



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 20 September 2018

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

23rd Meeting 2018, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

Oliver Mundell (Dumfriesshire) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Alexander (Law Society of Scotland)

Shaben Begum (Scottish Independent Advocacy Alliance)

Detective Chief Superintendent Lesley Boal (Police Scotland)

Sergeant James Devoy (Police Scotland)

Nicola Fraser (Victim Support Scotland)

Juliet Harris (Together (Scottish Alliance for Children's Rights))

Kate Rocks (Social Work Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 20 September 2018

[The Convener opened the meeting at 09:18]

Age of Criminal Responsibility (Scotland) Bill: Stage 1

The Convener (Ruth Maguire): Good morning, and welcome to the 23rd meeting in 2018 of the Equalities and Human Rights Committee. Please ensure that all electronic devices are switched to silent.

I have received apologies from Oliver Mundell.

Item 1 is to take evidence on the Age of Criminal Responsibility (Scotland) Bill. We have two panels of witnesses. I welcome our first panel: Detective Chief Superintendent Lesley Boal, head of public protection at Police Scotland; Sergeant James Devoy of the children and young people business area at Police Scotland; Juliet Harris, director of Together, the Scottish Alliance for Children's Rights; and Kate Rocks, chief social work officer at East Renfrewshire Council and a member of Social Work Scotland.

We will not have opening statements this morning and will move straight to questions. We have a lot to get through.

Fulton MacGregor (Coatbridge and Chryston) (SNP): In our first evidence session on the bill, which was a couple of weeks ago, the two panels that we heard from were clear that there is a need for the bill and for the age of criminal responsibility to be increased. As a general question to open up the discussion, do you agree that the age of criminal responsibility should be increased?

Detective Chief Superintendent Lesley Boal (Police Scotland): As we said in our written evidence, Police Scotland welcomes legislation to raise the age of criminal responsibility to 12. Nothing would please Police Scotland and our officers and staff more than if we never had to use the powers that are provided in the bill, because that would mean that no child was implicated in causing the type of serious harm that the bill responds to. However, from experience we are well aware that that is unfortunately not the case and such occasions do arise. What we want from the bill is the ability to respond to children who are displaying serious harmful behaviour, the victims

of serious crime and the wider communities that we serve.

Kate Rocks (Social Work Scotland): Social Work Scotland supports the increase in the age of criminal responsibility to 12. It is a positive move by the Scottish Government that will help us to focus more on the needs and wellbeing of children under the age of 12 who would previously have been brought into the criminal justice system. Notwithstanding that, we have concerns about some of the construction of the bill, such as the processes for children under the age of 12. I imagine that the committee will want to ask more questions about that.

Juliet Harris (Together (Scottish Alliance for Children's Rights)): We definitely welcome the fact that we are talking about raising the age of criminal responsibility, as we have been pushing for that for well over 10 years, and it has been described as Scotland's shame that the current age is only eight. However, our perspective is that the age should be higher than 12 and that the bill will bring us up to an absolute minimum. We could even say that 12 is below international standards. Looking across Europe, out of 28 states, 23 have a minimum age of criminal responsibility of 14 or over, and the countries that we like to look at in considering the approach to children and young people, such as Norway, Sweden and Iceland, all have an age of criminal responsibility of 15. Back in 2010, the Parliamentary Assembly of the Council of Europe called for a minimum age of 14.

Although I welcome the fact that we are talking about raising the age of criminal responsibility in Scotland, it really should be higher than 12. I say that not just from the perspective of what international human rights law says on children's rights but because we know that it is the right thing to do. International human rights law is that way because we know that a higher age of criminal responsibility reduces reoffending, increases public safety, is aligned with the trauma-based approach that everybody is now more aware of and is aligned with a rights-based approach.

In summary, 12 is a start, but it is not good enough and it should be higher.

Sergeant James Devoy (Police Scotland): The bill is part of a journey that we have been on for a number of years. Particularly in the past 10 years, there has been a sea change in the way in which we respond to the needs of children. Even in policing, we look at the issue very much from a needs-based perspective. We have published a four-year plan that focuses specifically on the rights and needs of children. The bill is part of the process, but the issue is about getting a balance between the rights of society and communities to be safe, the needs of very young children who are under 12, and how we respond effectively to the

individual child. Our approach has to be centred on each individual child and not on the process that we put the child through.

Fulton MacGregor: One issue that came out strongly in the previous evidence was whether 12 is going far enough. Juliet Harris was the only one who touched on that, so I ask the other witnesses to comment on it before we move on. Does the service that you represent believe that 12 is the right age or should it be higher?

Detective Chief Superintendent Boal: The bill is the starting point. Police Scotland's view is that we police with the consent and will of the people, expressed through the democratic process and Parliament. It is for the Scottish Parliament on behalf of and with the support of Scottish communities to set the age of criminal responsibility. Whether the age increases to 12 or higher, it has to be recognised and accepted that it must have societal buy-in.

Last week, there was some commentary about those occasions when children do bad things and how we need to accept it. It is not for Police Scotland to agree whether the age should be set at 12 or above; when children over the age of 12—or whatever age it might be—do seriously bad things, it is for the community to agree whether it accepts that approach. We are not there yet in all communities across Scotland. That is a journey that we must embark on.

Kate Rocks: Social Work Scotland has had less debate about the age and more about the impact of the bill. Our starting point—and this picks up Juliet Harris's point—is to ensure that whatever the impact, there is a level of trauma recovery. Children do not commit offences in isolation from their experiences and the trauma that they experience throughout their childhood. Our plea is for a focus on trauma recovery. Irrespective of whether someone is 10, 12 or 14, the system needs to be curious enough to ask what has happened to the child as opposed to just looking at criminality being the cause or it being some kind of one-off event. That is not what our experience as social workers tells us because that is not what happens with children—they do not suddenly wake up one day and decide to commit a crime.

That is not a cop-out by Social Work Scotland. We are saying that we need to have a different focus and a different philosophy of care. It is about how Scotland as a society views children and how we get underneath to consider why children commit offences, rather than thinking about an outcome or process that is just that and does not help that child to recover.

Alex Cole-Hamilton (Edinburgh Western) (LD): Kate Rocks elucidated very clearly the importance of a trauma-informed approach. In our

previous evidence session, we heard the compelling and personal story of Lynzy Hanvidge, a person with care experience who is a champion for Who Cares? Scotland. She told us the terrible story of the night that she was about to be taken into care at the age of 13. She did not want to be taken into care and kicked off, then spent the night in the cells for the behaviour that she exhibited in resisting being taken into care. That is one catalyst of trauma being met by another deeply traumatising experience of having to spend the night in a police cell.

I was struck by the unanimity of the previous witnesses who told us that the age of 12 is a floor, not a ceiling. We have heard from Juliet Harris about the raft of countries that do not have that age. Even if we do not move the age past 12, should we be dealing with kids aged between 12 and 18 in a different way than we do adult offenders?

Kate Rocks: Absolutely. We now have the neuroscience to understand. In the past—and I have probably done this many years ago, as a social worker—we just considered the behaviour of the young person and did not think enough about why or ask what happened to them.

As a society, we need to have a much more humane and compassionate way of dealing with 12 to 18-year-olds. We now understand that we should be dealing with people who are older than that in that way, but that is a different conversation for a different place. We know that the teenage brain continues to develop up to the age of 25. Social Work Scotland supports raising the age of criminal responsibility to 12, but that is only the beginning of the conversation, not the end.

