OFFICIAL REPORT
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Justice Committee

Tuesday 25 February 2020

Session 5

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Pàrlamaid na h-Alba

Tuesday 25 February 2020

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JUSTICE COMMITTEE
8th Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ash Denham (Minister for Community Safety)
Shona Spence (Scottish Government)
Simon Stockwell (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 25 February 2020

[The Convener opened the meeting at 10:00]

Children (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's eighth meeting in 2020. We have received no apologies.

Agenda item 1 is consideration of the Children (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome Ash Denham, the Minister for Community Safety, and her Scottish Government officials. Simon Stockwell is head of the family law unit, Shona Spence is from the looked-after children team, and Jamie Bowman and Victoria Morton are from the legal directorate.

I understand that the minister wants to make a short opening statement.

The Minister for Community Safety (Ash Denham): I do. Good morning and thank you for inviting me to give evidence on the Children (Scotland) Bill. I have been watching the committee's evidence sessions with great interest and I am very interested in some of the things that have been raised during the process.

The bill aims to improve the family courts for children, balancing the interests of those who are affected—in what can often be difficult times for them personally—in an effective court system. We believe that the bill's provisions represent a step forward in ensuring that the child's best interests are at the centre of all contact and residence cases, that the views of the child are heard, that we further protect victims of domestic abuse and their children in family court proceedings and that we have further compliance with the United Nations Convention on the Rights of the Child. I am happy to consider any ways in which the bill can be improved to meet those goals, and I look forward to receiving the committee's views in due course.

I will mention three areas on which stakeholders have commented. The first is to do with ensuring that the child's views are heard. I am aware of the suggestions that there should be a positive presumption that all children are capable of giving their views. Of course, the majority of children are able to express their views, but there will be circumstances involving extremely young children and children with severe learning difficulties who are not able to form views, and the legislation needs to include options for those exceptional circumstances. I would expect such exceptions to be used only infrequently, but the bill provides for them. To strengthen the provisions, we are removing the presumption that a child aged 12 or over will be mature enough to give their views, which has in some cases worked against that outcome.

Secondly, I understand that a number of stakeholders have suggested that the bill should include provisions on child support workers. Such workers may play a useful role in supporting children to give their views. However, we would need to ensure that minimum standards of training and experience were set out in legislation in order to ensure that there was a consistent approach and the best interests of the child were maintained. Further work would be needed to ensure that there was a joined-up approach so that any provisions would work with existing support and advocacy systems and other proposed Scottish Government work. As the committee will be aware, we have committed in the family justice modernisation strategy to consider that.

Finally, I would like to focus briefly on the comments that stakeholders have made on the regulation of child welfare reporters and contact centres—

The Convener: Minister, I will stop you there. You are going into territory on which we will be questioning you in some detail, so, in the interests of time and the best scrutiny of the bill, we will move straight to questions.

John Finnie (Highlands and Islands) (Green): Good morning. My question is on that issue. We have heard that even very young children are able to offer views on issues that affect them. Given the comments that you have made, do sections 1 to 3 of the bill as they are presently configured suggest that some children are not capable of giving their views?

Ash Denham: With appropriate support, even really quite young children can express views on matters that affect them, if they are approached in the right way and they can express their views in a way that suits them. The bill removes the presumption that a child aged 12 or older is mature enough to decide whether they wish to give their views. The removal of that presumption is proposed because of concerns that it has led to the views of younger children not being taken, which was obviously not the intention when the provision was introduced.

The bill provides for all children, including younger children, to have an opportunity to give their views. As I said in my opening statement,

there are a number of very limited exceptions, such as when

"the location of the child is not known"

or

"the child is not capable of forming a view".

An exception might apply if the child has a severe learning disability. As I said, however, I would expect those exceptions to be used extremely infrequently. We have set it out in that way because we are seeking to take a practical approach and ensure that the provisions are workable.

John Finnie: Does that not inevitably lead to a position that the bill should be framed in such a way that there is a presumption that all children will be capable of forming a view? That is the position of the Children and Young People's Commissioner Scotland, for example. You could take the view of Scottish Women's Aid, which is that every child has a right to express their views.

Ash Denham: I am aware that some of the stakeholders have made that case. The right for children's views to be heard in matters that affect them is protected by the UNCRC, article 12 of which states that a

"child who is capable of forming his or her own views"

has

"the right to express those views".

The provisions in the bill follow the UNCRC wording. The bill requires the court and other decision makers to give all children who are

"capable of forming a view"

the

"opportunity to express"

that view. The right of children to express their views is built into the bill. It just contains the limited exception to cover the cases that I have set out. The starting point is that all children are capable of forming a view, and that is the provision in the bill.

John Finnie: We have heard various ages being quoted. An arbitrary figure such as 12, as it was, is not seen as being fit for purpose. Will the bill bring sufficient clarity when it comes to how practitioners operate? We have heard different views from practitioners, which are often associated with an age bracket rather than necessarily with a capability. That is how I understood what they said, anyway.

Ash Denham: The bill seeks to create significant change in the area. We want sheriffs and the courts to find ways to engage with children—even young children—if they want to express a view, and to enable children to express views in a manner that is suitable for them. I hope that there is enough clarity there for the courts. We want to give them guidance, but we also want to give them flexibility so that they can decide in each individual circumstance what is appropriate.

John Finnie: You talk about flexibility, minister, yet the financial memorandum includes cost estimates only for child welfare reporters and judges speaking directly to children. We have heard from various witnesses—and, indeed, you have acknowledged—that there are a range of ways in which it could be achieved. Should we be concerned that the financial memorandum specifically mentions only two methods? Is it not the case that there could be additional costs if other people are involved in acquiring children's views?

Ash Denham: The bill makes it clear that there are a number of methods that could be used, but it is not intended to be an exhaustive list. We know that there will be costs associated with that, and the financial memorandum is quite detailed on that point. It represents our best estimate of what the costs will be. If other methods are used to obtain the child's views, the associated costs could be higher or lower. We have costed child welfare reporters speaking to the child. If the sheriff was to write a letter instead, there could be a cost associated with that. Perhaps Simon Stockwell can give a little more detail on that.

Simon Stockwell (Scottish Government): What the minister says is right. The financial memorandum looks at two ways in which the child's views could be taken. The two most likely ways are via child welfare reporters and via the court speaking directly to the child. As Mr Finnie said, there could be other methods of getting the child's views, and decisions could be explained by letter or through the use of material that is picture based rather than word based.

In essence, there is a balancing act on costs. If higher costs are associated with other methods, lower costs might be associated with using child welfare reporters and using the court directly. To an extent, it is swings and roundabouts when it comes to costs.

Shona Robison (Dundee City East) (SNP): As you are aware, section 15 provides that the court must explain to the child court decisions that will affect them, and the financial memorandum says that most decisions will be explained by child welfare reporters. The committee has heard evidence on the proposed approach, and some stakeholders said that there might be practical issues, for example because a child welfare reporter might not be in court when a decision is made. It has been argued that the court might not have the resources to ensure that decisions are properly explained to children before the new

arrangements take effect or before the parents have provided an explanation to the child.

Are you aware that those concerns have been expressed? Do you accept that there might be issues in that regard? If so, what legislative or non-legislative solutions might there be to overcome people's concerns?

Ash Denham: I am aware of the concerns about how the provisions will work in practice. The starting point is that a child deserves to receive an impartial explanation of decisions that affect their life. It has been suggested that the parents should explain such decisions, but I think that the committee understands that, in what is often quite an adversarial setting, it can be demanding to expect a parent to explain a difficult situation to a child in an impartial way. Not providing the information could be detrimental to the child's best interests.

