



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 21 May 2013

Session 4

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**Tuesday 21 May 2013**

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**EDUCATION AND CULTURE COMMITTEE**

**16<sup>th</sup> 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)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Marco Biagi (Edinburgh Central) (SNP)

Carolyn Brown (Association of Scottish Principal Educational Psychologists)

Jim Carle (NHS Ayrshire and Arran and Child Health Commissioners Group)

Dr Helen Hammond

Detective Chief Superintendent Gill Imery (Police Scotland)

Jo Macpherson (West Lothian Community Planning Partnership)

Hugh McNaughtan (Glasgow Children's Panel)

Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

Donald Urquhart (Glasgow Child Protection Committee)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

Committee Room 6



## Scottish Parliament

### Education and Culture Committee

Tuesday 21 May 2013

[The Convener opened the meeting at 09:35]

#### Taking Children into Care Inquiry

**The Convener (Stewart Maxwell):** Good morning and welcome to the Education and Culture Committee's 16th meeting in 2013. I remind all present that electronic devices should be switched off at all times.

Under agenda item 1, we will take oral evidence as part of our inquiry into decision making on whether to take children into care. The themes for today's session are neglect and permanence, with a specific focus on joint decision making and partnership working. I welcome our witnesses: Donald Urquhart, independent chair of the child protection committee in Glasgow; Jo Macpherson, representative of the community planning partnership in the West Lothian Council area; Jim Carle, of NHS Ayrshire and Arran and chair of the child health commissioners national group; and Hugh McNaughtan, authority chair of the Glasgow children's panel. Good morning to you all.

I remind the witnesses, as I did the committee before the witnesses came in, that we have a tight agenda. Therefore, where someone has already covered the point, it might not be necessary for people to answer all the questions if they have nothing specific to add. We will begin with a question from Liz Smith.

**Liz Smith (Mid Scotland and Fife) (Con):** Good morning. I start by putting on record my view, which I think is shared by the committee, that the written evidence that has been provided to us has been very helpful.

One difficulty that the committee is wrestling with is how to ensure that there is top-class guidance for professionals on how to look after the best interests of each individual child and at the same time to get some consistency. Can you comment on the difficulties in that approach?

**Jo Macpherson (West Lothian Community Planning Partnership):** Particularly with regard to child neglect, there are many challenges to getting a consistent approach. In West Lothian, we have tried to tackle that through a programme of multi-agency training for our professionals that helps to identify some of the impact of child neglect on future development and behaviour.

A critical issue that makes it problematic to have a completely consistent approach to tackling neglect is that neglect can be an on-going or chronic situation, which requires a thorough assessment of when to intervene in the individual situation—assuming that the need to intervene has been identified. We need to be realistic about the areas in which we want to have a greater level of national consistency, given the need to look at the individual child's life circumstances and what it is like for that child to live in that particular family.

**Liz Smith:** How close are we getting to a situation in which consistency can be applied to the issues that you have described?

**Jo Macpherson:** We have a much greater understanding and definition of child neglect—with areas of physical or sexual abuse, it is easier to have that clear understanding—so we have more of a shared appreciation of the potentially very serious impact that early neglect can have on children's future lives.

We still need to do work on helping our professionals to intervene when appropriate. There is a range of toolkits or assessment models that can assist professionals in making those serious decisions. In our area, because of the difficulties with identification, assessment and intervention in child neglect, we are involved in a study with the National Society for the Prevention of Cruelty to Children that is looking at the effectiveness of the graded care profile, which is one particular assessment toolkit. It is too early to say whether that will be effective, but we have invested some time and resource in that.

**Liz Smith:** Outwith those toolkits, is there a sufficient number of well-trained professionals who are able to provide the training for the people who are involved in that process?

**Jo Macpherson:** We have many skilled and experienced professionals who work hard each day to support very vulnerable children and their families in communities, but there are challenges for all agencies. For example—my background is in social work—from managing the fieldwork teams in West Lothian, I know that retaining experienced staff is a challenge. We need to work hard to ensure that we retain that level of skill.

**Liz Smith:** One of the written submissions made the point that there is a

"lack of clarity regarding when to share information".

Can someone explain a little more the background to that problem?