09:30

The Convener: I apologise to Fulton MacGregor, but I am going to abuse my position and jump in briefly.

I endorse what the witnesses have said. When we talk about serious crime, we are talking about violent or sexual crime. If teenagers perpetrate such crime, other children and teenagers are likely to be on the receiving end. How do those young people come into the picture? How will they be impacted?

Kate Rocks: The police and social work deal with such issues every day. We have really good child protection procedures and processes that safeguard children at that moment in time. Our starting point in child protection is to ask what has happened and where the risk lies. We think about the risk to the individual child—we have to manage the behaviours that have resulted in that child being brought to the attention of police and

social work—and the risk to other children, so we need to formulate plans.

Our child protection process in Scotland is child centred. Police Scotland and Social Work Scotland are jointly undertaking work on making that process even better, and ensuring that it is trauma-informed by following the developments around joint investigative interviewing as a consequence of Lady Dorrian's recommendations. I am hopeful of a better and positive outcome in the way in which we support children in Scotland, and that, in the future, there will be fewer stories from children who have experienced the processes—that is what they are; they are processes.

The children's hearings system allows us to provide safeguards around the welfare of children when children require compulsion. We regularly refer such children to the children's hearings system and manage them through that process. The children in the hearings system are on a journey, and we should ensure that the journey involves a child-centred tribunal. Although it is a legal tribunal, it is not a legal court system. I think that we do quite a good job.

Some of our young children are really challenging, but it is not just a bill that will resolve those challenges. We need to look at resource issues and support for children in parallel with any bill. Irrespective of there being a process to manage the risks that a child might pose to themselves, to other children or to the community, if we do not have the right trauma-informed support we will still be managing the impact of what happened to that child well into their adult life.

Detective Chief Superintendent Boal: I absolutely agree with Kate Rocks on the on-going work between Social Work Scotland and Police Scotland. Even if a child has been, for example, the victim of a serious sexual crime—and the case does not fit within the child protection procedures because the child is not at significant risk of harm and has family, carers and support around them—we still deal with such a case, in the vast number of occasions, in a child protection manner, even though the child might not be in need of protection. I hope that that makes sense. Even with children who have family support around them and whose needs might not be as critical as those of others, at the very beginning we will still have a conversation with social work and say that it would be good to take a joint approach.

Whether the child fits within the child protection environment or whether they are a child victim, some wellbeing needs may still be required to be met, but not protection. We will still try to approach it in that manner. From a protection and a general

victim wellbeing perspective, we work well together.

Fulton MacGregor: I will finish this line of questioning by asking James Devoy his view on the age question. Is 12 high enough or should it be higher?

Sergeant Devoy: As Lesley Boal said, it is a difficult question. We police by consent; we police with the consent of communities and we have to be mindful of the fact that if we offer an input on what that number should be—and the age of criminal responsibility is a number—that will not be particularly helpful.

It would be helpful for us to articulate and explain how we respond when a young person—a very young child, in the context of those under 12—offends. If we are going to change the language as the bill requires and say “causes harm” instead of commits an offence, we get away from the whole notion of the criminal justice system. A lot of what we have done in Scotland during the past 10 years has already moved us in that direction.

We have heard about the whole-system approach. We have been one of the primary agencies involved in its development because we and our officers readily see that responding to the needs of a child is very much more in keeping with the description that Kate Rocks provided, which is about a child's needs.

I often describe it as the easiest thing for us to do—it is our training and background—to say that A and B saw C do D, because we are in the business of collating evidence and submitting that evidence to the Crown Office for consideration for prosecution. That is our job, especially with adults. Why did C do it? Should that be a feature? That is for others to decide. That is not the case with children. With children, we are much more focused now on why and what sits behind what they have done? What is happening in their lives? What are their wellbeing needs?

The whole-system approach has very much directed us towards that approach. You have probably heard of early and effective intervention as well. That is merely about moving away from the world that existed when Lesley Boal and I started in the police, where every single child offence got reported to the Scottish Children's Reporter Administration. We should be looking at whether a child is in need of protection, guidance, treatment, or control. If they do not meet that test, there is no need to refer them to the children's reporter. We refer through partners and we engage the support of those who are there to respond to the needs of the child within the community. It is a more effective and simpler system, and it is a more child-centred approach.

We are constantly evolving and changing and retraining our officers to move away from simple evidential assessment. It is important, but it is just part of the story with a child. The more important part of the story is about their needs. What is their resilience? What is their support? What is lacking within that support? It needs to be about that. It is not about a punitive approach; it is about a needs-based approach, because it is about behaviour change. We want to see children's behaviour change for their benefit, their family's benefit and the community's benefit.

Others are better placed to comment on the age of criminal responsibility; our job is to respond to the needs that are demonstrated and we respond very differently now than we did 10, 15 or 20 years ago. This is part of that process. That is why we readily understand why the age of 12 gives you a demonstration of that change of approach—an approach that we can adopt and deliver, and which is in keeping with where we are at the moment. How that evolves in the future is for others to decide.

Fulton MacGregor: To pick up on James Devoy's point, we all want to know what the impact of this bill will be. Two weeks ago, we heard that raising the age to 12 does not incorporate a lot of children who are committing offences just now.

I probably should have declared an interest at the start, convener—I apologise. I am a registered social worker with the Scottish Social Services Council so I have sat, as Kate Rocks will have done, on children's panels with children who are there on offence grounds.

What do witnesses think the impact will be for children who go to children's hearings on offence grounds up to the age of 12? Will there be any impact on those who are in the age group beyond 12, even if the age does not increase further?

Kate Rocks: The impact for children over 12 will probably be much the same as it is now; I do not foresee significant change. However, we are talking about a whole load of orders, and as an experienced social work professional I think that when a child is aware that there is a formal order—although the bill does not suggest that the order be served, it says that the child should be given a copy of the order—a completely different starting point is created. We need to be clear about the impact of legal orders on children and how they are perceived.

We are more worried about children under 12, given how the bill is constructed. In particular, we are worried about the introduction of the child interview order. In essence, it will be for the police to get the order, in consultation with the local authority—I stress “in consultation”. Normally

when social workers come to investigate—I put “investigate” in inverted commas—our starting point is to consider the child's welfare and the harm that has been caused to the child; the police's responsibility is to investigate a crime.

The bill does not make clear the starting point for children under 12, as far as I can see. It reads almost as though it is providing for a quasi-judicial system for under-12s. There is the intent to support children in the right way, which is admirable. We want to ensure that children get the resources that they need.

However, I am concerned about the involvement of other people such as sheriffs in the interview process. When we plan an interview we do that through initial referral discussions, or IRDs, and then move to JII with an interview plan that is agreed by the police, social work and sometimes health and education, depending on who knows the child best. Under the proposed arrangements, the sheriff will have sight of the interview plan and we will have to advise the child of the interview plan and give them a copy of the child interview order. I worry that that will shut down children and we will not get to the nub of what has happened to them, which is my starting point as a social worker. Police will still have a responsibility to establish whether the child is a suspect and the perpetrator of the alleged offence. They will have to establish that. How do we blend that in, to make sure that it does not impact?