We do not expect the court to explain every single decision to the child. We would certainly not expect the court to explain procedural decisions and so on; the provision is about explaining to the child important decisions that will affect them. We are trying to take a balanced approach: we are asking the court to consider how decisions can be explained impartially to the child, but we are building flexibility into the approach so that, if the court thinks that it would not be in the child's best interests to explain a decision, it can take a different course of action.

There are a number of routes whereby a court can explain a decision, so there could be practical solutions in that regard. For example, an explanation will not have to be given face to face, although I am sure that some sheriffs will take that route. An explanation could be given electronically or in writing.

We anticipate that many such explanations will be provided by the child welfare reporter, who might not be in court. I think that we envisage a slight change in the role of the child welfare reporter, whereby we expect reporters to become more involved in cases. However, even if the reporter is not in court, they will be able to receive a copy of the written judgment, with an explanation of the reasoning behind it, so that they can deliver the information to the child.

Shona Robison: Some of that might hinge on there being an expansion in the professional training of child welfare reporters in order to enable a wider pool of people to do the job. Do you envisage growth in the pool of child welfare reporters so that children may have decisions explained in each case?

Ash Denham: Sure. It will need to grow. Obviously, we will need to keep an eye on the situation in order to ensure that enough professionals are available to do the job. We are looking at bringing in other professionals who can deliver the best service to the child. That might well include lawyers who have worked as child welfare reporters; equally, it might include social workers and psychologists.

The Convener: I have a question about whether there should be local or national lists of reporters. The Faculty of Advocates and members of the judiciary told us that there are benefits to retaining lists of reporters and curators ad litem at a local level. For example, such an approach would allow a sheriff to use their local knowledge to appoint the person who was best suited to an individual case. Do you agree?

10:15

Ash Denham: I am aware that that evidence has been given to the committee. Child welfare reporters play an extremely important role in supporting children and ensuring that their views are heard during the court process. However, points have been raised about a need for greater consistency across the country in how that works. The bill is therefore aimed at ensuring that child welfare reporters are, in the first instance, suitable and that they have a consistent level of training and qualifications and are subject to a Scotland-wide appointment process. I consider that a centralised list of child welfare reporters is the best way to achieve that consistency across Scotland.

The Convener: Have you considered the compromise option that the Faculty of Advocates has proposed, which seems to give the best of both worlds? The faculty suggested that the regulatory regime could set national standards for certain issues such as training, but some local discretion could be retained, perhaps in relation to appointments. We would therefore be clear that those who were appointed would adhere to national standards, but there would be the added value of having local knowledge.

Ash Denham: We have considered that. We should bear in mind that there will be economies of scale from operating the list centrally. If, as you suggest, the lists were to be maintained by the courts at local level, there might be additional resource requirements. We are keeping an eye on that.

The Convener: Might there be advantages to having a local list, such as benefits relating to travel and people being available? Court business can change quickly. A case might not go ahead and the next case might be heard. That could present issues if there is a national database. Have you considered the logistical practicalities?

Ash Denham: You raise a fair point. We certainly would not expect somebody from the

Highlands to produce a child welfare report in the Scottish Borders, for instance. All those issues will be considered. However, it is important that we move towards consistency in quality and training and that we provide the ability to complain about a child welfare reporter, and a centralised list is the way to achieve that.

The Convener: Will there be flexibility in the centralised list? Will account be taken of the geography and the logistics? We know that court business is unpredictable, so I would have thought that having flexibility and responsiveness could save money and make for more efficient running of the courts. The suggestion seems to be worth considering, and it would not compromise the national standards that you are keen to ensure are in place.

Ash Denham: We absolutely would not want to compromise the standards. We will consider all those issues.

I ask Simon Stockwell whether he wants to add anything on that.

Simon Stockwell: As the minister said, we will consider the fact that, for instance, it might be difficult for a child welfare reporter who is based in the Highlands to work on a case that is based in the Borders. We will consider whether the list can set out that child welfare reporters will operate only in certain parts of the country.

Another reason for having a national list is that we have found—and research has suggested—that the ways in which child welfare reporters are appointed are not as transparent as we might like. Although in some cases the court might appoint somebody because of their particular expertise, there might be other reasons that explain why certain persons are appointed. We want to introduce greater transparency in relation to who is on the list and why they are on it, and providing a centralised system enables us to work to do that.

Like the minister, I would have concerns about the resource implications for the Scottish Courts and Tribunals Service of running lists at local level. At the most recent meeting of the family law committee of the Scottish Civil Justice Council, which is chaired by Lady Wise and on which the Faculty of Advocates is represented, there was discussion about running lists at local level. I asked what the cost implications would be for the Scottish Courts and Tribunals Service, but there was not really an answer to that.

The Convener: Now that we have had the discussion in public, we can address the matter more fully and, perhaps, return to it at stage 2.

Shona Robison: The financial memorandum provides for four days of training for child welfare reporters. Given the importance of consistency and the fact that people with different professional backgrounds might be brought in, will that be sufficient?

Ash Denham: I know that that issue has come up quite a bit in the committee's evidence. I will reflect carefully on what the implications might be. We will set the training requirements and qualifications through secondary legislation, which will be developed after the bill is enacted. We will consult stakeholders on how we should develop the requirements. I envisage that the training will cover domestic abuse, coercive control and other areas that witnesses have mentioned in the evidence sessions. Four days of training a year might not be sufficient in some cases, but it might be more than sufficient for child welfare reporters who have been working in the field for many years. We will certainly listen carefully to what the committee says on the issue as we develop the training requirements.

Shona Robison: That is helpful. Other professionals such as social workers and psychologists might be included as child welfare reports. Have you looked at how that will be done? Will there be a recruitment campaign? What mechanisms will be put in place to encourage a wider set of professionals to become child welfare reporters?

While you answer that, will you address the concerns of the legal stakeholders and members of the judiciary who have said that there are important benefits from having solicitors as child welfare reporters? Obviously, solicitors will remain as child welfare reporters, but those stakeholders said that solicitors' legal training is very important and they cast some doubt on the inclusion of other professionals. It would be helpful to have your response to those concerns.

Ash Denham: At the moment, about 90 per cent of child welfare reporters are solicitors. Of course, lawyers bring to the role a range of skills that are extremely beneficial and welcome. The committee probably recognises that other professionals—such as social workers, who also act as child welfare reporters currently, and psychologists—will also bring skills and experience that will be very useful to the process. There is nothing unusual in using other professionals. Until quite recently, it was quite normal for people to have a choice about whether to go with a social worker or a lawyer—in fact, quite a lot of social workers were used to produce reports.

Eligibility criteria for being a child welfare reporter will be set out. We think that the criteria will be based on competence and could be met by a variety of professionals, as we have described. The key point is that we want to have the right

professionals who will give the best service to the child. That is what we are looking to achieve.

Shona Robison: Judgments about which professionals are used will be made on a case-by-case basis.

The policy memorandum suggests that fee rates for child welfare reports could be set in a variety of ways, including by an hourly rate, by report or by page of the report, although there is an acknowledgment that we should not encourage people to write long reports. What system for setting fee rates will attract good-quality professionals to become child welfare reporters and ensure an efficient use of public resources?

Ash Denham: That is quite right; we want to set fee rates to ensure that the job is attractive, so that, as we have just discussed, we can get the best professionals to do it. The bill gives the Scottish ministers the power to set those rates, and we will consult fully on the regulations on that in due course.

