



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 19 April 2023

Session 6



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CRIMINAL JUSTICE COMMITTEE

11th Meeting 2023, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)
*Jamie Greene (West Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)
*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Dunbar (Aberdeen Donside) (SNP)

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)
Catriona Dalrymple (Scottish Government)
Natalie Don (Minister for Children, Young People and Keeping the Promise)
Barry McCaffrey (Scottish Government)
Tom McNamara (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 19 April 2023

[The Convener opened the meeting at 10:30]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, and welcome to the 11th meeting in 2023 of the Criminal Justice Committee.

We have received apologies from Collette Stevenson, and I welcome Jackie Dunbar to the meeting as her substitute. We have also received apologies from Jamie Greene.

Our first item of business is a decision on taking in private agenda item 4, which is consideration of evidence that we will hear today. Do we agree to take the item in private?

Members *indicated agreement.*

Children (Care and Justice) (Scotland) Bill: Stage 1

10:30

The Convener: Our next item of business is consideration of evidence on the Children (Care and Justice) (Scotland) Bill. I welcome to the meeting Angela Constance, the Cabinet Secretary for Justice and Home Affairs; Natalie Don, the Minister for Children, Young People and Keeping the Promise; and, from the Scottish Government, Catriona Dalrymple, who is the deputy director of community justice, Tom McNamara, who is the head of youth justice and children's hearings, and Barry McCaffrey, who is a lawyer. We give a warm welcome to you all.

I take this opportunity to welcome both ministers to their new roles and to thank the former cabinet secretary, Keith Brown, for his engagement with the committee over recent years.

I refer members to papers 1 and 2. I intend to allow up to 90 minutes for this evidence session. On that note, I invite the cabinet secretary and/or the minister to make some brief opening remarks.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Convener, the minister will make an opening statement.

The Minister for Children, Young People and Keeping the Promise (Natalie Don): Thank you for having us. I also thank the witnesses who appeared at the committee's evidence session on 29 March.

Scotland, and all the parties in this Parliament, made a commitment to keeping the Promise. One of the Government's stated commitments is to end the placement of children in young offenders institutions by 2024. The bill takes forward that part of promise keeping and advances rights under the United Nations Convention on the Rights of the Child.

Notably, the bill does not disturb the constitutional independence of the Lord Advocate. Procurators fiscal will retain the discretion to prosecute young people in court where that is deemed necessary. Independent sentencers in Scotland's courts will still be able to deprive a young person under the age of 18 of their liberty where appropriate. However, the bill makes it clear that, when a young person under 18 needs to be deprived of their liberty, that should be in secure accommodation rather than in a young offenders institution. Therefore, public protection in dealing with any risks of harm to others remains a key consideration in the provisions before the committee.

Members will also recall that the previous Justice Committee carried out an inquiry into secure care and prison places for children and young people. Its report concluded that no young person under the age of 18 should be placed in Polmont when a place in a secure care unit would be more suitable.

Research tells us that children who commit harm are often the very same children who have been harmed by others. They have often faced multiple traumas and adversity. Those issues need attention in the right setting. As you have heard, YOIs are not primarily designed to be therapeutic environments for children. Secure care centres are specifically designed to be trauma informed and age appropriate. They offer a high staff-to-child ratio of skilled professionals to meet the complex needs of young people.

When a child is placed in secure care, public protection and safety are critical. Facilities are locked, and the supervision and support arrangements in secure centres are intensive. Members can be assured that secure care can—and, indeed, already does—care for those children who pose the greatest risk of causing serious harm.

Stakeholders unanimously expressed support for ending the placement of children in YOIs, but they also expressed concerns about resourcing. The Scottish Government is already investing in secure care capacity, and a national resourcing and implementation group is due to start that work in early June. Drawing on these evidence sessions, that work will support preparations for the financial years 2024-25 and beyond.

I hope that these opening remarks have been helpful, and I look forward to answering your questions on the bill.

The Convener: Thank you very much, minister. As usual, I will start the questions and then bring in members.

Minister, in your opening remarks, you mentioned some of the witnesses who we have already heard from and some of the very helpful evidence that we have heard. I will start by looking at the issues around age. One of the main provisions of the bill is that people under the age of 18 are no longer placed in a YOI or prison. The committee heard evidence from a range of witnesses that there should perhaps be more scope for an individualised assessment process to determine whether and where a child or young person should be detained. That would be based on factors such as their development, maturity and, perhaps, their neurological development. Aside from the issue around resources, are there any other particular barriers to being able to provide an individualised assessment process for

children who are entering the criminal justice system and, potentially, a secure environment?

Angela Constance: Convener, I will start on your question around children entering the criminal justice system. Given my justice portfolio, I am the lead cabinet secretary for the bill, while the minister is coming from the children and care perspective. The bill that is before the committee is very much about that intersection between how we meet the care needs and uphold the rights of children, and the context of the demands and expectations in and around our justice system.

If we—as a Government and, indeed, a country—are absolutely focused on reducing risk and reoffending among young people, it is imperative that we start by addressing their care needs because, unless their individual needs are addressed, that will be a barrier to addressing and managing risk. If we do not address and manage risk, we will not reduce reoffending. Therefore, it is imperative that the children's hearings system and, in particular, the courts system have the widest range of disposals available to them.

With regard to barriers—which you specifically mentioned, convener—right now, children below the age of 18 can be placed in secure accommodation if they have been convicted of an offence, but there are existing legal barriers. For the purposes of the bill, and in accordance with the Promise and the UNCRC, the definition of a child is a person who is under the age of 18. The purpose of the bill is to ensure that all children, irrespective of their deeds, should be able to be placed in secure accommodation, notwithstanding that, when those children come of age, they can transfer to a young offenders institute and, depending on the length of their sentence, progress into the adult system.