The other issue that we are worried about is the introduction of advocates and supporters into the process—

The Convener: We are going to come on to that. This is such an important subject, and we have a lot to get through, so I will try to move us on a bit.

Kate Rocks: Okay.

Mary Fee (West Scotland) (Lab): My initial question is a follow-up to Fulton MacGregor's questions. If we were to move the age of criminal responsibility to 12, we would join the cluster of four countries in the European Union that have that age limit, but we would still be at the floor of what the United Nations Convention on the Rights of the Child recommends. Does the panel support including in the bill provision for a review of the age of criminal responsibility after a time, with a view to increasing it incrementally? If you support such an approach, at what age should the incremental increases stop?

Juliet Harris: That is a really interesting question. Inclusion of a provision to ensure that the age of criminal responsibility is incrementally increased would be a positive development, if it were possible to do that, because such an approach is very much in line with what Police

Scotland and Social Work Scotland have been saying about 12 being a starting point and the need to consider where we go next.

Safeguards need to be in place not to review the age of criminal responsibility but to ensure that it is increased. It is also important to have in place processes to monitor and evaluate the impact of increasing the age to 12 throughout the first three years or so of the bill's enactment, so that safeguards are in place to ensure that the bill achieves its policy intentions.

09:45

The bill could be strengthened to secure children and young people's rights. Amendments are needed to get the voice of the child into the bill at all stages, particularly in relation to police powers. In a number of areas, a duty is needed to explain to the child what is going on, in accordance with the child's age and maturity. Safeguards are also needed to ensure that the bill works for children with disabilities and additional support needs, so that they know what is going on.

If all those safeguards were in place, that would support having a duty to incrementally increase the age of criminal responsibility later. An evidence-based approach should be taken to that, to ensure that communities are on side and that the public support the approach.

Mary Fee: What should be the ceiling?

Juliet Harris: I do not think that there should be a ceiling. We need to keep looking at the age and increasing it as the evidence presents itself. The European network of ombudspersons for children—I might not have got that name right—which involves the children's commissioners of Europe, recommends that the age of criminal responsibility should be 18 and has quite a strong evidence base for that call. We should look to that and use the evidence to increase the age as necessary.

Sergeant Devoy: I have a slightly different focus, which is on outcomes. We should review whether legislation has improved outcomes for children. First and foremost, if we are to be genuinely child centred, we need to see whether the legislation has made a difference. The children who pass through a different system will not carry the label of criminality—the biggest significant change that the bill will deliver is that it will stop that label being applied to very young children. Will that have a positive impact?

The committee heard evidence of the experience when the age of criminal responsibility in Denmark was lowered and then raised again. What will Scotland's experience be? What will communities' experience be? Will we have a

tolerant society that recognises children's needs? Will we support the children who are involved? That will be the measure of what all of us do; that is our world and what we focus on.

My purpose in Police Scotland is to further children's rights and ensure that we support and protect them correctly. Sometimes, that means responding to the harm that children cause, but we must do that effectively. The measure of success will be whether the legislation makes the situation better.

Mary Fee: Would the review that you suggest cover the support services for the children concerned, the children who had committed some level of wrongdoing and the victims?

Sergeant Devoy: Yes. We have learned a lot from listening to children's voices, which the committee heard about when it spoke to care-experienced young people. That is critical and has been at the heart of much that we have done in recent years.

Juliet Harris explained eloquently that the voice of the child influences us more than anything. We ask what the child's experience was. Children's experiences all differ; the more we put a process around a system, the less we listen to the voice of the child and the more we apply something that feels—to us, too, as the people who are charged with protecting children—like a structure that we force children through.

I would involve all the communities that you mentioned as a whole. I would absolutely include children who are subject to the system, and I would ask whether children more widely in society were aware of the increase and whether they felt a change in attitude towards them. Scotland has about 1 million under-18s—do we hear their voice? My job is to ensure that we hear their voice in Police Scotland, and we are passionate about that. Young people deserve a service from us in the same way as every other sector of society does.

Detective Chief Superintendent Boal: I agree with Jim Devoy, and I take Kate Rocks's point that operationalising the bill presents challenges for us. It seems as though the bill has been constructed around children who will not have criminal responsibility, yet it introduces an even greater criminal justice process than the one that we presently have for children and adults.

My issue with the bill is where it starts. The bill seems to start from the point at which we know that it is that child, but at the initial stages of a crime being reported—especially a serious sexual or violent crime—there is no black and white. At the building-block stage, it is all varying shades of grey. How do we easily find out if it is that child, who will be anxious, without traumatising them or

causing them further anxiety? At times, it might not be that child—they might have been falsely implicated in a serious crime. We want to establish that we are dealing with the right child, so that the child gets the right help and support and has the best outcomes.

Kate Rocks mentioned a bureaucratic criminal justice-type system. That is not how to get to the truth of the matter quickly.

The Convener: I will bring Gail Ross in, because her line of questioning is about the investigative interface.

Gail Ross (Caithness, Sutherland and Ross) (SNP): My questions lead on from what Lesley Boal said. They are about the powers to take forensic evidence from children under 12. The advisory group on the minimum age of criminal responsibility acknowledged that there would still be circumstances in which that had to happen.

Is the panel content that the powers to take samples from children strike an appropriate balance between the need to investigate fully incidents of a serious nature and the overriding ethos of what we are trying to do in not labelling children as criminal? What Lesley Boal said about steps to avoid traumatising children and to reassure them that they will not be labelled as criminals was important. How do we strike that balance?

Detective Chief Superintendent Boal: For the vast majority of children who present with harmful behaviour, there will be no requirement to take any forensic or biometric samples. That is the present position for all children. Unless there is a necessity to take biometric or forensic samples, we would not do so.

Gail Ross: In the situation in which you did have to do so, what would happen?

Detective Chief Superintendent Boal: On the small number of occasions on which it would be necessary and relevant to do so, it would be appropriate to apply for approval to obtain the samples, unless there was a critical need to do so quickly that could be backed up by authorisation. The difficulty is what seems to be the complex process for getting approval. I am not clear about whether the sheriff has to be in chambers or in a court setting. Sometimes things do not happen between 8 and 4, Monday to Friday.

There could be an appeal against such an order. With a serious crime that we wanted to investigate timeously, would we have to wait for an appeal process to be concluded? If that was the case, the opportunity to take sensitive forensic samples might be lost. The process involved is complex and could be elongated. However, in cases of serious violent or sexual crime, a senior

investigating officer will be appointed, who will be at no less than detective inspector level. They will have to provide the policy reasons and rationale for their action. I know from my experience that that would be absolutely necessary if there were a requirement for a forensic medical examination of a very young child. There is still the question of consent, and I am absolutely clear that no forensic medical examiner would examine a very young child—or anyone else—if it would be traumatic for that person. They just would not do it.

Gail Ross: What is the current policy on the retention of data collected forensically from children?

Detective Chief Superintendent Boal: Do you want to cover that, Jim?

Sergeant Devoy: Forensic data is recovered from a lot of people at the point of investigation. As far as younger children are concerned, under-12s cannot be prosecuted, so we are notified by the children's reporter about the action that they are taking, and at that point, any samples that have been taken are destroyed. The Criminal Justice and Licensing (Scotland) Act 2010 allows us to retain samples for excepted established cases, but after three years, they are subject to review to find out whether it is necessary and proportionate to continue to retain them, with rolling two-yearly reviews thereafter.

