



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 10 September 2019**

**Session 5**



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**JUSTICE COMMITTEE**

**21<sup>st</sup> Meeting 2019, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*John Finnie (Highlands and Islands) (Green)

\*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

\*Liam Kerr (North East Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Shona Robison (Dundee City East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Hugh Carr (Scotland Excel)

Nicola Dickie (Convention of Scottish Local Authorities)

Nick Hobbs (Office of the Children and Young People's Commissioner Scotland)

Janine Hunt (Scotland Excel)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

Tuesday 10 September 2019

*[The Convener opened the meeting at 10:02]*

### Decision on Taking Business in Private

**The Convener (Margaret Mitchell):** Welcome to the Justice Committee's 21st meeting in 2019. We have received no apologies.

Agenda item 1 is to ask the committee to decide whether to take agenda items 4 and 6 in private. Under agenda item 4, the committee will review the evidence that we will hear today on secure care places for children and young people, and under agenda item 6, we will consider our approach to the work programme in relation to Brexit. We have already agreed at a previous meeting to discuss the Scottish Biometrics Commissioner Bill in private. Do members agree to take agenda items 4 and 6 in private?

**Members indicated agreement.**

**The Convener:** I put on the record that last night I received a written submission from the parents of Katie Allan—Linda and Stuart Allan. I acknowledge receipt of that written submission, which we intend to treat as such, and to follow the usual procedures for its circulation and publication.

On behalf of the committee, I thank Daniel Johnson for all his work as a member of the Justice Committee and the Justice Sub-Committee on Policing. He always asked insightful questions, and will be missed by the committee. We look forward to his replacement joining the committee next week.

10:03

**The Convener:** Agenda item 2 is our final evidence session in our inquiry on secure care places for children and young people. I am pleased to welcome to the meeting Nick Hobbs, who is the head of advice and investigations at the Office of the Children and Young People's Commissioner Scotland; Nicola Dickie, who is the chief officer for children and young people at the Convention of Scottish Local Authorities; Hugh Carr, who is the head of strategic procurement at Scotland Excel; and Janine Hunt, who is the strategic programme manager at Scotland Excel.

I thank the witnesses for the written evidence that they have supplied. Considering such evidence is always very helpful to the committee in advance of witnesses appearing before it. I refer members to paper 1, which is a public paper, and paper 2, which is a private paper.

We move to questions, starting with John Finnie.

**John Finnie (Highlands and Islands) (Green):** Good morning, panel, and thank you for your contributions.

I have a question for Nick Hobbs. We have heard of the complex health issues and other needs that children and young people have when they enter secure care. Do you have any general concerns about children and young people with such issues who enter the system?

**Nick Hobbs (Office of the Children and Young People's Commissioner Scotland):** The written paper that we have provided makes it clear that we are looking for a human rights-based approach to children across the board. That needs to happen.

The first thing that the paper recognises is that, under the United Nations Convention on the Rights of the Child, children are defined as being people under the age of 18. Secondly, deprivation of the liberty of children and detention of children should restrict children's rights only where necessary. That means that children's rights to education, family life and healthcare—including mental healthcare—must not be restricted by a decision to deprive them of their liberty, whatever form that takes.

Therefore, we have concerns that children need to be provided with facilities and services that meet their mental health needs and ensure that their right to health is properly respected. We need to make sure that the process through which

children are deprived of their liberty and the decisions that are taken recognise and understand that those children are rights holders who have, often, experienced trauma and adverse childhood experiences and are often struggling with issues including mental health issues.

Therefore, the decision-making process—from the police, the children’s reporter, the children’s hearings system and the sheriff all the way through to the Crown Office and Procurator Fiscal Service—needs to reflect and understand the traumatic experiences that the children have undergone. When we need to detain children, we must make sure that the places where we detain them have appropriate, regular and frequent access to mental healthcare provision.

**John Finnie:** Thank you. You mentioned the rights-based approach. There are United Nations rules for protection of juveniles who have been deprived of their liberty. I will ask a specific question—initially of Nick Hobbs, then of other members of the panel.

The rules state that

“Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care”.

Are you content that all children in secure care have appropriate access to all those provisions?

**Nick Hobbs:** The report of Her Majesty’s chief inspector of prisons raises concerns about access to mental healthcare in Her Majesty’s Young Offenders Institution Polmont. There is a broader point about children’s access to mental healthcare provision not just in secure care, but more generally. We hear that regularly and consistently from the children with whom we work. When we ask them what issues they are most concerned about, mental health frequently comes up.

We hear a lot through the office’s advice function, whereby children, young people, adults and professionals call into the office for advice about the challenges in accessing child and adolescent mental health services support and assessments. Within that, there has been no specific reference to secure care, but because access is such a problem across Scotland, we want to make sure that access to mental healthcare is available within the secure estate.

**John Finnie:** Nicola Dickie is nodding her head about mental health. Do you care to comment on that and, perhaps, on other provision?

**Nicola Dickie (Convention of Scottish Local Authorities):** I agree with Nick Hobbs that we have recognised that there is an issue with children and young people’s access to the right mental health support. That came through loud and clear in the work that Dame Denise Coia led

through the children and young people’s mental health task force. Recommendations are being taken forward through a joint board of the Scottish Government and the Convention of Scottish Local Authorities. There is no doubt that mental health services for children and young people will feature in that. As part of that, a strand will look at secure care. A flavour comes through from reading the submissions to the committee, and we acknowledge the evidence that the committee has taken previously from the centre for youth and criminal justice.

Local government welcomes the human rights perspective and incorporation of the UNCRC. We are actively thinking about what that means for our services and the services that we commission. Secure care will be included as part of that.

**John Finnie:** Mental health is an important issue that has had a lot of publicity. Can you comment on the other forms of preventative and remedial medical treatment, including dental care?

