OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 26 November 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 26 November 2020

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EQUALITIES AND HUMAN RIGHTS COMMITTEE
25th Meeting 2020, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)
*Alison Harris (Central Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Gillian Martin (Aberdeenshire East) (SNP)
*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Oonagh Brown (Scottish Commission for People and Learning Disabilities)
Beth Cadger (Article 12 in Scotland)
Carly Elliott (Who Cares? Scotland)
Susie Fitton (Inclusion Scotland)
Juliet Harris (Together)
Kevin Kane (YouthLink Scotland)
Josh Kennedy (Scottish Youth Parliament)
Afrika Priestley (Intercultural Youth Scotland)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

Virtual Meeting

Scottish Parliament

Equalities and Human Rights Committee

Thursday 26 November 2020

[The Convener opened the meeting at 08:30]

Decision on Taking Business in Private

The Convener (Ruth Maguire): Good morning, and welcome to the 25th meeting of the Equalities and Human Rights Committee in 2020. The first item on the agenda is a decision on whether to take item 4, which is consideration of correspondence from the Finance and Constitution Committee, in private. Do members agree to take item 4 in private?

Members *indicated agreement.*

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill: Stage 1

08:30

The Convener: The second agenda item is our third evidence session on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. We have two panels of witnesses this morning. I welcome our first panel: Juliet Harris, director of Together, the Scottish Alliance for Children's Rights; Carly Elliott, policy manager of Who Cares? Scotland; Josh Kennedy, a member of the Scottish Youth Parliament; and Kevin Kane, policy and research manager of YouthLink Scotland. Thank you for joining us.

I remind members that, if your question is for a specific witness, you should identify that witness by name. Witnesses, if you have nothing to add on a question, please do not feel that you have to speak. We have quite a lot to get through in a limited amount of time—and we are dealing with technology as well as scrutinising the bill—so I encourage everyone to keep questions and answers as succinct as possible. Please allow broadcasting staff a few moments to operate your microphone before you ask your question or provide an answer.

I will start. There is strong support for direct incorporation of the UNCRC into Scots law, and we heard last week that the bill is unique in international terms because as well as directly incorporating the UNCRC, it includes active and reactive measures. What are your views on the Scottish Government taking that approach? What are your reflections on the potential benefits or disadvantages of that approach?

Juliet Harris (Together): Thank you for inviting me to give evidence on the bill. As you know, we have been campaigning for decades for full and direct incorporation of the UNCRC into law. As the Children and Young People's Commissioner said, incorporating UNCRC is the number 1 thing that we can do to ensure that children's rights are at the centre of everything that we do.

On the benefits of full and direct incorporation, I want to look back to 2013, when I gave evidence on the bill that became the Children and Young People (Scotland) Act 2014. Back then, we talked about the fact that the process of incorporation brings about a culture change in which children and young people are better recognised as rights holders. Seven years on, we are living that culture

change—it is happening right now and, as committee members, you have been part of it.

It is an extremely strong bill. It has been drafted in a very inclusive way. The drafters have listened to children and young people who said that they wanted full and direct incorporation because they wanted to know that the rights in the bill were the same rights as those in the UN Convention on the Rights of the Child, which other children across the world also enjoy. From education, health and social work through to transport, policing and the environment, full and direct incorporation provides clarity that children and young people have the rights in the UNCRC. It means that those rights are not just something that we need to think about but are embedded in everything that we do.

Those are the benefits of full and direct incorporation. I do not think that there are any failures in that approach. It is what children and young people have asked for—they asked for a binding duty and for access to remedy and redress if their rights are breached, both of which are in the bill.

We will find areas where there can be improvement. Today, I would like to talk about the interpretation provisions, definition of public authorities, better access to justice and commencement. However, it is an extremely strong bill and we are living the culture change that full and direct incorporation brings.

Carly Elliott (Who Cares? Scotland): Who Cares? Scotland strongly supports the bill, and we are incredibly excited that Scotland is in the position of incorporating the UNCRC. As an organisation that has provided independent advocacy for more than 40 years, we are all too aware of the challenges that care-experienced children and young people face in navigating the world of their rights. We firmly believe that the bill as it stands is a good attempt to tackle that challenge.

The bill is full of advantages—there are too many to go through. As you said, convener, it includes both proactive and reactive measures. That full spectrum of access to justice and information options will be what makes a difference day-to-day for children and young people. That is really exciting.

I want to make it clear that there are no disadvantages, but there are areas that could be strengthened, particularly the children's rights scheme and the public authority reporting duty, both of which are important but could benefit from a few additions. I can run through those briefly and then expand on them later.

The Convener: I will pause you there, Carly, because I know that colleagues will want to probe the specifics of that. I promise that we will come back to it.

Josh Kennedy (Scottish Youth Parliament): Thank you for having us along today. The SYP has been campaigning on the issue for quite a while and, even before it was a mainstream issue, our "Lead the Way" manifesto for 2016 to 2021 noted that an overwhelming 76 per cent of young people agreed that the UNCRC should be fully and directly incorporated into Scots law and that the rights of children and young people should be protected and promoted. We are really happy that there has been a positive step in that direction. In our right here, right now campaign, which ran from 2017 to 2018, and in our children and young person's meetings with the Cabinet, we have consistently called for full and direct incorporation.

There are a few reasons for making that call. Importantly, rewriting rights raises the risk of them being diluted and that is not in line with the principles of full and direct incorporation. UNCRC rights are universal and equal. Scotland can set a leading example for the world by not cherry picking which UNCRC rights should apply and keeping intact the principles of universality, indivisibility and interdependence on human rights, which is extremely important.

The basic rights of children should be the same wherever they live in the world. As members will be aware, Norway, Iceland and Sweden have all incorporated the UNCRC without difficulties in its interpretation. As one member of the SYP said:

> "You can't pick and choose what rights to protect as they're ALL important. To do so could result in discrimination."

That cuts through the argument.

That is a real concern for members of the SYP and the young people across the country whom we have consulted. If rights are in place, we can hold the Government and key decision makers to account—as I am sure that the committee will know. All rights are equally important. It is important to stress that point. It would be dangerous to permit decision makers and duty bearers to decide which rights will bind them and which rights will not bind them.

The maximalist approach to incorporation highlights that the UNCRC is the bedrock and baseline of children's and young people's rights. Article 41 of the convention underpins that. Encouragingly, we can build on that and put in place a higher standard of rights protections. Direct incorporation would not hinder the Government in going further. That is a good thing. Direct incorporation will allow Scotland to keep pace and adapt to international-level developments, taking into account the general

comments of the UN that can inform a better approach.

By incorporating the UNCRC, we are ensuring that children who may be in vulnerable situations, and who live in Scotland but may not have British nationality, are also included. It is important that that group can access the new protections.

Finally, it is worth mentioning that Brexit, with the United Kingdom steaming towards exit from the European Union, and the further austerity restraints stemming from the Covid-19 pandemic put rights at risk in Scotland. Direct incorporation is the best way to address that and ensure that Scotland can be the best place in the world to grow up in.

Kevin Kane (YouthLink Scotland): That was all excellent stuff from everyone. I will leave the overarching stuff well alone and focus on the bill's two-pronged approach to the proactive cultural shift on children's rights—which is really positive—and the reactive commitment to protection when a child's rights have been breached.

Our sector is excited about the proactive elements, because we are positioned to inform and enable other services that are built around children and young people. That will help everyone to get policy and law fit for purpose at the earliest possible stage.

As an educational practice, what really excites us is the chance to bring about the positive cultural change that we often talk about. In the youth work sector, we are fortunate because we are in schools and communities and are in a unique position in that we take a non-formal approach with young people. Those things substantially increase the reach of our sector.

On the reactive side of things, we are keen to explore how youth workers can develop their approaches to ensure that young people have access to remedy and redress. In the most serious breaches, we stand ready to provide child-friendly advice and advocacy. In particular, we could give that to those people who face additional barriers in pursuing remedies.

We have heard from thousands of children and young people at every phase of this consultation, and they have driven the campaign to where it is today. They tell us that they want this bill.

Representatives from other countries tell us how incorporation of the UNCRC has changed how children see themselves, which is brilliant. We know from international precedent that, with incorporation, children's views are better considered at every level of decision making and policy planning.

We are on the cusp of something special. Therefore, it is incumbent on everyone here to get everything to do with the bill—the passage, commencement, implementation, support and guidance—correct from the get-go.

The Convener: That is helpful. We are living in challenging times, and the pandemic has highlighted existing inequalities, particularly for disabled children, minority ethnic people and, perhaps, children and young people in general. Will you say a few words about how you think the bill will lead to a better realisation of all children's rights for different equality groups?

Juliet Harris: The legislation will be a strong tool for us, with regard to our ability to advocate the rights of children from across different groups and let children and young people know that their rights are protected by it.

There is a way of enhancing the children's scheme to do a little bit more to ensure that the bill is clear that some children—those who have told us that they need extra help to ensure that their rights are respected—are identified, and that that is set out clearly in the bill.

The consultations that we have had with children and young people tell us that particular children struggle to access their rights. During consultation events that the committee has been involved with, we have heard about children whose first language is not English and those who might face food poverty or who cannot go to school.

We would like to call on ministers for one further addition; to include in the children's rights scheme a provision that requires them to report every year and that set out steps that have been taken to respect, protect and fulfil the rights of children who have protected characteristics or who are in situations of vulnerability.

We have spoken about that far and wide across our membership, and we feel that it would provide the hook that we need to ensure that the bill meets its policy intention of realising the rights of all children and young people, particularly those who are more likely to see their rights marginalised.

Carly Elliott, on this panel, and Susie Fitton and Oonagh Brown, on your next panel, will be able to provide real examples of how that provision might make a make a difference in practice.

Carly Elliott: The bill has the opportunity to improve the experience of rights for all children but, as Juliet Harris said, there are some particular groups that are worth considering more expressly in the bill. We support her message about the addition to the children's rights scheme that she outlined.

08:45

When the state makes the difficult decision to intervene in the life of a care-experienced child or young person, it does not just disrupt their family construct—the child is entered into a world that is full of formal meetings and quasi-legal processes. The challenge that the child faces in having their rights met and upheld, and even in understanding what their rights are, cannot be overestimated.

I will provide some case studies that might be helpful to explain how the Covid-19 pandemic has impacted care-experienced children and young people day to day. Our advocacy workers around the country are supporting young people right now to challenge rights decisions that are concerning. Most prominent are issues about contact with family members. Some children have been told that they are not allowed to have contact with their mum, dad, brothers or sisters due to family members living in different levels. They have been told that, if they have contact with family, they will have to isolate alone in their room for seven days on their return to their care placement.

These are challenging times and we must ensure that situations such as that are clearly mandated in the bill. We must ensure that not only do children and young people understand their rights, but the professionals and adults around them understand how to use the legislation to protect and uphold those rights, especially in relation to the children whose rights are more challenging to understand.

Josh Kennedy: We echo what Juliet Harris and Carly Elliott have said. We place high importance on consulting young people—I am sure that that does not surprise you—and seldom-heard young people. We know that certain young people, particularly vulnerable young people, struggle more than others to access their rights, so we would like provision in the scheme to be extended beyond what is currently listed. For example, including independent advocacy in the scheme would go a long way towards helping young people who struggle to access their rights.

We are keen on ensuring that such young people are not left behind in the process, and we echo the calls of other partners to mention the needs of vulnerable groups and protected characteristics in the scheme. We place high importance on a recognition that it should not be a one-size-fits-all policy, as we must not leave any vulnerable groups behind.

Kevin Kane: We support the amendment that Juliet Harris proposed, and I thank Carly Elliott for her tangible examples. As we said in our written submission, the connection between children, women, disabled people, ethnic minorities, care-experienced people, homeless young people and many other groups is that the issues that they face have been exacerbated by Covid-19. It has highlighted existing inequalities—that is a really important point. We must consider wider human rights protections, so we are really positive about focusing attention on key groups in the children's scheme, as outlined by Juliet Harris.

Alex Cole-Hamilton (Edinburgh Western) (LD): I note for the record that I am a former employee of YouthLink Scotland, and I was a director and convener of Together Scotland.

The UNCRC is a living document and is adapted or interpreted in a range of ways, including through general comments, optional protocols and the concluding observations of UN rapporteur visits. Should section 4, on the interpretation of the UNCRC requirements, be expanded to take account of general comments and concluding observations, or any other opinions or international human rights treaties? Could there be any unintended consequences if the bill were amended in that way?

Juliet Harris: Yes, it most definitely should be expanded. We strongly believe that section 4 needs to be amended to include decisions that are made under the third optional protocol of the UNCRC, as well as general comments and concluding observations, not just from the UN Committee on the Rights of the Child but from the other UN treaty bodies, in a way that aids the interpretation of the rights in the UNCRC. It is worth reflecting on the fact that, last year, we celebrated the 30th anniversary of the UNCRC, so the document is 30 years old. I do not know whether the internet was invented 30 years ago, but the world changes and we need to see the UNCRC as a living instrument, so that we can adapt and view the rights in the—[*Inaudible*.]

It is strongly recognised that concluding observations, general comments and other interpretive sources are an authoritative way to see the UNCRC as a living instrument, to identify what rights look like in an ever-changing world and to understand the UNCRC in the modern context.

