

EDUCATION COMMITTEE

Wednesday 12 November 2003
(Morning)

Session 2

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EDUCATION COMMITTEE

9th Meeting 2003, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

*Lord James Douglas-Hamilton (Lothians) (Con)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Rhona Brankin (Midlothian) (Lab)

*Ms Rosemary Byrne (South of Scotland) (SSP)

*Fiona Hyslop (Lothians) (SNP)

*Mr Adam Ingram (South of Scotland) (SNP)

Mr Kenneth Macintosh (Eastwood) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Mr Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Bill Aitken (Glasgow) (Con)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Councillor the Rev Ewan Aitken (Convention of Scottish Local Authorities)

Susan Aitken (NHS Confederation in Scotland)

Graham Atherton (Convention of Scottish Local Authorities)

David Eaglesham (Scottish Secondary Teachers' Association)

George MacBride (Educational Institute of Scotland)

Joe Di Paola (Unison)

Hilary Robertson (NHS Confederation in Scotland)

Martin Vallely (Convention of Scottish Local Authorities)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 12 November 2003

(Morning)

[THE CONVENER *opened the meeting at 09:50*]

Education (Additional Support for Learning) (Scotland) Bill: Stage 1

The Convener (Robert Brown): Good morning and welcome to the ninth meeting of the Education Committee. I ask members to ensure that their mobile phones are switched off to ensure that we can proceed without interruption.

This morning we are taking further evidence on the Education (Additional Support for Learning) (Scotland) Bill. We will hear evidence from several panels. We will start by taking evidence from a panel of three gentlemen from the Convention of Scottish Local Authorities. They are Councillor the Rev Aitken, Mr Atherton and Mr Vallely. I invite you to make an opening statement before we move to questions from committee members.

Councillor the Rev Ewan Aitken (Convention of Scottish Local Authorities): I begin by saying that COSLA welcomes the general thrust of the bill and in particular the clear evidence that the bill has been changed in several ways through the initial consultation period. That has been enormously constructive.

The bill's attempt to facilitate the practicalities of a presumption of mainstreaming without there being an unnecessary loss of choice for parents and pupils is taking us in a positive direction that COSLA—as the deliverer of education—very much wants to be heading in.

COSLA takes the view that in some senses the bill is in opportunity that, if not lost, has not been fully grasped. We would have preferred the bill to take forward some of the principles that underpin the Standards in Scotland's Schools etc Act 2000 along with the Executive's report "For Scotland's children: Better integrated children's services". Those principles include the promotion of social inclusion and adopting a holistic approach to child development support. They should have been taken forward along with related developments such as the integration of children's services, the development of the wider framework of interagency co-operation in community planning and integrated community schooling—that

approach was reiterated by the Minister for Education and Young People at last week's conference in Edinburgh.

The focus should be on making schools responsive to the support needs of all their pupils through appropriate organisational staff development, curricular flexibility, personal learning plans, parental involvement and interagency co-operation. That means that the interventionist approach should be less intrusive and less necessary.

We believe that there is scope for building on the lessons of the joint future framework and for working towards a fully integrated approach to provision, including single assessments.

The bill is in danger of creating a three-tier system of children and young people: those without additional support needs; those with an ASN but not a co-ordinated support plan; and those with a co-ordinated support plan. The bill could perpetuate the existing system under which individuals with particular needs can be seen as distinctively different from the rest of the school population and youngsters could become labelled as they are processed under the proposed system.

We want today to highlight a number of issues that we believe need to be addressed. Some of them are fundamental if we are going to be free to head in the direction that I identified.

Our submission—a revised submission will come to the committee—offers detailed comment on the bill and on the financial memorandum. Although we do not want to overplay this, it is the tension between the two documents that lies at the heart of much of our concern. It is not so much that we think that the sums are wrong; it is more that we believe that we do not yet have the detailed information from the code of practice and the legislative guidance on which to make the calculations that will give us a real understanding of what the costs will be and how much of the cost can be dealt with through reconfiguring and how much will need to be spent in addition. There are huge resource implications, particularly in the transition, and we are not convinced that they have been adequately taken into account.

We are concerned about the demands that the bill will place on teachers and other school staff, especially in the context of the national teachers agreement. Who exactly will manage each of the plans? We are also concerned about the contribution of agencies other than the local education authority—health authorities, for example—and we are especially concerned about the apparent ability of other agencies to opt out. Should identified agencies not have a statutory duty too? Clarity as to the exact meaning of

“additional needs” and “different needs” is required. The bill quotes the Standards in Scotland’s Schools etc Act 2000 on developing pupils’ fullest potential. That is a great aspiration, but it allows for a breadth of interpretation of “additional” and “different”.

We are also concerned about the potential increase in the number of placing requests to independent special schools and about the compatibility of grounds for refusal with the need to consider the child’s best interests—taking account of social needs, home residence and health services as well as educational needs. There is scope for confusion over the appropriateness of local authority involvement with parents’ private arrangements at independent schools. We are also concerned about the mediation and dispute resolution systems and the scope of appeals tribunals. In the process, the tribunals come before mediation. That suggests a move towards a more adversarial system.

We are concerned about monitoring arrangements for the implementation of legislation and for the way in which information and advice are given to parents, children and young people. We want such information and advice to be given, but that will have resource implications. Who will act for looked-after children when the parent and the provider are in conflict?

Taking all those concerns together, we are concerned about the lead-in time for the implementation of the legislation. Although we acknowledge that, as the bill suggests, the need for CSPs will diminish over time as schools in the main stream develop the capacity to deliver education to a cohort with a wide range of needs—thus putting the presumption of mainstreaming into practice—and although we see the bill as a clear signpost on the journey, we know that we are a long way from achieving the aspiration. Because of the design of the bill, schools will have to have children and young people on CSPs so that they can develop the capacity no longer to need CSPs. We see a possible tension there. The proportion of the pupil population on CSPs in the early years will be much higher than the 3 per cent that the bill suggests. That will mean that many more resources will be required. We reckon that the increase could be as much as 15 per cent. The problem is exacerbated by the change in section 2(1)(c) where, during redrafting, an “and” between two subparagraphs has been changed to an “or”. That affects the criteria for capturing any child who requires the support of any agencies—including social work departments as well as external agencies—whether or not that support would normally be available or readily accessed. As we understand it, that means that many more children will have a CSP.

Those and several other issues are outlined in our submission. I hope that members have the most recent version. Although the submission offers criticism, I reiterate that that criticism is driven by the desire to make the bill successful in achieving its high aspirations. It is not driven by a desire to knock the bill down.

The Convener: In general, you support the bill, but your submission knocks a good deal of the approach to it. I hope that that observation is not unfair. Do you accept that there are time-scale issues? The aspiration to have all children dealt with according to their individual requirements is laudable and one that, I am sure, the committee shares. However, achieving the aspiration will take some time. Resources are also an issue—and COSLA is usually careful to bring such issues to our attention—when we consider the broader approach that you suggest. Should the bill be amended to be broader and more integrated?

Councillor the Rev Aitken: We understand that the bill is part of an incremental approach towards the aspiration and we accept that such an approach is valid. However, we do not want to lose sight of the wider aspiration. The new measures need to be set in the context of other aspirations in education to allow an individualised approach to all children. We are not entirely convinced that that has happened yet. We would like a way to be found of gathering things together—through personal learning plans and individualised educational programmes and through things such as integrated community schools.

The Convener: How would that be done in the bill? Is this a monitoring issue? Is a statement of an action plan required? What do you suggest?

10:00

Martin Valley (Convention of Scottish Local Authorities): What we are suggesting is that there are a number of points of detail in the bill that, in our view, are counter to the general thrust, which is to enable schools to become more inclusive and to work in a more integrated way with other services. That must be done in such a way that we get it right first time for children, without recourse to additional documentation or dispute resolution. We recognise that the provision of co-ordinated support plans is important for children with the most complex and enduring needs. However, we feel that there should be a pragmatic test to determine whether the co-ordinated support plan is required to add benefit to the support for the child rather than to determine whether the child fulfils certain criteria that entitle him or her to a co-ordinated support plan.

If the former approach is taken, that will encourage schools, local authorities and our partners to work together in a more integrated way so that there is no necessity for a co-ordinated support plan. That way, the personal learning plan and an individualised educational programme will deliver everything that a child needs, with the provision that, if that is not the case, the co-ordinated support plan can be drawn on.

The Convener: Much will turn on the code of practice and on how it comes into play in practice.

Rhona Brankin (Midlothian) (Lab): I would like to pick up on something that you said, Mr Vallely. If I understood you correctly, you said that it is not clear who will have the lead role in the co-ordinated support plan, but my understanding is that education will have the lead role.

Councillor the Rev Aitken: What I was saying was that it was not clear who would manage and monitor the co-ordinated support plan for individual children. If that is to be done by staff in educational establishments, we need to be clear about that in the context of the national agreement and of the training issues that will emerge as a result. Not all teaching staff have had training for that, nor do they understand what is involved. I do not mean to be pejorative in any way, but I recognise the need for additional resources in that area.

Rhona Brankin: Is it not the case that similar interagency work is going on at present with the record of needs? Do you see the proposal as a huge new burden in terms of staff needs, training and experience?

Martin Vallely: It is true that there are common features in records of needs and co-ordinated support plans. However, the record of needs focuses much more clearly on the educational needs of the child in school, although reference is made to other services, and the co-ordinated support plan has a wider aspiration that the overall support for the child, in the community and the school, would be governed within the framework of one document and one plan. Our concern is that, if staff in schools are expected to take on that work, it will involve widening their sphere quite significantly. It will involve them in engaging in quite complex case-management work that has hitherto been within the domain more of social work than of education.

Rhona Brankin: I understand that there will be a lead manager. Could you elaborate on some of your concerns about the practical difficulties with interagency working? You have obviously given us one example, but do you have other concerns about how it can work in practice?

Martin Vallely: One of the significant differences that we broadly welcome is that the co-

ordinated support plan—in so far as we can ascertain this from the details we have at the moment—would engage children and young people with social, emotional and behavioural difficulties much more clearly than the record of needs does. That will involve staff in schools broadening their role quite significantly.

