



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Tuesday 23 April 2013

Session 4

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**Tuesday 23 April 2013**

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**HEALTH AND SPORT COMMITTEE**  
**12<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

\*Mark McDonald (North East Scotland) (SNP)

\*Aileen McLeod (South Scotland) (SNP)

\*Nanette Milne (North East Scotland) (Con)

\*Gil Paterson (Clydebank and Milngavie) (SNP)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

\*Drew Smith (Glasgow) (Lab)

\*David Torrance (Kirkcaldy) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Karen Anderson (Care Inspectorate)

Graham Bell (Kibble Education and Care Centre)

Richard Crosse (CrossReach and Church of Scotland)

Zachari Duncalf (Care Leavers Association)

Duncan Dunlop (Who Cares? Scotland)

Richard Meade (Barnardo's Scotland)

Jacquie Pepper (Care Inspectorate)

Jean Urquhart (Scottish Catholic Safeguarding Service)

Gerry Wells (Quarriers)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**LOCATION**

Committee Room 1



## Scottish Parliament

### Health and Sport Committee

*Tuesday 23 April 2013*

[The Convener *opened the meeting at 09:45*]

### Subordinate Legislation

#### National Health Service Superannuation Scheme etc (Miscellaneous Amendments) (Scotland) Regulations 2013 (SSI 2013/109)

**The Convener (Duncan McNeil):** Good morning and welcome to the Health and Sport Committee's 12th meeting in 2013. As usual at this point, I remind all those present, including members of the public, to switch off mobile phones, BlackBerrys and other wireless devices that can interfere with the sound system. Another reason for mentioning that is that some of us work with iPads, which we use to look at our pile of papers—I reassure people that we are not disrespecting their evidence.

Agenda item 1 is consideration of a Scottish statutory instrument that has been laid under the negative procedure. No motion to annul the regulations has been lodged, but the Subordinate Legislation Committee has drawn the Parliament's attention to them on a general reporting ground.

As members have no comments, do members agree that we have no recommendations to make on SSI 2013/109?

**Members** *indicated agreement.*

## Victims and Witnesses (Scotland) Bill: Stage 1

09:46

**The Convener:** Agenda item 2 is our third evidence session on the Victims and Witnesses (Scotland) Bill. As the session will be in round-table format, I start by asking people to introduce themselves. I am the MSP for Greenock and Inverclyde and I am the committee's convener.

**Gerry Wells (Quarriers):** I am the head of service for adult disability services at Quarriers.

**Bob Doris (Glasgow) (SNP):** I am an MSP for Glasgow and I am deputy convener of the committee.

**Graham Bell (Kibble Education and Care Centre):** I am chief executive of Kibble.

**Richard Crosse (CrossReach and Church of Scotland):** I am the head of safeguarding for the Church of Scotland. I am representing the Church of Scotland and CrossReach.

**Jean Urquhart (Scottish Catholic Safeguarding Service):** I chair the Catholic church's authorised listeners group. I am here to speak on the bill.

**Drew Smith (Glasgow) (Lab):** I am an MSP for Glasgow.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I am the member for Clydebank and Milngavie.

**Mark McDonald (North East Scotland) (SNP):** I am an MSP for North East Scotland.

**Richard Meade (Barnardo's Scotland):** I am public affairs officer for Barnardo's Scotland.

**David Torrance (Kirkcaldy) (SNP):** I am the MSP for the Kirkcaldy constituency.

**Nanette Milne (North East Scotland) (Con):** I am an MSP for North East Scotland.

**Aileen McLeod (South Scotland) (SNP):** I am an MSP for South Scotland.

**The Convener:** As people might have observed in our previous evidence sessions, we will start with the general context of the work that has been put in, with the involvement of various parties, during the consultation on the bill. Do people believe that the work that has been put in gives us a good context for going forward? Does anyone want to take up that general question?

**Jean Urquhart:** It is good to be part of the process, and it is good to be here today. We have come a long way. Following the questions in the consultation that were formulated to inform the

legislation on the national confidential forum, we now have the bill, which is being considered at stage 1.

When I read the papers on the bill, I was struck by how it provides all the bare bones on which the national confidential forum will depend. It is very thorough. The bare bones contain a lot of the detail that might be expected: they cover what the national confidential forum is; how it will function; its membership; its procedures; eligibility to take part; and recording, reporting and disclosing. We would expect all that, as all those things are necessary.

However, it is not evident how those bare bones will be clothed in the language of care for the participants who engage in the process. When people decide to take part in speaking of childhood trauma experienced in care, it is an important experience for them. However, that experience also contains risks for their wellbeing, if support is not in place when they really need it. If the required support is provided at key points throughout the process of preparing for and giving testimony as well as afterwards, that could help to make a huge difference and would make a difficult adult experience worth while in the long term. Otherwise, the experience could be damaging once again.

**The Convener:** Does anyone else have comments?

**Gerry Wells:** This might be an opportunity for me to say a little about how Quarriers has been involved to date and to introduce why we feel that we have been invited here.

Quarriers was a major mainstream children's home provider until the early 1980s. From its inception in the late 19th century as the Orphan Homes of Scotland until the shift in childcare policy that resulted in the closure of long-term institutional care, some 30,000 children went through its care in Quarriers Village. Quarriers still has the records available from the earliest days plus annual reports from that time.

In the early 2000s, there were a number of successful prosecutions of former employees of Quarriers, following allegations of abuse that the police investigated. Quarriers is now a very different provider, but there was a clear recognition that there had been historical abuses and a commitment was given to assist in every way possible those who had been victims. Quarriers agreed to play its part in furthering learning to prevent repetitions.

For some time, Quarriers had invested in providing a genealogy and aftercare service for those who wanted to see the records of their time in care and/or to make sense of previous family connections or disconnections. Inquiries to the

records service provided us with the recent addresses of former residents. Therefore, when we were approached by the Scottish Government to co-operate with the pilot acknowledgement forum, we realised that we could help to ensure that the chair, Tom Shaw, had direct access to potential interested parties through our database of recent contacts by former residents. In that way, we were able to forward a standard letter of invitation from Tom Shaw to some 400 people.

Quarriers is not party to information about who responded to those letters, but I understand that a goodly number of the 98 people who took part in the time to be heard forum had heard of it through that channel. From the report "Time To Be Heard: A Pilot Forum", we understand that many found the opportunity offered to them helpful. That appears to be backed by the evaluation report, which was prepared by the Scottish institute for residential child care. Quarriers received some letters of appreciation from people for helping to inform them about that opportunity.

Quarriers was also pleased to participate in a pilot restorative justice process that was offered as an option to all time to be heard participants. That pilot was delivered by Sacro. Fifteen participants made contact with Sacro, and that led to some four or five concluding the process with a restorative meeting with the chief executive of Quarriers.

Time to be heard and the national confidential forum are about acknowledgement, but Quarriers also recognises that, for many, that does not go far enough in addressing the trauma of their abuse. That is really where we are up to at the moment. The message from Quarriers to other providers of childcare is that we need to engage with the process, which is not one to be afraid of.

**The Convener:** I have a follow-up question. From the involvement that Quarriers had in the initial pilot, what benefits and challenges did you face as an organisation? Others might also want to comment on that. What benefits or challenges were there in that process?

**Gerry Wells:** In the initial stages, there was a degree of anxiety about opening ourselves up to interrogation, in some ways. However, we learned that a foundation of the process was its totally confidential nature and—we learned this strongly—that the process put the individual at its heart. It should be about the needs of only the person who has been abused in the past. Once we understood that clearly, it was easy for our board of trustees to agree to participate in the forum.

**The Convener:** Do the other witnesses have views on the process and whether it offers a good grounding from which to proceed with the bill?

**Graham Bell:** I am from Kibble, which dates back to 1857 and is based in Paisley. Miss Kibble, the daughter of a wealthy textile entrepreneur in the town, was worried about young people in prison. She established what was initially a farm school, which later became an industrial school and then an approved school. Today the organisation is much wider, but we still have a significant number of residential places.