We would never say that concluding observations and general comments are binding; they are not binding and they do not seek to be binding, but they provide helpful and enlightening means of interpretation. We have some examples. The UN Committee on the Rights of the Child is currently drafting the general comment on children's rights in the digital environment. That will be absolutely key to how we see children's rights in the digital environment; we could have done with it right now, as we work in the pandemic with children and young people. General comment 16 looks at children's rights and the impact of the business sector. It helps to clarify some of the obligations on private bodies that deliver public

services, which I am sure we will discuss in talking about section 6.

It is also important to include general comments from other treaty bodies and not just the UN Committee on the Rights of the Child, in recognition of the inter-related and indivisible nature of human rights that Josh Kennedy referred to. That will help to encourage alignment with other treaty bodies ahead of further incorporation—we hope—of other human rights treaties, following on from the work of the First Minister's task force. For example, for the UN Convention on the Rights of Persons with Disabilities, there is a general comment on the right to inclusive education, which we should of course be looking at. There is a general comment on women and girls with disabilities and, of course, we should be looking at that. Therefore, section 4 should include not only general comments from the UN Committee on the Rights of the Child but those from all treaty bodies.

General comments on the wider jurisprudence need to be prominent throughout the bill, so it is not just about including that in the interpretation clause, but I strongly advocate that it should be reflected in the children's scheme as something that ministers should consider when they make and revise the children's scheme. In that way, we will bring together all the expertise from the international community and apply it in the Scottish context to make sure that the bill really is the gold standard.

Carly Elliott: Juliet Harris has covered that perfectly; I will add some comments. We support the inclusion of things such as general comments and concluding observations in section 4. If there is ever suggestion that the articles in the CRC are vague or difficult to interpret, that is the way to get past that and offer detail. That is incredibly important, especially as we progress through the pandemic and our understanding of the application of rights changes and gets more nuanced.

Juliet Harris mentioned the need to consider such UN documents throughout other parts of the bill, including the design of the children's rights scheme, and we support that incredibly important point. I also quickly note that, perhaps more in terms of the children's rights scheme and the drafting of any supporting guidance to the bill, if we want to better understand how we can support the needs and protect the rights of care experienced children, there are documents and frameworks that will help us to do that, such as the UN "Guidelines for the Alternative Care of Children". Although we are talking about general comments and concluding observations, and perhaps reports of days of general discussion, it is worth noting that those UN guidelines have been an important source of knowledge for us as we move forward.

Josh Kennedy: We echo what Juliet Harris said. We fully support the idea of general comments and concluding observations from wider human rights treaties being included. It is an important level of accountability for decision makers to be held to account for their actions on young people's issues.

We spoke about that at length with our members and young people as part of the bill process. They heavily emphasised that, because they are experts, they know what they are talking about, and an objective stance is needed, paving the way for greater levels of insight into the processes for safeguarding our rights. That was really powerful and it is something that we are keen to protect.

Kevin Kane: The point about the application being across the whole bill and being broadly interpreted when writing the children's scheme, which was first flagged by Juliet Harris, is really important.

The UNCRC exists to inspire, as we have heard from numerous witnesses. It is a living instrument and so the tools for interpretation should be maximised, because it is important to get back to the essence of what we are doing here today, which is protecting and serving children and young people. As just one example, Norwegian judges do that all the time; if they can do it, so we can we. An explicit inclusion in the bill would keep up with the progressive and evolving approach that we are taking to rights in Scotland.

Alex Cole-Hamilton: There is clearly unanimity across the panel on that, for which I am grateful.

My second question is about commencement. The last piece of legislation about children's rights that the Scottish Parliament passed was the Age of Criminal Responsibility (Scotland) Act 2019, back at the start of 2019. It did not have a commencement date and it still has not been commenced, so our age of criminal responsibility is still eight.

The bill does not have a commencement date either. Are witnesses concerned by that? If that is to be remedied by amendment, how quickly would you like to see it implemented, and would that be possible practically?

Juliet Harris: That question is absolutely key. We say that the bill must commence within six months of royal assent, so it really must commence by autumn 2021. The example of the Age of Criminal Responsibility (Scotland) Act 2019 shows why putting a commencement date in a bill is essential. We cannot predict what might delay commencement, whether it is a global pandemic

or problems with the Government's information technology system.

Interestingly, the Children and Young People's Commissioner Scotland, Bruce Adamson, said at last week's committee meeting:

"The bill is a bright ray of sunshine in what has been a very gloomy year".—[*Official Report, Equalities and Human Rights Committee*, 19 November 2020; c 2.]

Although he is not normally one for understatement, this has been a more than "gloomy" year—it has been an absolutely dire year for children and their families. Thousands of children and their families have been sent into poverty; 76,000 young people have had the uncertainty of the exam fiasco and thinking that their future prospects were going to be dictated by which school they go to; and countless children have been unable to access their right to education during the pandemic. Children and young people from 2020 are going to be left traumatised by their experience during the pandemic, and they will need real support to deal with that. We are yet to see what the potential long-term impacts of lockdown on the educational attainment of children and young people will be.

In addition, I woke up this morning to hear that we face the biggest economic decline in 300 years. Yesterday, we launched a report about Brexit from the children and young people's panel on Europe—"Young Brexit Voices: It's Our Future Too"—which sets out their concerns about being able to live, work and travel in the European Union post-Brexit. The combination of the pandemic and the impact of Brexit makes it more important than ever that those rights are made binding in law.

This has been a more than gloomy year, and we have many more gloomy years to follow. We therefore have to make sure that the bill commences within six months, that the rights of children and young people are at the forefront of Covid recovery, and that they have tangible rights in law that they can draw on and use to counter the disproportionate impact that 2020 has had on their rights and prospects so far.

We therefore completely agree with Alex Cole-Hamilton that we must have a commencement date in the bill and that we must make sure that the bill commences six months after it has received royal assent, at most. We must also make sure that children and young people's rights are at the absolute centre of everything that we do from this point onwards in order to counter what has been a way more than gloomy year.

09:00

Carly Elliott: We whole-heartedly agree with Juliet Harris: commencement as soon as possible, within six months of royal assent, is crucial. The reason for that is the impact that the pandemic is having on our children and young people and, most importantly, on the most vulnerable among them. The pandemic's impact on poverty worldwide should also be noted. The World Bank has estimated that, in 2020 alone, Covid will push something like 100 million more people worldwide into extreme poverty. We know that the people who will feel the effects of it most, for years to come, are our children and young people.

The bill is therefore really important for Scotland, and commencement needs to happen soon in order to provide extra protection for those groups. Right now, across the country, they are being affected by decisions that are made not through malice or the intention to cause harm in any way, but as a result of the difficulty of trying to interpret the pandemic situation and the associated guidance and guidelines.

For example, one of our advocacy workers was supporting a care-experienced young parent, whose child was no longer in their care but for whom there was in place a robust package of supervised contact that was always intended to rebuild that relationship. However, the rules of the pandemic have intervened in that contact relationship. Previously, the young care-experienced parent, who lives alone, had support from their mother, who was able to enter their home. Such support is incredibly important for a vulnerable person but, during the pandemic, because that person was entering the home, a decision was made to cancel contact because it was thought that their inclusion in the household might put the child at risk. That was a disagreement within the local authority.

The bill offers the opportunity to provide clarity not only to children and young people with regard to what their rights are, but to local authorities, which are currently trying to navigate and understand complicated guidelines. Commencement needs to happen incredibly soon, because we are at a point in time when children's rights need to be protected in law.

The Convener: Thank you—those examples are hugely helpful and illustrative for the committee. Perhaps Josh Kennedy can give us the Scottish Youth Parliament's view on commencement.

Josh Kennedy: Members of the Scottish Youth Parliament fully believe that the legislation should come into effect as soon as possible. We have consistently called for the United Nations Convention on the Rights of the Child to be incorporated in law by 2021, and we would like the bill's commencement to be realised by the end of the year. However, it is important to stress that that would, in our view, be the latest possible date.

As an organisation, we are very much aware of the strain that the Covid-19 crisis has placed on the Scottish Government and public authorities, and we appreciate that it has changed Scottish society since the initial 2019 consultation. However, the pandemic also highlights and exacerbates many existing children's rights issues, as well as creating new challenges. One such example is the Scottish Qualifications Authority exam issue, which Juliet Harris mentioned. MSYPs have raised a lot of rights concerns during this period, and there have been quite a few to note.

At our July sitting this year, we proposed policy on the imprisonment of young offenders in respect of ensuring that they still have the right to social distance and to have equal access to healthcare. The motion was passed by a massive 97 per cent. Incorporation would ensure that, throughout the pandemic, imprisoned young offenders could access the right to be treated and respected with care, in accordance with article 37 of the UNCRC, and the right to the best possible healthcare, in accordance with article 24. That is extremely important.

Furthermore, more than half of the respondents to our lockdown lowdown survey, which was carried out in April 2020 in partnership with Young Scot and YouthLink Scotland, had concerns over their ability to access rights as a young person in the Covid-19 context. We saw that with the SQA issue, with young people really concerned about their futures.

The bill's commencement must be a priority, as it will provide much-needed protection for us, as children, to enable us to navigate our way through the pandemic and the resulting recovery period. We anticipate that many public authorities will be prepared for the commencement of the bill. With those factors in mind, we believe that it is reasonable and practical to call for a commencement date by the end of 2021, but we acknowledge that that should be the absolute latest date.

Kevin Kane: I will try to be as illustrative as possible. I will get the obvious out of the way first—this might sound generic, but it is important to say that we believe that commencement should be done on as short and effective a timescale as possible. We focused on that question with young people, because we wanted to speak with confidence in sessions such as today's, so that is not my answer or YouthLink Scotland's answer; that is me letting the committee know the majority view of our youth work sector.

The committee heard a wee bit from Josh Kennedy about the lockdown lowdown survey that we carried out along with Young Scot and the SYP. That has been an on-going process and we have gone through thousands of written responses from young people and questions related to their mental health and wellbeing, employability issues and broader issues in their lives, which was just last week. You would need to have a heart of stone not to be affected by the sheer volume and level of intimacy in the answers about how disillusioning the pandemic has been for young people. I was thinking this morning that it is important to note that those same young people who made so many sacrifices are the ones who are at times most heavily stigmatised as a result of lockdown.

To echo some of the other comments that have been made, we cannot afford to write off a whole generation as the Covid-19 generation—that is not acceptable, so it is really important that we protect those young people from the disproportionate impacts of Covid-19. As such, we believe that explicitly naming a date in the bill would ensure that their rights are respected. Beyond that, what a wonderful message we could send—a message of real hope at this time. The short answer is that, if it takes a date to focus people's minds, six months would be acceptable.

Mary Fee (West Scotland) (Lab): The approach that the Government has taken in the bill is to focus on a duty not to act incompatibly rather than take a dual-duties approach, which would include a due regard duty. The reason it has given is that that could cause unnecessary duplication. We have heard differing views on that in evidence; some people are supportive of the Government's approach and some would prefer it to take dual action and include a duty on due regard. What are the witnesses' views on that?

Juliet Harris: In the original draft Children's Rights (Scotland) Bill that we gave to the Deputy First Minister on universal children's day back in 2018, we included a due regard duty and a duty not to act incompatibly. We thought that that was important to ensure that we take a proactive and reactive approach to ensuring implementation of the UNCRC. We called it a carrot-and-stick approach to making sure that there are no breaches of children's rights, which was the intention of the due regard duty. We also had the stick to make sure that, if children and young people's rights are breached, they can do something about it and can access the courts and remedy.

I will concentrate on the policy ask. The due regard duty is about front loading children's rights in the decision making of Government and public bodies. That is where the children's scheme and the public body reporting duty offer a way of achieving the same policy purpose, but without a due regard duty.

That is why we have recommended in our response some additions to the children's scheme in relation to data collection, human rights education and steps to ensure access to justice for children and young people, including legal aid and advocacy for complaints. We feel that, if those are in the children's scheme and ministers have to report on them every year, that would help to put those measures in place at national Government level to ensure that we have a proactive approach to children's rights. The scheme is already strong, but we can always come up with ways that it can be strengthened.

The children's scheme applies only to national Government, so we would welcome consideration of a few more proactive measures to be included in the public body reporting duty. That would help to fulfil what we are looking for from the due regard duty. We welcome the fact that listed public bodies have to report under section 15 of the bill, and we recognise that it will help to promote rights-based policy making.

We would like that duty to be not just retrospective but a planning and reporting duty. If, every three years, public bodies had to set out not just what they have done but what they plan to do over the next three years, for scrutiny by children and young people and civil society, that would significantly strengthen the proactive approach of the bill. We encourage public bodies to include in that what they are doing on children's rights impact assessments, what they are doing to ensure child-friendly complaint mechanisms, and what they are doing to ensure adequate data collection, so that they can evaluate the impact of their services.

Through those additions to the reporting duty for public bodies and to the children's scheme, we can achieve the policy intention that we wanted through the due regard duty, perhaps in a more proactive and comprehensive way.

Carly Elliott: Again, Who Cares? Scotland agrees strongly with Juliet Harris. Although we would be supportive of a due regard duty, there are other methods that could include the intention of encouraging a conscious and planned approach to day-to-day delivery of activities. Juliet's suggestion of a more planning-focused approach to the public body reporting duty could be an incredibly important addition.

