



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 25 June 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
20th Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

- *George Adam (Paisley) (SNP)
- *Clare Adamson (Central Scotland) (SNP)
- *Colin Beattie (Midlothian North and Musselburgh) (SNP)
- *Neil Bibby (West Scotland) (Lab)
- *Joan McAlpine (South Scotland) (SNP)
- *Liam McArthur (Orkney Islands) (LD)
- *Liz Smith (Mid Scotland and Fife) (Con)

COMMITTEE SUBSTITUTES

- *Marco Biagi (Edinburgh Central) (SNP)
- *Mark Griffin (Central Scotland) (Lab)
- *Mary Scanlon (Highlands and Islands) (Con)
- *Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Blair (Scottish Government)
Susan Bolt (Scottish Government)
Elisabeth Campbell (Scottish Government)
Aileen Campbell (Minister for Children and Young People)
Boyd McAdam (Scottish Government)
Gordon McNicoll (Scottish Government)
Clare Morley (Scottish Government)
Phil Raines (Scottish Government)
Lynn Townsend (Scottish Government)
Scott Wood (Scottish Government)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 6

Scottish Parliament

Education and Culture Committee

Tuesday 25 June 2013

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

Taking Children into Care Inquiry

The Convener (Stewart Maxwell): Good morning. I welcome everybody to the 20th meeting in 2013 of the Education and Culture Committee. I remind all present to ensure that all electronic devices are switched off at all times.

Our first item today is an evidence session with the Minister for Children and Young People as part of our inquiry into decision making on whether to take children into care. I welcome the minister, Aileen Campbell, who is accompanied by Scottish Government officials David Blair, who is head of looked-after children policy, and Phil Raines, who is head of child protection.

This is the final oral evidence-taking session of our inquiry, the final report on which we intend to publish after the summer recess. Today's session is, therefore, an opportunity for members to question the minister on the key issues that have arisen throughout our inquiry, including those issues that were raised extensively and eloquently at the event that we held here in the Parliament last week.

Good morning, minister. I presume that you would like to make an opening statement.

The Minister for Children and Young People (Aileen Campbell): Yes, I will make a brief opening statement.

The Scottish Government believes that every child has the right to expect the best start in life. In practice, that means working towards narrowing the difference, across a range of indicators, between the outcomes of looked-after children and those of children and young people in the wider population.

Over the past several years, there has been a shift in legislation, with reforms to hearings, child protection and how we inspect. More and more research shows the value of early intervention, early permanence and the effectiveness of key family interventions that can arrest neglect, overcome trauma and improve outcomes.

As a country, we are making tangible progress. Since 2007, the number of adoptions from care has doubled, the proportion of children becoming looked after under the age of five has increased by

more than 25 per cent, and the number becoming looked after under the age of one has increased by 50 per cent. Care quality and attainment outcomes are increasing year on year. Those are not signs that the system is in crisis or in need of radical reform but indicators that we are, slowly but sustainably, getting it right for more of our young people.

We need to go further. We will better support families, including those in the early stages of difficulty, through measures in the Children and Young People (Scotland) Bill. Through the kinship care order, we will promote kinship care as a positive alternative to becoming looked after so that we build on a child's existing attachments.

Although family breakdown is a complex issue, the task ahead is to implement our key frameworks and to improve practice so that we can build on the consensus about what works. That will involve setting national aspirations for social work and all corporate parents—including new ones as a result of the bill. We need to be clearer about how we support children, families and communities.

Effective interventions should follow three key principles. First, they should be appropriate and based on evidence of what works. For example, parallel planning for every child would be transformative for children and for budgets. In addition, a prerequisite for improving family and child outcomes is that a long-term, trusting and honest relationship is formed with the care worker.

Secondly, interventions should be proportionate and do only what is required. We recognise that universal services and the third sector are better placed than social work to do much of the heavy lifting, for example, when supporting families with the early signs of breakdown. We need to invest fully in early preventative measures so that problems do not escalate. We also recognise that, in cases of neglect, resolution might warrant long-term, low-level parenting support rather than time-limited, focused intervention.

Thirdly, interventions need to be timely. That means taking responsibility for investing in families much earlier and ensuring that, for every child in care, timescales relevant to the child are set for determining permanence and are adhered to.

In summary, the challenge is to mobilise better our combined effort and resources, to put more of those efforts into families earlier and to make it easier for practitioners to deliver involved family support and the safe, stable, nurturing and permanent home—in whatever form—that is needed by every child.

I thank the committee for the work that it has done. I look forward to taking your questions.

The Convener: Thank you very much, minister. Let me begin with a couple of questions. Will you explain the Government's role in the decision-making process for removing children from the home? What is your role as minister and what is the Government's role in the process?

Aileen Campbell: I very much see our role as being a leadership role: setting out the guidance, providing the frameworks and ensuring that we provide the support to ensure both that local practitioners make decisions in a way that is fully informed and that those practitioners are fully empowered.

For example, through the Children and Young People (Scotland) Bill, which I know the committee will take evidence on later this morning, we want to ensure that getting it right for every child is put in statute to ensure that there is national consistency. We have taken a leadership role on that to ensure that the pace of change can be upped and to provide consistency through the bill. That is one example of where the Government is in a position to take a leadership role in ensuring that decisions can be taken in a way that is timely and best serves the interests of the children whom we are dealing with.

The Convener: Given that it is your view that the Government sets out the legislative framework and direction of travel, do you believe that all those involved in the decision-making process have a shared vision of what success looks like and of how we get there?

Aileen Campbell: As the committee will know from the evidence that it has taken over the course of weeks and months, a number of different players are involved so, yes, we absolutely must ensure that we coalesce around a shared agenda of what is in the best interests of the child. That is about ensuring that interventions are proportionate, timely and appropriate. We want to ensure that, throughout the country in a consistent way, practitioners can coalesce around the GIRFEC framework and the best interests of the child.

That is also why we have produced the common core of skills to ensure that all practitioners know about the different needs of the child and the wellbeing of the child. The aim is to ensure that all practitioners work together and speak the same language to ensure that we focus on delivering good positive outcomes for children, whose wellbeing should be at the heart of everything that we do.

The Convener: I ask about that shared vision specifically because I asked the same question at the start of our event last week. Would it surprise you to find out that, when the around 70 professionals who attended were asked whether

there is a shared vision and an idea of what success looks like and of how we will get there, the ratio of those who said no rather than yes was four to one?

Aileen Campbell: From our perspective, through the bill we are making progress towards implementing a number of key policies and legislative requirements to ensure that we can improve the outcomes for children and young people, given that we know that there has been that inconsistency.

Lots of local authorities have made progress on implementing GIRFEC, for example. It has been around for a number of years, but the inconsistency has been persistent. That is why we need to increase the pace of change and to ensure that there is consistency so that we have that shared understanding of the needs of the child, and so that we can ensure that we get it right.

It is also important to ensure that we have the tools to empower practitioners—for example, the common core and other things through which we can ensure that there is a shared understanding of what a child needs and what the best interventions could be. There is a degree of progress there, but the legislation will help.

The Convener: Thank you. We move on to questions from committee members, beginning with Joan McAlpine.

Joan McAlpine (South Scotland) (SNP): In your opening statement, minister, you talked about the rising number of young children who are looked after, but the term "looked after" includes a large number of children who are supervised at home by their birth parents. Our inquiry and the previous one have found difficulties in relation to those children's outcomes. What guidance do you plan on children who are supervised at home? What is the purpose of supervision at home?

Aileen Campbell: It is a good question, because the policy area of children who are looked after at home is one that has needed a bit more attention. We are pleased to have hosted two summits in the past few months to look specifically at children who are looked after at home. I was pleased that you were able to join us for the most recent one, where we were able to set out a number of the actions and outline a number of our thoughts about where we want to go with this issue. We want to take on board the views that practitioners and experts in the field gave us at the first summit to ensure that we can move the agenda forward.

There are a number of action points, not the least of which is to ensure that, once the decision has been made for a child to be looked after at home, we provide proper support rather than that

child being cut adrift. Another action point is to have a national mentoring scheme, which is something that we should welcome. That is being developed by Susan Elsley, who gave a presentation at the most recent summit. She said that to have a trusted, stable relationship with an adult can be crucial for a child who is looked after and is particularly useful for a child who is looked after at home. She made a compelling case, building on some evidence from approaches in other parts of the world, about why that would make a difference for children in Scotland.

We need to take that kind of evidence-based approach and build on what we know works—in particular, strong relationships with adults—to ensure that the group of children who are looked after at home are supported in order that their outcomes are better than they have been.

Joan McAlpine: Some of the young people who came and gave evidence to us in a private session said that they felt that it had taken too long for them to be taken into care and they had been left being looked after at home for too long. A number of them were quite positive about being in small residential units as young teenagers, as they found that a more positive experience than being left at home. Would you care to comment on that? Are there plans for more of those units?

Aileen Campbell: Funnily enough, in the past couple of weeks, I have spoken at two events that were organised by CELCIS, which is the centre for excellence for looked after children in Scotland. One event was for residential workers and one was for external managers.

The most recent event—the one for external managers—was about us publishing guidance for them to recognise their role in looking after children in residential settings. The messages that we gave at both events were about ensuring that, if care is the right and appropriate place for a child who needs to be looked after, it should be the first choice for the child and it should be a positive choice for them. Residential workers and residential care settings provide good, stable places for such children to go on and—we hope—have positive outcomes.

We have to listen to the child. The residential units work well for children if that provision is appropriate for them. Making sure that the residential workers are properly supported has also been a key approach by the Government to ensure that they are aware of the different ways in which they can deal with, help and be therapeutic advisers for children who are looked after in residential settings. It has to be a positive choice—and if it is the right choice for a child, it has to be the first choice.

10:15

Joan McAlpine: If the choice is made to leave the children to be supervised at home, what should the outcome be for them?

Aileen Campbell: It should be better than it has been. We must ensure that there is family support so that those children do not become lost in the system and that they are in an appropriate place. That is why we talked at the previous summit about how to strengthen support for children and find the best option for them.

The issue is particularly complicated because children have strong attachments to their home setting and family, and there could be trauma in a family's life and a child's upbringing. We need to provide support, and the approach that Susan Elsley is developing with a mentoring scheme can help to ensure that children have good, positive and happy lives.

Joan McAlpine: In your opening statement, you mentioned the increasing role of universal services. What plans does the Government have to require all the people who interact with a child across those universal services to have adequate training, both in the importance of attachment and in child development milestones, so that they can identify when something is going wrong in a child's life?

Aileen Campbell: Attachment is a key issue, and we are learning more about child development and the attachments that are formed in the early years of a child's life. That is why we must ensure that everything we do is done as early as it can be, so that the crucial early years of a child's life are as nourishing and nurturing as they possibly can be and that they have firm foundations to build on, so that they can achieve in their adult lives.

We have the common core, making sure that people understand the developmental needs of a child. CELCIS has done work on attachment and there is a whole host of other areas of intervention, so practitioners know that cognisance must be taken of the value of child development and that interventions must be proportionate, timely and appropriate.

Lots of other work has been done, not least that furnished by the academic knowledge of people such as Bruce Perry, who spoke at a CELCIS conference about the physical brain development of children and young people, and Suzanne Zeedyk, an academic in Dundee who has been evangelising about the need for early intervention because of the brain development of young children. That helps us to focus our attention on ensuring that the interventions that we make are the most appropriate ones for the children in question, so that their lives can be as fulfilling as possible.

Neil Findlay (Lothian) (Lab): A number of young people who had been involved in the system advised us that they were left at home for too long and should have been removed earlier. We can look at that in two ways. We can look at it as a preventative action—moving in early, removing them from the family home and preventing further problems down the line—which could be good for some young people. For others, remaining at home with looked-after status can also be seen as preventative for the family.

The Government's responses in today's session do not seem to convey any urgency about dealing with the issue. Everyone is telling us that the stage of being looked after at home is a major opportunity for preventative, therapeutic and family work to be done, and we appear to be missing that great opportunity. Is it the Government's view that there should be more urgency around providing support at that time?

Aileen Campbell: As I said, we must ensure that the best interests of the individual child govern and direct how the intervention is managed. If looking after a child at home is the best option for that child, there must be support in place—

Neil Findlay: That is the problem.

Aileen Campbell: Absolutely, and that is why we must ensure that we can take the action points from the summits and recognise the points that have been raised here in the committee, to drive forward improvements for that tranche of looked-after children. Becoming looked after should be an opportunity to turn a child's life around, so that he or she can have a positive outcome in later life.

As I said to Joan McAlpine at the last summit that we held, we want to ensure that research is much more rigorous, that interventions are based on evidence and are properly supportive of the family, and that, given the recent legislative changes to the children's hearings service, panel members know what a home supervision order is expected to provide to ensure that support is in place for the child. Likewise, social work services must be empowered to ensure that they can act at an appropriate juncture so that, if the child needs to be removed from a home setting, that is done as quickly as possible.

Neil Findlay: We hear that social workers who work with families have less time to do the one-to-one therapeutic work that they want to do and are trained to do and that there are fewer of them doing it. Do you agree that we need to take a step back and get social workers doing the jobs that they are trained to do?

Aileen Campbell: Social workers do a phenomenal job—we often hear about things only when they go wrong.