As you have outlined, there are a variety of ways in which we could set the rates. I agree that we probably do not want to encourage the production of extremely long reports—that is probably not in anyone's interests. We have not finalised exactly how we would set fee rates. I have heard some of the evidence that has been given to your committee, and I am considering how we can move forward. We will come back to the committee in due course on the matter.

Liam McArthur (Orkney Islands) (LD): Before I start, I apologise for my late arrival, which was due to flight disruption this morning.

Shona Robison asked about the mix of child welfare reporters, around 90 per cent of whom currently are lawyers. In many cases, social work input or the input of those with psychology training will be more relevant than the input of lawyers—in fact, in some cases it will be fundamental. To your mind, does that 90:10 split appear right, or do you envisage the bill presenting an opportunity to alter the mix so that it includes more people with other skills and expertise?

Ash Denham: As I said, we are not interested in the title that someone holds; we are looking for the best professionals who are able to deliver the best service for the child. I envisage that there will be a mix, but I cannot say at this point how the mix will split.

Liam McArthur: Clearly, it is the skills that are important rather than the job title, but people's skills will vary enormously depending on what their job titles are. I am interested to know what input those who are involved in social work and the psychology profession have had to this aspect of the bill. How much consultation has been done with them? What views have been expressed to you and your officials about where that balance ought to lie?

Ash Denham: I do not think that we will be taking a prescriptive view on the issue or saying that we want 40 per cent of the mix to be made up of certain people or whatever. Clearly, many people who are currently working in this area are extremely skilled, and there are many social workers who are equally skilled with regard to the issues in this area. However, I agree that we are looking for a mix of skills and that we want to get people who are able to bring experience to the role.

We must also bear in mind that the bill makes provision for training. We expect that training to be developed. At the moment, we are looking at four days a year of training for child welfare reporters, which will increase the skill set that is there at the moment.

Simon Stockwell: We have met the Society of Local Authority Lawyers and Administrators in Scotland, which involves local authority social workers and people such as that, to discuss what sort of reports are produced at the moment and to seek the input of those professionals.

In the past, a good number of the reports were done by social workers. When you look back at the older research, you can see that more reports were done by social workers than is the case now, when the situation seems to have moved much more towards lawyers producing reports, possibly as family law has grown as a profession and there have been increased pressures on social work. However, social workers produce some of the reports, and we understand that they tend to do the reports in the Western Isles and Dumfries and Galloway, too.

As the minister was saying, there is a mixture of people. We have spoken to the authorities on the issue, and I know that there have been some representations from child psychologists, too.

The Convener: Section 13 requires the courts to appoint curators ad litem only where necessary, to give reasons for that appointment and to reassess the appointment every six months. Do you consider that that current wording might result in a reduced role for curators in future?

Ash Denham: No. That section is pretty clear on what we are trying to achieve. It makes it clear that if the court wants to appoint a person to act as a curator ad litem, and the court is satisfied that it is necessary to do that to protect the child's interests, it should go ahead and do that. The assessment is to check whether the curator is still needed and, if it is, the court can continue with the appointment.

10:30

The Convener: The Faculty of Advocates has been critical of the requirement that the appointment of a curator to a case is reviewed every six months. The Sheriffs Association said that the requirement was "arbitrary and pointless", as curators become involved in a case only when there is a need for them to perform a distinct role and they carry out bespoke work for the court. The Summary Sheriffs Association describes the provision as "somewhat unrealistic". Would you like to comment?

Ash Denham: I do not think that that is the case. I will ask Simon Stockwell to give some further information on that.

Simon Stockwell: In past children's cases and elsewhere, we have had complaints about curators ad litem being appointed by the court when they are not needed and about them getting in the way of parties to a case. I do not want to go into details, because they relate to a specific case that was raised with us.

The point is to check that the courts are appointing a curator when the curator is needed and that the need for the curator is continuously assessed. As the minister said earlier, we want to ensure that there is consistency across the courts where we can. Although some courts might indeed be appointing curators on the basis that they are needed and assessing that need, we cannot absolutely say that that is true in all courts across the country. The point of the provision is to make sure that it is.

The Convener: It is always dangerous to make law on the basis of one case or one adverse experience. What has to be weighed against that, and what I hope the minister will take into account, are the comments from, for example, the Family Law Association, which regards a legal qualification for curators as essential. On the role of curators, the Sheriffs Association comments:

> "Curators are worth their weight in gold to family courts where a very large and increasing number of cases are conducted by party litigants. In such cases, the parents rarely present their case in a child-centred way or give the court the relevant information needed to resolve matters in the best interests of the child."

That is fundamental to the bill. The association goes on to say:

> "It is vital that those interests are protected and that decisions are made in a child centred way. Curators also speak to children, explain the process to them, see them in their home and at school, support contact and mediate outcomes."

Are we absolutely sure that, on the basis of one case and anecdotal evidence that curators are not always being appointed only when needed, the wording that is in the bill about the appointment of a curator and the review of that appointment is in the child's best interests, particularly in cases in which parents represent themselves in court?

Ash Denham: It is not on the basis of one case; we just used that as an example of why the provision would be useful in future.

There is nothing in the question that you just asked that I disagree with. Of course, curators play a vital role, and we are not suggesting that any change be made to that. They would be legally trained; that is the point of the provision. All we are saying is that, when a court needs to appoint a curator, it should review the cases to make sure that they continue to be needed. That is all.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Issues around contact centres have been an important part of the evidence that we have heard. Does the role of contact centres need to be clarified? To give you an example, some stakeholders have expressed concern that, if supervised contact is ordered, that necessarily means that the contact might be unsafe. What is your impression of where we are going with that and with the regulation of contact centres?

Ash Denham: I am aware of the comments about contact centres that you have referred to. Contact centres can play an important role in facilitating contact, specifically where contact has not taken place for a long time, or where the contact is new. What is of absolute importance is that contact should take place only in a safe environment, and the bill achieves that by introducing the regulation of contact centres. That will make sure that we have consistent standards in things such as training and accommodation to help ensure that all contact centres are the safe spaces that we would expect for children.

Rona Mackay: Have you considered having a publicly funded network of centres? Regulation would have an impact on cost in that regard, and I am sure that that has been considered.

Ash Denham: The Scottish Government funds contact centres. Relationships Scotland has received £6.5 million over the past four years from the Scottish Government. In 2019-20, it was awarded £1.53 million from the Scottish Government's children, young people and families early intervention fund. However, I accept what Rona Mackay is saying. We need to look at the on-going sustainability of funding for contact centres. I am actively looking at that, but the committee will understand that I cannot speak at this point about any future funding decisions.

Rona Mackay: Section 9 requires referrals from a court to a contact centre to be to a regulated centre, but it does not impose such a requirement in relation to referrals from other sources, for

example from solicitors. Relationships Scotland said that it would be "impractical" for contact centres to operate in such a way. Could the section be amended at stage 2 so that, regardless of source, children should be sent to a regulated centre?

Ash Denham: I agree with that completely. The member is talking about provisions in the bill that refer to court-ordered contact. When the bill is enacted, all contact centres will be regulated; that is something to bear in mind. I am not sure how we would enforce where solicitors make referrals to, but I agree that all contact referrals should be made to a regulated contact centre.

Rona Mackay: Would regulation mean greater training for practitioners in the centres?

Ash Denham: Absolutely, yes.

Rona Mackay: The committee has heard a number of concerns about that.

Ash Denham: Yes, I have heard those concerns as well, and that is why it is a feature of the bill to ensure that we have consistency around the country. We want to ensure that contact centres are safe places for children, that the accommodation is up to the standard that we would expect and that the staff are fully trained.