Where we are, quite properly, looking to improve co-ordinated working for those children, we must recognise the challenges that are implicit in that and the multiple factors that can impact on the child's attendance and attainment at school. That will often involve volatile family situations and unpredictable circumstances, and a whole range of different agencies, perhaps to do with drugs, housing, social work and health, as well as education. We do not underestimate the challenge that is involved in co-ordinating that kind of provision.

Ms Rosemary Byrne (South of Scotland) (SSP): I welcome what you said, because it is realistic. I also welcome social, emotional and behavioural difficulties coming into additional support needs. I want to ask about resources for social services and social services' ability to work with, for example, education, in particular on SEBD issues and the issues that you outlined. Will the national shortage of social workers be an issue in implementing the bill, and is that being addressed?

Martin Vallely: That is an issue. Various measures are under way to attempt to address it, but they have yet to be proven successful. Our concern is that we are in danger of shifting the locus of the problem from social work to education, without having properly analysed the situation and produced a realistic approach to address it.

Ms Byrne: I have an additional question. Should we take the agencies involved and sit down and talk about how the situation can be resolved before the bill proceeds?

Councillor the Rev Aitken: Do you mean resolved with regard to concern about the level of resources for social work?

Ms Byrne: Yes.

Councillor the Rev Aitken: That has to be taken into account in determining whether we can deliver, so that education staff do not find themselves trying to deliver on their own. Clearly, there needs to be co-ordination between education and social work in particular, and health as well, where there are some other issues.

Fiona Hyslop (Lothians) (SNP): I was interested that you said that the single assessment was essential, but that we are in danger of having a three-tiered system, which might undermine that.

It is interesting that last week we heard from the civil servants that at one point they thought about having one system, rather than having an additional CSP approach. In your submission, you referred to the importance of PLPs and IEPs, and in your verbal submission you talked about CSPs and their almost planned obsolescence in the future, as most information will be on PLPs. Are PLPs sufficiently developed and ready for implementation across Scotland to provide the support that is required to deliver the bill?

Councillor the Rev Aitken: As far as I am aware, there are pilots in every authority to develop an understanding of what PLPs will be and how they will work. We need a layered approach that takes us to PLP then IEP then CSP, if that is necessary. In everything that we are doing we are developing an understanding of what is required to develop an individualised approach to each child's strengths and challenges, but which sets that within the commonality of each school or classroom. I am not certain that PLPs are as far on as they need to be but, because of the lead-in time that we are looking for, I think that we can get there.

Fiona Hyslop: That goes back to your point about concern over the lead-in time for the bill. Would you prefer an extension, or is the time sufficient?

Councillor the Rev Aitken: We have concerns about the lead-in time.

Fiona Hyslop: What concerns?

Councillor the Rev Aitken: I would like us to examine the possibility of an extension.

Fiona Hyslop: I have a question on a separate subject. Parents in different groups are concerned about the section of the bill that states that local authorities are not required to do anything that

"is not practicable at a reasonable cost."

Their concern is that that takes power away from parents and into the hands of local authorities, which in effect could have a veto on the provision of support. What is your response to that criticism?

Martin Vallely: It is consistent with the legislation on disability discrimination. It is also consistent with the test of best value, which is enshrined in the Local Government in Scotland Act 2003 and in the Standards in Scotland's Schools etc Act 2000.

We have a duty to manage public resources effectively and responsibly, and that means that, in some instances, the response to a child's needs that is most desirable from the parents' point of view is not a proper response for a public service to deliver. The bill needs to reflect the requirement to manage that tension between individual

aspirations and the proper fulfilment of a public duty.

Fiona Hyslop: Do you acknowledge that that is the key point of contention with the bill for many groups?

Martin Vallely: I acknowledge that it is a tension that runs through the management of public services. It is proper that the bill reflects that tension.

Fiona Hyslop: Your comments on paragraphs 88 and 89 of the financial memorandum make some interesting points on placing requests. Currently, only parents of children with records of needs can make placing requests to independent special schools. The bill provides for more rights for parents to make placing requests. You think that that will put particular stress on the new system in its first few years because more parents will try it out. You also express concern about education authorities having to pick up the tab for the fees for independent special schools and call for a proportionality principle to be included in the bill. How can we effect the transfer of resources from the health service and social work to help to pay for the fees that will result from the increase in placing requests to independent special schools that you think will result from the bill?

Councillor the Rev Aitken: Part of the answer lies in a statutory duty, to which I referred earlier: where resources from other agencies have been identified as being required, a statutory duty must be imposed on those agencies too. That is not the case at the moment—the statutory duty lies with the council, which is the education authority. If the council ends up having to deliver those resources, a resource transfer from that other agency should be considered if the agency is not in a position to provide the service itself.

Fiona Hyslop: Do you think that only children with CSPs will be granted places at special schools? Is that the basis on which you make your projections?

Martin Vallely: Our concern is that the bill will extend the right to make placing requests beyond those with co-ordinated support plans. Our experience is that, in some instances, such requests are driven by the parents' desires to secure particular health benefits and services or particular social care and support arrangements for their child, but existing legislation requires that the test for such requests is principally educational. If the bill's thrust is to take a more holistic view, the provisions on considering, granting and, where necessary, appealing placing requests should properly reflect all the considerations and reflect the responsibilities of the respective agencies through a statutory requirement on the agencies to comply or through

some mechanism that would allow for resource transfer where an education authority was required to make a placement that related to health and social circumstances.

The Convener: You seem to be downgrading parental choice as a right, which is an educational theme, but the matter is also a sensitive one, in which having real choice between different provision and having real advice are important. Is choice not a significant theme that local authorities should take on board?

Councillor the Rev Aitken: I am not sure that we should seek choice in isolation from the relationship that the bill attempts to build up. It is not as if the parents are going to a supermarket and picking something off a shelf; there must be a debate, discussion and relationship to achieve an agreed end. The tensions arise where people have different views on how best to achieve that agreed end, which is why we have established the additional systems. It is not as if parents have come along and said to us, "We'd like this," and we have said, "No." Instead, when we reach a point in the conversation where a dispute arises, the mechanisms that we have highlighted seek to deal with it without the matter ending up in the sheriff court. Frankly, although that is what happens, the court is not the best place for reaching a conclusion on choice.

10:15

The Convener: So the criteria home in on a particular matter rather than on the principle that there should be a relationship in that respect.

Councillor the Rev Aitken: Yes.

Lord James Douglas-Hamilton (Lothians) (Con): I have one or two questions about duties, although I should begin by saying that I found your submission extremely helpful and think that it will be very valuable in our deliberations.

The bill introduces a duty on authorities to identify and address the additional support needs of all pupils for whom they are responsible by making adequate and efficient provision for any additional support that is required. Are you content with that new duty as it is expressed in the bill?

Martin Valley: Although we are content with the duty in principle, we question its scope. It is potentially very broad. Indeed, it could lead to very high levels of demand on a whole host of grounds that go well beyond the population captured by the record of needs or the population of children with social, emotional and behavioural difficulties. It might also extend to children who are gifted in music, drama or some other discipline and to circumstances in which parents feel that their child should have high-level individual tuition in some

very specialised aspect of the curriculum. We are concerned that the bill's terms are very broad in that respect and do not feel that full and proper consideration has been given to the implications of introducing such a duty or to how it would be measured in terms of parental expectations and expectations on the local authority.

Lord James Douglas-Hamilton: In that connection, would you be prepared to let the committee members see your draft amendments and your thinking behind them to ensure that we can give full consideration to the considerable technical details as the bill progresses?

Councillor the Rev Aitken: Absolutely.

Lord James Douglas-Hamilton: There will no longer be a duty on authorities to carry out compulsory medical and psychological assessments, although parents will be able to make such a request. What are your views on the removal of compulsory assessments? Would you prefer to have them or not?

Councillor the Rev Aitken: We welcome the removal of compulsory assessments. However, the process of identifying a child's needs requires a staged intervention approach, which works well and provides support for learning. We want to take that kind of approach in this case.

Lord James Douglas-Hamilton: The bill states that

"the education authority must comply with the assessment request"

from parents

"unless they consider the request to be unreasonable".

Should the wording of that duty be stronger or should it be left as it is? Would you prefer to consider the matter further?

Graham Atherton (Convention of Scottish Local Authorities): The power to turn down unreasonable requests should be clarified through the development of the code of practice. We really need to unpick the question of how we test what is reasonable or unreasonable.

Lord James Douglas-Hamilton: Should reasons be given in writing?

Graham Atherton: I think that that would be helpful.

Lord James Douglas-Hamilton: The bill will put a duty on other agencies, such as social work, to help education authorities in identifying additional support needs and in co-ordinating support and planning for transitions. Am I correct in thinking that you support that duty?

Councillor the Rev Aitken: As we said earlier, we think that there should be a duty on other

agencies. Social work departments are part of councils and therefore part of the authorities that will be charged with the duty, but authorities need either to be able to make a statutory call on other agencies—in particular, health agencies—or, as I said earlier, to get resource transfer to deliver.

Lord James Douglas-Hamilton: Should the duties be monitored constantly in case the resourcing proves to be more expensive than anticipated?

Councillor the Rev Aitken: The delivery of public services should always be monitored constantly. As the system evolves, monitoring will be a key issue, particularly given the theory—which we acknowledge—that the system will evolve to a stage at which we have very few CSPs. The idea is that that will happen because we will be able to deliver the resources properly and in a co-ordinated way in mainstream schools, without removing the final option of special schools, where that is appropriate.

Graham Atherton: That links to our point about the need to reconvene the Scottish Executive's group on the financial memorandum, with which we worked. As our submission states, we are concerned that many of the figures could be underestimated. We want to examine the estimates and the assumptions that underlie them in much more detail, but we have not yet reached that stage.

Dr Elaine Murray (Dumfries) (Lab): I want to follow up on that issue. I am interested in a difference between your interim submission and something Reverend Aitken said. The Executive worked on the assumption that 50 per cent of children who have records of needs, plus between 0.3 and 0.6 per cent of the school population who do not have them, will receive co-ordinated support plans. Your written submission suggests that around 3 per cent of the school population might need co-ordinated support plans, but in your oral presentation you suggested that the initial figure might be considerably in excess of that.