Given our long history, we expected some comeback from the various initiatives that had been undertaken, but we are not aware of any at all, even though many people who were youngsters in Kibble's care and who have come back to us have talked about there being a tough regime in the past. We find ourselves stuck in a position in which we want to be open and transparent about our past and are committed to being involved wherever we can be—we broadcast the name quite widely; it is an unusual name, which has certainly stuck in the minds of people who were youngsters in Kibble's care—but in which we simply have had no one come forward to us.

That makes us slightly hesitant about commenting on what other organisations have done. We have not gone through the same process, despite our long history. From our contact with people who were residents and pupils, I can say that for many people, the fact of having been in care of any kind is particularly shameful. Whether or not there was abuse, people are reticent about talking about what went on. That remains very difficult for many people. The issues are obviously interwoven with feelings about their families and so on. We feel as though we are taking a bystander view on the issue, in a sense, but we are ready to respond should anything come out.

**Richard Crosse:** I am representing the Church of Scotland. I am head of safeguarding, which covers child and adult protection for the church.

We recognise that harm and abuse, including childhood abuse, can happen in any setting, including faith communities. For the past two years, the Church of Scotland has ensured that, if people come forward because they have had harmful experiences while in the church's care, we are more receptive, and we have policies and procedures in place to ensure that people are heard and their experiences acknowledged.

10:00

When looking at the paperwork for today's meeting, I noticed that survivors have a range of needs, which are not just about being heard or acknowledged. I see that many survivors groups say that they have other needs and expect other

and maybe better outcomes. As I said, those outcomes are not just about being heard or acknowledged; they include such things as wanting an apology or acknowledgement from the care provider and access to written records from the time when people were in care.

Some survivors might require professional counselling, as might some close family members who have been affected by the reported abuse. Others might seek reassurance that the person whom they reported as having harmed them is not in a position to harm others today, and others still might want an investigation into their concerns or referral to the police, if a criminal matter was reported. There is a range of outcomes. Perhaps the one thing that is missing in the structure as it is presented in the bill is the link between the national confidential forum and the care providers.

Certainly, the Church of Scotland expects that some people might be referred to the church after having been to the national confidential forum. We feel that we are in a good position to respond to the needs, by which I mean that there will be named people in the church whom people can contact. We see it as very important that people have an opportunity to determine their needs and wishes. In that respect, like the Catholic church in Scotland, we have in place something called a safeguarding listener service. Through that service, which is independent of the church, someone can meet in confidence with an independent person, who can help them to decide what they want and what their needs are.

The Church of Scotland is well placed at present. We support the setting up of the national confidential forum, but we believe that the links between the forum and the care providers need to be further developed so that survivors feel that their wider range of needs is met.

Survivors will judge the process, the bill, the act and the national confidential forum on the personal outcomes for them. Just being heard and acknowledged might be exactly right for some, but others will have needs that must be met, probably by care providers, support groups and others. If they feel that those needs are not met and are left hanging without follow-through, having been acknowledged at the forum, the structure may be deficient. There needs to be commitment from the care providers.

**Richard Meade:** We agree with a lot of what has been said today and in previous evidence sessions. We certainly support the NCF and believe that it would be a great therapeutic help to some survivors. However, we also agree with the Scottish Human Rights Commission and lots of other organisations that some of the proposals do not necessarily go far enough.

We participated in the first interaction, which was organised by the SHRC and the centre for excellence for looked after children in Scotland, and we believe that what came out of that meeting was a lot of positive steps forward that will help all survivors. It is important that we look to that group, its work and the action plan that it is looking to produce as a good way forward, so that all survivors' needs—not just the needs of the survivors who would be helped by the NCF as it is currently proposed—are met as part of the programme.

**Jean Urquhart:** I will echo something that Richard Crosse said about having safeguarding listeners in place. In the Catholic church we call them something different—authorised listeners—but the process is the same: listeners are in place throughout Scotland and it is a bit like the national confidential forum. People can come forward and there will be someone placed in their diocese to listen to them and signpost them to where they might need help after that. Listeners would try to help people with counselling or whatever their need is.

There are a lot of things in place that are not largely known yet. Like the Church of Scotland, we have put a lot of safeguarding people and procedures in place. They are not widely known about, but they are there and they are very strong, and I hope that they will make our whole community—and our whole country—safer.

**Gil Paterson:** The suggestion has been made that the bill should have an obligation for the national confidential forum to refer any criminal activities automatically, no matter what. What are the panel's views on that?

**Gerry Wells:** I agree with that. As has been said in evidence at previous meetings, confidentiality goes so far, but it is never possible to give a full guarantee of confidentiality when it is suggested that there is evidence that people, in particular children, might still be getting put at risk—possibly because someone who is still working with children has been named.

**Richard Crosse:** I noticed that, in part 6 of proposed new schedule 1A to the Mental Health (Care and Treatment) (Scotland) Act 2003, which the bill will insert, paragraph 13(4) says that the national confidential forum “must disclose” information to prevent a crime from occurring if its members feel as a result of information that has been disclosed that somebody else is at risk. Paragraph 13(5), in relation to historical abuse, says that the NCF “may disclose” information relating to a suspected crime from the past. That “may” should perhaps be a “must”.

Survivors feel that they lose control once a police referral is made and the police become

involved. It is important to remember that others might still be at risk from an individual, even if they are reported to have harmed a child decades ago. They could be working in different settings and roles and not necessarily in paid employment.

To the best of my understanding, the survivor does not have to co-operate if a referral is made to the police. Their information makes very good intelligence for the police, but the survivor will not be badgered by the police—nobody will phone them up or come round to get a statement from them. They retain some control in that respect. That is a sensitive and difficult topic for survivors.

There is also the public interest. Generally, if a report is given to us at the Church of Scotland that somebody might be a risk to others and we suspect that a crime—past or present—has occurred, the presumption is to share that information with the police. The police, and sometimes social workers, are best placed to determine whether there has been a crime and whether others are at risk. That judgment is sometimes not best made by the Church of Scotland's safeguarding service, and it is probably not best made by the national confidential forum either.

That “may disclose” in paragraph 13(5) of proposed new schedule 1A should perhaps be “must disclose” instead. I note, however, that the issue is contentious.

**Richard Meade:** I agree with what has been said, but it brings up another important element: the support that is provided to survivors who could give their accounts. If that information might be referred on to the police or others, adequate support is required before, during and after the survivor has given their account, to ensure that they are fully aware of what is happening and that they get any particular support that is needed. If they need particular mental health or therapeutic support, they should get that support as part of the process. That is crucial.

**Graham Bell:** In our view, the police would have to be involved. One lesson that has been drawn from investigations is that they have often not been well conducted—for the accused and the victims. Special training needs to be given to the police involved. As for other types of investigation, we would expect some specialist inquiries to be held. That is essential if justice is to be seen to be done for everyone.

**Richard Crosse:** I just want to build on a point from Barnardo's. At the outset, survivors who attend the national confidential forum should be made aware of the limits of confidentiality, and no surprises should be sprung on them. They should enter into the process knowing what the outcome might be if the information that they provide



suggests that a crime has occurred and that others, or they themselves, might still be at risk.

There should be openness and transparency. As well as something being given verbally on confidentiality and its limits, there should be something in writing. I agree about the support that a person needs before they enter into the process. All those issues should be made as clear as possible.

**Gil Paterson:** Further to that point, we recognise that many people find it difficult to engage and that starting the process is the hardest step. If there was a definitive statement that referrals to the police would be automatic for historical incidents, my view and that of others would be that some people would be unlikely to take that first step.

What are the witnesses' views on the use of the word "may"? Will that prevent folk from participating or stop them after they have engaged, when they are advised of the consequences of a complaint being made and followed through? Does the use of the word "may" strike the right balance? Based on your expertise and experience, should the "may" turn into "must"?

**The Convener:** Does Mr Wells want to comment on that?

**Gerry Wells:** I was not going to comment on that specifically but, in some ways, other safeguarding responsibilities that are on us almost lead to the fact that the word has to be "must". That is because of legislation that we and local authorities need to work to.

I say for the committee's interest that, as a result of the time to be heard forum, Tom Shaw passed on to the police a number of names that were disclosed by participants in the process. A lot of the issues were about very historical abuse, so I am not sure whether much will necessarily come from that, but Tom Shaw certainly felt an obligation to pass on names to the police.

