OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 10 January 2019

Session 5

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
1st Meeting 2019, 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:

Malcolm Schaffer (Scottish Children's Reporter Administration)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 10 January 2019

[The Convener opened the meeting at 09:30]

Age of Criminal Responsibility (Scotland) Bill: Stage 2

The Convener (Ruth Maguire): Good morning, everybody, and welcome to the first meeting of the committee in 2019. I ask for all mobile devices to be switched to silent.

I thank everyone who submitted additional evidence ahead of stage 2, particularly given the tight deadlines. I welcome Malcolm Schaffer, who is head of practice and policy at the Scottish Children's Reporter Administration. I invite you to give an opening statement of up to five minutes.

Malcolm Schaffer (Scottish Children's Reporter Administration): Thank you, convener, and thank you for inviting me to come back and give further evidence.

I begin by reiterating the SCRA's support for the reform in the bill, and indeed for further reform. As the committee will be aware, we were members of the advisory group that was set up to do homework to prepare for the bill. The group was able to analyse all the data and look at all the issues that affect the raising of the age of criminal responsibility, and that work led to the bill that is before you.

First and foremost, our hope and desire is that this reform can be implemented as soon as possible so that we stop the criminalisation of eight-year-olds. However, in common with other agencies, we have a genuine passion to go further. We believe that it is worth looking at—and that we can aspire to—raising either the age of criminal responsibility or the age of criminal prosecution to 14 or 16. The committee will have read a number of arguments that have been raised by other groups about why that should be the case.

Our only caution is that we want to see this work effectively. We want to reassure the committee and the community that we can still deal with the difficult behaviour that children can throw up. The work of the advisory group was entirely focused on the ages eight to 11, and the bill was written with those ages in mind. As I hope you can see from the evidence that we have submitted, other issues emerge the older we go; there are more offences and the offences are more complex. We have not analysed the data on that in the way that we have for eight to 11-year-olds. We have not assessed whether other implications for legislation need to be taken into account in raising the age. We do not want to stop the ambition—far from it. We want to support it, and we believe that 14, certainly, and possibly 16, is achievable. All that we are asking for is a bit more time to do the work that we did for eight to 11-year-olds and analyse whether any extra issues need to be built into the legislation for guidance, resources and services, so that we reassure everyone that difficult behaviour that is shown by children can be dealt with without requiring the criminal justice system to do so.

The Convener: Thank you. You mentioned that the priority is not to criminalise eight to 11-year-olds, and that you would like to see that change made as quickly as possible. How long did the work of the advisory group take? What was the lead-in to do all the analysis and assessment of data? Is there a risk that, if we go straight to 14 and dismiss that initial work, things will be delayed?

Malcolm Schaffer: The first part of the group's work was to undertake research within the SCRA to analyse 100 cases. That was done in three months. That was an easier task to do than doing the same work for 12 to 16, which is what we believe needs to be done, would have been. One particular difference is that we would need access to Crown Office records, because one of the core elements of the analysis would be analysing how jointly reported cases are dealt with, and whether they have any implications for things such as grounds and powers because of their extra severity.

I do not recall how long the group took. As I say, the research took three months. I would say that the research on this would take longer because of the Crown Office dimension, so we are talking about six months to a year. How much longer it would take depends on your ambition. Unquestionably, it is easier to move to 14 than it is to move to 16, because 16 raises additional challenges, particularly in terms of extending the powers to cover people beyond the age of 18. If we are relying on the children's hearings system to deal with cases, its maximum age is 18 so we would have to look further. That would be added work.

However, it can be done, and we are ready to go. I certainly understand that the Government is happy to support us doing further research into 12 to 15-year-olds.

Mary Fee (West Scotland) (Lab): I have a number of questions, but I want to start by asking you about the age of criminal responsibility in the bill. The bill raises the age to 12. The letter to the

minister and the committee from the Commissioner for Human Rights in Strasbourg says that she is concerned that raising the age to 12 gives "insufficient guarantees" for a "forward-looking system".