In the recent past, we have had the independent advisory group on biometric data, whose recommendations we are encompassing in our current work on the age of criminal responsibility. Our team is starting to draw together some of the work on under-18s and to consider how we can best give effect to the group's recommendations.

Part of the challenge that we face touches on Juliet Harris's earlier point about how we communicate all this to children. It is really important that we make sure that the child understands what we have done, why we have done it, what happens next and what their rights are. That sounds easy when we talk about it in this forum, but it is not; it is, in fact, very difficult, because children are at different levels of learning. As Lesley Boal has pointed out, there is also the challenge of when to impart such information to a child. When are they ready to listen and understand? They might say, "Yeah, yeah—I understand," but they might not.

Moreover, who is the right person to communicate that information to them? Kate Rocks has already touched on this, but more and more we are working collaboratively, because that is the best way of working. We recognise that we are the police and that, therefore, we come with a label and a certain expectation, particularly for children. It is a question of recognising when we

are the right people to be involved and when we are not, and of recognising the skills and abilities of others in a child's life. Our approach should very much centre on finding the right person for the child; it might be a social worker, a teacher, mum or dad or someone different. We just need to identify who is best placed to communicate information to children.

We are in a process of change with regard to biometric data, and the review has identified the need for that to take place. Consultation is being undertaken in that respect, and we are keen to be directly involved in it. We recognise the need for it, and we welcome the opportunity to ensure that the process that we put in place is, first and foremost, fair.

Alex Cole-Hamilton: First, I remind members of my entry in the register of members' interests: I was formerly the convener of Together—the Scottish Alliance for Children's Rights.

Given the Government's stated intention to incorporate at least the UNCRC's principles if not its articles, do you think that the bill is fully compatible with the convention? Secondly—this question is specifically for Juliet Harris, although other panel members might wish to respond—the place of safety provisions suggest that, in an emergency, that place could be a police station. Is that compatible with article 37 of the convention, which is, of course, about not holding child suspects in the same place where adults are being held?

Juliet Harris: We welcome the Scottish Government's commitment to incorporating the UNCRC's principles, and we are really pleased that that means not just the general principles but the intent behind all the convention's articles. The bill is a key way of taking forward one of the concluding observations of the UN committee on raising the age of criminal responsibility, although as I have said, it might not go far enough.

There are definitely ways in which the bill can be improved to ensure compatibility with the UNCRC. Quite a lot of those are to do with introducing additional duties to seek the views of the child and to make sure that we communicate with the child in a way that they understand and that enables them to feel informed and empowered. Reflecting on what was said about forensic sampling, I think that it is really important that a duty is included on informing the child about what is going on and communicating with them about why the sample is necessary.

10:00

We recognise the need to be able to take the child to a place of safety—that would certainly be compatible with article 37—but we are concerned

that there is a presumption that the place of safety should not be a police station, when we would like police stations to be seen as a measure of last resort. If a child is taken back to a police station, it needs to be clear that they will not be put in a cell and that they will be in a child-friendly environment.

It is also really important that we listen to the child's view because, when we take them to a place of safety, we need to talk to them about what the place of safety might be. I know that the Children's Hearings (Scotland) Act 2011 has been looked at to see what the place of safety could be. It might include community homes and residential establishments, but it could be a friend or a parent's house. It is really important that there is an emphasis on ensuring that the place of safety has emerged from a conversation with the child in which the child has said that they feel safe and secure in that place, and that it is an environment in which they feel that they can talk about what happened to them. That would be a key way of ensuring that the bill is more compatible with article 37.

Alex Cole-Hamilton: Perhaps my next question will allow the other panellists to come in on that issue. Juliet Harris referred to the 2011 act, and it is clear that other places of safety are defined in that. My concern is that the only place of safety that is defined in this bill is the police station. My anxiety is that, although the bill intimates that the police station should only be used as such in an emergency, that might get forgotten in the mists of time and it might become the default. A police station on a Friday or Saturday night is certainly not the safest place in the world.

Perhaps we could bring in our law enforcement colleagues and hear their views on how often the police station would be used as the place of safety as a last resort. When your guys are on the beat and intervening in a disturbance, how often would they think to take people there as a matter of practice?

Detective Chief Superintendent Boal: You are absolutely right that a police station is not the best place for a child, especially in circumstances in which there has been trauma or anxiety. We have reached out to our 13 local policing divisions on this, and the difficulty around Scotland is: where else is there locally to take the child?

There might always be circumstances in which it is absolute necessary that a child is taken to a police station because of what is happening. I absolutely agree that that must be the last resort. However, there have to be resources and suitable premises to which a child can be taken and in which they feel safe. Further, if any process—I hate using that word—is necessary as part of the initial investigation at that point, it needs to be

done discreetly and sensitively in premises that are child friendly and child centred.

I know that people referred to Barnahus, and it is definitely not appropriate to take children displaying the most seriously harmful behaviour to the same accommodation as children who are at risk of harm. However, the Barnahus principles on where a place of safety should be and what it should look like are absolutely right.

Sergeant Devoy: Our experience is just as Alex Cole-Hamilton described. The point of crisis when we respond is often not between the hours of 8 am and 4 pm, as Lesley Boal said, and we have to have access to facilities that are suitable when we respond. Lynzy Hanvidge told you about the work that she has been doing in West Dunbartonshire and having 24/7 access, and that is the type of suitable resource that we want.

That issue touches on Kate Rocks's point that the right resources have to be available across the country, which we accept is not always possible to achieve. Sometimes the environment is not right, because the child may be so anxious—or, on occasions, violent—that it is difficult to control the situation to make sure that we keep them safe. Such a situation is rare; on the vast majority of occasions, we look for an environment that is much more suitable to meet the child's need—that is fundamentally what we want to do.

Alex Cole-Hamilton: Your answers draw out in me a desire to ask the Government minister, when they come to speak to us, about the financial memorandum with regard to a place of safety. Models such as Barnahus will require additional investment in capacity.

My final question is about exactly what happens now when a police officer decides that the place of safety to which they need to take a child is the police station. We were very concerned that Lynzy Hanvidge, who gave evidence in the committee's previous evidence session, was taken to a place of safety that was a cell. How do your officers use the estate around the police station? Are children held in an office? How does it typically work when children are taken to a police station as a last resort place of safety?

Sergeant Devoy: We will try to find somewhere that is suitable for the child. The estate is very different across the country. It would be wrong not to mention the Criminal Justice (Scotland) Act 2016, which made a significant change to the manner in which we assess. We have given robust guidance to our officers about the "necessary and proportionate" test, which has been massively reinforced by the 2016 act.

First and foremost, we ask: is it absolutely necessary to bring the child into custody? Why is it necessary? Is it in our interest because of the risks

that the child poses to wider society? What is the best alternative available for that child? At the moment, we are looking with social work colleagues at the guidance that we provide to officers to try to improve the custody setting. The police station might be the right place at the point of crisis, but how quickly can we transition away from it? We are the first to acknowledge that our cell complex is not the right setting for children. Sometimes it is absolutely necessary; sometimes a child poses a risk. We are talking about children as people aged under 18, but the law is different for different age groups, so 16 and 17-year-olds are in a different space of criminal procedure.