**Jim Carle (NHS Ayrshire and Arran and Child Health Commissioners Group):** The various agencies might have significant information that would have a real impact on how a particular child is treated, but we lack the integrated information

systems that would allow us to share that information well and early enough in the child's life to intervene at a point at which we could prevent some of those children from being received into care. There are systems in development just now and there is a lot of good practice, but we will have good practice only if we have good information. Arguably, information from health, which is my area, is not being well shared.

**Liz Smith:** Is that an information technology problem, or is it to do with the management of people?

**Jim Carle:** There is a significant IT problem and we need to invest in IT systems that share information. As my submission says, we have a pilot model for that in NHS Ayrshire and Arran and in a couple of other areas in Scotland, but that is a serious issue.

We also have issues around a lack of a common culture among the agencies that approach children and young people. Arguably, a lack of value is placed on the information that health may have and how that may impact on the treatment plan for a child. Certainly, with the predictive factors that allow us to look at the family history, the child's early history and the history of the siblings, we are not making best use of the information by utilising it to guide us in intervening early enough.

**Liz Smith:** Is that information available and the issue is just about best use, or is there is a problem in some health areas that not enough information is provided?

**Jim Carle:** There is a combination of both those issues. In some areas, we have very good information that is not well shared. We always have islands of good practice—there are some excellent practitioners out there, and I would not want to take that away from them—but there is information on things such as foetal alcohol syndrome, which we do not currently screen for. If we are not aware that a child has been affected by foetal alcohol syndrome, we might not treat that child appropriately. That type of thing needs to come into play.

We are just beginning the process of gaining information from adult services in those cases where a parent may have an issue with mental health or alcohol or obesity or tobacco that has a direct impact on the child. To a certain extent, we are still treating the symptoms and not the causal factors. We need to move to a process similar to getting it right for every child that can be applied for every family rather than just for every child. We should look at the family as a whole unit and not just the child as an isolated factor within the family.

**Liz Smith:** Let me finish my questions by asking about that issue of getting the right culture. It has

been put to us by a few witness panels that we need to ensure that the right culture is out there. What are the barriers to adopting that correct culture?

**Donald Urquhart (Glasgow Child Protection Committee):** Before I answer that question, let me pick up on the information issue, which is a recurring theme in reviews of cases in which things have gone wrong. I think that there is a big issue about the way in which we train professionals on data protection. We need to give them a real understanding of what they can and cannot share.

Helpful guidance was provided by the Scottish Information Commissioner about six weeks ago, which talks about the issuing of information under the GIRFEC approach, and it is not seen as something that professionals should not be doing. As Jim Carle said, some practitioners are good at sharing information effectively, but there are also people who are less confident. I think that it is a training issue. We do not invest in training professionals. My background is in policing and I know that police officers are not as confident about sharing information. The point that we make in training is that children have died because we have not shared information rather than because we have shared it. We need to change the culture.

09:45

Part of the difficulty of partnership working, particularly on thresholds in terms of neglect, is that there are practitioners who come from a completely different organisational culture, and that makes it much more difficult. It is not that people are desensitised to the conditions in which they find children, but the reasons why they find them in those circumstances will be different. A police officer might attend a call and see something that causes them concern. For a social worker, it might be slightly different. That is a difficult one to crack. It is about the different organisational cultures.

**Liz Smith:** Thank you.

**Neil Findlay (Lothian) (Lab):** I have a practical question. If a social worker, a health visitor, a headteacher or whoever is alerted to an issue, how do they then check what is happening in the other services? How does that happen practically?

**Jo Macpherson:** In the main, people pick up the phone and have a conversation. Although there might be disagreements between services and agencies, that is not always unhealthy or unhelpful. Disagreement can lead to the challenging of perspectives and positive interventions. I can speak only from a West Lothian perspective, but agencies are picking up the phone every day and having conversations

with one another, saying, "We have a concern", "What does this mean?", "What do you know about this family?", "Do you have similar concerns?" and "What should we do?".

**Neil Findlay:** If it is a telephone-based system, presumably it relies on people writing notes—

**Jo Macpherson:** Yes. Clearly, a telephone conversation would be an initial point of contact. In other situations, it is important to bring people together in a formal meeting to share information and agree a support plan or what further actions are needed, to involve families in that and secure the best support for them.

**Neil Findlay:** If there is no IT-based system, the system relies on telephone calls and people writing notes. If something happens and then, say, you have to phone a school and the teacher is in the classroom, you immediately have delay. I think that you can see where I am going with this. A telephone-based system relies on people writing notes and keeping records. Inevitably, with the workloads that people have, things will be missed. Are we not still in the dark ages on this?