Councillor the Rev Aitken: As I said earlier, part of the reason for that is that we will go through a process of testing the new system. The breadth and holistic approach of the bill, which are good features, will mean that a number of folk who might not have assumed that they would get support under the bill could attempt to get such support. The figure could be up to 15 per cent in the first instance.

Dr Murray: To be eligible for a CSP, a person will have to have complex needs that involve another agency and which are prolonged—which means that they continue for more than a year. I assume that children with such levels of needs should have been picked up by the record of needs system.

Martin Vallely: The figure of 3 per cent was based on the original draft of the bill.

Dr Murray: How does that figure compare with the number of children in local authorities who have records of needs?

Martin Vallely: The figure for children who have records of needs is 2.3 per cent.

Dr Murray: So you assume that the figure for CSPs will be slightly greater. Do you agree with the Executive's estimation of costs? Executive officials told us last week that if 70 per cent of children who have records of needs were given CSPs, the burden of costs would be around £2 million per annum across all local authorities. You estimate that more children will have CSPs than have records of needs. What financial and resource burden will that create for Scotland's local authorities?

Martin Vallely: We do not have precise figures, but we can extend the Scottish Executive's analysis. However, because much of the devil will be in the detail of the proposals, it is difficult to reach a realistic view about their implications until we can clarify in more detail what the definitions will be, how they will be applied, what the tests will be and so on.

Graham Atherton: One difficulty with the financing of the bill is that it is largely focused on administrative costs, even though the bill has a close link with the presumption of mainstreaming in the Standards in Scotland's Schools etc Act 2000. If we bring that into the equation, we could be talking about much bigger costs than those for which the bill accounts. The financial memorandum suggests that such increases cannot be attributed directly to the bill, but, on the other hand, the bill and the other legislation are linked closely—we find it difficult to divorce them. We need to think about the wider context to undertake a proper costing exercise. Audit Scotland's work has shown that the costs from the presumption of mainstreaming will be substantial.

The Convener: It is odd that, if funding is mainstreamed, so to speak, it is difficult to track what is spent on provision and how much more is needed separate from the mainstream provision.

Councillor the Rev Aitken: You describe the tension that exists. We are trying to ensure that schools can deliver for a cohort whose needs will change and are spread over a wide spectrum. That is the challenge that laymen will face in deciding how much is mainstreaming and how much is additional. That returns to our concerns about the definitions of the words "additional" and "different".

The Convener: We will move on to tribunals and mediation, so I declare my membership of the

Law Society of Scotland and my consultancy with Ross Harper, in case legal aid is discussed.

Ms Byrne: The witnesses have mentioned their concerns about the mediation process, tribunals and the way in which the process is laid out. I will broaden that out. What are your views on the proposal for independent mediation services and particularly on the resource implications of those services? What are your views on the tribunal system, the jurisdiction of tribunals and the underlying issue of their resourcing? What are your views on the legal aid issues?

Councillor the Rev Aitken: Clarification is needed on whether legal aid will be available for the placing request route or for the tribunal route. We are concerned about the shape of tribunals. Tribunals are intended to be family friendly, but they still feel adversarial. As I said, we go to the tribunal before we go to mediation and I wonder whether that is the right order.

Making the process work will mean that there is a great demand on resources, especially in the transitional time, because people will be testing how the process works, the agencies that are involved, what evidence is taken from those agencies and how that evidence is combined. Evidence will be taken from individual agencies, but the combination of several agencies makes up the delivery of the service. Much work has to be done on understanding how that will be handled and who will gather evidence. We will need to benchmark one person's interpretation of how that combination works against somebody else's interpretation.

The Convener: Before we leave the relationship between mediation and the tribunal system, I will ask about Councillor the Rev Aitken's suggestion that the mediation process follows the tribunal. That is not my understanding of what the bill suggests. Where did you get that idea from?

Councillor the Rev Aitken: I am sorry; I made a mistake. I understood that to be the case.

The Convener: The section on mediation services says that they

"do not affect the entitlement of any parent or young person to appeal any matter to a Tribunal."

That implies that mediation services are involved earlier than tribunals in the process. I am not sure whether it is intended for mediation to be available en route to a tribunal, but I understand from section 16 that mediation services are intended to be involved before the final resolution stage.

Councillor the Rev Aitken: That is not how I understood the situation.

Martin Vallely: The point is relatively minor and relates to how the bill is laid out. Mediation

services are in section 16 and tribunals are dealt with in sections 12 to 14.

The Convener: I accept that, but the thrust of the procedure is to avoid tribunals through proper school arrangements, then mediation and advocacy if necessary, which are followed eventually by a tribunal.

Graham Atherton: A key issue is the extent to which mediation and dispute resolution services should be part of a national service or managed by an education authority, as the bill suggests. At this stage, we do not have a clear view on that issue, which needs to be further debated.

Obviously, a key issue will be the credibility of those services for parents. On the one hand, the system will need to be sensitive to local needs and circumstances; on the other hand, it will need to provide a consistent approach. Issues such as the accreditation of those who provide the mediation will need to be dealt with.

The Convener: I apologise for interrupting Rosemary Byrne's questioning, but I did not want to lose that point.

Ms Byrne: Further to what Ewan Aitken was saying, does he think that there is a clear need for staff training across the agencies to make the mediation service work?

Councillor the Rev Aitken: I have no doubt that the issues involved will be different enough to require people to receive training so that they understand what relationships need to be built to make the mediation service work. There will need to be training both for the assessment and for the delivery, management and monitoring of the service. That is a key issue. The issue is about the relationships that are built between home and school. We want to build on that relationship rather than take an adversarial approach. The other stuff should kick in if that relationship has broken down. All of that will require training.

10:30

Ms Byrne: Finally, what is your view on whether there will be equality in the system, given that legal aid will not be available for people who cannot afford legal representation when they come to the tribunal?

Councillor the Rev Aitken: We made reference to that in our submission. There should be a level playing field. As I mentioned, there is also the question whether people will get legal aid for a placing request or for a tribunal.

The Convener: I am sorry that I interrupted you with that side issue, Rosemary, but I thought that it was important to clarify the matter. Did you get a full answer to your first question?

Ms Byrne: Yes.

Ms Wendy Alexander (Paisley North) (Lab): I take the point that it is hoped that the tribunal mechanism will be used infrequently and very much in circumstances of last resort. In that context, it is suggested that the jurisdiction of the tribunal will be limited to education authorities. Does COSLA have a view on that? Obviously, we want the process to remain family friendly, but that needs to be balanced against the circumstances in which conflict might arise where there is more than one party at the table. What is COSLA's view on how the bill should resolve the issue of the jurisdiction of the tribunal?

Martin Vallely: We have concerns about that. We are concerned that all local and informal means should be exhausted before there is any resort to tribunals and more formal mechanisms. The need for that should be demonstrated in advance.

We are also concerned that the terms of reference for the tribunal should properly reflect the responsibilities of all agencies. The tribunal should take into account the need for a balanced view in arriving at decisions about disputes and about placing requests in particular. For example, if it were argued that particular health benefits would come from a child's attending a residential special school, we would want the health authority to be directly responsible for the implications of that decision. However, the tribunal should also take proper account of the implications for the child's well-being that would come from moving the child out of the family home and the local community. Those different interests should be balanced when the tribunal is resolving any dispute between the authority and parents.

We also want an assurance that tribunals will make due reference to local circumstances and local context. The danger is that we will have what has happened in England and Wales, where prescribed solutions are externally imposed on local circumstances to which they are sometimes quite alien. We want to avoid those outcomes and ensure that the tribunal's judgments take account of what is most effective in the child's local context. The tribunal needs to take into account the overall picture in resolving any matters that require to be addressed.

The Convener: I will return to training. To some extent, the background to the bill is that there will be training to implement the changed arrangements. However, there is also a general issue about more requirements for training if new categories of people—emotional, social and behavioural problems have been identified as one of the main themes—are to be mainstreamed. Perhaps you could comment on the adequacy of the existing training arrangements, on their style

and on the resources that are devoted to them. Should we be concerned about the issue?

Councillor the Rev Aitken: There has always been an issue about how we co-ordinate training so that different professions understand the common task. It has been pointed out to me that community workers, teachers and social workers are often in the same lecture room but without the clear perception that they are working to a common task. We are taking the approach that was outlined in "For Scotland's children". The professionals must endeavour to ensure that all the decisions are about the child. The kind of training that needs to happen would be about understanding other professions, making collective decisions and implementing and monitoring those decisions.

The Convener: I was thinking more about the training of teachers and assistants in schools, at the education end, where there is a broad spectrum of specialist needs, with more children coming into mainstream accommodation under the existing provisions.

Councillor the Rev Aitken: There will always be a need for that kind of training and for additional training as the spectrum of young people with which a mainstream school is engaging broadens. However, I reiterate my view that professionals should work together. Rather than saying that we will just train up the teachers more so that they can deliver everything that is needed, we should co-ordinate the professionals and ensure that they work together—in the same building, if that is what is required.

Rhona Brankin: Do you agree that training for senior management across the different services is absolutely critical? The process will be complex to manage and that cannot be left up to people at senior teacher level. There has to be commitment from the highest level across all the services.

Councillor the Rev Aitken: Absolutely. In my oral submission to the joint future committee, I gave an example of that. We had to do training about how to put all one's money on the table and make those collective decisions and about how to understand and manage that process.

Rhona Brankin: I would like to examine the whole area of transitions. You said that you have some concerns about future needs—the future needs assessment is obviously going to be changed. How will the transition of young people with additional support needs from school into further learning or work be managed under the co-ordinated support plans? Your written submission mentions your concern about resourcing implications where "other agencies are exempted". I was not clear about what you meant by that.

Councillor the Rev Aitken: In terms of transition?

Rhona Brankin: Yes.

Councillor the Rev Aitken: I am sorry. I did not catch your final remark.

Rhona Brankin: You said that there is concern about the resourcing implications of section 19(3), under which other agencies, such as further education colleges, are exempted. I did not understand that.

Councillor the Rev Aitken: That brings us back to the subject of the agencies that are exempted. Further and higher education establishments do not have the same statutory duty under the bill as other agencies have. If we are to have a future needs assessment, the agencies that are involved in delivery need to be under that statutory duty as well, otherwise everything will fall to the local authority again.