A number of different players are involved in a child's life. As I said in my opening remarks, the third sector plays an important role by being fleet of foot and helping a child or young person to cope. We need to respect social workers and ensure that, if a child has to be looked after, they feel empowered to make a decision as timeously as they can. It is important to ensure that social workers feel empowered and that there is no unnecessary delay in the system. We are working to declutter the landscape—the committee picked up on that issue—to ensure that the practitioners who are involved in a child's life can do the job that they want to do and have been trained to do.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Given that a huge amount of evidence has been built up and there is a body of expert opinion, we should now know what is best in seeking to return a child to the family home. If that is the case, why are outcomes for the children in question so poor?

Aileen Campbell: As I said to Joan McAlpine and Neil Findlay, the last two summits that we held provided an opportunity to shine a spotlight on children who are looked after at home. We have recognised that things have perhaps not always been in place in the way that we would hope or expect, which is why we need to ensure that, if a home supervision order is the right choice for a child, proper support is in place.

Through the work of the early years task force, we understand that interventions such as the triple P—the positive parenting programme—and the incredible years programme are about strengthening the assets of the family to ensure that they can cope a wee bit better and build on their strengths—a family will undoubtedly have strengths if a home supervision order is deemed to be the right approach for the child.

Parents can be empowered to ensure that they can create a much more nurturing home for the child, but we must work a bit harder on that because we recognise that the outcomes for young children who are looked after at home have not been as good as they have been for others.

Colin Beattie: We have talked to some of the young people in recent weeks, and they said some interesting things. One point that they emphasised, but which none of the professionals and experts had come up with, was the importance of a loving relationship. The young people thought that that might be messy and so on, but they felt that a loving relationship was a very important thing that was missing from their lives. It is difficult for corporate parents to replace that, but how do you envisage the issue being tackled?

Aileen Campbell: It is often most important to address the simple and obvious things. In the same way as children who do not need to be looked after have a strong, stable family behind them to help them to achieve all that they want to achieve, a strong, stable relationship is crucial in enabling young people who are looked after to go on and achieve.

I mentioned the national mentoring scheme that is being developed. Susan Elsley sits on the looked-after children strategic implementation group—LACSIG—and is developing the national mentoring scheme to try to ensure that children who are looked after at home have the opportunity to have such strong relationships.

Through the early years collaborative, we have taken forward something that is loosely related to the work that the committee is doing. It is about applying improvement signs to early years policy.

At the learning session at one meeting that we held at the start of the year, Paul Brannigan, the actor from “The Angels’ Share”, spoke about his experience. The stable relationship that he formed with his prison officer, who was able to watch what he was doing, direct him and guide him, allowed him to turn his life around. We hope that a child or young person would find such a stable relationship before they had to end up in prison, but that was a compelling story about how important it is to have someone with whom to form a loving relationship and how it allows children to turn their lives around.

Early intervention does not necessarily always equate with the early years. We must recognise that there are points at which we can turn a child’s life round. That is why their becoming looked after should be viewed as an opportunity for that to happen.

Colin Beattie: Another important point that the young people raised was the continuity of care. That is perhaps being addressed in the new Children and Young People (Scotland) Bill, but they were anxious about the fact that there came a point when care simply vanished. One minute they are being supported, but then they hit a certain age and that is it—the support goes.

An interesting question that they asked was whether it would be possible for residential units to have open beds so that they could go back there for support as and when they needed it. How practical might that be?

Aileen Campbell: Let us think about our own families—we often go back to our mum or dad beyond the age of 16 or 18, which is when a child can leave care. We want the support that is in place to be a bit more reflective of what it is like in the family, so we are increasing to 25 the age at which a young looked-after person who wants to

seek additional help can access support from the local authority if it can provide it and it is not provided by someone else.

It is important to ensure that the young person can keep a degree of continuity with the care worker that they meet in a residential unit. We need to be mindful of what reflects family life and to do our best to replicate it as best we can.

As you recognise, it is difficult as it is a corporate parenting role that we have, but we must do what we can to ensure that young people feel supported and not cut adrift, as some young people described it in the committee’s evidence-taking session.

Liam McArthur (Orkney Islands) (LD): To go back to Colin Beattie’s earlier point about the importance of a loving relationship, I think that I am right in saying that, on a couple of occasions, you referred to the importance of creating a strong and stable relationship. That point is fairly made, but the young people who appeared before us in private session and at last week’s event consistently told us about the importance of loving and trusting relationships.

There is probably an important difference between loving and trusting relationships and strong and stable ones. I do not think that any of us would wish to underscore loving relationships in legislation, but there seems to be an important distinction between what you said and what younger people—albeit slightly older than the early intervention that we are talking about—are looking for. They want a loving and trusting relationship perhaps more than a strong and stable one, which sounds worthy but perhaps lacks some of the warmth that children need.

Aileen Campbell: I totally agree that those young people will want to find a loving relationship as well. A sub-group of the early years task force has done some work about the importance of relationships, which is why the Government supports Relationships Scotland and Scottish Marriage Care. We recognise that all families, from time to time, may require a bit of help and assistance to ensure loving relationships, whether that is between a couple or within the family. Support can be given to them. The task force’s work recognises the need for that loving relationship.

Liam McArthur: Is there perhaps a distinction? The description “strong and stable” seems worthy, but it suggests that something is done to them and for their benefit, as opposed to the description “loving and trusting”, which suggests more of a two-way process in which their views are taken on board and they are kept informed about what is happening to them.

10:30

Aileen Campbell: I guess that it might partly be a question of semantics, as I do not disagree with what you have said. The mentoring scheme is designed to ensure that a young person has a relationship of some sort with a trusted adult to ensure that they get the support that they deserve and need but have lacked in their lives. It will have to be recognised that there will still be strong attachments to the family and that the young person will experience a lot of conflict. Providing support will require a very special, dedicated person.

I think that we are talking about largely the same thing. We recognise that some children have lacked some of the key elements that constitute a strong, loving relationship, and we are trying to provide them with that through what we hope will be a good project—the national mentoring scheme.

Neil Findlay: The Scottish Government said in its response to the committee's interim report:

"73% of young care leavers had a pathway plan in 2012."

We have spoken to many people throughout our evidence taking over the year, but the only time that I have heard or seen the term "pathway plan" is in that Government response. Does it worry you that none of the professionals, the young people or the third sector organisations has mentioned it?

Aileen Campbell: Did you ask them about that specifically? I am just trying to work out whether it was just not mentioned.

Neil Findlay: I would have thought that, when we were talking about young people leaving care or their progress through the care system, someone would have said, "Oh, yes, each young person has a pathway plan", or each professional who works with those young people would have referred to it. However, no one mentioned the term, which I find quite startling.

Aileen Campbell: But 73 per cent of young people had that plan, so there has clearly been a—

Neil Findlay: But they are not aware of it.

Aileen Campbell: Clearly, it has been developed and is there for them, and its use is increasing. We need to ensure that that happens more regularly. The bill will helpfully legislate to put GIRFEC into statute, and ensuring—

Neil Findlay: Can you tell us what a pathway plan is?

Aileen Campbell: It ensures that there is a clear pathway for the child leaving care and that the support is in place. However, if practitioners are saying that they are not aware of the pathway

plan, we will take that on board and ensure that it is addressed.

Neil Findlay: Sorry, but I want to make sure that I am not misleading you. Practitioners have not told us that they are not aware of the plan; it is just that no one has mentioned it. Throughout the whole process, not one person has mentioned the term "pathway plan". If they had, I am sure that someone on the committee would have asked them to tell us what is in it. I have no idea what is in it; perhaps you can tell us what is.

Aileen Campbell: I think that there are perhaps two issues. It is useful if that is what the committee has found, because we all want to get it right for young people who are looked after and accommodated to ensure that they have a seamless transition to independence—we need to get better at that. That is a key challenge because they need support to go into adulthood, which we need to ensure is a positive experience for them. If that process has not been clear for the young person and they feel that they have not been included in it, and if the practitioners are not raising that as an issue with you, we can take that back and ensure that there is more clarity.

Neil Findlay: What would be in a pathway plan?

Aileen Campbell: It would cover accommodation support and support with looking for destinations through training and education—that type of thing. Perhaps David Blair would like to comment.

David Blair (Scottish Government): Sure. The looked-after children guidance explains some of the key elements that should be in the plan. I do not have that guidance with me, but I can certainly send it to the committee. There is no prescribed format for the plan; it should just be a fairly straightforward record of the decisions taken about a looked-after child's aftercare package and the support needed for that child.

Neil Findlay: What standing does the plan have? A number of young people said that when they left their care setting, that was it. Some might have had something written down, but, for several young people to whom we spoke, that meant nothing. Nothing happened.

Aileen Campbell: We have all identified the need to be better at the transition from care to independence and ensuring that support is there. As others have said, young people need help after they have been in care. We need to ensure greater continuity and that they can access the support that they need. That is why the bill seeks to increase to 25 the age until which a looked-after young person can seek assistance; that age is far more reflective of the family life of people who are not in a care setting—albeit that there are limitations.

Clare Adamson (Central Scotland) (SNP): In your opening statement and your evidence so far, you have mentioned family intervention a lot. I appreciate that, although a lot of work is being done, the situation is a moveable feast, as it were. We cannot really take a snapshot in time of where we are. One concern that came through in the evidence was about the decision-making process in which a child who has been removed from the home is returned home and whether adequate interventions have been made, if, for instance, the problems at home are to do with addiction.

Can you give the committee some reassurance about how family intervention will change the situation where a child is repeatedly being removed from home and returned without anything changing within the home context?

Aileen Campbell: The point that you raise has been expressed not only in evidence to the committee, but in the two summits that we have held. In the coming months, we will carry out work to assess the support that children returning home require. That will be informed by the Scottish Children's Reporter Administration's research "Children on Supervision Requirements for Five or More Years".

In relation to the bill, in the kinship care order we want to make provision for access to family counselling to ensure that there is far more emphasis on therapeutic interventions that can empower families and enable them to better equip themselves to look after the child, so that the experience for both the family and the child is far more positive. We need to recognise, too, that some kinship carers might not have looked after a child for a generation. There indeed need to be appropriate and timely interventions for those children who are looked after at home.

In terms of the family interventions that are taken before children become looked after, the work of family nurse partnerships with teenage parents to ensure that they are better equipped to look after their babies has been rolled out. Evidence has shown that those parents then space out their babies a wee bit more and are far better able to look after their next child because of the parenting skills with which they were equipped through that intensive support.

The early years task force advocates triple P and the incredible years programme as other forms of intervention in a group setting. The parenting strategy that we launched last year also articulates the importance of parenting and the fact that every parent, regardless of whether their child is looked after or not, may require a degree of support and help.

A number of things are going on to ensure that support is in place. We recognise that support at

whatever level is often needed to make sure that every child is given a good start in life.

Neil Findlay: On the resources available, how much do we spend on protecting children?

Aileen Campbell: In terms of child protection?

Neil Findlay: I mean under the whole budget heading of protecting children.

Phil Raines (Scottish Government): Do you mean within the national Government, across Scotland as a whole, or in local government?

Neil Findlay: Across Scotland.

Phil Raines: I am not sure that the statistics are collected in that way. We need to establish what you mean by protecting children, because, clearly, one could argue that a lot of social work or children's services more generally—all that sort of expenditure—exists to protect children.

Neil Findlay: Do we not know how much we spend?

Phil Raines: I think that we will have to come back to you about that.

Neil Findlay: We have asked for that information twice already and have not been given the figures. There is clearly an issue, because if we are going to plan services and determine whether public money is being well spent or poorly spent, we need to know initially how much is being spent.

Aileen Campbell: Oh, I see—I understand the question now. I think that we responded to you to say that, absolutely, we need a far greater understanding of what has been spent and how it has been spent to ensure that we can plan strategically. However, as Phil Raines says, the landscape is complicated, given the interactions of all the agencies, such as third sector organisations and the health sector, that come together to ensure that adequate protection for children is in place. We will look at that again and, if we can provide you with any more figures, we will do so, although I think that the original answer that we gave recognised the need to do a bit more work on that.

Neil Findlay: The whole budget is complex, but we can put a figure on it, so surely we can put a figure on protecting children. We have to know whether the money is being spent well or badly.

Phil Raines: That is true, but it can be difficult to define that, because many services are set up to do a range of things, an important part of which is protecting children. There is an argument that almost all children's services protect children in one way or another. Much of the education budget is there to protect children. The issue is complex, because part of the purpose of having the

GIRFEC approach rooted across many agencies is to ensure that universal services have protecting children as part of their on-going functions and that that is hardwired into what they do as a whole. Therefore, it is difficult to extract the protecting children bit, because that is almost separating out something that they should do as part of their everyday business.

Aileen Campbell: If Mr Findlay is advocating that we ring fence to give him the clarity that he wants, and if the committee wanted to recommend that, I would happily go back to the Convention of Scottish Local Authorities with that.

Neil Findlay: You mentioned that—I did not. I simply asked about how much money we are spending on that element. Clearly, significant issues have been raised during the inquiry. Normally, that would lead to the Government making a response that required either more cash or less cash, but if we do not know the current figure or the starting point, how can we establish whether we need to invest or take money back?

Aileen Campbell: We have been working to ensure that the resource that is being spent is spent much more strategically. Assistance has been given to local authorities on strategic commissioning to ensure that we properly and much more effectively prepare the services that are required for children to ensure that they are more alert to the needs of the child. The approach should not just be to say, “Oh, what’s out there? We’ll place a child in this care setting.” We need to ensure that the commissioning is a bit more streamlined. That is another way to ensure that we use the money that is in the system effectively to protect children.