The Convener: Is there scope for factors other than age—such as risk, which is topical at the moment, or the nature of the crime—to be considered in relation to that placement process? I imagine that that already happens to a certain extent.

Angela Constance: You are quite correct. The committee will be aware of the work on the development of risk assessment tools—for example, by the Risk Management Authority. That is based on evidence, and it is correct that the risk management tools for children have to be distinct from those for adults.

The advantage of placing all children in secure care when an offence has been committed is the flexibility there to really focus on those tailor-made, individual assessments of need and risk. The committee will be aware that the physical environment in secure accommodation is smaller, and it involves more intense support and a more

intensive way of addressing the risks and needs of children who are in conflict with the law. That is an area in which providers of secure accommodation are already experts—they have all been doing that for a number of years with children who have committed a variety of offences. I hope that that helps to answer the question.

The Convener: Thanks. That is helpful.

I will bring in other members. Pauline McNeill would like to come in, and then Rona Mackay.

Pauline McNeill (Glasgow) (Lab): Good morning. I welcome the minister to her post. I think that I have already welcomed the cabinet secretary.

I totally and whole-heartedly agree with your statement. In the Parliament, I have raised horrible cases in which people took their own lives because they should have been in secure accommodation, so let us be clear that this is something that I support. However, I am concerned—and I wonder whether you will address my concern—about how the Government will achieve this. Do you have a plan?

Given the very strong statement that you made, how will you create the spaces and the funding to make it happen? Will there be a stepped approach—for example, this year, will you create so many additional places? I realise that you cannot do it in one go, but the only way that your statement can have any validity is if you can tell the committee that you have a plan to reach, albeit incrementally, the number of places that you would need.

This has been a controversial issue in Parliament for some time. The cabinet secretary will be well aware of how far back the issues and sensitivities go around who gets a secure place. It is a fundamental question that needs to be addressed by Government.

Angela Constance: I will start, and the minister might wish to come in later.

I am aware of the history of the issue—it goes back many years—and it is imperative that we have the right provision at the right time, which requires resources. Going forward, we need to be confident that we have the capacity to meet the needs of children who are being displaced and shifted from the criminal justice system into secure accommodation.

We know that there has been a reduction in the number of young people—16 and 17-year-olds—who receive custodial sentences. Over the past decade or so, that number has fallen by 93 per cent. Therefore, we are talking about a comparatively small cohort of young people.

The most recent figures that I have seen, which are just a few days old, show that we currently have six under-18s in Polmont YOI, and there are currently 12 vacancies across the secure estate. I do agree with Ms McNeill that we need a vigilant eye, because absolute predictions about the circumstances in which a young person will go through the court system are always hard to make.

I think that we are starting from a good baseline position with regard to our understanding of current capacity and the likely demand. I do not need to repeat what is in the financial memorandum and the work that underpins it, but I would just highlight to members our work on secure care plus, which is about our having the correct contingency plans in place to ensure that, in all circumstances, we can meet the needs of any child at any time in an establishment.

This is a complex area, with many issues to do with funding, and I would also highlight the longer-term work that is being undertaken to reimagine the secure estate. I will continue to keep an acute and keen interest in it.

The minister might have something further to add from her perspective.

10:45

Natalie Don: I am happy to do so, although I think that the cabinet secretary has just given a very thorough answer.

Because the numbers fluctuate, it is hard to give a definitive overall answer to the question. Currently, however, there is capacity; there are six children in young offender institutions, with 13 beds available in secure care. Obviously, though, those figures fluctuate.

The financial memorandum took care not to underestimate the number of children on average in order to provide headroom as we move forward with these changes. At the moment, a young person should never have to go to a young offenders institution because there is no capacity, and that will be at the forefront of things as we move forward. Moreover, as the cabinet secretary has noted, this issue is being looked at in the work on reimagining secure care.

Pauline McNeill: I just want to be clear about this. What you are both saying is that, with regard to the number of under-18s in young offenders institutions, there are about 12 vacancies. That has not really been the case before; indeed, I know for certain that William Lindsay or Brown did not go to secure accommodation, because there was no place for him, and he took his own life in Polmont—on remand, I have to add. I also want to ask you whether remand is included in all of this, too. Is it your position that it is the reduction—the

policy change, if you like—that has resulted in the vacancies? I just want to be clear about why the vacancies exist.

Angela Constance: A longer-term trend is the reduction in the number of 16 and 17-year-olds being incarcerated. Notwithstanding that, though, the fact is that, last year, nearly 1,000 under-25s were still imprisoned.

On your specific question, some profile work is being carried out on the under-25 population so that we can plan things as much as possible and try to anticipate future demand and expectation. Some work is also going on with Scotland Excel, which manages the current secure care contract, and that is a change from what was going on when I first became aware from a Government perspective of some of the issues in and around this policy area—

Pauline McNeill: I am sorry to interrupt, but I want to get a clear answer to the question whether it is a policy change that has resulted in a reduction in custodial sentences and is the reason for our having 12 vacancies. Have I understood that correctly?

Angela Constance: I suppose that I was giving you the backdrop and accurate information about the current situation. Today, there are 12 vacancies in secure care accommodation and, in Polmont, there are six children under 18—

Pauline McNeill: But the question that I am asking is: why is that, and are you confident that that trend will continue? What I was trying to get at in my first question was whether you have planned adequately for your policy position, which I fully support. If you are saying in your evidence to the committee, “We’ve got a good starting point, because the policy is resulting in vacancies,” I just want to be clear that that is the case.