Rona Mackay: Finally, I want to ask about domestic abuse risk assessments, for which the bill does not provide. Some stakeholders have advised that it would be preferable for the bill to provide for risk assessments in the context of family cases involving domestic abuse, with all the complexities that that throws up. Could that be looked at at stage 2?

Ash Denham: I am aware of the issue that Rona Mackay raises. I am not totally clear on what would be laid down in the bill. We need to look into that and consider what we might do in that area.

Rona Mackay: Thank you.

The Convener: Shona Robison has a supplementary question.

Shona Robison: My question is about practice—I guess that this would be captured in the regulatory guidance.

Last week, on a very helpful visit to my local contact centre, an issue was raised around the need for greater flexibility. Let me give an example. Staff are required to record contact going ahead. However, at a certain point, it is clear that that level of supervision is not required any more, and it might be helpful to have a clear process for bringing supervised contact to a conclusion to allow more natural engagement to take place between parent and child. At the moment, the feeling is that the process is often quite arduous. Will that be looked at in terms of the practice in contact centres? The safety of the child is clearly absolutely paramount, but mechanisms have to be brought in whereby there is more flexibility and an appropriate use of that level of supervision.

Ash Denham: Do you mean in relation to supervised contact?

Shona Robison: Yes. I guess that my question is whether every modification of supervised contact requires to go back to the courts so that the order can be adjusted. If so, a set of triggers might need to be put in place. The point may be reached whereby the contact centre staff feel that that level of supervision is no longer required, but the process of making any changes seems quite arduous.

Ash Denham: Contact centres do different types of contact: they do drop-offs, pick-ups, supervised contact and unsupervised contact. Supervised contact is court ordered, so any changes to that would have to be done by the court. The staff provide reports to the court. In the circumstances that you describe, where the staff feel that a person is handling supervised contact well and could progress to unsupervised contact, the staff could provide a report to that effect. However, the matter would have to go back to the court for it to decide whether such a change was appropriate and whether the time was right for that person to move on to unsupervised contact.

Shona Robison: There might be a need for clarity within the guidance about trigger points. Perhaps it could happen more speedily, and there could be a mechanism that staff were clear about for supervised contact to go back to the court. Could that be clarified in the guidance? The feeling is that the process sometimes goes on far longer than it needs to, because of the time that the court takes to look at the order again.

Ash Denham: I hear what Shona Robison says, and we can certainly look at that issue. My understanding is that the child's safety is paramount.

Shona Robison: Of course.

Ash Denham: If the court has ordered that supervised contact should take place, I would want that contact to be supervised. Some contact centres have volunteer staff, but not in the case of supervised contact, which is undertaken only by trained staff, who feed information back to the court. However, I would not want to rush those situations. If supervised contact was undertaken by the pursuer in a contact and residence case, it would be up to them to go back to court to seek to vary the order. That is what happens in the majority of cases.

John Finnie: I want to pick up on the points made by Rona Mackay and Shona Robison. I urge extreme caution in relation to the matter. It is important that any risk assessment, as well as any training, picks up on the most recent legislation on controlling and coercive behaviour. We heard that extremely manipulative people—invariably, we are talking about men—conduct themselves very well in the presence of third parties. However, there are concerns that people move from the criminal court, where special measures are put in place, to civil court, where nothing similar is done and children are chaperoned by third parties in the presence of a perpetrator of domestic violence. I hope that the matter will be given a thorough examination.

Ash Denham: I assure John Finnie that we will give the matter due consideration.

The Convener: We turn to the secondary legislation, which will create the regulatory regimes. Given the importance of secondary legislation in the context of sections 8 and 13, which cover child welfare reporters and curators ad litem, and section 9, which covers family centres, is the minister minded to consult on the details of the regulatory regimes? In particular, will she commit to a full public consultation?

10:45

Ash Denham: I will. We will hold a full public consultation, in which we will consult on the detail of the three areas that you mentioned.

The Convener: Do you still think that the negative procedure is the appropriate procedure to use for scrutiny of secondary legislation that is made in relation to sections 8 and 13, which are on child welfare reporters and curators ad litem, respectively?

Ash Denham: I do. We set out the rationale for our approach in the delegated powers memorandum, and the Delegated Powers and Law Reform Committee said that it was content—it did not raise any concerns with us about that approach to scrutiny. Therefore, I think that the use of the negative procedure is appropriate.

As we are to consult on the key areas, we will have an opportunity to listen carefully to all stakeholders, but I think that the proposed procedure is appropriate.

The Convener: I suppose that I am thinking about the fear that was expressed that fewer curators ad litem would be approached. If the matter is dealt with in secondary legislation that is subject to the negative procedure, that issue might not be discussed fully. However, it is welcome that there is to be consultation.

Rona Mackay: I turn to shared parenting, on which the committee received important evidence. Have you been persuaded by any of the evidence that we received that the bill should include a presumption in favour of shared parenting?

Ash Denham: I have not. The Scottish Government believes strongly that both parents should be fully involved in their child's upbringing as long as that is in the best interests of the child. The courts already apply the general principle that it will normally be beneficial for children to maintain an on-going relationship with both their parents.

However, as we are all very aware, there are circumstances in which shared parenting is not in the best interests of the child. In such cases, the court must make a decision. My opinion is that a presumption in favour of shared parenting would cut right across that, so I do not think that that is the right approach here.

Rona Mackay: So you want to uphold the principle of getting it right for the child and the child coming first.

Ash Denham: Absolutely.

Rona Mackay: Do you think that there should be a presumption in favour of a child having contact with his or her grandparents? Should there be such a right of contact?

Ash Denham: The situation here is very similar. I appreciate that the very important role that many grandparents play in children's lives has been highlighted in written evidence. We recognise that in the family justice modernisation strategy, and we have something called the charter for grandchildren, which I have committed to promoting more widely.

In addition, the bill includes a list of factors that the court must consider in every case, one of which is the child's important relationships with other people. That would, of course, include relationships with grandparents.

I do not think that it would be appropriate for there to be an automatic right of contact with grandparents or a presumption in favour of such contact, for the reason that we have discussed, which is that that would cut across what was in the best interests of the child. I think that we are all aware that, in some cases, an automatic right to contact with grandparents would not be appropriate and, indeed, might not even be safe for the child.

Rona Mackay: If the child expressed the view that they wanted to see their grandparents, that wish would be granted.

Ash Denham: It would be. Obviously, grandparents can apply to the court for contact. In

making that decision, the court would take the child's views into account.

Rona Mackay: We have heard some compelling and powerful evidence on the benefits of sibling contact. Why does the financial memorandum not set out any cost implications for local authorities in implementing the new duty under section 10? Do you agree with the stakeholders who say that, to implement the new duty, more resources will be required?

Ash Denham: Section 10 strengthens a piece of practice that should already be happening, and we indicated in the financial memorandum that we do not consider that to be a new burden. Local authorities have to act in support of the welfare of the children they have responsibility for. We know that practitioners already recognise the protection of relationships between brothers and sisters as something that is necessary for the welfare of children who are in care. Glasgow health and social care partnership said in evidence to the committee that it is already doing that, and the City of Edinburgh Council has said that it also fully supports the practice. It is essential that local authorities implement the duty. The provision is designed to reinforce that responsibility for maintaining sibling relationships. We know that local authorities have signed up to the care review's promise to deliver the changes to the system that are needed. If they have difficulties implementing the measure, we stand ready to work with them.