There is also the complication that all the different services are coming together. The total that can possibly be spent on children’s services is about £2.5 billion. Although the early years task force’s £270 million change fund is small, it is about ensuring that the global total of resources that have been brought to the table can be put towards early and effective intervention. It is easy to talk about early intervention, but it is difficult to do it. We need a cultural change in services to ensure that we determine the best outcomes for children and young people.

Neil Findlay: In this area, what does the term “strategic commissioning” mean?

Aileen Campbell: It is about the best place to put a child and about ensuring that the resources are spent in areas of need for a particular local authority. It is about ensuring that the best place is available for a child and that there is a planned and proportionate intervention that is not just about where is free but about placing a child, with permanence planning in the background, to

ensure that there is a limit to the number of times a child is placed. It is about ensuring that the process is done in the best possible way for the child.

The Convener: The issue of resources has come up in a number of ways during the inquiry. I accept that it is complicated and complex to extract an exact figure, but are the resources that are being allocated to the area being spent appropriately and efficiently?

10:45

Aileen Campbell: The hallmark of the Government’s approach and indeed of what we are trying to do across the whole public sector is ensuring that we can shift resources to early intervention. However, as I said in response to Neil Findlay, that will require a cultural change. With the pressure on finances that everyone has recognised, we need to use the money in the system to the best of our ability, which will mean early intervention, preventative spending and getting the most from our finances to ensure that we have the best possible outcomes.

We are seeking to bring about that cultural shift through the early years change fund and the early years collaborative. Local authorities and their partners in the third sector, the health sector and other sectors are ensuring that their small-scale interventions produce the outcomes that they want and are then scaling them up. You need to spend your money where you can be sure both that it will support that change and secure the best outcomes and that you have reliable, robust, real-time data to act with confidence. That is why we are very much promoting an evidence-based approach and, indeed, why we are implementing family nurse partnerships, triple P and the incredible years programme. All of them have the evidence base to allow us to inform the direction of policy.

The Convener: I am glad that you have raised the issue, but is it possible to quantify whether we are being successful in shifting resources to early intervention? Can we quantify the impact that the shift in resources has achieved?

Aileen Campbell: As a result of the early years task force, a number of changes have been made to ensure that preventative spending is the watchword. However, we have also asked councils to give us returns on how they are coping, and those returns are now coming in. The task force has been in place for a year now, and it is important to know whether the partnership approach through the community planning partnerships has been effective in a local setting and to get information back about the approach to preventative spending and early intervention.

The Convener: I accept that it is still early days, but when will we be able to see that data and know whether the shift has occurred?

Aileen Campbell: We requested returns from the local authorities a few months ago, I think, and when we get them back and the task force has looked at them we might be able to share that information with you.

Liam McArthur: Going back to an issue that Clare Adamson raised earlier about the problems of achieving permanency in the multiplicity of moves, I note that one of the consistent themes that has emerged from young people who have given evidence to the inquiry is that, particularly as they get older, their voice is not heard clearly enough throughout these difficult changes and that the level and timeliness of information have not been good enough. When young people are first taken into care, they very often almost blame themselves, and not enough is done not only to reassure them in that respect but to give them warning of what is coming up, the reasons for it and so on. I suppose that this goes back to my earlier point about young people's trusting relationship with a range of individuals in the process. How can children's voices be better heard in the system, and how can young people, particularly as they get older, be included and involved in a process that at the end of the day is supposed to be about securing their best interests?

Aileen Campbell: I absolutely agree that the young person's voice must be heard. Indeed, part of the GIRFEC approach is to ensure that children are at the heart of the services that have been designed around them and are delivered to them, that they have a voice in that system, that the information that they get—an issue that I know has been raised with the committee—is honest and up front and that they are fully informed about what is happening to them. They have been through traumatic experiences—their relationships with their families have broken down and so on—and given what they have already been through in their young lives they must be treated with the respect that they deserve and must get trustworthy information.

Who Cares? Scotland, which we support, has done phenomenal work in ensuring that the country's corporate parents understand their role and that in the training they get and the decisions they make they are always mindful of the young person. Indeed, its destigmatisation campaign is part of that work and seeks to make people understand that it is not the young person's fault that they are in care, that their situation is absolutely nothing to do with them and that they now have the right to be cared for and nurtured by the corporate parent. Its advocacy work on behalf

of young looked-after people around the country must be applauded and I am sure that its evidence has enriched the committee's inquiry.

We also want to make the training of children's hearings panels more robust, and now that the new children's hearings system is going live, we have an opportunity to ensure national consistency in that approach. There are a number of ways in which we can ensure that children's voices are heard. For a start, having good relationships with Who Cares? Scotland and other organisations will allow us at a national level to hear young people's voices and to ensure that our policies reflect and are mindful of their views.

Finally, in embedding GIRFEC and taking much more cognisance of the United Nations Convention on the Rights of the Child, which is very much about ensuring that children's voices are heard, the Children and Young People (Scotland) Bill will help to ensure that the Government and indeed the wider public sector are mindful of their role in giving young people a voice in the processes that are going on around them.

Liam McArthur: The priority was more about reducing the number of moves and placements, and achieving permanency earlier. I suppose that another factor would be limiting the number of different social workers or other participants in the process whom the child has to deal with. However, are you saying that your expectation is that unless there are good and compelling reasons for it not to happen—when, for example, there might be a risk of the child absconding to avoid a move—information will be shared with the child in advance?

Aileen Campbell: Yes. My expectation is that young people who are coming into care will be very much part—indeed, at the heart—of whatever arrangements are made and whatever support they receive. We must avoid causing a young person trauma as a result of that not happening. We must ensure that young people feel as informed as they can be and that they are provided with appropriate, truthful and honest information. After all, the last thing that a young person needs is to feel that another relationship with an adult has not been as trustworthy and as honest as it could have been; they need to feel that they are respected when they go into care or when they are looked after.

Liam McArthur: Although all the young people we spoke to gave us examples of where the system worked well, they then used them as a contrast to examples where it had not.

Aileen Campbell: When you hear young looked-after people talking through Who Cares? Scotland, the debate project or the other groups

that support them, you realise that they tell very different stories, depending on where they come from. Although young looked-after people need a degree of consistency, we must recognise that each and every one of them has individual circumstances and needs and that we therefore cannot take a blanket approach. Instead, we have to ensure that their voices are heard, that the information they get is provided in a trustworthy and honest way and that they do not feel as if they are in the dark or that they are going to experience more trauma in their young lives to compound the trauma that they have already had. We have to get things right for them—indeed, there is no point doing anything else.

Liam McArthur: Concern was also expressed about the overall number of people involved in the process, by which I mean not just the hearings process but the other associated forums. Is that likely to change, either through legislation or through the direction of travel of policy? The view certainly was that it had an effect on the confidence of some young people to speak out and articulate their views.

Aileen Campbell: The named person provisions in the legislation should go some way towards streamlining that. I guess that the unfortunate reality is that lots of people will be involved, but that has to be done in a more sensitive way if it has been causing stress and trauma to the child. The named person provides a single point of contact, which can help a young person to navigate through the care process.

Liam McArthur: If appropriate, would that allow for fewer people to be involved, albeit that their input would still need to be captured in some way?

Aileen Campbell: I would hope so. The named person role is designed to ensure that a single port of call is provided within universal services and that a more streamlined approach is taken to providing those services. I reiterate that a number of different people will be involved in the young person's life, but their involvement needs to be managed sensitively so that that does not cause undue stress and trauma on top of everything else that they have experienced.

Liam McArthur: The extension to the age of 25 of the period in which—if appropriate—support can be provided is welcome. A point that has been made is that although we may leave the family home, we never leave the family. In that sense, we could ask whether the concept of leaving care should exist at all. I am not sure whether this is a practical option, but there was certainly a view—Barnardo's Scotland has been particularly strong on this—that capturing what happens to individuals after they leave the care system is not done as systematically or comprehensively as it should be. Is capturing that information something

that the Government is trying to improve, either through legislation or by other means?

Aileen Campbell: Moving the age up to 25 is designed to be more reflective of what other people's lives are like, ensuring that support is in place and recognising that the corporate parent's role stretches to the age of 25. If people are able to help those young people, they should do so. There is a bit of work to be done in monitoring the data beyond the care setting; we are alert and alive to that and we want to ensure that it is carried out. The mentoring scheme will also provide help and assistance for young people leaving care; a solid relationship will have formed there.

Given what I have heard from residential workers at the past couple of conferences that I attended, I know that they are important in some young people's lives and have helped to turn their lives around, and we want to provide that support beyond the care setting. We should recognise the fantastic work that residential workers do across Scotland in providing that support to young people.

Joan McAlpine: I have a supplementary question on that point. At our meeting with professionals last week, some representatives of residential workers said that they felt that continuing a relationship with a child after that child had left care would put a mark of suspicion on them. They felt that they might even be disciplined for being Facebook friends with the child, for example. What guidelines are available to protect workers so that they can continue to maintain relationships with children?

Aileen Campbell: It is about ensuring that children do not face a cliff edge when they leave care. There should be openness so that, if they need to come back and seek advice and guidance, the residential worker is there to help them. However, if residential workers fear that they may be disciplined for, or prevented from, doing something that is naturally instinctive, we should be mindful of that and should help them. There are a number of bits of guidance out there for residential care workers, who are now a registered workforce, so there are procedures and structures in place to help them.

11:00

Neil Bibby (West Scotland) (Lab): Minister, you mentioned that the number of looked-after children is increasing. Given that the estimated number of children who suffer from neglect varies between research studies, do you have any plans to begin recording the numbers in the way that you do for children on child protection registers and children with additional support needs?

Aileen Campbell: Neglect is a big issue and one that we need to tackle, and ensuring that we can properly deal with it is fundamental. Just last week, we launched training materials specifically on neglect that were developed and designed by Brigid Daniel. They are available on the WithScotland website, I think. That is one example of where we are trying to ensure that we can better deal with issues around neglect and empowering practitioners to be more alert to it as a form of early intervention.

Neil Bibby: Neglect is an important issue that needs to be tackled. Do you intend to compile data and statistics on the level of neglect? We have various statistics on the extent of the problem.

Phil Raines: Perhaps I can answer that. The fact that there are different definitions of what is meant by neglect and which circumstances qualify is one reason why there are different statistics. However, we collect information on neglect through the child protection register. The statistics that came out in March, which I think are the most recent official statistics on child protection, capture the concerns that led to kids being put on the child protection register, and neglect is one of the concerns on which we collect information. We have been doing that for a number of years, and past statistical publications have provided a lot more clarity about the nature of the concerns.

Neil Bibby: Is that information about children on the child protection register who have been neglected?

Phil Raines: Yes.

Neil Bibby: We understand that a number of children who are not on the child protection register are suffering neglect. I think that we need statistics on them in order to understand the problem.

Aileen Campbell: We have outlined the work that we are doing to help to empower practitioners to be more alert to the issues of neglect. That is on WithScotland's website.

Neil Bibby: Different agencies work on issues to do with children who suffer neglect. Do you have any plans to introduce powers to centralise control under the Scottish ministers and remove powers over children's services from local authorities and health boards?

Phil Raines: With regard to neglect?

Aileen Campbell: I do not understand. Are you asking about taking responsibility away from local authorities?

Neil Bibby: Yes. Do you have any plans to remove control over children's services from local authorities and health boards and centralise it?

The Convener: For clarity, is there something specific that you have in mind?

Aileen Campbell: Have you heard something that we have not? Do you mean taking control over social work, children's services and health visitors—all those things—and having control over them in national Government? That is certainly not the Government's plan.

Neil Bibby: So you will not introduce powers to centralise that sort of—

Phil Raines: I may be speaking a bit wide of the mark here, but my understanding is that, under legislation that already exists, when local authorities fail in their duties and functions ministers have powers to take steps and act regardless of what those functions and powers are. We can certainly come back to you with clarification of that if the question is specifically about children's services and the failure of local authorities and health boards to act on their functions with regard to children. Is that specifically what you are asking about?

Neil Bibby: Yes.

Phil Raines: Okay.

Neil Bibby: We have heard particular concerns about children in the early years and decision making affecting very young children. What is the Government planning to do through the early years collaborative to tackle neglect among very young children? How can we improve decision making for very young children? Liam McArthur said that children need to be heard but, obviously, it is difficult for very young children to make their views known. What would your response be to that?

Aileen Campbell: The stretch aims of the early years collaborative are about making sure that children have the best start in life and that we collect robust data about the interventions that practitioners have made to ensure that, once they are confident that those interventions deliver the results that they want, they can scale them up. That information will be shared and has been shared over the past two learning sessions.

All the community planning partnerships in Scotland have been working together to ensure that the interventions that they make deliver the results that they want. That does not always happen, but that also helps our knowledge because, if a particular intervention does not deliver the results that we want, that indicates that we should not continue with it.

That real-time data is being collected by community planning partnerships around the country now. At the second learning session, local community planning partnerships were able to share that learning among themselves to ensure

that it could be applied in other local authorities. That application will not necessarily be a carbon copy; it will have to reflect the particular local authority's needs, settings and geography.

Something that might be of interest to the committee is the work that Scottish Borders Council is doing on looked-after children and permanence planning, which concerns one of the stretch aims that it is trying to improve on. That is an example of one local authority seeking to improve the lot of looked-after children and using the improvement science advanced by the early years collaborative to enable it to do so.

