



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Education and Skills Committee

**Wednesday 9 October 2019**

**Session 5**



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**EDUCATION AND SKILLS COMMITTEE**

**27<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

\*Daniel Johnson (Edinburgh Southern) (Lab)

**COMMITTEE MEMBERS**

\*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

\*Iain Gray (East Lothian) (Lab)

\*Ross Greer (West Scotland) (Green)

\*Alison Harris (Central Scotland) (Con)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

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

\*Liz Smith (Mid Scotland and Fife) (Con)

\*Beatrice Wishart (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Andrew Alexander (Law Society of Scotland)

Sheena Brennan (Police Scotland)

Cheryl Campbell (Scottish Social Services Council)

Nicola Dickie (Convention of Scottish Local Authorities)

Gil Paterson (Clydebank and Milngavie) (SNP)

Alison Reid (Clan Childlaw)

**CLERK TO THE COMMITTEE**

Roz Thomson

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Education and Skills Committee

Wednesday 9 October 2019

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Clare Adamson):** Good morning and welcome to the Education and Skills Committee's 27th meeting in 2019. I remind everyone to switch mobile phones and other devices to silent for the duration of the meeting. Apologies have been received from Jenny Gilruth and I warmly welcome Gil Paterson, who is substituting for her this morning.

Agenda item 1 is a decision on whether to take in private at future meetings consideration of our draft report on science, technology, engineering and mathematics—STEM—in early years education. Is the committee content to do that?

**Members indicated agreement.**

## Disclosure (Scotland) Bill: Stage 1

10:00

**The Convener:** Item 2 is our second evidence session on the Disclosure (Scotland) Bill. In September, we heard from the bill team, and today we will hear from a range of organisations with an interest in the bill. I welcome Nicola Dickie, who is chief officer for children and young people at the Convention of Scottish Local Authorities; Alison Reid, who is principal solicitor at Clan Childlaw; Sheena Brennan, who is information manager for disclosure at Police Scotland; Andrew Alexander, who is head of policy at the Law Society of Scotland; and Cheryl Campbell, who is acting director of regulation at the Scottish Social Services Council.

I ask each of you to make some brief introductory remarks on your interest in the area. We will start with Nicola Dickie.

**Nicola Dickie (Convention of Scottish Local Authorities):** Good morning and thank you for the opportunity to be here. COSLA supports the broad approach in the bill, which seems to strike the right balance between protecting public safety and supporting the rehabilitation of individuals. We recognise that the current system is complex and often confusing, and we support the bill's aims to streamline disclosure and close the loopholes. We recognise that the financial impact on local government is estimated to be minimal, but that is set against a climate of significant reductions to local government funding, so all new resource implications must be fully met by the Scottish Government.

COSLA is broadly happy with the bill, and that view is shared by our elected members, colleagues in Social Work Scotland and our heads of personnel networks.

**Alison Reid (Clan Childlaw):** Clan Childlaw is a unique legal outreach service solely for children and young people in Scotland. It enables young people to have their voices heard and to participate in decision-making processes that affect them. We are specialist lawyers for children and young people. Clan Childlaw enables young people to know about their right to access free, child-centred outreach and legal help, which allows them to get support and be treated in the way that they are entitled to be treated.

The vast majority of young people that we represent are care experienced. We take issues that arise in our direct casework with young people and try to make the law better for all children and young people in Scotland. Our concern about the

effect of childhood offending-type behaviours later in life has long been one of our priority policy areas and it is one in which we have practical experience. That led us to intervene in the Supreme Court last year, in the matter of an application by Lorraine Gallagher and others, to assist the court with the details of the Scottish system.

We represent children in children's hearings every day, and the issue of disclosure arises frequently as young people are asked to accept offence-based grounds without knowing the consequences for them when they apply for a job or a college course when they reach the age of 16. We are often asked by young people who are applying for their first job whether anything will appear on their disclosure.

Given our involvement with the disclosure scheme, we have restricted our submission to the consideration of childhood behaviours only. I thank the committee for the opportunity to give evidence today, and I hope that I can be of some assistance.

**Sheena Brennan (Police Scotland):** Good morning, convener and committee members. Police Scotland welcomes the opportunity to attend the meeting this morning. As the committee will know, the bill represents the first review of the primary legislation since it was enacted, and Police Scotland is very supportive of the revised terms. We have worked closely with Disclosure Scotland since the introduction of part 5 of the Police Act 1997 in Scotland and the Protection of Vulnerable Groups (Scotland) Act 2007, and we continue to work together on the bill and related legislation.

We welcome the current process and a number of the major changes in the bill, including the change from lifetime membership to a five-year renewable membership, which will reduce the number of scheme members and the duty on us for on-going monitoring. The change from the current form of membership to role-specific or post-specific membership through regulated roles is welcome, and the fact that the scheme will become mandatory for identified post holders or job holders addresses what we see as a shortfall in the existing legislation.

We welcome the replacement of the existing dispute process by representations to be overseen by the role of the independent reviewer. That mirrors the situation down south, where there is an independent monitor. The moving of the role with regard to responsibility for disputes around other relevant information from Police Scotland to the independent reviewer is welcome, although it will be assessed as the bill progresses.

We also welcome the fact that statutory guidance will be produced for the chief constable of Police Scotland in respect of the quality assurance framework. Police Scotland currently follows the Home Office guidelines, and we welcome the bill's introduction of Scotland-specific guidance for the QAF. Overall, we are very supportive of the bill and we welcome the opportunity to discuss it further today.

**Andrew Alexander (Law Society of Scotland):** I thank the convener and committee members for the opportunity to attend today to assist the committee in its scrutiny of the bill. The Law Society of Scotland is broadly supportive of the bill, given the way in which it balances protections for the public with the importance of rehabilitation. The simplification of the process is a welcome step. We appreciate the fact that, as a regulator and a user of the disclosure system, we have had the opportunity to engage with the Scottish Government and Disclosure Scotland on how the bill might impact our organisation.

Guidance will be important, particularly on the way in which tests of relevance and provisions on what "ought to be" disclosed will operate, in order to allow us to discharge our public functions. That will give us clarity to be able to progress with the new disclosure system and allow us to ensure that we maintain the professional principles of a regulated legal profession.

**Cheryl Campbell (Scottish Social Services Council):** Good morning. The SSSC welcomes the opportunity to appear before the committee to provide evidence on the bill. We regulate the Scottish social services workforce and protect the public by carefully assessing applications for entry to our register. We also take action against those applicants and registrants whose behaviour falls short of the standard that is expected. The disclosure of information plays a key part in our assessment.