Graham Atherton: It is interesting that under the Local Government in Scotland Act 2003, agencies—particularly health boards—are required to assist the council in the community planning process. The exemptions in the bill do not appear in that act, so we do not see a real need for them in the bill.

Rhona Brankin: Are you satisfied that the bill will meet the needs of youngsters in the transition from school into later years?

Martin Valley: We are satisfied with the principle, which is a good one, but we are concerned that the infrastructure should be in place for the training of staff and that there should be capacity for the increased scope of future needs planning, which will involve a much wider population. If we are talking about all children with additional needs, that could be 25 per cent of the school population. We should not underestimate the scope of that, but we must ensure that there is provision for further education, careers and other services to be fully aligned with the process and fully responsible for their contribution.

Rhona Brankin: Are you satisfied that the bill will provide enough support for youngsters with co-ordinated support plans? Will it ensure that they have a smooth transition and that support continues where it is needed?

Councillor the Rev Aitken: Our concern is that an agency can choose to be exempted. It is not that there is a problem but, if an agency wants to withdraw, we might end up with the statutory duty to deliver a service that was not previously our responsibility.

The Convener: I will ask about a slightly different transition: from the record of needs to the co-ordinated support plan. You will be aware that the committee has heard concerns that those who have records of needs but might not have CSPs will lose rights. Does the bill need, or allow for the

possibility of, some sort of reinforcement mechanism to continue the existing rights attached to records of needs or to provide additional reassurance to parents who, perhaps after a long battle with the local authority, think that they have landed with something that will be taken away from them? There is a perception issue.

Martin Valley: I will make a couple of points on that. First, we do not accept the Executive's estimate: we think that far more of the children with records of needs will qualify for co-ordinated support plans under the terms that are outlined. Secondly, we want to reassure parents throughout the transition; we want to emphasise the fact that the authority already has a duty to make appropriate provision for their children's needs, which is evidently happening at the moment, and that there is a framework for provision to be continued through the individualised educational programme. The bill provides for dispute resolution, but we hope that that avenue will not be required in many instances. Broadly speaking, we believe that any issues that arise in that respect could be managed under the bill.

The Convener: Parents are inevitably particularly sensitive about records of needs and the proposals make them worry about their children's futures. My concern is that you will face more difficult situations in which the authority and parents disagree—that is probably inevitable. Dispute resolution will deal with a lot of that, but are we not still left with a perception that rights are being taken away, which is a difficult perception to manage, and does there not need to be some reinforcement of those rights in the bill? That is a matter of some concern.

Councillor the Rev Aitken: There will be a perception among parents that they have lost something for which they have fought and it will be a challenge for authorities to evidence, particularly in the early years, that what is being delivered is what the children had before. The processes that we have had until now have meant that parents have felt that they needed a bit of paper to prove their rights. In some senses, we are trying to get round that attitude and say that those rights are presumed, so parents should not need to have such a piece of paper. I am not sure how we legislate for that, because we would be legislating for the cohort that is involved in the transition in the first instance. The numbers that will be involved are a concern to us.

Ms Byrne: Has enough consideration been given to the resource implications that the huge increase in IEPs might have? We should remember that additional support needs will be identified, that a lot of young people who have records of needs but will not have them any more will have IEPs and that social, emotional and behavioural difficulties will be added.

Martin Vallely: We would expect that any child with a record of needs would have an IEP, so that would not be an additional burden. The most likely additional burdens will arise in relation to people with social, emotional and behavioural difficulties. Moreover, there might be additional challenges and burdens during the period of transition in relation to children who have English as an additional language or who are gifted in some way.

10:45

Dr Murray: I am not saying that I agree with this, but there is a perception that the statutory requirements for records of needs had to be introduced because local authorities were not willing to fulfil their duties to children with special needs. I am not saying that I accept that, but there is a perception that that is true.

There is also a perception that children who currently have records of needs but will not have a CSP will not have statutory back-up in terms of the right to have their needs met. How do you respond to that? Do local authorities perceive that they will not have the same duties to meet the needs of children in that category as they do under the current system?

Councillor the Rev Aitken: Clearly we have a duty to meet those needs. The question is whether that duty should be written into the bill. The issue will be a huge challenge. Parents whose children have challenges or additional needs—describe it how you will—are in a fragile situation and there needs to be hard evidence. We support the argument—on which the bill is based—that there is no need for something to be written into the bill because the service is already being delivered. The question is whether the parents are prepared to believe that and I accept your point.

Dr Murray: You would reassure parents that the bill would not diminish any child's rights to have his or her needs met.

Councillor the Rev Aitken: Absolutely. We want to go along with the minister's assertion that that is the case.

The Convener: That is helpful.

Rhona Brankin: You believe that the number of youngsters who will come within the scope of the bill is significantly greater than the projected figures. Can you give us your research and the methodology that you used to arrive at that view?

Martin Vallely: We can certainly provide further information about the assumptions that we have made.

Rhona Brankin: That would be useful.

Martin Vallely: Our concern is that, until we know what is intended to be in the code of practice

and regulations, it is difficult to be concrete about the full implications.

Rhona Brankin: It would be useful if you could provide the committee with that information.

The Convener: I thank our witnesses for that useful session. We are grateful for your detailed submission and we will want to refer to your evidence on the costings. If you have any further information, feel free to come back to the committee with it.

I now welcome Hilary Robertson and Susan Aitken from the NHS Confederation in Scotland. Do you want to say something by way of introduction?

Hilary Robertson (NHS Confederation in Scotland): No, I do not want to add to our brief written submission except to thank the committee for inviting us to come today. We support the general principles of the bill as they apply to the national health service. We have focused only on the bill's implications for the NHS, particularly on section 19, which relates to the duties for NHS bodies.

The Convener: Thank you. We shall start with Rosemary Byrne.

Ms Byrne: In the past, formal medical or psychological assessments were compulsory for the record of needs. Is it possible that young people with attention deficit hyperactivity disorder, autistic spectrum disorder or dyspraxia—the symptoms of which are similar and are often misinterpreted as simply social, emotional and behavioural difficulties—will not be identified and will slip through the net, with the result that the correct diagnostic treatment and targeted resources are not put in place early enough?

Hilary Robertson: We appreciate that concern, but we welcome the removal of the compulsory assessment element, on the ground that targeting assessments will be a better use of resources. We would like the assessments to be health or clinical assessments, rather than strictly medical ones—other professionals can ask for assessments to be carried out if they feel that there is a need. There is an increasing awareness that social, behavioural and emotional problems may sometimes have a physical cause—or at least a contributing physical cause—that could be helped by NHS services. Provided that there is a clear process for carrying out assessments, which is backed up by clear protocols on how they should be performed, and provided that there is training for people who work with children and young people and that awareness is raised, it is unlikely that young people will be missed. Our overriding view is that targeting resources and removing the element of compulsion is the right way to go.

Ms Byrne: The definition of additional support needs is being broadened to take in young people with social, emotional and behavioural difficulties. It will also cover those with mental health issues, who are increasingly being identified in schools and are being treated for depression and other mental health conditions. Are you concerned that NHS resources, such as child psychologists and child mental health services—for which I know there are big waiting lists in some areas—will not be ready for the bill? What are the implications of the bill on those services?

Hilary Robertson: We alluded to that concern in our written submission and included speech and language therapists, occupational therapists and physiotherapists. There is a greater demand for those services than the NHS can meet quickly, which results in waiting lists. The bill is likely to reveal a degree of unmet need, because it will broaden the range of children who are covered, including those with social, behavioural and emotional difficulties. As well as the existing unmet need—which is reflected in waiting lists—there will be additional need that we so far have been unable to identify.

Ms Byrne: Is a strategy in place to recruit people to, and build, those services in preparation for the bill, or does that need to be addressed urgently?

Susan Aitken (NHS Confederation in Scotland): It should be looked at urgently. Strategies are in place in NHS Scotland to increase numbers of staff, and to examine recruitment and retention issues across staff groups as a whole. Work-force planning and development structures have been put in place. However, those structures are still relatively new and have so far focused largely on the professions that people talk about most, such as doctors, nurses and consultants. There is already an awareness that mental health services and professionals are not meeting the need that was created by the Mental Health (Care and Treatment) (Scotland) Act 2003. That is an additional reason why we must urgently address the recruitment and retention of those professionals, consider maximising their numbers within the NHS and find the most effective way of planning and developing the existing work force.

As Hilary Robertson pointed out, under the proposed legislation, we foresee that there might be a considerable new client group not just for mental health professionals but for therapy professionals and allied health professionals such as speech and language therapists, occupational therapists and physiotherapists. Our submission points out that NHS Education for Scotland, the universities, the NHS boards and the Executive must urgently examine the existing work-force

planning arrangements in a co-ordinated way if the NHS is to deliver its responsibilities under the proposed legislation.

Rhona Brankin: I am interested in how you arrived at the conclusion that there will be much greater demand for additional occupational therapists and physiotherapists. I can see how additional demands might be made on mental health provision, given that the bill seeks to broaden existing definitions to include pupils with social, emotional and behavioural difficulties, and I acknowledge that there is great and unmet need in the area at the moment. However, how have you reached the conclusion that there will be even greater need?

Susan Aitken: The reason is that, as you have said, the bill seeks to broaden definitions to include social, emotional and behavioural difficulties. We are not talking merely about mental health issues; very often, conditions such as autistic spectrum disorder, dyspraxia and Asperger's syndrome lie behind perceived social, emotional and behavioural difficulties and go undiagnosed. The therapy professions have an enormous role to play in that respect. Indeed, there is increasing evidence that, for example, physiotherapy and occupational therapy are clinically effective in treating such conditions. As a result, it is our perception that a potential client group exists. I realise that medical assessments will no longer be compulsory under the bill; however, if the kind of joint working structures that we want are introduced and health, education and social work professionals work together, we might end up with more clinical assessments as a result of greater communication and understanding of the fact that potential health needs lie behind many of the new groups that the bill seeks to include.