**Jo Macpherson:** I am sure that we could have better IT arrangements in place to support practitioners' work, but we still have to have human contact and connection.

**Neil Findlay:** Of course.

**Donald Urquhart:** There is a danger in assuming that IT is a panacea. It is not, because if someone is updating a record using a computer, they still have to take time to do that. There are issues about whether a written record is less efficient than an IT record. If we had an integrated system, an updated record on a computer that could be shared with other agencies would be infinitely preferable, but at the moment we do not have such systems.

Returning to the original question about initial concerns, all areas in Scotland have in place child protection procedures that deal with how professionals should raise concerns initially. If it is not a child protection situation in which the child is at immediate risk of harm, GIRFEC deals with the identification of concerns and encourages the person who has lead responsibility for the child to convene a meeting of interested or relevant professionals to discuss concerns that might be at a much lower level, but which might still require some intervention over and above the delivery of a universal service.

Procedures are in place, and GIRFEC is being rolled out across the country. The extent to which it is rolled out will be different in different areas, but I think that a culture is beginning to be embedded that is about the interests of the child and a partnership approach to ensuring that the

child gets what they need, to address the concerns.

**Jim Carle:** I reiterate that good practice relies on individuals talking to one another. It is important that we do not regard IT systems as some kind of panacea. We are moving rapidly towards having integrated IT systems. In NHS Ayrshire and Arran there is a common system across all health professionals who deal with children, so people input information into a single IT database. With our local authority partners, we are piloting AYRshare, which is a common system, currently with input from social work and health—education is about to come online, if we can resolve some IT issues, and we are working with the Scottish Children's Reporter Administration and the police, to enable them to access the system.

Common IT systems are being developed rapidly and information can be shared, but the key point is that good practice relies on good practitioners. It is the analysis of the information that it is important to get right.

**Neil Findlay:** I do not dispute that. IT cannot replace human beings. We have had that debate in the context of the careers service.

In our papers, the example that you gave from Ayrshire and Arran is mentioned in the context of "pockets of good practice across Scotland",

but it is not suggested that such good practice is widespread. Although some areas are doing well, it sounds as though many more have problems. It also says in our paper:

"This level of IT provision is essential to collating information and can help to identify cumulative neglect early."

Given what the committee has heard over the months, should we make a clear recommendation to Government that investment in the area is critical?

**Jim Carle:** My colleagues and I would find that extremely helpful. Significant investment in the area would be positive.

Systems must be properly integrated, which means that they must meet the needs of all partners. If I may speak from a personal point of view, I would want something that was shared throughout Scotland rather than developed in individual health boards. We need a fully integrated system. That would help in a number of ways, including in the development of predictive techniques, so that we can identify the group of children that we are talking about earlier and intervene, perhaps preventing a number of children from having to be looked after or accommodated.

**Neil Findlay:** Do the other witnesses agree? I am cautious about saying that, because I know that there have been some spectacularly bad public sector IT projects.

**Hugh McNaughtan (Glasgow Children's Panel):** The situation has been a bit shambolic at times, across the country.

From my experience of being on the children's panel and related committees in Glasgow, I can say that because of Glasgow's volume and compactness, an approach that works is the non-offence referral management—NORM—project, whereby people from the reporter administration, health, education and the police meet fairly regularly in each area to consider what is coming up. Health visitors probably see a lot at a very early stage and can bring things in.

I do not know whether NORM would work in every authority, given the distances involved, but some sort of national system to tie in good practice, perhaps through IT and videoconferencing, might well help. Some direction and on-going money would be needed to make it work.

**Neil Findlay:** Is housing involved in the project?

**Hugh McNaughtan:** Yes. Sorry, I forgot to mention housing; it is the whole gamut in a particular area. I have always felt—probably because of my experiences a long while ago—that housing officers probably see more than anyone else does before a child gets to school, at which point it is the teachers who see things.

**Jo Macpherson:** For some years now, West Lothian has had a system in which information is shared across agencies. However, it is probably time to review and advance the system.

