be able to say more about access to speech and language therapy for young people of a similar age who find themselves in the justice system.

Karyn McCluskey: I have come into contact only with therapists working with young offenders in Kilmarnock and south-east Ayrshire. However, the fact is that offenders who come out of prison cannot get jobs because they do not have the language skills to work in, say, call centres. I have to say that the service is poor everywhere. As for those who are excluded, I have seen no evidence in that respect.

Humza Yousaf: Kim Hartley made the fair point that the Scottish Prison Service is the only part of the justice system that has a dedicated speech and language therapy service. However, we are on a fact-finding mission, as it were, so can you tell me whether there is a link between programmes in prisons that improve literacy and numeracy, in the broadest sense, and rates of recidivism?

Kim Hartley: There is evidence from a number of services in England in which speech and language therapists have worked within young offender teams, as well as in young offender institutions, that people have been diverted from crime. Statistics from a study in 2006 suggested that recidivism was reduced by as much as 50 per cent.

With regard to what it would be helpful for an inquiry to consider, there is evidence from practice elsewhere on the difference that has been made to young people's speech and language skills. However, the main difference was that young people were enabled to access all the other aspects of rehabilitation, such as anger management, drug therapy and other types of diversion work. The violence reduction unit does work in that regard by working with young people who are in gangs.

The speech and language work enables others to provide inclusive communication rehabilitation rather than necessarily to change the speech, language and communication skills of the individual, although work that is done on that means that the individual is much better able to cope with what life throws at them.

Dr Loucks: One of the issues that was emphasised by the no one knows research was that people in custody who were required to go through offending behaviour or anger management courses but who did not have the communication and literacy skills to do that, either could not access such courses or, if they started them, they would often give up and would be seen as unco-operative. They could not cope with the material, but they would just say that they were not interested rather than say that they could not do it. There is evidence to show that people were being released later because, for example, they did not go through the programmes that were required for parole. There are concerns about that.

A point was made earlier about the secondary school stage. An example of practice in that regard is the work that Apex does at the Dunfermline inclusion unit. I do not know whether it picks up on communication needs, but the unit works specifically with young people who have been excluded to help bring them back into the school environment. I think that there is an opportunity to get more specialist evidence from that work.

The Convener: I suspect that that might be an issue for the Education and Culture Committee. The committees do not work in silos, but one might expect that committee to consider the issue, perhaps in tandem or co-operation with the Justice Committee. We have done joint inquiries before, but I am not particularly suggesting that we do that.

Roderick Campbell: I take on board Kim Hartley's point that before we deal with literacy and numeracy, we must deal with much more fundamental skills. What approach has Kim Hartley's organisation—or, indeed, any organisation—made to the Scottish Prison Service and others to go down the route of addressing other fundamental needs?

Kim Hartley: The Royal College of Speech and Language Therapists has approached the Scottish Prison Service on that issue and a number of prison governors are supportive of speech and language therapy provision. As I said, the Scottish Prison Service leads in the provision of a dedicated speech and language therapy service to deal with speech, language and communication needs. At the moment, the SPS headquarters does not feel that it would like to pursue further provision of speech and language therapy in prisons. However, we have certainly approached the SPS in that regard. The SPS hosted a conference in the Polmont young offenders institution in 2010, but since then we have not had direct dealings with the SPS headquarters.

Roderick Campbell: Why do you think that it is holding back?

Kim Hartley: I am not sure. I think that there is clear awareness of and sympathy for the difficulties.

We ran a conference with the support of the Scottish Prison Service in 2010—I do not have the report in front of me—called, "Locked Up and Locked Out: Communication is the key", which focused specifically on speech, language and communication needs in the prison service. It identified the barriers to achieving change as including awareness of the issue; the fact that speech and language therapy provision is, like everything else, competing for funding; and the fact that the recognition that literacy—which was mentioned a moment ago—does not happen without fundamental skills is not necessarily universally shared.

Karyn McCluskey: I am passionate about early years and universal prevention, but there is little doubt that the best way for us to prevent people from reoffending is to get them into employment. Unless we intervene in prisons at that teachable moment when we can improve people's communication skills, we will not get them into employment at the other end. That is an issue for us.