Angela Constance: Forgive me—I thought that I had said in my original answer that we have a good starting point and a good basis to go forward on.

Pauline McNeill: But I am asking why—is that 93 per cent reduction a coincidence?

Angela Constance: The 93 per cent reduction in the number of 16 and 17-year-olds that are being sentenced is due to work that has commenced during the past decade.

Pauline McNeill: Has it been a policy impact?

Angela Constance: Work has been done on when it is appropriate to shift young people into either alternatives to prosecution or alternatives to custody, which is related to the whole-systems approach to youth justice that commenced in 2011.

The reasonable point has been made that, if we expand the legal route so that all children who are under the age of 18 and in the system go into secure accommodation, that will increase demand on secure facilities. Today, there are six young people who are under the age of 18 in Polmont and there are vacancies, but we need to be vigilant that there is always capacity.

Some of the work is on funding. The Scottish Government funds one bed in each of the four independent providers, and, as you will see from the financial memorandum, there are plans for the number of funded beds to increase. That is part of that work that we are doing to ensure that we always have the right contingency arrangements in place. Notwithstanding that, there is further work going on—in particular, with providers and multi-agency partners—to ensure that we are in a position to put in additional support for any provider, should we need to.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I welcome the cabinet secretary and the minister to their new posts.

Cabinet secretary, you talked earlier about the need for intensive support to be given to young people who are going into secure care. During our private session, we heard a care-experienced person’s opinion that there should permanently be a mental health professional in every secure care setting. Can I have your view on that? Do you envisage that that will happen? Staff training will be needed for that, so can I have your view on that, too?

Angela Constance: This is stage 1 of the bill process. There are matters to do with how we amend and improve the legislation, but there are also matters that are more about policy and practice. We are currently engaged with providers and the sector to ensure that young people are given the best possible care, support and supervision. There are questions about what the best way is for young, vulnerable people to access on-going mental health support, and there are key issues about staff training.

To my knowledge and in my experience, the staff who operate in the secure estate are very well trained and they have a high skill base. However, we want to ensure that people—children, in particular—can access the right treatment at the right time. I give a commitment to look closely at the evidence that the committee has been provided with and at any recommendations that the committee subsequently makes in its report.

Rona Mackay: There are changing priorities, which I fully support, but the change will mean that children who have committed more serious crimes will be placed in secure care. Is that a cause for

concern? They will be in with younger and more vulnerable children. How will that be managed? Will suitable risk assessments be done? I presume that staff training will be required to allow them to deal with such situations.

Angela Constance: The starting position for the arrangements is that, for the staff in the secure estate, this is their bread and butter. Staff deal with children from a range of age groups—the latest figures that I have seen show that the majority of children who go into secure are in the older age group: they are 15, 16 or 17—and they already work with a high proportion of children who have a history of committing assaults or using or brandishing weapons. They already have that expertise, which should give us confidence.

Irrespective of the route by which children go into secure accommodation, whether it is via the criminal justice system, via the children's hearings system or under measures to do with their care and protection or the care and protection of others, there is an overlap between them, and a real similarity in their history of adverse childhood experiences. We know that 98 per cent of children who appear in court will have a history of being in the children's hearings system and will have high levels of vulnerability. Children who reach the destination of secure accommodation via the children's hearings system will also have had instances of conflict with the law. The research that the Children and Young People's Centre for Justice has undertaken demonstrates that the risks and needs of children in secure are not dissimilar.

Having said that, there are always exceptions, which is why we need to have contingencies and flexibilities in place. That includes the work in and around secure care plus, which enables us to make arrangements, if necessary, by which we can quickly support and facilitate additional staff or provide other additional intensive measures in a secure environment, or make adaptations to a property. We need to be able to do that.

Where secure care has an advantage over prison care is in its flexibility and the ability to respond to not only individual needs but individual risks that children present. Staff who work in secure accommodation are well acquainted with addressing the needs of an individual child while considering the context of the other children for whom they also have responsibility.

Rona Mackay: That is reassuring. Thank you. Do you want to say anything, minister?

Natalie Don: Again, that was a thorough answer, but I will add a little to it. Prisons are not places for children, as we have discussed this morning, but we acknowledge that there are obviously circumstances in which people need

protected from children who have caused harm. There are rigorous risk assessments involved with regard to both the individual child and the children who are already in the secure care centre. We really want to emphasise that.

The secure care centre is the most appropriate form of care, regardless of the gravity of the crime in any given situation, because it will be a nurturing environment that offers the best chance of giving the child or young person the opportunity to rehabilitate and change their path in life. That element of secure care needs to be emphasised, in comparison with the situation for older adults.

The Convener: I will bring in Katy Clark, and then Fulton MacGregor.

Katy Clark (West Scotland) (Lab): My first question arises from the evidence that you have given so far. I want to be absolutely clear about why we need the bill and why there are currently six young people in Polmont. Is there a legal barrier at present that prevents those young people from being transferred into secure care?

Angela Constance: That is my understanding, but I am, of course, conscious that Ms Clark is a lawyer, and so I may want to defer to officials on that.

11:00

Catriona Dalrymple (Scottish Government): I am more than happy to take that question. I am sure that Barry McCaffrey will correct me if I am wrong, given that he is the official lawyer in the room.

At the moment, if 16 and 17-year-olds are prosecuted in court and they are under a compulsory supervision order, they are deemed to be children, so the court can place them in secure care. However, there are also 16 and 17-year-olds in the court environment who are not under a compulsory supervision order. I do not think that the provision to send them into secure care exists at the moment; they would have to go to a YOI.