**Nicola Dickie:** I cannot comment on dental care, because that specific issue has not been raised. I would need to take that question away and come back on it. I would be surprised if the issues relating to accessing mental health services do not similarly apply to accessing other health services.

**Nick Hobbs:** We do not have specific information on dental health services, but I suspect that those issues will, as Nicola Dickie said, be flagged up through the conversations that the care review is having on the experiences of children who go through the care system.

**Hugh Carr (Scotland Excel):** Having provided the base contract for secure care for young people, Scotland Excel recognises that the required approach depends on the individual needs of the young person at a particular point in time. We ensure that there is adequate provision to enable the secure care providers to seek whatever additional support is required. That is entirely down to their judgment and the dialogue that they have with the local authority that has requested a placement for the child.

**John Finnie:** For the avoidance of doubt, can you say whether provision of such services a contractual requirement?

**Hugh Carr:** The contractual requirement is that it is ensured that a young person receives individual care, not a generic care package. The care that is provided should meet the individual needs of the young person, and is assessed by the care unit in conjunction with the relevant services in the local authority.

**John Finnie:** Forgive me—I need to ask the question again. Does the contract say specifically

that a child will be given preventative and remedial dental and ophthalmological care, as well as mental health support? Does that form part of the arrangement when the service is commissioned?

**Hugh Carr:** I cannot confirm that the wording is exactly aligned to what you have asked about. However, the contract document, which I can provide after the meeting, indicates that the individual needs of a person will be met, based on the assessment of the carers in the secure unit.

**John Finnie:** It would be helpful if you could provide the document.

**Hugh Carr:** I can do so.

**John Finnie:** Thank you very much.

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** Nicola Dickie and Nick Hobbs mentioned the human rights perspective. I am interested in the panel's views on whether the human rights obligations relating to children in care or custody are being upheld. Nick Hobbs mentioned access to education. Are the opportunities that are available being provided fairly across the board?

**Nick Hobbs:** Our starting point is the UNCRC, the European convention on human rights and Council of Europe and UN guidelines on children who are deprived of their liberty. First and foremost, the principle that we draw on is that a child is anyone who is under the age of 18. We need to ensure that particular and separate provision is made available for under-18s, so we support the recommendation from the chief inspector of prisons that children should not be detained in YOI Polmont.

I also talked about the process for decision making and ensuring that there are community-based alternatives to detention, so that children are detained only as a last resort. When we need to detain children, we should ensure that there is access to appropriate education. That issue has come up through the care review's discussions, and it comes up in our discussions with children and young people, who sometimes say that the system is not particularly well designed or set up to enable them to access education.

Issues include children being taken out of school to go to children's hearings, the availability of education in the secure units, and the ability to retain the educational provision that children accessed before they came into secure care. Those need to be part of the conversation about alternatives and the model of secure care provision that we are looking for. We need to apply the human rights standard and to consider whether the model is capable of delivering the child's right to education. We should bear it in mind that those children often have additional support needs, which presents issues and

challenges in respect of ensuring that the right kind of educational provision is available.

**Nicola Dickie:** Again, I concur with Nick Hobbs. The services of our secure care providers are inspected by the Care Inspectorate, which looks at human rights as part of its inspection regime, so we have that to draw on.

10:15

With regard to where we go next, when we incorporate the UNCRC, it will have to flow through the secure care centres and into the wider services that are provided by local government and the inspection regimes. We acknowledge where we are: we recognise that there is more to do. As Nick Hobbs said, the conversations that are taking place through the independent care review are important, and the review's approach is to look at matters through a human rights lens. The inspection regime is certainly done from a human rights perspective.

**Janine Hunt (Scotland Excel):** To clarify and echo what Nicola Dickie says, I say that the approach to be built in to the new standards for secure care is a human rights-based approach. We are keen to understand what the independent care review will share with us further down the line. The human rights of children have been absolutely built into the contracts that we have devised in the past: we will do that again in the future. The contract and the standards that come out of it are inspected by the Care Inspectorate, which should and does take a human rights-based approach. We welcome any conversations that would assist us in making sure that the needs of children and young people are fully met in the future.

**Jenny Gilruth:** The committee has heard evidence about the impact that social isolation can have on young people. It might stress them out more and might, for example, hamper their ability to access existing educational opportunities. Has the commission looked at social isolation in detail, and at how it might be addressed with regard to access to educational opportunities?

**Nick Hobbs:** We have not looked in detail at social isolation. I agree with the comments on the subject that were made by HM chief inspector of prisons and by the CYCJ in written and oral evidence, which was that very often, when we are talking about children in secure care, or who are deprived of their liberty in Polmont, we are talking about children who have been distanced from social structures and support networks for a variety of reasons. Therefore, we need to be really careful that when they are in secure care and in placements, we do not exacerbate that distance.

For children who are in conflict with the law, the purpose of secure provision should be rehabilitative, and it should be designed around the idea that we want to try to bring the children back into the community. Social isolation certainly does not help with that—it does not help with mental health and it does not help with access to education. Finding a way to rehabilitate children and reintegrate them back into their communities, rather than isolating them and cutting them off from their communities, is hugely important.

**Jenny Gilruth:** Does Scotland Excel have a view on social isolation?

**Janine Hunt:** We would look to take the findings of the independent care review and whatever comes next with the contracts that we need to build. We would enable an approach that very much listens to the voices of young people telling us what they feel that they need. Education and the right to it are built into the nature of the contract that we have with the providers, which is obviously subject to inspection from outside. We are keen to be clear about the direction that Scotland is going in and what that means for the work that we need to do with providers.

**Liam McArthur (Orkney Islands) (LD):** Following on from Jenny Gilruth's line of questioning on social isolation, I note from Scotland Excel's written submission that:

"the location of the secure units is also important to note, with four of the five providers located within the central belt. This poses issues for local authorities not located within this region, where there is often the preference for placing close to home to facilitate access with loved ones, social workers etc."