Rhona Brankin: You said that you are happy that compulsory assessments are being withdrawn and that that will lead to a better use of resources. I am not absolutely clear about the kind of medical assessment that is currently available in schools. As far as early intervention and the transition from primary to secondary education are concerned, are you satisfied that provision exists to screen for hearing and visual impairment and that youngsters are picked up?

Susan Aitken: Screening provision exists, but the follow-up services are not necessarily in place. The problem comes back to staffing issues. The NHS lacks capacity at the moment—the numbers are simply not there. For example, there are waiting lists for therapy with respect to child mental health services. The proposed legislation will exacerbate the current situation because it will bring in new groups. There is unmet need just now and we believe that the bill will uncover more.

Rhona Brankin: Have you been able to quantify that?

Susan Aitken: No.

Hilary Robertson: I am afraid that we have not done so. We contacted some of our members to check their views, so we are describing a perception, but we have not yet been able to put a figure on it. If it would be helpful, we would be happy to do that and to send the figures to the committee.

The Convener: It should be possible to identify the extent of current unmet need, vis-à-vis demands from schools and so on.

Susan Aitken: Waiting lists—for example, for speech and language therapy—give an indication of current unmet need.

The Convener: The committee would appreciate any information that you could provide on the current situation and on your perception of an increase under the new arrangements.

11:00

Dr Murray: We heard from COSLA that it disagrees substantially with the Scottish Executive about the number of young people who will be eligible for co-ordinated support plans. I get the impression that the NHS's view is also that the Scottish Executive has underestimated the number significantly. COSLA referred to its membership of a working group on the financial memorandum. Was the NHS involved with that working group?

Susan Aitken: The NHS Confederation was not involved in the group.

Hilary Robertson: I do not think that any of our members was involved either.

Fiona Hyslop: What would have been an appropriate NHS body to be involved in the working group that put together the financial memorandum? Were health boards and trusts represented on the group? Even if they were represented, should your organisation or member organisations be involved if the group were to be reconvened as COSLA suggested?

Hilary Robertson: We would welcome involvement in the group because the bill will have significant impact on NHS bodies. I am not aware that any of our members—who are NHS boards and trusts—was involved in the work of the group, although I might be wrong about that. I am happy to check.

Fiona Hyslop: Would you be willing to be involved if the group were to be reconvened?

Hilary Robertson: Yes.

Lord James Douglas-Hamilton: Section 19 states that “An appropriate agency”—which includes health interests—

“must comply with a request ... unless it ... is incompatible with its ... statutory or other duties, or ... unduly prejudices the discharge of any of its functions.”

Are you content with the duty that the bill will impose on agencies? Are you worried that the bill's resourcing issues may bear more heavily on health interests than on other responsible bodies?

Hilary Robertson: We are happy with the duty that the bill will impose. It is entirely right that an NHS body should not be asked to compromise its primary function in order to assist, although we struggled to think of circumstances in which that might happen. Conflict is unlikely because a health organisation's *raison d'être* is to plan and deliver health services and to contribute to the well-being of individuals in its area. The provision is likely to be used only in the last resort, but the principle is sound.

Susan Aitken: After education and social work, the NHS will be the next agency in line in terms of responsibility and resource implications. Large numbers of children who have records of needs at present—and who, we presume, will have co-ordinated support plans—have them because of a health need. A lot of work is already done. Support is provided for a range of children in the education system who have conditions that include physical impairments, learning disabilities and chronic disease. NHS professionals already work with their equivalent professionals in education and social services to support young people.

As we have said, we think that the requirement for resources will increase. The number of children who will be included under the bill will increase and therefore more health conditions will be involved and there will be more work for NHS professionals in the system.

We are concerned that relationships should exist to ensure that agencies work together in an integrated service. The COSLA witnesses mentioned joint futures; our submission also mentions that issue. The structures that exist between health and social work have been in place for a couple of years in the delivery of integrated community care services. It would be entirely appropriate to put similar structures in place for the planning and management of services across all the agencies. There should be structures between health and education. Alternatively, education could be brought into the existing structures, given that social work clearly has a role under the bill as well. The three services will have to work closely together.

We have touched on staff and financial resources. However, the key to delivering services

and allowing agencies to work together will be to ensure that structures are in place. That may come about through the code of practice.

Mr Adam Ingram (South of Scotland) (SNP): You have said that formal systems of communication between education and health are not as well developed as those between social work and health. At the heart of the bill is the question of joint work and co-ordinated support plans. Have we underestimated the problems in joint working between education and health? I see from your submission that new, higher level arrangements will be required. Will you expand on that? Will there be any resource implications?

Hilary Robertson: We certainly see it as a challenge. The joint future work has made good progress and is a good model—although it was not without challenge and is still not without challenge.

The picture of the relationships between health and education services is patchy. In some parts of Scotland, very little formal joint working takes place beyond the interactions of individual professionals. However, other parts of the country are much further ahead and the services work together in a way that is similar to the joint future model—there can even be posts that are jointly funded by the health authority, the social work department and the education department. Some such models exist although, as I say, the picture is patchy. We would like the existing models to be built on. We should learn from the parts of the country in which closer relationships have been forged.

Mr Ingram: A code of practice would be required to close the gaps.

Hilary Robertson: Yes—that would be helpful.

Fiona Hyslop: You say that provision is patchy but you also said that you do not expect conflict of interest and that any requirements on local authorities to enforce compliance issues would be a last resort. That seems to be a contradiction. Provision is patchy and relationships are patchy. In my constituency, there are instances in which there is conflict and lack of co-operation.

We have yet to see the code of practice; the bill contains only an outline of what it could cover. How would your members feel if, when considering good practice, we decided, rather than following the slowest ship in the convoy, that the needs of children should come first and that there should be more statutory requirements on local authorities, if education is the lead service, to follow direction? Waiting for everyone to catch up and follow the best model for the joint future programme might be inadequate if services for children are at stake.

Hilary Robertson: Indeed. I accept the point about the time scale. I said that the provision for boards to be able to refuse to help would be a last resort simply because the purpose of boards is to deliver services and to protect and improve the health of their populations, so any child or young person who is identified as having a health need would naturally expect to receive services from the health service anyway. We see no conflict between an education authority's asking a health authority to assess or provide services for a child and a social work department's doing so.

Will you refresh my memory of the second part of your question?

Fiona Hyslop: Rather than our relying on a code of practice, which would be published separately from the bill, how would the confederation respond to there being tougher provisions in the bill to enforce compliance by local authorities? In an ideal world, we would not want to do that, but such provisions may be needed in the bill. Would you resist that?

Hilary Robertson: I do not think so. I think that boards would accept that there is a good parallel between the joint future work and the bill. Boards are moving in the proposed direction. I understand that, throughout Scotland, examples of resistance and conflict between education authorities and health services are very much in the minority. I would be surprised if that led to a significant problem for health boards.

Fiona Hyslop: You are relaxed about such provisions in the bill.

Ms Alexander: I will pursue the issue that Fiona Hyslop explored. Given the patchiness—I appreciate your candour about that, which reflects the experience of people around the table—it is inevitable that, particularly in the early years, the tribunal mechanism will be called into play simply to prod the system and to encourage relationships to be created. In that context, I am interested in the interaction with the appeals process. If the jurisdiction of tribunals is limited to local authorities, it will be difficult to see the tribunal process as one that necessarily produces solutions rather than one that simply identifies difficulties.

As Fiona Hyslop hinted, the logic is that the jurisdiction and responsibilities should be extended towards health boards. It is difficult to argue for that in a resource-constrained environment, but, as Fiona Hyslop said, you were willing to say that your role as a partner at the table must be recognised formally in every dimension—perhaps right through to the appeals process. Will you comment on that? We are trying to create an appeals process that develops possible solutions and does not simply identify

difficulties. Perhaps we need to do further thinking about how that process will be used to encourage a joint future model of mutual responsibility, but I would be grateful for your thoughts.

Hilary Robertson: Perhaps we, too, need to do further thinking, so I will give initial thoughts. I emphasise that NHS bodies are accustomed to working with other agencies. That is part and parcel of the everyday undertaking of their duties, so extending that to education authorities would introduce nothing with which NHS bodies are not familiar in another setting. The primary duty of such bodies is towards health and the individuals in their populations. They interpret that as meaning participation in any process that would contribute to an individual's health.

We understand that the tribunal process as outlined in the bill is specific to education needs and that the bill concerns other agencies—particularly health bodies—supporting education, rather than being equal players. The bill is about education, rather than health. We would like to think further about that, but those are my initial thoughts.

Susan Aitken: I return to the point about joint working. In addition to the work force element, a key task that will have to be done during the lead-in time, by all the agencies that are involved, is building those relationships. We must do that job to ensure that, when the legislation comes into force, the relationships and structures are in place and there is communication. We hope that, by then, we will be coming to the end of disputes about what is whose responsibility. There should be a joint approach and joint planning and management of a group of services, which must be delivered by the agencies together. That has certainly been the aim of the joint future framework and it should be replicated within the context of the bill.

11:15

Rhona Brankin: I want to ask about the practicalities of joint working. There is an intention to introduce more joint training in the initial education for social workers and teachers. What are your views on the importance of joined-up initial training and joined-up continuing professional development?

Hilary Robertson: That would be very welcome where it is practical. Joint training would be valuable as it would raise awareness among one profession of the roles and responsibilities of other professions and the help that they can offer. We are beginning to see, in the training of the medical profession, more links being established between different disciplines and even between nursing and medicine. It would be very useful if that were

extended to allied health professions and other professionals who may be involved, although I am not sure how practical that would be. A lot of work would have to be done to allow it to happen, but in theory it would be welcome.

Rhona Brankin: A review of initial teacher education is taking place. Might it be useful to take the opportunity to consider involving health professionals in looking at how they could feed into the process?

Hilary Robertson: Yes. It would be particularly useful—I referred to this earlier—if teachers' awareness of potential reasons for particular social, emotional and behavioural difficulties was raised when they go through their training. There is sometimes a physical or medical reason behind those difficulties, and teachers would be in a better position, particularly in relation to the bill, if they could identify those children and request help from the health services when they suspect that a health problem may be the source of the difficulties.