In her letter to the commissioner, the minister talks about our "wider, uniquely Scottish" approach and where the age of criminal responsibility sits within that. I am concerned that there is almost an implication that, because we have this unique system, we can somehow ignore our obligations under the United Nations. I am interested in your comments on that, and whether you think that, because of our unique system, there are any other obligations that we can just ignore.

Malcolm Schaffer: In the past, we have unquestionably felt comforted by the fact that such cases are dealt with through the children's hearings system. Our position is that we can go higher. A crucial part of the reform, which the bill touches on but does not deal with completely, is also dealt with by other reforms, and it is dealing with disclosure so that children who are dealt with through the hearings system do not end up with a record that taints them throughout their lives. That is a critical element.

I have been a reporter since 1974 and, ironically, the law has existed since 1974. The Rehabilitation of Offenders Act 1974 has required children to disclose and meant that they have carried a criminal record for appearances through hearings. That is a core element of the reform, which is also attached to the Management of Offenders (Scotland) Bill and the reform of the protection of vulnerable groups, which will make a huge difference in Scotland to what the hearings system is about.

We are about rehabilitation. We are about children not having what happened to them at the age of 10 or 12 hanging over them all their lives. We want to give them a fresh start. That is why we believe that there is a potentially exciting programme of reform around at the moment. We can make a substantial difference.

Coming back to your question, I think that it is important that we give a clear message that we are not stopping at raising the age of criminal responsibility to 12.

Mary Fee: Taking account of everything that you have just said, would you say that the decision to make the age 12 was the easiest option?

Malcolm Schaffer: There is no question but that it is a very easy option. You will remember that, in our research, we showed that potentially only two children a year appeared at hearings for offence grounds. It is the easier nut to crack—there is no question but that it is—and that is why we need time to look further at the other areas of reform with regard to raising the age limit. Can it be done? Yes—there is no question about that. The only issue for me is ensuring that the system is working properly.

Mary Fee: In its submission, the centre for youth and criminal justice has said that raising the age to 14 "would have minimal impact" because, in the past five years, no child of 12 or 13 has been prosecuted in the criminal court. Do you accept that view?

Malcolm Schaffer: To be honest, I do not know. What I do know is the figures that I have given for the number of children who were jointly reported to the Crown Office and the number retained by the Crown Office, and I know that some of those cases involve particularly significant events and incidents. I am afraid that, occasionally, I will have to answer some of your questions with, "I don't know"—and that is my whole point. We have not analysed the data, and I am not as confident about it as I would like to be, and as I am for the under-12s.

The Convener: Perhaps I can jump in briefly here. You have talked about needing more time. I think that we all aspire to always doing better for young people, but the more you talk about needing time to analyse the data and do the extra work, the more I get concerned about the fact that, while we are taking that time, there are children under 12 who are still being criminalised. Do you think that going to 12 first would be a sensible move, given that you have done the work on and understand that aspect?

Malcolm Schaffer: I would hate it if there were a delay in implementing the under-12 provisions, because they are core to this for me. Can we please introduce them this year? That would be our starting position.

Mary Fee: In its submission, Community Justice Scotland suggests that we move to 12 now and then raise the age limit to 14 in 12 to 18 months, as that would provide a period of transition to get everything in place and allow you to do the work that you have talked about. What would organisations need to do to facilitate the move from 12 to 14, and how difficult would that be?

Malcolm Schaffer: There are two different issues in that respect. First, there is what organisations might need to do but, secondly—and this is the question that I do not know the answer to—there is whether additional legislation might be required. In that respect, I would want to look in closer detail at the cases that were jointly reported, the cases that were retained by the fiscal, the cases where the child was kept in custody, the cases where we referred the child to a hearing on offence grounds, and the implications of those cases for whether any change might be

needed to the grounds of referral, the powers of a hearing, the resources available and victim information. These are the legislative issues that we would need to look at.

As for practice issues, I guess that each agency would have to reflect on such matters. From our point of view, we would need to consider our drafting of alternative grounds—that would be the most crucial difference. If we did not have offence grounds, we would need to use alternative grounds, although I should point out that we already do that to an extent. The other main issue for our practice would be changing our victim information service to meet the criteria in the bill.

