



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 4 October 2018**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**

**25<sup>th</sup> 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:**

Paul Beaton (Scottish Government)

Liz Blair (Scottish Government)

Audrey Cameron (North Lanarkshire Council)

Liz Fergus (North Lanarkshire Council)

Councillor Jennifer Layden (Glasgow City Council)

Louise MacKenzie (Glasgow City Council)

Rosemary Mackinnon (Highland Council)

Tom McNamara (Scottish Government)

Maree Todd (Minister for Children and Young People)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 4 October 2018

*[The Convener opened the meeting at 09:00]*

### Age of Criminal Responsibility (Scotland) Bill: Stage 1

**The Convener (Ruth Maguire):** Good morning everyone, and welcome to the 25th meeting in 2018 of the Equalities and Human Rights Committee. Please ensure that all electronic devices are in silent mode.

Our main item of business is our final evidence session on the Age of Criminal Responsibility (Scotland) Bill at stage 1. I welcome Maree Todd, the Minister for Children and Young People; Paul Beaton, who is the bill team leader; Tom McNamara, who is head of youth justice and children's hearings; and Liz Blair, who is senior principal legal officer. They are all from the Scottish Government.

I invite the minister to make an opening statement.

**The Minister for Children and Young People (Maree Todd):** Good morning, convener, and thank you for inviting me to give evidence on the general principles of the bill.

Throughout my life, I have believed that how we treat and view children says much about who we are as a nation and a society. Children deserve to be valued, loved, cared for and nurtured, and we owe it to them and to their families to make sure that they hear that message loud and clear. Above all, we must make sure that our most vulnerable and disadvantaged children and young people hear that message and see it in action.

That is why the evidence that we have heard from James Docherty of the violence reduction unit and Lynzy Hanvidge of Who Cares? Scotland matters so much. Their honest and moving accounts of their experiences serve as stark reminders to us of what is at stake for young people who come into contact with care and justice agencies, and why we must work together to change that experience for the better.

As Minister for Children and Young People, I feel hugely privileged to be leading and guiding the bill to raise the age of criminal responsibility through Parliament. The fundamental premise that lies at the heart of the bill should not be overlooked, and I ask the committee to consider

the change as just one part of the Government's work in and journey towards bringing a rights-focused approach into all areas of government policy relating to children, especially when it comes to the children who are most affected by early trauma and adversity.

I know that some on this committee, in Parliament and in external organisations think that this change is much needed and long overdue, and I understand that some feel that we are not going far enough and that the age should be raised further. I am keen to hear their views, but I am clear that, in my view, the age to which we propose raising criminal responsibility is the right one. It is supported by the majority of respondents to our consultation and in the written evidence received by the committee. It is the age at which there is shared professional and public confidence in our proposals.

We have not arrived at the measures in the bill on our own; we have taken a collaborative approach to the work. Many of the individuals and organisations that the committee has heard from were members of the 2016 advisory group. Many continue to contribute to the working groups that have begun the detailed planning for the implementation of the bill, if it is passed.

Throughout the development of the bill, we have made and are continuing to make significant efforts to seek the views of those who will be most affected, especially children and young people. Informed by thorough and on-going engagement and consultation, the bill represents a balanced, thoughtful and ambitious reform package for Scotland.

The reforms in the bill need to be considered within the wider unique context of our taking a child-centred approach to addressing the needs of children and young people. Our distinct children's hearings system plays a critical role in addressing and responding to children's behaviour. It provides a flexible, child-centred and welfare-based framework for exploring and addressing the harmful behaviours that some children and young people engage in. It is where decisions are taken to safeguard and promote the child's welfare. The system focuses on the needs of children, whether they are perpetrators or victims with broader needs. Many children are both those things, and it is important for us to bear in mind our unique children's hearings system when we compare what we are doing here in Scotland with what happens in other countries.

The bill is a strong statement that, no matter what a child has done while they are under the age of 12, it is society's ethical duty to treat them first as children and to acknowledge that rarely does a child with no adverse childhood

experiences or challenging circumstances engage in harmful behaviour.

We are also clear that safeguards are required. There will be a small number of cases that constitute really serious harmful behaviour. The bill provides that in those very rare situations, where it is necessary to use the powers, safeguarding and promoting the wellbeing of the child has to remain a primary focus for all those involved when setting out the steps that should be followed.

We also recognise and appreciate the need to ensure that those exposed to harmful behaviour by young children continue to be properly supported. The experiences and perspectives of all victims require serious consideration and an effective response to help them to address the trauma that they may have endured.

We will ensure that appropriate information and support is available to all those children and adults who need it. In that respect, we have heard a range of views about what might be appropriate in the bill and whether there are any omissions from it. I undertake to continue to listen, to consider all the evidence and, where appropriate, to lodge amendments.

I will conclude on these fundamental points: every child deserves equal treatment under the law and all children deserve to be treated in law as we would want to be treated. As a Government and a Parliament, it is our duty to put in place the right laws and the right practice to enable our children to flourish and to ensure that we are getting it right for every child. The principles of the Age of Criminal Responsibility (Scotland) Bill will achieve that. I hope that the committee agrees.

I welcome the thoughtful approach that the committee has taken and I thank everyone who has provided written or oral evidence. My officials and I are happy to answer questions or provide more details today and as the bill progresses.

**The Convener:** Thank you, minister. We have a lot to get through this morning, so we will move straight to questions.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I remind the committee of my entry in the register of interests: I am a former convener of the Scottish Alliance for Children's Rights. Before we get into the detail of the bill, I am keen to understand the landscape in which it is set. In her programme for government speech, the First Minister announced the Government's intention to incorporate the principles of the United Nations Convention on the Rights of the Child. Many of those rights are contained in the bill.

Incorporation is a specific idea and the language matters here. The international test of

incorporation is that if the rights afforded to children by the 42 articles of the convention are encroached upon, the children will have access to justice and judicial remedy. That is relevant to the bill. Will that be the case when you achieve your goal of incorporating the principles?

**Maree Todd:** Yes, I believe so.

**Alex Cole-Hamilton:** Great.

**Mary Fee (West Scotland) (Lab):** I want to focus on the age in the bill, which is 12. I listened to your opening comments with interest, minister. You talked about how we treat and view children saying much about who we are, and said that we should love and nurture them. You said that we should ensure that vulnerable and disadvantaged children hear that message and that we should have a rights-focused approach. You also said that the bill is ambitious.

The UNCRC recommends a minimum age of 12 and the bill would move the age to the minimum. Why do you think that that is ambitious?

**Maree Todd:** We recognise that there are people who passionately believe that the age of criminal responsibility should be higher than 12 and I understand those arguments.

I understand that the proposal to raise the age of criminal responsibility was first made at the very first cabinet meeting after devolution. It was the current Government and Administration that raised the age of criminal prosecution and that is proposing to raise the age of criminal responsibility. The length of time that it has taken probably illustrates the lack of consensus across the country for that move. However, we are now there and we have worked collaboratively with many groups across the country to achieve that.

We believe that changing the age to 12 is the right choice for Scotland at this time. Twelve marks a significant transition from childhood to adolescence and it is an age that already has significance in Scots law. It is the age at which children can make a will or veto their adoption. They are considered to have sufficient understanding to express views on matters such as future arrangements for their care, to form a view to express at a children's hearing, and to receive hearings reports.

When we are talking about the children's hearings system, the importance of that unique system cannot be overstated. It provides a flexible and welfare-based framework for dealing with children who engage in harmful behaviour.

The age of criminal responsibility is therefore part of a much wider framework that takes account of the age and stage that children are at. When we are changing the age, we have to be confident that our professionals share an understanding of what

works and what to do when things go wrong, and that our systems can respond appropriately.

Children and families have to know that serious harmful behaviour will be dealt with seriously when necessary but, for the child, that should not be a criminalising experience. Young people have to be able to leave behind the behaviour that was associated with their youth—with their lack of maturity. To that end, it is important to see the Age of Criminal Responsibility (Scotland) Bill acting along with and in conjunction with the Management of Offenders (Scotland) Bill and the protection of vulnerable groups review, as part of a much bigger picture.

The final thing that I ask you to note is that 12 is the age that commands confidence and extremely strong support. When we consulted in 2016, 88 per cent of respondents supported raising the age of criminal responsibility to the age of 12. When the committee asked for oral and written evidence, 63 per cent of respondents supported raising the age of criminal responsibility to the age of 12. It is vital, in this situation, to build and sustain public and professional confidence. Very careful consideration has gone into choosing the age of 12.

**Mary Fee:** If we move to the age of 12, we will be one of only four countries in Europe that have an age of 12—one of only four countries. Again, I make the point that we will sit on the floor of what the UNCRC recommends. I come back to my original question about the ambition of moving the age to 12. To be ambitious, you would move the age more. Did you consider raising the age higher than 12?

**Maree Todd:** We have considered it, absolutely.

**Mary Fee:** What age did you consider moving it to?

**Maree Todd:** We considered all ages and we have settled on the age of 12. I reiterate that that is the age for which there is strong support.

When you look at other countries, it is clear that you cannot make direct comparisons between countries because the headline age does not capture the nuance. The age means different things in different countries. In Scotland, beyond the age of 12, the vast majority of children will continue to be dealt with by the children's hearings system and not by the criminal justice system. That is vital to understand. Cultural context is also important. We will have the highest age of criminal responsibility within the United Kingdom.

For example, Luxembourg has a headline age of 18, but there are real idiosyncrasies in that and I urge you, if you are interested, to look at the idiosyncrasies in the different countries. Children who are under 16 in Luxembourg, although they

nominally have a criminal age of responsibility of 18, have to be dealt with in a youth court and the youth court can impose penal measures, including deprivation of liberty and solitary confinement for up to 10 days. There is no age limit on that. I therefore do not think that it is useful to look just at the headline age.

**Mary Fee:** This is my final question, convener, and then others can come in.

Do you have any proposals to review and increase the age?

**Maree Todd:** Certainly, the UNCRC advises us to keep further reform in this area on the agenda and we definitely will. Future moves have to follow the evidence. We would need to be sure that the move to age 12 had worked well. The public would have to have confidence in what we are doing.