Liam McArthur: I absolutely accept the fundamental importance of keeping the interests of the child at the centre of any decision that is taken by the court. The argument around shared parenting, unlike that in relation to contact with grandparents or other members of the wider family, is based more on a concern that, when it comes to contact or residence, there is often a presumption that the mother's rights will prevail over those of the father. A presumption of shared parenting is not about cutting across the interests of the child; it is more about the way in which the courts arrive at decisions when there are perhaps competing interests between both parents. The question is whether a presumption puts a greater equilibrium into that assessment, while, as you rightly say, keeping the interests of the child firmly at the centre of whatever decision the court arrives at.

Ash Denham: I return to my previous answer. We have to keep in mind that we are taking a child welfare approach here and that the welfare of the child is paramount, and it is up to the court to decide how it implements that. The presumption of shared parenting could cut across that.

The bill is compliant with the European convention on human rights and the UNCRC. I am comfortable with where the bill is and the direction in which we are heading, which I think is an appropriate one.

Shona Robison: I will go back to the issue of siblings for a second. We heard some harrowing evidence on people's experience, which I am sure you will have looked at. Having previously worked in social work, I appreciate that the practical difficulties of maintaining sibling contact can be very challenging.

In the case that we heard about, the nature of the contact between the siblings was very difficult, but we have to be wary of assuming that practice is the same everywhere. You will have seen that the contact took place in a contact centre, it was supervised and a note taker was present. It was a relationship in which the sibling in question had played a very strong part in their sibling's life until the point of family break-up.

It comes back to the risk assessment. Presumably, every effort needs to be made to ensure that that contact is as natural as possible. Although we do not know the background in the case that I mentioned, it seemed to me that that did not happen—in fact, both children were probably failed in that situation. How can we ensure that contact is made as natural as possible under the bill and, indeed, in the guidance and in practice around contact centres, if that is where sibling contact takes place?

Ash Denham: Such contact would not have to take place at a contact centre. I am aware of the example that you gave, and I agree that it does not sound as though the experience would have been good for the children concerned.

As you said, we want such contact to take place in as natural a way as possible. We have heard from young people's organisations that sometimes they do not want contact to be limited to their natural brothers and sisters. Often, the relationships that are important to them are with other children with whom they have grown up and who might not be their natural siblings. We have therefore drafted the legislation quite broadly so that it is able to capture and respect those other relationships.

However, we must also recognise that, sometimes, keeping in contact with siblings might not be practical. For example, a child might have a much older step-sibling whom they have never met, who lives at the other end of the country—perhaps in the south of England—and who is not interested in maintaining that relationship. I think that we have to have the flexibility to maintain the relationships that are important to the child, but also recognise that it will not necessarily be practical to do so in every single case.

Shona Robison: I do not think that anyone would argue that that is wrong. However, going back to the views of the child, if, in a particular case, we see that they want to maintain a relationship, surely every attempt should be made to facilitate that? Some of the concerns that we have heard about the practicalities of doing so, and the resources required to facilitate it, have been quite challenging, but it is very important.

Ash Denham: That is quite right. Shona Spence will be able to give you a bit more detail on that.

Shona Spence (Scottish Government): The intention is for contact between brothers and sisters to be as natural as possible. If that happens, it should not cost too much.

There will always be a minority of siblings who will need specialist therapeutic work to ensure that their relationship can be maintained in a positive way. The care review report has been clear about that and, as the committee will be aware, that review is concentrating on the future of care being based on loving, long-lasting relationships. In the Parliament, the First Minister has committed to supporting the aims of the care review, as have ministers in committees. Section 10 makes a start on that process and tries to get us moving in the right direction. I think that everyone is supportive of that. As the minister has indicated, local authorities have also signed up to fulfilling that promise.

I hope that if we work together we can make improvements so that we will not see situations such as the one that the young man whom you mentioned described in his evidence to the committee—in quite heart-rending detail.

The Convener: We have two more supplementaries. Before we hear those, and before we leave the subject of contact centres, I ask the minister to clarify whether the £6.5 million that she mentioned relates to funding of such centres only or of all Relationships Scotland's services.

Ash Denham: That money is for Relationships Scotland.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I want to ask a quick supplementary question about contact with grandparents, which is a line of inquiry that I have been following in our previous sessions. However, before I do so I want to put on the record my appreciation for the provisions on sibling contact, which are the highlight of the bill for me. As someone who has worked in social work, I can say that nothing is more frustrating than cases in which children cannot have contact with their siblings because of resources rather than the outcome of a risk assessment, which is an issue that we have discussed.

I know that contact with grandparents has also been discussed. For the record, I say that I agree with the bill's provisions and the Government's position on the rights of grandparents. We should not have a limitation there; the important point is for a child to be able to maintain contact with the significant adults in their life, who are not always their grandparents.

11:00

From my experience—it is probably not hard for the people around this table to understand this scenario—grandparents are often seen almost as collateral. If I might use the example that John Finnie gave, the right decision might be that it is not appropriate for a child to have contact with the man in the relationship, but the man's family could be left out, which might not be in the child's best interests if they have had significant contact with the family. I think that all members will have come across examples of people looking for support in that regard. I certainly encountered many such examples when I was a social worker.

At various points during our evidence gathering, I have argued that, if the children's hearings system is involved with such situations, there is a much stronger likelihood that the panel and the people around the family will find a solution. There will be more consideration of whether the grandparents are in a good position to maintain contact, even if the father—in the example that I gave—does not do so. Families who are going through the court system might not have access to such an approach.

I know that you said in answer to Rona Mackay that grandparents can apply for access, but there are funding implications in doing that. Also, people need to know that they can do that, and they might not be willing to do it. Have you any thoughts on the issue? Have you seen the evidence that the committee received?

Ash Denham: I have. I think that your assessment is right, in that sometimes grandparents are not aware that they have the right to go to court to seek contact. You are also right to say that some people worry about their financial situation—although I suspect that many people in such a situation would be eligible for legal aid.

That is where the list of factors to be considered comes into play. The bill provides that one factor is

"the child's important relationships with other people."

That will include grandparents, and the court will have to take account of such relationships. Clearly, there will be situations in which

grandparents live with the child in question and provide day-to-day care and so on. I imagine that the court will take that into consideration.

On the status of grandparents, we are looking at how we can further promote the charter for grandchildren. We will speak to a number of stakeholders in the area, to find out what more the Government can do to raise awareness in that regard. Simon Stockwell can tell you a little about that.

Simon Stockwell: We certainly want to speak to social work departments, which are key stakeholders, given that there are particular issues to do with kinship care and so on. We also want to speak to family lawyers who are involved in such cases in practice, and to grandparents organisations, such as Grandparents Apart UK, about what more we can do in the area. We will have a bit of discussion with key organisations and then work out how best to promote the charter without making legislative change.

Liam Kerr (North East Scotland) (Con): Minister, may I press you on the siblings issue that we talked about earlier? In your view, I think, what the new duty in section 10 provides for is being done anyway, so section 10 will change nothing for local authorities. The committee heard from CELCIS that resources are the main reason why siblings are separated. Is it your view that compliance with section 10 will have no cost implications for local authorities? Is that absolutely your position?

Ash Denham: What I am saying is that section 10 will strengthen practice that should already be happening. I will ask Shona Spence to give you more detail.

Liam Kerr: It should already be happening. However, if it is not happening, the local authority will incur costs if it complies with the new duty, will it not? Therefore, the approach should have been budgeted for in the financial memorandum.

Ash Denham: We do not consider this to be a new burden.

Shona Spence: As the minister said earlier, section 10 will add the duty to the provisions of section 17 of the Children (Scotland) Act 1995, which has as its overall principle that local authorities should promote the welfare of the children in their care. From that point of view, we do not consider that protecting and promoting the sibling relationship is a new thing for local authorities. If it is in the interests of a child, they should already be doing it.