**The Convener:** Does anyone else want to follow up Gil Paterson's point about the use of "may" or "must" and whether the provision could become a barrier? People will perhaps enter into the process because it is not a legal one. It will be in confidence and will not be in public or in the papers or the courts. Is there a contradiction in our feeling that the need to prevent people from perpetuating such trauma and abuse should overcome the needs of those who want to speak about the issue for the first time, put something on the record and have their trauma acknowledged? Is that a big issue?

**Jean Urquhart:** It is helpful for people to come forward and tell their story, but I know that trying to ensure that such abuse does not happen to

anyone else is high on the agenda. That is one thing that people say, and it can sway people in making decisions on passing information elsewhere.

However, it is important for participants to know that that does not mean that they have to speak to the police. They have the right not to do that. If information is passed on, they still have the right not to speak to the police.

**The Convener:** The message that we have had from previous panels and, I think, again today is that, when the person at the centre enters the process, they should fully understand its limitations and extent. That is the key point. Who would provide that support? How do we ensure that such support would be provided to the approximately 1,000 people who—as I think we heard last week—could be involved? Who would be the best people to provide that support? Where are they?

10:15

**Richard Crosse:** The well-established and well-regarded survivors organisations in Scotland would perhaps be well placed to assist with that process. The starting point is probably to get views from survivors on—and assess—their needs and the type of support that they want, and tailor a service to meet those needs.

The process is a new initiative and it is great, but we do not have any experience from similar schemes to go on. Survivors organisations, in conjunction with some major care providers, could perhaps tailor a support service for the people who are entering the process in order to meet their needs.

As I said, I think that the police are best placed to make a judgment about criminality and risk—whether others are at risk of harm from an individual. Despite the fact I have been working in social work for 33 years, and for the church for seven years, that is still my firm belief.

**The Convener:** We are discussing whether that would be a barrier to an individual. Presumably, people could go to the police at any time—they could go to the police tomorrow; they do not need a confidential forum to do so. Although some criminal investigations flowed from the pilot, I thought I heard the witnesses say that, for the majority of people, an acknowledgement of their trauma and their experience was enough.

**Gerry Wells:** That was in Tom Shaw's report and in the evaluation—to which I referred earlier—by the Scottish institute for residential child care. Quarriers itself did not meet those individuals, because we were not part of the time to be heard process in that way, so I cannot speak for them. I

am speaking about what I have read in the report and in the evaluation.

**Graham Bell:** It was clear from some of the people who have already given evidence that there is no single answer. In fact, the evidence from most people seemed to suggest that different people wanted quite different things. Some quite understandably wanted nothing to do with their previous care provider, but there appear to be others who feel a sense of affinity with the organisation in spite of what individual carers may have done.

It is difficult to give a definitive answer, but I think that it is important to have a raft of ways for people to go, and not just in relation to historical abuse. It would be naive to think that everything is in the dim and distant past. We still have residential care and thousands of children in foster care, and the way in which we conduct business now sends out messages to youngsters who have been more recently—or are currently—in care. A range of ways to respond is important to people.

**Nanette Milne:** I am interested in hearing the panel's views on the eligibility criteria that the bill sets out, particularly in relation to age—that the person should be 18 or above—and the definition of “institutional care”, which specifically excludes the foster care that Graham Bell just mentioned.

**The Convener:** That is a good question on the scope of the bill with regard to age. Perhaps Jean Urquhart would like to comment.

**Jean Urquhart:** No doubt the national confidential forum reference group's long and wide-ranging discussion about age eligibility will be reported, but what came out of it was the fear that people with a valuable story to tell—for example, the 16 and 17-year-olds who are just out of care—could be missed. When we debated the issue, I wondered whether there could be an exceptional circumstances caveat. The group kind of agreed that it would be exceptional for a 16 or 17-year-old just coming out of care to talk about these matters—they might not want to know anything or even speak to anyone about them—but it would be good to have a caveat in exceptional circumstances so that a younger person could be given the opportunity to speak to the forum. If we are all about plugging gaps, that would certainly be one to think about.

**Richard Meade:** We agree that consideration should be given to the under-18s. The matter is not only complicated—after all, these people might still be in care—but challenging, and if the age limit were to be lowered we would need to be careful that adequate, appropriate and proper support and services were available to the children in question.

As far as other institutions are concerned, we agree that the bill should cover foster care. Indeed, we think that it should cover instances where the state has played a role in placing someone in institutional care.

**Graham Bell:** I understand why the bill is about institutional care. The messages that we send out are important and, speaking as a former foster carer and as an adoptive parent, I think that given the sheer scale of the numbers of youngsters involved it would be naive to think that everything is in the past. How the bill is constructed will be important in establishing the openness and transparency that we will want things to be dealt with in future. However, in dealing with certain foster care issues, we might well require a different approach from that taken in relation to residential institutions.

**Gerry Wells:** We do not have a particular view on the issue of lowering the age of eligibility. In some ways, it is a bit of a technical issue about the definition of a child. The key thing is that, no matter who the person is or how old they are, they know that they have somewhere to go and someone to speak to.

As for whether the bill should cover foster care, I have to say that I do not fully understand the argument against its inclusion. I am not sure, but it might have to do with the many different kinds of foster care arrangements, or it might have to do with issues of definition. Nevertheless, I fully agree that there is the potential for harm or abuse to take place in all settings and the key message is that people should feel that they have someone to talk to or that there is help available and that they should not feel cowed in coming forward.

**Richard Crosse:** I agree with Jean Urquhart that provision should be made for 16 and 17-year-olds. I note that one of the NCF's general functions is to identify any patterns or trends in the experiences of those placed in institutional care and to make policy and practice recommendations. Even if only a handful of 16 or 17-year-olds had something to say about their experience in residential care, that would still be data about patterns, trends and changes to policy that might be required, which would otherwise be lost. It does not seem a terribly good idea to suggest that they come back when they are 18. That said, I can see why the Scottish Government wants to regularise the definition of a child; after all, various pieces of legislation define children as being up to 18, up to 16 and so on.

**Nanette Milne:** Does anyone think that the scope should be extended to kinship care?

**Gerry Wells:** I said that there are different kinds of foster care, and kinship care is one that I was

thinking about. I do not know where the boundary should be.

**The Convener:** Are there any other responses on kinship care?

**Richard Crosse:** Can someone remind me of the definition of kinship care?

**Nanette Milne:** I do not know what the formal definition is, but I presume that it involves people being cared for by relatives.

**The Convener:** Bob Doris will help with the definition.

**Bob Doris:** The Children and Young People (Scotland) Bill, which is, of course, currently going through the Scottish Parliament, reviews the matter, but there are two definitions. A child can have a permanence order or can be a looked-after child who is placed with a family member. There is also a range of informal kinship care arrangements involving social work placements in which the state technically does not have a looking-after, corporate parent role. I hope that that helps with the definitions, but I am afraid that it does not make things less complex.

**Richard Crosse:** In that context, I wonder whether the key is who has placed the child in the family setting and what measures they have taken to ensure that that setting is and continues to be safe. That might be a pointer to who may have some responsibility if things go wrong or become harmful.

**The Convener:** As Bob Doris mentioned, there are complexities in relation to the scope of the legislation and challenges for those who are drafting it.

I want to conclude our discussion on confidentiality. Many of those who are in the process recognise that anonymity is important, but when the reports from the pilot were produced, people were angry and frustrated that their evidence had not been reflected. That process was therefore less than satisfactory. Are there any thoughts on that?

The other suggested barrier is that, whether we like it or not, there is a stigma around mental health. The Victims and Witnesses (Scotland) Bill proposes to house the forum with the Mental Welfare Commission for Scotland. Are there any views on that being a barrier?

**Gerry Wells:** On the observations by people who took part in time to be heard that they could not identify their testimony in a report, I do not know whether that was deliberate or a matter of editing. Some 98 people were seen. If people wish to recognise their testimony so that they can ensure that the report truly reflects what they said,

and if that could be built into the process, that would be appropriate.

On housing the forum with the Mental Welfare Commission for Scotland, I share the concern that people have expressed that there is potential for there to be stigma associated with the mental health side of things. Participants may not feel that they want to be associated with that.