I am open minded about the proposal. I am very interested in hearing the committee's views on what would be a reasonable length of time for letting the system bed in and be tested and what we might need to monitor in the interim period so that we can have confidence about moving from the age of 12.

09:15

**Oliver Mundell (Dumfriesshire) (Con):** It has taken 70 years for this issue to be looked at again. Do you not accept, as a number of witnesses have, that once this decision is made, that could be it for another 70 years?

**Maree Todd:** No. You just have to look at this Government's record to see the progress that has been made on this whole area. This is one aspect of a much bigger picture.

**Oliver Mundell:** If you think that the bill is inadequate and not progressive enough, why are you not bringing forward something more progressive now, instead of risking the possibility of having to wait another 70 years for change?

**Maree Todd:** It is extremely rare for a child under 12 to engage in seriously harmful behaviour, but it happens, and the public and all the people who work in the justice system must have confidence in our being able to respond appropriately to such extremely rare situations.

**Oliver Mundell:** But exactly the same point could be made about a child of 13, 14, 15 or 16.

**Maree Todd:** Twelve is the age at which we have confidence that we are able to do this. The numbers of children who engage in harmful behaviour and therefore come into contact with the system are much smaller below the age of 12 than above. That is one of the reasons why we have confidence in this proposal—we are able to look at the matter very carefully.

I do not believe that this is a once-in-a-lifetime opportunity. As you have seen, we raised the age of criminal prosecution some time ago, and we have taken our time to be absolutely confident that the systems are delivering as we hoped. We are now confident about taking the next step of raising the age of criminal responsibility.

**Oliver Mundell:** I realise that you might be more confident than perhaps I am about how much time the Government has to make these changes, but are you not worried that the Children and Young People's Commissioner Scotland is confused about why you have chosen 12 as the age? He said:

"the question should not be how to justify raising the age from eight to 12, but how we justify treating children under 18 in a criminal manner".—[*Official Report, Equalities and Human Rights Committee*, 27 September 2018; c 23.]

**Maree Todd:** I absolutely understand why people passionately believe that the age should be different; indeed, I said so in response to Mary Fee's very first question. It is absolutely appropriate for the children's commissioner to make those comments; by campaigning in the way that he is, he is carrying out his role appropriately as children's commissioner.

**Oliver Mundell:** But you think that he is wrong on this issue.

**Maree Todd:** We have built consensus around this age—

**Oliver Mundell:** Is he right or wrong?

**The Convener:** Mr Mundell, please let the minister answer your question.

**Maree Todd:** I have not done this work on my own; it builds on a great deal of work that has been carried out from 2015 onwards. Twelve is the age that commands majority support and which we are confident is correct, and I am absolutely sure that it is the right step to take at this time.

**Oliver Mundell:** Thank you.

**The Convener:** A couple of members have supplementaries on this matter.

**Alex Cole-Hamilton:** In your opening remarks, minister, you mentioned Lynzy Hanvidge's very powerful testimony, which I think everyone on the committee found compelling. She was 13 when she was taken into police custody because of her reaction to being taken into care, but the fact is that there is nothing in the bill that would have changed those circumstances.

You have mentioned the vast weight of consultation and evidence showing that the public and stakeholders support increasing the age to 12. Is that because the question that you asked was, "Do you agree that the age should be raised to

12?", or did they offer the view, "We think that it should go further than that"?

**Maree Todd:** Some did. In the evidence that you collected, about 63 per cent of people said that they agreed with the age being raised to 12, but many saw that as a first step.

I found it harrowing and heartbreaking to listen to the evidence that you took from Lynzy Hanvidge. That should not have happened back then, but her situation is not the type of situation that we are talking about at the moment. It was heartbreaking for me, as Minister for Children and Young People, to listen to the evidence of somebody who was taken into the care of the state and spent their first night in care in a prison cell. That is appalling. That situation should not have arisen then and should not arise now. However, that is not what we are discussing here; we are talking about serious, harmful behaviour and not about taking children into care.

**Alex Cole-Hamilton:** I will pick this up in my later line of questioning. Does the bill not represent a perfect opportunity to create parameters in which what happened to Lynzy Hanvidge can never happen again to a 13-year-old?

**Maree Todd:** There are other opportunities to create such parameters. Perhaps one of my officials would like to talk about the bigger picture.

**Tom McNamara (Scottish Government):** On the question about Lynzy's experience, my understanding is that the focus of the current practice guidance review on joint investigative interviews directly contemplates the 12-to-18 cohort. Alongside that, it recognises that there are few material distinctions between, for example, an 11-and-a-half-year-old and a 12-and-a-half-year-old. We want to build a continuum of experience for children and young people that is appropriate to their age and their increasing maturity.

As the minister outlined in her remarks, the bill should be seen in the context of a wider approach to children under 12, in particular. It also connects to a wider set of efforts that relate to young people aged 12 to 18, for example, in relation to the protection of vulnerable groups review. We want to encourage a further dialogue on how the state should respond to harmful behaviour and recognise a sliding scale of maturity and experience.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good morning, minister and panel.

I disagree that just because it took us 70 years to get to this point, it will take us another 70 years to get to another point. If we go for the age of 12 just now and the bill is passed, what would be a good time for a review period? I am not talking



about post-legislative scrutiny, as that will be done anyway. We could put in a section, if that is appropriate, saying that we will go back and look at the legislation and see what positive effect it has had. We could perhaps then look at revisiting the age and—not automatically, but if it is appropriate—raise the age slightly higher. What should that time period look like?

**Maree Todd:** I am very open minded about that approach. I urge the committee to consider what might be an appropriate length of time for us to test that the new systems are in place and working robustly and have confidence that that has been a successful step and that we are ready to take the next step.

I also ask you to consider what we need to monitor and what evidence we need to gather so that we can have confidence to consider a further step.

**Tom McNamara:** I will briefly add to that. In outline planning terms, if the bill is passed, the hope is to have most of the scheme up and running towards the end of 2019. We have to think about what would be a sensible period of time after that to have a critical mass of lived experience, data and evidence, as happened with the change to the prosecution age.

In the implementation group arrangements that we have set up in parallel with and in support of the bill processes, there is a hard science aspect that relates to the challenges that Mary Fee posed to the minister around the 12-to-14 and 14-to-16 cohorts. What is the range and severity of the offence referrals? What changes might we see as a consequence of the bill?

We would also have to consider the perspective and lived experience of the victims. We would want to gather metrics about the impact on the confidence of people who are directly affected by children's behaviour, such as their own families. We would need a more rounded picture so that we could come back to Parliament with a fuller perspective on that experience.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I should probably declare an interest, as I am a social worker registered with the Scottish Social Services Council. Good morning, minister and panel.

To follow on from the last line of questioning, it appears from the minister's evidence today that a major factor for not raising the age beyond 12 is public opinion. Like the minister and others, I would initially have been keen to have an older age, but I am convinced by the evidence about where the public sits on the issue. What steps will the minister take to shift the culture in Scotland to an approach that is centred on child welfare, as opposed to a more punitive approach? I am not

talking about children's hearings; I know from experience that they take a child-centred approach. I am talking about perception. If we review this after the bill is passed, how will we take the public with us?

**Maree Todd:** You have to take into account the fact that, for a long time in Scotland, we have taken the Kilbrandon approach to the children's hearings system and looked at children's needs, not their deeds. In many ways, we in Scotland have been progressive and ahead of our time. The past 10 years have seen a real gear shift—a step change—in the level of progressiveness and in how we consider children with harmful behaviour and try to help them through it.

As a result of leadership on the issue, we have seen a change in the population, but there is no getting away from the fact that this harmful behaviour is sometimes very serious, with very serious consequences for its victims. We, and they, have to be confident that we are moving at the right pace for them and that such behaviour will still be responded to appropriately.

**Fulton MacGregor:** It is obviously very encouraging that the vast majority of respondents regard an increase to the age of 12 as appropriate.

My main line of questioning is about disclosure and the PVG scheme. We have heard quite a lot of evidence from witnesses who are concerned about the current system in which children can present at hearings on offence grounds and, in order to get the hearing over and done with quickly or avoid a stressful situation, they can accept offence grounds that may have an impact on them in later life. How will the bill help with that? Will there be any changes in that system?

**Maree Todd:** One of the working groups is working on the information that is given to children. They have to have good-quality information at the time they are making decisions, because these incidents can have a lifelong consequence. We are clear that children should be able to move beyond the behaviour that they had that was related to immaturity and youth.

One of my officials might want to say a bit more about the bigger-picture work that we are doing.

09:30

**Tom McNamara:** As the minister outlined, with regard to disclosure matters, the bill restricts itself to ancillary matters that flow from the change to 12, but we recognise that there is a legitimate expectation that the Government and the connected agencies will address themselves to the experiences of older teenagers. For example, the bill attends directly to the removal of the

offence and the conviction label for under 12s, but the Management of Offenders (Scotland) Bill could have far-reaching implications for the obligation on the child or young person to self-disclose at children's hearings, which would reduce the journey to zero, effectively, for children's hearings appearances. Further, one of the proposals in the PVG review, which will be discussed more in the coming weeks, is to extend the role of the independent reviewer to all children under the age of 18; the reviewer would take an individualised, risk-led approach to how the young person had progressed since the incident that was causing concern and would respond to that at the time rather than responding to the concern or the conviction as if it had just happened the previous day.

If you connect those three vehicles, as it were, you can see that we are building towards a simplified and more cogent approach to all young people under 18.

**Paul Beaton (Scottish Government):** The collaborative approach has been one of the great supportive starting points for this work. In accepting the complexities and the challenges, culturally, systematically and in terms of the public awareness about, consciousness of and support for this kind of work, I have been reflecting on the evidence from Victim Support Scotland that you received in a previous meeting in respect of the need to bring victims, children, families and members of the public to an improved state of awareness of the children's hearings system, youth justice and the points around disclosure, which you quite rightly mention.