Mary Fee: I understand that it is difficult to quantify each of those things, but am I right in thinking that there is a lot of data and information and that it is just a matter of gathering them, or are you starting from nothing?

Malcolm Schaffer: We have a lot of data—you are quite right. It is just a matter of gathering it. However, we do not have the data that is held by the Crown Office.

Mary Fee: You have all the other data; it is a matter of collating it and working with partner organisations.

Malcolm Schaffer: Absolutely. That is right.

09:45

Mary Fee: I turn to the costs of moving the age to 16. The SCRA submission says that the cost of raising the age to 16 would be £400,000. I want to unpick that figure. Is it based on 2,800 children?

Malcolm Schaffer: It is a very rough ballpark figure, because I do not have the data to match it against. It recognises that, if we were to raise the age to that extent, we would deal with cases that are currently handled by the Crown, which would include some significantly serious offences, as they are currently defined. We would need the extra time for reporters to be able to potentially draft grounds and prepare and handle quite complex proofs on new grounds, which I am sure the legal profession would ensure were properly tested. That would be the significant extra demand on the reporter service.

Mary Fee: The figure is very much an estimate.

Malcolm Schaffer: Very much so.

Mary Fee: Have you done any work on the cost of raising the age to 14 and then on the extra cost of moving from 14 to 16?

Malcolm Schaffer: No—we have not split up the costs. Estimating the extra cost would require our having the information from the Crown Office on the cases that it currently handles that we would then handle. I do not have the level of understanding of such cases or of the implications for our service. It is critical that we do a deep dive into those cases, so that we understand what the extra burden on us would be and how much extra resource would be required if such cases were handled by reporters in the hearings system. You will appreciate that I had very little time to come up with a cost.

Mary Fee: I do, but my concern is that picking a figure of £400,000, which is a fairly significant amount, could lead people to believe that raising the age to 16 would be too costly or that the cost would be much more than that. You have said that the figure is an estimate.

Malcolm Schaffer: Absolutely.

Mary Fee: You have nothing on which to base it.

Malcolm Schaffer: The figure is very much an estimate, which is based on looking at the figures from jointly reported cases that are being dealt with at the moment. You are quite right that we would need to refine the figure.

Oliver Mundell (Dumfriesshire) (Con): I have two supplementaries. First, you have talked about serious offences. I could probably guess what they are but, for the record and for people who take an interest, where is the line drawn for serious offences?

Secondly, I am not convinced about changing the age but, if cases were to move from the Crown Office to the SCRA, I imagine that there would be an equivalent saving, or a saving of some sort, to the Crown Office. Is that correct?

Malcolm Schaffer: The answer to your second question is that I would assume so.

On serious cases, the cases that are jointly reported are covered in a circular. The Lord Advocate produces guidelines for the chief constable on what cases should be jointly reported. The serious ones involve murder, of which there are thankfully few, if any, cases; rape, of which there are a few cases; serious assault; wilful fire raising; and Road Traffic Act 1988 offences by those over the age of 15. Those are examples of the offences that we are talking about.

The Convener: If there were not going to be a criminal justice response to such serious offences—sexual offences or seriously violent offences, for example—I presume that the children's hearings system would need more powers to ensure public safety. What do you envisage those powers being? If the age of criminal responsibly were to move to 14 or 16, would the powers need to extend to cover children beyond their 18th birthday?

Malcolm Schaffer: On the powers of the hearing, I think that, first and foremost, we have to agree on what the purpose of the hearing is, and agree that it is not a criminal justice forum. It is not there for retribution or punishment. It is there for treatment and rehabilitation—it is there to deal with the causes.

The Convener: Malcolm, I am going to interrupt you briefly, if I may. I absolutely acknowledge and accept that. However, I think that the public—our constituents—and we as MSPs would want to ensure public safety, and we are talking about serious criminal offences. Of course there is an element of rehabilitation for children, but that is what I am asking you about.