**Donald Urquhart:** With the advent of Police Scotland last month, one IT system is being rolled out to replace eight different systems. The consolidation of the police's IT system certainly presents an opportunity; I am not quite sure how advanced such moves are in health, but at least it is a start. As Jim Carle said, it would be a significant advantage in identifying at an early stage or predicting problems. However, it can be seen as a panacea and it is essential for practitioners to speak to one another.

**The Convener:** I will take two very quick questions from Joan McAlpine and Clare Adamson.

**Joan McAlpine (South Scotland) (SNP):** First, I apologise to the committee and the panel for my late arrival.

On Mr Carle's comment about the desirability of screening for foetal alcohol syndrome, do you agree with an expert in this area who a couple of

years ago suggested that the syndrome was more widespread than many people believed? What might be the implications of such screening?

**Jim Carle:** The most recent evidence supports my belief that foetal alcohol syndrome is far more widespread than we have previously thought. Of course, we should consider not only its impact on the child but the fact that people out there who are themselves victims of foetal alcohol syndrome are now parents in their own right and are trying to bring up children with a number of challenges.

I have no doubt that foetal alcohol syndrome is far more widespread than is recognised, and screening is clearly important because early identification of that group of young children means that we can make appropriate and effective interventions in their lives. There are children right now who I do not believe have been diagnosed accurately and are therefore not being treated effectively. For example, social workers and health professionals commonly use cognitive behavioural therapy to tackle these children; however, this is a group of children who will happily say yes to every question that you put to them and leave you with the impression that they have understood what you said when in fact they have not understood anything. They have learned by rote how to respond to you and know how those issues will then be picked up.

Given the issues with alcohol in Scotland, it is important that we develop some kind of national screening programme for foetal alcohol syndrome.

**Clare Adamson (Central Scotland) (SNP):** I have a very quick question that I am afraid brings us back to the technical stuff. Last week, we took evidence from two academics who talked about expert systems that would trigger certain things and prompt people to take particular action in particular circumstances. Given what you have said this morning, is it simply a data-sharing system that has been put in place or does it have an expert element? If it does not have an expert element, are you aware of any expert systems outwith Scotland that fulfil such a function?

**Jim Carle:** The Ayrshire and Arran system is not what you would call an expert system in that it is not predictive; it simply shares—or attempts to share—information from a number of agencies in an effective way and the social worker or health professional performs the expert function by reviewing and pulling together that information.

At this point in time, I am not aware of any programme that would effectively pick up and pull together, for a certain house, all the information on, for example, the number of doors that have been broken into, the number of windows that have been broken or the number of missed appointments with a general practitioner. In fact,

such a system would make me a bit nervous because I think that we need to rely on very well-qualified and experienced professionals who are able to analyse the data. For me, the issue is much more about the next stage and pulling together the data effectively to ensure that the individuals who work with the child in question can see all the available information, no matter whether it comes from the parents, the grandparents, the siblings or the individual child. All that information must be available to the professional.

**Hugh McNaughtan:** I think that Bruce Perry in America has such a programme. However, from the programmes that I have read about and which he has spoken about, it seems that they ride roughshod over people's rights. We would need to be very careful about how much information would be available, how it would be shared and who would have access to it.

10:00

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I have three questions. Last year, the Scottish Government published a risk assessment toolkit that was supposed specifically to identify and respond to child concerns. I am interested to know whether the witnesses feel that that was effective, particularly in light of some of the evidence we have already been given.

We have taken evidence from the likes of NHS Lanarkshire, which commented on the variations between professions in relation to thresholds for neglect or significant harm, and the same evidence exists about good-enough parenting. Obviously that is a great concern. It is quite basic to say that there should be an identifiable threshold that is common across the country. Does any training lead you to believe that we are moving towards a common understanding or that a common threshold is starting to appear? I am concerned if variation exists across the country.

The other thing is that there seems to be—

**The Convener:** Colin, can we stop there and let the panel respond? You can come back in.

**Colin Beattie:** I am sorry. I was too enthusiastic.

**The Convener:** You were quite enthusiastic, yes.

**Donald Urquhart:** The risk assessment work was undertaken by a colleague of mine in Glasgow on behalf of the Scottish Government. It is being rolled out currently.

Rather than being a completely new approach, the risk assessment is a combination of a number of approaches to assessing risk and equipping

professionals with the capacity to analyse what they have in front of them. As Jim Carle said earlier, it is all very well having information but it is the professional analysis of what that information means that shows whether there should be interventions. It is useful to put all the information together but the idea is not new. At the end of the day, the real test is the ability of professionals to understand what they are seeing and to decide whether action is required.