Juliet also mentioned creating the expectation that reporting will include steps to ensure provision of access to advocacy for all children, but especially for people in the groups that we have spoken about today, who might require additional means to have their rights protected and fulfilled.

There are areas that we can learn from in that regard. The corporate parenting duties in the Children and Young People (Scotland) Act 2014 include reporting requirements. We work closely with corporate parents, and we support them in understanding what they can do, through their services, to better the lives of care-experienced people. We see that the corporate parents that take a more proactive and planned approach to how they report on what they are doing and how they adapt their services have a much more positive experience of fulfilling those duties.

Those proactive steps also involve directly the engagement and participation of care-experienced people, which is something to consider with the reporting duty. The participation of children and young people in the creation of planning and reporting documents will be incredibly important.

Again, the corporate parenting work is most successful when corporate parents engage directly with care-experienced people, but also when they engage with organisations such as ours and CELCIS to help them to navigate through what the duties mean in practice. That is an important point to note, particularly in relation to organisations such as ours, which provide independent advocacy and which have for years been seeing what it means if we do not get rights protection right for that population of young people.

Josh Kennedy: I am sure that it is not surprising that young people want accountability on the part of public authorities. The SYP echoes Juliet Harris's call, which was stated so perfectly, on the reporting duties, which we hope will not be too onerous.

We would also welcome reporting duties on local authorities. Young people want the concept of due regard but, in line with responses to the bill, we favour the idea of expanding the reporting duties. However, we would favour the method that would provide most transparency and accountability for young people, to ensure that rights are protected.

I am a young person but, unfortunately, I am not an expert on the technicalities—as, I am sure, members appreciate. Therefore, we are happy to provide more evidence after the evidence session, should the committee require that.

Kevin Kane: The short answer is that the bill could go further to ensure more proactive and positive measures to help public bodies with their decisions and priorities. A due regard duty would be a useful addition.

However, I will pick up on Juliet Harris's point that making it a planning and reporting duty—which must include what public bodies are doing to include collection of data on child rights education and advocacy and human rights

education—might be a more proactive and rights-embracing approach to take.

09:15

Mary Fee: I thank the panel for those very helpful responses.

My next question is about the definition of "public authority". In section 6, it is not exclusively defined, although its meaning has been considered in a human rights context in courts. I will give an example before I ask for broader views on the definition.

Section 6 says that a "public authority" would include ministers but not the Parliament. Do the witnesses think that the definition should be more clearly laid out in the bill? If so, what changes would you like?

Juliet Harris: I thank Mary Fee for the question. We really welcome the scrutiny on that key part of the bill, but we definitely think that the definition of "public authority" in section 6 needs amendment to clarify the organisations that are included in the duty. We support the evidence that has been provided by witnesses including Dr Katie Boyle and Andy Sirel of JustRight Scotland, and the perspective of the Scottish Human Rights Commission.

As was highlighted in previous evidence, the definition of "public authority" that is used in the bill does not provide clarity. That leaves children and young people, and those who provide services to them, uncertain as to whether the bill actually applies in various settings.

It is really important to go back to what we are trying to achieve with the bill. It is about children and their human rights, and about making sure that we protect children's human rights in all services that can be considered to be public in nature. It should not matter who provides the service; it matters that children have equal protection of their rights.

For example, a disabled child might rely on transport to get to school. If that transport is provided by a private provider, would the child have the protection of the UNCRC? We have clarity that the child would have that protection if the transport was provided by a local authority, but if schooling is delivered by a private or third sector provider, will the child have the same rights as somebody who is in a local authority school? We do not know.

There are such issues across all sorts of areas of the lives of children and young people. There are so many areas of children's lives in which services are provided by third sector or private providers, including residential care, foster care and secure care. There must be no inconsistency in how children experience their rights in different settings. The children do not know who delivers the services. All that they care about is that their rights are respected, protected and upheld.

I do not have the legal expertise to say how we should tackle that, but I encourage the committee to consider the evidence that has been provided by JustRight Scotland, the Scottish Human Rights Commission and others, in order to make sure that the bill provides clarity on the issue.

The Convener: I am looking at the clock and see that we are halfway through. I still have three colleagues to bring in and quite a lot of ground to cover, so this is a reminder that if you do not have anything to add, that is absolutely okay. Carly Elliott, I am not trying to stifle you; that was just a reminder for witnesses.

Carly Elliott: I will keep my answer short. We agree fully with Juliet Harris. It is important to note the number of private and third sector organisations that provide services across the board for care-experienced children—for example, in day-to-day care, residential provision, mental health support and education. If we do not include private providers and, potentially, third sector organisations that provide similar duties, we will miss opportunities to protect children at their most vulnerable moments and, in particular, to realise their economic, social and cultural rights. We need to consider that strongly in the bill.

Josh Kennedy: It is important to mention that many young people might not always make the distinction between public authority and other care providers. It is important that the Scottish Government and any public authorities that deliver services for young people are included in the bill, so that a rights-based approach remains consistent.

The Convener: That is helpful.

Kevin Kane: To pick up on that point, I note that our sector is clear that youth workers and children and young people should be consulted during preparation of public body reports, and that child-friendly versions should accompany every part of the process.

YouthLink Scotland was informed of concerns about the issue that Mary Fee raised, particularly in relation to housing providers, childcare providers, private foster carers and public schools. On that broad point, I reiterate that it is not beyond the wit of all of us here, despite our not having legal training, as such, and not being solicitors, to ensure that children and young people across Scotland receive the same protection.

There is a little point to be made in relation to taking a comprehensive approach. It seems that an obvious omission is that the Scottish Courts

and Tribunals Service is not listed in the authorities with reporting duties under sections 15 and 16. Although it is said that that is covered by the ministerial duty to report, given the proximity and importance of the SCTS as duty bearers for young people, I think that it should be listed in the bill.

The Convener: That is very helpful.

Gillian Martin (Aberdeenshire East) (SNP): Kevin Kane has nicely introduced my theme, because I want to talk about the readiness and suitability of the existing courts and tribunals to incorporate the UNCRC. Existing courts and tribunals, rather than a new judicial body, will authorise the judicial remedies that are proposed in the bill. Are they accessible enough to children and young people? If not, what changes should be made to the bill or to the institutions more generally? Will the courts and tribunals be effective in practice? Will they focus on what a child or young person might want? Will they ensure that changes are made in the public authority concerned for the benefit of other right holders in the future?

The Convener: I wonder whether we can go to Carly Elliott first on those questions.

Carly Elliott: Yes—I have not been caught off guard. [*Laughter*.]

The enforcement of rights through the courts is an incredibly important part of the bill. Children and young people's right to legal recourse is incredibly important for creating accountability, and it can be used as a last resort for challenging rights breaches that they have not managed to rectify through other means.

That said, I would argue that the court process is inaccessible and intimidating for all people, never mind children and young people. For that reason, I will focus my answer on the more proactive alternative mechanisms on which the bill should equally focus, which we mentioned in our written submission.

The role of advocacy services is incredibly important in that regard. If the bill was able to focus more robustly on the provision of services such as advocacy, children and young people could be supported to challenge rights abuses without having to step into the legal sphere. I do not think that any of us wants children to have to go to court, either directly or with other organisations through the sufficient interest test. We want to keep them out of that space.

Earlier, Juliet Harris mentioned additions to the children's rights scheme, such as the inclusion of access to advocacy services for all children, especially those who need it most, and the inclusion of child-friendly complaints mechanisms and procedures. Those methods will ensure that children do not have to step into the legal space unless there is an urgent need for them to do so.

We have learned about child-friendly complaints processes, but I do not think that we truly understand what they should look like. Our advocacy workers have lots of experience of supporting children and young people to lodge complaints with local authorities and other organisations through their typical complaints procedures. We hear all the time that those experiences are unsatisfactory. They lack communication, there is no feedback loop to children and young people about what is happening, and they take a long time. Importantly, our advocacy workers reflect that such relationship-based advocacy support is often what keeps children in the complaints process until the end. Without someone helping them to navigate such processes, many children opt out at early stages because the processes can become so convoluted and complicated.

In summary, I do not necessarily think that the courts are accessible for children and young people. Legal services are offered through incredible organisations such as Clan Childlaw, which take a relationship-based, trauma-informed approach to supporting them. However, they are still entering an adult system. That is our greatest challenge, and it is also why the bill needs to focus more prominently on additional measures such as access to independent advocacy.

Juliet Harris: Dr Katie Boyle recently gave strong evidence on access to effective remedies, and I endorse and support what she said. There is potential to strengthen the bill in that area by adding the right to such a remedy. As Gillian Martin said, it is important that whatever remedies are available should be effective for the specific circumstances of children and young people and in addressing systemic issues that might have resulted in the breach of their rights.

Together welcomes the committee's consideration of whether there should be an amendment to add the right to an effective remedy or to allow courts to strike a balance in ensuring that remedies are just, effective and appropriate. That would empower courts to be more interventionist and help children to access prompt and effective remedies.

I also completely echo everything that Carly Elliott said. We want the courts to be the very last resort. It is essential that children and young people have access to them and that they can go there. However, we want to see breaches of children's rights being tackled as close to the breach as possible. That is why we are calling for the children's rights scheme to be more specific on access to child-friendly complaints mechanisms

and access to advocacy. It should also set out the steps that the Scottish Government is taking to ensure that children and young people have access to legal aid, which will be key to enabling them to take cases to court and access effective remedies.

Josh Kennedy: The Scottish Youth Parliament is very pleased that the bill does not include a victim test. It is important that we draw a distinction when it comes to cases that are brought in relation to a UNCRC breach, because they are made on behalf of children and young people, who are a vulnerable group who might not always have the knowledge, confidence, ability or capacity to bring such a case. To do so would ask a lot of any young person, but especially one who has been isolated or excluded from society.

MSYPs have told us that they would like to see a wider variety of individuals and bodies being granted the ability to bring court proceedings. We therefore support the sufficient interest test and believe that it will help to ensure that vulnerable children and young people can be better represented in cases. Our members have also told us that the more clarity there is about who can bring a case, the better.

The point about the process being intimidating is a good one. I do not want to labour that too much, but I know that, if I had had to go into such an environment at the age of 15, I would have been a lot more nervous. The need to ensure that young people have the capacity for that cannot be overstated. We agree with Juliet Harris and Carly Elliott that more clarity should be provided on exactly who should be enabled to bring cases. Having that written in law would provide such clarity and, importantly, more accessibility to young people.

09:30

Kevin Kane: Those were comprehensive answers, which allows me to think beyond the bill more broadly. We know from young people that access to justice remains a big issue. The bill is an opportunity to consider what we mean by "access to justice". For the bill to be a truly watershed moment, free access to advice, remedy and other forms of advocacy should be considered for all people. Although I know that that goes beyond the bill, if these sort of discussions on children's rights can positively influence policy planning across Government portfolios, it can only be a good thing.

On access to justice, the prospect of barnahus is coming down the road—our colleagues in Children 1st are doing a power of work on that. There is an opportunity for us to think in a less siloed way. I see the bill as part of a bigger discussion about how we make the youth justice system fit for purpose, including by making it more inquisitorial, which we know from research gets better results. That would mean that the system would be in keeping with what we want to achieve from incorporation.

One of the witnesses at last week's meeting, Bruce Adamson, said that the system is

"designed by adults for adults".—[*Official Report*, *Equalities and Human Rights Committee*, 19 November 2020; c 19.]

That certainly chimes with us. We have numerous examples of support at the point of disclosure in the youth work sector. I commend the model of the 6VT young victims of crime service, which is based in Edinburgh. I will not go into too much detail here, but I will pass on information after today's committee meeting. I recommend that the national task force on human rights leadership look into that specific question in more detail so that we can positively evolve the whole system for children over time.

The Convener: That is helpful. We would appreciate that further detail if you are able to give us it after committee.

Gillian Martin: I have one more question, but I first want to ask Kevin Kane something. You mentioned barnahus and you said earlier that Norway has incorporated the UNCRC very effectively. Is the fact that Norway already has the barnahus system one of the reasons for that?

Kevin Kane: Absolutely—research tells us that that is the case. It also gets better outcomes no matter where someone is in the justice system, whether they are a perpetrator, whether they are in need of rehabilitation or whether we are considering restorative justice. It is part of a swathe of progressive measures. Working with a system is certainly easier than taking a bill forward within a system. However, we also have to face the realities of where we are and get the bill through while certainly not neglecting any good models of practice that we can take from our international partners.

Gillian Martin: That is helpful—thank you. Carly Elliott mentioned other public bodies, and I would like to know what other witnesses think in relation to whether public bodies already have sufficient child-friendly complaints processes.

Juliet Harris: The answer is quite simply that no, they do not yet have those. A lot of work needs to be done in that area. I wanted to be able to highlight good practice in child-friendly complaints mechanisms and I did my best ahead of this session to find some. However, it is patchy, and we were not able to find a good model of a child-friendly complaints process in Scotland to put forward to the committee.

Interestingly, the Welsh Parliament published an inquiry into the implementation of the Welsh measure this summer in which it called for better child-friendly complaints processes. It is a challenge that we are all facing, and we need to look at the international community more widely to find good examples that we can highlight and publicise, and encourage public bodies to pick up on. It is in public bodies' interest to have good child-friendly complaints mechanisms. If children and young people can raise concerns about their rights early in the process, that stops the problem from escalating and stops the breach from becoming more serious.