Neil Bibby: Mental health is one of the major issues that affect very young children. In its strategy for mental health, the Scottish Government made a commitment to improve infant mental health. Does the Government have plans to invest in the skills of key staff who will deliver the stated improvement, such as health visitors, nurses and social workers?

Aileen Campbell: The emphasis of the Children and Young People (Scotland) Bill is on ensuring that we do our very best for children and young people who require support. That means putting GIRFEC in statute, which requires an understanding of the different interventions that different workforces and skill sets can make. It is about recognising their important role in delivering for children and young people who require additional help through their lives. Health visitors are a fundamental part of ensuring that children and young people can go on to have happy and fulfilling lives. They are very much part of the workforce that we want to empower to seek the positive changes that we want to make.

The Convener: Children's hearings have come up a number of times. Colin Beattie wants to ask a question on them.

Colin Beattie: A couple of points came out on children's hearings. The first was made by the young people to whom we spoke. I accept that the group of young people we talked to was rather narrow, but they consistently spoke about the fact that they often did not understand what was going on and that people were talking over their heads. Indeed, several of them said that they lied at children's hearings to conform and not to rock the boat. It appears from that that there are some difficulties in getting through to the child and getting their views heard.

The second point, which was made by other people who gave evidence, related to the increasing presence of lawyers at hearings, mostly representing parents. Children's hearings are perhaps not quite equipped to deal with legal arguments. If the lawyers are representing the parents' rights, where does the child come into it?

Aileen Campbell: The new children's hearing system, which went live at the start of the week, provides the opportunity to ensure that there is far more consistency and that, where there is best practice that enables a child to feel that going through the panel has been a positive experience, that can be replicated. Training of panel members is now far more robust and empowering, to ensure that they do things as sensitively as possible, although we recognise that panel members are volunteers who do a phenomenal amount of good work to ensure the wellbeing of children in Scotland.

We have been trying to work through a number of issues relating to legal services. There is a recognition of the interface between legal services and children's services and on the need for legal services to understand exactly concepts such as those in GIRFEC. Fairly senior officials have therefore been working hard to ensure that appropriate links are in place to try to influence the way in which the legal service can cope in making the decisions that it will have to make without undue delay. We are also making sure that the balance is appropriate. Mr Beattie touched on the issue of children's rights versus parents' rights. If we are to be true to GIRFEC, children's rights will be of paramount concern to people when they are making decisions. I believe that the Children and Young People (Scotland) Bill, which will enshrine GIRFEC in statute, will go some way to ensuring that that balance is always appropriate.

Colin Beattie: When we talked to the kids, they made the point that there does not seem to be a process whereby young people are talked to separately or have the opportunity to give their views away from parents and other people by whom they might be a little influenced.

Phil Raines: I can respond to that almost in a personal capacity, because I have recently started as a children's panel member. I have been struck by some really good practice. Often, the lead has come from the chair of the children's panel, who has cleared the room in order to speak to a child on their own, to enable them to feel more comfortable. Obviously, only so much can be done to make a child feel comfortable in that kind of environment, but some chairs are acutely aware of the fact that the child often has an audience and that it is important for them to present their views to the panel without those people being there. A lot of it comes down to good practice. I hope that the implementation of the Children's Hearings (Scotland) Act 2011 will enable the kind of good practice that I have seen in panels to be spread more widely to enable children to have that experience more regularly.

Liam McArthur: Colin Beattie mentioned concerns about the input of legal representatives

in the hearings process. We have also heard concerns that the issue extends beyond that process and that some problems relate more to the court process. There are legal representatives whose understanding of attachment theory, child development or whatever is perhaps not extensive, yet in the court setting they have as much if not more sway as some of the other experts who are called to give evidence or participate. Is that issue being addressed, possibly through the interaction that you said is taking place at senior official level?

Aileen Campbell: Yes. There is much more interaction with the Scottish Court Service, the Scottish Prison Service and the Scottish Legal Aid Board. There has been a lot more dialogue with family sheriffs to ensure that they understand about permanence and all the other issues to which the member alluded. Good work has been going on for the past few months to ensure that there is much wider knowledge of all the elements that are important in making a decision about a child.

The Convener: That brings us on to the balance of rights between children and parents, which we have started to touch on

Liz Smith (Mid Scotland and Fife) (Con): One of the greatest complexities with which the committee is having to grapple is the balance between children's rights and the rights of parents, in particular, and other stakeholders. What advice is the Government taking on that and, in particular, what legal advice is it taking?

Aileen Campbell: Do you mean in relation to hearings?

Liz Smith: No, I just mean in general. Obviously, if we are to expand the rights of children, we must be very sure that we are not undermining the rights of others, and particularly parents. I would be interested to know about the legal advice that the Government is seeking on that.

11:15

Aileen Campbell: Everything that we do and all our policies are underpinned by GIRFEC—getting it right for every child—and making sure that the child is at the centre of decisions. Of course we recognise that parents also have a role in making decisions. The last time I was a member of the committee, we passed a series of Scottish statutory instruments that were about ensuring that parents have an appropriate role in, and are protected by, the hearings system.

As to particular legal advice, I can get back to you about that.

Liz Smith: It has been pointed out to us a number of times that, if we are to extend the rights of children, there may be some development of Scots law in relation to European law. I am interested to know at what stage you are in taking advice on that.

Aileen Campbell: We do not disclose whether we have had legal advice. However, relationships have been formed and are continuing in order to ensure that there is recognition in the legal world of areas such as permanence and GIRFEC. That will mean that, as we bring forward legislation, everyone who is involved in decision making around a child will be properly aware of the issues and children's and parent's rights will be given the appropriate balance.

Liz Smith: I fully understand that you cannot give us the details of legal advice. However, I think that you can confirm whether the Scottish Government is looking at other legislation and specifically at the European convention on human rights to see how compatible they are with the development of children's rights.

Phil Raines: It is one of our key duties to ensure that the Children and Young People (Scotland) Bill is compatible with the ECHR. You will have seen from the supporting documentation that we believe that it is.

Liz Smith: May I press you a little bit further on whether there is discussion going on about Scots law being incorporated in other aspects? That is something that was put to us at various phases.

Phil Raines: Other aspects—?

Liz Smith: If we look at the proposals in the bill and the extension of the rights of the child, by definition that has possible implications for Scots law and how it relates to European law. What stage have you reached in taking advice on that?

Phil Raines: I am not sure that we are in a position to say.

Aileen Campbell: We can take advice and guidance on what we can disclose and, if appropriate, we can come back to you about that.

George Adam (Paisley) (SNP): Good morning, minister.

Last week, I chaired a breakout group that, ironically, probably had more social workers than any other category of professional. The question concerned the role of optimism in social work and whether it creates a reluctance to move children from the family home. When the discussion started, the social workers answered that they felt there might have been a contradiction between the policy objectives of getting it right for every child and the need to deal at the same time with adults in recovery, whether that is from alcohol or drug

addiction. Having had the discussion, we thought that there probably is an issue with trying to keep a family together and ensuring that a person gets on the road to recovery. What is your opinion about that? The social workers asked us to ask you that question. Do you think that a contradiction exists, or do you believe that it is possible to get a balance and to achieve both those objectives?

Aileen Campbell: We have touched today on the need to make sure that appropriate family interventions are there and are made—whether they are needed long term or in a short burst of intervention—and that social workers are empowered to make those decisions at the right time, as long as the child's wellbeing is always at the forefront of decision making. We need to ensure that if a child needs to be removed from its family, that is done at the appropriate time and as quickly as it can be, while also ensuring that if there is an opportunity to empower the family to cope better with the child, that is done.

That is why we are keen on the parallel planning that we talked about. You heard about the New Orleans approach, under which, if someone who is working with a family needs to remove a child, there is a process for that to be done quickly, so that there is not the drift and delay that have caused so much concern for all of us with an interest in the outcomes for looked-after children. Parallel planning, the work that the New Orleans project has been doing and the early years collaborative work in the Borders are all about ensuring that we can work with the family but, if we need to, we can step in and remove the child appropriately.

George Adam: People in the breakout groups last week also wanted to ask whether anything could be done at a national level to improve practice on contact.

Many of the young people said to us that, if there were four siblings in a family, two of them might be in the same care home in the central belt and two might be in Perth because there was a difference in age. That caused difficulty with contact, which left particularly the older siblings with quite a mental scar, especially in one case that I can think of. We discussed that with some of the social work professionals. Their answer was that it was difficult for them to deal with the issue, because they dealt with the cases of whoever was in their area. Can we do anything nationally about that?

Aileen Campbell: We are funding CELCIS to focus on that, spread good practice and, taking on board the issues that you mention, ensure that contact is done a bit more sympathetically, recognising the fact that children are spread around the country.

The Convener: I will ask a couple of questions that have not been covered or have only been touched on.

A rather crude measure of success or failure that has been used in the past is the number of children who have been taken into care. In other words, if the number of children being taken into care is rising, that is considered to be a failure and, if it is falling, that is considered to be a success. Will you clarify the Government's view on that attitude? I hope that you confirm that the issue is not the number of children who are being taken into care but the outcome for children, irrespective of whether they are taken into care or left at home.

Aileen Campbell: I agree that it would be too crude to judge success on the numbers alone. The statistics that I outlined at the start talked about more younger children being taken into care, which shows that decisions are being taken at an earlier stage.

We need to be more sophisticated in how we interpret the figures. There is a LACSIG workstream on how we collect the data, what we do with it and whether the data that we collect tells us the right things. I agree that saying that the numbers going up or down equates to failure or success is too crude and that we must look beyond that. We also have to ensure that we have a better, more rounded picture of a looked-after child's wellbeing and not base success on educational attainment alone. That broader approach allows us properly to gauge whether the looked-after intervention that that child has had has been successful.

The Convener: As you will be aware, a couple of months ago, we met young people who had been through the care system. All of them, with the exception of those who had been taken into care as babies or very young children, said that it took far too long for them to be taken into care—many years in most cases. They also said that they had been removed from the parental home because of their behaviour. In other words, their behaviour had descended into vandalism, criminality or violence to such an extent that they went through the hearings system and were removed from their homes because of it rather than because they were subject to abuse and neglect by their parents. Attached to that was the fact that, when they were removed, younger siblings were left in the parental home.

Those young people had been through the system. Has the system changed, in your view, such that it is no longer the case that children are left for many years in the situation that those young people described? Secondly, is it the case that children are being removed from the home because of the abuse and neglect that they suffer, rather than because of the bad behaviour that they

eventually display because of that abuse and neglect?

Aileen Campbell: I do not have the figures to hand but, during the 40 years since the children's hearings system began, the proportion of children involved and the reasons for them going through the system have completely changed. There are now far more children coming through because of—

The Convener: The young people to whom we were talking were only in their early 20s. Their experience is relatively recent.

Aileen Campbell: I am talking about the longer-term change in the children's hearings system. At the start, people might have been going through the hearings system because of the behaviours that they had exhibited, but now the proportions have been turned on their head and far more are coming through because of issues to do with child protection, neglect and all the different things that we have touched on today. I can get detailed figures to you if that is helpful.

Going back to the points that were raised earlier, we must ensure that there is honesty and clarity in the approach that is taken and in the messages that are given to children and young people, so that they understand that it is not their fault that they are going into care or need to become looked after. Who Cares? Scotland has started work to destigmatise some of the perceptions about young looked-after people, so that people understand that it is not their fault that they are in care and that, because they are in care, wider society has a responsibility to support them. I have outlined some of the work that we are doing on permanence with the courts and the legal system to ensure that decisions are made more speedily, and the parallel planning work that is being done to put processes in place when working with families so that, if a child needs to be looked after, that can be done more quickly.

Those are the types of interventions that we want to see happening around the country, and the stretch aim of the Borders early years collaborative is about achieving early permanence in a quicker timeframe. That work is also important in informing the committee's understanding of how seriously local authorities take the issue. We are trying to get decisions made more quickly, and that is the emphasis of the bill and of all the work that we are doing on looked-after children.

The Convener: In your opinion, have we got the balance right between treating each case individually and the practical reality of the situation, which is that if one child in a household is being neglected, the likelihood is that the siblings are also being neglected? How do we deal with decisions about whether to remove an

individual from the parental home and look at the wider circumstances of a family group in which there are two, three or more siblings, and take a decision based on the group rather than on the individual?

Aileen Campbell: You raise an interesting and valid point. Common sense would tell you that there is a need to intervene for that family and to ensure that siblings are not left in any danger or under any threat, and there is also the question of keeping the family unit together. Attachment to the family is important and children need to maintain sibling bonds, and if that is not being reflected in decision making, we will take on board that point and enhance the situation so that sibling contact is more likely to happen in future. Common sense tells us that, if a child has been taken away because of neglect, and there are other family members left in the home, there is a need to intervene in the whole family, to ensure that we can get it right not just for the one child but for the siblings as well.

The Convener: I agree. Most of us would agree about common sense, but is there a strain between common sense on the one hand and the rules under which professionals work in dealing with each case as an individual?

Aileen Campbell: Social workers, or whoever is involved with the family, will be aware of the whole family situation. Taking a holistic approach to dealing with one child requires us to get it right not just for the one child but for all of them, because there will be a duty to ensure that every child in the family is supported. If people are describing a strain, we will ensure that that is looked at and dealt with by empowering the workforce to make decisions in the best interests of a child and of any other child in that family setting. We all agree that if one child is suffering, support must also be given to any remaining siblings.