That would tend to suggest that with the current model, the risk of social isolation is probably higher for those who come from communities such as the ones that John Finnie and I represent. Is there a way in which the contract might be framed so that, as of next year, those concerns could be more effectively addressed and the risk of social isolation could be reduced?

**Hugh Carr:** That has indeed been a challenge. Given the nature and the location of the facilities, there are local authorities that fall outwith reasonable travelling distance, which will inevitably cause additional difficulties for families in providing support and may result in additional stress for the young person. We are aware of that situation, and we work very closely with our local authorities to ensure that we take cognisance of where some of those issues may come into play and to understand what additional support they can provide to the families in order to minimise the negative impact on the young person.

Based on our early work for next year's contract renewal, we know that our member councils are

aware of some of those impacts and are keen to be part of developing an effective solution.

**Liam McArthur:** What do the measures that they can take look like? Is there assistance with travel? Can Skype calls be regularly made? What is the form of contact?

**Hugh Carr:** It can include both those measures. We are looking at all alternatives. Available technology could mitigate some of the difficulties and the need to physically travel. Based on the dialogue that we have had with councils, we know that councillors are receptive to the discussion about what additional support they can provide, whether that be technological or physical.

To answer your question, it is all the above, and we want to embed as much of that as we can into the next generation of the contract.

**Liam McArthur:** Given the current financial situation for providers, presumably it would be impractical to have smaller units that are more widely dispersed. There needs to be a critical mass in order to make the system viable—is that right?

**Hugh Carr:** There are four locations in Edinburgh. One of our challenges is that developing a secure unit is very expensive. If we consider where capacity is utilised across the secure units, it is safe to say that the capacity consumed by local authorities has been decreasing. That brings the additional challenge that it is relatively unlikely that additional units will be required—certainly in the short to medium term—given local authorities' reduced dependency on those units. The capacity appears to be at the appropriate level, but the problem is exacerbated if they are in that the wrong location.

The answer to your question is yes—financial constraints, coupled with capacity, would make it unlikely that additional units would be constructed in different locations.

**Nick Hobbs:** I understand the argument about resources in a resource-constrained environment—that will always be part of the conversation—but that risks approaching the question from the wrong direction. Children have the right to respect for their private and family life under article 8 of the European convention on human rights and article 16 of the United Nations Convention on the Rights of the Child, and the Government has an obligation to take that into account when considering what the secure care provision model should look like when we need to deprive children of their liberty. The Government also needs to look at alternatives, including community-based alternatives, so that children do not have to be taken from their communities to the central belt to be locked up. It also includes looking at Liam McArthur's suggestion about

whether there is a viable way of creating provision closer to the communities where the children come from and live, so that we do not remove them or risk interfering with their rights to family life.

The technological solutions are valid and the support that could be provided to families is really important, but the starting point is to say that there is an interference with children's rights to family life and we need to look at the model from that perspective first and foremost.

**Liam Kerr (North East Scotland) (Con):** Hugh Carr talked about knowing where the referrals for placing people are coming from. Buried in the evidence, there is a line in your submission that states:

"From this viewpoint it is unfortunate that there is no centralised recording of referrals at the current time."

What am I to infer from that? Am I correct in thinking that, if Liam McArthur had asked you how many people are being referred from Orkney, there is no central database that would allow you to answer that question?

**Hugh Carr:** That is correct. There is no central database for referrals.

**The Convener:** The committee has received evidence from the Royal College of Speech and Language Therapists, which highlights that more than 60 per cent of young people who offend have significant speech, language and communication needs. Can the witnesses comment on the current availability of those specialist services for children and young people in secure care and in custody?

**Nicola Dickie:** COSLA does not have that information to hand. I suppose that that is a question for the national health service, if those therapists are allied health professionals. I do not have the figure to hand, but I could take that question away and find out, certainly for secure care. I would not be confident that I could answer for the prison service.

**The Convener:** Are the other panel members aware that there is an issue?

**Nick Hobbs:** I referred to the issue in one of my previous answers when I talked about the need to make provision for children's needs around education. However, I am afraid that we do not have any data on that to provide to the committee.

**The Convener:** The issue goes beyond education. It is a specialist service for speech, language and communication needs.

**Hugh Carr:** Likewise, I cannot offer any quantum around the requirement for those services. However, for the contract that we are developing, which will become the next generation, we recognise that there is an

opportunity to collect data from the providers on the additional services that have been provided so that we can give a much clearer picture of that to our local authorities. However, at this stage, I am unable to articulate what has been provided so far.

**The Convener:** It is a bit disturbing that none of the panel members seems to be particularly aware of this serious issue. The Royal College of Speech and Language Therapists has said:

"There is no ring-fenced provision of SLT in Secure Care in Scotland."

The submission points to the

"strong co-occurrence of mental illness"

and speech, language and communication needs, and to the

"strong co-occurrence of challenging behaviours ... and SLCN".

Those are all bread-and-butter issues in considering the welfare of such children, whether they are in secure care or in custody. Would the panel be in favour of ring fencing the provision, perhaps in looking at the terms of any contract, to ensure that those services are available?

Worryingly, the royal college says that there is "patchy provision" in prison and young offenders institutions, which

"demonstrates the lack of understanding of the nature of need and SLT contribution."

It goes on to say that,

"Without a shift in funding to ring-fenced SLT funding for this population, provision"

is "unlikely to change", given the general funding challenges.

Now that you are aware of those issues, will you comment on them?

**Nick Hobbs:** Those things are parts of children's rights to the fullest enjoyment of their health, to education and to development. It is part of a rehabilitative approach to children who are in conflict with the law. There may well be issues around the Equality Act 2010, if those services relate to a disability that the child has. Access to those services and that provision should certainly be in place for children who are in secure units or in Polmont.

**The Convener:** It probably goes a little further than that. The Royal College of Speech and Language Therapists states:

"Without effective communication it is impossible to meaningfully fulfil"

international human rights obligations. Is that a fair assessment?