I am certain that we will be able to work closely with public bodies to learn from each other how best to support child-friendly complaints and to come up with a model that works to support the intention of the bill.

Josh Kennedy: I have realised that I responded before from the wrong note.

We do not have an official stance on that area, but we know from a recent focus group that we ran with MSYPs to inform the family court law review that young people want these changes. It is important that courts are youth friendly. As Juliet Harris said, young people should feel able to realise their rights more fully. We believe that there should be adequate support and access to counselling during proceedings. I echo what Juliet said. It is important that young people can fully access those rights so that Scotland can become a rights-respecting society.

Kevin Kane: I am smiling with admiration at Josh Kennedy's honesty. It happens to everybody.

It is important to start from what young people tell us. They want to know who they can safely complain to. Youth workers are often the first port of call for young people. Whatever we do must be simple, in plain language, easy to understand and non-confrontational and it must happen at the pace dictated by the young person.

Alison Harris (Central Scotland) (Con): I would like to discuss court proceedings. Section 10 specifically empowers the children's commissioner to raise court proceedings in respect of the duty on public authorities. More generally, section 7 says that an individual or organisation can raise court proceedings in respect of that duty. In practice however, for judicial review proceedings, litigants will also be required to demonstrate "sufficient interest". Are you happy with that overall approach, including with how the Government's policy intention is given effect to in the wording of sections 7 and 10?

Juliet Harris: Regarding section 10, we welcome the fact that the commissioner is included in the bill and is able to raise proceedings on behalf of children and young people. That is an essential way of ensuring children's access to justice and that some of the more embedded and systemic issues that affect implementation of the UNCRC, and some of the serious issues that affect children and young people, can be addressed. We endorse and welcome the provisions in section 10.

We said in our response to the committee that we would welcome clarity on whether the provisions in section 7 achieve the policy intention. Overall, we welcome the approach that has been taken and the removal of the victim test. We understand that courts interpret "sufficient interest" broadly. Together is a membership organisation. It is a significant development for organisations to be able to take cases on behalf of children and young people. That will allow us to support children who are in the most vulnerable situations and who might not be able to take a case themselves.

The committee heard strong evidence from Andy Sirel of JustRight Scotland, in the first evidence session on the bill, about the importance of the provision to enable cases to be raised on behalf of asylum-seeking children, who may not be able to navigate the complex legal systems and may be facing so much trauma that the last thing they need is to be involved in legal proceedings—[*Inaudible*.]

The Convener: Sorry, Juliet—your sound has dropped a little bit.

We hear what you are saying now.

Juliet Harris: I am sorry—it is dodgy wi-fi.

We welcome section 10. We also welcome section 7 and the policy intention behind it, but we would welcome clarity on whether its provisions will achieve that intention.

Carly Elliott: We support the inclusion of both section 10 and section 7, and we especially support the exclusion of the victim test. The inclusion of the sufficient interest test is an incredibly important provision that strengthens the bill. Organisations such as Who Cares? Scotland would be primed to take cases to court through that test. As an organisation, we see systemic rights issues across the country—we have advocacy workers in almost every local authority in Scotland, and we have a presence through participation in every local authority. Organisations such as ours, which work within a national remit, are especially well placed to see issues arising across the board and it is incredibly important that we will not only know about such things but have the power to address them.

However, we need to think about the provision of sufficient training and education for

organisations such as ours with regard to what it might mean to take cases to court or raise proceedings, whether through the children's commissioner or otherwise. Perhaps the duties in the bill that will be provided through the children's commissioner could take into account the fact that we will need sufficient training to understand what it means to take cases to court on behalf of both individual and collective groups of children and young people.

The Convener: I know that Josh Kennedy shared some reflections on those aspects of the bill in his previous answer—if he wants to tell us again, that is fine.

Josh Kennedy: I refer the committee back to what I said on the sufficient interest test, which is so important. It would be good to get clarity on where it applies to young people and who it applies to.

In addition, it is worth stressing that the Scottish Youth Parliament is delighted at the inclusion of the Children and Young People's Commissioner Scotland in the bill—it is a really positive step. Once again, when we consulted with young people, they told us that they consider it essential that such bodies have powers.

As the committee will know, many children and young people struggle to have the knowledge and confidence to bring their own complaints. We have certainly heard that young people, including care-experienced and disabled young people, are more likely to have less confidence and the knowledge to enable them to take action against breaches of their rights. Through the provisions on the commissioner, we can take meaningful steps in safeguarding our rights and providing some equity in these matters.

Kevin Kane: There is a lot of great stuff in the bill. YouthLink Scotland also thinks that it is really positive that the children's commissioner will be able to take cases on behalf of young people. That will be hugely important in the bill's implementation phase and, more broadly, for the recognition of children's rights.

It is worth putting on record that there has been some discussion with youth work leaders on that point. There are some—they are a minority, but enough to mention—who would like there to be explicit mention of youth workers, framed in appropriate wording, so that particular youth groups could take a case on a young person's behalf. Our sector is not alone in that regard.

However, we have been listening to many of the arguments on how the sufficient interest test is currently applied, and we are persuaded that the definition is interpreted widely. The fact that the victim test has not been included in the bill represents a welcome widening of access.

The short answer on the question about section 10 is that we will support the approach that allows the youth work sector to be utilised to its fullest potential in that space.

On section 7, my short answer—it is a slightly longer answer, but not too long—would be to echo what Juliet Harris said: clarity is required to achieve the policy intention, and it is crucial that young people's evolving capacity and maturity is taken into account as they progress through various ages.

09:45

The comments about balance of power merit strong consideration, especially given the vast differences in a young person's capacity to access the law, which is often due to issues outwith their control. That can be to do with information, finance or advocacy, or it can just be because they are in a situationally disadvantaged position.

I would say that section 10 is spot on, but a wee bit more clarity is required on section 7.

Alison Harris: I would like to ask about time limits for bringing court proceedings. The committee has received written submissions offering mixed views on whether it is correct to exclude the period when a young person is under 18 when calculating the time limits for raising court proceedings under section 7. Would you like to comment on that issue or on the approach to time limits under section 7 more generally?

Juliet Harris: We strongly support the policy intention behind the provisions on time limits in section 7. The provisions support the evolving capacities and maturity of children and young people as they get older, and they recognise that they ought to have the right to have a say on acts that were done to them when they were too young to do anything about it themselves or when they were not aware that whatever happened was a breach of their rights.

Importantly, as Kevin Kane said, the provisions address the issue of balance of power. The children who are most likely to experience breaches of their rights might be those who are in secure care—they might be care-experienced children and young people. The idea of a 10-year-old child taking a case against the corporate parent—against those who are supposed to be providing care to that child—is terrifying. There is no way that we can expect children and young people always to be able to take cases at the time when the breach occurs. It is really important to give them the option to raise cases right up until after they reach the age of 18.

Carly Elliott of Who Cares? Scotland has provided some really strong examples of the fear

that children and young people have of even raising complaints against corporate parents—the idea that they would take legal action against a corporate parent is unthinkable to some children and young people.

We absolutely welcome the policy intention behind section 7. We think that it is essential for children's access to their rights and their ability to bring claims against breaches of their rights. We just want to double check that the bill as drafted meets its policy intention.

Carly Elliott: We whole-heartedly support the time limit provision and the ability to start the clock at the age of 18. I would echo everything that has already been said. The discussion about the power imbalance that children and young people face is incredibly important, no more so than for care-experienced children. As the state intervenes, they are thrust into a world that is full of formal processes and legal interventions, and that is worth stating again in this discussion.

Children might not realise that their rights are being breached, and the removal of the—[*Inaudible*.]—time limit is a helpful way to acknowledge that. Juliet Harris mentioned the situations that we hear all the time from young people about how they feel disempowered to raise challenges against the people who are tasked with their care—their corporate parents and whoever else.

I want to read a quote to you. When we were shaping up our written response on the bill, we engaged with our care-experienced membership through a variety of means. I have included some material from that in our written response to you and, in the next couple of weeks, we will be shaping up and sharing with you a broader report that reflects on this point. I think that the quote answers the point really well:

> "The environment wasn't child-friendly. I felt that I couldn't talk about it if my human rights weren't being met. I couldn't say anything about my home with that person I lived with sitting right next to me. Can I really express what my rights are without causing offence and damaging my childhood home any further than it already is?"

Those comments are incredibly powerful; they make the point that we cannot expect children immediately to raise issues at a young age and to understand what that would mean.

The Convener: Thank you, Carly. That is, indeed, a powerful example—it speaks to the imbalance of power that we have discussed.

Josh Kennedy: We do not have an official policy stance on the time limit provision, but I think that it is undoubtedly a really positive step, given that young people have told us that they want to be able to access their rights as easily as possible. I have no doubt that the provision will help to facilitate that.

With that in mind, we welcome the provisions on time limits alongside the provision that allows cases to be lodged up to a period of a year after the event and how that applies to those aged under 18. We consider that to be equitable, because we appreciate that younger and more marginalised children might not yet have the capacity or desire to bring a case but might want to bring a case as they age. When I was 12, I definitely would not have had the confidence to do that. Therefore, the proposal is extremely positive—especially in cases in which young people are reliant on toxic situations and feel threatened about challenging them. I echo the excellent point that Carly Elliott brought up in that regard. We also agree with Together's concerns about how things happen in practice and how we can ensure that things work.

Kevin Kane: I have probably already answered Alison Harris's question, and people have gone on to give very good examples. I do not have much more to say, but, for the purposes of the record, I simply say that there was nothing that we disagreed with; what was said was absolutely brilliant.

During the co-production of the new national youth work strategy, there was engagement with thousands of young people—both directly and through written surveys—and accessibility came out as one of the top themes. Therefore, we will have a job to do in the next year in examining how a lot of the questions that have been asked today and a rights-based approach can fit with the national youth work strategy.

Alexander Stewart (Mid Scotland and Fife) (Con): I will ask about witnesses' views on the provisions for the Scottish ministers to prepare the children's rights scheme. There are suggestions that the language in the bill could be stronger or have more impact. What do you think the contents of the scheme should be? Examples have been given of youth work that has not featured in the scheme that perhaps should.

Kevin Kane: A number of sectors and people in groups perform the key role of connecting young people with issues in their community and in their schools.

The children's rights scheme is really important. It links to the actions that we need to take to realise the ambition in the bill and it will help keep ministers accountable. The stronger and more explicit the scheme, the better. That is my partial answer.

In the relevant provision, the word "may" should be replaced with "must". We could work alongside the Government on clear processes for children

and young people, particularly in relation to accessing legal assistance and how the youth work sector can help with that. We understand that that process will require reviews of legal aid and resourcing to ensure that all children have access to confidential and independent legal assistance.

It will not come as a surprise that we always advocate for investment in the youth work sector. Research shows that there is a social return for spending in it. As a sector whose national outcomes are enshrined by UNCRC and a key deliverer of incorporation, it is quite an easy connection for us to make.

On advocacy, we did some workshops on the future of youth work in Scotland, and it came up time and time again that children and young people need support and advocacy to enable them to access their rights. Carly Elliott made some good points about that. Attendees also spoke about the importance of children and young people knowing what mechanisms are available to them. As we mentioned before, it is also important to recognise the swathe of rights and those that we might consider explicitly mentioning in the scheme. Children's complaints mechanisms could also be discussed in the round.

Does that answer your question?

The Convener: Alexander Stewart is nodding.

Juliet Harris, can we hear a bit more from you on strengthening the scheme?

Juliet Harris: Certainly. I agree with Kevin Kane. The scheme is very strong and we were delighted to see specific requirements on children's participation, raising awareness of children's rights, budgeting, and children's rights and wellbeing impact assessments—CRWIA—in the bill.

At the moment, those requirements are specified only as "may" duties. For example, ministers "may" set out what they are doing. Our members are clear that ministers must set out what they are doing in those essential areas of implementation of children's rights.

There is a children's rights scheme in Wales. I have mentioned the parliamentary inquiry into the implementation of that scheme. It found gaps in practice in certain areas, such as children's participation and child rights budgeting. It could be argued strongly that it was the failure to specify those elements as essential parts of the scheme that resulted in some of them not being properly embedded.

Given that learning from Wales, the Scottish scheme should explicitly require ministers to set out what they are doing every year on children's access to justice and on data collection. We have already touched on advocacy, complaints and access to legal aid. We also need to know what ministers are doing to collect data to assess the impact of the measures of the scheme and on children's realisation of rights, because that is the only way that we can ensure that we direct resources in a way that counters some of the implementation issues.

We would also like human rights education to be specified in the scheme, as well as the steps taken to secure the rights of children with protected characteristics and those in vulnerable situations, as we mentioned at the beginning of the session.

Carly Elliott: I echo what you have already heard. The language in section 11 of the bill needs to be strengthened to create more compulsion, by replacing "may" with "must". Getting the detail right is what will embed rights most effectively in children's day-to-day lives. If we get right this part of the bill, it will prevent children and young people from having to go to court.

As Juliet Harris and Kevin Kane have said, the scheme could be strengthened by the addition of child-friendly complaints mechanisms. Tia Mure, one of our care-experienced members, met the convener and Gillian Martin in the engagement sessions with young people, and she strongly emphasised the importance of a public education campaign that targets not only children and young people, but the professionals in and around their lives.