Malcolm Schaffer: Yes. The hearing has some of the powers that a court has. It can place the child in secure accommodation, for instance, and it has powers to impose residential care and supervision. The added benefit of the hearing is that it keeps those measures under review at regular intervals to check that they are still appropriate and that the child still needs them. The protective measures that are available to a court are more or less available to the hearing. We do not have a power to fine, but that is hardly relevant for under-16s. We do not have a power to place children in prisons. That is good, because our belief is that no child under 16 should be in prison. However, we can provide safety measures where necessary—where a child is out of control.

We might need to look at one aspect of the analysis, which is the small number of children—I think that there were about 28 in all—who were detained in custody having been charged with an offence, presumably because their behaviour was judged to be so significant that it was not felt to be safe to release them. We might need to look at whether the hearing's powers to keep those children in care and looked after are sufficient, because the bill covers only the initial 24 hours and not beyond that. That might be the most significant change that I can identify in relation to the hearing's powers. Other than that, the powers exist.

The bigger issue for us all is to be able to argue that we do not require the criminal justice system to control behaviour—that we can take behaviour seriously even through a welfare system. The evidence from the University of Edinburgh, which I think you have some familiarity with, shows that dealing with it through the welfare system is more effective for children and young people than using the justice route, for all that it does not immediately have the same ring to it, if you like, especially for victims of offences.

The Convener: Thank you. Oliver Mundell has another supplementary question.

Oliver Mundell: When you deal with serious offences, how do you communicate with victims? Will that have to change if even more serious offences come into the mix?

I do not want to say, "when someone is found guilty", but what would happen if it were to be established that the person had killed someone—that they had taken someone else's life? Would they have the same right to appeal? At present, a young person who goes through the criminal justice system perhaps has better legal rights than they would have if they went through the hearings system. Is that correct? Does that need to be looked at?

Malcolm Schaffer: I will take your second point first. I point out that young people in the hearings system have exactly the same rights of appeal and legal representation as those in the criminal justice system. If a child is at a hearing for a serious offence that might merit their being put in secure accommodation, they will be entitled to legal representation at the hearing, entitled to deny any grounds of referral and entitled to appeal the decision of the hearing. Indeed, they have extra rights because they have the right to ask for review of a supervision order at any point after three months. The hearings system has built into it more rights and more potential flexibility for children and young people than the court system does.

The information that we currently give to victims relates to whether we have received the referral, what decision the reporter has made and what decision the hearing has made. On occasion, it will be sufficient for the victim to know that at least somebody has looked at the matter and made a decision. On other occasions, that is not enough, and the victim will be frustrated because they are looking for retribution, which we cannot provide, or we cannot provide all the details behind why the decision was taken, because it was based on the personal background of the child and family. That can cause frustration.

In the bill, the criteria for passing information for under-12s are that there has been physical violence, sexual violence, behaviour that is "dangerous, threatening or abusive", or conduct that

"causes harm to another person".

That is quite a high bar. That high bar might well be appropriate for a child under 12, but if we apply the same criteria to over-12s—members should look at the information that I have given them on the nature of the offences that are reported to us and the numbers who are reported for dishonesty or vandalism—the number of times that we contact victims will be very much reduced. For instance, if a child broke into a person's car, that

would not give us grounds on which to contact the person or to tell them about our disposal. Whether the criteria need amendment is an issue that needs to be looked at if we are going to raise the age above 12.

Mary Fee: We received a substantial amount of evidence in our earlier evidence sessions on the final issue that I want to cover with you, which is also covered in submissions that we have received for today's meeting. The issue is a young person's capacity to understand the consequences of what they have done.

A lot of the discussion about raising the age of criminal responsibility has been about young people knowing absolutely the difference between right and wrong. There is a massive difference between a person knowing the difference between right and wrong and understanding the consequences of their actions. We have received lots of evidence that suggests that young people can be in their early 20s before the part of their brain that deals with that fully develops and they can fully understand the consequences of what they have done.

I am interested to hear your view on how young people are assessed. I presume that when reports are being prepared social work assessments are done, but are proper psychological assessments of young people—particularly young people who have committed serious crimes—done to determine whether they have the capacity to understand what they have done? In an adult court, an adult can claim the defence of diminished responsibility. A child might be able to do that—I am not sure. That seems to me to be a sensible approach. A proper assessment being done would give us the ability to take a more nuanced approach to young people and crime.