11:30

The Convener: The Government's response to the committee's interim report made a number of points, of which I shall briefly mention three. It says:

"we are refreshing the national child protection guidance ... We are also reviewing our approach to Looked After Children and child protection more generally, over the long term"

and

"We are also working on a mapping process for the interaction between these complex child support processes and the court system."

Do you have a timescale for that work to be completed? Obviously, it would be helpful for our report to reflect the work that the Government is doing.

Aileen Campbell: The guidance is due at the end of the year. The mapping process is on-going, on the bill timescale. What was the other thing?

The Convener: You said that you were “refreshing the national child protection guidance”

and

“reviewing our approach to Looked After Children and child protection more generally, over the long term”.

Aileen Campbell: That is part and parcel of the bill and the other timescales that we have got, not least because there are other strands of work that are being conducted by LACSIG. It is all being done within the timescale of the bill, but the guidance will be issued at the end of the year.

The Convener: That is helpful. Anything that you or your officials could share with us in advance of the publication of our report on the matter would be helpful.

I thank Phil Raines, David Blair and Aileen Campbell, the Minister for Children and Young People, for coming along this morning. That is the end of our oral evidence sessions on our inquiry. We will try to complete our report over the summer and publish it after the summer recess. I thank everybody who has taken part in what has been a fairly long inquiry and an interesting piece of work on an extremely important subject, as I am sure we can all agree. I thank everyone who has been involved, not just those who have been here today.

11:32

Meeting suspended.

11:35

On resuming—

The Convener: As part of our inquiry, we recently held an informal meeting with children and young people who are going through the care system. That was done in conjunction with Who Cares? Scotland and included input from the Kibble Education and Care Centre. It is important that we get the main points of that meeting into the public domain. The clerks have prepared a note of the meeting, which has been agreed by Who Cares? Scotland. Once it is agreed by members, it will be published on our web pages with other evidence that we have received. Do members have any comments on the draft paper?

Liam McArthur: The paper is a helpful summary. As I said before the meeting, we are particularly grateful for the input from the young people from Kibble and we should write to them separately expressing our gratitude.

The Convener: Those letters are already in preparation.

Clare Adamson: Convener, you mentioned when we were in private session that you want additions to be made to the paper. What are they?

The Convener: One thing that I think has been missed out is reference to the fact—which was mentioned in our evidence session with the minister a moment ago—that most of the young people, if not all of them, feel that they should have been taken into care sooner. That should be reflected in the paper.

As there are no other comments, are members happy to publish the paper, with a change to reflect that point?

Members indicated agreement.

Children and Young People (Scotland) Bill: Stage 1

11:37

The Convener: Next is our first oral evidence on the Children and Young People (Scotland) Bill, from Scottish Government officials. Because of the number of issues that are raised by the bill, we will have two panels, the first of which will deal with parts 1 to 5, which cover rights, children's services planning and getting it right for every child. We will take further oral evidence in September and October, including from the Minister for Children and Young People. That meeting will be the opportunity for members to get ministers' views and comments on the detailed policy decisions.

I welcome our first panel. There are rather a lot of you, so I will not give everybody's title, if you do not mind. We have Elisabeth Campbell, Gordon McNicoll, Scott Wood, Boyd McAdam, Lynn Townsend and Stuart Robb, all from the Scottish Government. I invite Elisabeth Campbell to make a brief opening statement.

Elisabeth Campbell (Scottish Government): I am the bill team leader for the Children and Young People (Scotland) Bill, which my colleagues and I are grateful to be here to discuss. The provisions are fairly wide ranging, so a number of officials are present in order that we can answer your questions as fully as possible.

The bill is fundamental to the Scottish Government's aim of making Scotland the best place in the world to grow up. It will put children and young people at the heart of planning and delivery of services, and will ensure that their rights are respected across the public sector.

The bill will also ensure that children's rights properly influence the design and delivery of policies and services and it will increase the powers of Scotland's Commissioner for Children and Young People. It will improve the way that services support children and families by promoting co-operation between services, and it will strengthen the role of early years support in children's lives by increasing the amount and flexibility of funded early learning and childcare. It will also ensure better permanence planning for looked-after children by improving support for kinship carers, families and care leavers; extend corporate parenting across the public sector; and put Scotland's national adoption register on a statutory footing.

The scale of the Government's ambition for children and young people is significant, and the very strong response to the consultation on the bill makes it clear that the Scottish Government is not

alone in holding such high aspirations for the children and young people of this country. The bill will bring about a step change in the way in which all services support children and young people, and it will inspire renewed debate and ambition for what Scotland's children and young people can expect. There is clearly an appetite for that kind of change. My colleagues and I will be delighted to answer questions from the committee.

Liz Smith: I think that we all agree that one of the greatest difficulties and complexities that the committee is grappling with is partly ethical and partly legal: if we extend the rights of children, there are implications for the rights of parents and other groups. The committee would welcome information on where the Government and the bill team are in seeking advice on that.

Our briefing notes for this morning mention that there has been a request regarding the incorporation into Scots law of the United Nations Convention on the Rights of the Child. How are you addressing that issue? What stage are you at?

Scott Wood (Scottish Government): As regards the balancing of the rights and responsibilities of parents against those of children and young people, the UN convention is clear on parents having primary responsibility and taking the lead role in raising children and young people.

On the question of incorporating the convention, ministers are not against making targeted changes to domestic law that build on the requirements of the UNCRC. They will tend to make those changes where they think that they will directly benefit children and young people, and where they think that the changes will ultimately strengthen our approach to children's rights overall.

Ministers are not supportive of wholesale incorporation of the convention—of lifting the convention in its entirety and dropping it directly into Scots law. They do not feel that that would necessarily take us forward from where we are at the moment. Very little evidence has been shared with ministers that sets out the benefits of taking that approach, and the limited evidence that we have seen suggests that benefits lie primarily in relation to improved culture within services and increased awareness of children's rights. We want to deliver those benefits, but we do not think that wholesale incorporation necessarily represents the best and most effective way of going about that.

For instance, we are seeking, through the bill, to improve the culture within public services through effective embedding of getting it right for every child, which is an approach that builds on the principles of the convention. We are also taking steps through the bill to place a new duty on the

Scottish ministers to promote awareness and understanding.

There is some risk that wholesale incorporation could result in far too much emphasis being placed on the courts and on legal processes to address the range of often complex issues that can impact on this agenda.

Liz Smith: When could you provide us with the legal advice that you think is appropriate to the decision not to incorporate the whole convention?

Scott Wood: I do not think that we would seek to offer any legal advice to the committee on that issue. It is a policy decision for ministers whether they wish to pursue incorporation of the convention.

Liz Smith: We have to make a decision. If we extend the rights of children, which is part of the basis of the bill, we have to be clear about the implications for and knock-on effects on other rights. What I am driving at is that we have to make an informed decision, which depends partly on legal advice. If it is not the intention of the bill team to provide that, from where else would that advice be forthcoming prior to the start of stage 1?

Scott Wood: It is important to recognise that we are not seeking to extend the rights that are available to children and young people. Irrespective of whether the convention is incorporated into Scots law, the Scottish ministers have a responsibility to implement the UNCRC. The duty is about increasing transparency and accountability around how ministers go about that. It requires ministers to evidence how they are considering the convention when they are taking decisions that impact on children and young people.

Liz Smith: In some areas of the bill, particularly in respect of the named person, do the provisions not increase the rights of the child?

Scott Wood: I apologise. Perhaps it is better for Boyd McAdam or Lynn Townsend to comment specifically on named persons. I was talking in the context of part 1 of the bill, which focuses on the UNCRC.

11:45

Boyd McAdam (Scottish Government): The named person provisions set up a framework that is made available to children but does not give children additional rights; it provides a structure for services to support children. The rights issue is very much in relation to UNCRC. Article 3 recognises the rights of parents but does not indicate precisely how they are balanced. The UNCRC applies at present and there is no intention to adjust or extend that.

Liz Smith: So, there is no intention in the bill to extend the rights of children.

Boyd McAdam: No.

Neil Bibby: I believe that a number of organisations have requested that a children's rights impact assessment be carried out on the bill, but I understand that that has not been done. Can you tell me the reasons behind that?

Elisabeth Campbell: Absolutely. It is essential to understand the impact of the bill on the rights of children and young people, which is why we engaged with over 2,400 of them during the bill's development. A report on children's views has been published on the Scottish Government website. In addition, we carried out an equality impact assessment on the bill, which looked at the impact on children and young people, based on a number of factors, including age, gender and religion. We also carried out a non-mandatory privacy impact assessment that looked at the impact on privacy factors for children and their families.

The children's commissioner's model for a stand-alone children's rights impact assessment states that the point of it is to look at and raise awareness of children's interests in policy or legislation. I feel that we have covered all of that by engaging with children and young people and doing all the other impact assessments that we did, and by explaining the rationale behind the bill's proposals in the policy memorandum. We have not done it in a separate stand-alone document, but what we have done is more extensive than what would have been done for a stand-alone children's rights impact assessment.

Neil Bibby: There are concerns that parts of the bill—for example, the named person aspect—could breach the UNCRC around the child's right to privacy. Have you assessed that from a children's rights point of view?

Boyd McAdam: On the impact of the provisions on the child and the family, there is a balance to be struck, particularly with regard to article 8 of the UNCRC on respect for family life. Part of the named person provisions and the information sharing provisions that relate to getting information to named persons are couched in terms of their being proportionate, appropriate and justified. Before sharing information, a practitioner must have a reason for doing so and must share appropriate information with the right person—that is covered by the Data Protection Act 1998. We feel that, given the proportionality element, the provisions are compliant with ECHR and the UNCRC.

Neil Bibby: I understand that, before the consultation, it was proposed that "due regard" would be given to the UNCRC but that people

responded in the consultation to say that that aspect should be strengthened. However, following the consultation, the bill uses the phrase “keep under consideration”. Can you tell me the reasons for that change?

Scott Wood: Yes. A couple points arise from that. First, I will focus on stakeholders’ views of our proposals. When we consulted last year on proposals to legislate on children’s rights, about 70 per cent of respondents to the consultation agreed that our proposals would help to strengthen transparency and accountability around ministers’ approach to the UNCRC, but only about 15 per cent felt that the proposals did not go far enough and that they would like to see incorporation of the UNCRC. That suggests to us that we have got the focus about right on the nature of the duties that we seek to place on ministers through the bill.

On a “due regard” duty, whenever we introduce a new duty for ministers or anyone else, it is important that we are clear about its likely impact. We feel that we do not have that clarity in respect of a “due regard” duty. The concept of having due regard to international law is a new one in Scotland; there is no legal precedent for it and there is no case law to support us in understanding how the courts might interpret a duty of that nature. We think that, in this instance, that lack of clarity is an unnecessary risk. We have therefore sought through the bill to formulate a duty that accurately reflects exactly what ministers are looking to deliver.

The Convener: Liam McArthur has a question. Is it a supplementary on this area?

Liam McArthur: Yes. I acknowledge what you said, Mr Wood, in relation to the non-incorporation in the bill of the UNCRC, and I think that I am right in saying that you reflected that one of the potential benefits of the bill will be cultural change. We have heard from the minister this morning, in relation to improving outcomes for looked-after children, about the importance of cultural change, so I do not think that it is terribly helpful to downgrade the importance of that cultural change.

Scott Wood: Absolutely not.

Liam McArthur: Therefore, I am still trying to get my head round why ministers have decided not to incorporate, but instead, in a sense, to cherry pick the elements of the UNCRC that they see a need to implement through the bill.

Scott Wood: One factor is that limited evidence has been presented to ministers that suggests that incorporation provides benefits in terms of culture change and improved awareness and understanding. It would be beneficial to have a more robust evidence base on which to form any future view about incorporation.

We also have to weigh up the benefits against the potential risks of incorporating the convention. As I said, we feel that there is potential for incorporation to place far too much emphasis on the courts and on legal processes. We certainly do not want to end up in a situation in which the courts are considered to be the go-to forum for addressing the range of issues that impact on children in Scotland. We think that we can deliver many of the benefits through other avenues—through other provisions that are set out in the bill. We do not think that incorporation represents the best way to progress the rights agenda at this time.

Liam McArthur: If you were to put the rights in legislation, I presume that there would still be a risk that the issue would ultimately end up in the courts anyway, in terms of testing the legal status of whatever the rights were.

Scott Wood: That would depend on the focus of the duty that was being introduced. Gordon will add something on that.

Gordon McNicoll (Scottish Government): It is certainly correct that if you impose any duty on anybody—on ministers in particular—there is a risk of litigation, because someone will argue that ministers have failed to fulfil whatever duty has been imposed on them.

The position that ministers have taken, however, is that the focus is on education—on changing the culture—as has been explained. It is considered that that will best be achieved through the approach that has been taken in the bill. Ministers would prefer not to see the emphasis being on pursuit of litigation through the courts on rights that, in their view, should more properly be developed through education and through a change of culture.

Liam McArthur: You have identified potential benefits—albeit not necessarily on as robust an evidence base as you may have wished for—so is it fair to say that, through the evidence process that the committee is embarking on now, there is still willingness among ministers to look again at the issue if such evidence were to be put forward?

Scott Wood: It would be premature of us to say what ministers’ future views might be in the light of emerging evidence. However, I can certainly state that based on the evidence that ministers have seen to date, their view is that incorporation does not represent the best way to progress the agenda at this time.