The Convener: From the visits that we have made to schools, it appears that a lot of practical issues on site, as it were, are worked through when health professionals are on site in new community schools and other facilities in which they work daily in association with teaching staff and others. Is that a fair comment?

Hilary Robertson: Yes.

The Convener: You suggested that there had not been health involvement in the resourcing study that was done by the Executive. It appears from the financial memorandum that

“Greater Glasgow Health Board, North Glasgow University Hospital Trust and Forth Valley Health Board”

were all involved in the study group on that matter. Your organisation may not have been involved, but it appears that health interests have been involved.

Do you want to add anything else?

Hilary Robertson: No.

The Convener: That is fine. Thank you very much for your time. As always, we are grateful for your input.

As I said to those who gave evidence earlier, if, as the bill progresses, you want to make us aware of any issues that arise—perhaps in particular on the staff resource and training side—please feel free to write in or make contact with the clerks.

We will take a short break.

11:18

Meeting suspended.

11:28

On resuming—

The Convener: The final panel session is with various union representatives. We have Mr Di Paola from Unison, Mr MacBride from the Educational Institute of Scotland and Mr Eaglesham from the Scottish—I can never get it right—

David Eaglesham (Scottish Secondary Teachers' Association): The Scottish Secondary Teachers' Association.

The Convener: Thank you. We have a paper from Unison but, for various reasons, not from the other organisations. I understand that all of you, with the exception of David Eaglesham, want to make introductory statements.

Joe Di Paola (Unison): Unison is pleased to have the opportunity to speak to the committee this morning. From our submission, members will have seen that we broadly welcome the bill and its provisions. I am appearing for Unison because I am the senior paid official for Unison in Scotland not only for education but for local government, and the thrust of the bill goes well beyond education.

Earlier this morning, members heard about interagency working. Unison represents people who work in education, social work and other local authority services. Unison also has a sizeable membership in the national health service and in professions allied to medicine, including occupational therapy and physiotherapy. Those members are involved in supporting children with additional needs. I wanted to give the committee an indication of our membership's interest in the bill.

11:30

I want to say briefly that it is not only professionals who will provide the services. There are also people who will transport children to schools, provide support for teachers in classrooms and other parts of schools and interact with children from the age of three onwards in nurseries. Other Unison members who are employed in further education and higher education will interact with children when they leave the school system. Members discussed that issue earlier this morning. One thought that occurred to me was that it appears that there is no duty on the HE and FE sectors to provide additional support for learning. The committee might want to consider that issue. At the core of our evidence is the fact that anyone who is involved will need to be properly trained and supported. That requirement goes right across the work force. That is all that Unison wants to say about the work-force aspects of the bill.

We have one word of caution. Colleagues from the employers' side have indicated that the joint future agenda could be the model to follow, but I have to say that that model is not without its difficulties. I was a member of the Bates committee that produced some of the human resources models for the joint future agenda. Interagency working requires a lot of support and sensitivity from all involved. At the base, it is about ensuring that the people who have to supply the services and who work with young people are properly trained and supported.

As the committee will see from our submission, we commented on the wider aspects of the bill. Given the size of our organisation, the committee would expect us to do that. Frankly, our submission also reflects the number Unison members who will be users of the services in the wider community. That is all that I want to say just now. I am happy to take questions from the committee.

George MacBride (Educational Institute of Scotland): We welcomed the draft bill that appeared earlier this year and the extensive consultation process that the Executive carried out. We also welcome the consequent bill that we have before us today.

We further welcome the fact that policy formation in this area is coherent. There has been a progression through a number of consultation papers, the paper, "Assessing our children's educational needs: The Way Forward?", and the policy memorandum to the bill, which provides a clear context for the legislation.

We want to raise a number of issues for consideration, one of which—that of children's rights—is fundamental. In our comments on the draft bill, we said that we were concerned that, although parent's rights were clearly specified at all stages throughout the draft bill, children's rights were not so specified or built into the legislation. There are requirements for children's voices to be heard at some stages, but that is very much after the parent has exercised his or her rights.

In the context of a changing culture that recognises children's rights and that of certain legislation that builds children's rights into Scottish legislation, we are concerned that the model in the bill is still one that is derived from the Education (Scotland) Act 1980 and the Education (Scotland) Act 1981. We think that there will be areas of tension. It is crucial that young people contribute to planning their futures.

We also want to raise the issue of the code of practice, which will form a locus for the bill. Initially, because of the experience in England and Wales, where a code of practice has often led to bureaucratic monstrosities and mountains of

paperwork, we were not supportive of the concept of having a code of practice. On reflection, we are now minded to accept that the code of practice will be an important aspect of taking forward a number of the detailed issues that colleagues referred to earlier this morning.

Of course, we are deeply concerned to ensure that appropriate levels of funding are found by whatever means are deemed to be appropriate. Earlier, reference was made to the means by which the partner agencies—not just local authority education services—can ultimately be held accountable to ensure that adequate provision is made for youngsters for whom health or social work support is required. That will ensure that the youngsters benefit from their education. Those are the general points that I want to make at the moment.

The Convener: Thank you. We would welcome your input in the later stages of the bill if there are detailed changes that should be made to the legislation, especially on the issue of children's rights to which you referred.

Let me begin by asking Mr Di Paola about the training needs of Unison staff members. You referred to the role of nursery nurses in identifying issues with children under five. The thought had not immediately occurred to me, but nursery nurses' role is obviously important in the lead up to the introduction of CSPs and, I suppose, in the records of needs that we have at the moment. Do nursery nurses and similar staff have specific training needs that need to be addressed?

Joe Di Paola: Some of nursery nurses' needs have already been addressed by the move away from Scottish vocational qualifications towards a diploma course at college or university. However, regard must be had to the bill's provisions that would require nursery nurses to identify difficulties. Nursery nurses would probably be one of the earliest groups of staff to be involved with other interagency professionals. We would like nursery nurse professionals to be involved in some of the discussions about what that would require. The Executive has already set up early-years groups that are considering various aspects of nursery and pre-school provision. Perhaps parliamentary colleagues could consider whether that issue has been properly picked up.

The Convener: Let us stick with that issue first of all. Do members want to raise any points about the role of Unison members and other staff who are away from teaching and allied areas?

Ms Byrne: There will be a lot of involvement from classroom assistants and special educational needs auxiliaries. Now that many local authorities have implemented good training programmes, many of those people already have good

qualifications. Is training an issue in some local authorities or is it being dealt with appropriately?

Joe Di Paola: Other colleagues have talked about provision being patchy across Scotland and I am afraid that that is the situation. Some local authorities provide very good training for classroom assistants and special needs auxiliaries. However, as our recent survey on training in local government in Scotland showed, the problem is that the amount of money that the authorities devote to training across the range of their activities is very small. Sometimes, they spend less than 2 or 3 per cent of their total budget on training. We want to take up that issue with COSLA and our employers.

We think that the bill will not work properly unless people are properly trained. Where training provision is patchy, authorities need to pick up on that. We will raise the issue with them, but we think that a duty should be placed on authorities to train people properly to work in this area.

George MacBride: If I may add to that, the need for training is an issue not only for special needs auxiliaries or classroom assistants but for teachers and school managers. They need training on how to ensure that all colleagues can work together effectively. Attention should not be focused on only one area; we need to work together collectively, as was said earlier.

Ms Byrne: I accept that, but I wanted to ask Joe Di Paola about how that issue affects Unison members specifically.

The other issue is that, although classroom assistants have been made permanent members of staff and have been given contracts in many local authorities, that practice is patchy across the country. It is important that those who work with our young people at the sharp end should be considered professionals and should have decent contracts of employment. They should be part of the permanent core staff in our schools so that they can get access to staff development and so on. Is that an issue across the country or is that patchy as well?

Joe Di Paola: To be absolutely blunt, I think that there has always been an issue for us about people who are not so-called professionals accessing training and staff development. We have been involved with the Executive in initiatives such as the return to learn programme, under which the union and the Executive have worked together to try to get people back into education or into formal adult education for the first time.

We want people to be properly educated and trained to the level required to do their job—and beyond, if they so wish. As George MacBride says, it needs to be clear that multidisciplinary groups will deliver the measures. All the people

involved need to know how they will work, and they must be comfortable with one another. A hierarchical approach will not deliver that way of working properly.

Fiona Hyslop: Where will the space and time for training for teachers, which is absolutely necessary, come from, bearing in mind McCrone and the fact that many teachers already operate at minimum contact time? We have heard that other organisations were involved in the discussion of the costing issues that took place in the working group on the bill's financial memorandum. What involvement has Unison had in quantifying the amount of training that will be required? It is unfair to ask many of Unison's members to do the jobs that they will have to do without training, and it might be helpful to quantify the amount of training required.

Joe Di Paola: To be absolutely honest, we have not quantified the level of training required. The existing staff numbers and tasks that are carried out are not clear. For example, we have difficulties getting local authorities to tell us how many classroom assistants they have. One aim of the training survey that we sent to local authorities was to try to get such basic information. I am sorry, but I cannot help you with that question.

Fiona Hyslop: My other question was where the space and time for training for teachers will come from. Further, given that much of the new system will rely on IEPs and PLPs, will those be developed and in place in time, and where will the time to do that work come from? It will have to be done on top of the required training and in the light of the contact-time issues that already exist in schools.

David Eaglesham: You have probably given the answer in your question. The layers that will build up are implicit in the proposals. The first layer will be the training of teachers and other professionals before they begin working full time in an establishment. Reference was made to the idea of including the required training in initial teacher education, which would be important. I recall that, when I was training, such issues were never mentioned and there was no concept of outside agencies—they were an unknown world. We are moving closer to reality in many ways.

The issue is crucial to the future of young people and we need to adapt the systems to take account of that and ensure that the bill is fully resourced and provided for. However, the problem is that, tomorrow, in another room and another building, an issue that is equally important to the future of young people will be examined in another way and we will find that it has to be factored in, too. Eventually, the available time will be compromised in one way or another as a result of the competing demands that are being made. This morning, I

heard that money management is an implicit part of the curriculum in secondary schools. Such demands, which are perfectly legitimate, are quite rightly being made all the time, but if we keep on going with them, we will have to prioritise and decide which aspect of provision is the most important and should predominate in decisions about available time.