**Nick Hobbs:** That is exactly my point. To meet the state's obligations under the UNCRC in

particular, but also under the UN Convention on the Rights of Persons with Disabilities and the rights and articles that I referred to previously, ensuring that those services are accessible and available to children and young people is of absolute importance.

10:30

**The Convener:** In the light of the information that has been raised today, would Scotland Excel agree to meet the Royal College of Speech and Language Therapists to discuss the matter before the next contract is confirmed?

**Hugh Carr:** Absolutely. We never develop a contract in isolation and we try to be as inclusive as possible. We recognise the importance of working closely with key stakeholders, such as the Scottish Government, colleagues in COSLA and—crucially—representatives of our local authorities. Over the course of a contract, we also have regular contact with the providers.

To answer your question, I can say that we will definitely arrange a discussion to help inform the current strategic development of the contract.

**The Convener:** That is very helpful. We have already established that the young people have very challenging needs, and there is a huge gap in the failure to recognise fully that communication and speech difficulties can play an important part in some of their challenging behaviour.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Following on from the convener's questions and those from Liam Kerr and Liam McArthur, I am shocked to hear about the lack of nationally held data. It is a very serious issue. From my time as a children and families social worker, I know that, in effect, we are removing a young person's liberty. That we do not have access to national data on where those young people are coming from and what access to treatment they have is an important fact to come out of this evidence and one that could lead to change.

I will move on to my main question. In its submission, Scotland Excel is very helpful and honest in pointing out that secure care is not always the correct environment, and it mentions

“an intensive mental health facility”.

Can you expand on what you mean by that?

**Janine Hunt:** We have built into the contract provision that the needs of young people and children in secure care should be met, whether that is through psychiatric input or psychological support by educational psychologists. The monitoring and development of those services is subject to working with local authority colleagues

in the areas where the secure units are based. We need to be aware of the new needs that are arising—and the information that the committee has received—in developing the contract for the future.

In short, the mental health needs of young people should be met by the secure unit in which they are placed. The issue of monitoring and data is something that we all need to be aware of, and we have to consider what action may need to occur in the future, across the Government, local authorities, the NHS and so on.

**Fulton MacGregor:** Is the discussion around the “intensive mental health facility” leading to a conversation about the use of and need for secure care provision? We have talked about this before in committee. Do we require something in between that is not secure care in the traditional sense, but more of an intensive community care package, perhaps with some restrictions to keep the individual and others safe?

**Janine Hunt:** There are potentially many models of providing services in the future and we would want to look closely at the findings of the independent care review to commission, source and develop those models, whatever they may be. Mr MacGregor may well be right that there could be alternatives to secure care for particular children and young people. We would be keen to work with local authority members and various other stakeholders on what those would look like, so that we can secure them for the future.

**Fulton MacGregor:** I also want to ask about child and adolescent mental health services. I would like to hear from Scotland Excel first, before coming to the other witnesses.

We heard previously that the availability of CAMHS for young people in the secure units is limited to one team in Glasgow. Do you have thoughts on how CAMHS could be rolled out? In your previous answer, you said that the secure care service itself should be working to meet the mental health needs of individuals in that system. Can that be done collaboratively? Can the intensive work be done while the young person is in secure care, followed by a more joined-up approach to support them when they come out?

**Janine Hunt:** We expect there to be a joined-up approach when the young person leaves secure care. The contract covers their being received into secure care and leaving it through the throughcare process. We may all need to learn lessons that come out of the independent care review and from the voices of children and young people that that process includes. We are keen to learn more about the Glasgow model and what it potentially means for other local authority areas across Scotland.

**Nick Hobbs:** I will pick up on Fulton MacGregor's previous question first. It is important to recognise two things: first, that secure care is a deprivation of liberty in human rights terms, and needs to be considered as a last resort; and, secondly, that the need for secure accommodation rarely arrives out of the blue.

To ensure that secure care genuinely is a last resort, and that we need it for as few children as possible, the approach needs to take into account the requirement for us to assess and intervene at an early stage. Doing that ensures that the right supports are in place for children, which can divert them away from paths that might lead to the need for secure care. That includes CAMHS.

The committee knows about the huge challenges around Scotland that I mentioned on access to CAMHS services and assessments for children and young people. They present a real challenge, because some of the support that we would hope to have in place for children that might reduce—or ultimately even prevent—the need for them to go into secure care cannot be provided at the moment.

Through getting it right for every child and the whole-systems approach, we have the policy basis to make sure that that diversionary activity is in place and the right supports and services exist in order to reduce—as far as possible—the need for children to be detained, and that once they are in secure care they can access the really intensive support, to make sure that they stay there for as little time as possible.

**Nicola Dickie:** I concur with what has been said. As well as the before, during and after service that is part of the Scotland Excel contract, we also have a set of draft secure care standards that are being worked on through the secure care group. They have been pulled together with support from the secure care providers themselves, local authorities and, importantly, young people with experience of the secure care estate. They include specific standards on people's rights and needs, such as the need to be involved in decisions.

We have a good grounding to take us from where we are now to where the independent care review recommendations might take us. The discussion about what "good" might look like in the future for children who are not able to be accommodated at home is a live one. However, the current secure care standards are very much about ensuring that people who are in secure care accommodation can expect acceptable standards that have been designed for children and young people. The secure care providers—to their credit—have worked with us to develop those.

We recognise the work of Dr Dame Denise Coia on children and young people's mental health. Transitions, whether into and out of secure care, or into hospital or somewhere else, are certainly on the list for us to look at, because those are potential crisis points for our young people. We are actively considering all of that.

**Fulton MacGregor:** Do the conversations that you are having include the pressure that is on CAMHS—there is almost a dependence on CAMHS among various agencies—and other ways that we can reach out to young people and support them with their emotional and mental health?