We consider that the bill represents a welcome simplification of the current system of disclosure, and the mandatory element of the PVG scheme is also welcome. We look forward to continuing to work with the Scottish Government and Disclosure Scotland to advance the bill's aims, and I hope to be able to assist the committee today.

**The Convener:** Thank you. When you wish to respond to a question, please indicate to me or the clerks, and we will ensure that you are brought in. We have a broad range of topics to cover, and we begin with a question from Dr Allan.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I am interested in what the bill has to say—or perhaps does not have to say—about under-16s and where they fit into the picture. We want to avoid the twin risks of letting someone under 16

who is a danger slip through the net and getting into a situation where there are too many restrictions on young people who want to do voluntary work. I am keen to hear your views on how the system works and the fact that under-16s will not be able to join the PVG scheme.

**Nicola Dickie:** The number of people who are under 16 and in the PVG scheme is fairly limited. COSLA has had broad discussions with professionals who support young people, and getting it right for every child means that many young people who are troublesome or have behavioural issues are already well known to support services such as social work, teaching staff and Police Scotland, depending on the level of the behavioural difficulties. Many of those young people are also involved in the children's hearings system. We are comfortable that the bill strikes the right balance between the risk of having those young people outwith the system and having them in the system and continually monitoring their behaviour for a significant time.

**Dr Allan:** In previous discussions on the subject, my colleague Ross Greer has asked how, if somebody approaches a voluntary organisation, it will know whether they are in the scheme.

**Nicola Dickie:** The Scottish Government is clear in the policy memorandum that it will be for Police Scotland and the lead professionals to have a conversation with the young person, and they will expect the young person to disclose the information. If that does not happen, Police Scotland and the lead professionals might have to disclose the information. I am sure that Police Scotland has thoughts about that.

**Sheena Brennan:** I agree with Nicola Dickie. When a person under 16 has behaviour that is concerning, they will be known to a number of professionals, who will ensure that the young person does not work or volunteer—in most cases, it will be volunteering—in certain areas. You could look at that and think that there is a potential gap. However, organisations have their own safeguarding responsibilities, and if people under the age of 16 work for or volunteer with them, they will place restrictions to ensure that those who do not have a PVG certificate cannot work one to one with vulnerable children or whatever. It is a partnership-working scenario. The Scout Association works all around the United Kingdom, and it addresses its safeguarding responsibilities.

It would be unusual for an individual under the age of 16 who had behaved in such a manner to be in that situation. If they have committed an automatic barring offence, Disclosure Scotland will have to automatically disclose the offence as a duty of care.

**Dr Allan:** Related to those issues is the concept of spent convictions, which might affect people throughout their lives. I am keen to hear your views on how the proposals to change the system deal with that. What are your views on the way in which the rules deal with spent convictions and people's potential for rehabilitation if they are being monitored?

**Sheena Brennan:** That relates to the Management of Offenders (Scotland) Act 2019, which is associated with the age of criminal responsibility due to the fact that 12 to 17-year-olds are now in a different situation because of the Age of Criminal Responsibility (Scotland) Act 2019. Following the management of offenders legislation, Disclosure Scotland has now implemented schedule 2 paragraph 1(8)(a) and (b) lists for filtering information, which benefits individuals who have the right to rehabilitation. If they committed a more serious offence, that would not be caught by the rehabilitation guidelines.

**Alison Reid:** We have some concerns about how childhood convictions are treated in the bill. We are particularly worried about children's hearings. Given that the children's hearings system is welfare based and looks at the best interests of the child, we feel that there is a dissonance between the negative outcome of the disclosure scheme and the welfare that the children's hearings system is trying to achieve. We see that as problematic and potentially challengeable under article 8 of the European convention on human rights.

The purpose of the children's hearings system is to divert a young person from their offending behaviour, and we question whether having enduring adverse consequences from childhood into adulthood is an effective and proportionate way of achieving that. That raises concerns for us around article 8.

10:15

We are also concerned about the group of under-18s who are convicted in the adult court. Given that the Scottish Government is committed to the incorporation of the United Nations Convention on the Rights of the Child and to making sure that children are looked at in a different context from adults, our view is that under-18s should not accrue convictions. If there is something serious, it could appear as other relevant information. I can say more about that. I believe that a high bar is required for other relevant information in relation to children.

**Dr Allan:** Finally, I have a question for the Law Society, which may or may not relate to the points that have just been made. More generally, how robust is the new system that is proposed, given

that there have been legal challenges to the existing system and similar systems throughout the UK? Do you have any views on the robustness of the system in the face of possible challenges from individuals?

**Andrew Alexander:** Alison Reid has highlighted areas in which there is the potential for challenge, and it is always feasible that individuals might look to test, on article 8 grounds, the ways in which the disclosure system operates. There could potentially also be the prospect of challenge under article 1 of the ECHR, which concerns interference with property, because a disclosure can have a direct impact on someone's livelihood.

The approach in the bill is reasonably robust and there is a degree of flexibility. Therefore, we are not particularly concerned about that. It would be helpful if some of the detail was fleshed out because, if we are in a situation in which the process is not fair to most of the individuals involved, there could be particular difficulties.

One of the areas that we highlighted involves the prescribed periods during which reviews could take place, because there is a degree of tension there. Often, if a disclosure is for the purposes of employment, the review process might need to be fairly quick. Equally, if the review process is particularly short, it might not allow people the opportunity to adequately represent their position, or to get independent advice on what could be some serious consequences.

We think that the bill takes a reasonable approach in the light of current decisions, although it is always difficult to future proof legislation regarding potential challenges.

**Alison Reid:** When I was looking at the question of compatibility with the ECHR, I was concerned about three areas, apart from the one that I have raised already around children's hearings.

The first is around the "ought to" and relevance tests, because the law has to be foreseeable. At the moment, without the detail of what the tests are, it is really hard to be able to advise young people, or any person, about what will actually be disclosed. I therefore think that more detail around those tests is required.

The second area is around other relevant information, which I am sure we will come on to. It has to be proportionate and, given that the information is not proven information, we think that a very high bar will need to be set around the other relevant information. In addition, there should be a really close link between the disclosure and the risk that it is trying to protect against, in order for it to be compatible.

My third concern is around the complexity of the scheme. The law has to be foreseeable, and I understand that it has been simplified to some degree, but it still remains pretty complex.