We can be reassured that the collaborative approach that was set up by the advisory group has continued. We have specific working groups that consider issues relating to victims with regard to disclosure, as Tom McNamara outlined, and investigations, which have also been the subject of some interesting discussion. Each of those areas involves professional organisations that are closely connected to and responsible for that work, as well as those that represent people who work with children. Each of those groups includes in its work plan the need to develop public-facing and age-appropriate material, depending on where the work is directed, with the broad aim of telling that story again and ensuring that people understand what the hearings system is for and how we respond when things go wrong for children.

The idea of understanding the issue of responsibility is a broad one. These systems need to be ready and they need to be engaged, and people need to have confidence in them. If the explanation is not there, we need to improve on

that. That is certainly something that is moving forward now.

**The Convener:** We note that the functions of the independent reviewer might be modified. Can you say a bit more about what factors were taken into consideration in that regard?

**Tom McNamara:** Explicit in the title is the expectation that the independent reviewer would operate with a large degree of autonomy, professionally and in terms of practice. There is provision in the bill for ministers to, at least initially, provide guidance to the independent reviewer, because, obviously, there would have to be a first one.

In keeping with the approach that we have taken to other challenges relating to the bill, we are working to ensure that we hear the perspective of our partners, including not only the police and victims but children's rights organisations and others—I am aware that Disclosure Scotland has raised issues—in order to build a critical mass around what the functions would be.

Essentially, the independent reviewer would be empowered to take information from the children's reporter, the local authority, the courts and anybody else that they deemed appropriate in order to form an accurate picture of the individual young person and how they had progressed or otherwise in the time since the incident that caused concern.

I guess that we would take a degree of inspiration from the independent monitor function in Northern Ireland and other areas, and seek to adapt that model and align it with the eternal principles that we have in Scotland. That would not be done behind closed doors—it would be very much a broad-based effort with the entire care and justice communities.

**The Convener:** That is helpful.

**Fulton MacGregor:** I have one more question. Is the minister able to comment on trends over time? I am aware of those trends from my personal experience. When I first started in social work in 2004 and began going to children's hearings, offence grounds were extremely common. Over the years, they seemed to become less and less common, and by about 2009-10 they appeared to have reduced dramatically. Is the minister able to comment on the trends over time in children appearing on offence grounds and in the use of what is disclosed?

**Maree Todd:** That is a really important point. Over a number of years, we have taken a very different approach to children and young people—the whole-system approach—which embodies the GIRFEC principles and is an example of a preventative multi-agency approach. It is really

about improving outcomes. There have been fewer children going into the system and being seen at children's hearings than there were 10 years ago. The children and young people who arrive at hearings on offence grounds are generally at the more complex end, and they are the children who need our help most. We have seen that trend reflected in disclosure—I have the figures here. From 2014 to 2017—the last three years for which we have data—there were six convictions accrued when the applicant was under 12, which were disclosed in 2017. That figure is down 92 per cent from 2014, when there were 79.

When we look at the bigger picture, it is important to remember that we are talking about decriminalisation of children under 12 so that their contact with the justice system is not traumatic for them. The bigger picture is that we do not want children and young people to suffer the consequences of their behaviour right through adulthood.

For the older age group, there were 174 convictions accrued when the applicant was aged between 12 and 15, which were disclosed in 2017. That figure is down by 79 per cent since 2014, when there were 814. That gives a sense of a much bigger picture of a more progressive needs-based approach.

**Fulton MacGregor:** Thank you. That is very helpful.

**Alex Cole-Hamilton:** I will move on to police powers, but before I do so I would like to talk about the bill's retrospective qualities. It is clear that the bill will sweep up those young people under 12 who received a criminal record before it came into force. However, the committee has just passed a piece of legislation on retrospective offences: the Historical Sexual Offences (Pardons and Disregards) (Scotland) Bill. It felt like there was more to that bill in terms of ensuring that disclosures would never be affected by offences that are now legal. We are effectively saying that, if someone committed an offence before they were 12, it should not count. What comfort, therefore, can you give to those young people that they will not have their offence following them as relevant information on disclosures in the future?

**Maree Todd:** There is a key difference between the situation that we are discussing today and the situation with pardons and disregards for historical sexual offences. Those offences are now no longer offences, whereas this bill provides that children under 12 cannot commit an offence. It is about the age of the child rather than the incident. We are comfortable that what we are doing is the right thing to do. There is a significant difference between the two situations.

**Alex Cole-Hamilton:** The catalyst for introducing the bill was that, although the Scottish Government increased the minimum age for criminal prosecution to 12 some time ago, young people were still able to carry for the rest of their lives a criminal record for behaviour from before they were 12, which would impede their future chances.

Under the bill, other relevant information could still disclose something that a person did when they were eight, which would impede their future chances. If we agree that young people do not have the mental capacity to be held responsible for such actions, how is such disclosure fair or justified?

**Maree Todd:** The bill creates tight safeguards. The presumption is that information will not be released; it will be released only when not releasing it would really risk public safety. I am comfortable that the circumstances will be extremely rare in which anything that someone did when they were under 12 goes into other relevant information.

**Alex Cole-Hamilton:** Where will the test be set? Who will determine the bar for the reasonable assessment of the risk to public safety from not releasing the information?

**Liz Blair (Scottish Government):** The function will be given to the independent reviewer. Under the current system, the chief constable assesses the inclusion of other relevant information on a disclosure certificate, and the chief constable will still require to assess whether the information is relevant to the disclosure certificate's purpose and whether it ought to be disclosed. That is the current statutory test.

In addition, if the chief constable considers that there is relevant information that ought to be disclosed about behaviour when someone was under 12, that information will go to the independent reviewer, who will assess it and have wider access to information, as the bill gives them the authority to request information from a wider group of people than is available to the chief constable. The independent reviewer will also have the benefit of guidance on how to apply the statutory test.

**Tom McNamara:** Would it help to explain the experience of the ORI scheme's operation? I understand that, under the application of its quality assurance framework, Police Scotland has disclosed no other relevant information about behaviour when someone was under 12. That is because Police Scotland is particularly mindful of the maturation process in adolescence.

Another distinction from the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 relates to the mindful working through of the

perspectives on and experiences of how we should look back on childhood behaviour that was dealt with as offending behaviour. We are giving close attention to people's life chances and disclosure issues—as Mr Cole-Hamilton said, we do not want behaviour to follow children and young people into adulthood—but we are also mindful that we must not minimise or disregard the harm that was done to victims, many of whom would have been children when the behaviour occurred. The evidence is that harmful behaviour by children often has an impact on other children. We do not want the stigma to follow young people into adulthood, but we also do not want to signal to victims and other observers that such behaviour is no longer of concern when it is still of concern.

**The Convener:** You said that no other relevant information has been disclosed. For the committee's benefit, will you say in what scenario it would be usual or deemed to be in the public interest to disclose such information?

09:45

**Tom McNamara:** I guess that other relevant information would include contextual material about concerns that had been raised about an individual or reports that had been made about them, which might or might not have resulted in proceedings, a finding at a children's hearing or a conviction. The police very carefully apply their own quality assurance framework, and it is very much a statutory function of the independent chief constable to decide what would be most relevant for a third party—most likely, a prospective employer—to be aware of. Moreover, that would apply only to higher-level disclosures.

The other aspect that they will be very mindful of is the role being applied for by a young person—now older person—who has this conduct in their background. For example, are they looking to work with particularly vulnerable groups? What might not be relevant to other more common-or-garden roles might become very relevant if someone was looking to work with, say, vulnerable people. We will look at whether we can reach out to Police Scotland and provide the committee with some exemplars about what might be included.

**Alex Cole-Hamilton:** On section 23, which relates to the powers of the police—and, in particular, the power to take children under 12 to a place of safety—I and other colleagues have had, since the bill's publication, an anxiety that the only place of safety that is mentioned in the bill is the least desirable one: a police station. Anyone who has been to a police station on a Friday or Saturday night will know that it is pretty far from being a place of safety.

The matter relates to Lynzy Hanvidge's testimony to the committee: that was the default position that people took in her case, and she actually ended up in the cells. When we questioned Police Scotland about the matter, its representatives said that children are occasionally housed in cells for want of somewhere else to take them. Does the minister agree that we need to amend section 23 to identify places of safety that should be tried first, and that the section perhaps presents an opportunity, with regard to use of cells and the police estate, for us to create an additional provision for children who are over the age of 12 but who are not yet 18?

**Maree Todd:** The provisions allow exceptional responses to be made to exceptional situations. Such situations will not be routine. The place-of-safety provision will be used only if there is an immediate risk of harm or of further harm, and only for the shortest possible period.

We are talking about a genuine place of safety. This is not about taking a child away for questioning or interrogation, but about providing an emergency space in which they can cool off. In most cases, the place of safety will be the child's home, which is the very obvious place for children to go to. However, it could also be a friend's home, a relative's home or even a children's home. Those are regularly used as places of safety in other situations.

I understand Alex Cole-Hamilton's concerns about a police station being used as a last resort, but as a Highlands and Islands MSP and, therefore, as someone who represents an extremely vast rural area, I can conceive of situations in which something might happen out of hours and there is no other place of safety to which a child could be removed without taking them hundreds of miles away, which would also be traumatic. I therefore think that the provision needs to be in the bill, as a last resort. As I have said, it will not be used routinely. The first place of safety will be the child's home.

**Alex Cole-Hamilton:** Thank you for that, minister. However, although I understand the need to cover the possibility of having to take a child to a police station as the very last resort in the sort of situation that you described, my anxiety arises from the risk that, if a police station is the only place of safety that is mentioned in the bill, their use will become the default position.

Moreover, because the bill contains no detail about the conditions in which the young person should be held when they are taken as a last resort to a place of safety, you run the risk of their spending a night in the cells. That already happens—we heard as much from Lynzy Hanvidge and Police Scotland. Is amendment to the bill required, first to delineate, as in other

legislation, various places of safety to which children might be taken first, and secondly to make clear the operational parameters of what happens when a child comes to a police station, the conditions in which they should be held and what needs to be done?

**Maree Todd:** Liz Blair will respond to that question.

**Liz Blair:** On the definition, it might assist if I say that section 23(8) defines “place of safety” by reference to a provision in the Children’s Hearings (Scotland) Act 2011. As you know, it is common to cross-refer in legislation. There are six places listed in the Children’s Hearings (Scotland) Act 2011, one of which is a police station. On whether there is a need for those also to be included in the bill, I would say that in legislative terms, they are already there.