Liam Kerr: But if a local authority is not doing it, and feels obliged to do it as a result of section 10, costs will be incurred by that local authority, will they not?

Shona Spence: If a local authority does not currently consider that that is a welfare issue for children, it would be a new situation for that local authority. However, it should be aware that promoting sibling relationships is in the welfare of children. There may be more awareness of the importance of that relationship now, and that is perhaps where the difference is.

Fulton MacGregor: I want to ask about vulnerable witnesses in the courtroom. We have heard concerns from the Summary Sheriffs Association and the sheriffs principal about the practical implications of sections 4 to 7. They are concerned that some courts around the country might not have the infrastructure to implement the provisions in those sections, which may cause additional delays. Do you have any views on that?

Ash Denham: In many respects, what we are doing here is replicating a provision that is already in place in the criminal justice system. We will of course listen to the detailed points that have been made to the committee by the Scottish Courts and Tribunals Service on resources and infrastructure, but generally the infrastructure and knowledge should already be in place.

Fulton MacGregor: On the approach that is taken to different types of court cases, we have heard quite strong evidence from the Scottish Children's Reporter Administration that it would like children's evidence in family cases to be treated in the same way as it is treated in criminal cases, for example by being taken in advance where possible. That would mean that sections 4 and 6 would not be required for children. Do you have any views on that in relation to sections 4 to 7?

Ash Denham: I understand where you are coming from. The bill, certainly in part, is trying to ensure that the civil system is in line with the criminal system when it comes to protecting vulnerable individuals. I will ask Simon Stockwell to provide you with a bit more detail on that.

Simon Stockwell: Was your question specifically about the children's hearings system?

Fulton MacGregor: The Scottish Children's Reporter Administration gave us quite a strong view on that, but I suppose that the question is more whether you think that there needs to be a review of special provisions relating to sections 4 to 7 in order to align criminal and civil cases.

Simon Stockwell: I do not think that we could commit to doing a full review now, given workload pressures. As the minister said, we recognise the point about consistency. I have occasionally seen issues more widely with the protection of vulnerable witnesses—not in children's hearings but in civil cases more generally—and I could see

that there might be a need to look at that occasionally.

On children's hearings, Shona Spence is the expert rather than me, but I understand that we are planning to do some work, which we might do by way of secondary legislation rather than primary legislation.

Shona Spence: It depends what the question is about. Is it in relation to the court proceedings for children's hearings, or the children's hearings themselves?

Fulton MacGregor: The court proceedings.

Shona Spence: These provisions add to the protections that were already available to the criminal courts. Previously, witnesses in the criminal courts had protection through the ban on personal cross-examination. We were in a situation where criminal cases and civil cases were not aligned, so this is already an improvement on that.

Further measures have been introduced more recently. Last year's Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 allows the criminal courts to deal with children prior to going to court. I think that that might be where the SCRA is coming from. Dealing with witnesses prior to going to court is very much recognised as the direction of travel, but I think that it is quite restricted so far in the criminal courts. We certainly support the measures going as far as they can go in the future.

In the meantime, child witnesses could use the existing provisions in the Vulnerable Witnesses (Scotland) Act 2004 to allow evidence on commission—which avoids children going into court and involves questions that are prepared in advance—because that option is already available for children's cases.

Fulton MacGregor: My final question for the minister is about her response to views about how the register of solicitors might work in practice for people who are subject to the ban on personal cross-examination. We have heard some stakeholders say that good-quality solicitors might not come forward to take complex cases at the last minute. Has she considered that issue while we have been taking evidence on it?

Ash Denham: I heard the view that you have outlined expressed during the evidence session. I am sure that the committee agrees that the ban on personal cross-examination is an extremely important provision. The bill includes that Scottish ministers will establish a register of solicitors who would be willing to act for a party who has been prohibited from conducting their own case or who is unable or unwilling to apply for legal aid or to fund their own lawyer.

I do not envisage the register being used very often. So far as we can tell from the data, there could be between 10 and 20 cases per year—we do not have an exact number. We would have the power to set fee rates for the lawyers who are appointed to the list, which we would do by secondary legislation. I recognise that lawyers taking on cases at a late stage might be a challenge. However, I think that the legal profession will recognise the need to protect vulnerable parties and I expect some solicitors to welcome the challenge and be willing to join the list.

Liam McArthur: You have addressed the concerns that solicitors have expressed. There are also concerns about where the threshold for exclusion from cross-examination has been set. If it is based solely on an allegation rather than something more substantive having been established, that would appear to be too low a threshold and to cut across the human rights of people who find themselves subject to an accusation. Can you address that issue?

Ash Denham: How you have described it is correct. It would not apply to allegations, but only to convictions.

Liam Kerr: Section 16 is about failure to comply with a court order. If a court order has been disobeyed and the court is considering a finding of contempt or a variation of the court order in response, section 16 will impose a duty on the court to investigate the circumstances behind the breach of the court order. Some stakeholders have told the committee that that would be a good thing and would be welcomed. However, others have expressed more caution and said that it is unnecessary, because the court already has such a power and is already using it. What is your view?

Ash Denham: Liam Kerr has made a good point. Courts have the power to investigate already and do so in some cases. It comes back to the argument about consistency and variation across the country. We looked at the possibility of additional or alternative sanctions to see whether there could be a better way forward, but there was no clear consensus about what might be a better option. This area is not straightforward. The courts have a range of sanctions available now, such as contempt of court, fines and the threat of imprisonment. Section 16 has been put into the bill so that there is a clear duty on courts to establish exactly why an order has not been complied with. I would expect them to seek the views of the child if they thought that that was appropriate.

11:15

Liam Kerr: You moved on and spoke about additional sanctions. I was asking about the

investigation of the circumstances. However, as you have brought up sanctions, I will ask a question on those. The Sheriffs Association told the committee that the bill should state which additional sanctions are available to the courts when court orders—for example, community payback orders—are breached in family cases. Do you agree that the bill should make specific reference to those?

Ash Denham: I referred to that in my previous answer because, when courts are looking to see why orders have not been complied with—the committee will recognise that that happens in some cases—they also need to work out which approaches might mean that orders are complied with. There are some instances when an order is not complied with because of fear for the safety of the child. We had the opportunity to consider what sanctions are available and appropriate. We considered additional ones, but the court has a range of sanctions available to it that are rarely used but which are appropriate. It is incumbent on the court—especially in cases like the one I have described—to investigate why a court order has not been complied with.

Liam Kerr: An idea that was consulted on was that problem-solving approaches, rather than sanctions, could be used, and that those could be contained in the bill. They are not in the bill. Given what you just said, are you sympathetic to the proposition that they should have been included in the bill?

Ash Denham: Can you explain what you mean by "problem-solving approaches"?

Liam Kerr: Sure. Some people say that the range of problem-solving approaches that you have just spoken about—alternative dispute resolution, counselling and family therapy—could reasonably have been put in the bill. I think that that was consulted on in 2018. However, they have not made an appearance in the bill. In cases that do not involve domestic abuse, is it your view that the bill could introduce more problem-solving approaches?

Ash Denham: Okay—I see what you are saying. I did not quite understand where you were going with your question.

There is a question about whether it is better to put that in the bill, as you have suggested, or whether a more general, signposting approach might be a better option. There is a wide variety of options and legislating is probably not the best approach. Signposting to those problem-solving options might be better. You probably know that the family justice modernisation strategy commits us to issue public-facing guidance on alternatives to going to court.