After the initial teacher education stage, we move to in-service training in schools. The national agreement provides time for such training, but, again, schools will have to try to budget within that time for the curricular, assessment and other demands that are being made. The bill is exceedingly important, but so too are many other matters.

The third layer is that of implementing the new system in schools. Schools must decide who will do what and when, given the competing demands on people. All those demands rightly focus on young people, but the amount that can be done in a given time is finite.

At the end of the day, the issue comes back to resources. I am afraid that, as our colleagues in COSLA will understand well, the bill has resource implications. If we do not have sufficient resources to deliver, we must consider how we can implement the bill to the best of our ability, which may not be as well as we want to implement it, given its importance.

George MacBride: The teaching agreement for the 21st century has built into it a provision for 35 hours of staff development time per annum for all teachers; five in-service days are built into the teachers' contract; and the changes in the primary school week may free up some time for staff development. Resources are available, but they are limited.

An important issue is that staff development is not purely about attending courses; there are other ways of developing expertise, such as shadowing and visits to or short placements in other establishments.

An important issue—which has come up in my school—is that if we want joint training involving teachers and colleagues who are, in this case, members of Unison, we must recognise that we have to set aside time for that from the whole school provision. You cannot expect Unison members to take part in staff development on the same terms as teachers' 35 hours per annum. That would be totally improper.

There is a need for such joint planning. Education authorities have an important job to do, and many—although probably not all—are well down the road in terms of their own continuing professional development, professional review and development, and employee review and

development policies. There is a need for joint working at local authority level.

Do you want me to comment on the PLP issue?

11:45

Fiona Hyslop: Yes, because we are interested in that. Ewan Aitken envisaged things being delivered through IEPs and PLPs, which are not as well developed—well, we do not know how well developed they are, because they are just being piloted. It is of concern that such emphasis is being placed on pilots despite our not knowing whether they will be successful.

George MacBride: I have some personal experience that may or may not apply. Within our school development planning exercise, I set myself a target of doing a number of personal learning plans for youngsters, but I am falling well behind my target. The issue is not about the other resources; it is about time for planning, for meeting parents and young people, and for discussing the planning process. It is important not to underestimate the time investment that is required to develop the PLP process in our schools. I know that piloting is going on this session, and that there is testing to destruction of a PLP model. We hope that out of that exercise we will get information on the necessary resources.

The Convener: There is a distinct resource implication from widening the targeting, notwithstanding the labelling problems and other problems that were touched upon.

Rhona Brankin: I have a broader question about resourcing. Various witnesses talked about the implications for resources. I am keen that we begin to quantify that, because if people are going to argue for additional resources, they have to be able to do so on the basis of having done the research to quantify those resources. Have any of your organisations done any research on the financial implications of the bill?

George MacBride: From the EIS point of view, no.

Rhona Brankin: I am sure that you agree that, as has already been said, one of the key factors that will lead to the system working is its management. Do you agree that it is important that senior management training is provided? One of the problems with the way in which the record of needs system worked in the past was not only that local authorities sometimes did not open a record of needs, but the way in which the system was managed in schools varied tremendously. There is a need for senior management to sign up to the system, but also for a particular person in senior management to be made responsible for the management of the system. There is also the

need for a particular person to be the lead person for each pupil in the school, given that the system seeks to allow every child to benefit from education. Essentially, do you recognise the importance of senior management involvement? Is it important that there is a named person in the school who takes responsibility for the day-to-day management of the interagency contact?

Joe Di Paola: May I make a wider comment? Colleagues will talk about what should happen in schools. From a Unison perspective, we are keen to ensure that the agencies work together, because then the senior managers will work together. We have already said that there should be a named person, because someone has to manage an individual's situation so that parents are not running from pillar to post trying to get answers on behalf of their children.

George MacBride: My response to both the questions you asked is yes.

David Eaglesham: I would like to pick up on Joe Di Paola's final point. The naming of an individual is vital in this context. If there is no named individual, there is a real danger of people being given the run around, or thinking that they are being given the run around—it almost does not matter which is the case. The practical problem goes back to what we said about resourcing. We need to ensure that the named individual is always available to those who need contact with them. Depending on how many pupils we are talking about, there could be a vast resource implication in the named individual being available all the time.

Members might have experienced the situation in hospitals where there is a named person for each bed. If that person is not on shift or is off for a few days' holiday—which is entirely appropriate—it is of little or no value to people to know that that named nurse is the person whom they have to speak to if they cannot find them. How do we ensure in a school context that the named individual is available to all the people to whom they need to be available? How do we achieve that, particularly if the named individual is also expected to be teaching and doing other things? If that individual is trying to deal with 30 kids who are doing higher English in one place and with a particular pupil in another, there is a dichotomy and we cannot say which has greater priority in such a situation. That is the reality of life in school.

Rhona Brankin: One of the issues around how such situations are managed is that there is a need for senior people from all the different agencies to be involved and for those people to have responsibility for their agency's involvement in the co-ordinated work. At a slightly lower level, somebody has to be available on a practical, day-

to-day basis and that usually falls to the senior support teacher in the school, who is responsible for managing that work. Do you agree that it is important for there to be named practice social workers or medical professionals as the day-to-day contacts? I am sure that you would agree that one of the problems of interagency work is how to manage that day-to-day contact.

George MacBride: The answer is yes. An interesting and difficult point is that although schools are, by definition, relatively stable organisations—they tend to last for a large number of years—there has been a series of reorganisations of other public service provision, which led to considerable difficulties and rapid changes for individuals. I hope that, as well as considering training and levels of funding, we have a period of stability in the structure and organisation of other services. In that context, your suggestion that there should be named people in each of the agencies involved with a particular youngster is helpful. However, the legislation would make it clear that the education department would take the lead in that.

Rhona Brankin: That is important.

George MacBride: It would be useful to have named people in the other agencies.

Lord James Douglas-Hamilton: I have a question for the EIS and the SSTA about duties. Unison gave clear evidence on duties in its submission, which says:

“UNISON Scotland believes that the compulsory nature of these observations and assessments as they stand at present, are of real value and make a significant contribution to the identification of children’s learning needs.”

The submission refers to another duty and says:

“UNISON Scotland is also uneasy about the proposal ... to remove the duty, on the part of education authorities, to seek advice from other agencies in identifying a child’s additional support needs.”

The submission then mentions the importance of joined-up working, and says in conclusion:

“in the area of assessment and intervention the current proposals would remove key duties, which at present add up to disabled children’s legal entitlement to receive the educational provision their need calls for.”

I would be most grateful if you would indicate whether you wish to be associated with that evidence or whether you wish to distinguish yourselves from it.

George MacBride: The EIS wishes to distinguish itself from that evidence, but not by saying simply, “We are totally opposed to that.” We welcome the proposal to remove the compulsory medical and psychological assessment that is part of the record of needs

process for two reasons. One is the practical reason that some young people do not need such an assessment—their difficulty might have no medical component at all—and it seems unnecessary to put the youngster through that process, which might not be pleasant for them and builds a delay into the process of identifying that young person’s needs. The second reason is an issue of principle or philosophy: we wish to move away from a model that seeks to equate difficulties in learning with a medical model that might ultimately be based on a concept of individual deficiency or defect, because we wish to move towards an inclusive agenda. However, we acknowledge the concern that Unison has raised that there is a risk of some children falling through the net. That is why we believe that the code of practice must clearly state the duties for authorities.

We would wish to retain the duty on authorities to seek information from other agencies, to which I think that you referred. The other agency might respond that there is nothing that it can say on a particular case, but retaining the duty to consult other agencies would be important.

Lord James Douglas-Hamilton: Did you say that you would wish to retain that duty?

George MacBride: Yes, the second one, not the compulsory assessment. We do not support the compulsory assessment, but we wish to retain the duty on education authorities to take advice from other agencies.

David Eaglesham: I agree in principle with everything that George MacBride said. However, if we remove a compulsion, the interface becomes a difficulty. As George MacBride said, there are situations in which the compulsion is not necessary, because a reference comes back marked “no information”, and we proceed. Although a compulsory reference might delay the process and exacerbate a problem, the danger is that without a duty, the point where it is not absolutely clear whether a reference is the right thing is where we come to a difficulty. If no duty exists, there will be a perception among parents that the authority almost automatically will not seek information because of the cost implications of doing so and will say, “Oh, we don’t need to do that.” It would be unfortunate if parents were to have that perception, so I agree with George MacBride that the duty to seek information should be retained. The duty might be fulfilled in an instant, but, in the marginal cases, it will be beneficial to have the duty, because it will provide more reassurance to parents and, perhaps, young people.

Lord James Douglas-Hamilton: George MacBride mentioned the risk of some young people falling through the net if the compulsory

assessment is removed and that that could be covered by the code of practice. Should it be covered in the bill, or would you prefer to leave it to the code of practice?

George MacBride: I would prefer to leave it to a code of practice for the reasons that I suggested. To build compulsory assessment into the bill might not be in every child's interests, might use up resources unnecessarily and would delay provision for some youngsters. However, in carrying out their duties to identify additional support needs, education authorities should err on the side of generosity in seeking advice from other agencies. I suggest that that could be covered by the code of practice.

David Eaglesham: I concur with that.

The Convener: I follow what you say on the duty to seek advice, but without some knowledge of the child and the practical situation, will the advice not be superficial at best? I do not quite follow why there needs to be a duty to seek advice in every instance for a range of different situations. How does that help the situation without follow-up—the agency seeing the child or being involved with the child in some practical way? Will you elaborate on your thinking?

12:00

George MacBride: I will speak from personal experience, which may not be generalisable. If we have a concern about a boy or a girl, we seek advice from psychological services. We take seriously a psychologist's advice about whether a young person should be formally referred to them and whether a school needs to seek further information on the young person and return to the psychologist with that information to discuss the situation. That is the context that I was thinking about.

The Convener: Ideally, that should happen on the ground. Staff should be in place to contact one another.

George MacBride: Yes. The difficulty in writing legislation to cover a complex subject is that practice on the ground is important. It is also difficult to ensure that practice through legislation.