Alex Cole-Hamilton: Will you clarify whether, right now, police officers in Scotland use the cell complex as a place of safety?

Sergeant Devoy: It depends, as the situation is different across the country.

Alex Cole-Hamilton: But it does happen.

Sergeant Devoy: I can only draw on my personal experience, which is that we would look to have the child constantly supervised by an officer. We will try to find a setting in the police office that is suitable for the child and is the least intrusive and least impactful possible. I cannot say with certainty that that happens on every occasion, as it would depend on what resources are available and the dynamics of the circumstances at any given time. By and large, we endeavour to be as child centred as we possibly can. The last thing that we want to do is to traumatise a child any more than they have already been. Our officers will do everything possible to be as friendly and supportive as we can and to ensure that the child is in a suitable setting to minimise the impact on them of being in a police office. We never lose sight of the fact that they are children first.

However, our estate is what it is. It is not designed to meet that type of need. The issue is about finding something suitable. I heard recently about an estate that has been changed to make it more child focused, but such examples are isolated. The evolution is happening over a long period. We have come a long way and the 2016 act has further informed the debate. However, Alex Cole-Hamilton is right when he asks whether we want children to be in a police setting any longer than necessary. The answer is: absolutely not.

The Convener: Annie Wells is going to ask about search powers.

Annie Wells (Glasgow) (Con): Thank you, convener. I have a couple of quick questions, as we are running quite short on time.

The bill will obviously change some of Police Scotland's current search powers. How often are

the police required to search young children, and under which circumstances will such searches be carried out? How are children currently informed of their rights?

Sergeant Devoy: The code of practice, which was a significant change in how our policy is delivered, was introduced six or seven months ago, and we have had the six-month review. I do not have figures about volume to hand, but I can provide them in writing to the committee, if that would be helpful.

The code of practice significantly influenced the way that we deliver the policy. It is no longer a consent-based process but based on statutory powers. We can provide further background and detail on that, if that would be helpful. There has been a sea change in the manner in which stop and search is used, but it is, nonetheless, a legitimate policing tactic, used in the context of keeping people and communities safe. The focus is very much on safety for children.

Annie Wells: Excellent. Are witnesses content that the powers of search afforded to the police in the bill are sufficiently clear and proportionate?

Sergeant Devoy: Yes. From a policing perspective, it is about the whole picture, and the legislation is only one small part of that. There is also the code of practice, the training for our officers and the guidance that we provide for them, which is absolutely essential. We are moving more towards responding to the needs of society rather than responding to criminality within society. That is well documented, and it requires on-going evolution in the manner in which we police. Stop and search was a significant part of that and we got significant support from external partners.

An important piece of learning for us has been about knowing where to turn to for the right advice as the world and society around us change, particularly in the context of children. Where do we learn from? We are willing to learn constantly and to evolve our practice to be much more in keeping with people's needs, particularly children. The code of practice is one example of that, and it will have a 12-month review. Checks are rightly built into that process, because we welcome and recognise the need for scrutiny. It has to be there and we have to be open to it and willing to learn constantly.

The Convener: Thank you. Kate Rocks helpfully outlined some of the current principles around child protection and the joint investigative interviews. It will obviously be important that children who are subject to interviews can give their best evidence. Are witnesses content that that will be possible, given the provisions in the bill?

Kate Rocks: When Police Scotland and Social Work Scotland embarked on reviewing Lady Dorrian's recommendations, the starting point was about dealing with children as victims or witnesses. The starting point of the bill, which I probably outlined in too much detail, is different: it is about establishing facts.

From a police perspective—and from ours, because Social Work Scotland will be involved—the starting point for child protection is what has happened to the child and where the risk currently lies. A by-product of that might be that the child who is a victim gets access to justice through the adult justice system. Our worry is that the starting point feels quite different for that child. Our aspiration from the review of the JII training and how we intend to progress nationally is that the starting point will be trauma-informed and feel very different for children. However, the bill will not give us the level of flexibility that is in the current child protection processes, because formal orders will be put in place for those children.

My worry is that a child will have access to other adults in the system. We have spent a lot of time in child protection debating how to reduce the number of adults who may be part of that formal interview. Our aspiration is to have one adult with the child, whereas under the bill there could be up to four adults in the room. In the main, only the adult who is the supporter of the child will be known to them—and we will have to define what that means, because we might not know about the culpability of that supporter with regards to the reason why the child is there. Three of those four adults will not be known to the child, which does not provide the best conditions for children to give any kind of information or evidence—although the interview is not supposed to be gathering evidence, but trying to find out what happened to the child. That is our position.

10:15

The Convener: That is helpful. Juliet, do you have anything to add?

Juliet Harris: We think that what is proposed could be strengthened through a rights-based approach. At the moment, there is a duty to inform the child that questioning has been authorised and that they have the right not to answer the questions, but that falls short of a provision that requires the police officer to explain to the child what is happening in line with the child's capacity and maturity. That is the number 1 priority—the child must know what is happening and why, and we must make sure that the child does not feel that he or she is being interviewed as a suspect in the questioning.

The other area where the provisions could be strengthened is in relation to a child-friendly environment. The policy memorandum mentions that, but we would like to see it in the bill. In that way, the interviewing would take place in an area where the child feels safe and informed, knows what is going on and is empowered to take an active role in the proceedings.

The Convener: Thank you. Detective Chief Superintendent Boal, do you have any comments?

Detective Chief Superintendent Boal: I totally agree with what Kate Rocks said. Our frustration is that, specifically on interviewing, we have framed the model for how we interview the child according to the very model that we want to avoid, which is a criminal justice model. Where we apply for an order specifically for serious harmful behaviour, an order has to be granted, there can be appeals against it, we have to explain to the child about the order and the child's plan, and we have to provide a child's plan. In addition to that, a number of people have to be present and we have to explain that there is, basically, a right to silence, which is a criminal justice process—and a process that the child should never be in. The process seems to have been constructed to an even greater extent than the process for adults who go through the system.

In all the discussions that James Devoy has had about this, he has been really clear that we should be doing this with consent. If we have a consent-based model and parents or carers and children are involved, why do we need those difficult, protracted processes? In our experience—and, I think, Kate Rocks's experience—if we have those processes, we will never get to establish whether the child was involved, which is really important, and if we cannot establish that, will we get to the point of establishing why, and what support measures and protection have to be taken to support the child in the future?

Nobody wants the wrong child to be getting intensive support while another child who can be held responsible evaded that because, by the time we get to the interview, everything has calmed down. I suppose that goes for quite a lot of the bill. It seems to put a criminal justice process around the child, whereas we are trying to take them out of the criminal justice system.

The Convener: Unfortunately, we have run out of time. If there is anything that you did not get the opportunity to say, please feel free to write to the committee. Thank you all for your evidence this morning, which will be very helpful in our deliberations.

I will suspend the meeting briefly to allow us to change panels.

10:18

Meeting suspended.

10:23

On resuming—

The Convener: We now move on to our second panel of witnesses. I welcome Andrew Alexander, head of policy at the Law Society of Scotland; Shaben Begum, director of the Scottish Independent Advocacy Alliance; and Nicola Fraser, operations manager at Victim Support Scotland. You are all welcome.

I will kick off by asking whether you support raising the age of criminal responsibility.