The 450 gang members who engaged with us did not have the communication skills to go into the employment industry. The majority of jobs are in places such as call centres—there is no hard industry. Those people cannot get those jobs, and we are condemning them to a life of welfare unless we intervene when we have them as a captive audience. It is critical to intervene at that tertiary end, whether we like it or not.

The Convener: To return to the issue of concealment, are people prepared to be identified as having communication difficulties or do they feel that that is a stigma? In your experience, do they hide it and say, "There's nothin wrong wi me"? Is that something else that you have to overcome?

Karyn McCluskey: Some will identify it. In our experience, when we—criminal justice social workers, in particular—start to support people, they will self-identify. A good criminal justice social worker is worth their weight in gold in trying to identify and address problems. However, I do not mean to say that that is easy. We are trying to undo 18 years of deprivation.

Martin Henry: I want to throw in a comment about children, as that is part of the focus of our discussion today. We speak to many children who do not know that they have speech, language or communication needs. All they know is that they are not being understood by the adult world. In that respect, they probably share that experience with all children.

It is important that we understand that, and that we place children's needs in context. Part of that context involves how we understand children and how they communicate anyway, irrespective of the special nature of that communication. Children with such needs are children first and foremost. They have a range of needs that are not to do with literacy, but with styles of communication. The important thing that I was trying to say right at the start is that the system—as Raymond McMenamin said—is not well placed to meet the needs of those children.

It is important to recognise that the criminal justice system does not start with conviction and custody. It is a very broad church, and we must understand that many people come into contact with it through early opportunities for police or criminal justice social work involvement, or through the voluntary sector—whatever it might be. It is important that the criminal justice system is viewed in a broad way rather than as dealing simply with custody or conviction.

The Convener: I think that we know that, and we appreciate how broad the system is. It can start with toddlers, as some nursery nurses no doubt identify early on someone who will go down the wrong route if certain issues are not addressed by carers or whoever.

Graeme Pearson: I have a question about process, just to check what the reality is out there. The children's panel is probably the first opportunity for the system to analyse a child's

circumstances in depth. Presumably, shortcomings in communication and a child's needs in that regard can be identified at that point.

Does the system have the ability to record that identified need and pass it on in the future? As a human being comes into contact with the system and graduates to Polmont and so on, does the system reassess that person as a new human being every time that it comes into contact with them? Is there no learning or consciousness in the system that helps to add the bricks together to make a wall?

Do you understand what I am saying? We learn that someone has real problems with communicating when they are, say, 11 years of age. We see them at 14 and there is no change. We see them as an adult, at 17, and they go into a remand centre. We next see them at 20, when they are serving a three-year sentence. In my experience, the system always seems to meet that individual as a fresh sheet, and it assesses them again. Does the system have any cognitive capability to assess and add to information or is that too much to ask?

11:45

Martin Henry: I will comment quickly, as I am sure that Karyn McCluskey and others will want to respond as well.

As John Finnie said, one thing that has changed the landscape is getting it right for every child. If people make the cultural shift into a GIRFEC way of thinking, we should not have to reinvent the wheel further down the line or rediscover information about children and young people as they grow up and travel through childhood into adulthood. The system should be capable of not just recording but understanding the needs of children as they emerge through the system, and GIRFEC takes us a long way down that route. However, Graeme Pearson is right that, in the past, that has been a huge problem.

Graeme Pearson: Is that shift happening now? Are you saying that there are signs that it is beginning to happen across the board?

Martin Henry: There are signs. I am being optimistic. I do not know whether Karyn McCluskey agrees.

Karyn McCluskey: I am optimistic, too.

Kate Higgins: This is not the first opportunity to identify a child's needs. The Education (Additional Support for Learning) (Scotland) Act 2004 created a statutory duty and a right for children to have their support needs, in terms of learning, identified in the earliest years. The point is—

Graeme Pearson: Again, you are missing the point of this committee. We are talking about justice, and as a person—

Kate Higgins: Yes, but how can you say that we just start to identify children's needs when they are identified as an offender?