Malcolm Schaffer: Yes—I have every sympathy with that view. The honest answer is that I do not believe that such assessments are done sufficiently at present, and the approach can vary very much from individual to individual. It is very much an individualised thing. Using physical age is the easiest approach; the other grounds are very difficult and would take a lot of assessment. However, more could be done on that.

10:00

Mary Fee: If the physical age of criminal responsibility was set at 14, 16 or higher and we built in psychological assessments, that would allow the criminal justice system to take a more welfare-based approach to young people and would prevent them from being stigmatised later in life.

Malcolm Schaffer: That would require an extra specialised resource in terms of really grilling the child, but I think that such a resource is needed and appropriate.

Mary Fee: Thank you.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning, Malcolm. Thank you for coming back, and thank you for your written evidence. I remind members of my entry in the register of interests: I am a former convener of Together—the Scottish Alliance for Children's Rights.

The written evidence that we have received in response to our second call for evidence on raising the age of criminal responsibility to 14 or 16 is quite compelling. It is very supportive of such an increase, which you clearly also support. A note of caution was sounded in evidence from Social Work Scotland, along the lines that—as you suggest—we need to get this right and to make sure that work is done to assess what a further uplift in the age would mean.

Numbers are important. Moving the goalposts when it comes to how we deal with young people in certain contexts really matters. There is a massive jump between an increase in the age to 14 and an increase to 16. Your submission says that there were 835 referrals on offence grounds for 12 and 13-year-olds, and the figure rises to 2,800 for 14 to 16-year-olds. Not all of those 835 cases made it to a children's panel. How many of them went to a children's panel?

Malcolm Schaffer: Roughly 10 per cent of cases go to a children's panel.

Alex Cole-Hamilton: So, we are talking about 80-something cases.

Malcolm Schaffer: Something like that. We are talking about very small numbers. The number of prosecutions is small, as is the number of children who are kept in custody, but they are the critical cases—they are the ones on which success or failure of the legislation might depend. We want to make sure that we have them covered.

Alex Cole-Hamilton: What, in respect of disposal and victim information, will happen to those who make it to a children's hearing? You made an interesting point about grounds for communicating information. If the age of responsibility is lifted to 14, what would happen to the 12-year-old in your example, who vandalised a car, in terms of disposal and victim information under the law as it stands?

Malcolm Schaffer: We do not base our decisions on the offences; we base them on the child and their background. Disposals therefore vary a great deal, according to the background of the child, the support that the child has at home and other risk issues that might be to do with how the child is getting on at school. The criteria relate

to the need for compulsion. In the event of a hearing, our disposal might involve home supervision, residential care or living with another family, but in the majority of cases the child would be at home.

At that point, we would communicate with the victim. We would have told the victim when we got the referral and would have asked them whether they want further information. If they said yes, we would tell them if the child was coming to a hearing. We would then say that the child had been placed on supervision or in secure care.

Alex Cole-Hamilton: What would change for young people who would currently be referred on offence grounds who would get some kind of disposal as a result of their interaction with the hearing, other than their not having a criminal record? If they were no longer held criminally responsible, what would change? Would the victim information or the disposal change? What would be different?

Malcolm Schaffer: As I explained earlier, the victim information would change according to the criteria in the bill. That would tighten things, if it were kept there. Otherwise, the disposal would remain the same.

A couple of agencies' submissions raised the interesting issue that the implications of coming to a hearing can be significant, including in relation to secure accommodation. Is it therefore sufficient that we move to non-offence grounds, which have a standard of proof on the balance of probabilities? Is that fair? That is another issue that we did not explore with eight to 11-year-olds that perhaps needs a bit more thought.

Alex Cole-Hamilton: Funnily enough, I was coming on to exactly that.

I do not want to pre-empt the stage 2 proceedings. However, after the evidence that we have heard at stage 1, the majority view of this committee may be that, in order to afford our children's hearings system greater flexibility—especially if we are having an influx of more serious cases—a tool could be put at its disposal to offer, for a defined set of offences, a higher burden of proof. For crimes of violence and of a sexual nature, the standard would be beyond all reasonable doubt and no longer just the balance of probabilities.