I understand that the Scottish Government must think carefully about the most practical way of taking things forward, and using the Mental Welfare Commission for Scotland may be the most pragmatic response. The commission has good standing and is recognised as being independent. It would be a matter of the message round about that so that people understand that the NCF is totally independent.

10:30

**Richard Meade:** On anonymity, it must be made clear at the outset to those who participate what they can expect, how the process will work and what the outcome will be. That is crucial to ensuring that, at the end of the process, the survivors who participate feel that they got what they needed out of it.

As long as the NCF is operationally independent of the MWC and the forum's positioning, branding and presentation to those who will approach it are right, there will be less chance of it being stigmatised because of its association with the MWC.

**Jean Urquhart:** I know how important it is for people, once they have made the decision to speak, to feel that they have been heard. One way that they know that they have been heard is if they recognise some of their words in the report. I guess that it might be impossible to have every word that everyone said in a report, but the suggestion was made at the reference group meeting that a code known only to the person who spoke could be used to signify to them that certain words were their contribution.

It must be very hard for someone who feels that they do not count to take the brave step to speak and then, after they speak, to be unable to find what they said in the report. They would still feel that they did not count. It is important that, somewhere along the line, their words are recognised and noted and that they can find them for themselves.

**Graham Bell:** I understand some of the concern about the matter being seen as a mental health problem. Survivors see themselves as being stigmatised by having been in care and then having been abused. A strong feeling has come through from them that that stigmatisation

continues because of the link that people make with mental health. We can try to be as professional about it as we like, but the moment that we put it in that bracket, people will feel like that. I am not sure that I have an alternative, but I understand perfectly well why people are concerned about that.

**The Convener:** We have a couple of questions about the annual report of the national confidential forum, for which the bill makes provision. Graham Bell suggested that the annual report could help to raise awareness, be a preventative tool and bring wider acknowledgement, and I think that it was Richard Crosse who referred to the current situation and asked what recommendations can be made as a result of the acknowledgement of problems.

What should the annual report look like? As well as acknowledging some of the testimony, should it recognise trends and experience? Should it make recommendations about policy and practice as a result of what the national confidential forum has heard? How do the witnesses see the annual report playing into the overall, wider issue of people's experience?

**Graham Bell:** Its most important task is to keep the matter on the public agenda, as part of creating the sense that it is no longer hidden. That is its fundamental value, but it also needs to be clear about what is being done to assist and support survivors.

**Jean Urquhart:** I was just thinking that, if this were education, we would expect to see learning outcomes. We should expect the annual report to set out what has been learned, what trends have been identified and what the policy outcomes might be. That would certainly be useful.

**Richard Crosse:** Survivors and survivors organisations will look at annual reports to see what the outcomes are. Given that the term "outcomes" is just jargon for how needs have been met, I think that it would be good if the annual report could say that X number of survivors had contact with their care providers and that the outcomes were, for example, access to records, a period of professional counselling or just an acknowledgement by the care provider. Those are the measures that I think survivors and survivors groups would look for.

**Gerry Wells:** The annual report must, year on year, add to our knowledge of the issues that people have faced and are facing. It is also worth considering building into the process some periodic and independent evaluation to ensure that we can be confident that the forum is achieving what it sets out to achieve.

**Richard Meade:** The outcomes issue is really important and, if presented in the right way, the

annual report could be useful in encouraging others to come forward and give their own accounts. After all, they would be able to see that the system works and that their contribution would serve a purpose. We should also ensure that any document comes in a friendly format that helps to encourage people, is put where they can find and read it and lets them think about coming forward themselves.

**The Convener:** I have a final question to cover the range of issues that we are examining. We have already talked about support for people entering the process and have heard evidence that people can feel tremendous relief and euphoria in getting a weight off their shoulders that they have not told anyone about. However, does anyone have any thoughts on the question of aftercare and the provision of support not just prior to but after the hearing in order to deal with any consequences that might arise?

**Gerry Wells:** I can perhaps say a little bit about the experience of Quarriers and highlight an issue that has not been discussed. Built into time to be heard was an entirely voluntary restorative justice pilot that was delivered by Sacro and which people could opt into if they wanted to take a closer look at the matter. Essentially, people met trained Sacro counsellors to explore the issues further and discuss what they might be looking for in going to the next stage of restorative justice. My understanding of the pilot's outcomes comes purely from Sacro's evaluation report, but of the 98 people involved in time to be heard 15 opted to have a further look at whether they wanted to pursue that route, a number that was considered to be higher than might have been experienced in other restorative justice programmes.

Of those people, I think that only four or five moved to the stage of having a one-to-one meeting with the representative—the chief executive—of Quarriers, in that setting, to talk again about their experience and look for some acknowledgement from the organisation.

I understand, certainly from the evaluation, that people who went through the whole process found it helpful. I also understand from other evidence that a number of people felt that the process was flawed and so did not opt to go through it. Part of the concern was that a kind of confidentiality clause was built into the process, although it was not and could not be legally binding.

I think that the four or five people who went through to the final stage got some added relief from doing so—some added closure, if we want to use that word. Providers could think about offering such an option, as part of a range of ways of offering assistance.

**Gil Paterson:** Did the process reawaken issues for individuals, or did it enable them to find services that they had not known existed? Was work done on that? Are we creating a problem or are we solving one by doing what we are doing? That is the conundrum.

**Gerry Wells:** The same question could be addressed to the whole time to be heard process. I think that for one or two people, it reawakened things. Clearly that was part of the point, in some ways; the idea was to give people the opportunity to talk—in some instances for the first time. There are some moving stories in the report from people in their 80s who talked, almost for the first time, about experiences that they had when they were 10, which they had carried with them for such a long time.

There is potential for reawakening and there is potential for people not to cope with that reawakening. That is why the support that we have talked about is so important. The time to be heard team included people who provided support throughout the process, and I believe that they were able to help to signpost people at a later stage.

There is always the potential for the reawakening to be damaging for some people. That raises questions about individual resilience, which has been talked about, and about how some people manage to come out of a trauma better able to cope with life than others do. Access to therapy and psychological support must be built into the process.

**Richard Crosse:** Gerry Wells's point about the need to build in support is probably where there is currently a weakness in the system—that takes us back to the point that was made earlier. That is why I urge that there be guidance, for example, to help care providers to make the link between the national confidential forum and what they can provide in the context of their responsibilities. I talked about the Church of Scotland's safeguarding service. That is just part of a response procedure that we have put in place to help people to identify their needs and to help us to meet them, where it is practical and reasonable to do so.

10:45

**Jean Urquhart:** It is worth remembering that when people come forward there is sometimes an immediate reaction, but sometimes it takes time. We need to be aware of that. Reports are sometimes written quite quickly, which means that they miss reactions that come later in the participants' lives. That is why care has to be there during and after participation. The reaction might set in much later.

**The Convener:** If no one else wants to comment, it remains for me to thank you all for coming and for your written and oral evidence. If you want to raise issues that were not covered this morning, please do so. We encourage you to observe the evidence that we take over the next couple of weeks and to feed back to us informally, to ensure that we take account of your views before we publish our report. Thank you very much for your time.

10:46

*Meeting suspended.*

10:52

*On resuming—*

**The Convener:** We now move to our second panel on the Victims and Witnesses (Scotland) Bill. As usual, we will begin this round-table session with introductions. I am Duncan McNeil, the MSP for Greenock and Inverclyde and the convener of the Health and Sport Committee.

**Bob Doris:** I am an MSP for Glasgow, and deputy convener of the Health and Sport Committee.

**Zachari Duncalf (Care Leavers Association):** I represent the Care Leavers Association.

**Jacquie Pepper (Care Inspectorate):** I am the head of inspection for children's services and criminal justice for the Care Inspectorate.

**Drew Smith:** I am an MSP for Glasgow.

**Karen Anderson (Care Inspectorate):** I am director of strategic development and deputy chief executive of the Care Inspectorate.

**Gil Paterson:** I am the member for Clydebank and Milngavie.

**Mark McDonald:** I am an MSP for North East Scotland.

**David Torrance:** I am the MSP for the Kirkcaldy constituency.

**Nanette Milne:** I am an MSP for North East Scotland.

**Aileen McLeod:** I am an MSP for South Scotland.

**The Convener:** Duncan Dunlop is still trying to get here. There has been a slight delay, but we will proceed in hopes that he will make it in time.