Graeme Pearson: I am not saying that.

Kate Higgins: The point is that, as Martin Henry and others said, we need a joined-up approach. It is right to say that there is no cognitive memory, and the information is getting lost. Children could be identified at as young an age as three, although we know that that is not happening, and if they are ending up in the children's hearings system—

Graeme Pearson: I accept that pre-school is the beginning of it. I do not deny that. I am just looking at the justice system part of it.

Kate Higgins: But all that information needs to be taken with the child through the process.

The Convener: I understand that the subject is huge. I want to make it clear that we are just fact finding. We have only a narrow slot in which to hold a kind of inquiry—at the most, we could have four evidence sessions. Much though I would love to travel back to the nursery, parenting and everything else that goes with it, we cannot do that.

We will have round-table discussions on other topics and it is up to the committee to decide what we will discuss and what we can tackle, but with all our legislative commitments, we will have only four evidence sessions. We therefore have to be pragmatic, narrow it down and decide what we can come out with, even if it is just a tiny thing about educating solicitors or police or whatever. I am not suggesting that, but our inquiry is as narrow as that, and we have to think in that way. I know that we would all love to get to grips with other things, but I am afraid that that is for another day, another committee or another time.

I started off by asking the witnesses, if there was one thing that should be changed within the justice remit, what it would be. Given that we will have only four evidence sessions and we want to write a report that does not gather dust but actually turns a knob and changes something in the system, I ask you to apply your minds to that question again and say what that one thing would be, having had our discussion this morning. It might be the same thing that you said at the beginning or it might be different.

I know that that is a tough call. I will come to Kim Hartley last. Does someone want to start, rather than my going round the table? Some of you already have ideas. What is the one thing that we can tackle within four evidence sessions and

what is the practical change that we can achieve in the system?

Kate Higgins: The point that I have been waiting for some time to make—and which I think is relevant to the convener's question—relates to special measures; indeed, Raymond McMenamin has highlighted that issue and we, too, have submitted written evidence on their inconsistent application. Children 1st engages with the Scottish Court Service and the Crown Office and Procurator Fiscal Service, has carried out training for sheriffs and has engaged with academics and other organisations but the big problem is the inconsistent application of special measures, particularly with regard to vulnerable witnesses. No one is measuring these things or gathering data on what is being used where, and where it is making a difference in the court system.

The Convener: I must remind you that we are looking at offenders in the system.

Kate Higgins: Are we looking only at offenders?

The Convener: The remit of the inquiry is to examine

"why provision to meet speech, language and communication needs among offenders is almost negligible in all areas of Scotland's criminal justice system".

Witnesses might be offenders in due course and offenders might well be witnesses, but we are looking at the person who is standing in the dock, losing their liberty or being given some other punishment. Perhaps you could have a wee think about those people in the system.

Dr Loucks: We should bear in mind that special measures also apply to offenders because they are, for example, allowed to have supporters and appropriate adults present. As I said at the beginning, we need to increase the awareness of staff across the criminal justice system in that respect and ensure that they know when to apply the measures. The fact is that, whether we are talking about the police appointing an appropriate adult, about prison staff recognising that a young person's behaviour is a result of communication difficulty instead of their simply being bad, or about simply ensuring that people know where they can go to for additional support, such measures are not being applied at the moment. Evidence not only from Polmont but from England and Wales suggests that speech and language therapy has been very useful in raising awareness among prison staff and teaching them to know how to recognise and handle such issues and difficulties.

Martin Henry: I have a very small wish list and I hope, convener, that you will permit me the luxury of setting it out in two small parts.

The Convener: That's a politician speaking.

Martin Henry: My list applies across the board to offenders as well as to witnesses and victims. First, I want to see the creation of a forensic capacity within speech and language therapy that would be consistently available no matter where people lived.

The Convener: What do you mean by "forensic capacity"?

Martin Henry: By that, I mean the provision of speech and language therapists who are trained in and understand the system's forensic needs and are able to bring out the voice of people with such needs in the criminal justice system. The flipside of that is the provision of improved broader and specialist communication training for investigators in the system itself.