**Dr Allan:** Thank you.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** I want to follow up on the human rights aspect. I invite everybody to answer; however, it relates to the submission that Alison Reid made, which she mentioned just now. It states:

"A system so complex as to mean there is the lack of foreseeability, is at risk of being incompatible with Article 8 ECHR",

which concerns respect for private and family life. Will you expand on that a bit more with regard to the challenges that there have been and how you see this as being different?

**Alison Reid:** The law has to be understood and it has to be foreseeable. We are trying to explain the scheme to young people who potentially have complex mental health issues, who have experienced physical and emotional abuse or trauma or who have been exposed to neglect.

We try to explain really complex concepts; it is not that each concept in itself is difficult, but it is complex once you get them altogether. I also deliver training on the subject to professionals who work with young people, and it is difficult. A person has to understand the concepts of what a conviction is; whether it is spent or unspent; other relevant information; the lists and whether the offence fits into the list or not; whether it was heard in the children's hearings system; whether it was brought on offence grounds rather than care and protection grounds; whether there was a time lapse that has gone since the incident; and whether it is level 1 or level 2, as it now is. By the time that you have brought in all those concepts, it becomes tricky to explain. I understand that, to some extent, it needs to be complicated, because it is not straightforward; I am not trying to overstate the position.

**Gail Ross:** Is there any way at all that you could see it being made simpler, compared to your description of what we have now?

**Alison Reid:** In relation to the way that childhood offending behaviour is addressed, our view is that it should not be treated as a conviction. That would simplify the system substantially, because any childhood behaviours would be treated as other relevant information, which would take out the whole column in the table that I created in my submission to try to explain the system, and leave us with just other relevant information.

As I said before, a high bar needs to be set around what other relevant information is. There



needs to be certainty around what that is, and a link between disclosure and the risk that is trying to be protected against. That would certainly simplify it for the purposes of children.

**Gail Ross:** Would that fit in with the second section of article 8, which is about the public safety aspect?

**Alison Reid:** In my view, it would, in that, if there were some circumstances that still required to be told to a prospective regulator or employer, it could be done under other relevant information, with the high bar being set, given that it relates to childhood.

**Daniel Johnson (Edinburgh Southern) (Lab):** I would like to follow on from that line of questioning, to an extent. One of the clear policy intentions of the bill is to simplify the disclosure regime; indeed, it does so by reducing the categories of disclosure from four to two. However, in creating one single level of enhanced disclosure, is there—to use Alison Reid’s terminology—a lack of “foreseeability” as to what might be disclosed? A very broad range of different types of information might now be disclosed in level 2; whereas, previously, with the three levels of enhanced disclosure, you would have a degree of predictability about what might come out.

Would the panel agree that there is potentially an issue there, and perhaps for more people than just those with childhood convictions, whose situation Alison Reid outlined?

**Nicola Dickie:** COSLA recognises that such matters are complex, given the nature of trying to shoehorn everybody into the same disclosure scheme. Whatever the bill ends up looking like, a publicity campaign will be desperately important for members who will be joining the scheme and for prospective employers. That will help to inform people with disclosures that they will need to come forward.

The change from four levels of disclosure to two levels is a simplification, but Daniel Johnson is right to say that that will not come without consequences. Therefore, there must be an undertaking in the financial memorandum to raise the profile of what we have done and why we have done it. That is important so that the changes are as foreseeable as they can be for people who are in the scheme, but it is also important for public perception. We must be careful to be absolutely clear about what we are trying to establish and why we want to do that. We should do that through the public conversations that we are having in relation to the age of criminal responsibility and the UNCRC. We should be aware that public awareness of such issues is growing, but raising

awareness further will be an important part of our work as we move forward.

**Cheryl Campbell:** The Scottish Social Services Council is part of the stakeholder advisory group that is reviewing Disclosure Scotland. That is a complex area of work, because there is a diverse landscape and it is a real challenge to get the right balance between rehabilitation and protecting the public. The stakeholder advisory group meetings have shown very clearly that people are on different sides of the fence, so we have tried to come together with some sort of compromise. The bill presents that compromise, but the position is still rather complex. The bill goes some way in simplifying things while taking account of both those elements.

**Daniel Johnson:** I totally take Nicola Dickie’s point about the need for publicity; that stands to reason. However, the problem is that we cannot design the publicity campaign now, because we do not know what criteria will apply—that will be entirely down to guidance. Clan Childlaw and the Law Society have pointed out that the only tests that are in the bill relate to relevance and whether information ought to be disclosed. Cheryl Campbell said that there is a compromise, but we do not know what the compromise will be because we do not have the criteria in front of us. Is that a correct summary of where we are?

**Cheryl Campbell:** Yes—I would say so. We would welcome the opportunity to work collaboratively with Disclosure Scotland on the development of the guidance, so that all views—not only those of the Scottish Social Services Council, but those of other bodies—are taken into consideration.

**Daniel Johnson:** I will put a direct question to the Law Society and Clan Childlaw. Should some high-level principles be included in the bill to provide clarity and to allow for legal redress? Is there a weakness in relying on guidance to provide people with legal certainty?

**Andrew Alexander:** In our submission, we highlighted our concerns about using the tests of “relevant” and “ought to” without there being guidance in place. People who apply for disclosure and those who are in receipt of it require a degree of certainty, so we must ensure that we have the correct balance. It is a difficult area and there might need to be a degree of flexibility. We do not know whether the jurisprudence around how to deal with that balance will shift over time, not just in Scotland but across the rest of the UK, and we want to maintain consistency. It would be helpful to have guidance that could be scrutinised at this stage. Alternatively, there is the prospect of including high-level principles in the bill, with the potential of using regulations to amend them through a negative or affirmative process, should

those principles find themselves out of touch with emerging jurisprudence at a later stage. However, it is an area in which being able to see what the tests of relevance ought to disclose and how they might operate will play a large part. For instance, as a regulator, we might be interested in offences under the Solicitors (Scotland) Act 1980 and think that it would be relevant for them to be disclosed.

10:30

We would have to consider whether our approach on relevance could be sufficiently nuanced to enable us to say that, for the purposes of deciding on admission as a solicitor, such offences would be relevant and ought to be disclosed, or whether a more general set of principles might operate for positions of trust and the like. There is undoubtedly scope to provide greater clarity on the two tests.

**Alison Reid:** I agree. Clan Childlaw aims to be able to advise young people on what the changes would mean, what would happen and what the consequences would be. We need to make all that foreseeable, so my preference would be to have the scheme set out clearly in the bill. That would mean that the detail would be preserved and could be challenged more easily if something were to go wrong, which I hope will not happen—that is the last thing that we want. It would just make clear what the scheme is and what the tests are. People would be able to see the detail and everything would be up front. Clearly, guidance would help with that, too.