James Kelly (Glasgow) (Lab): In our evidence sessions, we heard concerns about the impact that delays in the court system have on children. Section 21 attempts to deal with that. Can you give us some detail on the practical effect that you think section 21 would have in dealing with delays in the court system and giving priority to children?

Ash Denham: Section 21 is not going to solve that by itself, but it will send a clear signal across the country that delays in family cases can prejudice children's welfare. We are working through the family law committee of the Scottish Civil Justice Council to introduce new court rules, and there is on-going work on case management that will look at the more technical aspects of delays in the court system.

James Kelly: You mentioned the work on case management. New rules have been drafted on that, but they have not been agreed yet. When are they likely to be finalised and agreed?

Ash Denham: That is not a matter for the Scottish Government, but a matter for the Scottish Civil Justice Council. I believe that it will be quite soon. Simon, do you have an update on that?

Simon Stockwell: Yes. I am a member of the family law committee of the SCJC—I represent the Government on it. We considered a draft of the rules at our meeting at, I think, the end of January. There was a quite lengthy discussion on some detailed procedural points.

As I understand it, the intention is that a further draft of the rules will go to the next meeting of that committee. Last time I checked, we did not have a date for that, but it will probably be at the end of March or the beginning of April. I hope—but, as the minister said, I cannot guarantee—that the family law committee will sign off the rules at that meeting. The process is that they will then go to the full Scottish Civil Justice Council to be approved, and an act of sederunt will be laid before Parliament after that.

If all goes well, the rules will be in place by the end of the calendar year. As the minister said, however, we cannot guarantee that, because it is ultimately not in our hands but in those of the Scottish Civil Justice Council.

James Kelly: I appreciate that it is a matter for the Scottish Civil Justice Council. If there is an update in the coming weeks, it would be helpful if you could write to the committee about that. We need to consider the matter alongside section 21, on delays in court cases, and it would be useful to know what the new case management rules are.

Simon Stockwell: We can certainly send you a letter outlining what has been discussed at the family law committee, the current position, and an expected timetable. I can certainly agree that with

the secretariat of the family law committee, and the minister or I can write to you accordingly.

James Kelly: Okay. Minister, do you think that there is a role for family sheriffs or specialist family courts in dealing with cases that involve children?

Ash Denham: There is already a degree of specialisation, particularly across the central belt, but you will recognise that decisions on how sheriffs are deployed and how courts are set up are a matter for the Lord President and the sheriffs principal.

Fulton MacGregor: I want to ask about some of the terminology in the bill. We know how important language is. Why have you decided not to change some of the language, given the responses to the committee from stakeholders, which I assume have also been made available to the Government? For example, we heard some strong representations about the use of the word "contact" from people who have been involved in the system. They asked the committee how we would like our relationships with our children to be described as "contact". There have also been representations about the term "residence" and its implications. For example, if someone is referred to as a "non-resident parent", there might be unconscious bias in the system. Have you given any thought to the words that are used in the bill and whether amendments might be lodged in that respect at stage 2?

Ash Denham: I saw that evidence and I have given the matter some thought. We are not saying that the term "contact" sums up the entirety of the relationship between a parent and their child—of course that is not the case. The terms are not meant to be pejorative in any way. They have been in use for some time. The terms "contact" and "residence" have gradually gained acceptance and I think that they are well understood. I am not sure that there are useful alternatives that could be brought in, so I think I am quite comfortable with keeping them as they stand at present.

The Convener: Rona Mackay has a supplementary question.

Rona Mackay: On the point that Fulton MacGregor made, I note that the term "parental alienation" has huge implications. Do you think that it would be appropriate not to use it in the bill?

Ash Denham: That term does not appear in the bill. As part of the factors that we are asking the court to consider, we are asking it to consider in every case that comes before it the impact of its decision on both parents. However, the term "parental alienation" does not appear in the bill.

Liam McArthur: I will raise a couple of issues, which are not linked. First, the Government sought views in the original consultation on the potential for putting in place legislative provisions that confidential information may be shared with parties who request it only where the child's views have been taken account of, and on the basis that it is in the child's interests. However, that is not in the bill. You will be aware of the concerns that a number of stakeholders have raised, including Children 1st, about the absence of such provisions and, therefore, the potential for confidential case files to be requested by the court and shared with other parties, including potentially with abusers.

We have had exchanges on that with the bill team and other witnesses who have expressed concerns about the implications for the human rights of other parties in cases. However, the concern remains. With regard to retaining the confidence of the child or young person, who might be imparting highly sensitive and deeply personal information, the notion that that information could in due course be shared with others cuts across that. What further thought has been given to that? The bill team suggested that, if such provisions are not included in the bill, clearer guidance on the sharing of confidential information could follow from the passing of the bill.

Ash Denham: That provision is not in the bill. Children already have rights to confidentiality, which is protected. It is a complicated area because, as you pointed out, a number of rights are at play, and a number of welfare issues. For example, a child who provides confidential information might be a different child from the one that the court proceedings are about, so we need to ensure that we can protect the welfare of multiple children. As you mentioned, there is also a balance of rights to be struck between the child and their parents.

The committee will probably be aware that the Supreme Court has made it clear that the rights of the different parties have to be balanced when issues of disclosure are considered, and that includes the rights of different children. If there was an amendment to the bill along the lines that have been suggested, the court could be forced into a position where it had to prioritise that confidentiality above everything else. If that happened, my concern would be that the welfare of the child was not the most important priority, which it should be.

I do not know whether Simon Stockwell has any technical detail to add to that.

Simon Stockwell: The minister has made the point. As Mr McArthur said, we could consider issuing some guidance on the subject for family law practitioners in order to try to make the law clear. However, I think that, as the minister said, we would be nervous about putting any such provisions into the bill.

Liam McArthur: One suggestion was that we should play up the importance of proportionality in relation to information that is shared. In a case file, there will be a wealth of information. Some parts will be more sensitive than others, and some will be less relevant to the case. Could a provision on that usefully be inserted into the bill in a way that did not cut across the balance of rights that are at play?

Simon Stockwell: It might be difficult to lay that out in primary legislation, because the issues that are faced in a specific case will depend on what happens in that case. If various people have rights over a document, the court has to strike a balance, looking at the rights of everybody who has an interest in it. I would have thought that putting that into primary legislation would be quite complicated. My inclination is that it is best to leave it to the individual court to determine what to do based on the facts of the case that is in front of it.

Liam McArthur: I turn to a different issue. You will be aware of the research that Dr Barnes Macfarlane carried out for the committee before we embarked on our scrutiny of the bill. In that research, attention was drawn to a feeling that we need to play catch-up in relation to the law on the rights of unmarried fathers, which has been deemed to be outdated. However, there are no proposals in the bill to strengthen those rights.

We heard evidence that a blanket, automatic registration of unmarried fathers brings attendant problems, partly to do with the rights of unmarried fathers, but also to do with the rights of individual children and young people to know about their identities, for want of a better expression. That suggests that further work has to be done. Although the percentage and the absolute numbers that are involved are relatively small, the impression that we got from the evidence that we received was that there is still some work to be done. That was certainly the strong message from Dr Barnes Macfarlane in the research that she provided to the committee.

Ash Denham: Are you talking about parental rights and responsibilities?

Liam McArthur: Yes. The evidence that we received highlighted a number of potential difficulties with going down the route of automatic registration. Short of that option, however, is the Government prepared to look further at ways in which those rights could be enhanced, not least because of the way that they potentially interlink with the rights of the child?