Raymond McMenamin: I think that the phrase "the system's forensic needs" is a good one. We all need to know what those needs are because sooner or later everyone in society, no matter whether they are a juror, a witness, the accused, a lawyer or whatever, will be subject to them.

As I said at the very beginning, people should be educated at an earlier stage about elements of Scots law, including those that pertain to policing, social work and so on. Young people with whom I come into contact genuinely do not know what is going on, and we could improve the current lack of awareness about the justice system. It is simply far too late to leave that sort of thing until the person in question is in court, giving evidence or standing as the accused. Something must be done at the educational level to make young people aware of these things; I genuinely believe that if they have some orientation about what is going on round about them, they might find it easier to communicate.

Karyn McCluskey: I am rather shocked by the poverty of provision in the prison service. I think that, if we were to do one thing, it would be to capitalise on offenders' time in prison and provide specialist language therapists to improve their outcomes when they come out.

The Convener: Would you include throughcare in that? After all, the committee has previously discussed the fact that provision should not simply end once a person goes out through the prison gates.

Karyn McCluskey: Absolutely.

The Convener: Does Kate Higgins want to come back in? I stopped you in mid-flow before.

Kate Higgins: I have to apologise, convener. When I read the agenda, I assumed that we were going to discuss the communication needs of young people in general. However, I agree with Nancy Loucks that we need to examine how the special measures are being applied to young

offenders and, indeed, how we are supporting them in the round. I am sure that Kim Hartley will say more about that.

Lynn Jolly: I came here today with a specific interest in the court system. I take the point about the horse having bolted and so on. However, I have experience of courts from my time as a probation officer. There is evidence from elsewhere, such as the mental health courts in the United States and Canada, which have made a significant difference to people, even at that late stage—I take the points about that. Even if the outcome is still a custodial sentence, a positive difference can be made to people's experience. Paying attention to communication needs makes all the difference in the longer term. We need something that addresses that, in addition to the things that the others have suggested.

The Convener: If it is identified then, perhaps it will carry through if people go into the custodial system.

Kim Hartley: If I were to make a suggestion for your four sessions, it would be to explore the awareness, understanding and effectiveness of the current response to speech, language and communication needs in Scotland and other parts of the UK and to learn from practice elsewhere.

First, are we aware of it? What is the knowledge base? That would tell us something about identification. Secondly, what is our understanding of how to deal with the issue and what is the consistency of response? It is about mapping the experience of the offender going through the justice pathway, from the perspective of speech, language and communication.

Perhaps the final two sessions could ask what people are doing elsewhere and what works, with a view to making recommendations about an evidence base and practical recommendations about what could work well in Scotland.

I stress that it is about a universal, inclusive, communication approach to justice, as well as enabling those who deliver rehab to provide inclusive communication rehab services, and the specialist services that Karyn McCluskey talked about. Although we want to enable people to communicate more effectively so that they do not get to prison, more support in prisons is important. A mapping exercise of what is happening and what we could do better would be helpful.

Dr Loucks: I commend the no one knows research, which includes specific recommendations for Scotland and compares what happens throughout the UK. It could be quite useful.

The Convener: The submissions and so on that you have provided will be research material. The committee is provided with material by the Parliament's research centre and we can commission research, so that material can be back-up. An inquiry can be informed by written evidence and research, as well as evidence sessions.

I have to say, because it is the truth, that we do not know whether we will pursue the issue. We will have to think about it. It would be useful for the committee to chew over the issue before we reach a view. The session has been extremely useful. I thank all the witnesses for giving evidence and for giving us the idea to take on the issue.

Our next meeting is on Tuesday 29 May. Get your pens out to note down the dates. We will begin consideration of amendments to the Police and Fire Reform (Scotland) Bill at stage 2. Our aim is to consider amendments up to and including section 70. We might not get there, but we will not go beyond that. Amendments should be lodged by noon on Thursday 24 May. If members are unclear about where their amendments fall in the bill, they should get in touch with the legislation team, not the committee clerks—although they are allowed to talk to the clerks as well.

On 29 May, we will also consider our annual report.

Meeting closed at 11:58.

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