Neil Findlay: It is always dangerous to ask a question that you do not know the answer to, but I will anyway. What other countries have carried out full incorporation?

Scott Wood: We do not have an exhaustive list. I know that Ireland has recently made changes to its constitution to embed rights more effectively within that constitution. The United Nations Children's Fund undertook some research last year that looked at the approach to legal implementation of the convention in 12 countries in total. Three of those 12 countries had taken the step of incorporating the convention into law. We do not have an exhaustive list of the range of countries that have progressed the issue, but I am certainly happy to share the UNICEF report with committee members if that would be helpful, so that you can see the range of different approaches that have been adopted in progressing the issue.

The Convener: That would be helpful. Liz, did you have a question?

Liz Smith: I was just going to say that it would be very helpful to see that report.

The Convener: Yes, I am sure that it would be.

The bill also gives the Scotland's Commissioner for Children and Young People powers to investigate individual cases, which was pushed for back in 2003, when the post of children's commissioner came into being, but did not happen at that time. What is the difference now as regards the children's commissioner's ability to undertake investigations?

Scott Wood: I can certainly talk a bit about the process that led to the development of the provisions in the bill. When ministers first proposed to legislate on children's rights, they did not propose to extend the powers that are available to the children's commissioner. Even without the question being asked, a significant number of stakeholders came back to us to suggest that we should actively consider including in the bill a provision on that.

We listened to that and we developed a set of proposals that were set out in a consultation that focused on the bill, which was published last June. Again, the majority of respondents suggested that there was scope for the new investigatory function to offer direct benefit to children and young people, and broader learning, in terms of practice in front-line services.

Since then, we have had a number of conversations with the other complaints-handling bodies in Scotland in order to understand better how the children's commissioner's investigatory power might add value, and how it should align with the range of other complaints-handling processes that are in place, because we do not want to duplicate activity. The feedback that we have had is that, by and large, there is consensus across the complaints-handling bodies that there is scope for the new investigatory power to add benefit to children and young people.

We think that the investigation function should be exercised in a fairly targeted and strategic way. That is based on the premise that we already have a fairly robust complaints-handling landscape in Scotland. We expect the number of instances in which it would be necessary for the commissioner to intervene to be quite limited.

We think that any investigation should offer benefit to the child or young person in question, but investigations should also offer wider learning and be targeted so as to inform the wider work of the children's commissioner's office. The approach should be strategic.

We recognise that it would be helpful to the committee to have particular examples of the types of investigations in which the children's commissioner might be involved. We recently held a meeting with the complaints-handling bodies and the commissioner, at which it was agreed that they would develop some such examples over the summer, with a view to sharing them with the committee towards the end of the recess.

The Convener: That would be helpful.

I would like you to clarify something. As the bill stands, it proposes that investigations could, in effect, be undertaken only when they did not overlap with the work of others. I am struggling. A number of bodies undertake work in this area, so examples would help us understand what exactly the added value would be.

Scott Wood: Absolutely. We will be happy to share them as and when they become available.

Liam McArthur: The Finance Committee will look at the bill's financial memorandum. However, if there is an agreed understanding of the level of activity, and therefore of the cost implications, that would be very helpful to us.

Scott Wood: The estimate that we set out in the financial memorandum was based on the premise that the commissioner would undertake a fairly small number of investigations—the assumption was that there would be between one and four—each year. We have shared that assumption with the commissioner and it has been the basis for our discussions until now.

Liam McArthur: The bill looks to put GIRFEC—a policy that has been in place since 2006—on a statutory footing. We heard earlier from the minister about the value that she could see in a number of cases of that move to provide a consistent approach. Can you explain where to date there have been inconsistencies? Are there geographic areas in which best practice has not been applied as it might have been? That is relevant to the committee's inquiry, which we are drawing to a conclusion, as well as to the bill that we are about to embark on.

Boyd McAdam: The GIRFEC programme board has set up an implementation working group, which is engaging with community planning partnerships to get a better feel of where each area is on implementing GIRFEC. We are at a level at which everyone has corporate buy-in. Most areas are implementing the new processes into their key business areas, and two or three believe that they have progressed implementation to the point at which they are comfortable that they could comply with the proposed duties in the bill.

The areas that are looking for further assistance are looking for information and information-sharing materials around training, to help staff to understand how to move forward in consistent way. Lynn Townsend may speak a bit more about the work that we are doing on developing guidance. We are proposing a national training event in the next six to eight months to help people to understand how they can progress.

A report has just been issued by the implementation working group, which we can share with the committee. We are not identifying particular areas; everyone is at a different stage in their journey, but the key message is that work is well under way and we anticipate that by about this time next year implementation of GIRFEC will be well advanced.

12:00

Liam McArthur: What you describe would not necessarily require legislation, although I appreciate that it is a response to the legislation. Can you explain the rationale for going down the legislative route rather than for buttressing the policy guidance, the training and all the rest of it?

Boyd McAdam: Among the feedback that we have received as we have progressed to implementation is that people are looking for a structure within which all the activity will take place. Ministers were concerned that progress on implementation was not happening as fast as might have been anticipated. As Liam McArthur said, the GIRFEC policy has been around since 2005-06, although the actual GIRFEC approach was finalised only in 2009-10, following the pathfinder work in Highland and the learning partnerships.

We have been advocating change, but people need help to move forward. The approach is part of the big culture change that we are talking about around rights, and it requires a lot of planning, process and leadership. The bill provides the framework within which all that can happen, so that there is clarity about the role of the named person and about when information should be shared. We feel that those provisions should go in legislation, but there is still a lot of on-going activity

around guidance to help people to understand what they need to do.

Liam McArthur: Concerns were expressed earlier about the UNCRC not being integrated wholesale into the legislation. I think that I am right in saying that we are not seeing wholesale integration of GIRFEC into legislation either. The absence of legislation for the lead professional to take over from the named person in complex cases is one example that has been cited. Given that some of GIRFEC will have a statutory underpinning and some of it will not, is there a potential problem in providing the consistency to which the minister—given her evidence this morning—clearly attaches considerable value?

Boyd McAdam: We describe the provisions in the bill as the key elements of GIRFEC and they are the elements on which we can legislate. A combination of practice change, systems change and culture change is required.

Liam McArthur: I am sorry for interrupting, but the phrase

“on which we can legislate”

tends to suggest that this is a question of what lends itself to legislation as opposed to its being a policy choice. The provision on the lead professional appears to be a policy choice, rather than a choice based on ability to legislate. You are, after all, legislating for the named person.

Boyd McAdam: The rationale is that the named person is located within the universal services of health and education and we can place a statutory responsibility on those bodies to make arrangements to provide a named person. The lead professional will be the person who is best placed to address the needs and risk of the child, and so can be drawn from any service; they will not necessarily be located within health or education. It is therefore difficult to place a duty on an individual body to make the arrangements for the lead professional. We believe that how that system will work will best be sorted out by protocols across agencies in a community planning partnership.

Liam McArthur: Is there not a risk that you will create a two-tier dimension to GIRFEC, because some of it will have a statutory underpinning and some will not? There will always be a gravitational pull to the statutory elements, and inconsistencies will arise in relation to the non-statutory elements, whether it be in respect of the lead professional or other aspects?

Boyd McAdam: The guidance groups that are being developed are working with stakeholders from across all the services to ensure that what emerges is something that they are confident in, that will make a difference and that will deliver

consistency. Lynn Townsend might want to say a bit more about the guidance; there is a combination of statute and guidance.

Lynn Townsend (Scottish Government): The policy view on the provisions in the bill that cover a child's plan and the named person was that the role of the lead professional follows from both those duties. Interestingly, in terms of implementation, most areas are already quite happy with the lead professional role, because that role has been around in practice for a number of years where an integrated assessment has been in place. The guidance will address management of the plan and the lead professional role will feature in how we frame the guidance.

Clare Adamson: Part 13 of the bill introduces a statutory definition of wellbeing. Given that welfare is already included in the Children (Scotland) Act 1995, will you explain the differences between welfare and wellbeing and say why a statutory definition of wellbeing is required?

Boyd McAdam: Part of the challenge that has been faced over the past 15 years or so is that welfare as provided for in the legislation has been interpreted around vulnerability and child protection. It was recognised in the 2001 report, "For Scotland's Children" and in "It's everyone's job to make sure I'm alright" that practice was operating with thresholds and that children and young people were not getting the service that they required until that threshold had been reached. Part of what we are seeking to achieve with the bill is the promotion of early intervention and prevention. Adopting the concept of wellbeing and taking a more holistic approach should encourage people to identify concerns at an earlier stage. It is about trying to shift the mindset.

My colleagues can maybe advise me, but I do not think that in legal terms there is that much difference between welfare and wellbeing. What we are proposing in the bill is a definition of wellbeing. Welfare is not defined in existing legislation. Part of what we are trying to bring about is a culture shift around early intervention.

The Convener: Do you want to move on to the issue of the named person, Clare?

Clare Adamson: Certainly, convener. The named person role has been mentioned already. It is one of the things that has hit the headlines and there is perhaps a bit of confusion about what it means. Will you give us a brief definition of the named person and what their duties will be?

Lynn Townsend: Yes. As Boyd McAdam said earlier, the named person will be somebody within the universal services of health or education. Health boards will have responsibility for children up to the age of five and local authorities will have it for children aged between five and 18.

In some ways, the named person will face in two directions. First, they will be a point of contact for the child and the family and will be there to offer support and to help them to negotiate their way through systems and gain access to services. The other side of their role will relate to the wider world. They will be a recognised point of contact for others who might have a concern about wellbeing. We know from experience and research that people sometimes have concerns about aspects of a child's development but do not feel that they can go to somebody about them because they do not breach a threshold. With a named person in place, there will be somebody whom they can go to within universal services who will have an overview of the child and will be able to take one piece of the jigsaw—the information from the other person—bring it together with what they know and make a judgment about whether there is cause for concern. Those are the main functions of the named person.

The other thing to say is that the role will be quite layered. The named person in both health and education will have a role in relation to every child. It is about ensuring that the culture within an educational establishment or in which a health visitor works supports taking a holistic view of the child and of wellbeing, rather than just looking at the person or the patient in front of them. That will benefit every child.

Where a concern emerges, the named person will also have a role in looking to see whether they can offer support within the universal service from within the resources available to them or whether they need to look beyond their agency or service to the wider multi-agency arena for resources and support. They will be the person who can support the child and family through that process, take the case into a multi-agency arena and then look to the lead professional to co-ordinate multi-agency, targeted interventions.

Boyd McAdam: Having a holistic overview of the child and all the relevant information is important. We have developed a training exercise called GIRFEC Cluedo, in which people play the roles of practitioners. Interestingly, because only partial information is available, false assumptions tend to be made about what is going on in the child's life. We need the overall picture to be able to understand what is relevant and appropriate and where to target the right help. If people's perceptions are false, they will propose the wrong intervention and might begin to interfere with family life.

Clare Adamson: Although the financial memorandum gives some information about resources, they very much relate to time. As one of my colleagues will ask about the statutory duty on data sharing, you should perhaps steer clear of

that, but one of the key issues is consistency of data collection across the country to ensure that the same decisions are being made in different local authorities. Given that health boards and education departments are likely to be dealing with this issue, do you envisage the development of a common data-storage mechanism or, at least, best practice in data storage?

Boyd McAdam: We are not creating a central database for storing information. Instead, our fundamental approach is very much that agencies will continue to be responsible for the information that they hold; for example, a health professional will have information on their system and a teacher will have other information on theirs. We must ensure that the relevant bits, although not stored centrally, come together. After all, this information should be brought together for a particular purpose, either to address a concern or to help to inform professional judgment.

In the Ayrshires, a programme called AYRshare has been developed to facilitate the electronic bringing together of information, but that is done for a particular purpose and within a particular locality. As I have said, there is no proposal to create a central database. We might specify minimum data sets to capture the relevant information that everyone needs to know, but the aim is to have proportionate sharing.

Neil Bibby: I have a practical question about the named person for a child from the age of five to 18 being a member of the education personnel. How do you expect education personnel, who will usually be teachers, to act as a named person during their 12 weeks' holiday? If a child goes missing or is affected by an incident during the summer holidays, how will the teacher act as the point of contact?

Lynn Townsend: As the duty in the bill is on the local authority, it will have to put arrangements in place to ensure that the named person is available. Local authorities will build on current practice during the holidays; at the moment, someone based centrally in the education service will be the point of contact if, as you have suggested, a child goes missing. People will have access to school records and that type of information and will play a role in the multi-agency response to that kind of emergency situation.

In situations that are not an emergency—say, if a parent is looking for information about a course or what is happening in the school at the start of the new year—centrally deployed officers in every education department will be able to offer non-urgent advice, or not-so-urgent issues that parents wish to raise can be held over until the named person in the school returns. It is for local authorities to put the arrangements in place, but that is how we envisage the system working and

we have had discussions with stakeholders on that.

Neil Bibby: What consideration has been given to the impact on staff workload and during the holiday period? For example, what sort of ratio would you be looking at in, say, a school with 250 pupils that has only 12 members of staff during term time? I guess that, during the term, you could have one teacher per class but what would be the ratio outside term time if the local authority is expected to put someone else in place to cover that named person's role?