**Nicola Dickie:** Yes, absolutely. We do not look at secure care in isolation in those conversations. The board that is being co-chaired by COSLA and the Scottish Government is taking forward Dr Dame Denise Coia's recommendations. Part of that is around community mental health services and how we can access low-level support for our young people to prevent escalation. Importantly, it is also about how crisis intervention, when it is necessary, is handled in a way that gets the best outcomes for our children and young people.

**Fulton MacGregor:** I want to ask about mental health provision for young people who are in custody at Polmont. We have heard evidence that that provision can be quite fragmented because of the different boards involved. Would you say that a similar approach is required there?

**Nicola Dickie:** I agree—I think that the other approach will be required there. It is all the more important because our young people are not necessarily in either the secure setting or Polmont for a long period. The profile is different from that of the young people who come from elsewhere in the United Kingdom. Our young people tend to be in secure care or Polmont for much shorter periods. The transition between the secure care providers and Polmont, or the secure care providers and the community, is even more important because it is such a short period. We do not have a long planning window to get our young people back out into the community with the right support, and we need to get it right.

**Liam Kerr:** The convener asked about the contract. I understand that in 2011, a procurement process was introduced for the purchase of secure care services. Would Scotland Excel and COSLA outline how that procurement process works? What are the specific benefits and, perhaps, weaknesses of the current model?

**Hugh Carr:** The procurement process involves an open advert online, typically using a public contracts Scotland system, which states that there is a requirement for secure care services to be provided. We work very closely in conjunction with

member councils to try to understand the capacity, the requirements and, crucially, the specification that we would want to embed into the contract. We would provide some national standards, taking into account that there would be an individual requirement based on the young person's separate needs.

I should have said that, by law, there is a threshold beyond which there is a requirement to advertise a contract opportunity publicly. For this service, that is just in excess of £650,000, and a forecast for anticipated spend of somewhere in excess of £15 million.

Over the course of the tender exercise and evaluation, we would meet with the providers that responded to the advertisement. Because of uncertainty in demand, any subsequent award of a contract would be on a non-commitment basis.

That would be the tender process.

**Liam Kerr:** That makes sense. Perhaps I could ask Nicola Dickie to follow up on that. You obviously recognise that process.

**Nicola Dickie:** Absolutely.

**Liam Kerr:** From your perspective, what are the strengths and weaknesses of that approach? Could it be improved upon?

10:45

**Nicola Dickie:** The strengths are the strengths that we have with all of our Scotland Excel contracts, which is that we potentially do it once for Scotland. That in itself brings benefits—it allows us to have a collective view on what we may want at a Scotland level and across all the local authorities. It also means that our providers have one set of meetings to attend. If we did not have the Scotland Excel contract, all our providers would be getting into contractual arrangements with individual local authorities, so there are strengths in that set-up.

We have already discussed some of the weaknesses. It is not a surprise that COSLA is a huge fan of localism. That means that when we have one contract for Scotland, it can take a while to get the contract right. We need to make sure that we cover all the fundamental differences across our local authorities and, importantly, that the wants and requirements of our children and young people are included. Having one contract is a strength, because it allows us to do that once. However, having been involved in those conversations, it is not always easy to get to a point where we can say, "Yes, that is what 'good' looks like for everyone."

We have good support from our local authorities and from our secure care providers, who are very

involved in the process. They will challenge us and give us their ideas about how things could be done differently or what would work from their perspective.

**Liam Kerr:** To move on from the procurement process to the overall arrangements, following up what Fulton MacGregor rightly explored earlier, does the panel feel that the way that secure care is currently provided is the optimum model? Given a blank canvas, what would they change?

**Nicola Dickie:** From a local government perspective, as Nick Hobbs alluded to, we have to look at how we can get the best possible outcomes for our children and young people. From the evidence that you took from Glasgow City Council, it is clear that we have local authorities that recognise that we must try to reduce the number of children who we are placing in secure care and that we have to think about what better options there are for children and young people. Some of those options may well involve keeping them within their own communities; the difficulty for Scotland Excel when it is looking to set out the contract and for our providers when they are looking to set up their business model is the changeable nature of the situation. We do not know what we will have in any given year. We can try to project it, but it is not an exact science.

If we were to draw up the model again, we would probably do it in a different way. I do not think that we will not be able to get there because I genuinely think that all the people who are involved in the secure care group recognise that the model that we have at the moment is the model that we have at the moment—although that is not to say that it will not transition into something else.

If you are asking whether we will ever get to a point where we require no secure care, I am not sure that I can say that that is the future that I see. I see a reduction in secure care but not necessarily to the point of zero secure care.

**Nick Hobbs:** There are some big things that we need the model to deliver—I do not know whether they involve a change of the model or a change to the model. Places need to be available for children when they need them; they need to be available as close to the child's community and family as possible; and the services that are contained within those facilities need to be appropriate to the many and varied needs with which the children coming into secure care may present. We have talked about a lot of that already.

We have not touched on the availability of places, but the challenges that the model has experienced around cross-border placements would certainly come into that. The Government needs to look at that issue a bit more closely and

consider how the model works and how it depends to some extent on those placements for financial viability. First and foremost, we need to make sure that for those children who need to be deprived of their liberty, places are available for them so that they do not need to be accommodated somewhere else.

**Hugh Carr:** The weakness in the current model is fairly simple and can be drawn from the evidence that we provided. The role of Scotland Excel is to understand national policy objectives and put in place a solution that meets the needs of our member councils, enabling them to source their requirements and deliver best value. One of the weaknesses is that going to market to put in place a service on a non-commitment basis makes it difficult for the Government to identify a national solution; it is also difficult for the providers and local authorities.

With the providers, we agree the assumption that should be made in the pricing model that they use, which is that facilities are 90 per cent occupied. At 90 per cent occupation, providers offer a unit price to deliver a service against the specification that they are given.