On the question about older children, it might be worth bearing in mind what the Children’s Hearings (Scotland) Act 2011 says: section 189 places a restriction on the use of police stations as a place of safety that is similar to the restriction in section 23 of the bill. It is clear that for children under 12, who will be dealt with under the bill, and for other children who will be dealt with by the children’s hearings system, the restriction on the use of police stations that has been in force since June 2013 is in place.

**Alex Cole-Hamilton:** I worked very closely with Government officials on the 2011 act; I was referring to its list of other places of safety that children might be taken to. However, my concern is with the Age of Criminal Responsibility (Scotland) Bill.

I do not agree with overlegislating, so if there is a usual way of handling such things, that is fine. However, neither the bill nor the Children’s Hearings (Scotland) Act 2011 contains clear statutory parameters on use of the cell estate in police stations. I go back to Lynzy Hanvidge and the fact that, at the age of 13, Scotland did her a profound disservice, yet nothing in the current bill would prevent the same thing from happening. We need to act on that and the bill needs to contain a provision to make it clear that no child should ever be put in a cell, because that is a direct infringement of their rights under article 37 of the United Nations Convention on the Rights of the Child. I intend to lodge an amendment to that effect.

**The Convener:** I want to jump in on that, briefly. Minister, you mentioned that it is rare for children to be taken to a place of safety. Can you provide the committee with numbers on that and an indication of the circumstances in which a child would be taken to a place of safety? Of that number, how many would go to a police station?

**Maree Todd:** It is difficult to be precise about the numbers. We are talking about a very small number of children each year who would be covered by the bill—a handful—and not all of them would need to be taken to a place of safety, because they would not meet the test of there being an immediate risk of harm.

We thought hard about the circumstances. As I said, I expect that the place of safety would be the child’s home in almost all cases. That is what most of us would expect.

We have thought hard about circumstances in which the home might not be a safe place to take the child, such as in the very early stages after something terrible has happened. I give the example of a child having died as a result of someone’s harmful behaviour, but it is not clear whose behaviour is responsible. If another child in the family was being implicated by the parents, but the police were not sure whether that was true and were considering whether the parents might be responsible, that home would clearly not be a safe place for the child. The child would have to be removed from danger to a place of safety and further arrangements would need to be made for that child as rapidly as possible, while the facts of the case were established.

**The Convener:** The overriding purpose of the bill is that we do not criminalise children, but is there a risk that the provisions on the place of safety rub against that ethos? How would we let children and their families know that the child who was being taken to a police station was not being criminalised?

**Maree Todd:** It is absolutely as a last resort that a police station is included as a place of safety. We are talking about a handful of cases in a year, but I can envisage a situation in which a child would have to be transported hundreds of miles to get to a suitable place of safety, which would also be a traumatic experience for them. It is useful to have that provision there, but I cannot envisage that it would be used except in the most rare of circumstances. It is an exceptional response to an exceptional situation.

**The Convener:** Thank you for that example.

**Alex Cole-Hamilton:** My final line of questioning on this section concerns the investigative interview sections of the bill. Section 38 affords children the

“Right not to answer questions”.

I picked up a feeling from some of the witnesses that we interviewed that that does not meet the test of our obligations under article 40 of the UNCRC, and that the rights of adult suspects are more robust—the right to silence being different from the right not to answer questions. “Tell me

what happened” is an instruction, not a question, and nothing about the bill would preclude an interviewing officer from giving that instruction. Do we need to improve that?

**Maree Todd:** I put that question in the context that an interview is not going to happen in every situation. All the provisions in the bill are exceptional circumstances for exceptional situations. In order for an interview to happen, there has to be a reasonable ground to suspect that the child was responsible—it has to be necessary to interview the child. To properly investigate the child’s behaviour, the police will have to apply to a sheriff. There are a number of safeguards in place around the interview, one of which is that the child will have a right to have a supporter, who will be both legally qualified and an independent advocacy worker. We looked very closely at what kind of person we thought should be there to support the child. In order to protect the child’s rights, we think that that person needs to be legally qualified.

**The Convener:** Gail Ross wants to pick up on the issue of advocacy.

**Gail Ross:** I am glad that you touched on that, minister, because when we took evidence about the proposal that the advocacy workers must be “legally qualified”, there was some confusion as to why that would be and what it means. The Law Society of Scotland said,

“We would question how these rights will operate when considering the rights to legal advice provided under the equivalent criminal proceedings”

and the Scottish Independent Advocacy Alliance said,

“It is vital that independent advocacy is not seen, or used as a substitute for legal representation or the Appropriate Adult scheme.”

Can you explain to the committee why advocacy workers will require to be legally qualified?

**Maree Todd:** The provision is to provide robust protection of the child’s rights throughout the interview process, which is why we think that the advocacy workers need to be legally qualified. What the child says and does during that interview may well have life-long consequences for them, so it is really important that their rights are protected in that situation. Equally important is that the child receives a proportionate and child-centred response, so advocacy is as important as the legal qualification. We think that the bill provides protection on both fronts—robust protection of children’s rights and a child-centred voice for the individual. Would my officials like to add anything?

**Tom McNamara:** The manner in which Gail Ross introduced the challenge was really helpful. The Law Society evidence referred to the

equivalent criminal proceedings, but the entire premise of the proposal in the bill is that it signally would not be equivalent to criminal proceedings. We are talking about drawing on and then supporting an existing cohort of legally qualified solicitors who are already operating on the children’s legal assistance scheme, so they have already been required to demonstrate the capacity for child-centred practice.

There is a quality-assurance mechanism in place in relation to that, and those solicitors also already have the wider obligations of—and the assurance and oversight that are offered by—professional solicitor status. However, they would also be able to operate in a very child-focused and child-centred way.

10:00

The approach should be about having appropriately skilled individuals who have a robust set of quality assurance mechanisms behind them, but it should not feel as though it is a proxy for a duty solicitor scheme. It should feel very much as though the person has such expertise and skills to call on, but is able to deploy them in an appropriate and accessible way—for both the child and the supporter—and also to hold the other adult actors in the room to account about the focus of the interview. It should be about finding out about not only the circumstances of the concerning behaviour, but about the underlying needs and risks that have played into it.

Let us remind ourselves that while there might be a right to remain silent, it is probably better for people to come forward and talk about their experiences and concerns, and what has led to the incident or series of incidents, so that we can put the right support in place around them. It should not be about their being in trouble.

**Gail Ross:** I want to ask about the numbers of people who are already undertaking the role—legally qualified solicitors with a child-centred focus. Are we going to upskill the advocacy support workers whom we currently use but who do not have legal qualifications, and ensure that they go through training to become legally qualified, or is the current cohort big enough?

**Tom McNamara:** There are a number of potential cohorts on which we could draw. As I have said, the children’s legal assistance scheme has 700 solicitors on it. The national safeguarders panel, which already operates in children’s hearings, has about 160 members, of whom about 40 per cent are legally qualified. I guess that we would be looking to build an environment in which people could access the right learning and development pathways and accrue the right qualifications, skills and knowledge to meet need,

whether for investigative interviews or in conversations with families between or at pre-hearing panels, children's hearings or connected sheriff court proceedings.

The other virtue of the proposal that the minister has set out for the committee is that if we were to draw on children's legal assistance scheme members, that would mean that the same individual could act throughout. In the emergency circumstances that we have been talking about, there would not be the very important and beneficial relationship-based advocacy that we would like to have, because the situation would have arrived very quickly. However, the proposal would mean that the child's relationship with an individual practitioner could continue if matters were to go on to a hearing, and that that practitioner could continue as their legal representative.

**Gail Ross:** Are you comfortable that the amount of £20,600 in the financial memorandum is enough for a fully accessible, legally qualified advocacy service?

**Maree Todd:** Yes.

**Tom McNamara:** Yes. We are working through the aspects of learning and development, quality assurance and oversight that you mentioned, with the Scottish Independent Advocacy Alliance, the Law Society of Scotland, Clan Childlaw and the wider advocacy sector, all of which have agreed to help us with the detail that will emerge over the coming months.

**Paul Beaton:** I add that it is also important to emphasise that this is about to be the subject of consultation. Gail Ross rightly brought up a question on the rights that attach. The approach has been about offering another tool for the box, and another opportunity to get the right people in the room at the moment when a crisis has been responded to, or there has been an emergency but there is now an opportunity for a different sort of conversation. It is about ensuring that the right specialist support is accessed by the child and that the best people to help them through their difficulty and address their needs are there.

What legal qualifications look like in that context is about to be the subject of consultation. Although there might well be consequences, the child will no longer be a criminal suspect. The authenticity of the change in the age of criminal responsibility must be reflected by there being a different set of rights attached, responded to and respected. Part of the conversation has been about coming up with the best answer for that. The specialist advocacy role for that narrowly defined set of circumstances can be fulfilled by an existing cohort. We look forward to the consultation to see what the next steps might be.

**Gail Ross:** What form will that consultation take? What is the timescale for it and who will be consulted?

**Paul Beaton:** My colleague can answer that.

**Tom McNamara:** Ministers agreed to the consultation fairly recently, and the plan is for it to go public before Christmas. Although we wanted to delineate the acute rights challenges, notwithstanding the child-centred focus of the investigative interviews conversation we wanted to relate it to section 122 of the Children's Hearings (Scotland) Act 2011 and to wider children's advocacy services, and to invite views on what we would identify as broad areas of commonality around that relationship-based approach.

We also want to identify and invite views on the particular points of difference. We would be consulting on particular aspects of the draft practice model that we have worked on with the advocacy sector, along with the specifics that would flow from the proposals in the bill. We will put that context together to a public consultation later in the year.

**Annie Wells (Glasgow) (Con):** Minister, in your opening remarks you spoke about support for victims. Do you believe that, as the bill stands, it protects the rights and interests of children who have been involved in harmful behaviour as well as the victims of that harmful behaviour?

**Maree Todd:** That is an important question; thank you for asking it.

Victims are at the heart of the bill in a number of ways. We have recognised that the children who are involved in harmful behaviour are often victims of other people's harmful behaviour. They are some of Scotland's most vulnerable citizens, and the way in which we respond to them when they are in crisis can help to turn their lives around. They are undoubtedly victims.