Nicola Fraser (Victim Support Scotland): Yes. As the largest charity that supports victims, we support the increase in the age of criminal responsibility. We are aware that raising it to the age of 12 is de facto not going to make a massive difference, given the numbers involved. We are interested in the implications for the victims and the levels of communication and information provided for them.

Shaben Begum (Scottish Independent Advocacy Alliance): We have some questions about the raising of the age of criminal responsibility only to 12. We support the evidence that was given by Together earlier today about why it is only being raised to 12. We would like to see it much higher.

Andrew Alexander (Law Society of Scotland): The Law Society supports increasing the minimum age of criminal responsibility to 12. We note that the United Nations committee suggested that 12 should be the minimum and that standards could be raised at a later stage. We think that 12 is an appropriate age and it coincides with other legally significant steps at the age of 12, such as the ability to raise a court action to make a financial claim or to instruct a solicitor for that purpose.

Alex Cole-Hamilton: We have Shaben Begum here, so I would like to address the advocacy provisions in the bill. Shaben and I worked together on section 122 of the Children's Hearings (Scotland) Act 2011. It is nice to be working with you again, Shaben.

First, I would like to ask about capacity. One of the problems with making section 122 a reality was that it took a while to get it all onstream. Are you confident that the independent advocacy network has the capacity to meet the needs of the provisions in the bill?

Shaben Begum: We are still discussing section 122. The reality is that children who are going through the children's hearings process do not have universal access to independent advocacy. I know that the Scottish Government is working on

developing a model for rolling it out across the country.

At the moment, the way that things stand, capacity is a huge issue for advocacy organisations, especially for children and young people. My organisation produces research through the advocacy map every two years. Children and young people who have a legal right to access independent advocacy under different bits of legislation, primarily the Mental Health (Care and Treatment) (Scotland) Act 2003, are still desperately in need of independent advocacy and the provision is not there. The main reason for the lack of provision is the lack of funding from local authorities and national health service boards.

There would be provision because our members are keen to work with children and young people and they try to do so as much as possible. However, it is a universal problem with funding.

Alex Cole-Hamilton: If it is a problem with funding, and if we are not to set ourselves up to fail with advocacy provision, should we amend the financial memorandum to ensure that there are resources to bring independent advocates onstream?

Shaben Begum: I would like to see quite a bit of amendment to the bill, particularly with regard to independent advocacy. There needs to be clarity about what the bill means by an independent advocate—it would be useful to have a clear definition. I would like to see something that resembles the definition of independent advocacy in the Mental Health (Care and Treatment) (Scotland) Act 2003.

I am confused, and I imagine that other people might be confused, about the requirement for independent advocates to be legally qualified. If I was a young person going through this process, I would be confused about the role of my solicitor or lawyer and the role of my independent advocate. If they are both legally qualified, what are they doing?

There are parallels in the mental health system where people have a legal right to access an independent advocate and they also have a legal right to legal representation, and those two roles have worked collaboratively to support the person who is going through the mental health system and have been able to work to the benefit of that person. We can draw parallels from that, but I would like to see clarification in the bill about what an independent advocate should be doing, what their role is, and a recognition that they might play a more qualitative role and have a relationship with the young person.

When I worked as an independent advocate, I had the opportunity to build up a relationship with people and saw them much more often than other

professionals such as their lawyer. I was able to help them to think through what their rights are and to make sure that they fully understand them

As someone in the previous panel said, a young person might say, “Oh, yes—I understand” and give every indication that they understand, because that is what is expected of them. However, they might not have a full understanding or appreciation of the situation that they are in or its consequences.

10:30

Alex Cole-Hamilton: My final question—which is specifically for you, Shaben, but I am sure that other panel members will have a view—follows on very nicely from what you have just said. We heard from the previous panel that social workers and even the police have concerns and anxieties that the bill’s provisions on child interview orders actually go against the principles of policing by consent in this country. They are far more regimented than anything related to interviews with adult suspects, and there is no reference to the right to silence, which is almost as important as the right to be heard. Do these provisions go too far and impinge on the principle of policing by consent and the rights of people who are being interviewed?

Shaben Begum: If we are going to have something specifically for children, much more flexibility needs to be built into it, and it needs to be child centred. The legislation needs a much stronger human rights-based approach. I am not that familiar with the criminal justice system, but from what I have seen, what is in the bill seems to resemble that system quite strongly. I do not think that that is the intention behind the bill, but further work needs to be done to make it more child friendly and child centred and to ensure that traumatic things that children might have experienced are taken into consideration. This should be about a young person’s wellbeing.

Alex Cole-Hamilton: I wonder whether the Law Society will comment, particularly on the question whether these provisions fly in the face of the principle of policing by consent with regard to aspects such as the right to silence.

Andrew Alexander: It is important that, in this type of interview process, the rights of the child are respected, there are safeguards in place and, as Shaben Begum has said, there is a collaborative approach involving the various parties. The mental health system provides a very useful parallel to think about in that respect.

We believe that lawyers and others involved in the process can play an effective role. Although we want to avoid a situation in which proceedings might feel particularly criminal, we think that there

are important safeguards in place such as reminding the child that they do not need to answer questions if they do not want to. There is also an opportunity for guidance to be issued under section 46 in order to highlight more detail, but some provisions could also be brought into the bill itself.

Alex Cole-Hamilton: And what does Victim Support Scotland think?

Nicola Fraser: The problem is that we are not talking about victims. My situation is entirely different in that I am looking for the victim's right in the process. I and my organisation totally understand that people are looking for a child-centred approach and that the system is based on consent, but we have to ensure that the victim of an offence also has rights with regard to communication, information and support. Although I am not arguing with anything that has been said, I simply reiterate that, at the other side of the table, there will be a victim who will require the same things.

Alex Cole-Hamilton: The bill contains provision for the victim to be provided with information on what has happened and feedback on how the matter has been dealt with. Does that go far enough, or should the bill also include something about restorative justice?

Nicola Fraser: Restorative justice would certainly be another step forward. Even to this day, under the current children's hearings system, victims still do not get enough information. That is because, under section 53 of the Criminal Justice (Scotland) Act 2016, SCRA can give out only a limited amount of information.

That impacts on victims, because I need to say, "Yes, we have a child who has supposedly, or is alleged to have, committed an offence." An awful lot of those offences are against children, and we lose sight of the fact that one child goes straight into the system and the other child does not. There is not that level of support and the current system is letting those children down. Before we raise the age of criminal responsibility, we need to ensure that communities get the information to understand how the system works.

Annie Wells: My question relates to Alex Cole-Hamilton's questions regarding the age that we use. Quite a lot of people say that raising the age of criminal responsibility to 12 does not go far enough and ask why we are stopping there.

At a previous committee meeting, Mary Fee stated:

"In a room of 20 young people, all of them will have developed differently."

Dr McDiarmid highlighted:

"some academic commentators have suggested that ... there could be a criminal responsibility test"—[*Official Report, Equalities and Human Rights Committee*, 6 September 2018; c 11.]

Would such a test go further than testing for an understanding of right and wrong? Should we be looking at and reviewing such tests?

Similarly, should we look into staggered ages of criminal responsibilities and the way different crimes should relate to different ages between 12 and 18? The bill would raise the age of criminal responsibility to 12, so that would be the starting point.