Katy Clark: I have not worked as a solicitor for many years—

Catriona Dalrymple: Neither have I.

Katy Clark: I think that you are saying that the nature of the court disposal means that it is not possible for the Scottish Government to transfer those children from Polmont into secure care, which is why the bill is required. That is really helpful. It has clarified things for me.

I have a couple more questions. I appreciate that the cabinet secretary wishes the widest range of disposals to be available. I fully support what the Government is trying to do here. Yesterday, I was at the Scottish Trades Union Congress in

Dundee, where there was a debate about the cuts to justice social work and the cuts in relation to children's services more widely. The cabinet secretary has spoken about the need for resources, and we know that secure care is very expensive. To what extent are alternatives available that might be less expensive but still involve some of the rehabilitation and support that both the cabinet secretary and the minister have referred to?

Earlier this morning, we spoke to two young women who experienced prison and secure care settings when they were 16 and 17 years old. Although we do not know everything about those individuals, one of them in particular definitely should not have been in prison. She was a care leaver; she had basically been thrown out of care when she was 16, which we know has happened to many young people.

To what extent is the justice system being asked to step in due to failures in relation to responsibilities that are not those of the Cabinet Secretary for Justice and Home Affairs, such as the failure, collectively, to properly fund youth services and social work and to provide the support that the state should be providing to young people in care when they are over the age of 16 and are leaving care? I do not know whether the minister is better placed to answer that.

Angela Constance: I will pick up on a few points in and around community justice services. We invest in community justice services to the tune of £134 million. Of that, £123 million is ring fenced for local authority criminal justice social work services, and some of that—around £3 million—is ring fenced again in relation to bail assessment and bail supervision.

I acknowledge that prison is expensive and that secure care is even more expensive. If we use either secure care or prison inappropriately, it is a very expensive way of making matters worse. We invest in community justice services not because they are cheaper but because the evidence tells us that we should be investing in them. I will not deny that there is pressure on the public pound. Many of the challenges that local government is experiencing are the same as those that the Scottish Government is experiencing across the board.

I will never demur from the importance of investment. However, while acknowledging the challenges, I point to the fact that the local government settlement went up in real terms while there was a real-terms reduction to the Scottish Government block grant. Nonetheless, I recognise the pressures that mean that we need to work even harder in relation to those shifts in culture, policy and practice that are first and foremost based on the evidence. I assure Katy Clark that

investment in community justice services will continue.

Katy Clark: I appreciate the points that you make, but we know that there have been real-terms cuts in community justice. It costs roughly £40,000 a year to keep a person in prison—it depends on which prison they are in, but that is the broad-brush figure that we have been given. We were also told that it costs four times more to keep someone in secure care. I therefore wonder why we have not seen more significant shifts in budgets to put money into social work and community justice.

I appreciate that both the cabinet secretary and the minister have just taken up their posts, so I am not holding them personally responsible, but there seems to be a disconnect between policy and where we are putting our money.

Angela Constance: I point to the statistics that I quoted to Ms McNeill earlier. We are seeing the number of prosecutions of children and young people decrease, the number of custodial sentences for young people decrease and the number of referrals to the reporter on offence grounds decrease. That would indicate that we must be doing something right around supporting young people, reducing reoffending and focusing on the best disposals for them and indeed for the community.

There are always competing demands around shifting resource from acute care to community services. For example, even if we reduce a prison's population, we still need to keep that establishment up and running.

Historically, the ring fencing of funding for criminal justice social work has not always been popular, but it is there for good reasons. It came about more than 20 years ago because criminal justice services were not getting their fair share of resource. Because it is quite a small service in comparison with, say, children and families or community care services, it had been sidelined. I will certainly want to protect the position of community justice services as well as community justice social work services.

Katy Clark: I am in no way doubting the cabinet secretary's personal commitment, but does she accept that there just has not been the structural shift that we need with resources being moved towards rehabilitation?

Angela Constance: I would always be candid and say that there is more to be done on that matter.

Katy Clark: Okay. On the resources issue, there has been a great deal of media speculation around the sentencing guidelines for under-25s, particularly in relation to very serious offences. Will you outline the non-custodial disposals that are

available? I do not mean community service, because that does not necessarily have a rehabilitation element as such. Rather, will you outline what is available to the courts that adequately focuses on supporting and trying to rehabilitate individuals who have committed very serious offences?

Angela Constance: I will do that in general terms. In the old days, what we called community service was a kind of fine on the person's time. These days, community service sits within the broader panoply of community payback orders, within which there can indeed be requirements for rehabilitation measures to be in place. We have arrangements in and around electronic tagging and monitoring. There are also arrangements around sex offenders registration and multi-agency public protection arrangements, or MAPPA. In some instances, courts can ask for report-backs in order to review a situation.

A range of disposals and approaches are available to the court, and some of those rehabilitative measures can be intensive, whether they involve one-to-one work or group work.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I take this opportunity to welcome the minister and the cabinet secretary to their new positions, and I thank the minister for her statement at the start of the meeting.

I will follow on from the convener's questions. I am very supportive of the bill, as are the stakeholders, as you will be aware. I might be jumping ahead a bit, because it makes provisions for people up to the age of 18, but I am keen to hear where the Government stands on 18 being a starting point. A lot of the evidence that the committee has heard—including the evidence that we heard privately from two individuals today, which was really powerful—is that 18 is still very young, as are 21 and 25. Do you have any thoughts on where the Government might see this going? I will come to the minister first.