We would like to see the addition of access to advocacy for all children but explicitly for the groups who need it most and who have formal interventions in their lives. A specific reference to groups that need extra consideration, such as care-experienced children, is important. That cannot be referenced through protected characteristics alone, because that does not cover care-experienced children. A form of words that we collectively suggest to the committee is: "protected characteristics and children in situations of vulnerability". That would ensure that we account for all children who need that additional access.

Josh Kennedy: I will keep it brief. MSYPs consider that the inclusion of provision for a children's rights scheme is an important and positive aspect of the bill. The scheme will get children engaged in rights and will bring about accountability, and we are really pleased to see its inclusion. It could also be strengthened, and we would echo the calls for the change from "may" to "must". SYP and its work are founded on article 12 of the UNCRC, which is on young people's voices being heard. We see some good examples of that. Children and young people meeting the Scottish Cabinet has been referred to, which enables us to raise issues directly with the Government. We would like that to trickle down and to have a rights-

based approach to participation in the bill. We also echo Juliet Harris's call for education on human rights to be explicitly included in the bill.

The Convener: Fulton MacGregor has a question on child rights and wellbeing impact assessments. Alexander, I know that you have questions on resourcing—I will come back to you later.

10:00

Fulton MacGregor (Coatbridge and Chryston) (SNP): I thank the witnesses for their answers so far. The session has been very interesting.

As the convener said, I want to ask about child rights and wellbeing impact assessments. What are your overall views on the assessments? More specifically, what are your views on the legal duty of the Scottish ministers to prepare such assessments for legislation and for

"decisions of a strategic nature"?

To what extent should ministers have that discretion?

Juliet Harris: We strongly welcome the provision in section 14 that places the duty on ministers to conduct child rights impact assessments on decisions of a strategic nature. However, a bit too much discretion is included in the duty, because the bill says, "as they consider appropriate", which we would like to be removed.

It is timely, because research shows that there is still inconsistent use of child rights impact assessments in Scotland. They are sometimes undertaken too late in the policy-making process, and they are not fully embedded across all areas of Government. It is important that they take place not just in children's services but in all areas of Government work that impact on children and young people, such as transport and the environment.

The inquiry that I mentioned before concludes that the lack of a statutory requirement for CRIAs in Wales is a weakness, so having them in the incorporation bill is a strength.

Overall, we welcome the assessments, but we would like to remove the layer of ministerial discretion to ensure that it is clear that a child rights impact assessment must be done for all decisions of a strategic nature.

Carly Elliott: We agree that there is possibly a bit too much discretion in the bill at present. We recommend strengthening it and including more compulsion in relation to that issue.

Our more broad reflection on the use of child rights and wellbeing impact assessments is that, when done right and used well, they can lead to effective rights-based decision making and planning, which is incredibly important to the overall policy intention of the bill. The challenge is that, sometimes, they are not used well and they become a tokenistic measure. You have already heard strong evidence on that.

We must effectively train people on the purpose of using rights impact assessments, how to do them meaningfully and the benefits that people can get from undertaking them. It is about not just benefiting children and young people, although that is the paramount reason, but helping people to understand how to do their jobs using a rights-based approach. That is fundamental to the bill.

Josh Kennedy: We welcome the legal duty of ministers to prepare child rights and wellbeing impact assessments for any new bills that they introduce to the Parliament. As an MSYP said, it will increase accountability, which is a key theme of the evidence that we have given today.

However, the wider CRWIA process could be strengthened by limiting the discretion of ministers to determine when it should be used. Young people want full and direct incorporation, as they believe that their rights should not be tampered with by decision makers, and we believe that allowing ministers to decide when it is appropriate to undertake a CRWIA could allow policies to slip past the review process.

We are also concerned about the discretion that is given to publish

"in such manner as the Scottish Ministers consider appropriate."

MSYPs have specifically told us that it should be made accessible to children and young people to enhance accountability and equality. That is a straightforward and essential element to making children's rights a reality in Scotland, so there should be a requirement to publish in a child-friendly format—if it is youth friendly, it is everyone friendly.

The Convener: Thank you. That is a very good point.

Kevin Kane: Specifically, we welcome the section 14 provisions. However, the phrase "as they consider appropriate", which Juliet Harris mentioned, needs to go because it is not good enough.

More broadly, we know that impact assessments are vital to ensuring that decisions are made effectively. I am aware that the evidence across Europe is varied, but what comes through strongly is that the higher the quality, consistency and obligatory nature of the approach, the greater the chance of success. Perhaps it goes without saying, but I will say it anyway: training and

support also need to be in place around that issue, and our sector has masses of experience in that area. Again, I am happy to pass on examples of where we have taken on a proactive approach to training in the context of rights.

The Convener: Thank you. Fulton MacGregor, do you wish to come back on that?

Fulton MacGregor: I thank the witnesses for their answers, which covered everything.

Let us move on to part 4 of the bill, which sets out significant powers in respect of incompatible legislation. As a committee, we are particularly interested in your views on the courts' powers relating to incompatible legislation and the reporting duty as set out in section 23. I am aware of time, and I know that you have each commented on that in your written submissions, but I give you an opportunity to make additional comments.

Juliet Harris: In a nutshell, we really welcome what is included in part 4. We welcome the fact that courts have been given strike-down powers on incompatible legislation that is made prior to commencement of the bill. We recognise the limitations on the powers of the Scottish Parliament and that we cannot include strike-down powers on legislation going forward, so we welcome the steps that have been taken to put in the requirements for—I can never say this—declarations of incompatibility and incompatibility declarators.

In addition to that, there is a provision that requires the Scottish ministers to set out what they are doing to action incompatibility declarators, and we think that that duty should include a requirement to publish child-friendly versions of what they are doing to action incompatibility declarators. If a case has got as far as court, it is essential that the ministers speak to children and young people about the action that they will take to remedy an incompatibility declarator.

The Convener: Thank you. Well done for saying that phrase so many times instead of avoiding it.

Carly Elliott: This will be a short answer: we are fully in support of that part of the bill. I agree with Juliet Harris that there needs to be something around the feedback to children and young people. The provision in part 4 spoke really well to the group of young people that we supported to meet committee members. They were particularly interested in what that would mean, and they felt almost as though it was not just about the legislation but about looking forward and future proofing the protection of children's rights. It is notable that they were particularly interested in that complicated part, which uses phrases such as "incompatibility declarator" and "strike down" powers. Therefore, going forward, it will be important that the committee considers the inclusion of something that recognises the need to feed back to children and young people in accessible ways.

Josh Kennedy: We echo what Juliet Harris and Carly Elliott have put so excellently. We also welcome the strike-down powers and the provision to work within the Scottish Parliament's competence. Again, we would welcome any provision that could improve accountability and accessibility for young people.

The Convener: Thank you, Josh.

Kevin Kane: Josh Kennedy summed that up wonderfully. I have nothing further to add.

Alexander Stewart: I want to ask about the resource implications of the bill. Everything comes with a cost. We have heard about the possible need for training and support, which could have resource implications for organisations, public authorities and the third sector. Do panel members see a potential burden? Will resources have to be found to ensure that those organisations can do all of that?

Juliet Harris: I am positive about that. Taking a rights-based approach leads to better and more cost-effective decision making in the long run.

It is important to have the right resources for raising awareness and understanding of the UNCRC, but we are building on a long history. We celebrated the 30th anniversary of the UNCRC last year, and we have had GIRFEC—getting it right for every child—in place in Scotland since 2006. The Children and Young People (Scotland) Act 2014 already obliges the Scottish ministers to raise awareness and understanding of the UNCRC. We already have that commitment.

A general comment from the UN Committee on the Rights of the Child reminds us that investing in children must be seen as for the long term. One important way of securing children's rights is to invest in families. The provision in the children's rights scheme for child rights budgeting will help the Government to prioritise existing funding and ensure that resources are directed to uphold the rights of children and young people and that we comply with the UNCRC.

Together—the Scottish Alliance for Children's Rights—is a good example of how a small amount of money and a tiny team can go a long way in raising awareness and understanding of children's rights. That does not have to be expensive; it just has to be effective.

Carly Elliott: There will be a need for investment in training and education. To echo what Juliet Harris said, a lot of that work is already happening across the country. There are already

effective mechanisms to enable young people to learn about their rights and to find out how to raise a challenge and have their rights upheld. We will be strengthening what exists already.

The children's commissioner is in a strong position to offer enhanced training and access to information. It is important to consider that.

We should also consider access to advocacy. It is crucial that we invest in more access to independent advocacy for all children, and specifically for the groups that we have mentioned already. Advocacy provision is currently poor and does not reach all the children and young people who need it, but it is an essential way of sparing children having to go to court. That must be considered.

There are lifelong impacts. If we invest in advocacy services, particularly for groups such as care-experienced children and young people, that will have a positive and lifelong impact on those individuals. There will be investment implications, but it is essential and there will be overall savings if we invest early in measures such as independent advocacy.

Josh Kennedy: I do not have much to add. This is not a new concept for Scotland: the 2014 act already put requirements in place. This is a next step, not a new one.

I echo the point that this is a future investment. The rights-based approach is important. We are making provisions to protect young people in law and in the courts, but we want to prevent things getting to that stage. A rights-based approach will ensure that young people's futures are more secure, which will mean less of a burden on the state, because young people will be empowered.

10:15

Kevin Kane: The answer to the question is yes and no, depending on how we approach it. The other witnesses have made that point very well. However, as is the case with any ambitious bill, there needs to be an honest look at the financial memorandum and the implications of it for the bill. I found looking at the previous testimony really helpful in getting a feel for the genuine worries. Research shows that UNCRC incorporation has never increased through litigation, which is a really interesting fact. It shows that incorporation is as much about a culture shift as it is about creating a space for the few cases that merit litigation. That approach works.

We have engaged with a lot of youth workers who operate in the heart of public bodies. Although we get the instinctive worry about resources, they are much more excited by the immediacy of incorporation than anything else. I will use our Scandinavian neighbours as an example again. Sweden's approach to incorporation involved the Government designing a national programme to support local and regional communities and national agencies in the implementation of the law.

This is a space in which the youth work sector can be harnessed. We have multiple examples of working in schools and communities to deliver large-scale training and material on rights-based issues, but it is not just about us; it is about all the other agencies and sectors, including children's groups and social work. The evidence shows that, when incorporation comes, there will be a mass mobilisation of people and groups at its back who will be ready and willing to ensure that it is a success. The question is how we use existing infrastructures to ensure that incorporation is a success.

The Convener: I am very conscious of the time. We have kept the witnesses for far longer than we said we would, so I will draw the session to a close. The evidence has been really helpful and thorough, and good examples have been given. If there is anything that the witnesses did not get the opportunity to say in their written evidence or during our oral evidence session this morning, they should feel free to correspond with the committee.

I thank Juliet Harris, Carly Elliott, Josh Kennedy and Kevin Kane for taking part in the meeting. Please wait for broadcasting staff to switch off your video and microphone. You are then free to leave the meeting, but you can, of course, continue to watch the meeting on Scottish Parliament TV, if you wish.

I will suspend the meeting briefly while broadcasting staff set up the next session.

10:17

Meeting suspended.

10:21

On resuming—

The Convener: Good morning to the witnesses in this session. I welcome Oonagh Brown, policy and implementation officer for the Scottish Commission for People with Learning Disabilities; Beth Cadger, national co-co-ordinator for Article 12 in Scotland; Susie Fitton, policy officer for Inclusion Scotland; and Afrika Priestley, lead anti-racist and pro-black ambassador for Intercultural Youth Scotland. Thank you for joining us and for your patience while we concluded our first session.

We need to conclude this session no later than 11:45, so I make a plea for succinct questions from members and succinct answers from witnesses. I remind people to give broadcasting staff a few seconds to operate their microphones before beginning to ask a question or provide an answer.

There is strong support for direct incorporation of the UNCRC into Scots law. As the committee has heard, the bill is unique internationally because it includes active and reactive measures. What are the witnesses' views on the approach that the Scottish Government is taking? I am particularly interested in hearing reflections on the potential benefits or disadvantages of the approach.

We will work to the order in which the witnesses appear on the agenda, so I ask Oonagh Brown to answer first.

Oonagh Brown (Scottish Commission for People and Learning Disabilities): Thank you for inviting SCLD to give evidence. Similarly to the witnesses in the previous session, SCLD is very supportive of full and direct incorporation in so far as that is within the powers of the Scottish Parliament. We welcome the proactive and reactive measures.

The critical points that came across in the previous session were Josh Kennedy's comments about full and direct incorporation not diluting rights and the need for a cultural change, which was raised by Juliet Harris. For SCLD, the move towards Scotland becoming a rights-respected nation and the work that is being done on the bill are critical, because that has created a discussion about the potential to incorporate the UN Convention on the Rights of Persons with Disabilities. It has been particularly heartening that there have been opportunities for children and young people with learning disabilities to be heard by committee members at previous sessions, to have a seat round the table and to be part of this process.

Although we are very supportive of the bill, I highlight our concerns that children and young people with learning disabilities, whose human rights might be viewed as being more challenging or resource intensive to fulfil, might be overlooked at times. In line with earlier comments, we would welcome the strengthening of the bill through several small amendments that we believe would make a great positive impact on the lives of children and young people with learning disabilities. I will not go into detail on those just now, but the headline aim is to ensure that the needs of such children and young people are made visible in the bill, by future proofing it for wider human rights treaties incorporation and by ensuring a reporting process that includes data disaggregation as well as accountability for public authorities.