**Sheena Brennan:** I want to comment on the guidance and also the relevancy tests. As I understand the position, only the checks that would come through the level 2 disclosure process and would be triggered to Police Scotland would be assessed for relevancy.

We are already working with the Home Office quality assurance framework. We hope that, if the bill is passed, we would then have a set of Scottish guidelines that would probably be based on the ones that are already in existence. Such a change came about in the guidance that was issued in 2015 following recommendations made by Sunita Mason in her review of the criminal records regime. It said that the criterion should change from information that an officer thinks might be relevant to information that the officer

“reasonably believes to be relevant”

and which “ought to be” disclosed. If we could have such guidance set out in the bill, that might reassure those who are concerned about the relevancy tests that are undertaken. It would also be pertinent to our own piece of legislation and relevant to information that is retained here.

**Daniel Johnson:** You are saying that, at the moment, it is difficult for an individual to know precisely what will be disclosed, because of the absence of detail about the tests. Might the flip side of that coin not be that, from the perspective of members of the public, as the bill is currently drafted, they will be very reliant on Disclosure Scotland’s interpreting what the requirements and responsibilities are for roles for which they might apply through the scheme? Are there concerns about that and about the ability of Disclosure Scotland—or whichever other body might be involved—to understand those matters fully and to get them right? Is there a danger of its misunderstanding and therefore not disclosing information that would be relevant and should be disclosed?

**Sheena Brennan:** Only certain cases come to Police Scotland for assessment of other information that might be held, such as pending cases or intelligence information. As I understand it, when such a request is triggered, we apply our tests, which are based on the Home Office quality assurance framework that I mentioned, which is available to anyone who wishes to look it up—we have used that as a basis for our principles for undertaking tests. I am not sure whether Disclosure Scotland would make changes to our information once we send such requests back, because the chief constable would have decided that that was the other relevant information that we wanted to share with it.

I will not move on to the next steps, because that would involve looking at the dispute process and how representations might be made. However, the independent reviewer, which is a new post that came from the Age of Criminal Responsibility (Scotland) Act 2019 and has a much greater role in the disclosure bill, creates a better opportunity for an individual to see that information on ECHR and human rights grounds before it is shared with an employer.

**Iain Gray (East Lothian) (Lab):** Most or all of the evidence so far has been on the principles and the tests of ORI. I appreciate that the guidance for the new scheme does not exist yet, but Police Scotland works to the Home Office guidance. I am quite interested in the practicalities of how that works. The decision is taken by the chief constable, but I guess that some other people are also involved. I am interested to know how the police handle that and where the chief constable comes in.

**Sheena Brennan:** We regard ourselves as delegated signatories for the chief constable in respect of the legislation. As you might imagine, we are the ones who actually undertake the tests. When the request comes in, we assess all the information that is pertinent to the application,

whether it be information about a pending case or intelligence. We then assess the information against the relevancy tests—accuracy, relevance, proportionality, and the ECHR element, which is foremost. It is about balancing the rights of the applicant against the rights of the child or the vulnerable adult.

**Iain Gray:** When you say “we”, who do you mean?

**Sheena Brennan:** I mean my team.

**Iain Gray:** That is the disclosure team at Police Scotland.

**Sheena Brennan:** Yes.

**Iain Gray:** How big is that team?

**Sheena Brennan:** Across the country, we have approximately 72 people, and 60 per cent of them are working on PVG.

**Iain Gray:** You said that you are a delegated signatory.

**Sheena Brennan:** Yes.

**Iain Gray:** Does that mean that the chief constable does not see the decisions at all?

**Sheena Brennan:** He sees them very rarely.

**Alison Harris (Central Scotland) (Con):** Nicola Dickie, from COSLA, says that the cost implications will be minor. Can we explore that a bit? If the bill passes and the renewal system comes into play, the current cohort of PVG scheme members will need to go into the new scheme and that will be an initial cost.

Have you thought that, five years down the line, the bill creates a large liability for organisations that will have to be budgeted and planned for? The bill will also have implications for third sector groups—you talked about scouts and so on. Have you given that any thought?

**Nicola Dickie:** That is why I said that COSLA recognises that the financial memorandum estimates that the costs will be minimal. The financial memorandum is never an exact science. What it looks like when the bill is introduced is not necessarily what it looks like when it is passed.

From a local government perspective, we recognise that it is swings and roundabouts. We might well face up-front costs and then move forward. We are interested in doing some of that modelling work.

Over and above the financial, there are other resource implications. My team is responsible for the expansion of early learning and childcare, which is a significant undertaking and might require a significant workforce. We need to factor that in. There will therefore be a financial resource

implication and a personnel implication, which is not limited to local authorities, because third sector and private providers are also upscaling their workforces to meet their expansion programmes.

We are interested in working with the Government to get the financial modelling as spot on as we possibly can. There has been no pushback from the Government on that.

On the earlier point about guidance, the bill has been approached in a collaborative way, so I am not here to suggest that we will not do that work.

**Alison Harris:** Have the other witnesses given any consideration to the transition to the new scheme? Are there any thoughts on staggering the transition? I think that there will be a financial implication, so it is important to consider that.

**Cheryl Campbell:** We have been doing a bit of work with Disclosure Scotland on that—so far, we have had only initial discussions.

With regard to the cost, disclosures currently have to be repeated every three years in the social services sector. People have lifetime membership of the PVG scheme, but they have to get their record updated every three years, and there is a cost for that. The five-year membership could bring some savings, although those would be offset against some new costs. I do not have any details for you on that.

There needs to be a lot of thought about the details of implementation—for example, whether everyone is moved on to the scheme initially with a staggered renewal period so that people who have recently paid to become members could renew their membership later on. Those are the sorts of discussions that need to be had. As I said, our discussions with Disclosure Scotland are still in the very early stages.

**Alison Harris:** It is still being discussed.

**Cheryl Campbell:** Yes.

**Alison Harris:** That is good.

**Andrew Alexander:** We have not looked directly at the financial implications. As an organisation that admitted 587 solicitors in the past year, that aspect does not affect us.

However, one area that we think is important—to echo the earlier comments—concerns the idea of publicity. The scheme involves a huge number of people—it is currently seven figures—and there is ultimately a criminal sanction if people continue to do such work beyond the termination of their membership, as well as a criminal sanction on the organisation that allows that to occur, which is the right approach.