Children's Hearings Scotland asked for that tool in its written submission and said that it would be doable in the bill. Would you support such an empowerment of the hearings system?

Malcolm Schaffer: At the very least, it is worth looking at.

I am not a fan of expanding the grounds of referral. When I started as a reporter, we had eight grounds of referral. We now have 17, and a number of them are not used very frequently. We can, therefore, rush into adding grounds of referral. I am not yet convinced as to whether that is needed, although the data that we can get from jointly reported cases may better inform us.

The issue of the standard of proof certainly bears further consideration, given the implications of our actions for the child or young person, such as leading them to be placed in secure accommodation. I hope that we will deal with the disclosure issues so that they are no longer an issue. However, there are currently disclosure implications within the law as well.

Alex Cole-Hamilton: Children's Hearings Scotland also voiced a concern that the work that needs to be done around lifting the age still further is about the standard of proof. If a 13-year-old is accused of a sexual crime, there is arguably a children's rights imperative to apply to them the same sort of threshold that would be expected in a criminal court to have the case tested and to ensure that everyone has confidence in the decision that the panel comes to.

If the bill were to be amended to give the panels that additional standard of proof, which they could apply to a certain set of cases, would that negate some of the work that you would need to do in the hinterland of lifting the age to 14 or 16?

Malcolm Schaffer: I would prefer first to have done that work before we came to that conclusion, to see if that approach is necessary. That is the more logical way of doing it.

The clear difference is that, in the criminal justice system, we are talking about a child being criminalised and having a record. If our reforms can do away with that, there may be fewer implications. Unquestionably, it is a debate that needs to be had. Of course, it would be for not the hearing but the court that hears any proof that arises out of a hearing to apply that different standard of proof.

Alex Cole-Hamilton: I understand.

I will briefly go back to numbers. Of the 162 children aged 12 to 13 who were jointly reported to the procurator fiscal and the children's reporter, around 6 per cent were retained, some of whom, arguably, may have been prosecuted.

When a child is prosecuted in an adult criminal court, do they lose any access to the benefits that they could have received had they gone through the panel? I am aware that one of the great things about our children's hearings system is not just the disposal but the wraparound support that it comes with, such as signposting and the referrals that can be made by panel members to help the child's

rehabilitation. Do children who go through an adult criminal court lose that benefit entirely?

Malcolm Schaffer: No, not necessarily. A number of them might already be on supervision, in which case there would be parallel proceedings. Moreover, if the child is found guilty of an offence and is on supervision, the court is required to ask for advice from a children's hearing before making disposal. The court can subsequently remit the case to a children's hearing for disposal, which it has the discretion to do if the child is not on supervision. There are links built in; they could be strengthened, but they are there to ensure that the hearings system has a voice.

Alex Cole-Hamilton: On the issue of time, you have suggested that work on the permutations of lifting the age limit to either 14 or 16 could take a year or two. From what we have heard, you seem to be saying that it might be easier to move to 14, because of the smaller numbers involved and the fact that the crimes or offences committed are perhaps less severe.

I fully sympathise and absolutely agree with what you have said about not wanting to delay the reform for eight to 11-year-olds, but I would point out that we are in a sweet spot in the legislative process, because we have an opportunity to make changes that answer those concerns. If we lodged amendments at stage 2 or 3 that sought to phase in the implementation process and made it clear that from the date of royal assent, for example, no child up to the age of 12 would be held criminally responsible but that by, say, April 2021 there would be a second implementation date for raising the age to 14 or 16, with perhaps a moratorium to ensure that no child in the process would have a long-standing criminal record or be dealt with in a criminal court, would that answer your concerns and give you the time that you require?

Malcolm Schaffer: We are looking for a staged approach. You will know the process better than I do, but my only concern would be that, at the second stage, there would need to be the flexibility to introduce any extra legislative requirements that might have been identified by the deep dive and the further work.