On what we could do differently, one of the challenges for the providers is that, if occupation falls below 90 per cent, they have to seek cross-border placements to increase the utilised capacity of the unit. That creates a weak model, because there might be a lack of appropriate places at the most appropriate unit for the individual—that picks up Nick Hobbs's point.

By the same token, with such a high degree of uncertainty, the providers have to use their facilities to best effect, leaving additional agencies trying to understand where the gap in provision is and where they would want a facility to be located.

The weakness in the current model relates to our lack of ability to have block funding of places, which potentially leads to capacity constraints.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I want to probe further on Liam Kerr's line of questioning on procurement.

It has been suggested that the market approach to secure care can engender competition, which might restrict collaboration between care providers. Is that a fair assessment?

I will give you an example. The committee previously heard evidence from Carole Dearie from the secure unit at St Mary's Kenmure, which is in my constituency—I have been very impressed on my visits there. Ms Dearie stated that she attended a Scotland Excel conference where she

“shared a table with people who tendered for car parts, toilet rolls and confectionery”.—[*Official Report, Justice Committee, 28 May 2019; c 42.*]

She said that tendering for services for children and young people in the same way felt incongruent and not right. Is that understandable?

**Hugh Carr:** That is an understandable view, but I believe that that was not the case. As part of our contract development, we focus closely on the individual service provision that we are trying to put in place. Our approach to providing care services or any other contract area, whether that is goods or services related, varies according to individual requirements.

We work very closely with the appropriate stakeholders—in this case, the Scottish Government, COSLA and our member councils—to ensure that we embed the core requirements that meet the needs of individual young people and, at the same time, provide a national solution.

I am clear that we never adopt a one-size-fits-all approach; we always customise our approach to the service. In this particular case, it is customised closely according to what we believe the needs of the young people will be and, crucially, it is informed by national policy and council objectives.

**Rona Mackay:** I understand what you are saying and I am not disputing it. However, I am questioning whether you think that a process with people at the same table tendering for contracts that are so unrelated to children's services is the correct one.

**Hugh Carr:** I am sorry—could you ask me that again? I did not really understand the question.

**Rona Mackay:** Ms Dearie said that when she was in the process of tendering, she was at a table with people who were tendering for completely different things, such as confectionery and toilet rolls. The process was not related to the importance of securing places for children.

**Hugh Carr:** Forgive my lack of understanding.

Carole Dearie was referring to an annual event at which our member councils come together to cover a number of areas, including new developments or getting members' input into how an operation can be improved. The event was part of our national conference, for which we decided to invite some of our providers of goods or services to come along and to have some cross-sector dialogue on what was happening, where there were developments on new procurement provisions and regulations, and so on.

When we have an information event or stakeholder engagement in order to understand the market's views on one of our developments, we align it with that development area. Ms

Dearie's particular example was a conference at which we had providers across a number of areas. We would never have an event that specifically seeks the views of providers on the delivery of secure services for children in conjunction with any providers of other services.

**Rona Mackay:** That has cleared that up. That is not how procurement would normally be done. It would be done at a specific session for securing places for children.

**Hugh Carr:** Yes.

**Rona Mackay:** Does anyone else on the panel want to comment?

**Nicola Dickie:** That is my understanding, too. Having been involved in meetings over recent months with both Scotland Excel and our secure care provider, my experience is that those are specific to secure care.

**Nick Hobbs:** I have no direct experience of those events, but I would be concerned if the secure units viewed themselves as being in competition with each other for business, or if the model is leading them to that conclusion. That is not how it should be working, and it would not be in the best interests of children who are in need of secure accommodation. Taken together, those units represent the secure estate for Scotland. The decision on which one a child who is in need of secure accommodation should be placed in should be based on an assessment of the needs of that child and of which unit is best placed to meet them.

**Shona Robison (Dundee City East) (SNP):** We started to touch on cross-border placements earlier, and I want to pick up that issue. COSLA pointed out that 30 per cent of secure care placements involve cross-border funding. I suspect from what you said earlier—but just want to get it on the record—that that arrangement is crucial for maintaining the viability of units, but that it has knock-on effects, which we began to explore. Could you expand briefly on that matter?

**Nicola Dickie:** I recognise the comments that Scotland Excel made on cross-border placements. Local authorities across Scotland are reducing—as best they can—their need for secure care. That is not to say that we do not require it. The providers are in a difficult position. Their break-even point with the contract is 90 per cent, so if the figure in the equation goes below that, they have to look elsewhere.

Nick Hobbs's point on competition is interesting. Competition comes into play only if you have significant capacity. We are not in that situation in Scotland. Local authorities can find themselves in a situation in which they have to contact more than one provider to see whether a space is available

for a young person. If there is more than one space, they can then get into a conversation about which of the centres is best placed for that young person.

It is a difficult position for the providers to be in because we do not have any guarantee about what is going to happen. I do not apologise for the fact that we have no guarantee—it would be wrong for local authorities to say, "Oh we've paid for it, so we'd better use it". I would prefer that we work with the sector to ensure that we get something that is viable for the sector so that it can continue to provide something for our children and young people when we need it. At the same time, I recognise the constraints that people are under.

Local authorities are the biggest single purchasers of secure care, and any area that local government funds is under significant pressure. I know that the committee is due to carry out pre-budget scrutiny around the spending review. Any changes to local government budgets must be made in the context of the conversations that we then have with providers.

11:00

**Nick Hobbs:** Colleagues in England have done some work on the topic and are currently engaged in further work. I understand that the situation in England is outwith the scope of the Justice Committee, but the work is relevant because it shows where the demand is coming from. They have identified a real concern about the availability of secure provision in England, which drives English local authorities to look to Scotland for places to take children, which puts pressure on the Scottish system.