There needs, therefore, to be a degree of information available across the huge number of

sectors involved in the scheme to ensure that no one inadvertently falls into a challenging situation. That struck me in listening to a previous evidence session, in which it was mentioned that communications had been sent out to people to tell them that they no longer needed to be part of the scheme because they were no longer carrying out the work. The feedback on that was apparently mixed. There needs to be some resource to ensure that everyone is aware that the system is going to change, because the changes will affect such a large number of people. That would be helpful.

**Liz Smith (Mid Scotland and Fife) (Con):** I have some further questions about the cost, but first I would like Sheena Brennan to clarify something. In an answer to Iain Gray, you said that you had approximately 72 people around Scotland working in this area. If I heard you correctly, I think that either 60, or 60 per cent of them, are working full-time on disclosure.

**Sheena Brennan:** Yes—as part of my information management disclosure team, I also have responsibility across the board for data protection, subject access and freedom of information. Around 60 per cent of my 72 staff are working on the PVG scheme.

**Liz Smith:** Do you foresee that the bill would cause you to increase that number?

**Sheena Brennan:** As we have suggested to Disclosure Scotland, our concerns around staffing relate more to our responsibility for processing representations. If we are putting out other relevant information, the disclosure would have to go to the independent reviewer first. At that point, we would have to undertake another clean review, performed by individuals who had not worked on the first disclosure. Our concern is that we might need more staff to support the representations element.

With regard to the financial implications and the number of people involved, there are currently 1.2 million people on the scheme. There are not 1.2 million people working in regulated work in Scotland, but because people remain scheme members, they are subject to on-going monitoring. There could therefore be a positive impact on staffing in relation to reducing on-going monitoring, but we will have additional responsibilities in relation to applications.

Many years ago, when we first had applications, a lot of applications were being assessed and there was very little on-going monitoring. Over the years, we have had fewer applications and much more on-going monitoring. It will now go the other way and we will again have more applications and less on-going monitoring. I hope that the work would therefore even out. We have discussed with

Disclosure Scotland the responsibilities of the independent reviewer.

**Liz Smith:** I am interested to hear that response. I understand why the work might balance out. That said, moving to a mandatory scheme means that it will become mandatory for more people to be on the list. That in itself would create some kind of cost, not just to the individuals but in relation to the monitoring involved. Am I right?

10:45

**Sheena Brennan:** Rather than having 1.2 million people on the scheme, we will end up with a scheme that includes the number of core individuals who do regulated work. The beauty of the new scheme is that we will deal with people who have regulated roles or responsibilities, rather than with child or adult schemes. We are looking forward to that system because, when we assess the information, we will look specifically at the role and responsibilities that an individual would take, as opposed to taking a more generic consideration by saying, “Well, it’s within the scheme. They might be driving or they might not be driving.” The system will allow us to home in more on what we are looking at, which might be easier.

**Liz Smith:** I am interested in what you said about 1.2 million people being on the scheme but not all those people necessarily being involved in jobs that require disclosure. I know of people on the three-year disclosure system who have never been told by the group that they are working with to update their disclosure. The bill will make it clearer that there is an obligation on groups to inform people that they must be in the disclosure system. Some extra costs must be involved in that.

**Sheena Brennan:** We should look at good examples of organisations that have worked proactively with the turnaround of three years. We will now have a mandatory system with renewal every five years, and those responsibilities will be set out. You are right to say that, because it has not been mandatory for people to be on the scheme, there is potentially a huge risk relating to individuals who do regulated work but who have never been through the disclosure process.

We do not know the details of how the turnaround process will work, but a lot of work was done on retrospective checking when the PVG scheme was first introduced. Until we see the detail, we are assuming—or hoping—that the balance of applications against on-going monitoring will improve over time. We have a good relationship with Disclosure Scotland and we have yearly budget discussions. Our information on the independent reviewer and the numbers that we

think might be involved have very much come from our discussions with Disclosure Scotland.

**Liz Smith:** Everybody is relatively positive about the bill's general principles; I do not think that there is any disagreement about them, which is very good. However, when we drill down on some of the detail, I think that there are some hidden costs. We must be very clear about what those costs are and whether there might be a detrimental impact on clubs and societies that do not have very much money. First, those groups will be obliged to ensure that the people who work with them are properly told about their responsibilities. Secondly, we must be careful that, if those associations or clubs take the responsibility for paying the £59, we do not stop them doing that. I worry about that, not least because of the pressure that a lot of voluntary organisations are under. Does that concern you?

**Sheena Brennan:** Police Scotland is not involved in that area but, as was said in the earlier conversation, there is definitely a concern about how the proposals will impact on organisations. We do not want somebody to avoid doing something that is mandatory because of a cost implication. Under the bill, Police Scotland would become a referral agency, so if we identified that somebody who was doing regulated work was not a scheme member, we would have the opportunity to refer. That is a new provision in the bill, which we welcome.

**Liz Smith:** For clarity, what would happen in that instance?

**Sheena Brennan:** We think that, under the bill, when membership of the scheme becomes mandatory, it will be an offence for someone to do regulated work without the relevant certificate. Police Scotland would then have an opportunity to refer the case to Disclosure Scotland. Many organisations already have that referral opportunity, but we do not have it at the moment.

**Beatrice Wishart (Shetland Islands) (LD):** I am interested in the definition of "protected adult". Part of the three-stage test is to determine that, when an individual is undertaking a regulated role, the activities include the opportunity to have contact with protected adults or children. One of the respondents was concerned that that definition focused on adults who

"by reason of physical or mental disability, illness or old age"

require support or are receiving healthcare. The concern was that victims of domestic abuse might not meet the criteria. What do the witnesses think about the definition of a protected adult? Is it sufficient?

**Andrew Alexander:** When we looked at the bill, members of our mental health and disability committee raised the point that the definition of "protected adult" in section 76 was somewhat different to that in other legislation for vulnerable people. We specifically highlighted that an individual could qualify for a personal independence payment, or disability assistance as it will be in future, and need a carer to meet their assessed needs but still not be considered to be a protected adult for the purposes of the legislation. That was one area where we thought that additional consideration could be made.

We were also aware of the response from Scottish Women's Aid, which highlighted the area. Going back to look at the definition again would be helpful.

**Nicola Dickie:** COSLA is a co-signatory to the equally safe plan so, if Scottish Women's Aid has raised the point, it is worth looking at it. We do not want to jeopardise any of the good work that we are doing under the equally safe plan through unintended consequences. From a local government perspective, we would be happy to work with the Government and Disclosure Scotland to look at that.

**Iain Gray:** We talked a bit about people under the age of 16 who have convictions, and I want to ask about the age at which convictions should cease to be treated as childhood convictions. Clan Childlaw's submission takes a very different view from that of the other submissions and suggests that the system should pertain until the age of 25. Why do you believe that?