Alex Cole-Hamilton: I understand that. You have kindly suggested that we know how these processes work—that is not always the case, but we do our best—but the fact is that the legislative machine that is the Scottish Parliament is quite clunky. It has been 80 years since we last looked at the age of criminal responsibility in this country, and my deep anxiety is that, once this bill, in whatever form, is passed, the show will just move on and that, despite the will of the committee and its members, it might take us some significant time to come back to the issue, simply because of the confluence of events and the many things that overtake this Parliament and which it has to deal with.

We therefore need to use this opportunity as best we can. We both know from certain pieces of legislation that you and I have been involved with—the Children and Young People (Scotland) Bill, for example, and the Children's Hearings (Scotland) Bill—that aspects of implementation can take years. However, when we get them right, they work wonderfully, and the provisions remain on the statute. Whether we are talking about, say, the provision of independent advocacy in children's hearings or the named person provisions in the Children and Young People (Scotland) Act 2014, there is flexibility to make those connections and join those dots in the implementation period. However, do you agree that it is sometimes incumbent on Parliament to throw the cap over the wall and say, "This is where we need to get to. It is an international imperative"?

Malcolm Schaffer: I have made it clear that I do not want to stop at 12, and I want to make sure that the legislation works.

Alex Cole-Hamilton: I think that I can leave it there, convener.

The Convener: My colleague has made his views very clear, but I was struck by your comment that you want the analysis and assessment to be carried out first and got right. Is that what you think?

Malcolm Schaffer: Absolutely.

10:15

Gail Ross (Caithness, Sutherland and Ross) (SNP): I want to touch on the issue of raising the age of criminal prosecution. Do raising the age of criminal responsibility and raising the age of prosecution go hand in hand?

Malcolm Schaffer: You have different options. For example, you could keep the offence ground in the hearings system but raise the age of criminal prosecution to, say, 14 or 16 to ensure that children cannot be dealt with in courts. They can still be charged with offences, but they can be dealt with only through the hearings system, not in the criminal justice system. I am not necessarily arguing that, especially up to the age of 14, but it is another option if we are talking about a staged response and maintaining public confidence.

Gail Ross: Could we go to 12 now and phase in the move to 14, as has been mentioned, and do the work on disclosure, too? Would that all work together? How do you see that happening?

Malcolm Schaffer: Again, it comes back to having, first and foremost, a greater understanding

of the cases. I am sorry to keep reiterating that, but it is critical. If a move to 16 is contemplated, some real work and thinking need to be done on the powers that would exist in respect of the child beyond the age of 18. Whether we are talking about the age of criminal prosecution or the age of criminal responsibility, that would be the major test for me. I should point out that, if a child aged 15 years and 10 months is charged with rape and is dealt with through the hearings system, our powers end at 18, with nothing further beyond that. That is the bit that will need extra consideration if we are thinking about a move to 16; for me, that is the major challenge.

Gail Ross: Thank you.

Alex Cole-Hamilton: I said that I had finished my questions, but I have just realised that I have not entirely finished. You have talked extensively about the work that you think will be required to make either of the two changes happen. We understand and entirely get that; after all, it is only due diligence, and it is right that you should make those points. I take it that your views are based on the resources and capacity that you have right now in the SCRA to deal with that.

Malcolm Schaffer: We have had some discussions with the Scottish Government, and we understand that it would be willing to give us some extra resource to support that work.

Alex Cole-Hamilton: If you were able to increase your headcount with people with the right academic expertise and of the right quality, you could truncate the time that it would take to get the information and do the deep dive.

Malcolm Schaffer: It depends on whether we are looking at raising the age to 14 or 16 and the Crown Office's view on co-operating with us. I am sure that it would, but getting access to its records is a critical element.

Alex Cole-Hamilton: I understand. Thank you.

The Convener: That brings our evidence session to an end. I thank Malcolm Schaffer for his evidence.

The next committee meeting will be on Thursday 17 January, when we will take further evidence on the Age of Criminal Responsibility (Scotland) Bill ahead of stage 2. As the committee has already agreed to consider in private the evidence that it has received, we will now move into private session, so I ask that the public gallery be cleared.

10:18

Meeting continued in private until 10:30.

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