Shaben Begum: We want to build a system in which disability, additional support needs and maturity are considered. I totally agree that different children and different people mature at different stages. No legislation is very good at picking up these nuances.

I do not know enough about the issue of there being different levels of criminal responsibility for different ages. However, further work needs to be done on why the age of 12 has been chosen. It would be more useful for children and young people, as well as for our society, if we looked at what other countries do and, potentially, chose the age of 18.

Annie Wells: What do you think about a criminal responsibility test of understanding?

Shaben Begum: I do not know enough about such a test, but it is worth finding out more about it to see what value and impact it might bring to the system.

Andrew Alexander: As I mentioned, the UN committee suggested that 12 should be the minimum age and that that age should perhaps be adjusted upwards at a later stage.

There needs to be consideration of capacity, for example, with the instructing of a solicitor for a child aged 12, and whether they have a general understanding of what that instruction means. If there is a series of different categories that are dependent on age or offence, the concern is that that would proliferate the different types of responses that are required by the police or other agencies. Bearing in mind that the UN committee's recommendation was that incremental steps might be taken at a later stage, the age could be varied as part of the post-implementation scrutiny of the bill or by amendment through statutory instruments. If not, a more nuanced measure around capacity could be included in the bill.

Mary Fee: I will follow on from the questions on qualifications and advocacy. The Government has said that it wants to ensure that advocates have suitable qualifications and training to do the role. In the Government's view, an advocate should be

legally trained, and it intends to consult on that matter.

I am interested in hearing the panel's views—and perhaps we can start with Andrew Alexander—on whether advocates should be legally trained. According to a previous panel, the bill puts a criminal justice slant on the approach to young people when what we need is a needs-based and supportive approach. In that case, should a lawyer provide advocacy?

Andrew Alexander: In our submission, we have suggested that what is required is not just a legal qualification but experience in dealing with children and young people. Solicitors deal with children and young people in a variety of different contexts, not simply in a criminal justice context but through the children's hearings system and the like. The ability to deal with children and young people in such situations is particularly important.

If both a solicitor and a legally qualified advocate were to get involved, there might be some confusion about or perception issues with regard to their roles. However, there are examples of such an approach working well and successfully in other contexts, and there is also the opportunity for guidance to flesh out the differences between the roles. I think that such an approach could be successful.

Shaben Begum: We do not support the idea that independent advocates should be legally qualified. As I have said, that would create much confusion, with the potential not only for confusion between the two individuals concerned but, more important, for confusion in the young person. My question is: what is the purpose of the independent advocate? If we are looking for legal advice, the lawyer will be able and qualified to provide it.

My understanding is that independent advocacy brings something else to the situation by reinforcing a person-centred or child-centred approach to the issue and ensuring that the child or young person is able to participate in the situation as fully as possible. Advocacy facilitates all that.

We need only think of the PANEL principles of a human rights-based approach. PANEL stands for participation, accountability, non-discrimination and equality, empowerment and legality, and looking at the first two principles of participation and accountability, I think that advocacy helps people ask questions and ensure that the child or young person understands why particular decisions have been made and particular actions taken.

The PANEL principle of non-discrimination is central to any advocacy approach by ensuring not that everyone is treated in exactly the same way,

which is the old-fashioned way of looking at discrimination, but that people's needs are taken into consideration. This brings me back to my earlier point about children with disabilities, additional support needs or whatever. Advocacy is about addressing that imbalance of power and helping the young person participate appropriately in the whole process.

As for the empowerment aspect of the PANEL principles, advocacy is all about providing support, being on the side of the young person and empowering them to ask questions, advocate for themselves and take as much control of the situation as they can. On the final principle of legality, we have to ensure that everything that happens is legal and falls within the appropriate legislation.

Mary Fee: Before I bring in Nicola Fraser, I just want to be clear. Do you think that the support provided to the young person by an advocate should be more of the emotional kind?

Shaben Begum: It is not just emotional support. Going back to the issue of qualifications, I would point out that one of our members—the Advocacy Project in Glasgow—has developed an advocacy qualification that is being rolled out across Scotland. We are not talking about people who do not have the experience and knowledge to support people appropriately. It is really important for an independent advocate to have a clear understanding of the legislation, the context in which they are operating and the rights of the person.

Indeed, advocates provide not only emotional support but a range of other support.

Some of us might have experience of situations, possibly intimidating ones, in which people use language that is unfamiliar to us or in which there is a massive power imbalance between us and the people who are doing things to us, for want of a better phrase. Advocacy addresses such situations and imbalances of power. It provides emotional support and much more besides.

10:45

Mary Fee: So, it should centre on what the child needs.

Shaben Begum: Yes, it should be totally centred on what the child needs.

Nicola Fraser: It is very difficult for me as I come at the issue from a completely different side. I am nervous about what is being said, because I hear about all that support, which I totally agree with, but what about the six-year-old or seven-year-old victim? What support do they get when samples are taken or when the police speak to them? I have an anxiety that we are again building

in a huge imbalance and going down the criminal justice route with regard to the needs of the child. However, that is the person who is being blamed for a crime—where are the needs and rights of the child who has had that done to them?

I understand that a happy medium is needed because, if you want to further raise the age of criminal responsibility, you will need society to back you up. Unfortunately, if support for victims is not there, society will not back you, because people will not see an 18-year-old as someone who does not have responsibility. I am sorry but, if you are sitting with a child who has had something done to them, that is how you will feel. I totally understand the advocacy bit, but we need more support on the victim's side.

Shaben Begum: We support advocacy support for victims, too. I completely understand Nicola Fraser's point about the imbalance of power. We need to look at this in a wider context and not create more imbalance. We support advocacy for children and young people who are victims of crime.

Mary Fee: Obviously, the implications of the proposed legislation stretch far and wide, and we need to ensure that appropriate measures are put in place so that the organisations that do support work for victims do not lose out.

Nicola Fraser: Absolutely.

Shaben Begum: We must also recognise that victims can be perpetrators, too. It is not always black and white—there is a huge grey area.

Nicola Fraser: We are very aware of that. We help a lot of people who have been victims and who go on to commit crimes. I get that the child-centred aspect in providing support to prevent further offending is vitally important, but we must not lose sight of the impact on victims and communities.

Fulton MacGregor: That conversation raised a lot of good points and brought into focus what, for me, the bill is all about. It is about setting down a marker for where we are as a country and how we treat our children and young people. When a child is criminally responsible, that says more about what has happened in their background and upbringing. There is definitely a big conversation to be had on that.

All the panels that we have taken evidence from have talked about the children's hearings process, which is an integral part of the system. I want to ask about advocacy, not in the hearings system as a whole—because I know that there are social workers, teachers and others who should be providing advocacy—but specifically when a child is at a hearing on offence grounds. We talked about that with the first panel two weeks ago and

heard that, when that happens, particularly if the child is quite young—12, 13 or 14, or younger than 12—they have a tendency to say, "Let's get this over with," as do the parents. How important is advocacy in those situations, and how can advocacy ensure that the child knows exactly what the consequences are of accepting offence grounds?

Shaben Begum: In my experience, advocacy often slows down processes, because advocates are there to make sure that the young person fully understands the situation. The independent advocate is independent of all parties and is there solely for the child or young person. From talking to some of our members who work in the children's hearings context, I know that the child or young person and the parents or carers all want the situation to be over as soon as possible, so that they can put it behind them and move on.