Natalie Don: Thank you for that question. Obviously, that is looking to the future, and, as you rightly said, the bill focuses on under-18s, and that is because that is in line with the UNCRC. However, we absolutely recognise that people under the age of 25 are still developing. In many areas, Scotland has and is still developing a very distinct approach to young people between the ages of 18 and 25. However, at the moment, the considerations for under-18s are very different, particularly in terms of rights. For example, the bill makes provision for young people to remain in secure care until they are 19 if they have been sentenced or remanded before the age of 18. That will be possible only when that approach is not contrary to the best interests of other children.

I will come back to your question. When we look at young adults over the age of 18, we see that the number of people and the offences that would be affected by a different approach massively increases, as you have seen from the numbers of those who would be in secure care who are currently in YOIs.

I know that witnesses have been broadly supportive of the bill being a starting point and looking beyond the age of 18. We are also mindful of the Sheriff Mackie hearings system working group on redesign of the children's hearings system, which is yet to report. Those wider developments will provide us with an evidence base and valuable learning, and we can certainly look to that in the future. At the moment, young offenders institutions will continue to provide custodial facilities for young people up to the age of 23, but I absolutely take your point that we need to consider this in the future.

Angela Constance: I will briefly add to that, Mr MacGregor. The children's hearings system cannot operate after a child's 18th birthday other than by exception, so there will continue to be a need for young offenders institutions. Again, at the discretion of the governor, young people can remain in a YOI until they are 23, before being transferred to an adult prison.

Given the view of His Majesty's Inspectorate of Prisons for Scotland on the inappropriate nature of young offenders institutions for children, if children are no longer committed to YOIs, that will give us opportunities to look at the care and support that is provided in them. I am also aware of the review on mental health services in YOIs.

Improvements can be made in various custodial establishments, but there are no plans to remove young offenders institutions because secure care—other than with the exceptions that the minister has outlined—applies for children up to the age of 18.

Fulton MacGregor: The cabinet secretary has pre-empted my next question. In a previous session with stakeholders, we considered whether part of the answer would be for young offenders institutions to be modelled more on secure settings. I know that there would be resourcing issues, but, given that there is a very positive impression of secure care, could young offenders institutions be modelled more on secure settings? Would that be a potential answer to the question?

11:15

Angela Constance: I will draw parallels with some of the innovations and changes that have been made in the women's estate, because that probably provides a better comparator. In the women's estate, there have been significant

moves towards trauma-informed practice in custodial settings. The new women's national facility will open in the summer, and two smaller units for women—one in Dundee, which I visited recently, and one in Glasgow—have already been established.

I am conscious of the questions about resources that members have raised, but there is an opportunity to think about the type of care, support and rehabilitation that we provide and how we better address reoffending in the context of a custodial environment.

Fulton MacGregor: That sounds very positive.

My final question is for the minister. Rona Mackay touched on this. Does a wee bit of work need to be done with the public on what secure care is? You, your officials, committee members and people who work in the sector know what it is, but others might have the perception that secure care represents a softer-touch approach. Anyone who has been in secure care or has dealt with it will know that the young person still very much loses their liberty, so it is not a soft-touch approach for them. We heard that again today in our private session. Secure care is definitely a lot more therapeutic and beneficial, and it seems to be the best approach for young people, but is there work to be done in communicating that to the public so that secure care is not seen as soft justice or whatever we want to call it?

Natalie Don: We certainly do not want to give that impression. Secure care is, without a doubt, the most intensive and restrictive form of care in Scotland. I have visited one such centre. They are places where a child is, as Fulton MacGregor has stated, deprived of their liberty in a locked environment, while, at the same time, care, support and education are provided. When a child is placed in secure care, public protection and safety considerations are at the forefront. The child is cared for in a locked facility and, over a longer term, they are provided with support to aid their rehabilitation and reintegration.

That goes back to what I said earlier. We need to balance restrictions and the reduction of liberty with a nurturing environment in which 16 and 17-year-olds who might have committed offences have the chance to rehabilitate themselves in an appropriate setting. More work might need to be done to convey that image, but secure care is definitely not a soft-touch approach.

Fulton MacGregor: Do we need to convey that image to the judiciary and to sheriffs as well as to the public, or do they understand that?

Angela Constance: I do not mean to sound dispassionate in any way, but the important issue here relates to what the evidence tells us about what will work to rehabilitate people who have

come into conflict with the law and to improve community safety. I am of the view that members of the judiciary and members of the public are well able to engage in that debate based on the facts.

Particularly when we are dealing with sensitive and emotive issues—and there is, of course, great public interest in this issue—it is important that we have the courage to talk about what the evidence tells us and what will work in rehabilitating young people or other offenders and how that will improve community safety. It is important that the bill sits in the context of a wider refocusing of justice policy.

Fulton MacGregor: Thanks to you both.

Russell Findlay (West Scotland) (Con): I congratulate you both on your new appointments.

At our 29 March meeting, we heard evidence that secure accommodation costs around four times as much as prison and that Scotland currently has 84 secure places, with the largest provider of those being St Mary's Kenmure. Jim Shields of St Mary's said that funding right now was precarious and that it needed certainty; Professor Lorraine Johnstone said that, at times, St Mary's has relied on cross-border placements to ensure that it is sustainable. We heard that some English local authorities pay 35 per cent more for a place than the Scottish Government pays.

In the eventuality of more secure accommodation being needed, do you have any projections of how much more will be needed, how much it will cost and whether the financial memorandum has properly factored in the concerns that were expressed at our 29 March meeting?