**Alison Reid:** We included that in our submission after we had looked at the research that was provided by the Centre for Youth and Criminal Justice. Donna McEwan suggested that 25 was the appropriate age because young people are still developing up to that age. That is where the suggestion came from; perhaps you can ask the CYCJ more about that.

I am saying today that 18 is the age that is protected by the UNCRC and the principles of looking at childhood behaviour mean that that would be the cut-off point in law.

**Iain Gray:** I am a little confused about which age you are suggesting would be the appropriate age.

**Alison Reid:** The research shows that young people are developing up to the age of 25. That is why I put that in the submission. I do not know anything more than that about the research.

Under the UNCRC principles, 18 is the appropriate age.

**Iain Gray:** Do any of the other witnesses have a view on the idea of 25 being the appropriate age?

**Andrew Alexander:** We have seen the evidence and suggestions that neurological development takes place into the mid-20s. We are consulting on incorporating the UNCRC into domestic law. As Alison Reid says, that has 18 as the appropriate age.

The age of criminal responsibility has also been changed and there is the potential for that to be reviewed in future. That could be the stage at which evidence about the effects of offending in childhood stages is reviewed.

**The Convener:** The Children and Young People (Scotland) Act 2014 includes provisions on access to support services for looked-after children up to the age of 25. Could a special case be made for looked-after children in this instance?

**Nicola Dickie:** COSLA supports the principle of raising the age of criminal responsibility to 16. We understand why we have landed where we have and that we are very much on a journey. Broadly, that is where COSLA and local government sit. We need to continue to develop the evidence and ensure that we take that information into account as the bill goes forward. We would not be absolutely dismissive of such proposals, but we do not have the evidence or, perhaps, the necessary public perception at the moment. I go back to the point about ensuring that we balance the rights and needs of our children and young people—which are paramount—with consideration of public safety and public perception.

**Cheryl Campbell:** The SSSC does not have a fully formed position on the age at which offences should be disclosed. As Alison Reid and Andrew Alexander said, it is about providing evidence in order to make an informed decision on what the age should be. We think that there will be times when the conviction of a child might have an impact on our decision on whether that person is safe to work with some of the most vulnerable people in society.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I have a follow-up on Liz Smith's line of questioning. I would like a wee bit more detail on what Sheena Brennan said about a person who is in regulated work being referred for not having disclosure. Do you expect people to tell you that people are doing regulated work? How will you find that out? You do not look proactively for such evidence.

**Sheena Brennan:** The current legislation does not provide for a referral process for Police Scotland. As we understand the bill, once the mandatory scheme is introduced, it will be an offence for a person who has not gone through the process of getting the relevant disclosure to do regulated work. If police officers, while they are investigating a crime that relates to some other

matter, identify that an individual is doing regulated work without the relevant disclosure, Police Scotland will have the opportunity to refer the case to Disclosure Scotland, which will take a decision. We would share information on that basis.

**Rona Mackay:** Disclosure Scotland would take the decision on whether the person was guilty of not having disclosure. What would be the outcome of that?

**Sheena Brennan:** My understanding is that the bill does not include detail on that. Earlier, we said that some organisations have individuals working with them who have not been through disclosure checks. The gap in the current legislation will be resolved through the mandatory element of the scheme.

**Rona Mackay:** Would the organisation be responsible, or would it be the individual?

**Sheena Brennan:** Both would be responsible. At the moment, certain offences lead to automatic barring from working with children or vulnerable adults. Disclosure Scotland does that processing, but it applies only to certain offences. Given that membership of the scheme will be mandatory, people who work within the regulated workforce will need to have disclosure. We or any other organisation might identify that somebody is doing regulated work. Under the bill, the police will have a role in referring such cases to Disclosure Scotland.

**Rona Mackay:** Nicola Dickie spoke about the need for a public awareness campaign before the bill is enacted. Some of the issues seem to be a bit vague. We need to be able to make it clear to the public what the sanctions will be for a person who does not have disclosure, so we will need to look at that gap.

11:00

**Nicola Dickie:** Our approach needs to be proportionate. On the point about transitioning from where we are to where we need to be, we should be aware that the 1.2 million people who are on the current scheme do not all do the same things. It is in our gift to consider what we do and to ensure that, before someone is sanctioned for not being part of the mandatory scheme, we have a conversation with them and say that, if they come off the existing scheme, they do not need to transition. We need to get into that level of detail so that the system is not in a state of flux at a time when getting things right will be really important. I go back to what I said about early learning and childcare expansion because, on a personal level, I need that process to work particularly well.

There is also the on-going problem of the potential turnover of staff as a result of Brexit: we do not know what the staffing position will be. It is therefore important that we manage the transition in a helpful way, so that the system is not in a state of flux when we need it most.

**Rona Mackay:** The Brexit factor is very important.

**Ross Greer (West Scotland) (Green):** I will return to Alasdair Allan's questions on moving the minimum age of people on the scheme to 16. I want clarification on a point that Nicola Dickie made earlier about under-16s. In respect of the very small number of under-16s who are barred or restricted in their interaction with vulnerable groups, did you say that responsibility to disclose still exists even if the individual is a minor?

**Nicola Dickie:** It is my understanding that, from a public safety perspective, we would disclose—

**Ross Greer:** I am sorry, but are you saying that the child—the 14 or 15-year-old—would be responsible for disclosing the information?

**Nicola Dickie:** As the policy memorandum suggests, we would not sidle up to a 14-year-old and suggest that they should disclose stuff without any support. Under all the existing policies and procedures, we have on-going relationships with children and young people and with the people who have parental responsibility for them. It is about having those conversations in a supportive and informed way. I do not think for a minute that the issue should be dealt with in a black or white way by either sidling up to the voluntary organisation or stopping the person doing the work. Rather, we should say, "This is what's in your best interests." The conversations that take place on the front line should be about on-going protection and about children and young people's outcomes. I do not see that changing as we move forward. The number of cases such as those to which Ross Greer referred is small.

**Ross Greer:** The main argument for moving the minimum age of people on the scheme to 16 seems to be that other statutory services will be involved in the lives of under-16s who have restrictions for whatever reason, but would otherwise be part of the scheme. One of my concerns is that, if a young person in that position moved between local authority areas, there might be a break, at least temporarily, in the provision of statutory services that we want to be delivered. Do the witnesses share that concern, or can they provide me with some reassurance? If the bill is passed, someone under the age of 16 who would otherwise be barred or restricted will not be required to have PVG membership. However, there could be a risk—even for a limited time—of monitoring by social workers or whoever not being

continuous, due to a young person moving, for example.