The victims of their behaviour are also at the heart of the bill. When we speak to victims, we hear that the thing that they want most is for nobody else to have to go through what they have gone through.

At the heart of the bill is a progressive aim to turn around the lives of some of the most vulnerable citizens, who have landed in crisis. The aim is for there to be fewer victims in future because of the way in which we respond to their behaviour. Victims are therefore at the heart of the bill and I hope that Annie Wells agrees that they are threaded right through it.

**Annie Wells:** During the committee's evidence session with Victim Support Scotland, we heard some concerns that some of the victims of harmful behaviour were not receiving information about what had happened to the person who caused the

harm. In some circumstances, it helps the person who has been the victim to heal if they know that something has been done and what happened to them has been taken into account. Are we content that the information that is given to victims by the principal reporter is given only when the case is serious, or should we look at what information is shared?

**Maree Todd:** You are right. There is a balance to be struck. It is appropriate for victims to get support and information but there have to be some safeguards, and I think that the bill has struck the appropriate balance on that issue.

We cannot release information in inappropriate circumstances about people who are essentially children. We all agree that the perpetrators are often victims, too. Again, I refer back to our child-centred approach. The principal reporter must take into account the best interests of the child. One of my officials might like to say more about the information issue.

**Tom McNamara:** What the minister said is right. The victim information provisions in the bill are largely about reintroducing the Scottish Children's Reporter Administration victim information service, because the power of the principal reporter to provide information hinged on the offence label, so we had to build that afresh.

If the information and support that are provided are to be meaningful, the provision that was implicit in Annie Wells's question should probably be understood as a backstop, because the information that is provided for in the bill is relatively minimal. That is mainly because of the vulnerability of the children who are thought to be responsible. For the provision to be of most use to victims, it needs to be seen in the context of the wider efforts that are made through the delivery groups. One of the main benefits of developing the bill is that it has enabled the connections between the police, the children's reporter and Victim Support Scotland to be made afresh. It has been recognised that that needs to happen at the point of first contact, regardless of whether that is with the police, a third sector provider or the Scottish Children's Reporter Administration.

The experience of the victim information service, which has been operating since 2003, seems to be that, if possible, the opportunity should be taken to have a conversation with victims, to tell them that the appropriate agencies are giving attention to the issue but there are things going on in the family that are not connected to the incident in question that the victims cannot be told about, which the panel will look at in much more detail. It should be explained that those matters must be paid attention to so that the wider risks can be attended to, and that what the victim and their family can be told will be quite limited, because it

concerns a child. That seems to have been reasonably well understood and reasonably well received. It is a fair and honest reconciliation of the various competing interests in play. There is a real appetite to refocus on that and make sure that the bill provisions are the last chapter in a more meaningful and more regularised process of contact with victims, which provides more tailored information to them about the principles that we are deploying.

**The Convener:** Mary Fee has been waiting patiently to come back in.

**Mary Fee:** I have a couple of follow-up questions. The first is on places of safety, and it follows on from Alex Cole-Hamilton's line of questioning.

As has been explained to us, the bill uses the definition of "place of safety" that is used in the Children's Hearings (Scotland) Act 2011. The policy memorandum lists six places that the 2011 act recommended as places of safety. Why did you choose to include in the bill the example of a police station rather than one of the other examples?

**Maree Todd:** I think that Liz Blair tried to address that point in her earlier response, so I will ask her to answer that.

**Liz Blair:** There are six places listed as places of safety in the definition in the Children's Hearings (Scotland) Act 2011, and there is separate provision that places a restriction on the use of police stations as a place of safety. In effect, the bill is replicating that dual provision. It provides for the six places of safety and it includes a specific restriction on the use of police stations.

**Mary Fee:** I might be being naive or stupid, but a police station is the one place that has been included in the bill as a place of safety. Why did you not include in the bill, for example,

"a residential or other establishment provided by a local authority"?

**Liz Blair:** Because no restriction requires to be imposed on the use of such an establishment. The provision in section 23 is to restrict the use of a police station. There is no need for a similar restriction on the other places of safety, but that specific provision was needed in the bill.

10:15

**Maree Todd:** May I reassure Mary Fee? We believe that that is all captured in the wording; it is simply a drafting convention. If you would prefer to see the full wording in the bill, we would be perfectly comfortable with that.

**Mary Fee:** Okay. Moving on—



**The Convener:** Sorry—I am going to bring in Oliver Mundell, because he did not get to his question.

**Oliver Mundell:** Thank you, convener; it is just a technical point. Has the minister seen the evidence that Professor Sutherland gave last week about issues to do with referral on offence grounds, which, I think, the Law Society of Scotland also highlighted in written evidence? Has she had a chance to reflect on that?

**Maree Todd:** Absolutely. We watched that evidence and discussed it. I will ask my official, Paul Beaton, to respond.

**Paul Beaton:** It was an interesting exchange, which harked back to some of the written evidence. It is important to understand the context and potential consequences that we are looking at. First, the decriminalisation aspect—removing the offence ground—has consequences for standard of proof and so on, so the rights protections that attach are different, as I mentioned. The evidence that you heard reflected some concern about replication. I know from professional experience that we can have confidence that the characteristics of children, young people, victims and witnesses—the factors that are publicly available in the prosecution code for older children and so on—are always taken into account in decision making.

With respect to use of the referral ground, it is current practice that if a piece of offending behaviour is part of a broader need, that can be woven in. There is case law that prohibits the use of a non-offence ground for offence-only behaviour, which is addressed positively in the bill.

The first thing to say is that the offence ground is not actually required in relation to the age-12 limit. The work that has taken place in the advisory group and thereafter has resulted in confidence that any incident of harmful behaviour can be appropriately addressed by taking into account the broader, non-offence grounds, and can be responded to in a child-focused manner.

The provisions in the bill provide the rights-based safeguards, taking into account the change to the standard of proof. It is fair to emphasise that if the child is no longer a criminal suspect they need to be seen in a different context. Replicating criminal procedure is not quite in line with the underlying principle of decriminalisation. It is important, of course, that rights-based safeguards are put in place for all the actors throughout the different stages.

At the moment, the operation of the offence grounds is quite narrowly defined. When we reflect on the evidence, particularly the Police Scotland submission, one can see that the idea of operating the system for an older age group and a review

provision in that regard might need to be looked at again. That would include discussion about whether those grounds would continue to exist. For under-12s, however, I think that we can be confident that there should not be a gap in that regard.

**Oliver Mundell:** I think that Professor Sutherland said that there were talks about creating a new referral ground or a new category of referral ground. Why was that approach ruled out?

**Paul Beaton:** As I said, that was because the approach is not necessary for under-12s. The section 67 grounds under the 2011 act can be used to capture any incidents that occur, particularly ground (m), which relates to a child who presents a risk to others, and ground (n), in which

“the child is beyond the control of a relevant person.”

There is a clear message of reassurance that a new referral ground would not bring additional benefit.

**Oliver Mundell:** I understand what you are saying, but if this is not an issue, why are experts in the field such as Professor Sutherland and the Law Society of Scotland raising concerns about it? Where is their concern coming from?

**Tom McNamara:** It would help to reflect on the broad base of expertise that we drew on in the advisory group. The group included children's rights organisations, representatives from the legal profession and independent academics. In a context where we already have 17 available grounds for referral, including—Paul Beaton referred to them according to their section 67(2) subparagraphs—one that turns on a child's conduct having an adverse effect on other people and another that turns on a child being beyond parental control, our legal analysis and policy consideration and, more important, that broader group of care and justice experts, led us to a position in which we had confidence that there was sufficient capacity in the available grounds to deal with the behaviour of all under-12s.

**Mary Fee:** Minister, in your opening remarks and in your answers to a number of my colleagues' questions, you talked about the very small number of children who commit very serious crimes. Can you say how many children commit serious crimes and what those crimes are?

**Maree Todd:** I certainly can. As I said, we are talking about a very small number of children. On the number of children's hearings referrals to the reporter by age group, in 2017-18, 232 children aged 8 to 11 have been referred—

**Mary Fee:** But are those children committing very serious crimes? There is a range of offences—

**Maree Todd:** I am just going on to that, if you will allow me to finish.

In the 8 to 11 age group, 232 children were referred on offence grounds, 12 children were referred for serious violent or sexual offences and 42 children were referred for weapons offences. Does that answer your question?

**Mary Fee:** That answers that question.

In last week's evidence session, we talked about the needs-based approach and GIRFEC. You have spoken about that, too. You have also spoken about the fact that many of the children and young people who are involved in criminal behaviour or activity come from care-experienced or very disruptive, traumatic backgrounds and that they are victims themselves. A panellist at our session said that we should be asking young children when they are involved in such activity not what they have done but what has been done to them. Will the bill meet that need?

**Maree Todd:** Yes, absolutely. A fundamental aspect of the children's hearings system is that it asks us to look at children's needs, not their deeds, and to shift from asking what they have done to what has happened to them. I assure you that the bill is part of the bigger picture of that approach.

**The Convener:** I thank the minister and her officials for their evidence. We will have a brief suspension to allow a changeover of panels.

10:23

*Meeting suspended.*

10:29

*On resuming—*

## **Draft Budget Scrutiny 2019-20**

**The Convener:** Our second item of business is an evidence session as part of our scrutiny of the 2019-20 draft budget. We have a panel of local authority expert witnesses, and we will look at how equality and human rights approaches can be taken in local government budgeting. I welcome Councillor Jennifer Layden, who is city convener for equalities and human rights at Glasgow City Council, Louise MacKenzie, who is group manager for strategic policy and planning at Glasgow City Council; Rosemary Mackinnon, who is principal officer for equality at Highland Council; Audrey Cameron, who is development officer for equalities at North Lanarkshire Council; and Liz Fergus, who is youth work manager at North Lanarkshire Council. You are all very welcome.

I will start by asking what methods you use in your local authorities to undertake equality impact assessments. Can we hear a bit about what evidence is considered and who is consulted, please? I will go to whoever makes eye contact with me first. Who is ready? Does Audrey Cameron want to come in?