The Convener: I ask Beth Cadger to respond to the same question on the Scottish Government's approach.

Beth Cadger (Article 12 in Scotland): Good morning, everyone. I thank the committee for including Article 12 in today's panel.

We echo the views of the other witnesses. We fully support the proposal to incorporate the UNCRC into Scots law, for which we have campaigned for some time. We believe that it is the most important thing that we can do to ensure that all children's rights are respected and protected, and it would demonstrate that young people have the same human rights entitlements as adults. Such matters are particularly concerning at the moment due to issues arising from both the Covid-19 pandemic and Brexit.

We commend the Scottish Government's commitment to ensuring that the participation of children and young people remains an underpinning principle throughout the bill's progress through the Parliament and once it has been enacted. It is the only way in which the full and meaningful participation of children and young people will be at the heart of all its policy and practice. We ask the committee to consider whether the bill provides for the robust monitoring of all practices and that, if it does, it recommends to Parliament that that be put into place.

We do not envisage any difficulties with the incorporation model, but we believe that it should be viewed as a minimum framework and a baseline that can be continually held to account and built upon to create a gold standard that will protect and give a voice to all Scotland's children and young people. We intend to scrutinise the bill's impacts at national and local levels.

Susie Fitton (Inclusion Scotland): Thank you very much for inviting Inclusion Scotland along today.

To reiterate and back up much of the evidence that the committee has heard this morning, Inclusion Scotland fully supports the bill's maximalist approach, which would directly incorporate UNCRC requirements within the competence of the Scottish Parliament and make it unlawful for public authorities to act incompatibly with the convention.

It is important to stress that, although the rights of disabled children are provided for in the UNCRC, their rights as disabled people are provided for in the United Nations Convention on the Rights of Persons with Disabilities. I should say explicitly that Inclusion Scotland believes strongly that rights under the UNCRPD should

also be incorporated into our domestic law if we are, indeed, to "respect, protect and fulfil" disabled children's rights.

Disabled children consistently face additional barriers in pursuing remedies for breaches of their rights, including inadequate resources and barriers directly relating to their impairments such as a lack of communication support. The need for independent advocacy was stressed by many of the contributors to the earlier evidence session, and Inclusion Scotland echoes the need for such advocacy to be made accessible to disabled children, along with accessible information and knowledge of their rights. It is important to note that disabled children are often reliant on others' acting on their behalf when capacity is an issue.

We believe that incorporation of the UNCRC is a vital first step, but disabled children must be able to access the legal system and trust it to protect and enforce their rights. They must also be able to obtain a quick, effective and fair response. As such, the ability to take public authorities to court has several positive effects, which I could talk about in detail. The pressing need for incorporation could not be clearer at the moment. Disabled children's rights are at risk during the Covid-19 pandemic, and I would like to refer to evidence that we have on that as the committee continues its questioning.

10:30

Afrika Priestley (Intercultural Youth Scotland): Good morning, everyone. Thank you for having Intercultural Youth Scotland here.

Intercultural Youth Scotland and the anti-racism pro-black ambassadors fully support UNCRC incorporation. However, I think that it is important to examine—[*Inaudible*.]

The Convener: I am sorry—can I just pause you there? We seem to be having some difficulty with your connection.

Afrika Priestley: Are you able to hear me better now?

The Convener: Yes, I think so, but I suggest that broadcasting colleagues drop the video. I am sorry. We lost you right from the beginning. I hope that you do not mind.

Afrika Priestley: No worries. Can you hear me now?

The Convener: I can. You are nice and clear.

Afrika Priestley: As I was saying, not only has the community of black people and people of colour grown up with the structural racism that has seeped its way through the pandemic, it has also been dealing with the murders of innocent black people and the surge of the Black Lives Matter movement. This year, those things have, in tandem, shone a light on some of the oldest and deepest inequalities in our society, which have continued to persist for generations. A crucial part of that injustice is due to a lack of accountability across many groups of institutions.

We believe in and support the bill—absolutely. It has really great mechanisms that will enable us to hold accountable local authorities and public-facing sectors in protecting the rights of young black and POC children, and it has great potential to be a real force for good and power—and even for justice. However, as has been experienced by the black and POC community, the success of any policy comes down to the consistency and quality of its implementation. To enable true access to rights, we must first dismantle the systemic barriers that withhold them.

The Convener: Thank you, Afrika.

Some witnesses have already touched on this. They should not feel the need to reiterate, but I want to hear some reflections on it. Clearly, the pandemic has highlighted and exacerbated inequality that existed before. If you have anything further to say on how you think the bill might lead to a better realisation of all children's rights, that would be helpful. In addition, what guidance do you think public authorities need in order to ensure that they meet the duties that are set out in the bill?

Oonagh Brown: In answering that question, I would like first to outline the fact that children and young people with learning disabilities face a number of human rights violations, and I think we could talk quite extensively about what those look like. I will give some examples.

One of the more shocking facts is the number of avoidable deaths of children and young people with learning disabilities. Recent research from the Scottish Learning Disabilities Observatory has shown that premature mortality is 12 times higher among children and young people with learning disabilities and 17 times higher among girls with learning disabilities. That is deeply concerning given the evidence that we have seen on the experience of people with learning disabilities during the on-going coronavirus pandemic and the higher mortality rates.

Another example is the use of restraint and seclusion on children and young people with learning disabilities. In a recent survey by the Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 88 per cent of the 204 respondents said that their disabled child had experienced physical restraint, and 35 per cent said that that took place frequently.

In addition, we highlight the inequality of opportunity that is faced by people with learning disabilities. A good example is that, in 2016-17, only 9 per cent of young people with learning disabilities achieved a level 6 qualification or above compared to 60 per cent of all other pupils. That figure is representative of the many stories that we have heard from children and young people about their lack of support in school, which came through strongly in the evidence session that we facilitated with a number of young people with learning disabilities. We heard about circumstances in which a young person was being undermined by school teaching staff because of their disability.

It is important to recognise that that inequality of opportunity extends to the lack of opportunity to form meaningful friendships and relationships, often because of a lack of relationship education and support to make and maintain friendships. Again, I refer to our previous evidence session, at which committee members heard from a young person with a learning disability about being unable to go out with friends because they did not have the one-to-one support that they required for that. As a result, they were not often invited to things, because their mum would need to attend with them. For more information on that, SCLD has published a report on relationships, which highlights that important issue.

Going back to points that were made earlier, that would be best addressed in the bill by an overarching amendment to the children's rights scheme to make additional arrangements for children with protected characteristics, including those with a learning disability and those in vulnerable situations. UNCRC general comment 14 provides precedent for the term "vulnerable situation", and, as Carly Elliot said, that would account for children who might not be included under protected characteristics, such as care-experienced children and young people. We would also look for part 3 of the bill, on the children's rights scheme, to ensure specific commitments to those groups of children.

The Convener: I am sorry to interrupt you, but I will ask you to pause there, because my colleagues will want to probe you further on the specific provisions in the bill. Do you have any reflections on what guidance is required for public authorities?

Oonagh Brown: Guidance on working with children and young people with learning disabilities would be welcome, including particular guidance on working with children with profound and complex learning disabilities, to ensure, first, that they get the information that they need about their rights in a way that is accessible and understandable to them—and to their families, where capacity might be an issue—and, secondly, that they are supported to exercise those rights. SCLD would be happy to have input into that guidance over time.

The Convener: Beth Cadger, may I bring you in on my question about the guidance that public authorities might need to ensure that they meet the duties?

Beth Cadger: Yes. Article 12 in Scotland has consistently recommended that a suite of training and awareness-raising events at all levels is required for all those who have, or who work with and for, children and young people—particularly marginalised children and young people. Those events should be on-going during and following incorporation, and children and young people, as well as those who advocate for them, should be at the heart of the design and delivery of those events.

Wider inequalities have a significant impact on the rights of children and young people. For example, structural inequalities are a continuing barrier for young Gypsy Travellers—principally, the lack of opportunities to recognise their contributions as active citizens. Digital inequality has been a huge issue during the Covid-19 pandemic. It has long been an issue for children and young people from marginalised groups, and the pandemic has highlighted how much of a barrier to participation it is. That needs to be addressed in order to allow children and young people from these groups to participate fully in the consultation on, and the shaping of, the bill. Digital inequality is a particularly prevalent problem among children and young people living in the Gypsy Traveller community.

We have some issues that might be relevant to another question about how there will be scrutiny of the media's representation of marginalised groups of children and young people, particularly young Gypsy Travellers. That is one of the key drivers of the inequality that they face.

The Convener: I will bring in Susie Fitton on the question of guidance.

Susie Fitton: I will quickly reflect on the current context. During lockdown, many of the services that disabled people rely on to support their daily living—such as social care support, physiotherapy, occupational therapy, speech and language therapy, pain management provision, child and adolescent mental health support and additional support for learning when in school—have been reduced or stopped because of lockdown or tiered restrictions. We conducted research with 800 disabled people and parents and carers of disabled children across Scotland, and we found that, in many cases, social care has been completely reduced or removed, sometimes

overnight and without warning. That has been particularly extreme for children with complex support needs, or when service closure has meant that a disabled child or young person, who was previously in residential care or supported accommodation, has had to return to living full time in the family home.

I am talking about that in the context of guidance for local authorities and other public bodies because, at the moment, despite positive commitments from the Scottish Government on taking a child rights approach to the pandemic, rights are at risk. We need to have guidance around UNCRC implementation that reiterates the connections and interrelationship between the range of rights that disabled children have. They have rights not just under the UNCRC but under the United Nations Convention on the Rights of Persons with Disabilities. Even before—we hope—we incorporate the UNCRPD, we need guidance that looks at the broad range of disabled people's rights.

Public bodies need to have training and there needs to be a programme of awareness raising about disabled children's rights. We need to make sure that work with disabled children is conducted in a way that is accessible to them and that information about rights is accessible, because disabled children cannot exercise their rights if they do not know about them.

I echo Oonagh Brown's point that public bodies need support to work with disabled children with profound and complex learning disability. There needs to be guidance around working with children who lack capacity to understand their rights, particularly when breaches of their rights are the result of inaction, neglect or abuse by the range of professionals who support them, because those situations are exceptionally challenging to deal with.

In short, I would like to see a suite of guidance for public authorities that allows them to work in a way that respects disabled children's rights.

Afrika Priestley: On supporting good guidance in relation to young black people and young people of colour, for the bill to reach its fullest potential, we need meaningful and genuine participation of young black people and young people of colour at the heart of decision making, before decisions have been made that affect their future. Any body that provides a service to young people and children must ensure that there is consultation with groups of young people in safe spaces.

The ambassadors' main feedback on that issue was that education is key and that there needs to be an emphasis on providing more resources within education to enable children and young people to access their rights. Within education, we can ensure that antiracism awareness and fundamental knowledge of cultural backgrounds—not only of theirs but of others—can be instilled. That focus needs to be implemented on a national level, not just for children and young people but for those who work with them and surround them. We need to ensure that parents and families also have access to those resources, so that they can support their children in knowing and accessing their rights. That is part of empowering children to have those difficult conversations from a young age, but it is also part of protecting them and instilling in them the knowledge of their own rights.

To ensure that children's rights are respected by the Government, schools, hospitals, the police and so on, as I said before, we must take action to dismantle the systemic racism and bias in those institutions that withholds so many of those rights. An awareness and a rich understanding of young people's intersectional characteristics are required to truly respect them. Our institutions need black and POC consultation and training to broaden the reach of the facilities that they use to involve young people and make sure that young people who are often less heard have a voice.

10:45

Alex Cole-Hamilton: I will ask the same questions that I asked the first panel. The UNCRC is a living document that is added to every year with the general comments, concluding observations and optional protocols of UN rapporteurs. Do you think that section 4 on the interpretation of the UNCRC requirements should be expanded to take account of those living aspects—the general comments and concluding observations—or any other opinions or international human rights treaties? Could there be unintended consequences if the bill were amended in that way?

Oonagh Brown: In a nutshell, we agree with that. To give slightly more detail, we would like an amendment to be made to the interpretation of the UNCRC requirement in part 1 for the court to consider general comments from across all UN treaties—in particular the UNCRPD—and comparative case law, other treaty body jurisprudence and relevant reports from general discussions.

We would also welcome a similar amendment being made to part 3 on the children's rights scheme for the Scottish ministers to consider the broader general comments. For us, the Committee on the Rights of Persons with Disabilities would be of particular importance in that respect. That is critical for a number of reasons. General comments are recognised as authoritative guidance and have been by the Supreme Court on

several occasions. That would ensure that children and young people with learning disabilities, alongside those with other protected characteristics, see themselves in the bill; without that, a child or young person with a learning disability may not recognise the bill as relating to them or as being helpful to them in realising their human rights.

That would help to ensure that in relation to the various rights violations that are faced by children and young people with learning disabilities in Scotland—this goes back to Susie Fitton's point—they are considered not only as UNCRC rights holders but as rights holders of the UNCRPD. Ensuring that the general comments are covered by the bill and that there is a duty to consider them would help to future proof the bill if there was a move to incorporate the UNCRPD.