Angela Constance: It is important to highlight that, over and above the financial memorandum, there is a national resources group, because some of these issues need to be unpicked further. I will come on to talk about the cross-border transfer issue separately, but I recognise that there is a need for a clear pathway. Over and above the issues that are detailed in the financial memorandum, we are engaging intensively with stakeholders on this.

My understanding, from work that Scotland Excel has done, is that there is capacity in the system to meet Scotland's needs. If you remove the cross-border transfers—just for argument's sake—we have the capacity here in Scotland to meet our needs now and to meet our expected needs in the future, notwithstanding the fact that we could get further information and those expectations could change.

I have also pointed to the beds that we are now funding, which came off the back of a pilot. I think

that I mentioned earlier that, in terms of Scottish Government funding, the number of beds in the estate will increase to ensure that we have stability and certainty.

Russell Findlay: Is the number of beds rising from 84?

Angela Constance: Sorry?

Russell Findlay: Is the number of beds being increased?

Angela Constance: I would not rule that out, but Scotland Excel has looked at the numbers of children who have been in YOIs and in secure care over the years, and, if you discount cross-border transfers, we have capacity.

Russell Findlay: So, if the cross-border stuff is removed from the equation, Scotland will have capacity. However, that then brings into play the problem of cost, because the payment for cross-border places is 35 per cent higher. The Scottish Government will have to find the money to fund those places at a higher rate, will it not, to make St Mary's more sustainable?

Angela Constance: It is important to consider the financial stability of the secure sector. We know, for example, that it needs to be at 90 per cent capacity—that is its financial stability vector, if you like. The system has capacity for Scotland just now, but there is reliance on cross-border transfers. That is why we have started to fund beds, and there are plans for us to increase the funding of beds so that we can ensure that children who are resident in Scotland can be cared for in secure if that is required.

Russell Findlay: In the previous session, we also heard evidence from Victim Support Scotland. The organisation said that victims of crime, who are often young people, are really surprised by the lack of information, and it described it as an "information vacuum".

That happens when cases go not to the courts, which at least are public, but to the children's panel system. There was a recent case, which has been well publicised, in which a young girl was severely beaten by another young person. That young person was subject to bail conditions, but those were lifted or removed without the knowledge of the young girl or the police, which understandably caused great distress.

With regard to the greater number of cases that are likely to go to children's panels, has any consideration been given to providing more transparency through the bill? Given that the hearings process is not even public, has any consideration been given, or has any work been done, in respect of whether victims and their families should be informed of what is happening?

Angela Constance: As far as possible, we want to have parity between systems, notwithstanding the fact that the children's hearings system is fundamentally about addressing the needs of children, as opposed to punishment.

The bill will increase the obligation on the principal reporter, who will now have a duty, rather than discretion, to inform victims of their right to receive information. That information could relate to the fact that a hearing has taken place or to the outcome of the hearing. For young people who are progressed through the criminal justice system, a victim notification system is currently in place.

I contend that this very specific bill increases the rights and protections for victims, but it is not our only intervention in this area. As, I suspect, Mr Findlay will be aware, we have undertaken other consultations on what else we can do within the broader system to ensure that victims' needs are met. We have also consulted on initiatives such as a victims commissioner.

We are actively engaged with regard to what we need to do to enhance the rights of victims. As we move forward, there will be other policies and legislation that will help to address the matter.

Russell Findlay: Could the bill potentially include a right or a requirement for the children's panel to inform victims of outcomes?

Angela Constance: The bill as it stands places a duty on the principal reporter. Just now, the reporter has some discretionary powers, but the bill will put a duty on him or her. Where the reporter has sufficient information and contact details for the victim—I appreciate that that is not always the case—they can contact that person and advise them of their right to receive information, and ask whether they wish to do so. The type of information that the victim will be entitled to receive if they so wish is notification that a hearing is taking place and of the outcome of the hearing.

I will just check with my officials, and the lawyer, that I have articulated accurately, for Mr Findlay's interest, how the bill currently stands.

Barry McCaffrey (Scottish Government): I confirm that section 179B of the Children's Hearings (Scotland) Act 2011 enshrines that the information that is potentially available to victims concerns the determinations in relation to the system, including

"whether a compulsory supervision order has been made"

or whether

"any other action"

has been taken in connection with the case. That is the starting point for the current framework.

Russell Findlay: Thank you. Do I have time for one more question, convener?

The Convener: Yes.

11:30

Russell Findlay: Okay. I know that such cases are incredibly rare, but certain young people do commit extremely serious crimes. Indeed, I can think back to one such case not long ago, in which a 16-year-old raped and murdered a six-year-old girl. In such cases, the individual will be sent to secure accommodation. I wonder whether you accept that, sometimes, in those most rare, extreme cases, such a course of action might not be appropriate. Should the bill have some mechanism to allow for those kinds of cases?

Angela Constance: With regard to the gravest of offences, the Crown Office and the Lord Advocate will, as with any case, have prosecutorial independence. In those gravest of cases, where the young person is progressed through the criminal justice system and, as can happen, a hefty custodial sentence is handed down, what happens in practice is that, if the young person is 16, they will spend the first few years of their sentence in secure accommodation, progress to a young offenders institution and then go to prison. What I would want to convey is that secure accommodation, with its levels of security, the intensive nature of supervision and other inputs, is an appropriate place for all child offenders who require such accommodation. That does not mean that they will not go on to serve the remainder of their sentence in the adult sector.

Russell Findlay: And the bill will allow for them to remain in secure accommodation until they are 19—or is it 21?

Angela Constance: By and large, the norm is 18. However—and this applies to all children in secure accommodation, not just those who have committed the gravest of offences—what you have referred to would be an option open to the people most closely involved in the child's care and supervision, if it were considered to be in the child's best interests and if it did not conflict with the interests of other children.