In its evidence, the centre for youth and criminal justice reflected that since the court cases in 2017, which identified a lacuna in the law that was then closed, we have seen an 89 per cent increase in occupancy by children from England in Scottish secure units. That is the first thing to say: it is created by pressures from south of the border over which we do not have direct control. However, we have control over the model that we operate and the decisions that we make about the extent to which we permit those cross-border placements to happen. If we are saying that places for Scottish children are not available because they are being occupied by English children and the reason for that is that the model that we have set up for secure care means that that is what needs to happen in order for such facilities to be viable, we need to look very carefully at the model.

The second issue is, as we have noted in our evidence, that the secure units are not the only

places where children from England are being placed. We cannot talk a huge amount about that because it is the subject of a live case before the Court of Session. However, it reflects another way in which pressures on one jurisdiction can impact significantly on another. We need to make any decisions on secure care models with that very clearly in mind.

**Hugh Carr:** I endorse what Nicola Dickie from COSLA said. I would also like to make a point on the notion of competition. The rates provided by each of the secure care providers are individual—there is no national rate. So, when the providers submit an offer as part of a tender process, the rate is unique to them and there is no dialogue with other providers. Therefore, it is inevitable that it is most likely that all the rates would be different. Subsequent to that, over the course of the annual review, the providers submit their forecast changes, based on individual requirements. The notion of competition is not necessarily relevant.

I endorse the points that Nicola Dickie made about cross-border issues and the 90 per cent capacity. In my earlier answer, I recognised that that is one of the weaknesses that we have in the current model of contracting.

**Shona Robison:** To take that further, there appear to be a number of issues with the current model and one solution that was suggested was to put a cap on cross-border placements. It would be helpful to know your view on that. Would that have an impact on the sustainability of secure care units in Scotland? If you disagree with a cap, what other solutions could there be? We have already heard some suggestions on changes to the model, but it would be helpful to know whether there should be a cap, whether that should be alongside other changes, or whether other changes should be introduced instead of a cap.

**Hugh Carr:** Whether there should be a cap is a difficult question for me to answer. We have insight about the second part of your question, and my view is that the current model, and the 90 per cent utilisation that makes the commercial model work for providers, has an inherent weakness, which is exacerbated by the reduction of utilisation by local authorities.

An alternative would be block funding of placements to consume a defined capacity, but that would undoubtedly be unpalatable to local authorities and the Scottish Government. We have already indicated that the capacity at which the break-even point would occur is 90 per cent. I am not in a position to offer an opinion on whether there should be a cap on cross-border placements, but some form of block funding would provide a solution to enable providers to be less reliant on cross-border placements.

**Shona Robison:** How would need be assessed? We could end up funding underutilised beds or places that would not be utilised.

**Hugh Carr:** That risk is inevitable. We will welcome the outcome of the independent care review. As I have said, we do not set policy but our challenge is to work with local authorities and other key stakeholders to ensure that we provide a solution to implement the councils' policies. We must work harder to try to understand the long-term capacity requirements that will be in place. If we can do that, that will help us understand what form future block funding could take and how that could change the break-even point for individual units. If that changed, it would directly correlate with the cross-border capacity that would have to be put in place.

**Nick Hobbs:** Everybody is in broad agreement that we want beds to be available for children who need them and that the current model sometimes struggles to achieve that. I would like the Scottish Government to do the work to produce a range of solutions, which might include a cap or block funding or other options. I appreciate the risk that beds might not be utilised for periods of time; the question that we need to confront and Government needs to answer is which risk we are happier to bear. Are we happier for beds to be insecure and underutilised or for a child to need a bed but not be able to access one?

**Nicola Dickie:** I do not think that implementing a cap would be helpful unless we did some other things. If a cap were to be implemented and secure care providers left to carry the burden, viability issues across the estate would be inevitable, so it is probably not an option. A hybrid model may reduce the requirement for cross-border placements, through using a number of initiatives.

I am also interested in how a change in the model would play into the future for our children and young people who could not be accommodated at home. Many secure units do non-traditional activities, such as outreach, on which they are working hard across their local communities. Depending on where the independent care review comes down, there will be a bit of a journey to get to something different from having x number of beds and x number of young people to put into them. It would have to be done in a nuanced way, which implementing a cap would not achieve in the short to medium term.

The benefit of the secure care group is that it has everyone that you would expect around the table—we have representatives from secure care, independent care review representatives, people from COSLA and the Scottish Government and so on, and they are all prepared to have those conversations.

**Shona Robison:** That is helpful.

I have one final question, which is specifically about the provision of emergency beds. I understand that there are six emergency beds that can be used on a short-term basis, if needed. It would be helpful to hear how often those beds have been used, if you are able to provide that information. Also, when they are used, is any additional cost involved?

**Nicola Dickie:** Scotland Excel is probably best placed to answer that.

**Hugh Carr:** We collect utilisation data—the Scottish Government collects it and passes it to us. I do not have that data to hand, but we have visibility on how often those beds are used, and I can provide that to you. There is no additional cost involved in their use.

**Shona Robison:** It would be helpful if you could provide us with that specific information. Thanks.

**Liam McArthur:** On the issue that was raised about the conversation that is struck up between providers, I assume that, as far as possible, best value and the needs of the individual child or young person, rather than the desire to secure the lowest unit cost, will dictate where that child or young person will go.

**Nicola Dickie:** That is certainly my understanding. The outcome for the child or young person is the foremost consideration. However, in conversations that I have with local authorities, I find that we are not often in a situation in which we have more than one secure centre that would be able to accommodate a child or young person. The conversations that you mention involve local authorities contacting each of the secure centres and asking what they have available and whether that is the best place for the child or young person.

In some of the submissions that the committee has seen, there are examples of situations in which a young person could not be accommodated in a secure unit because there would be an issue with another young person who was already in that unit. Such issues are raised in the individualised conversations that the local authorities have with each of the units. Certainly, however, the issue of best value is not about the cheapest option; it is about the best value for the public pound against the outcomes that we are trying to achieve.