10:30

**Audrey Cameron (North Lanarkshire Council):** Okay. The approach that North Lanarkshire Council took in setting the 2018-19 budget in particular was to consider equalities groups in the proposals for the budget, which were made in August 2017. When the corporate management team and heads of service were considering what the budget proposals would be, a pro forma was developed that asked specific questions about whom the budget would impact on. That included consideration of whether the budget would impact on service users, employees and other services. If that was the case, a follow-up question was asked, to drill down on which specific protected characteristics under the Equality Act 2010 were impacted.

That was a kind of screening process at a very early stage of the budget-setting process, which obviously involved only proposals at that point. That work was used as a basis for later discussions with elected members. I can speak about my own service, which covers education, youth and communities. We took an overview of all the proposals that were being made for our service and looked at the cumulative effect on particular groups. We identified, in relation to the 2018-19 budget in particular, that there was an impact on young people—it is the education, youth and community service, so that was an obvious

group. We decided that we needed to keep an eye on young people who had additional support needs, communication support needs or mental health issues. Those were the kinds of issue that came up in relation to the original proposals.

The proposals then went out to public consultation, which took several forms. There were internet and email consultations and focus groups, and there were 25 articles in the local press. Hard copies were put in local libraries, and we held specific consultation focus groups with our British Sign Language community and with young people. Liz Fergus might be able to speak about the young people—

**The Convener:** I will bring in some of the other local authorities, and then we can get into that.

**Audrey Cameron:** Okay.

**The Convener:** Who else would like to come in?

**Councillor Jennifer Layden (Glasgow City Council):** I am happy to come in. In our budget process, a number of different strands took place simultaneously. I was part of our budget sub-group, along with the treasurer and another colleague, which met directors of services to discuss the budget proposals. That allowed me to ask specifically about equalities aspects.

Some of our budget proposals also went out to public consultation. We held a number of community events and used an online dialogue tool, and we spoke to equalities groups in the city, such as the Glasgow Disability Alliance, to get their feedback on the types of issue with and gaps in our budget and on where we could perhaps make savings.

As part of our meetings, we undertook equality impact assessments for our draft budgets. On budget day for the full council, draft budgets from all the parties were presented and each had an equality impact assessment. We were strong on making sure that consideration was given to equalities through the entire process.

**Louise MacKenzie (Glasgow City Council):** I will follow on from some of the points that Councillor Layden made. Strong political leadership is what is really important in our approach.

As Councillor Layden mentioned, we held a number of community consultation events. We are lucky in Glasgow in that we have a strong and thriving equalities third sector, and a lot of those groups were present at the consultation events, which were held in three different sectors of the city. In addition, we have a Glasgow household survey, which is a panel of 1,000 residents that is weighted to reflect the make-up of the city, so, to reach beyond the consultation events, we

conducted focus groups of people who were drawn from the panel to discuss the budget options and ideas that were coming through.

As Councillor Layden mentioned, equality impact assessment work was done, following a mainstreaming model, by the services that were looking at the budget options. In addition, for the new administration of the council, as well as councillors receiving mandatory equality training to cover the public sector equality duty under the 2010 act, there was a programme of equality impact assessment training, which was carried out by the corporate team. It is a fairly practical session—Councillor Layden will vouch for that. The training has really helped members to understand what they are required to do.

**The Convener:** Thank you—we will move on to training and such things later. We are interested to hear the perspective from Highland Council.

**Rosemary Mackinnon (Highland Council):** There are similarities between our approach and the approaches of Glasgow and North Lanarkshire. We use a pro forma template that asks at an early stage about protected characteristics and the likely impact of proposals, so that issues are identified and highlighted before proposals go forward. If it is identified that a full impact assessment is needed, one is carried out and presented to members.

We have used a range of different forms of engagement over the years. Some of that has been online, and we have worked with local communities in community councils and ward forums. We have carried out consultation with groups that have an interest in equality and access. In particular, we have tried to work with groups of people who find it difficult to use traditional methods of engagement, such as people with learning disabilities, people who are affected by mental health issues and people with visual or hearing impairments. We have carried out focus groups with such groups as well as the wider range of groups with whom we engage.

When we carry out surveys, whether online, on paper or through citizens panels, we disaggregate information by disability, gender and age, in particular, to give us further information. Although, generally, the feedback that we get from different groups tends to be aligned with the feedback that we get from the general population, it sometimes gives us rich insights into the different views of particular groups.

**The Convener:** Thank you. That is helpful. My colleague Gail Ross wants to ask about equality and training.

**Gail Ross:** Good morning, panel. I thank you all for coming along.

Before I go on to training, I have a question about the consultation with focus groups, citizen panels, disability groups and whomever else you consult when you are doing impact assessments. If it becomes clear that there would be quite a severe equalities or human rights impact, is the suggestion for that part of the budget immediately dropped, or is it put to elected members to decide whether it goes through? How does it work if you find out that a piece of work would have a severe impact on a certain group?

**Liz Fergus (North Lanarkshire Council):** I will give the example of one of last year's budget priorities in North Lanarkshire that was up for consultation, which was the proposed closure of our outdoor centre in Kilbowie in Oban. There was a strong reaction from local young people, who were supported to make their views heard about the impact that going to Kilbowie had had on them as they were growing up. Young people of all ages talked about their week at Kilbowie with school and felt strongly that the proposal would impact on learning experiences. All that information was put to the committee, and the proposal was then taken off the table and the centre was not shut. That is a practical example of our taking a "You said, we did" approach with our young people.

**Gail Ross:** That is good. Is there any other feedback on that?

**Councillor Layden:** We follow a similar process. We do not want to implement policies that will have a severe impact on a protected characteristic group. The reason for having the equality impact assessment and for training elected members in that is that we understand the types of impacts that can occur. The approach can allow us to work through a policy and see whether it needs to be changed radically or dropped.

**Louise MacKenzie:** I cannot think of examples from the past few years, which is perhaps because there is early engagement and because senior officers and members look at options at an early stage, which means that such issues are picked up before they get into a wider budget package. We remove a lot of such proposals when the impacts are understood at an early stage.

**Rosemary Mackinnon:** Highland Council has a similar process, in that not all proposals go forward to the council. Some proposals are dropped or changed along the way as a result of the engagement that is carried out.

**Gail Ross:** Is the training for elected members similar to that for officers, or does it differ? Is the training mandatory and on-going?

**Councillor Layden:** I can answer that from an elected member point of view. We undergo mandatory training on the Equality Act 2010, which involves going through the legislation.

However, when I came into post, I felt that it was important that we should undergo impact assessment training to understand why we go through that process. Our strategic planning staff kindly provided us with that training, which involved working through examples of developing policy. That has helped to give elected members a deeper understanding when we scrutinise policy and impact assessments.

**Rosemary Mackinnon:** Highland Council has on-going training for staff and members. The training is similar for both, although we tend to have slightly shorter sessions for members. With members, we focus on the equality impact assessment process and highlight their responsibilities to give due regard to equality issues in decision making.

**Audrey Cameron:** The situation is similar in North Lanarkshire. All our elected members have recently undergone equality and diversity training, with a focus on their roles and responsibilities and power dynamics. That was not specifically on equality impact assessments, but elected members raised that issue at the training as an area on which they would like to focus further in future training.

**The Convener:** This question might be challenging for council officers to answer—if it is, the officials can just leave Jennifer Layden to answer it. We have heard about all the training and awareness raising, but can you give the committee an example in which elected members spotted a budget proposition and thought that the impact on a protected group would be too great, so the policy needed to be dropped or changed?

**Rosemary Mackinnon:** We have had a number of examples of that over the years. One that springs to mind involves a potential impact on our employability services. An impact assessment certainly changed a decision at the end of the day on proposals to reduce costs.

**Councillor Layden:** In our budget proposals, we focus heavily on socioeconomic deprivation. Therefore, a lot of our budget proposals look at where levels of deprivation are higher in Glasgow than they are in other areas, and a lot of them have been medium or low impact.

10:45

**Gail Ross:** I have a small follow-up question. I used to be a council elected member, and I know that getting members along to undertake training can sometimes be quite challenging. Have all elected members had the training, or is it patchy?

**Councillor Layden:** I believe that we have all had the legislation training and that the vast

majority of the 85 members have had the equality impact assessment training.

**Rosemary Mackinnon:** At the moment, not all the Highland Council councillors have had training, but we will carry on and encourage members to attend on-going training.

**Audrey Cameron:** In North Lanarkshire, a motion was passed at council that all elected members had to undertake the mandatory equality and diversity training. That has happened in the past two months.

**Gail Ross:** That is interesting.

**Oliver Mundell:** If I cut across someone else's question, just tell me to stop, convener.

I want to ask about training for the public, as well. We have talked about officers and councillors, but I know from my own local authority that there is a big focus on participatory budgeting, and some of the witnesses have mentioned focus groups. One of my concerns is that sometimes the groups that are most disadvantaged or at risk are the ones that are least able to articulate their voice and that, particularly when budgets are tight, members of the public do not necessarily have information from impact assessments to make such choices. Have you looked at that?

**Audrey Cameron:** A colleague who works closely with me has taken forward participatory budgeting in North Lanarkshire. In conversation with him, I suggested that members of the disability access panel in North Lanarkshire should be part of the steering group that informs the participatory budget so that members of the panel could influence access and inclusion issues in the participatory budgeting setting. That is one approach that we are looking at.

**Councillor Layden:** I can answer on behalf of Glasgow City Council. A number of participatory budgeting pilots have come from our budget this year. The majority of those five pilots are based on protected characteristic groups. We have, in participatory budgeting, socioeconomic deprivation that is linked to child poverty, to black and minority ethnic groups, and to communities of interests as opposed to geographical wards. However, the main aspect of that is capacity building and training people in how to get involved in citizens panels, which includes equalities training.

**Liz Ferguson:** There is a risk with participatory budgeting that we will get the already very enabled and capable community activists, so we have to take an extremely proactive approach to ensure that groups that are at risk or are marginalised get involved in processes. It takes resources and time to enable people to do that. We have invested a lot of time in looking at how our care-experienced young people get involved in our youth

engagement structure. That requires a lot of support and training and additional resource to look at where they are, where they are going, the barriers to participation that they experience and how we can overcome those barriers. There is still a job to be done to ensure that the voices of those who are most vulnerable are heard.