Russell Findlay: So—this goes back to the original question—this is, as far as the bill stands, an absolute for anyone under a certain age.

Angela Constance: Under the Promise and the UNCRC commitments that the Government has made—there is, of course, cross-party support for implementing the Promise and for meeting our obligations under the UNCRC—all children who have offended and for whom a custodial disposal is required will, if they are under 18, go to secure accommodation in the first instance.

Russell Findlay: Thank you very much.

The Convener: I call Jackie Dunbar.

Jackie Dunbar (Aberdeen Donside) (SNP): I, too, welcome the cabinet secretary and the minister to their new roles.

I agree with Fulton MacGregor that the earlier session in private was really powerful. I have to be quite frank and honest here—I had not even considered some of the things that were discussed. For example, one of the young ladies told us how daunting she found it to come out of secure accommodation and be put into a flat, because she realised that she did not have basic life skills such as putting on a washing machine or paying a bill. Those are things that most people would not even think about. She said that that was purely down to the fact that the care system did everything for her when she was in secure accommodation. What is being done to ensure that our young folk get the basic life skills that they need once they leave secure accommodation?

Angela Constance: Secure accommodation is, of course, about providing support and interventions on the broadest range of matters. It is about providing age-appropriate, holistic support, and that should be provided for children who are being prepared to be reintegrated into the community post a secure placement. It is also very important that the proper aftercare arrangements are in situ. In addition, it is worth bearing in mind that a number of children go to secure for quite a short period. For children who are not spending two or three years in secure accommodation as part of a longer sentence, it is really important that the planning for their return to the community commences on admission.

That is a very live issue. Irrespective of where a young person is placed, if they are deprived of their liberty and are destined to be released, we need to set them up for success, not failure, on liberation. That also applies to adult prisoners.

Does the minister have anything to add to that?

Natalie Don: Yes—very briefly.

I make it clear that the bill means that, if children are placed in secure care, they will be treated as looked-after children and, as a result, they will be entitled to local authority support in respect of aftercare and some of the things that have been referred to.

Jackie Dunbar: The witnesses also said to us that being put into a police cell was the most traumatic bit of the process, because they were suddenly shut in by themselves and there was little or no support. Are we going to consider whether it is appropriate for children to be put in police cells in the first instance? Are we thinking of finding a better situation for them to be put in?

Angela Constance: The use of police custody is a really important factor. It is important to state that the bill does not change the definition of a place of safety. Other than by exception, where it is necessary and proportionate and to avoid further harm, a police station would not be considered a place of safety.

The bill extends to children under the age of 18 the provisions that currently exist for under-16s in relation to the safeguards around what should happen, should they be in a police station, bearing in mind that a police station can be a very frightening and distressing environment, particularly for a child. The constable or desk sergeant in charge has particular procedures to follow in relation to notifying a parent or another appropriate, suitable adult and, crucially, liaising with the local authority, because the local authority might have information that is germane to the care and treatment of a child under the age of 18.

Does the minister want to add anything to that?

Natalie Don: Further to the Age of Criminal Responsibility (Scotland) Act 2019, in February, we published a list of places of safety. Each local authority identified its own resources areas, which included foster care and children's houses. Therefore, that work is already under way.

Jackie Dunbar: If the police are going to charge children with something, they could still go to their foster home rather than to a police cell. Is that what you are saying?

Natalie Don: Yes.

The Convener: We have spent quite a bit of time looking at issues around secure accommodation. I will pick up on the issue of children coming into police custody. I know how difficult it is for custody sergeants and officers, regardless of the time of day, to care for young people and to meet their needs if the custody centre is busy and there are quite a lot of issues and challenges already in play. Is it the case that, regardless of the crime or offence for which they have been admitted, children should not be detained in police stations under any circumstances? Could that be included in the bill? That might have quite significant practical implications for how you make provision for an alternative place of safety. I would be interested in your views on that.

Angela Constance: It is fair to say that a place of safety is always preferable to a police station. I would want to avoid police officers feeling stuck in a particular situation and ending up not taking a young person to a police station because they have worries that go beyond that being unsuitable, leading to even more risk-averse practice. The current provision is that someone is taken to a police station when that is necessary and

proportionate, and when not doing so might be impracticable, unsafe or inadvisable.

We have live engagement on that issue, particularly with the Scottish Police Authority. The committee might be aware that a conference on children in conflict with the law, in which a lot of attention was focused on the issue, took place last year.

On the basis of my portfolio interests, I am keen that we give the matter further thought. I do not know whether there are any quick and easy solutions through the bill necessarily, but we are just at the beginning of the bill process. I know that there is interest in measures such as multi-agency care settings for children who are in conflict with the law. I suppose that I am trying to convey to the committee that that is definitely an area on which we must have more focused activity and thinking.

The Convener: That is very good to hear, because, like you, I am very interested in the process of children coming into custody. I am pretty confident that, when that can be avoided and an alternative option can be utilised, Police Scotland uses those alternative routes. It is interesting to hear about the conference focusing on that particular issue.

11:45

I have another couple of questions. I go back to the provision in the bill on secure care being the default for under-18s. Members, including Fulton MacGregor, asked about that age being a starting point. I am interested in whether one of the reasons why the Scottish Government is not yet extending that provision to 18 to 20-year-olds, for example, is that, if we look at the cohorts of young people who are offenders, we see that there are, I understand, currently more than 150 18 to 20-year-olds, as opposed to five 16 and 17-year-olds, who are held in prison. An extension would have significant implications for resourcing and the availability of physical accommodation. Might that be challenging, or will the Government commit to broadening the age range of young people who go into secure care in the future?