Beth Cadger: Keeping the bill live will allow for any developments that happen at the international level and will keep children and young people's rights at the forefront of all future developments in decision making and policy in practice. As has been said, that would help to future proof any future legislation that may not be compatible with the UNCRC.

Susie Fitton: I reiterate what Oonagh Brown said. We agree with the SCLD that, currently, the bill provides that the courts may consider certain material when interpreting the UNCRC requirements. Although that direction is welcome, like many other contributors today, we believe that that misses the rich and valuable guidance that is provided in other UN committee documents, such as general comments, concluding observations, opinions made in relation to the third optional protocol and reports resulting from days of general discussion.

We believe that those documents serve an important role for disabled people, particularly disabled children, in clarifying the content of UNCRC rights, particularly in relation to articles 2 and 23, which directly relate to disabled children. They outline potential violations and offer advice on how best to comply with UNCRC obligations. However, we also believe that direct reference should be made to the UNCRPD. We encourage the committee to consider broadening section 4 to provide for the courts to be encouraged to take account of those critical sources and take the widest approach possible to ensuring that disabled children's rights are upheld.

The Convener: Afrika Priestley, did you have something to add?

It seems that we have lost our connection to Afrika. We can pick up with her again when we manage to reconnect.

Alex Cole-Hamilton: I would like to ask about commencement. We are still waiting for the previous children's rights bill that Parliament passed to be implemented, because it did not have a commencement date. Should this bill have a defined start date? If so, when should it be?

Oonagh Brown: I am not aware of the point—I know that the earlier panel discussed it—but we would support speedy commencement of the bill, as we do not believe that the rights of children and young people with learning disabilities can wait. That is clearly illustrated in the evidence that we presented on the higher rates of mortality for children and young people with learning disabilities. We would therefore support the bill being commenced as soon as possible and up to six months after being passed.

Beth Cadger: Just to echo what other people—[*Inaudible*.]

The Convener: I am sorry, Beth. Can I ask you to repeat that? We did not quite catch it.

Beth Cadger: I am sorry. Article 12 in Scotland would support commencement of the bill as soon as is humanly possible. We do not think that there should be any delay to that happening, particularly given certain current circumstances.

Susie Fitton: Given the pressing need for incorporation and all potential levers to advocate for disabled children's rights at the moment, we believe that commencement should be as immediate as possible. We understand that public authorities, public bodies and the Scottish Government are under extreme pressure at the moment, but it is even more important in this context to have commencement by the end of 2021 at the latest. We support the comments on commencement in the first evidence session and this one.

The Convener: Broadcasting are still trying to connect Afrika Priestley. Alex Cole-Hamilton, are you content for me to move on to the next questions?

Alex Cole-Hamilton *indicated agreement.*

Mary Fee: Good morning. I would like to ask the same two questions that I asked the first panel. I will roll them into one, because I am conscious of time.

The first question is about the duties of a public authority. The Government's focus in the bill is on a duty not to act incompatibly with the UNCRC requirements—it is not taking a dual duties approach. Is that something that the panel agrees with?

My second question is on the definition of a public authority. Is the panel content with the

definition that is set out in section 6, or would you like that definition to be changed?

Oonagh Brown: I will keep my answer to the question brief, because it was well covered in the earlier evidence session.

In our initial consultation response, we supported the compatibility duty alongside the addition of a due regard duty. We thought that that would best ensure the reactive and proactive measures in the bill. We also said that we believed that article 23, regarding disabled children,

"should be used as a framework for effective policy and decision making, rather than only as the basis for taking legal action"

and that

"this would help ensure that the needs of children and young people with learning ... disabilities are considered at early stages in the decision making process, reducing the risk of rights violations",

which we know that they experience frequently.

In saying that, as this is an on-going process, it is important to say that we echo Juliet Harris's points about the other options for ways in which a dual-duties approach can be achieved—for example, through the children's rights scheme and public bodies' reporting duties. It is also important that that approach is achieved by ensuring that children and young people with learning disabilities are visible in the bill and through obligations regarding disaggregated data on disability.

The Convener: I will bring in Beth Cadger on the duties on public authorities.

Beth Cadger: I am having trouble hearing.

The Convener: Mary Fee's question was about the definition of a public authority as it is set out in section 6 of the bill. Do you think that that needs to be expanded?

Beth Cadger: We think that it is important to include all organisations, groups and services within that definition to ensure that all children and young people receive the same protections across the board and equal provision.

If that does not happen, it could lead to patchy provision from those who work with children and young people. We need to ensure that their rights are built into all practice, decision making and delivery.

Susie Fitton: Perhaps a due regard duty would improve the bill. We would be interested to find out more about that and, specifically, how it relates to the rights of disabled children. We would like to know what a due regard duty would mean for disabled children and young people who are trying to exercise their rights and whether it is significant enough to advocate.

We agree that additions to the children's scheme might serve the same or a similar purpose. In particular, there is a need for a public body reporting duty that makes reference to the need to report on how disabled children's rights are being upheld.

The issue of disaggregated data has been raised before, and we agree that public bodies need to break down how their actions impact on disabled children and young people.

We would like to see disabled children and young people participating and being involved in the production of the children's scheme.

The definition of public authorities is very important for disabled children. They are impacted by the decisions and actions of private housing providers, residential care providers, private childcare providers, private foster carers and public schools. For example, their rights can be directly breached by poor or negligent practice in relation to seclusion and restraint in private childcare provision. There is very patchy provision of adaptations in private rented housing, and there is poor physical access in schools and—in certain cases—poor provision of additional support for learning in childcare settings that are provided by private companies.

We are keen to seek assurances that such organisations will be included within the scope of the duty and that private bodies will not escape liability, should disabled children's rights be breached. The UN committee recognises the role that private actors play in the delivery of children's services, including education, transport, health and alternative care. We would like clarity on the definition of public authorities and assurances that the bill will ensure that disabled children's rights are protected in those settings.

11:00

Gillian Martin: Good morning, everyone. If the witnesses watched the session with the previous panel, they will know that I mentioned the issue of accessibility to the judicial system and courts, given that there will not be a new judicial body. Are courts and tribunals accessible to children as things stand? If not, what changes should be made ahead of the incorporation of the UNCRC?

Oonagh Brown: The most important thing to recognise is that courts are not accessible in relation to the needs of many children and young people—and adults—with disabilities. In our initial response, we highlighted evidence around the challenges that children and young people can face in accessing justice. For example, there is a lack of accessible information on taking legal cases, there are attitudinal barriers to do with their ability to take such cases and there is a lack of

specialist awareness of learning disability among legal professionals and within the courts.

In recognising that, we think that there is a role for those in the learning disability sector to be able to link children and young people with learning disabilities to legal professionals to take cases. That is a gap in the provision. As others did earlier, we would highlight the importance of advocacy and relationship-based practice within that, as well as the need for training for courts on disabled people's rights, particularly the needs and aspirations of children and young people with learning disabilities.

The Convener: Beth, Gillian Martin's question was about the accessibility of existing courts and tribunals to children and what changes might be required to make them more accessible, whether through the bill or more generally.

Beth Cadger: We endorse the preventative approach to any rights breaches via the children's rights scheme, impact assessments and reporting duties on public authorities. Incorporation will make for positive change in the perception of children and young people as rights bearers, and it will create a safety net around their rights and inform decision making and policy.

We hope that implementing the UNCRC will lead to less risk of rights being breached in the first place. However, Article 12 in Scotland welcomes the provisions in the bill that enable the courts to assess the compatibility of legislation with the UNCRC, and children and young people, and those who represent them, to challenge any breaches. Where it is not possible or appropriate for children and young people to raise complaints, we welcome the powers that are granted to the Children and Young People's Commissioner Scotland to act on their behalf.

Susie Fitton: I support the points that were made by Oonagh Brown. There are long-standing barriers to accessing justice for disabled children and young people, particularly in accessing the court system, which include understanding how to navigate the system, knowledge of the law and financial costs. The issue of costs is a particular issue for disabled young children who take cases, because they sometimes have to provide a fairly costly report on the nature of their disability, which can be a legal hurdle even when legal aid is provided. It is important to understand that many disabled children and young people and their families live in poverty. That is the context in which many children and young people will contemplate entering the court system.

I echo the points that were made in the first session about the need for parallel processes to ensure that disabled children's rights are enforced without having to go to court. Going to court should be looked on as a last resort, not as a primary mechanism for giving effect to UNCRC rights.

We would like there to be a system of child-friendly and accessible complaints procedures. That point has already been made, but I reiterate it. At the moment, the bill does not provide for that. The UN committee has emphasised the importance of the availability of independent complaints procedures and child-friendly information, as well as access to independent advocacy, which, again, has been highlighted by many contributors. Inclusion Scotland agrees with that. The need for independent advocacy is key. We urge the committee to consider how provisions on that can be strengthened in the bill—for example, through an amendment that adds a requirement on the Scottish ministers to set out a process for child-friendly and accessible complaints in the children's rights scheme.

The Convener: I understand that Afrika Priestley has been reconnected, so I will put Gillian Martin's last question to her, and we will catch up by correspondence on those that she missed.

The question was about part 2 of the bill, and the vision that existing courts and tribunals, rather than a new judicial body, would authorise the judicial remedies that are proposed in the bill. Are those existing courts and tribunals accessible to children and young people? If not, what changes would you suggest? Should those changes be made in the bill or more generally?

Afrika Priestley: Hello?

The Convener: Hi. Did you catch the question?

Afrika Priestley: Just barely, as the connection is so bad. I am so sorry for the inconvenience. I think that there must be a real issue with—[*Inaudible*.]

The Convener: It is not at all inconvenient to us. I wonder whether it might be more helpful for us to catch up by correspondence. I appreciate the pressure.

Afrika Priestley: I think that that would be more helpful. Coming in and out and just hearing bits and bobs is quite disorienting. I would love to hear everyone in full, and to be able to make out the questions, so if it would be possible to do things by correspondence, I would really appreciate that.

The Convener: It absolutely is possible to do that. We had a very good session with Intercultural Youth Scotland ambassadors, from which we got a wealth of information. However, the committee will follow up on our specific questions, so that you have an opportunity to answer them fully. I appreciate how stressful it is to pop in and out of

the discussion on the wonderful technological platform that we are using.

Thank you for persevering. We will be in touch in a different way.

Afrika Priestley: Thank you for having me. I look forward to speaking to you later. Goodbye.

Gillian Martin: We have just discussed the inaccessibility of courts. Earlier, I asked our other witnesses about child-friendly complaints processes in other public authorities, so I think that I know the answer to this, because certainly there was quite comprehensive agreement among them. Do you think that such processes exist? Are they child friendly and, if not, what should be done to make them child friendly?

Beth Cadger: It is important that children and young people are able to rely on the UNCRC to protect their rights in the legal system. However, it should be ensured that any complaints mechanism is child friendly, independent, accessible and free of jargon. Help, support and advocacy must be in place to help children and young people to assert their rights. Obviously, early intervention will be useful in order to stop any issues before they really start. It is important that children and young people know how to access such support, so a child-friendly model should be put in place. They also should be empowered to self-advocate where that is appropriate. We would look to the international community for guidance on that.

Oonagh Brown: Probably unsurprisingly, we echo comments made by members of the earlier panel, in that we are not aware of particularly child-friendly complaints mechanisms for children and young people with learning disabilities. It is important to acknowledge that we often hear from the families of children with such disabilities that, if they want to get anything done or to have their child's rights met, a parent has to be both willing to fight for them and capable of doing so.

In considering child-friendly complaints mechanisms, we must ask how we can level the playing field so that all children and young people have the same access. On how such processes might be developed, I suggest that we learn from the wider learning disabilities sector. Over the years, those who work with people with learning disabilities have developed good, effective ways of achieving accessible communication and of including and involving people. There is the potential to learn from that sector's existing work.

I highlight the need to support such an approach through providing human rights education for children and young people with learning disabilities and their families. One of the greatest barriers to accessing complaints is people not knowing that they have rights or entitlements in the first place because, for so long, they have been put down or put aside. Addressing that aspect will be of critical importance.

The Convener: Susie Fitton, you mentioned child-friendly complaints mechanisms in your previous answer. Have you anything further to add?

Susie Fitton: I support what Oonagh Brown has just said. We are not aware of a great body of what could be called best practice on child-friendly complaints that is accessible and suitable for disabled children, particularly those with learning disabilities. We echo the points about the need to involve the wider sector—particularly disabled people's organisations, which have a body of experience drawn from years of engaging with disabled children and young people, and providing information in accessible and child-friendly ways. If we are committed to providing human rights education on the back of the incorporation bill, there is an opportunity here. A public education process would go hand in hand with parallel processes and the need to set up complaints mechanisms.

At the moment, our pressing concerns for the rights of disabled children and young people are on matters such as social care being removed. There are very few processes in place whereby disabled children can make effective complaints about such issues. There are no child-friendly mechanisms for them to do anything about problems that currently affect their everyday lives dramatically.

The Convener: Thank you. If Gillian Martin is content with those answers, we will move on.

Alison Harris: Good morning. My question is about court proceedings. Section 10 specifically empowers the Children and Young People's Commissioner Scotland to raise court proceedings in respect of the duty on public authorities. More generally, section 7 says that an individual or organisation can raise court proceedings in respect of that duty. In practice, litigants in judicial review proceedings are usually required to demonstrate sufficient interest. Are you happy with the bill's overall approach, including how the Government's policy intention is given effect to in the wording of sections 10 and 7?