**Bob Doris:** I will keep the first question relatively general. As we know, the national confidential forum is based on the time to be heard pilot. That information has been evaluated and published. Do our witnesses believe that the time to be heard pilot was a good basis on which to

take forward the national confidential forum? All the provisions in the bill clearly follow from that.

**Zachari Duncalf:** It has been a long 10 years. Organisations and individual survivors have all worked really hard. Now, organisations such as Quarriers are on board and we have moved slowly through the processes.

In 2009, I was involved in work that was done by the Scottish Human Rights Commission, the Care Leavers Association and SIRCC, which is now CELCIS, on research to inform the Scottish human rights framework, which resulted in the “Time for Justice” report.

After that, the pilot confidential forum, time to be heard, was set up. Inevitably, within that, we lost accountability and we have lost justice in that process, even though we campaigned for a number of years to get justice brought back into that. We seem to be moving forward with a confidential forum that lacks any of that.

Although the research is important and good, some elements have—forcibly—not been included in the confidential forum, and that needs to be addressed as we move towards a full forum.

**Bob Doris:** I do not like to say this at this point, Zachari, but at the first round-table session, we made the point that the committee has been asked to specifically consider the health-related aspects of the bill. We are not trying to dodge issues relating to justice, however, and I am grateful that you have put that point on the public record.

To what extent do the witnesses think that the national confidential forum will meet the health or therapeutic needs of those who participate in it? I do not want to downgrade the need for justice, but I would like to know what our witnesses see as the strengths of the forum, at the level at which it is proposed that it will operate. I would also be keen to hear about any perceived weaknesses in respect of the health and therapeutic needs of individuals.

**Karen Anderson:** The Care Inspectorate welcomes the proposals to establish the national confidential forum as an independent and impartial forum. The time to be heard pilot gave us evidence of the health and wellbeing benefits for people who participated in the pilot study.

As we heard in the earlier round-table session, what is clear is the need for support before, during and after participation in any national confidential forum. That is certainly the position that the Care Inspectorate would adopt to supporting people to participate, ensuring that the right support is tailored to individual needs at the right time.

**Bob Doris:** I will move the questioning on. We want to keep the questioning open because we want to give witnesses an opportunity to express

what they feel needs to be expressed about the bill.

During our evidence-taking sessions, we have listened carefully to the proposition that talking about historic abuse in residential settings can open up various issues that individuals have kept locked away or which they had developed coping mechanisms for. It has been suggested that, therefore, there is a need for on-going support for individuals who speak at the national confidential forum. To what extent do you believe that that is true? Does the bill make adequate provision for that?

11:00

**Duncan Dunlop (Who Cares? Scotland):** Good morning, I am Duncan Dunlop from Who Cares? Scotland.

I concur with what Karen Anderson has said. People will need support before, during and after the process, and what will depend very much on who the forum’s target group really is, who attends the hearings and how they relive the trauma. I am thinking about the contemporary audience of those who have left care recently—those up to the age of 25 and maybe a little bit beyond that.

If someone faces physical, sexual, mental or psychological consequences because they were in the care system, that will probably be a live issue for the justice system and it ought to be dealt with through that route. It might not necessarily be appropriate for such people to turn up to a separate forum, beyond them talking about living through the overarching experience of care and us using that to improve our care system and services so that other people can get a better outcome from them. A specific case of abuse ought to be heard through other live routes.

I understand that the primary target of the national confidential forum is a different generation of people who went through care and who want their voices to be heard. What we learn from their experiences will impact on the people who are going through the care system today, although I do not think that there is necessarily a primary relationship between the experiences.

I say in response to Karen Anderson that if we are putting people through the proposed process, whether they are elderly or young they will need a continuous relationship and support before, during and after the process of giving evidence. Such people should not be handed from professional to professional.

**The Convener:** Does Jacquie Pepper want to comment on the justice aspect that has been referred to?

**Jacque Pepper:** I heard the evidence that was given earlier and the questions about whether the national confidential forum must make representation to the police when it is concerned. Provision could be made to allow people to give testimony in a confidential manner and to cover circumstances in which there are current concerns about an immediate risk to a child or a vulnerable adult. We need to balance that with the rights of an individual not to involve the police. It is a delicate balance but it is possible to make such provisions.

**The Convener:** Does the bill make such provisions?

**Jacque Pepper:** It does, but we need to ensure that we are thinking not just about children; we need to think also about vulnerable adults as being at risk, and that needs to be explicit.

**Zachari Duncalf:** We need to recognise that the mental health of survivors or care leavers of all ages has been affected by their involvement in the pilot forum. Without redress or access to justice—although it is a separate issue—people have been retraumatised and the process has affected many of the survivors who have fought long and hard to access those areas. There needs to be clarity about what the national confidential forum is and what it is not, what can be offered and what is not being offered, and what support there will be before, during and in the long term after the process.

Access to support even needs to be available to people who do not want to give their testimony to the national confidential forum but want access to services. That has also been a cause of tension throughout the pilot process.

**Bob Doris:** I am just trying to work out what is happening. Usually the committee witnesses are much more strident about expressing their views. I realise that this is quite a sensitive bill and I am tempted to go through some of its individual provisions and to give the witnesses a chance to comment on them.

Jacque Pepper was here for the earlier panel so she would have heard that there could be an issue with the national confidential forum being hosted in the Mental Welfare Commission for Scotland. Does anyone have any issues with that? Is it appropriate for the NCF to sit within that body?

**Karen Anderson:** The Care Inspectorate certainly welcomes the fact that the body is to be situated in the Mental Welfare Commission, which clearly has the expertise to support it. We concur with the earlier evidence on the positioning and the body's perhaps being a subsection of the Mental Welfare Commission. The important point is that governance arrangements are set up to

ensure that the forum remains independent and impartial and that people are not stigmatised, as was suggested earlier, because of their mental health issues. However, we believe that the Mental Welfare Commission is well placed to provide that support.

**Zachari Duncalf:** The Care Leavers Association also supports that, although the governance arrangements are important. However, we also need to recognise that care leavers and survivors have had poor and negative experiences with mental health service providers. Some survivors are surviving and indeed thriving, yet the issues of abuse are still prevalent in their lives. They might not want to be labelled as being in mental health services.

**Duncan Dunlop:** Bob Doris wondered why we were not being vociferous enough, but perhaps this gets us to that point. Perhaps this is the wrong time in the discussion to make this point, but the mental health issue is an interesting one when we look at the overarching state of young people who are in care. The target is to get waiting times for access to child and adolescent mental health services down to 26 weeks. For an adolescent, 26 weeks is a long time, but some people wait well over a year to get access to the service.

I will not get into why the confidential forum is wanted, but it will be housed within the commission and resources will be given to it. I respect the fact that there is potentially a different agenda and need for those who went through historical abuse but, for today's young people in care, there is a real and prevalent need to work out exactly what is going wrong in our care services and care system.

I have been at the Health and Sport Committee before to discuss teenage pregnancy, at the Education and Culture Committee to talk about the educational attainment of young people in care and at the Finance Committee to talk about the employability of those young people. We could also talk about youth justice or about premature death among care leavers. As a society, we are failing these young people massively and we should not think that a national confidential forum will solve those issues for them. It will not—it will be a sticking plaster over something, for whatever reason, but it will not resolve the issues that really affect our looked-after young people today. It will not deal with the fact that our services are not adequate and do not achieve adequate outcomes for young people.

These young people are not on the scrap heap. They are immensely capable characters and individuals yet, somehow, over generations, we have failed them, and we are still failing them. We are their parents, because we took them away from their birth family, often for the right reasons,

but we are not improving their situation. It was only 40 years ago, in the 1970s, when we stopped deporting young people to Australia. How come in our developed Scottish society the issues of our looked-after young people are so far behind many other social issues? It is just not on.

If we are speaking about the current cohort of looked-after young people and those up to 25, I am not sure where the proposed confidential forum fits. We can go into the detail of how it will work but, for me, members of this Parliament ought to be considering a far bigger picture.