**Alex Cole-Hamilton:** I am gratified to hear about the training that is going on for elected members and officials. However, my experience and the experience of members of the committee is that sometimes when something is everybody's responsibility, it becomes nobody's responsibility and that, if everyone thinks something is happening, it does not always happen.

I always remember that, when the Parliament passed the Children and Young People (Scotland) Act 2014, it was the first piece of legislation to refer to duties in respect of the United Nations Convention on the Rights of the Child. I was the convener of the Scottish Alliance for Children's Rights at that time, and I was horrified that half of Scotland's councils divested themselves of children's rights officers in the following year because of cuts as a result of financial pressures. Do your councils have elected individuals or officials who are specifically responsible for defending and promoting equalities and rights not just in budgeting but in policy and service delivery?

**Councillor Layden:** As the city convener, my role is to defend equalities and human rights in Glasgow City Council. I have a strong leadership role in ensuring that such rights are secured in policy. Many teams across our council offices and our arm's-length external organisations have an equalities remit.

We talked initially about having an equalities committee in our new policy committee structures, but we decided that that might mean that all the equalities work would go to one committee. The terms of reference for all our policy committees say that equalities must be considered. Our policy report templates contain a section that must be completed to detail what equality impact assessments have been undertaken and how equalities might be affected, so we scrutinise that. A number of our policy committees have also co-opted members from the third sector and equality groups, who scrutinise our policies and our papers.

**Louise MacKenzie:** I will add further observations. I recognise exactly the dilemma that has been posed of balancing mainstreaming with having someone who has responsibility. In the time that I have worked on equalities, we have strengthened the position. We have a small team of people at the centre who work on a range of corporate issues, and I have a number of staff who

focus on equalities, but we now have a much stronger group of staff who are closer to operational service delivery who understand the issues better.

We have a corporate equality officers group but, given Glasgow's size, services such as education have their own working groups that draw in people from the operational side to make links. A number of specialists also support work in areas such as addressing domestic violence and the hate crime policy.

We have a mix. Equalities cannot be only driven from the centre and seen as the equality team's job, which is where we were 15 or so years ago. However, we need a core to keep driving equalities through the organisation.

**Rosemary Mackinnon:** Similarly, Highland Council has a corporate operation—it is tiny and is represented by me—but we have much stronger roles across services. We have a cross-service equalities working group, and equalities are much more embedded across all our services than they were in the past.

Our care and learning service has made a huge shift forward. It has its own equalities working group, and equalities work is being taken forward much more strongly there, particularly in education. Equalities have been seen as other people's responsibility, and the role has traditionally been with human resources, but the responsibility is shared.

We have a lot of partnership working on equalities in Highland with other public bodies, which are in a similar situation of having one lead member of staff. We work closely together to provide support and to network. Where we can work together, that helps us.

**Liz Fergus:** To build on the 2014 act, our children's services partnership co-produced with young people in North Lanarkshire a partnership agreement on a rights-based approach, which the chair of the partnership and the chair of our council-wide youth fora jointly signed. It says that all the business of the children's services partnership will be done in conjunction with young people's views being sought at every opportunity.

We have moved from officers considering how to include a rights-based approach in plans to having practical examples, such as the partnership agreement. Our young people are empowered to ensure that the children's services partnership delivers. When we raise our expectations of young people, they respond and react.

**Audrey Cameron:** Our situation is similar to that of other councils. We have an elected member equality champion and a youth, communities and equalities sub-committee, which

young people go along to and contribute to. We have a corporate equalities working group that has service representatives from across the council, and my role supports corporate work. There are also specialist staff across the organisation who work on issues such as gender-based violence and housing. We mainstream equalities as much as possible.

**Alex Cole-Hamilton:** It is good to hear all the steps that your authorities are taking. It is fair to say that massive organisations such as local authorities can do all the things that they have in their armoury to address equalities and human rights, but unless they have a good process by which people whose rights are impacted or who have been discriminated against accidentally at local-service delivery level can raise the issue, it is all for nothing. The most marginalised people in society are often the quietest and find it hardest to have their voices heard. Can you give me an example of how that process works? If somebody has difficulty physically accessing a public space or experiences unconscious bias at the hands of a council employee, are you confident that they would know that they can challenge that and raise it with the authority, and how would they go about doing that?

**Louise MacKenzie:** On the first part, I am not sure that people always know that they have the ability to do that or that a behaviour or deficiency in a service is discriminating against them. However, we have processes in place to allow people to challenge that. Corporately, we try to support that. We engage with third sector groups, which are often the first place that people would go. People also go to their elected members. In Glasgow, over a long period, many of our elected members, and not just the ones who are equality champions, have had a strong interest in a range of equality issues, and particularly those of disability, race and religion. Our members are quite often a port of call if there is a particular issue.

**Rosemary Mackinnon:** We have a similar approach. I do not think that any of us would say that we are wholly confident that all people can access our services or find an effective way of taking forward a complaint. As has been said, the third sector is extremely important in this regard. We try to focus our training, particularly with front-line staff who come into contact with members of the public, on the equality and diversity issues, which is extremely helpful in raising awareness about people who need different ways to engage and who use different ways of communication. That helps us.

**Audrey Cameron:** A partnership approach with other public sector bodies, such as the police, is crucial. Recently, we have done quite a bit of work

with the police in relation to people with learning disabilities and disability hate crime. That involves having a partnership approach with the police and our social work colleagues in young people and adult services. We would not be able to reach everyone if it were not for our close working with third sector disability organisations, particularly deaf people's representative organisations, with which we work closely.

**Mary Fee:** Could the panel give the committee information about how you balance difficult decisions and take account of different and competing priorities when you look at equality issues?

11:00

**Audrey Cameron:** As councils, we sometimes have to make decisions with a heavy heart. For example, we spoke earlier about making difficult budget decisions. Sometimes we have to make difficult decisions, but we need to look at balancing them with mitigating factors. Rosemary Mackinnon spoke earlier about employability services. One of our recent proposals for employability services was to close a building, which we knew was going to impact on people who used those services specifically. We can save money by closing the building, but we need to ensure that we provide the service. We can do that in other ways, such as using libraries and community centres to ensure that people continue to access the service but in a slightly different way.

We need to be creative in our thoughts about how we balance things and make difficult decisions, and we need to ensure that the impact is not so great that the decision cannot be justified. That is certainly the approach that we take.

**Rosemary Mackinnon:** That goes back to the role of the equality impact assessment, which means that we are able to take account of some of the issues at a very early stage. In particular, officers are able to flag up any issues or considerations, and evidence such as feedback from local groups or national evidence. Decisions are taken daily at different levels in different ways—some are political decisions, and some are taken by officers. It really depends on what those decisions are, but we need to make sure that they are evidence based.

**Councillor Layden:** We always have difficult decisions to make, and we face some challenges. We have our council plan priorities, many of which are based on equality, fairness, dignity and respect. As others have indicated, we look at the evidence base and the outcomes, and the impact that we can make on people's lives, as a way to help to direct resources. I will give examples of some of the budget decisions that we made this

year. We put in approximately £2 million to mitigate the impact that universal credit will have in the next couple of months, in particular on disabled people and people who have learning difficulties. We know that there is a cumulative impact on protected characteristics. We have also put in additional moneys to deal with child hunger, or "holiday hunger" as it is called. That will help us to challenge some of the socioeconomic deprivation in the city.

**Mary Fee:** One of my bugbears with equality impact assessments and equality training—I know that some committee members share this view—is that they are done once a year so that a box can be ticked. Equality is then put back on the shelf to be revisited the following year, when we remove the dust from the book and say, "Yeah, yeah, we need to do this again." How confident are you that the equality training that all of you, and colleagues in your workplaces, have received is actually almost a living entity in your working and day-to-day lives and is meaningful?

**Councillor Layden:** I can come in on that—I think that Louise MacKenzie would probably back me up. At almost every committee, there is mention of equalities and how we are consulting hard-to-reach groups. It is a continuous process that we look at through all our policy development and service design.

We are about to start our budget process for next year, and we are already looking at some of the equality impacts of this year's budget and reflecting on the decisions that have been made. We plan to discuss that with some of our third sector colleagues who represent equalities groups in the city to see whether we can do anything further and to find out whether they have any reflections on the budget decisions that we have made.

**Rosemary Mackinnon:** I agree with that. Even 10 years back, equality would come up very rarely in committees. Now it comes up at most, if not all, committees in one way or another. The process is on-going throughout our committees; it is not simply about our budget proposals and decisions.

**Liz Fergus:** In North Lanarkshire, we have established a sub-committee of our education committee that focuses specifically on equalities, young people and communities. That has helped to ensure that equality is part of the overall budget plan, and that the process is—as Mary Fee said—not just something that sits on a shelf that we dust down once a year.

**Louise MacKenzie:** I am thinking about what has been said. In Glasgow, given the make-up of our city, the equalities issue is very real for our front-line staff who deal daily with issues that citizens face. There are some challenging issues

for some of our newer communities and for more excluded communities. At the centre, we are very much focused on giving them what they need. What Councillor Layden said reminded me of an example. When we were developing our equality outcomes, in addition to engaging with equality organisations in the city, our equality policy officers held workshops with front-line staff to enable them to help to shape policy because they deal with the issues on a daily basis. We are very much trying to keep the issues live.

**Audrey Cameron:** We also have an employee equality forum, and we hold regular events for employees. The events are consultation forums for the council in relation to all sorts of policies, including budget decisions. Along with all the previous mechanisms that I mentioned to do with equality, keeping that focus ensures that equality is not forgotten and that it always has a high profile. Our elected member equality champion has also provided an excellent focus to keep equalities high on the agenda. Recently, the fairer Scotland duty has helped us to focus further on equality in all our decisions. In all our templates for reporting to committee, we now have to provide evidence on how we have considered equality and socioeconomic disadvantage.