**Nicola Dickie:** I would prefer to concentrate our efforts on ensuring that that young person would not experience a gap in provision. That would be a far more helpful way of working, because there are issues—not just those relating to Disclosure Scotland—for children and young people if they are not transitioned properly between different local authorities' public services. We are talking about a small number of cases. For the benefit of the outcomes of those children and young people, I would prefer to work with all our professionals to ensure the transition between local authority areas and between public authorities. I would not use the bill to try to fix that: it has got things right by having a proportionate approach.

There is a separate conversation to be had about how our children and young people move between local authorities. I come back to the getting it right for every child approach. If we get that right, nothing should be unplanned, and young people should not be without the correct support, even for a limited time. The Disclosure (Scotland) Bill is only one part of that.

**Ross Greer:** I agree that more work needs to be done around transitions, but the issue is not that the bill would be used to solve that problem. As it stands, someone under the age of 16 can be a member of the scheme. The bill would change that. Given that the situation in relation to transitions is not perfect, the current scheme resolves that issue because an under-16 doing such regulated work would be a member. The bill will change that so that they would not be. In a world in which we acknowledge that transitions are not perfect, I am concerned that we are creating vulnerability rather than resolving an issue that is already resolved under the current scheme.

**Nicola Dickie:** That is certainly not the opinion of the professional associations with which I have had conversations. COSLA is clear that the bill almost has it right. I do not know whether that gives you enough reassurance.

This work is not being done in isolation: it is part of the work that we are doing on youth justice and the children's hearings system. All that stuff is going on and the conversation in it is exactly the same. It just so happens that in relation to the bill we are talking about Disclosure Scotland. We have similar conversations about youth justice.

**Ross Greer:** I will go back to the core issues. I am still looking for a clear answer to the question about what the problem is with having under-16s as members of the PVG scheme. The bill team's explanation is that it is about striking a balance between risk management and the administrative burden of having in the scheme a substantial

number of people who would not pose a risk and would otherwise not be restricted. I understand that there is a perfectly legitimate debate to have about striking that balance and creating a system that is not overly cumbersome, but beyond administration, are there any other inherent issues with 14 or 15-year-olds being members of the PVG scheme?

**Nicola Dickie:** I am not sure that their being in the scheme would be proportionate when set against the risk that would be posed by such individuals. All 14 and 15-year-olds would be in, as opposed to the small minority who currently apply for the PVG scheme. I am wholly aware that there are, on the panel here, experts on the law who can comment. However, putting all 14 and 15-year-olds in the scheme and having their behaviour monitored at all times does not seem to fit with the wider conversations that we are having about children and children's rights across the country.

**Ross Greer:** It is about balancing the risk between one child who is engaged in work that would be restricted if they were a few months older and the children with whom they are working. I am interested to hear Clan Childlaw's view of that. Am I getting this right? Are we talking essentially about balancing the rights of two different sets of children—the ones who are doing the work and the ones with whom they are working?

**Alison Reid:** That is my understanding. I have to say that this is not an area that we have come across in practice, so we have not formed a view. Therefore, I am not sure that I can be much help to you on the issue.

**Sheena Brennan:** On proportionality, we are probably talking about a handful of children being individuals of concern.

**Ross Greer:** There are literally half a dozen.

**Sheena Brennan:** Absolutely. As I said earlier, organisations are responsible for ensuring that when they take on volunteers aged 14 and 15, their safeguarding and protection roles mean that those volunteers do not have one-to-one access to children, just in case. It is about organisations taking responsibility.

That might go back to the publicity and awareness campaign that needs to be run for the new legislation saying that, if an organisation has people working for it who are under 16, its responsibility is to ensure that safeguarding is in place because those people will not be subject to the legislation.

As we have said, we are probably talking about six or seven children who we are aware of who would be of concern.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I am going to ask a couple of questions about the lists. Do the witnesses agree with the continuation of the system of having two lists?

**Alison Reid:** I have made clear my position on that in relation to children. I do not think that we should be getting involved in lists. The scheme should not involve convictions for under-18s, especially those in the children's hearings system. There is a route to further information through the relevant information, with a high bar set on that relevant information.

**Sheena Brennan:** Police Scotland is not involved in what is on the list. It is very much a Disclosure Scotland responsibility so it is not for us to comment on it.

**Andrew Alexander:** We highlighted the issue in our response. There is the ability to change the lists over time, incorporating new offences or changing for policy reasons the priority that is given to various things and, I understand, changing them by using regulations to be laid under affirmative procedure, which gives the opportunity for detailed scrutiny.

If we are looking at the division between the two lists being around issues of honesty or positions of trust, we highlighted embezzlement and fraud as separate because they can be charged as alternative offences under the same legislation. We also mentioned other offences that we thought could be included on list A, including perjury and attempting to pervert or defeat the ends of justice. We thought that those areas merited further consideration and could be changed in the bill, if that is deemed to be appropriate.

**Gil Paterson:** Could the system function without a list?

**Andrew Alexander:** It would be more challenging to operate on that basis. If everything was moved from list B to list A, more information would be brought into the domain in which it would be disclosed. There would also be concerns about shifting things the other way, so that serious offences were subject to a less strict regime.

We are also conscious of the fact that there is some consistency among the jurisdictions of the United Kingdom. We are aware that some respondents to the bill have suggested that there should be different lists based on whether the person is a young person or an adult. When we considered that, we thought that we would need to see evidence for making a distinction between lists.

There are undoubtedly different ways of approaching the issue but, overall, we were content with the list A and list B approach, with some modifications to the types of offences that sit on those lists. We are looking to safeguard the



public: when solicitors are in an important position of trust and are helping people with significant issues, often at very stressful times, we need to be able to apply a robust approach when we use the disclosure system.

**Cheryl Campbell:** I would echo what Andrew Alexander has said. We appreciate the rationale behind having list A and list B. We would like to be assured that some sort of consultation will be done on any review of list A and list B so that we can be content that they meet the needs that we are looking for, as a regulator.

11:15

**Gil Paterson:** Are the timescales that are set out in the bill in relation to lists A and B appropriate?

**Nicola Dickie:** The idea of the timescales being wrong was not raised by our professional advisers or in any of our conversations from a local government perspective. We are content with the timescales and the lists.