**Zachari Duncalf:** I completely agree with Duncan Dunlop.

The national confidential forum has the capacity for an awful lot of learning, as was the case with the pilot forum. Organisations are on board. The pilot forum listened to adult or older care leavers from across the generations—60-year-olds, 50-year-olds, 40-year-olds, 30-year-olds and 18-year-olds—repeatedly saying the same thing and sometimes about the same organisation. The proposed national confidential forum has to provide learning opportunities. Having something on such a scale will enable larger organisations and other organisations across Scotland to get on board on wider agendas and not just on one issue.

**Bob Doris:** I thank Mr Dunlop for his passionate response—I asked for people to be more strident and that certainly was passionate and well put. Obviously, we have a duty to scrutinise the bill, and that is the main part of what we are doing here. However, one of the provisions is on an annual reporting process. Zachari Duncalf mentioned the ability to learn from what has happened to young people in the care of the state not just in the past few years but over generations. How should the annual reporting mechanism work and how should it inform Government policy and the Care Inspectorate in looking at the situation?

**Zachari Duncalf:** As an academic and a researcher, I know that the research on young people in care and care leavers stops at a particular point, and services stop at a particular point. The annual reporting process gives us the ability to see longer-term issues and outcomes around employability, accommodation and mental health, for example. We see those as young people's issues, but actually they last a lifetime, because there are longer-term effects. Reporting on the statistics, the outcomes, the positive elements of care and the processes can really benefit us in the wider scheme of things.

**Duncan Dunlop:** I like Zachari Duncalf's point. We did some research that we called a conversation across the care generations. As part of that, a woman who had left care, who is now in her early 40s, was talking to a guy of 17 or 18 who

had been in the care system. There was recognition that, materially, the provision that is made for young people in the care system has got a lot better and that there is less risk of physical or sexual abuse, although that can still happen and we need to safeguard against it. However, what is still missing for a large number of young people, which is exactly where the reporting mechanism has potential, is that they are not cared for or loved within the system. They are not given access to what they believe are long-term, caring, loving, stable relationships, which are the fundamental basis of most family situations.

I guess that, whether in relation to the Care Inspectorate, other scrutiny bodies or other systems and services that we create, we ought to be questioning how we enable our services to maintain long-term caring, loving relationships not just for a period of 18 months but for years, and continue that through the entire process of leaving care. We discuss the issue of leaving care, but leaving home is a process and not a point. Most care leavers can tell us the date on which they left care, but not many people can tell us the date on which they left home, because it is a process.

We need to look at the opportunities that may arise in reporting on a number of those issues. How are we improving the psychological wellbeing of our young people in care by securing them long-term stable relationships that they want and have bought into? It would be really valuable to learn about that, because we have seen that, across the generations, we have not managed to get that right.

**Karen Anderson:** We certainly welcome some of the comments that have been made this morning. There are four key points. First, in relation to the national confidential forum, we need to learn from historical abuse and the experiences that people have had. Secondly, we need to ensure that there is appropriate support for people who have had these terrible experiences, that support is tailored to individual needs and that it is available for as long as the individual requires it. That might mean that someone who is now looking at going into residential care as an older person requires particular support, because they might well be revisiting trauma from residential care when they were a child. Thirdly, collectively, we need to prevent further abuse. That is a responsibility of national policy, the delivery partners and indeed scrutiny bodies across the country. Finally, we need to improve the quality of care so that young people do not continue to experience the levels of abuse that we have seen in the past.

**The Convener:** Zachari, do you want to come back in?



**Zachari Duncalf:** Yes. I reiterate a couple of points that Karen Anderson and Duncan Dunlop made. What is lacking in current services and reporting structures is what happens beyond the statistics, outcomes and targeted measures. A life in care and beyond care is much bigger than that. For survivors and adult care leavers, this debate brings in the emotional side—the love, care and support that are seriously lacking in our current care system—and how the longer-term effects of that are played out through people's lives.

We need to look at how to prevent abuse and safeguard and protect our children, but we need to do that through care and protection and not through control and restraint. The care system throughout the UK and systems in other places around the world are built on previous systems and a fear of historical abuse. We need to use the forum and the learning from it to build a different way forward rather than building a system in reaction to historical abuse.

11:15

**The Convener:** Does Jacquie Pepper want to say something?

**Jacquie Pepper:** On the Care Inspectorate's responsibility for improvement across services for children and right through the life cycle, we are keen to learn from the outcomes of the national confidential forum as part of our improvement agenda and how we inform our inspection methodology.

**The Convener:** How does the Care Inspectorate's current methodology assess, recreate or measure a loving, caring relationship such as the one that Duncan Dunlop and Zachari Duncalf have referred to? I would be interested to hear ideas on how to recreate that in a residential setting.

**Karen Anderson:** We will very soon commence a review of all our regulated care service methodology and some of the discussion today and what we learn from that can feed into that. The methodology that we currently use focuses on four quality themes across regulated care services: quality of care and support; quality of staffing; quality of the environment; and quality of leadership and management. As of April 2012, every inspection that is undertaken of any care setting has inspection across four quality themes.

Within those quality themes we have a number of quality statements and some of those focus on the involvement of individuals in the whole service design and delivery process. We look at whether people who participate in a care setting are actively involved and whether the service is tailored to what they look for and their needs, wishes and rights, and we measure that in lots of

different ways. One of the key ways is simply to talk to people to get their first-hand experiences of how it looks, feels and tastes to be in a care setting. That gives us rich information and intelligence on how well a care provider is considering the individual needs of people using the service.

**The Convener:** How does that meet the test, Ms Duncalf?

**Zachari Duncalf:** That requires private conversation and further discussion, and the committee is not necessarily the place for that because we would be here for quite some time. I do not think that the way in which the residential sector is regulated meets the criteria for good practice sometimes and the needs of young people in care. For example, young people make mistakes, as do adults. Young people go out and get drunk and come in late, and yet we want to regulate that or to see that as a problem of their care experience, when actually that is just them being young people. Sometimes we—I do not necessarily mean the Care Inspectorate—are too quick to regulate things, but that perception of regulation does not allow young people to make the mistakes that they are entitled to make as young people.

When we get strands of quality, strands of regulation and a star rating system, it is difficult to get to grips with what it is like to live in care. Having lived in residential care for eight years as a child, I know the reports that were written and I know about my experience, and they are sometimes quite at odds.

I also put into the debate the point that foster care is not regulated. Foster care is not part of the bill or the national confidential forum, and that is a major gap and a major flaw that must be addressed.

**Mark McDonald:** That was rather neatly set up convener, because that covered part of what I was going to ask in my questions. Mr Dunlop's testimony was very powerful and I do not want him to think that we are ignorant of the issues that he has raised. The committee is about to embark on a substantial piece of work on the inequalities agenda and a lot of what has come out will feed into that. The input of Who Cares? Scotland into that process will be very welcome.

Zachari Duncalf alluded to foster care; the absence of foster care from the bill has been raised in a few of our evidence sessions. My colleague Nanette Milne also mentioned earlier the possibility of kinship care's being included in the provisions. Another issue about the bill's provisions has been the minimum age limit of 18. I would welcome the panel's views on those two issues.

**Zachari Duncalf:** Kinship care is an interesting issue; there was a point in history when we formalised kinship care. Previously, communities, friends and family looked after children, but we did not formalise that. Anybody, including adoptive parents, who has been formally assessed and has been recommended to be a carer for young people should be under scrutiny for that. People who have experienced abuse in those settings, where the individuals concerned had been assessed as being appropriate adults for their care, should be allowed to come forward and to use the national confidential forum.

On the age threshold of 18, we have a massive issue—which has been raised time and again in the research—about the time bar being the point at which survivors cannot get access to justice. Somebody who is 18 years old and who is still in care might get access to other avenues in seeking justice or support, so I think that we should consider 18. However, according to the report “Sweet 16? The Age of Leaving Care in Scotland”, many young people leave care at 16, so people in the 16 to 18 bracket fall through the net because they are not able to access justice through normal routes or services, such as CAMHS or adult services. They are still out of the care system, however, and they could be outside the time bar in respect of abuse in the care system.

**Karen Anderson:** From the information and statistics that we have, we have noticed a rising trend regarding placements in foster care since 1987, with a decrease in placements in residential care. The important thing in all this is that, although the setting might be different, experiences may be shared. The Care Inspectorate welcomes the proposal to include foster care.