**Liam McArthur:** It is interesting that the capacity constraint can arise not only because of a lack of beds but because the mix of individuals might be one that could not be tolerated.

**Nicola Dickie:** Absolutely, and the hugely complex situations that our children and young people find themselves in are relevant in that regard, too.

**The Convener:** I want to probe a little bit further on the procurement process. You said that local authorities are the biggest purchaser of secure care places, but we already know that there is a lack in the speech therapy service. When you know that you are dealing with vulnerable children with complex needs who require certain services, what kind of dialogue and communication is there between Scotland Excel and local authorities to ensure that, when the places are bought, the services will be in place?

**Hugh Carr:** I mentioned earlier that we never develop a contract and go to the market with it in isolation; it is always based on working with the local authorities to ensure that individual service requirements are met. If it is identified that a service is required, we would ensure that we embed that into the service that we are asking to be provided when we go to the market.

We have a forum—it is called a user intelligence group—that ensures that we get as much input as we need in order to put a contract to the market that enables providers to have clear visibility on the service that they will be asked to provide. That involves regular and on-going work with member councils.

**The Convener:** Is COSLA satisfied that that communication is as robust as it could be?

**Nicola Dickie:** I think that it is fairly robust. There will always be issues that arise, and it is fair to say that not all local authorities are huge users of secure care—it depends on the size of the local authority. We have good coverage from our local authorities in those user intelligence groups. The user intelligence groups are concerned very much with the contract, but I would also draw attention to the secure care group, which is looking more at the policy issues and how secure care is managed across Scotland.

Scotland Excel does the contract and so on. We have heard about the tried-and-tested approach that we have there, but we also have on-going dialogue at the secure care group, on which all the component parts of the system—health, local government, the Scottish Government, Scotland Excel and the providers—are represented. Representatives of the independent care review are there in a listening capacity, too.

11:15

**The Convener:** Given the gap that we have discovered in awareness of the 60-plus per cent of young people who have communication and language difficulties and how that can impact on their behaviour, I suggest that not just Scotland Excel but COSLA should arrange to meet the Royal College of Speech and Language

Therapists. I think that that would be a fruitful discussion.

**Nicola Dickie:** Yes, that would be fine.

**The Convener:** That is very reassuring.

**Rona Mackay:** I want to go back to something that Nicola Dickie said about how we move on and the direction in which things are moving.

From my visits to the unit at St Mary's, I have always been left with the impression that it is a very caring and nurturing environment. Should there be a move away from what I perceive to be a business model for procurement to something entirely different, whereby a bed would be there if the child needed it, which Nick Hobbs talked about? I know that that is impractical under the current system. Would you favour a radical move towards a different approach, whereby care would be available for the child, regardless of business, procurement and tendering considerations?

**Nicola Dickie:** I think that that will be part of what the future looks like. The nub of the issue that Scotland must wrestle with is whether we believe that removing young people from their communities in the number of cases that we do that is the right thing to do. The first issue is what the future should look like, and the independent care review is helping us to scope that. We then need to consider how we work with the providers that we have to make sure that we do not just throw away all the good practice that has been built up and all the work that the secure care centres have done. Like Rona Mackay, I have been round the secure care centres, and some of the stuff that they are doing is extremely good.

We need to find the space to have those conversations, but I do not want to pre-empt what the independent care review might say about what the future for children who cannot be accommodated at home should look like.

**Nick Hobbs:** The care review is doing something really powerful: as well as taking a human rights-based approach, it is not assuming that, because we have always done something in a particular way, we should continue to do it in that way. The root-and-branch nature of the review means that it is very deliberately looking at things from the ground up. It is asking questions about what the services should look like and even whether some of them will be needed in the future, which is extremely important.

For me, the focus should be on outcomes and adherence to the human rights framework. We need to ask what we are trying to deliver and to make sure that we deliver it in a way that is consistent with recognising children as rights holders all the way through the process. We should be as radical as we need to be to achieve

those things, and we should not be bound by things that we have always done.

**Hugh Carr:** I agree with the points that colleagues have made. Fundamentally, it is important that we look at the issue in a holistic way so that we understand, or try our best to anticipate, future requirements and ensure that we put the appropriate supply in place. That might or might not mean that there would be a separate procurement process, but I think that it would be appropriate not to consider a solution that would involve a procurement or tendering exercise unless we have clear visibility of what our future requirements are.

Every time that we conclude a contract and replace it with something different or something similar, we work hard to ensure that we understand what went well and what we would like to have done differently, and that we embed positive change in the next generation of whatever that contract happens to be. On an on-going basis, we try to understand what we could do better. If we continue to work with colleagues, partner agencies and the Scottish Government, we will be in a strong position to do that, not least in conjunction with the secure care providers.

**Janine Hunt:** I have nothing further to add to what colleagues have said. We are committed to working in a partnership and collaborative approach as we move towards March, when recommendations will be laid before members, and they will determine what happens next.

**The Convener:** That concludes our questioning. I thank all the witnesses for attending the meeting and providing evidence and information, which will certainly help us with our inquiry.

I welcome to the public gallery staff of HMP Kilmarnock and thank them for the time that they spent with committee members when we visited that prison recently. That was a really worthwhile visit. We thank them for looking after us so well.

We will now have a brief suspension.

11:21

*Meeting suspended.*

11:25

*On resuming—*

## **European Union (Withdrawal) Act 2018**

### **Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019**

**The Convener:** Our next item of business is consideration of a statutory instrument that relates to the United Kingdom's decision to leave the European Union. I refer members to paper 3, which is a note from the clerk.

As members have no comments to make on the regulations, are they content with the Scottish Government's view that it should consent to the relevant changes being made by the UK Government?

**Members** *indicated agreement.*

**The Convener:** That brings us to the end of the public part of the meeting. We move into private session.

11:26

*Meeting continued in private until 11:51.*

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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