**Mary Fee:** You have all spoken about the marginalised and disadvantaged groups with which you are committed to engaging. Across the authorities that are represented here today, can you give me an example of the specific dialogue and communication that you have had with the Gypsy Traveller community, who are an ethnic minority and a disadvantaged group?

**The Convener:** If you cannot give an example at the moment, perhaps you could bring one back.

**Mary Fee:** I would quite like the panel to say whether or not they have had dialogue with Gypsy Travellers.

**The Convener:** Absolutely.

**Audrey Cameron:** We have a Gypsy Traveller liaison officer in North Lanarkshire Council. We do not have a permanent Gypsy Traveller site in North Lanarkshire, but we have a transient Gypsy Traveller community coming through the area. Our liaison officer always takes views from and consults with Gypsy Travellers on their needs, and that is part of our housing needs assessment.

**Rosemary Mackinnon:** We do not have a specific Gypsy Traveller liaison officer in Highland, but our tenant engagement officers engage with Gypsy Travellers. We have four sites across the region, and we have regular engagement with them through our housing service in particular.

**Louise MacKenzie:** Glasgow, like the areas that colleagues have talked about, has traditionally

had a low number of Gypsy Travellers. Occupational travelling is the more prevalent trend in Glasgow, but we have worked regionally with colleagues in the west of Scotland to look at the accommodation and site needs of Gypsy Travellers. That has been done through our housing strategy. We also have a Gypsy Traveller liaison person who is located in our social work services.

**Alex Cole-Hamilton:** I have a brief supplementary. While we are talking about marginalised groups, it is fair to say that one of the groups of people who, in all of Scottish society, experience the worst life outcomes and the worst denigration of their equalities and human rights are those to whom the local authority is arguably most responsible: our looked-after children. On any given day in Scotland, there are 15,000 children in the care of the state at home or in kinship care, foster care or residential care. How do your authorities seek to meaningfully engage with that community and those with care experience who have left their supervision orders?

**Councillor Layden:** We do a lot of work with our integration joint boards, which are looking to redesign and transform our children's services, on our looked-after and accommodated children. We also do a lot of work with our social work services, and there has been a lot of involvement in trying to reshape the way that children's services are delivered. It is a matter of moving from the model in which children are in long-term institutional care, which we have had for a very long time. For example, we now have a family genealogy service running in Glasgow that uses genealogy searches to support children to find kinship carers. That is an innovative way to look at how we can support children in the looked-after and accommodated sector in Glasgow.

**Rosemary Mackinnon:** There is a lot of work with looked-after children in Highland Council's care and learning service, particularly on moving away from children having out-of-area placements. It is trying to keep children in the area or to bring children back into it.

We have also had a lot of engagement with looked-after children and have involved them in the shaping and redesign of services. That has been really important, and there have been powerful messages. For example, children have attended the committee and spoken at it about their experiences. That has been invaluable.

**Liz Fergus:** We have much to do to improve outcomes for our looked-after children, but a lot of good work is being done. Our authority has been partnered with the Life Changes Trust to set up a champions board. The work that is happening is really important. It is about ensuring that our care-experienced young people—past and present—



get the opportunity to participate in the decisions that affect them. I know that our young care-experienced group is set up to challenge what is happening with services. They are interested in particular in education, housing and employment services, and we have helped to support them to take part in that process. Although we have six locality forums for our young people, their last request was that they have their own forum—a seventh forum—specifically for care-experienced young people. It is important that we act when our young people make such requests. We have much to learn from our young people who have been through the system.

We also need to ensure that we can focus on a deficit approach and that we look at the assets and learn from our care-experienced young people. We still have a way to go, but the picture on outcomes for our care-experienced young people is improving.

**The Convener:** I want to ask about cumulative equality impact assessments. Obviously, individual policies do not sit in isolation. We have had a bit of discussion about partnership working, and integration boards have been mentioned. If you do cumulative equality impact assessments, how do you do them? I know that not all local authorities take that approach. Will you also speak a little about the involvement of community planning partnerships and joint boards in delivering the services that come out at the end and the mitigation or adjustment that you make when you identify that something will impact on a group?

I am sorry; there was quite a lot in that. I will let you breathe. Does North Lanarkshire Council do cumulative impact assessments?

11:15

**Audrey Cameron:** Yes—we did them for the 2017-18 budget and for the budget before that. With the last budget that we carried out a cumulative equality impact assessment for, it proved to be difficult, because in the end a lot of the proposals did not go through. When the Scottish Government brought out its draft budget, we realised that there was a lot of room for manoeuvre, and there was a significant difference between what was in the draft budget and the budget that was actually set. A lot of things did not go through.

That said, we try as best as we can to take a cumulative look at those matters. It is easier to do that for a budget, because so many equality impact assessments are being done at one time, but when you have an individual service doing an impact assessment on only two areas a year, it is difficult to get that focus.

**The Convener:** How do you carry out that kind of assessment? Do you look at the impact of services and decisions on a person with a protected characteristic, or do you look at the suite of decisions that you have to make and then map it all out? The process feels quite complex. What is your starting point? If you want to get back to us on that, that would be fine—we are interested in hearing what you have to say.

**Rosemary Mackinnon:** Highland Council has faced challenges with cumulative equality impact assessments; in fact, we have found the area itself challenging, and we are very interested in hearing about any models of good practice in that respect.

With regard to community planning partnerships, I have already said that we do quite a lot of partnership work on equality issues across equality leads, but I also point out that, in our community planning partnership's outcome improvement plan, equality is one of the horizontal themes cutting across all our outcomes. All the outcomes have a focus on inequality anyway, and many of our themes touch on equality.

Highland does not have an integration joint board; instead, there is a lead model approach, which is slightly different from the model in other bodies and authorities. However, under that, each organisation takes its own approach to equalities. We are the lead for children's services in Highland, and equality is built into that work.

**The Convener:** So even where there is joint working between two bodies, they might well have two different and separate approaches.

**Rosemary Mackinnon:** That is a challenge, too, but one of the benefits is that when we work together we ensure that equality is included in that work. For example, any integrated plans that we have must include equality in those considerations. As I have said, a lot of the work that we focus on jointly is, in a broadest sense, about inequality, equality issues and protected groups.

**Councillor Layden:** I agree that this is a challenging area. I would say that we need more evidence to support cumulative impacts, and it is important that we look at how we gather that data and focus on outcomes. It is also important that we carry out consultations and continue to speak to inequality groups to understand some of the cumulative impacts that our services might have.

**The Convener:** Just to be clear, though, Glasgow City Council does not formally carry out cumulative impact assessments.

**Louise MacKenzie:** No—we do not do so formally. In the past couple of budget rounds, we have attempted in a very high-level way to flag up to elected members the broad cumulative impacts

prior to decision making. However, like colleagues, we would be interested in getting more advice and support on how we might do that practically.

**Fulton MacGregor:** In the interests of time—and if Audrey Cameron and Liz Fergus do not mind—I will focus my questions on my own patch of North Lanarkshire. I am glad that Kilbowie was mentioned when the convener asked for examples of political groups taking things forward, and I know that the Scottish National Party group responded to concerns and took them to the council. Indeed, to be party political for a wee second, it was the SNP group who brought to committee the proposal for all members to have equality training—

**The Convener:** Mr MacGregor, I do not think that we should talk about specific political decisions.

**Fulton MacGregor:** I was just commenting on remarks that were made, convener. I also wanted to mention the really good equality work that is going on at Buchanan high school.

How can we make equality impact assessments better? I am thinking, for example, of the situation with the bins in North Lanarkshire, what happened with the winter services and the issues at Drumpellier nursery. How can we make impact assessments better in that respect and ensure that, as other members have suggested, links are made with minority and disadvantaged groups?

**The Convener:** I wonder whether the panel already covered some of that when they talked about how they carry out equality impact assessments. You are asking about quite specific and local decisions.

**Fulton MacGregor:** The issues were widespread—

**Oliver Mundell:** That is political.

**Fulton MacGregor:** It is not. Okay, then—I also wanted to ask about arm's-length organisations, particularly in North Lanarkshire, and organisations such as Glasgow Life. How do you ensure that equality is brought into those organisations?

**The Convener:** I am quite conscious of the time, so it would be wonderful if someone could just jump in.

**Louise MacKenzie:** Glasgow Life, which is the cosy term for our council family, participates in our corporate equality structures and is part of our framework for equality in terms of our equality outcomes agreement, although I should say that that is not a specific requirement under the public sector equality duty. It is also included in our plan. It has a different structure—for example, it has a board—but one of the directors of Glasgow Life is also its equalities champion.

From my daily work with people in that organisation, I know that they are very up front about this, and it is very visible in the service that they offer. I do not have the time to do it this morning, but I can provide a lot of practical examples of how those things are visible in the approaches that Glasgow Life has taken. I certainly feel comfortable with it as an organisation; it is part of our wider family, and it can demonstrate good practice in a lot of areas of its work.

**The Convener:** That is helpful.

I have a final question. We have talked a lot about equalities this morning, but I note that there is a new human rights outcome in the national performance framework. I know that this will be a challenge, but can you, as succinctly as possible, let the committee know how that will inform the forthcoming budget process?

**Councillor Layden:** We in Glasgow are starting to look at that, and officers have met Scottish Government colleagues to discuss how we can fit that into our budget process and our equality impact assessment training.

**Rosemary Mackinnon:** In Highland, we still have a way to go to incorporate human rights issues fully into some of our decision making, but it is certainly getting stronger in children's services, as children's rights are regularly considered.

**Audrey Cameron:** The philosophy behind participatory budgeting is that a human rights-based approach be taken to budgeting. It is about communities determining for themselves how they want their money to be spent.

Human rights are also integrated into our equality impact assessment process, but that is still work in progress, because it is still the case that, for a lot of people, their understanding of what human rights actually are happens at a not very conscious level. A lot of work still needs to be done on that. Like Rosemary Mackinnon, I would say that a lot of work on human rights happens in our children and adult services, but it needs to be broadened out to include other parts of the council.

**The Convener:** Thank you very much for your helpful evidence. We are quite squeezed for time on Thursdays, so we might write to you for more details.

I now close the public part of the meeting, and I ask for the gallery to be cleared.

11:24

*Meeting continued in private until 11:40.*

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