We propose in our submission that the age range should be examined, with eligibility starting at 16. Essentially, that was to concur with Scots law and the rights of young people from age 16. We appreciate the rationale that was provided by the Minister for Public Health in relation to proposing the age of 18. On Zachari Duncalf’s point, there may well be a gap for people who have experienced abuse in residential care between the ages of 16 and 18. If the eligibility threshold is to stay at 18, we need to ensure that mechanisms are put in place for individuals between the ages of 16 and 18 so that they have the opportunity to seek support and raise issues about historical abuse.

**Duncan Dunlop:** It makes a great deal of sense to include foster care. I will give you an example. We have delivered a lot of independent advocacy, generally based around residential units—we cross the care spectrum. In one particular area, we were doing a review of the foster care network.

There was a lot of reticence about allowing advocates in. People asked why we need to speak for their young people because they felt that they could do that for them.

About 90 per cent of the time, the placement will be very good, with the foster parents trying to create a great loving and caring environment for the child or young person. However, there are instances where that is not necessarily the case. In the case of a couple of families, the evidence that we brought through our having access to the children and young people meant that those people were barred from being able to be foster families. It is, however, interesting that another local authority then took them on as foster families, so the measures did not manage to cross the local authority boundary. There is a need for foster care to be involved.

Young people will often have had more than one care placement and do not fit neatly into categories of residential care, foster care, kinship care or looked after at home—they cross the spectrum of those care placements in their care journey or care history, so it could be of use to consider the whole care spectrum. If people have been under a supervision order, why not enable foster care to be open to them?

On the age issue, I agree on the technical aspect. Referring to what young people can do under Scots law and in relation to the proposals that have been made about voting and a range of other issues, 16 is a totally acceptable threshold, which we should identify as being the appropriate one for the bill.

In terms of the purpose of this committee, different questions arise for those who were abused in the past, in the 40s, 50s, 60s, 70s or 80s, from the questions that arise for those who have gone through abuse in the last two or three years. We have already talked about potential implications in the justice system and where those sorts of issues ought to be heard.

We have recently done a lot of work for various committees on engaging young people who are or have been in care to speak to MSPs. We hosted a meeting in our offices for the Education and Culture Committee as part of their current review of the issue. It took a lot of preparation work with young people to enable them to reflect on why they had gone into care and what being in care was like. They seemed to feel fine talking about leaving care, but it was very difficult for them to address why they had gone into care. That relates to the question of re-traumatisation that was brought up: how to open up to young people the process of addressing the past. As an advocacy organisation, we do not expect many young people to take up that opportunity in the immediate aftermath of leaving the care system.

The question is one of appropriateness. When young people are asked to talk about the past they sometimes realise that a criminal offence was committed of which they were unaware at the time, and so we have to go down a different avenue. A range of issues arise that are very different for the younger population; older people are often accustomed to the consequences of discussing their abuse. I do not expect a large proportion of the younger care-leaver population to come forward to the forum, but they ought to have the right of access to advocacy.

Finally, we need to be very clear about what people will gain from coming to the forum. At the moment young people will speak out because they want to make changes in the care system so that other young people do not suffer in the way that they feel they suffered. That is why young people will speak via our organisation when we give evidence to committees like this. What will they do as individuals talking through their experiences, though? We need to be clear that they do not have unrealistic expectations of what they will get out of it.

**Zachari Duncalf:** I want to make very strongly the point that the national confidential forum should not sideline access to justice. There is a danger of younger people going through the process and not actually having access to justice, as we have seen happen with older care leavers many times.

I also want to look at what training people will get. A few years ago the Care Leavers Association did a UK scoping exercise of mental health services, individual practitioners, councillors and therapists. We could not find a single person who had had any specific training on young people in care, older care leavers, access to records or historic abuse. That is a massive shortfall, which people need to recognise. Some of the problems that have been experienced by adult survivors have involved therapists, councillors and mental health services not knowing, for example, the importance of a record, or not understanding what a children's home, an orphanage or an approved school was and therefore being unable to work with those people through their experiences. That is a massive gap that we need to fill, specifically in relation to the forum.

**Duncan Dunlop:** I am interested in how young people will find out about the forum. Who Cares? Scotland would have a real issue as an organisation because it would probably fall on us to let young people know about it. Not many people who have been through the care system would know about the forum. As advocates for those children and young people, our organisation can certainly let them know about the forum, but if we are to support them through the process we

need to be confident that they will benefit from it. We will work with them up to the age of 25, so there needs to be clarity on what they can expect to gain from the process. That is one proviso that we would give, as an advocacy organisation.

**Mark McDonald:** The committee is looking purely at the therapeutic and health issues relating to the matter. Points were raised at previous evidence sessions about what closure can be provided. Obviously, people might not have had closure if their experience is very recent, as might be the case for some young people, but I note that the bill provides that any experiences that relate to an on-going situation, which would apply in many cases, would lead to the justice system becoming involved in the process.

11:30

I want to shift the focus to support through the process; we have already touched on it. During our first evidence session last week, the point was made that individuals who want to give testimony to the NCF will go through a fairly extensive briefing and interview process in order to ascertain their needs and requirements. Is the panel satisfied that the mechanisms and measures will be in place to identify need for advocacy?

Subsequent to that, does the panel have any views on how the NCF might signpost people to the appropriate advocacy, given my point that people may wish to access not just those organisations whose job or function it is to deliver advocacy under the existing statutory requirements, but those that provide other forms of advocacy? What are the panel's views on how to strike the appropriate balance there?

**Karen Anderson:** It is critical that we strike the appropriate balance. As I have pointed out probably a few times this morning, the key is to ensure that, when people share their experiences of abuse, any support mechanism that is put in place for them—before, during and after—is tailored to their individual needs. Those needs will be different from individual to individual depending on their circumstances—current health issues, their environment and so on. To summarise, from a Care Inspectorate perspective, whether the support that is provided is advocacy or a package of support for disability, mental health or whatever, the care and support should be tailored to people's individual needs, reflect their rights and address their wishes. There should be choice, and we need to respect that, too.

**Zachari Duncalf:** Sometimes, people find it difficult to locate what will work for them and what they need. When people know what they need, they can more proactively get support for themselves. Therefore, we need a wide range of

options so that people can explore them and dip in and out of options as time progresses. The whole process—before coming to the forum, during the forum and afterwards—could be a very long time. In thinking about the support that needs to be put in place beyond the pilot, given that in Ireland thousands of people came forward, we need to ask whether we have the capacity not only to support the forum but to provide that support, advocacy and wide range of services that people need.

**Jacquie Pepper:** Many people already have support mechanisms or relationships with providers of services for independent support and advocacy services, or they may have friendships. Those should also be supported through people's contact with the NCF. Similarly, after giving testimony to the NCF, people should have locally available support within their community and local network, rather than its being provided at a distance, so that it is easily accessible.

**Duncan Dunlop:** Further to what Jacquie Pepper said, people who have an advocacy relationship that they feel comfortable with when they come to the forum will not want to go to a stranger. In our experience, they will want that person to walk alongside them through the entire process, from beforehand right through to when they return home. I do not know who might provide that support for the older generation, but people might already have that through various mechanisms. Those services would be expected to give quite a lot of support, in terms of time, to help people to go through the process.

**Zachari Duncalf:** I disagree with those points. My research, and research that the Care Leavers Association has done with hundreds of care leavers, shows that many older care leavers are isolated. They have not told partners, children or friends that they have ever been in care, let alone that they have experienced abuse. They might not have access to services, and some of those who have accessed services have found those experiences to be negative. Although they might have people who can support them, we have found that, once people have declared to the forum that they have experienced abuse, they have lost those support networks, or those support networks have become a bit rocky.

The younger generation are fortunate in that they have Who Cares? Scotland and leaving-care services that support them up to a particular age. The older population do not necessarily have that support framework, and we should take that on board.

**Duncan Dunlop:** It is interesting to note that very few people are known for their care identity beyond the age of 18. However, there must be about 40,000 or 50,000 adults in Scotland who

have been in care. This summer, we will be launching a sort of alumni of care initiative, which will enable people to talk about the fact that they were in care and say how well they have done for themselves, whether because of or in spite of it. They can come along and say that they are a teacher, a doctor, a businessperson or whatever and have done very well, having been in care.