12:15

Lynn Townsend: That brings me back to the concept of the layered approach for the named person, which I described earlier. In a school of 250 children, the vast majority will receive all the help and support that they need from their class teacher and the other services that are available in the school. It is unlikely that the named person would have to take any action over and above their current duties. The bill is predicated on the fact that, within education, there are already statutory duties around planning and around assessing and supporting children. That work goes on currently. The bill proposes an overarching framework within which that level of assessment and support will go on.

It is difficult to say and will depend on where the school is and current practice in the school but, during the school holidays, we would certainly not expect inquiries to any centrally based officer about the 250 children and their wellbeing.

The Convener: Neil Findlay and Liz Smith have quick questions on the issue.

Neil Findlay: How many pupils would the named person in a school be responsible for?

Lynn Townsend: As I said, it will be up to education authorities to decide how to make arrangements for named persons, but from the experience that we have so far, it seems likely that the headteacher will be the named person, particularly so that the outside world knows who the named person is. However, within a primary school, we would envisage that aspects of the role will be delegated to the deputy and principal teacher levels, and similarly in a secondary school, as is current practice, there will be deputy heads with a pupil support portfolio and pastoral care staff who know the young people and are involved in offering support. We envisage that that is how it will operate.

Neil Findlay: So the named person in a primary school will be the headteacher.

Lynn Townsend: Yes, and I would imagine that that will also be the case in a secondary school,

for the purposes of people knowing whom to contact.

Neil Findlay: The financial memorandum says that, after the first year, teachers will not need any extra hours to act as the named person. Knowing the current workload of headteachers, I find that absolutely remarkable.

Lynn Townsend: We looked at the issues around capacity. Because the policy has been in place for a number of years and because some local authorities are already implementing, it is difficult to say definitively what the resource implications will be. However, the current workload of headteachers, depute heads and pastoral care staff is around looking after young people, assessing, working with others, putting in support, working in a multi-agency forum and going to children's panels.

What we have looked at is a systems change burden, if you like. At present, people work in a particular way. Through getting it right for every child, we are asking them to shift some of the ways in which they work. That usually brings an additional burden, hence the year's transition, but there are benefits to the new way of working. That came out through the Highland pathfinder project. There should be fewer meetings and reports and a more co-ordinated approach to children having to go to children's panels. We expect that there will be benefits.

Liz Smith: What provision is made in the private sector, which includes quite a few special schools? Obviously, no local authority is involved there.

Lynn Townsend: In the bill, we put parallel duties on independent and grant-aided schools. Some of the independent schools will be private schools, and it would be for the proprietor to put in place the arrangements for the named person and the child's plan, in parallel with the duties on the local authority. Where the school is a special school, the young people will be placed by a local authority, so—

Liz Smith: Not necessarily. Some special schools have children from both sectors.

Lynn Townsend: Yes. The special school will operate a named person system and arrangements in the same way as the local authority. If the school is a private special school and the children are not placed by the local authority but they require a multi-agency approach, there will need to be a lead professional, who may well be in a public service, supporting the young people. For a special school where the local authority has made the placement, again they will hold the responsibility through the lead professional role.

Joan McAlpine: My questions are about the statutory duty to share information. We have examined that subject extensively in our two inquiries into looked-after children. There seems to be a lot of confusion among professionals about when they can share information on a child. Some professionals think that that can be done only when a child is formally on the at-risk register. As Mr McAdam outlined, we need to be able to intervene earlier to nip things in the bud. However, that throws up an issue in relation to the ECHR and the rights to privacy.

You mentioned GIRFEC Cluedo, which I played at a Government event recently. Each table is a different person in the child's life—a childminder, the father, the mother, the school and so on. Each table has a different piece of information, and the exercise highlights the difficulty of sharing that information. In the game of GIRFEC Cluedo that I played, the crucial piece of information was held by the mother's general practitioner and related to the mother's mental health. Under the new arrangements, can the GP share that information about the mother's mental health with the schoolteacher or the child's health visitor, for instance, without being in breach of the ECHR? I am not sure how they could do that.

Boyd McAdam: The area is complex. Article 8 of the ECHR, on the right to respect for private and family life, does not give a blanket exemption from families. Irrespective of what is proposed in the bill, there are a lot of issues under the existing law in relation to the Data Protection Act 1998 and professionals feeling unable to share information because of a breach of confidentiality or because of professional practice.

The Information Commissioner's Office in Scotland clarified in April that, under the existing law, if there is a concern about a risk of harm to a child's future wellbeing, the practitioner should share information, if that is proportionate. That comes down to professional judgment. In the example that you cited, if the GP had concerns that the mother's mental wellbeing was impacting adversely on the child, that would be expected to be shared with the named person, who would be a professional in universal services.

My colleague Gordon McNicoll might wish to talk a bit more about article 8 of the convention. Part of the aim is to avoid all the information being made public. We are seeking to clarify that there is a responsibility to inform the named person when there is a concern about an impact on the child and when there might be a risk to their wellbeing. That is a judgment call.

Joan McAlpine: Would you expect professionals to be open to legal challenge?

Gordon McNicoll: I do not think that we can talk about the issue in the abstract. As Boyd McAdam said, it all depends on the circumstances of the case. If there was no serious threat to the child's wellbeing and the GP decided to tell all and sundry about his or her patient's difficulties, there would be a serious risk of challenge—probably justifiably so.

Absolute rules cannot be made as to when someone can or cannot share information. It depends on the circumstances and on why they are sharing. All that we can say is that article 8 of the ECHR and the Data Protection Act 1998 do not absolutely prohibit something such as the sharing of information. Article 8 is not an absolute right to privacy. In some circumstances, that right does not apply. Whether that is the case will depend on the circumstances.

Joan McAlpine: In the GIRFEC Cluedo, I played the role of childminder. The mum had started to bring the child in late and the child seemed a bit clingy. I thought that something might not be quite right, but the mum said that she had a lot of work. Although there was a serious issue in that hypothetical case, it did not seem that the childminder would feel confident that the mum coming in late and a clingy child would necessitate sharing information and breaching the mother's confidentiality, let alone going to the GP to find out whether the mother had a mental health problem.

Gordon McNicoll: In the situation that you describe, if the childminder had concerns that the child seemed clingy, I cannot see that they would disclose personal data relating to the mother or even the child; they would just observe, based on seeing the child every day, that something did not seem quite right. I do not see an article 8 issue there. The childminder would not disclose any personal information regarding the child; they would just make an observation about how the child appeared to them and possibly to those in the population at large who knew the child well enough.

Joan McAlpine: I am sorry to press the case, but the whole point of the exercise is that, if the childminder went to the named person with that information, which did not seem particularly serious, the named person should then be able to go to the GP. The GP would have the crucial information that the mother had a historical mental health problem. In that example, the child's wellbeing was at stake, but we could see how, if the named person went to the GP with the childminder's information, that might breach privacy if they did not have the full picture. Do you see what I am getting at?

Gordon McNicoll: The position depends on the circumstances. It is impossible to say in abstract whether information can or cannot be shared. It

depends on the circumstances and the perceived risk to the child's wellbeing.

Joan McAlpine: Is it not the case that trying to anticipate problems that might or might not exist will inevitably lead to breaches of privacy? Perhaps we should be honest about that and say that we will have breaches of privacy for quite a lot of families to protect the children who are at risk.

Boyd McAdam: Part of the early intervention agenda requires people to pick up concerns earlier, but it is proposed to do that in a framework that relies on the professional making a proportionate judgment. If there is a concern that someone is not comfortable with, the data protection advice is that they should share that. That is covered under data protection law, because it is a professional judgment.

The practice has to be that the person records the reason why they are sharing the information and explains why there is a concern. That will be done within the structure of the named person taking a view. All the evidence shows that, at present, information is known but not necessarily put together. The named person will provide that overview.

In the light of what the named person knows, the decision might be not to go further with an issue, but if the concern provided evidence that something was not right in the child's life, the duties on public bodies to safeguard children and treat their welfare and wellbeing as paramount would cut in. There is an issue about what is not known, but the process should be followed in a proportionate and secure environment, to avoid more public knowledge about what is going on in the family's life. If professionals are to make the judgment, they have to be aware of what is going on.

Joan McAlpine: I presume that professionals have to be aware that they could be open to legal challenge.

The Convener: I want to move on, because I am very aware of the time.

Colin Beattie: The bill provides for a number of additional plans and reports to be produced by a range of organisations relating to all sorts of things, such as children's rights, corporate parenting, children's services and early education, as well as individual child plans. Local authorities and perhaps health boards will be required to provide most of those, and other agencies will report on other things. Will that increase the bureaucracy and put more layers on top of what already exists? How will local authorities and other bodies cope with that?

Elisabeth Campbell: You are right that the bill contains a number of reporting and planning

duties. It is important to say that stakeholders broadly supported those duties through the consultation and subsequent engagement. We have been clear throughout the bill's development that we do not want to place extra burdens unnecessarily on agencies or other organisations and that we certainly do not want to increase bureaucracy. Therefore, for a number of the reports that will be required under the bill, we expect organisations to use current mechanisms rather than create bespoke new reporting mechanisms.

For example, organisations can use current annual reports to include stuff on the rights duty on the public sector. The children's services planning duty replaces a previous planning process, so it is not additional. The single child plan has been proven in the Highland pathfinder and in other areas to reduce the burden of paperwork and bureaucracy. Therefore, several aspects of the bill seek to reduce rather than increase bureaucracy.

Colin Beattie: Overall, will the bill increase or reduce the burden of paperwork?

Elisabeth Campbell: I think that that will probably balance out. Some new processes are replacing old processes, so the bill certainly should not increase bureaucracy.

The Convener: I thank our witnesses for coming. We will follow up a number of issues in writing, if you do not mind.

I suspend the meeting briefly while we change panels.

12:31

Meeting suspended.

12:34

On resuming—

The Convener: Our second panel will answer questions on parts 6 to 13 of the bill, which deal with early learning and childcare, looked-after children, children's hearings and schools consultation. I welcome back Elisabeth Campbell, who has stayed with us from the previous panel, and David Blair, who was with us earlier, and I also welcome from the Scottish Government Kit Wyeth, Ruth Inglis, Susan Bolt and Clare Morley. If the witnesses do not mind, we will go straight to questions.

Liam McArthur: The bill, which will set in statute and extend the number of hours of childcare that are provided for, defines the phrase "early learning and childcare". Will service provision have to include both learning and care instead of either education or care? I think that I am right in saying that the bill amends the existing

definition of school education to include early learning and childcare. It would be useful to know what will change as a result and what the expectation is.

Susan Bolt (Scottish Government): The expectation is that provision will cover both learning and care. The bill defines early learning and childcare as a service that provides education and care and which promotes and supports

"learning and development in a caring and nurturing setting."

As a result, the two concepts are seen as indivisible. The fact is that, when education and care are integrated, the quality of provision is higher; that is why the Organisation for Economic Co-operation and Development and the European Commission strongly support and promote models of integrated education and care. We are following that model, although we are calling it learning and care to fit with our learning journey policy. The expectation is that any learning should take place in a nurturing and caring environment, and we also want care to consist of activities and interactions that support learning.

The definition simply reflects current good practice. We are trying to move away from a model that is based on blocks of education—pre-school provision, for example, might be seen in two-and-a-half-hour blocks—topped up with care, which might be seen as less important. For children in half-day or full-day sessions in a nursery, we would not expect education to start at a certain point in the day and finish two hours later, after which all the interactions, activities and relationships would change to something different called "care". Instead, we want to promote consistent, high-quality provision for the child wherever their formal early learning and childcare take place and whoever delivers them. That is the aim of the new definition.

Liam McArthur: That is helpful. Another issue that has been raised and which we will probably come back to when we discuss the financial memorandum is the extent to which the statutory 600-hour allocation is fully funded. Is it your understanding that it is fully funded?

Susan Bolt: Yes.

Liam McArthur: The point about funding was made by, among others, Save the Children. Its initial submission picks up a point made by, I think, the Equal Opportunities Committee about the broader care that is required—in other words, not only early learning and childcare but out-of-school care. All committee members will have picked up the same point through different forums. What consideration has been given to putting a broader definition of care on a statutory footing?

Susan Bolt: The definition of early learning and childcare applies broadly to formal early learning and childcare provision, but we are still grappling with definitions. The Government is committed to developing and increasing early learning and childcare that covers all children of all ages and meets not only their needs but the needs of parents and families. More work is being done on that beyond the bill, and the definitions in the bill will support improvements in the quality of provision that is not necessarily covered in the bill.

Liam McArthur: Is there some budgetary rationale behind the delay over definitions or is there simply a concern that out-of-school care is not as well understood or defined as early learning and care, so more work needs to be done on the matter?

Susan Bolt: I do not think that there is such a concern. The Government's aim is to improve and increase provision for all, but ministers have decided in the bill to focus on and prioritise building up the current high-quality universal pre-school system and to build additional hours and flexibility into it. Local authorities are being asked to make a significant change.

We are doing work more widely—for example, on out-of-school care. We have a working group that is a sub-group of the early years task force, which is looking at childcare for all. That includes all partners that support organisations to develop a wider range of provision, such as staff banks, childminders or out-of-school care. We fund a number of organisations, such as the Scottish Out of School Care Network, the National Day Nurseries Association, the Scottish Childminding Association and the Care and Learning Alliance, which is a social enterprise. All those organisations share the same aim to increase and improve the range of models that deliver care for different age groups. Although that work is not focused through the bill, it is going on in parallel.