Ash Denham: For a number of reasons, I am not proposing to give automatic PRRs to all fathers. As you pointed out, only a very small number of unmarried fathers do not get PRRs. In some of those cases, there might a good reason why the mother decided not to jointly register the birth of her child. She might be a victim of domestic abuse or the father might have no interest in helping to bring up the child. The situation was part of the consultation work that we did, and there were very mixed responses on it. On balance, and bearing in mind the reasons that I have laid out, I decided to keep the status quo.

Liam McArthur: As I understand it, there are different rules in England and Wales around DNA testing and where it may be requested and required. While respecting the potential issues and rights issues that you identified that cut across that, could further options in that area not be explored? Even if that resulted in changes in only a small number of cases, it would go a small way towards addressing the issues that Dr Barnes Macfarlane identified.

Ash Denham: As I said, we consulted on that and we noted the arguments for and against it. It might interest the committee to know that, under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, the court may draw an adverse conclusion from a refusal or failure to give consent to the taking of a DNA sample. On balance, that seems appropriate here. I think you will agree that there would be a number of practical difficulties with taking things more in the direction of automatic rights, as you mentioned.

The Convener: I want to return briefly to confidentiality and the proportionality proposal. As part of our evidence, we heard from young people a strong message that there can, at times, be dreadful breaches of confidence and trust. It would mean a lot to the young people that we heard from if you could look again at proportionality. It can mean the difference between handing over a whole case file and selecting just the relevant information, or the difference between handing over a child's complete diary, with everything that they have written, and selecting only something that is relevant.

Ash Denham: I absolutely recognise the issue that you mention and I undertake to look further at that area.

The Convener: That is very welcome—thank you.

That concludes our questions. I thank the minister and her officials for attending. I will suspend the meeting to allow them to leave, and for a five-minute comfort break.

11:34

Meeting suspended.

11:40

On resuming—

Secure Care and Prison Places for Children and Young People

The Convener: Agenda item 2 is consideration of the Scottish Government's response to the committee's report on secure care and prison places for children and young people in Scotland. I refer members to paper 3, which details the Scottish Government's response.

Do members have any comments on the Government's response? Should we take any further action? There will be a chamber debate on the committee's report and the Government's response on 17 March, when there will be an opportunity to discuss the issue fully.

John Finnie: To me—I do not know whether this is to do with the circumstances in which I read it on the train coming down to Edinburgh—the Government's response seems a tad defensive; it is almost a case of, "There's nothing to see here."

I have concerns about three areas of the Government's response, the first of which relates to health and wellbeing. On our recommendation about swift access to services, it says that the host board would provide healthcare services for a young person who was placed in secure care. However, it goes on to qualify that by stating that the host board would

"be commissioned to do this by the 'home' board of the young person's usual place of residence".

I hope that there will be no undue delay associated with what sounds like a very bureaucratic process. We know that many young people who are in secure care are from outwith Scotland. There should be no doubt about whether that information will be forthcoming.

In relation to our recommendation on the expansion of secure care beyond the age of 18, the Government's response says:

"The Scottish Government will also work with SPS around a roadmap of young people entering Polmont, in order to consider ways of reducing this."

If the Government is considering alternatives, it does not seem to me that it should be engaging with the Scottish Prison Service, the role of which is clear.

In relation to suicide, I am concerned about the fact that the initial assessment of suicide risk is carried out

"by a prison officer and, if there are concerns, a healthcare professional."

I understood that a health assessment was carried out on young people who enter custody. It does not seem to me that a pro forma—even one compiled by health professionals—would necessarily pick up a young person who, in going into such testing circumstances, was at risk of suicide.

There are some positive aspects of the response; I just had concerns about those three points.

The Convener: It is helpful to raise those issues at this stage. The Cabinet Secretary for Justice will undoubtedly listen to what we have to say, and I hope that he will reflect on that when he speaks in the debate on the report.

Liam McArthur: I share some of John Finnie's misgivings about the tone at certain points in the Government's response. It is inevitable that the Government will put the counterargument, so a bit of rebuttal or defensiveness is to be expected, but John Finnie has given two or three examples where the Government's response is a wee bit disappointing.

It is helpful to know that the debate on the committee's report is to be held on 17 March. It might be worth our returning to this after that debate, depending on the response that we get from the cabinet secretary or whoever responds to the debate, to see whether there are issues that we need to follow up because of offers made by the cabinet secretary or because matters were not dealt with satisfactorily in the opening or closing speeches.

The Convener: That is a worthwhile suggestion.

Fulton MacGregor: I broadly agree with what John Finnie and Liam McArthur have said. I would put a different slant on the response: rather than reading it as being a defensive response to the questions, I saw it as outlining what has been done or what currently happens. We have had detailed responses to the questions and, as the committee picked up, there are clearly issues, so it is great that we will have the debate to bring those out. All the stakeholders who came to the committee will be very happy that we have secured a debate and have a chance to flush out some of the issues.

11:45

Rona Mackay: I totally agree with Fulton MacGregor. It is hugely important that we look into the issue and I am really pleased that we are having a debate on it. I agree with John Finnie's first point about the local centre—I hope that the bureaucracy does not get in the way of all that. That is a wee bit cloudy.

On the deaths from suicide in prison, a paragraph on page 11 talks about the time lapse

between a death in prison and a sheriff issuing a fatal accident inquiry determination. It says:

"In response to concerns raised by bereaved families about the impact"

of such delays, the SPS

"committed to updating their website quarterly to include the medical cause of death as listed on the death certificate, with a link to all published FAI determinations. This information is due to be updated in January 2020."

Would it be possible to chase that up and see whether it is actually happening?

The Convener: It would be helpful to get that in advance of the debate.

The debate will take place on 17 March. Does the committee agree that, following that debate, we can consider what has been said and decide whether further action is required?

Members *indicated agreement.*

Justice Sub-Committee on Policing (Report Back)

11:46

The Convener: Agenda item 3 is feedback from the Justice Sub-Committee on Policing on its meeting of 20 February.

I refer members to paper 4, which is a note by the clerk.

John Finnie: The sub-committee met on 20 February, when it heard from the Cabinet Secretary for Justice on the Scottish Government's draft 2020-21 policing budget.

The sub-committee received written evidence from the Association of Scottish Police Superintendents, the Scottish Police Federation, Unison, the Scottish Police Authority and Police Scotland, who all raised concerns about the proposed police budget for the next financial year. They are concerned that the proposed settlement will fail to provide the necessary investment in the police service's estate, information and communications technology, and fleet.

Police Scotland indicated that the settlement would mean that no new change improvement activity would be possible in 2020-21.

The sub-committee raised those concerns with the cabinet secretary, who told the sub-committee that he understood that Police Scotland faces financial challenges and that it would therefore be necessary for it to prioritise the areas on which it spends its budget. He acknowledged concerns about the police estate and indicated that the proposed budget made it possible to address maintenance issues.

The cabinet secretary also acknowledged that the budget would mean that the police service might have to reconsider the timescales for implementing its ICT strategy.

In relation to the budget for the fleet, the cabinet secretary indicated that he expected the additional £5 million to be spent on vehicles that are about to come to the end of their working lives.

The sub-committee was pleased to hear that the United Kingdom Government has agreed, in principle, to pay all costs for policing the United Nations 26th climate change conference of the parties—COP26—which is to be held in Glasgow in November. The sub-committee will consider police planning for COP26 at its next meeting, on 12 March, when it will hear from Police Scotland.

The Convener: We have a Parliament debate on police funding tomorrow, so many of those issues will be looked at then.

That concludes the public part of today's meeting. Our next meeting will be on Tuesday 3 March, when we will consider key issues for our stage 1 report on the Children (Scotland) Bill.

11:48

Meeting continued in private until 12:11.

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