We need to normalise the care identity and not just brand it with all the other labels that we quickly put on it. That will make it an issue that is more able to be talked about in an everyday fashion, which will mean that more people will be able to talk about their experiences.

**Zachari Duncalf:** I think that that is the duty of the reporting mechanisms, as well. The annual report should not just report an outcome. If we are looking at an outcome as closure, those numbers will be exceptionally small. That is not to say that the national confidential forum has not been successful in many ways; it is simply to point out that we should not focus just on those outcomes and targets. We should also focus on the positive ways in which people have strived in life, either in spite of their care experience or because they have known good and effective key workers. We can learn from that and take that with us as well.

**The Convener:** How does the Care Inspectorate hope to use those outcomes and the annual report as resources for identifying the issues and adapting its policies around inspection and review? What needs to be in there to help you?

**Karen Anderson:** Rather than just wait for an annual report, we would seek early engagement with whoever is appointed to head or oversee the national confidential forum. That is so that we can have early indicators of themes or trends that might be emerging across Scotland or at a localised level. We will take that information and intelligence and use it to inform a proportionate risk-based and targeted scrutiny activity, through strategic inspection across all the partners that are involved in the delivery of children's services—health, social work, education and police—or down to individual service level. However, regardless of the level, we would be looking to ensure that people who use the service are protected and that we are able to give some form of assurance to members of the public and those who use the service.

In essence, I am saying that we will certainly take the intelligence about themes and trends and use it to inform the target and focus of our inspection and the way in which the inspection is undertaken.

**Jacquie Pepper:** In response to some of the earlier comments, I should say that the Care

Inspectorate has a broader role than the care commission had. We not only regulate care services, but we have a strategic role with regard to a whole-system look at how children's services are working across Scotland. Ministers have asked us to lead on a joint inspection of services for children, the pilot phase of which is just completing. Taking on board the lessons of the forum into that process at an early stage is important, because it concerns decision making at an early stage in children's lives.

**The Convener:** The capacity issue was mentioned earlier. Our engagement with your organisation has focused mainly on the care of older people, including the inspection regime, budgets, the number of inspectors and so on. I think that we asked for an assurance that, despite the focus on that, you were not forgetting the other aspects of your work such as the inspection of children's care. Some of this is historical. However, what do you anticipate will be the impact on your organisation of this part of the bill?

**Karen Anderson:** The first thing to say is that the Care Inspectorate's inspection plan is approved by Scottish ministers annually. It was approved recently for the forthcoming year. Wherever possible, we look to make efficiency savings throughout the year and redirect resources into front-line scrutiny.

The other key thing to flag up is that we have a complaints process and we actively encourage people to access it. They can do that directly or they can do it anonymously if they prefer. Over the past year or so, we have seen a 20 per cent increase in use of our complaints process. People are accessing the process and telling us their concerns about their quality of care.

We are certainly planning for the national confidential forum in relation to our resources. We believe that we can achieve that by making the necessary efficiency savings wherever possible and redirecting resources into front-line scrutiny.

**The Convener:** Does the complaints process apply across the board to all the areas that you cover?

**Karen Anderson:** It applies to regulated care services.

**The Convener:** As we have no further questions, do our witnesses want to highlight any areas that have not been covered? Is there anything else that you want to put on the record?

**Duncan Dunlop:** We need to look at the forum as a way of giving a voice to people who have been through our care system. I take the point that this is the Health and Sport Committee, and the issue is one of health and wellbeing, given the impact that the forum will have on individuals in

helping them to gain closure. However, this work is also about preventing young people who go through the system in future from going through the same experiences and being scarred as individuals. Over time, the forum may evolve, grow and develop from primarily being there for the older generation who have been through care.

It will be very useful if there is a route directly into Parliament for contemporary care leavers in the younger generation. They will not necessarily need to discuss situations of abuse that they have experienced within the system, but they will benefit from discussing how they felt and why. I am interested in what Mark McDonald said about equalities, because these people represent less than 1.5 per cent of our population, and we need to hear where they feel they fit in our society and whether they feel that they are discriminated against or judged. We also need to hear whether they feel that they are excluded from opportunities in community learning and development, leisure, transport or education.

As an organisation, we think that it is great that various committees and MSPs will look at the issues of young people in care, because although they represent a small proportion of the population of Scotland, the figures show that they account for significant proportions in relation to any social wellbeing indicator where things are not working.

The thing that our Parliament has not yet got to grips with is that all the issues feed into one core story, which is that we do not give young people a good enough care journey while they are in our care system. They do not have the continuity of long-term caring, loving relationships and they do not understand what is happening to them. How do we improve that? If we give them a voice and there is a direct responsibility for it to be reported to and heard by Parliament, that will be effective, because the evidence will be gathered in one place.

I understand that it might not start this way, but it will also be effective if the evidence is not just restricted to whether people suffered abuse. Many more young people will be happy to give useful, constructive evidence, as they have done to a lot of local authorities. Hundreds of them have met elected members on an individual basis to say, "This is what's going wrong for me as a citizen. As you're my corporate parent, I want to tell you that I'm not accessing leisure or employment."

We could learn so much by broadening the conversation and moving it away from just the trauma and abuse—for the younger population in particular—to ask how things are for them and what they are experiencing, because it will be about the notions that Parliament has got right with the getting it right for every child approach and services joining together. From 1.48 per cent

of our population we could learn so much about what we could do to address poverty, to join up services and to improve the journey for young people. I see the national confidential forum as a starting point, but it would be really good if it was open to review to broaden the conversation and see how we can learn from that.

11:45

**Jacquie Pepper:** The committee spoke about confidentiality at the previous session. The preservation of confidentiality will be critical to the success of the forum. It will be essential to put measures in place for that, to reassure people that the forum will be confidential and to make that information clearly available to everyone who will take part.

One of the arrangements that we have in the Public Services Reform (Scotland) Act 2010 and the joint inspections is that our handling of personal information is governed by a code of practice that belongs to the Scottish ministers rather than the Care Inspectorate. If the handling, storing and recording of information is something that is not devised by the forum but is set outside of it and to which it adheres, that might be a useful way of preserving confidentiality and offering assurances.

**Zachari Duncalf:** I take Jacquie Pepper's point. I also want to reiterate the points that were made by previous witnesses who have come to the committee, in particular Helen Holland, Chris Daly, David Whelan and Jim Kane, that confidentiality is really important but survivors need to recognise their experiences in that information. Survivors need to be given transcripts. In my research, I found that having transcripts or a visual representation of their experience has helped people to work through their experiences with third parties.

The process cannot mirror the way in which records have been made and stored in the past, as well as in the present. There must be a way of doing that differently, otherwise we will go through similar processes that will map out and do the same as we have done for decades. This has to be a different forum.

We must also look at the way in which people can access services for mental health or redress without necessarily going through the national confidential forum. It is important that people who have experienced abuse but who do not necessarily want to give a testimony should also have access to services.

**The Convener:** That is interesting; if I am correct, I do not think that that point has been raised in that context. We have discussed the pre-hearing process and helping people to decide

whether they wish to go ahead. However, the interesting point that Zachari Duncalf makes is that people should not be debarred from any services that flow from the forum and getting access to services should not be conditional on their going and giving that testimony. That is an interesting point, which we can discuss with others and the minister.

Are there any other points that people wish to make before we close? As often happens, the option is—I see that Zachari Duncalf has another point. Yes, go on.

**Zachari Duncalf:** Sorry, but as a final comment I want to say that the forum has been a long time coming. Survivors and organisations have worked really, really hard for it. We must do it properly and we must get it right the first time round. We have already had a pilot that has raised many issues. We must now put the forum in place and we must have access to services, to outlets for redress and to all sorts of different things including justice. However, it must be done well so that it does not become another element of the retraumatisation that may happen as part of the process.

**The Convener:** That is a good point on which to end our session. We encourage our witnesses to watch as the committee's consideration of the forum progresses, and we will be happy to hear from you on anything that you feel would aid us in our final report. Once again, on behalf of the committee I thank you all for coming and for giving us your time and evidence in both oral and written forms.

*Meeting closed at 11:50.*

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