Liam McArthur: In terms of the age spectrum, we know that the bill makes provision for two-year-olds who are looked after or in kinship care. That is welcome, but we heard a heavy emphasis on early intervention from the minister this morning. Save the Children indicated its disappointment that the bill does not look to extend the provision for two-year-olds to those from the most disadvantaged backgrounds. Will you explain why that has not been incorporated in the bill and whether, as we take evidence at stage 1, there is an open mind to go back and look at that again?

Susan Bolt: The rationale for focusing on looked-after two-year-olds is that looked-after children have the worst outcomes—and the risk of the worst outcomes—of any group of children. The bill proposes to guarantee a minimum, sustained early learning and childcare provision for those

children. The bill also focuses on two-year-olds in kinship care because they are often at risk, so we can prevent children from becoming looked after or provide a positive solution and bring them out of being looked after.

The provision for looked-after two-year-olds will be flexible to their individual needs. It will look at their family circumstances and allow for different models and arrangements. Working one to one with parents or on certain programmes will be okay, as long as that meets the child's needs and wellbeing.

As for other two-year-olds who come from more deprived or poorer backgrounds, the evidence is strong that children from poorer backgrounds or poorer home learning environments benefit more from universal provision. That has a strong equalising influence and promotes social inclusion. That is why ministers are focusing on building up strong universal provision, from which children from poorer backgrounds will benefit most. That is the rationale.

Liam McArthur: One imagines that that argument could be sustained for children from looked-after backgrounds and those in kinship care, although I appreciate that those children are particularly vulnerable; we have certainly heard enough evidence to suggest that the outcomes for them are not as good and need to be addressed. However, the definition is very tight. Quality provision is clearly needed for the two-year-olds who get access to the services, but the interventions that we make before the age of three are critical, so it seems to be a missed opportunity not to expand provision to a wider cross-section of those who are disadvantaged. As I said, that certainly concerns Save the Children.

Susan Bolt: The provisions in the bill reflect certain priorities and go as far as they can within the current economic constraints. We are asking for significant changes from local authorities and we want those changes to be achievable, sustainable and affordable. Ministers have taken certain decisions about what to prioritise in order to deliver what they can, given the economic constraints within which they are working.

Neil Bibby: Early years education is funded through the pre-school education grant, which I understand does not currently cover childcare. Will the additional hours for early learning and care be funded in the same way?

12:45

Susan Bolt: Yes, they will be funded in the same way, so it will be for local authorities to secure provision, either through their own services or through partner providers. Local authorities will deliver that directly, under their education duties.

Neil Bibby: Will there be designated elements of funding for early learning and for childcare?

Susan Bolt: No. Those are seen as indivisible. There will be the same standards of high-quality, consistent early learning and childcare that we have already defined, so it will be for local authorities to ensure that those are provided, either through their own services or through partner providers, as I said.

Neil Bibby: On flexibility, what do you envisage parents being given if, for example, they wanted their 15 hours over two days? Do you also envisage them having that time on the days of the week that they want?

Susan Bolt: There is a wide range of ways in which you could cut the 600 hours, or around 16 hours a week, and it will be for local authorities to consult local populations on what their needs and preferences are. There is a minimum framework: sessions should be no less than two and a half hours a day, no more than eight hours a day, and delivered over no fewer than 38 weeks in a year, although that does not need to be confined to term times. Within those broad parameters, local authorities are free to reconfigure services to provide a range of choices. It is up to them to decide: it could be two eight-hour days a week, or five two-and-a-half-hour sessions, with additional sessions in non-term time. It really depends on the needs that parents identify, and local authorities will make decisions about what to reconfigure and what choices to offer on that basis.

Neil Bibby: Has any consideration been given to partner nurseries that may have financial difficulties if parents elect to take all their childcare time in nursery funded places, leaving no wraparound time for which the nursery can charge?

Susan Bolt: Whether they are in the public or private sector, nurseries can charge for wraparound care. They are free to do that.

Joan McAlpine: I have a supplementary question to Mr McArthur's point about extending provision. You mentioned the financial constraints. I know that in Scotland we have a higher ratio of carers to children in pre-school and that that has been diluted in England and Wales. Will you say something about the importance of the ratio in Scotland?

Susan Bolt: There were proposals to change the ratio in England, but I do not think that they have gone ahead. In Scotland, we have checked with stakeholders and there is certainly no appetite for changing staff ratios here from what they are. That is another key thing to remember when we talk about the economic constraints. In all the changes that we put in place, we do not want to compromise on quality at all. Any increase must

be in parallel with improved quality—that is fundamental to any changes that happen.

George Adam: I want to ask about kinship care and kinship care orders. I have had some experience of kinship carers, in constituency matters and as a councillor. The bill provides for residence orders that are kinship care orders. Paragraph 119 of the financial memorandum states:

"It is expected that a proportion of formal carers will apply for a kinship care order."

Why would they do that? What would be the advantage to them? How would the support offered by the local authority differ?

David Blair: The answer is fairly straightforward. The policy comes from the quite extensive feedback that we have had from kinship carers, who will apply for the kinship care order because it will provide much more specific support than they are accustomed to. Currently, the support that is provided to a formal kinship carer is very much at the discretion of their local authority. Kinship carers find that difficult.

The incentive for a kinship carer to apply for the kinship care order goes back to the policy rationale, which is about providing an enhanced form of permanence within kinship care. A child who is subject to compulsory supervision and who is living with a kinship carer is not in permanence. The order enhances an existing route for permanence within kinship care.

Kinship carers tell us quite strongly that they want to do what is best for the child who is in their care; they want a form of permanence that means that their parenting is not constantly being monitored when that is not required. That is the policy rationale. There should be an incentive for kinship carers to apply for the order because it is much more specific.

George Adam: Okay.

The Government is undertaking a review of existing kinship care allowances. I know that all the findings are not expected to come out until the end of the year, but are there any early ones that you might be able to share with the committee at this stage?

David Blair: There is nothing that I can share at this point, although I can tell the committee that we have had to review the timetable owing to the complexity of the modelling that we have had to do. We are exploring a number of options based on the work that we have done to date. We have done quite a bit of detailed modelling, which is being considered at the moment. I am happy to come back to the committee and advise members as to when we can share some information about that.

Neil Bibby: The Children Act 1975, the Children (Scotland) Act 1995, and the Looked After Children (Scotland) Regulations 2009 have an impact on kinship carers and local authority support. Why did you decide to include additional provisions on kinship care? Is it not already covered in existing legislation? Could you not allow local authorities to apply for residence orders for kinship carers under existing legislation?

David Blair: Local authorities cannot apply for residence orders. They are petitioned for by kinship carers or by a range of people in different circumstances. We felt that there was a need for the kinship care order based on the feedback that we had from kinship carers and local authorities. Neither group seemed particularly happy with the status quo—part of that was to do with the continuing growth in formal kinship care, which, based on the feedback that we had, did not seem to represent people's needs particularly well.

There was a feeling that children in formal kinship care were not necessarily comprehensively worse off or in greater need than those on the edge of care or at risk of becoming looked after at some point. That is a problem with how the system works. We felt that there was a need to enhance the route to permanence in kinship care and we took some feedback on that through the consultation process and in the years prior to the consultation process. This was the best mechanism that we could come up with.

Neil Bibby: When you talk about qualifying kinship carers in relation to the financial support criteria, which will be determined in—or left to—regulations, are you talking about kinship carers in relation to children who are at risk of being formally looked after?

David Blair: That is a consideration. We wanted to ensure that local authorities have some ability to focus support on families who need it most. That was one test that we thought about. We have put that into the documents accompanying the bill, but we think that the test really needs to be consulted on with practitioners through an extra piece of work that we are running now. There is good reason for that: we have to avoid stigmatising kinship care, but we also have to ensure that the test works and allows resources to be targeted at those who need it most, given the economic constraints.

Neil Bibby: The financial memorandum mentions savings being made through kinship care because there will be savings from children no longer being formally looked after unnecessarily. What evidence does the Scottish Government have that children are being looked after unnecessarily?

David Blair: That came through in the feedback that we had through the bill consultation. Also, we have been working with Children 1st for a number of years and we funded it to work with about 43 groups around the country specifically to gather useful information about how kinship care works in practice. We used that evidence to guide our policy making in the area.

Clare Adamson: For clarity—I am confused about this—will financial support be given only to kinship carers who have a formal order in place?

David Blair: Can you clarify what you mean by financial support, because the—

Clare Adamson: At present, local authorities have discretion to award kinship care payments, whether or not a residency order is in place. Does the bill remove that flexibility?

David Blair: No. At present, the expectation is that the kinship carer of a looked-after child will be entitled to an allowance, which covers a multitude of things. With kinship care orders, we are making that much more specific. We have said—we agreed this with COSLA for the purposes of the bill—that the kinship care order does not automatically extend the previous commitment to allowances for formal kinship carers. The review is looking at that aspect of things.

Clare Adamson: Okay. Thank you.

The Convener: Finally, Neil Bibby has some questions on the section on schools consultation.

Neil Bibby: The section seems out of place. Why has it been included in the bill?

Clare Morley (Scottish Government): It has been included in the bill, and it is proposed that the matter be dealt with in that way, because the bill provides an opportunity to deal with it quickly. The Government attaches importance to the area and there has been a large delay while the commission on the delivery of rural education considered the issues. Now that the commission has reported and the Government has responded to the report, we are anxious to move quickly. Also, a judicial review concluded recently and the Government wants to move to clarify the legislation. The bill is an opportunity to do that, which is not too far removed from the rest of the bill's purpose, as it is to do with services for children.

Neil Bibby: Provisions on the matter will be added to the bill at stage 2. What consultation will there be, or has there been?

Clare Morley: We expect to issue shortly a public consultation paper on the amendments that we will produce. There will be a shorter timescale than the Government would normally like to apply, but we feel that it is important to achieve a degree

of public consultation. There will also be arrangements for meeting stakeholders during the summer to carry out as much consultation as possible. That will build on the extensive consultation that the commission on the delivery of rural education did. We feel that the issues have received some airing through that.

The Convener: So that the committee can plan its work, will you clarify when the results of that consultation and the Government's response will be available?

Clare Morley: We expect to consult during July and August, and we expect to be in a position to respond and provide detail on the amendments that we will propose in good time for the session that we understand you have scheduled for 26 November to consider the bill after stage 1. The answer is during the autumn.

The Convener: That is why I asked, I suppose, because 26 November seems a little bit late. We have to take evidence on the bill during the stage 1 part of the bill process. Although you intend to introduce the provisions at stage 2, it would be helpful if we could take relevant evidence during stage 1. I am not convinced that it would be helpful for us not to know what is going to be inserted into the bill until after stage 1.

Clare Morley: We will want to allow as much time for the consultation as we can, and we think that that will be during July and August. I expect that ministers will be happy to write to you during September to give you as much indication as they can of what they have learned from the consultation, if that would be helpful.

The Convener: It would be helpful if we could have as much information as possible from the Government as early as possible, because we have to take evidence during stage 1 in September and October. I am thinking of the clerks in particular, as they have to get witnesses in place, and we have to ensure that there is enough time for us to properly scrutinise the bill and take evidence from witnesses. It is a large bill with many different areas and there is a tight timeline for us to do that work as it is, without any additional aspects. I would be grateful if we could get information as soon as possible.

Clare Morley: We appreciate the urgency.

The Convener: Thank you for coming along this morning and giving us some additional information at this early stage of the bill.

13:00

Meeting suspended.

13:01

On resuming—

Subordinate Legislation

**National Library of Scotland Act 2012
(Consequential Modifications) Order 2013
(SSI 2013/169)**

**Equality Act 2010 (Specification of Public
Authorities) (Scotland) Order 2013 (SSI
2013/170)**

**Requirements for Community Learning
and Development (Scotland) Regulations
2013 (SSI 2013/175)**

**Adam Smith College, Fife (Transfer and
Closure) Order 2013 (SSI 2013/179)**

**Anniesland College and Langside College
(Transfer and Closure) (Scotland) Order
2013 (SSI 2013/180)**

**James Watt College (Transfer and
Closure) (Scotland) Order 2013 (SSI
2013/181)**

**Kilmarnock College (Transfer and Closure)
(Scotland) Order 2013 (SSI 2013/182)**

**Reid Kerr College (Transfer and Closure)
(Scotland) Order 2013 (SSI 2013/183)**

The Convener: Our next item is consideration of eight statutory instruments that are subject to the negative procedure. As members have no comments on any of the instruments, does the committee agree to make no recommendations to the Parliament?

Members *indicated agreement.*

Neil Bibby: Can I raise an issue, convener?

The Convener: What is it?

Neil Bibby: There are allegations in the media today that this year's higher maths exam paper was "dumbed down", of "poor-quality", "uneven" and without "flow".

The Convener: Sorry, but the issue is not on the agenda, so—

Neil Bibby: Can I raise it briefly?

The Convener: It is not on the agenda. The committee is not a platform for raising issues that are raised in the media. If you wish to put the issue in the work programme, we will be happy to discuss that.

Neil Bibby: That is exactly what I want.

13:04

The Convener: There is no work programme item on the agenda, so we will move on. We will discuss the matter at the appropriate point.

Meeting continued in private until 13:15.

We previously agreed to take the next item in private, so we come to the end of the public part of the meeting. This is the committee's final meeting before the summer recess. I welcome the fact that we are reaching the end of a long and complex series of meetings on some difficult issues, and thank the committee for their efforts over the past year.

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