Angela Constance: We need to be crystal clear on that point. We need to look at issues of reform around young offender institutions, but 16 and 17-year-olds are being moved from the criminal justice system into the children's hearings system, albeit that, for some of those children, that will be done on a temporary basis for the purposes of their care while they are 16 and 17. The children's hearings system is for children up to the age of 18 and, although there could be approaches, interventions or work with young people in a secure setting that could provide learning for an adult setting, we need to be clear that extending

secure accommodation that is for children in order to meet the needs of offenders who are adults is not an option.

There are a number of legal issues, as well as physical issues, around that. That does not mean that we do not need to constantly review and challenge ourselves on the care of young people in young offender institutions—hence the work around refocusing the use of custody for adults, as well as the need to focus on and improve, for example, mental health support and opportunities to reduce reoffending and to tackle the issues around the heavy use of remand in Scotland. However, there needs to be a clear line.

The Convener: It might also go back to our earlier discussion on individualised placement and risk assessment. There are some caveats to what you have clearly articulated, given some of the evidence that previous witnesses shared with us on the need to consider the individual's maturity and other factors when considering placement.

Rona Mackay: I have a brief question. What assessment has been made of young people with learning difficulties, to whom the age threshold perhaps does not apply? Would that be down to an individual assessment?

Angela Constance: That might be a very important factor in considering whether a young person should remain in secure care after their 18th birthday, up to their 19th birthday. There are broader provisions in other legislation that address the question of what is the most suitable disposal for somebody with a learning disability. There are obviously issues for any person with a learning disability who is engaging with the court system when there are issues of capacity.

There is a broader issue but, in relation to secure care, a learning disability might be a factor in enabling a young person to stay past their 18th birthday, up to their 19th birthday. There would be an individualised assessment of the needs of that child and the other children in the establishment.

The Convener: We have a final question from Russell Findlay.

Russell Findlay: Thank you, convener. I did not realise that we had enough time for it.

We heard evidence about young people under the age of 18 who are in police custody. The bill would give them the option for no parental contact to be made. I asked about this issue in the previous session. Has any consideration been given to those children potentially being subject to exploitation, whether by someone who does not have their best interests at heart or by organised crime? Does the bill include any way to address that?

Angela Constance: I understand why Mr Findlay asks that question. That is the *raison d'être* of the current provision, which is being extended to under-18s. The local authority requires to be notified, because it might well have information about that young person's background and so could highlight to the police issues of vulnerability. I would certainly be happy to engage on that issue in relation to safeguarding. It should be considered in the context of the evolving capacity and rights of young people as they get older.

The minister might also have some thoughts on that.

Natalie Don: It is of the utmost importance that we ensure that an inappropriate or unsafe person is not contacted. Under the bill's provisions, when a child is in police custody, their parent must be informed if the child is under 16, and, as the member rightly stated, if the child is aged 16 or 17, an adult reasonably named by the child must be contacted.

Existing safeguards enable an appropriate constable to delay sending intimation for various reasons, including if the intimation is deemed necessary to safeguard and promote the wellbeing of the child in custody. The local authority will always be notified if a child under 18 is in police custody and can advise a constable that the person to whom the intimation is to be sent—that is, a parent or another adult—should not be contacted. The local authority can also give advice as to who might be an appropriate person to contact. The constable must have contact with that advice. Access of a parent or another adult to the child can also be refused or restricted if the constable believes that that is necessary to safeguard and promote the wellbeing of the child in custody.

The bill therefore takes account of that issue.

Russell Findlay: I am glad that I asked that question—the answer was all ready for me.

Natalie Don: I had a feeling about it.

Russell Findlay: Thank you.

The Convener: That brings us to the end of our time with the witnesses. We will have a short suspension to allow them to leave.

11:53

Meeting suspended.

11:55

On resuming—

Access to Court Transcripts

The Convener: Our next item of business is consideration of correspondence from the Scottish Government on access to court transcripts. I refer members to paper 3.

Do members have any comments on the correspondence?

Russell Findlay: It is reassuring that one of Keith Brown's last acts in post was to instruct a pilot project to look into the possibility of providing court transcripts at least to complainers in sexual offences cases, initially. That is a good bit of progress. We should not lose sight of that, so we should ensure that what has been committed to will be put into action quickly. We should be clear as to what is happening.

The Convener: Absolutely. I think that we all welcome the fact that the pilot has been proposed. That is very much a step in the right direction.

Rona Mackay: I totally welcome it. It is definitely a step in the right direction. We should let Rape Crisis Scotland, Scottish Women's Aid and Victim Support Scotland know, because they have been quite concerned about the issue and the information will be important for them.

The Convener: That is a good suggestion.

As no one else has any comments, members will note that there is a suggestion in the paper about our follow-up action. I think that we all very much welcome the moves to explore the possibility of a pilot to support access to transcripts for complainers in sexual offences cases.

I want to highlight whether it would be feasible for the delivery of a pilot to be incorporated into the committee's stage 1 consideration of the victims, witnesses and justice reform bill, which is due to be introduced shortly. As Rona Mackay has rightly flagged, we can share correspondence appropriately with external organisations.

Rona Mackay: Unless I have missed it, I am not sure, from the correspondence, when the pilot starts and how long it will last.

The Convener: You are right. We have not got that detail yet, but we can certainly ask for it.

Are members happy with the actions that are set out in the paper? We can follow up on that aspect.

Members indicated agreement.

The Convener: That concludes the public part of the meeting.

11:59

Meeting continued in private until 12:32.

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