Dr Murray: I will ask about your views on the period when systems change from using the current record of needs to identifying additional support needs and developing co-ordinated support plans. Duties will be placed on several agencies and a wide range of people will be able to ask an education authority to consider giving a child a CSP.

COSLA said this morning that it was a bit concerned that the lead-in time might be too short, especially as we have not seen the code of

practice and there is uncertainty about the number of children who might be eligible for CSPs and therefore the number of children for whom the recording mechanism would change. What is the view of the range of professionals who would be involved in making those changes on the lead-in time for implementing the legislation?

George MacBride: We have not discussed that, so I cannot provide a considered response. My initial reaction is that I do not share COSLA's concern. The lead-in time is appropriate and one of its benefits is that it encourages people to think about how they will make provision. Ensuring that people are aware of the legislation is an important public relations task. That is purely an initial reaction.

David Eaglesham: Elaine Murray identified the problem that the code of practice is not yet available, which is part of the difficulty. What is not visible now could be problematic when those two periods run together. Parents of young people who have records of needs will be greatly concerned to know how those records will interface with the new system. That concern might be allayed not by extending the time scale, but by providing more clarity in the short term. That is probably the more important lesson to draw.

Joe Di Paola: The time scale must be commensurate with the people who must deliver the services knowing what they are doing and having proper briefing and training. The time scale is important for those practicalities.

I take David Eaglesham's point that parents will be concerned about how they get from A to B—from the current record of needs to the CSP—but what matters is ensuring that the bill is drafted properly, that the committee has taken all the evidence that it wants to hear and that the provisions are correct. Implementing the legislation will also come down to people having enough time to establish the structures properly. The worst result would be for target dates to be reached before people are in place and systems are ready to deliver the legislation, because that would mean that parents—and the children whom the bill is supposed to support—would not have confidence in the system.

Ms Byrne: Many teachers were caught unprepared for the implementation of the mainstreaming policy. We hear that teachers feel that they do not have adequate in-service training to meet the needs of young people and that they have issues with managing other people in their classrooms and with the variety of special needs that can be in one classroom. This bill will identify more additional support needs, and social, emotional and behavioural difficulties will come into that category. Discussions have also been taking place about the likely number of co-

ordinated support plans, which I think has been underestimated.

What are your views on those matters? How well prepared do you think the various sectors are—in particular teachers at the chalkface—for the measures that the bill would introduce? As additional needs are identified, will there be more implications for teachers, or will the move into mainstream, once it has become embedded, provide the necessary support? Has enough work been done on that?

George MacBride: The important issue, which you identified, is the mainstreaming provision in the Standards in Scotland's Schools etc Act 2000. That set the agenda.

It is clear that there is a need for further training and resourcing. We have already identified the difficulties in the bill. The bill raises school management issues—especially in relation to CSPs—and issues about personal learning plans that were mentioned earlier. However, it might not make much difference in practice to teachers in classrooms, in some, although not all cases. If a teacher is already working with colleagues such as special needs auxiliaries and classroom assistants, who work with young people in the classroom, the situation will not necessarily be radically changed by the legislation.

Joint working and joint planning are important and are related to joint training. I become a wee bit concerned when teachers start using language such as “managing the classroom” or “organising other colleagues.” Collaboration and co-operation are important.

I am not sure whether the bill will have a huge impact on teachers in classrooms, but it will have a huge impact on the management of schools.

The Convener: Training has already been mentioned once or twice. Is there a feeling from the chalkface—as Rosemary Byrne described it earlier—that the training provision is both appropriate to what is needed in the classroom to deal with a range of different situations, and reasonably standardised, with similar approaches being adopted throughout Scotland? Does action need to be taken to bring training provision up to the proper level?

Joe Di Paola: From our perspective, training is certainly not standardised. Authorities provide induction and basic training, but beyond that, provision varies hugely across Scotland. Colleagues can speak about the training that teachers receive, but there is no standard job description or set of duties for classroom assistants. As a result, there is no standard training programme in Scotland for classroom assistants.

Different authorities demand different tasks from classroom assistants. They also pay markedly different salaries, which is not helpful. I understand that we are not talking about pay, but we are considering the treatment of people who provide support in schools and their status and pay can differ markedly across different authorities. That causes difficulties.

David Eaglesham: One of the big problems with much of the training is that it is usually delivered on a post-hoc basis. We implement a change and then think about the training. That has been the model for many years and it is not satisfactory. The training needs to be planned sufficiently far in advance that it can be beneficial from the time when the new system starts to operate.

There is a real danger now, in that no training is currently being undertaken. Training should be happening now, if it is to be effective at any point during the implementation phase. The committee must bear it in mind that post-hoc training will not be nearly as effective.

George MacBride: I entirely endorse that and I endorse what both colleagues have said. On the assumption that the bill will be passed, one hopes that the bill carries, along with the duty that it places on education authorities to identify additional support needs, a moral duty on education authorities to identify the training and resource needs that will be required to meet those additional support needs. That will be important. It must not become a paper exercise in which people fill in a few forms, file them somewhere and then just go on as before. The whole process of identifying needs—especially, but not only in the case of CSPs—must also identify the resources required, which will often, but not always, be training resources.

The Convener: Not entirely unlinked to that, we heard evidence from the COSLA witnesses, who gave us quite trenchant views on placing requests to independent special schools vis-à-vis parent choice, which we mentioned earlier. Do you have any views on that from a teaching perspective? If the bill's provisions are implemented against a background of varying standards of training, one can see why there would be an issue with parents.

George MacBride: There is a more fundamental issue in the bill, which is the whole relationship between the public sector and the private sector. There is an issue on which the EIS has not taken a view: education authorities have a power, but not a duty, to make CSPs for those young people who are being educated other than in the public sector. That is an area of some debate, especially in terms of children's rights.

The placing request issue is one where, again, the agenda is very much one of parents' rights and of the parents' identification of what is needed for the young person. That identification will almost always be correct, but there will be some occasions on which a young person may have a different view from that of their parents. We would be concerned about the possibility of opening up a cash flight from the public sector into the private sector, especially if decisions were ultimately made in the courts. We do not believe that the courts are appropriate places for making those difficult educational decisions, and I believe that the COSLA representatives said that too.

The Convener: It would primarily be the tribunal that would handle matters in such an instance, would it not?

George MacBride: Yes, it would. We are not concerned about the tribunal, but we have been concerned when sheriff courts have made decisions about placing requests in the private sector. Without criticising lawyers, I must say that I do not feel that that is a decision that a sheriff is capable of making, and I say that not as a matter of principle, but on the grounds of information and the educational decision-making process.

The Convener: Sure. Are there any other observations on that point?

David Eaglesham: We are entering an area that is very problematic at the moment and which will remain problematic in future. In fact, there is a trend emerging from the debate that will see us developing education in a specific way over the coming years. As time goes on, we will have tribunals on a range of educational issues and not just on the issue that we are discussing today.

It is important that things are set correctly now; otherwise the new provisions will not have a function. Speaking as a member of the employment tribunal, I know that tribunals often do not fulfil the function that they are trying to fulfil because what is presented is not something that they can deal with. It is therefore important that the terms of reference are clear, or people will be looking for some kind of moral vindication from a tribunal. That is not the function of a tribunal and it cannot deliver such an outcome. Such expectations divert people into all the wrong areas.

On that point, I think that Ewan Aitken misunderstood the order of mediation followed by tribunal, and having seen the documentation I can understand why. It is important that the mediation process is used as extensively as possible to prevent people from thinking that they have recourse to what they see as a court for some vindication. They will not get it, because the tribunal simply will not be able to do that.

The Convener: So the message, if anything, is, "Let us emphasise the mediation and conciliation arrangements."

David Eaglesham: Absolutely.

Rhona Brankin: I would like to ask specifically about the importance of the transition from school to further learning or to a job. How robust do you feel that the bill is in that area? As a practitioner, Mr MacBride, do you have concerns, or are you satisfied that what is proposed is in the best interests of the young person?

George MacBride: One of the interesting starting points of the debate was 10 years ago, when George Thomson at the University of Edinburgh was asked to carry out research in that area. The figures, which were horrifying, showed that many young people with a record of needs simply disappeared at the point of leaving school and that all the procedures that exist under the current legislation were, and presumably are, simply not effective. A change is therefore important, and I think that some of the bill's requirements make clearer the need to keep planning ahead and to keep coming back to the issue of planning ahead. Those aspects of the bill are helpful.

Earlier witnesses mentioned the statutory obligations of other organisations—particularly further and higher education establishments—or the lack of such obligations regarding transition. That is crucial and there is a need to examine the legislation that covers those organisations. Whether that is done through the bill or separately, I could not say, but it remains a worry that we can make those plans and that they can fall apart if there is no means of effectively carrying them out.

Lord James Douglas-Hamilton: I would like to ask about the record of needs. Our understanding is that several thousand of those with a record of needs will not get co-ordinated support plans. Would you be sympathetic to transitional provisions to ensure that, rather than the system changing overnight, those with a record of needs could be seen through the system before the new system comes irrevocably into force, to avoid any aggravation or undue concern?

12:15

George MacBride: We would be sympathetic to that. We would not want a situation to arise in which, say, a six-year-old for whom a record had just been opened would retain that exact form of record through to the age of eighteen, but there should clearly be some transitional arrangement that would run for a number of years.

Lord James Douglas-Hamilton: If that matter needs further thought, would you be able to send

written representations saying what you think is a reasonable time scale and what provisions would be reasonable, taking all the circumstances into account?

George MacBride: Yes, I could do that.

Rhona Brankin: There would be big legal implications.

Ms Byrne: In your introductory speech, you talked about children's rights, about your concern about the lack of specified rights in the bill and about a code of practice. Would you prefer to see children's rights embedded in the bill, and more participation of children, or are you happy for the code of practice to cover that?

George MacBride: No. Our preference, as we made clear in our comments on the original text of the bill earlier this year, is that children's rights should be written into the legislation. Putting them in the code of practice is a fallback position; we would prefer that to be in primary legislation.

The Convener: I thank the witnesses for their help. It has been a useful session. If there is any further information that witnesses would like to submit to us, apart from responses to the specific requests that have been made, they should feel free to contact us as the bill develops and we move on to stage 2.

Meeting closed at 12:17.

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