Oonagh Brown: Again echoing points that were made in the earlier session, we welcome the commissioner's role. Going back to Carly Elliott's earlier point about cases being brought by other organisations with sufficient interest, there is a need to build capacity for learning disability organisations—and, more widely, disabled people's organisations, as Susie Fitton mentioned—to bring such cases where appropriate. To an extent, the learning disability

sector and the disability sector more widely have been left behind on how to achieve that. There is a need for upskilling in the sector.

11:15

That goes back to the earlier point about where intermediary organisations might be needed to link people into legal processes, because there is quite a big jump from someone having their rights breached and dealing with that in day-to-day life to taking a case. A process might be needed to achieve that. The changes that are needed are about capacity building, the ability to bring cases and the ability to educate and inform children and young people about their rights. Those suggestions are in line with UNCRC general comment 5, which states:

"Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available".

Beth Cadger: I echo what has been said. We welcome the fact that it will be possible for cases to be brought by the Children and Young People's Commissioner, and we support the exclusion of the victim test. Third sector organisations are very well placed to work with and for marginalised children and young people to provide advocacy. Obviously, some sort of training would be needed to ensure that that was done in accordance with best practice.

Susie Fitton: On section 10, like everyone else, we welcome the provisions that allow the involvement of the children's commissioner. That lever has been extremely significant for disabled children and young people in the past, particularly with the commissioner's investigation into matters such as seclusion and restraint, which are long-standing issues for disabled children and young people, and particularly for children with challenging behaviour, additional support needs and complex needs. Although it was known about for a long time and individuals and parents had been raising those issues, there had not been an effective remedy or route for redress. Therefore, the involvement of the commissioner and the investigation into seclusion and restraint were a powerful lever. We support the bill's provisions on the involvement of the children's commissioner.

On section 7, on the matter of sufficient interest, Inclusion Scotland is actively seeking to support disabled people, including disabled children, to access their rights, so, in partnership with JustRight Scotland, we formed the Scottish Just Law Centre. The work of the centre aims to tackle discrimination in policy and practice via strategic litigation, which is an important avenue to protect and fulfil disabled children's rights and, in that context, we recommend that the committee seeks clarity on the provisions in the bill that relate to standing, to ensure that the bill definitely achieves its policy objective of removing barriers to disabled children's access to justice. We welcome the removal of the victim test, but we seek clarity on whether that will enable organisations, such as JustRight Scotland, Clan Childlaw and others that support parents, carers and individual disabled children, to bring cases and allow that linkage in cases in which they are deemed to have sufficient interest.

Alison Harris: On the time limits for bringing court proceedings, the committee has received written submissions offering mixed views on whether it is correct to exclude the period when a young person is under 18 when calculating the time limits for raising court proceedings under section 7. Do witnesses want to comment on that issue or the approach to time limits more generally, under section 7?

Oonagh Brown: I will keep my answer brief, because it was well covered in the first session. It is important to say that we support Juliet Harris's earlier point about the evolving capacity of children and young people, particularly those with learning disabilities, and extending the time limit so that people can bring cases at a later date.

We also echo those points about children and young people or their families not feeling able to raise issues, because they feel that it might have an impact on the care and support that they receive, which, for children and young people with learning disabilities, is very intertwined in their day-to-day lives. We welcome and support all those points from that earlier session.

Beth Cadger: We also support that. Vulnerable children and young people and their families might not have the confidence and capacity to bring cases as they happen, so extending the time limit is crucial to ensure accessibility for all. We believe that they should be able to bring cases when they feel ready, not just as they happen.

Susie Fitton: We agree with previous submissions and contributions in the first evidence session about timeframes for starting proceedings. Disabled children and young people are often exhausted by the systems that enable them to exercise their rights, because they are inaccessible, occasionally underfunded, disconnected from each other and difficult to navigate.

We are concerned about the meaning of the term "this Act" in section 7(1)(a). If that relates to the assessment and determination of an award of support to a disabled child and the assessment takes place before section 7 comes into force, we are concerned that disabled children and young

people will not be able to bring proceedings. If it would be helpful, I can come back to the committee with a more detailed submission on that at a future date.

The Convener: Thank you, Susie. That would be helpful. The Deputy First Minister will be appearing before the committee next week, so if it is possible to have the submission before then, that would assist the committee.

Alexander Stewart: I will go back to the questions that I asked of the first panel of witnesses, which were with reference to the children's rights scheme. As we indicated, there are concerns that it is not strong enough and that some of the language needs to be much stronger about what it is trying to achieve. What are the witnesses' views on that? Is there anything that should be added to ensure that the scheme becomes stronger?

Oonagh Brown: The SCLD would welcome a number of things to strengthen the scheme. I echo the earlier points around the strengthening of language, which has been relatively well covered. One of the main things that we want to see in the scheme, as Juliet Harris raised earlier, was human rights education for disabled children and young people and, in particular, children and young people with learning disabilities. As we have said in earlier sessions, young people with learning disabilities often do not know about their human rights and how to enact them.

With regard to strengthening the scheme, it would also be important to make sure that we have included the data disaggregation for children and young people with learning disabilities. We believe that, without that, it will be challenging to understand whether children and young people with learning disabilities are having their UNCRC rights fulfilled, which would further contribute to the invisibility of people with learning disabilities in published statistics. We therefore want that aspect to be strengthened in part 3 with regard to the children's scheme and public authorities. It should include protected characteristics that are disaggregated, for example disability, which includes learning disability and physical impairment. It should provide details on the number of children and young people with learning disabilities who receive human rights education and have access to advocacy and child-friendly complaints and processes. That is in line with article 31 of the UNCRPD and should therefore be considered as a priority issue to ensure compliance with that treaty.

Beth Cadger: We were happy to see a strong stance on young people's participation.

Introducing a children's rights scheme will ensure that there is monitoring and evaluation of progress and compliance by all stakeholders. It is important that the monitoring and evaluation is transparent; annual reporting will make it more accessible. It will also enable dialogue with young people about what works and what should be changed, which not only will help to embed children and young people's rights into the decision-making process, but will influence the process and ensure the participation and engagement of children and young people. There are lots of relevant third sector organisations that are well placed to amplify the voices of the young people with whom they work.

We echo what has been said on changes to the language around the scheme.

We agree with the point, which has already been raised, that it is important to ensure that all children and young people have access to rights-based education. As an example, I note that, during our most recent reporting process on our work with young Gypsy Travellers, none of them had heard of the UNCRC prior to the involvement of Article 12 in Scotland. It is vital that all marginalised children and young people, particularly groups such as Gypsy Travellers that experience difficulties in gaining access to information and in participation, are meaningfully engaged in decision-making processes.

Susie Fitton: I echo points that were made during the first session this morning about language in the bill on the children's rights scheme. We welcome the inclusion of such a scheme, but we note that the duty to prepare the scheme under section 11(3) does not set requirements for its contents—it does not say what should be in it. Instead, section 11(3) provides that the scheme "may ... include arrangements" to ensure children's participation in decision making, awareness raising and rights-based budgeting. The language should be changed from "may" to "shall", to ensure that the language in the bill on children's participation—including, obviously, disabled children's participation—is as clear as it can be.

We welcome the duty in section 12 to consult children and young people, the Children and Young People's Commissioner and other stakeholders. We are adamant that disabled children and young people must be properly involved in the development and review of the scheme. To ensure that, we urge the committee to consider an amendment to make all the scheme apply, as Oonagh Brown said, to children with protected characteristics and those in vulnerable situations. That point was clearly made by Together during the earlier evidence session this morning, and we support it.

Fulton MacGregor: What are the witnesses' views on child rights and wellbeing impact

assessments in general? More specifically, what are your views on the legal duty on the Scottish ministers to prepare such assessments for legislation and for

"decisions of a strategic nature"?

Should the ministers have discretion in that regard?

Oonagh Brown: Again, I support points that were made earlier. The child rights and wellbeing impact assessments are important and valuable tools, and we support ministers having a duty to complete them as part of the children's rights scheme.

As we stated in our response, SCLD also welcomes the commitment to extend the conducting of child rights and wellbeing impact assessments to all public authorities. Over time, we have become increasingly concerned with the quality and low uptake of equality and rights-based assessments across the board. In practice, we have seen that leading to the negative lived experience of people with learning disabilities, whose needs are often not fully addressed in those processes. When we look at the experience of children and young people with learning disabilities being restrained and excluded in schools—we heard recently about a young person with complex needs who was restrained 30 times between the ages of five and 10 in several schools—we believe that those processes are of value and are needed.

11:30

However, we recognise that that might be a challenge, and we would therefore accept Juliet Harris's suggestion that public authorities illustrate in their reporting how they have considered UNCRC rights and their implications in their planning. We would also ask for assurances that public authorities will ensure that their work is UNCRC compliant and that that will be promoted across public authorities through training.

Beth Cadger: We welcome the provisions; indeed, it is crucial that there is a duty to carry out an impact assessment on all decisions that impact on children and young people. We consider that, if the assessments are to be meaningful, they should not become a tick-box measure. They should also be published and promoted in a child-friendly format that will ensure accessibility to all the children and young people that they seek to represent.

Susie Fitton: We broadly support the provisions on the child rights and wellbeing impact assessments. We are beginning to have a degree of scepticism, which is probably related to what Oonagh Brown said about the quality and low uptake of equality impact assessments. The current context for disabled children is really important in that regard. Their rights are at risk, particularly because social care has been removed from them. We know that the Scottish Government is intent on having a child rights-based approach to the pandemic, and I suspect that public authorities are carrying out equality impact assessments of their responses. However, we are finding that, even if those things are in place, disabled children are still experiencing significant difficulties, with services being removed from them.

In that context, although we support the necessity to undertake child rights and wellbeing impact assessments, we have a concern that that alone will not impact on practice and policy in such a way that will ensure disabled children's rights.

The Convener: Fulton, do you have further questions?

Fulton MacGregor: I have a second question, but it is more of a summing up one. I am happy to leave it to the end—if, indeed, you think that such a question would be appropriate to ask, convener, given that the answers have been really full.

Alexander Stewart: We discussed with the first panel the potential resource implications of the bill and how organisations are managing that—we heard about all the work that has already been done in that regard. Do you foresee a requirement for additional resources, given the impact of the legislation on your organisations, other third sector groups and public authorities?

Oonagh Brown: We would be keen to highlight the need for resources to be ring fenced for children and young people, protected characteristics and vulnerable situations, particularly around human rights-based education.

If we take a universalism-based approach to how we achieve those things, that sometimes does not work for children and young people with learning disabilities, and they end up being left behind. We therefore want to highlight the need for ring-fenced resources for third sector organisations and for those working with children and young people with learning disabilities to help them ensure that their rights can be realised and linked into the legal system where that is appropriate.

Beth Cadger: It is important to ensure the funding for organisations that are already working with children and young people from marginalised communities. A lot of us are ready and waiting. We are already working with the UNCRC, and we are waiting to progress that work alongside the bill.

A rights-based approach could be seen as a preventive one. In the long term, if the bill is

properly implemented, it has the capacity to stop a lot of issues before they become an issue, which would be more cost-effective in the long term. When it comes to the future of young people and their rights, I know that finances are a concern, but I think that they should be at the back of the decision making surrounding their—[*Inaudible*.]

The Convener: Thank you, Beth. I ask Susie Fitton to address the question on resources, please.

Susie Fitton: We have found, particularly in our work to make disabled young children aware of their rights under the UNCRPD, that many disabled people, including disabled parents of children and disabled parents of disabled children, are completely unaware of their rights. We would encourage the committee to consider adequate resourcing to provide public information on the convention rights that is accessible and meaningful for disabled children and their families.

We would like the committee to consider recommending that sections 11(3) and 13(3), on the children's rights scheme be amended, so that ministers are required to set out and report annually on what they are doing to ensure independent advocacy for services for disabled children, as that is a crucial part of any public information campaign and a crucial part of the support that is required to enable disabled children to access their rights. That will take resourcing.

When the work was being done to set up the new social security system for the devolved benefits in Scotland, we noted that a right to independent advocacy for disabled people claiming new devolved disability benefits was recognised by the Scottish Government as essential to the running of that system, so as to ensure dignity, control and fairness for disabled people. A similar approach should be taken for independent advocacy alongside the bill. That will have resource implications.

For Inclusion Scotland, the resource implications will concern the cost of engaging disabled children and young people in the process, given the need to use resources to provide information in accessible formats about rights and rights entitlement. Additional resourcing will therefore be needed in order to involve the organisations that need to be involved in a public education campaign.

The Convener: Thank you for that, Susie.

That draws our second evidence session to a close. We have had a lot of good answers and information on areas that could perhaps be strengthened in the bill and on what more we could do to advance the rights of children and young people in Scotland.

Thank you very much for your evidence, Oonagh Brown, Beth Cadger, Susie Fitton and Afrika Priestley—and for your forbearance as we work our way round the technology. We really appreciate your time and your expertise. Any follow-up scrutiny issues will be dealt with by correspondence, which will be published on our website.

That concludes the public part of the meeting. The next meeting of the committee will be on Thursday 3 December, when we will take evidence on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill from the Deputy First Minister and Cabinet Secretary for Education and Skills.

11:40

Meeting continued in private until 11:49.

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