**Gil Paterson:** I see that no one else wishes to comment. Questions about the issue might not have arisen.

My next question might have been answered, in part, but I will ask it to see what people have to say. Do the provisions relating to childhood offences—namely no time limit for review for list A offences and a five-and-a-half-year disclosure period for list B offences—suitably differentiate childhood offending?

**Alison Reid:** My view is that that is an arbitrary distinction that feeds into the difficulties that I have with the approach, particularly in relation to the children's hearings system. The whole system is set up to do what is best for the welfare of the child, but we are imposing difficulties on young people as they move into adulthood. Other factors come into the decision on whether a young person ends up at a children's hearing faced with offence grounds that could lead to a conviction. When the reporter makes that decision, they look at the overall circumstances of the child and take into account what is best and what involvement the child already has with the system. The arbitrariness of whether offence grounds that could lead to a conviction are used at a children's hearing feeds into the arbitrariness of whether a conviction applies to a young person. We should think about it as a welfare-based system, so young people in the children's hearings system should not be given any convictions.

**Nicola Dickie:** We have some sympathy with the position that Alison Reid has just outlined. Again, it is about proportionality and the fact that the system is in a state of transition. I expect that

we will continue to have a live conversation about how criminal responsibility applies to children and young people and about the situation that we might be in in two or three years' time. If we create a specific list for children and young people, we will add another layer of complexity, and we are trying to strip out that complexity to a degree. There is a delicate balance to be struck between the arbitrary nature of the issue and the rights of children and young people more generally.

**Gil Paterson:** Do you have any suggestions for changes to the offences on lists A and B?

**Cheryl Campbell:** I go back to what Andrew Alexander said. We identified that fraud has been taken off list A and put on to list B, while embezzlement remains on list A. From our perspective, those offences share the same characteristics of dishonesty. That is a real concern for us as a regulator that assesses people's suitability to work with vulnerable people.

**Alison Reid:** We are pleased that the offence in relation to section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which is about threatening and abusive behaviour, has been moved from list A to list B. That offence has been used a lot for relatively minor offending behaviour by children in residential units, but the offence is really serious in the adult world. We are pleased that the offence has shifted from list A to list B, but that does not take away from my point about not wanting childhood convictions.

**The Convener:** I have some questions about other relevant information. The appeal process and the independent reviewer are new aspects of the system. Will there be greater transparency and certainty for individuals regarding whether non-conviction information will be shared as ORI? How could that be achieved so that someone could have some knowledge about what might be disclosed?

**Sheena Brennan:** Under the current process, individuals have an opportunity to dispute the information with Disclosure Scotland. The second dispute comes straight to Police Scotland, and the third dispute goes to a court of law. If we determine that we want to push out other relevant information, that decision will go directly to the independent reviewer for assessment. An individual will have the opportunity for that assessment to be made before the information goes to an employer. From a transparency point of view, the new system is very much a positive for the applicant.

We discussed the independent reviewer's role and responsibilities with Disclosure Scotland. I assume that the role and responsibilities will mirror those of the independent monitor for England and Wales, which is a role that has been in place for a

number of years. I am comfortable that the independent reviewer's role and responsibilities, along with the transparency route that we are taking, will be very much a positive.

For us, the Scottish Government's guidance in relation to the quality assurance framework is key. Individuals will be able to see the tests that are undertaken.

**The Convener:** How does the ORI review process work, and how might it change under the bill? Should information about the balance of the review process be included in the bill or left to guidance and regulations?

**Sheena Brennan:** The role of the independent reviewer is covered in the bill. Guidance tends to be part of regulations, because that means that it can be amended. We will be in a better position to tweak the independent reviewer's role and the relationships—should that be needed as time goes on—if the guidance is included in regulations.

In relation to the review process, we want totally independent individuals to review only those cases. In our conversations with Disclosure Scotland, we discussed the possibility of 150 such requests being made a year—that is a ballpark figure. Those requests will go to the independent reviewer and should be dealt with completely separately and without any interference from anybody who has been involved in the case previously. That will ensure transparency and show the individual that a fresh pair of eyes is looking at the case. Our team has a routing system, whereby a disclosure officer might take the first inquiry, and then it might be peer checked by a lead disclosure officer before it goes further up the chain. Assessment is done at different stages to reassure the individuals whose information is being assessed.

**The Convener:** Are childhood convictions, including those involving looked-after children who have been through the children's hearings system, treated differently in that process?

**Sheena Brennan:** All the information that we have to hand is assessed. The information is not assessed only against the paperwork that we have; sometimes we will go back to the reporting officer and assess their understanding of the background and how the circumstances came to fruition. We do a full root-and-branch assessment of all the information that we have to hand. Police Scotland looks not only at convictions but at all the documentation, which can be wide ranging and cover a number of years.

We have obviously been involved in the discussions around the age of criminal responsibility and the role of the IR, which came in under the Age of Criminal Responsibility (Scotland) Act 2019. We do not see a lot of work

in relation to the ACR for the IR, given that we have disclosed for very few individuals under the age of 12. When we move forward and get into ORI, the 12 to 17-year-olds will automatically go to the independent reviewer in the first instance. That is quite clear.

All the information that we assess is assessed bearing in mind relevance, proportionality, accuracy and necessity, and we obviously take the ECHR into account.

**Alison Reid:** I am delighted to hear that. That is all really good, but it would be even better if I could have some certainty so that I could tell young people that that is happening. If something was written down, I could give them some idea about whether information would appear. At the moment, I can just say, "It probably won't", but I cannot go any further than that.

**Sheena Brennan:** We are keen to have the Scottish quality assurance framework guidance so that there can be that assurance. It is about whether the information comes to us in the first place. If something is of a minor nature, or if there is no trigger that would bring it to Police Scotland's attention, we might never see it. That is why we have that assurance.

On the ACR, we have had a lot of discussions with the bill team; we will have another meeting tomorrow to discuss how information is recorded on police systems and how we get that information. At a certain point, it is not criminal information. If there is factual information that requires to be shared, how do we use that terminology? We need to make sure that there is a balance for the applicant and the sector.

**Alison Reid:** The other difficulty is that, because the relevancy test is specific to the role, a young person does not know whether anything will appear until they apply for a course or employment. It is hard to advise on that, because we just have to say, "We don't know."

**Sheena Brennan:** Again, that is where there should be publicity about whether a role is within the regulated area and whether someone is going to require a level 1 or level 2 disclosure. It will be important that there is publicity or marketing showing what the new legislation is, how things will be done, where mandatory disclosure will come in and so on.

**The Convener:** We have exhausted members' questions. I thank all the witnesses for their attendance this morning.

11:28

*Meeting continued in private until 11:43.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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