Often, it is the independent advocate who ensures that the child or young person fully understands what is going on. Part of the advocate's role is to talk through the consequences of any action. My experience of working with adults who had been involved in the criminal justice system for a long time was that they had not developed decision-making skills or the skills for thinking through the consequences of a decision that they made. A big skill that advocates bring is the ability to ensure that, even when somebody says, "Yes, yes—I understand," and they want to move on, that person fully understands the whole situation and its consequences, and advocates must reassure themselves of that. Advocacy would not speed up the process; it would slow down the process, which would be positive.

Fulton MacGregor: I agree.

Andrew Alexander: I agree, too. A solicitor is often involved in such situations. It is important for proceedings to take place without delay, but the consequences can be significant. The bill deals with disclosure, and the consequences of particular items being disclosed later can severely impact a young person's outcomes.

Fulton MacGregor: I will give a practical example. A 12-year-old faces offence grounds, and he, his parents and everybody else who is around want that to be dealt with quickly. We can understand that, because people do not want the stress of that environment any more. However, the 12-year-old does not think about disclosure in 10 years' time. That is a tough nut to crack. The right of the child and the family to have the process dealt with speedily sits against what might be the person's right in 10 years' time. I have always struggled with that difficult issue and I am glad that it has arisen in the debate on the bill. Advocacy is crucial to that.

Shaben Begum: It is crucial to have an independent advocate who is familiar with the situation. When I was an independent advocate, I knew the system. I often dealt with people who had no previous experience of such a situation, so they did not understand the consequences and did not think about what would appear on a disclosure in 10 years' time. An independent advocate asks people whether they know that, if they do A, the potential consequences in 10 or 15 years' time will be X, Y and Z. For quite a lot of people, that is a revelation.

Nicola Fraser: I will talk about the other side of the coin. I understand that some people want the process to go quickly. From the victim's point of view, I do not disagree with that, because victims definitely want cases to be resolved quickly.

The biggest issue is that, unless victims opt into being given information by SCRA, they do not find out anything. The first time that a victim has contact from anybody might be when SCRA gets the referral from the police and sends the victim a letter to advise them of the referral and to ask whether they want to opt into getting more information.

I am highly aware, from many calls through our national support centre and our helpline and from a variety of intense cases that we are dealing with, that victims do not receive information. If no further action is taken in relation to a child, the victim does not know that—they are just told that there is no further action. Victims do not know whether social work services have been involved; they know nothing about what is happening.

We have a huge gap. We provide support for all these people, but the victims are sitting with absolutely nothing. We must address that.

The Convener: Nicola Fraser's points are well made, particularly in relation to bringing communities with us in taking the approach under the bill.

Gail Ross: I have been struck by a lot of what Nicola Fraser has told us. Obviously, as the bill stands, there is a focus on the perpetrator rather than the victim. You have gone into this briefly already, but will you explain in general what support is currently available for child victims of crime?

Nicola Fraser: Normally, we hope that when a crime is reported to the police a referral will be received, whether the victim is a child or an adult. That does not always happen; sometimes, victims are not referred to support services. It is part of the Victims and Witnesses (Scotland) Act 2014 that they should be referred and we are working closely with Police Scotland on that, because there are always complications in getting referrals.

Our anxiety is that there is a massive process surrounding children and offending. While a police report is written, which goes to the Crown Office and to SCRA for a decision on whether the case will go to a children's hearing, there is not a lot happening for the victim. A risk plan and so on should be put in place, but we find that the victim is sometimes way down the communication line.

If the case goes to a children's hearing, the victim then gets a letter from SCRA. Victim Support Scotland now has a service-level agreement with the Scottish Government and SCRA, and we have designed leaflets that go with that initial letter from SCRA. That means that victims have access to support services as soon as they receive that letter, which is why we are getting a lot more inquiries through our national support centre and helpline.

The biggest issue is the lack of information. I have had a lot of meetings with SCRA and discussed what it can and cannot disclose, and I understand that the process is for the benefit of the child—we do not want to put that child in a difficult situation—but we have to remember that the victim does not know what has happened.

We are working on some case studies that it would be beneficial to show the committee, off table, to show where the blockages are. We are currently looking at three sexual cases that we are supporting, in which the victims range from four to nine years old. They have received no information and it is the victims who have had to move school, because the perpetrator is innocent until proven guilty but goes to the same school. The victims are going to have to move house, because it is a small community. We need you to see the impact on victims and that they do not receive the same level of support. Although we are working hard with SCRA and other organisations, there are still gaps in communication and information.

Gail Ross: As the bill stands, is there a balance between protecting victims and giving them information, and protecting the child perpetrators of whatever happened?

Nicola Fraser: There has to be a balance.

Gail Ross: Right.

Nicola Fraser: Raising the age of responsibility to 12 is an easy sell because, de facto, it is not going to make any difference, but if we want to raise it in Scotland and make it work—which we absolutely do—we need to bring society with us. If there are victims who receive absolutely no information or support, that will be a difficulty.

Gail Ross: Are you content that the provision of information to victims by the principal reporter will occur only in serious cases?

Nicola Fraser: If victims want information, they have to opt in. It is difficult to explain how it works. If an individual goes to a children's hearing, or the reporter decides not to continue to a hearing, all that the victim will be told is that there is no further action. If there are a few charges but the victim only appears on one of them, and a decision is made to join the charges together and put out an order, if the victim is not on the charge on which the order is made they will be told that there is no further action and will not be aware that anything is being done. Huge support will probably be provided for the perpetrator but, unfortunately, the victim will not know that. If we look at the victim's journey, what they need is closure.

Gail Ross: Are there provisions that it would be appropriate to put in the bill, or do changes need to be made elsewhere in the system?

Nicola Fraser: I totally understand the importance of not disclosing information about a child who has committed an offence. The advisory group's recommendations included that appropriate and effective support should be available to victims. We need to make sure that the victims are getting that support at their first point of contact, whether that is with the police or whatever. That is the important bit.

We also need to ensure that the information and communication that we provide covers everything. People do not understand how the children's reporting system works—it is bad enough with the criminal justice system. If we are raising the age of criminal responsibility, we need to make it clear how the system works.

The Convener: Mary Fee has a supplementary.

Mary Fee: It follows on from Gail Ross's line of questioning. Nicola Fraser said that Victim Support Scotland is working on case studies that she can show us to help to make clear where the gaps are. Your written submission said that

"with appropriate safeguards this ... will better protect the interests of victims".

It will be useful to see where the gaps are, but will you be able to show us where the bill could be improved so that we can plug those gaps, or can you make the links to other pieces of legislation, perhaps, where subsequent changes could be made? That would be helpful for the committee.

Nicola Fraser: Absolutely. Some of the cases that we are looking at involve a lot of gaps in the whole system, because we have worked on them from day 1. The only reason why I did not bring the information was that it is not correct for this forum—it is very sensitive—but we can show you the content where the issues have arisen. That will perhaps transfer to the bill, in relation to where we

need to tighten up communication between third and public sector organisations.

Mary Fee: That would be helpful.

The Convener: As colleagues have no further questions, we thank you for your evidence this morning.

11:02

Meeting continued in private until 11:30.

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