The second point was about common thresholds. I have already said that, because of organisational cultures, a police officer seeing a set of circumstances would respond in a different way from a social worker or a health visitor. Because of the nature of the organisations within which they work, it will be difficult for them to develop a common threshold. Colin Beattie said that it is basically common sense but it is not quite as simple as that. I am not suggesting that common thresholds are not something that we would work towards but it is difficult to achieve them. We have been struggling with them for some time, and we are not quite sure how best to achieve them. That is my view.

**Jim Carle:** A common threshold might not be an achievable goal in reality, and I am not sure how helpful it actually is. Each child has to be treated as an individual, and there are too many permutations or variations in the issues that impact on that child to establish a common threshold.

We can have more training in common, and we can have more understanding. For example, the child protection training that we get as professionals varies depending on which profession we come from. An awful lot of work could be done to make the training more common across all the different agencies that contribute to this work, and our training could be pulled together in a number of other areas.

I would very much like to see a situation in which the police, social workers and other health professionals are trained together on certain issues. That process itself would develop a shared understanding of the different agencies' roles and remits, which would lead to better practice, as uncovered by the GIRFEC pathfinder process.

**Jo Macpherson:** I agree with that. There is great value in training across agencies so that they have the opportunity to explore what definitions are, what they mean for individual children, how we make effective assessments of complex situations, and how we best plan to support children and their families. There is certainly evidence that suggests that understanding and shared awareness is positively affected by on-going multi-agency training.

That approach does not get away from the complexities that individual cases throw up, which will come down to individuals having robust assessments in place, including assessments of capacity for parents and caregivers to change within a timescale that meets the needs of children. There are serious difficulties and complexities involved in that.

**Donald Urquhart:** The value of joint training cannot be stressed enough. One of the key issues is the development of a working relationship between professionals. The ease with which professionals can pick up the phone and speak to someone they already know, because they attended joint training, makes sharing information much more effective.

Some of the significant case reviews have shown clearly that there is exceptionally good practice within Scotland—though there is also bad practice, which we are working hard to address. Joint training contributes significantly to that good practice.

**Colin Beattie:** I understand the comment that each case is individual. There are all sorts of different thresholds with which people are working. As a layman, I think that there must be concern that children perhaps are at greater risk in some areas than in others, because of the variation in the thresholds.

**Hugh McNaughtan:** I, too, speak as a layman. It is possible to look at thresholds, but thereafter we need to look at the individual child. Once the threshold is triggered, what needs to be provided? Is the question one of how quickly the parents will be able to change things for the child? There are different thresholds; the question is whether social work, education, or health practitioners can deal with the particular instance that arises. There might need to be some sort of basic trigger point; what happened to an individual child after that point would need to be dealt with on a case-by-case basis.

**Colin Beattie:** I will move on to my third question.

Obviously, there is a whole bunch of different professionals involved in every case. The evidence we have taken indicates that professionals tend to start from scratch every time they become involved, instead of building on what the previous professional has achieved up to that point. I wonder whether there is a way in which professionals might trust the judgment of the people who worked on the case before, instead of starting the whole thing again, which means that the clock starts again for the child. That seems to be the basis of the information I have received. Do you have a view on that?

**Jo Macpherson:** There can be a tendency to reassess situations. Sometimes that is demanded by our processes, either through children's hearings or court procedures, and it is not possible to take assessment activity that has happened in the past and say that that is still relevant. However, we certainly need to prevent as many reassessments, or cases being started again, as we can, because that contributes to delays in the assessments and in the critical decisions being made.

**Donald Urquhart:** Evidence from significant case reviews shows that that is an issue on occasions. We need to equip professionals with the knowledge and confidence to rely on the work that has gone before them when they take over a case and to say, "We are not starting from fresh here; there is a history to this particular child or family", so that they can work from the point where the previous practitioner left off.

Part of the problem is having the time to sit down and read what might be quite a significant, sizeable file and look at what has gone on in the child's life. The pressures under which practitioners work can make that a very difficult thing to achieve. We must recognise that practitioners are working under significant pressure because of resourcing issues.

**The Convener:** Have you had a chance to look at the Children and Young People (Scotland) Bill? Do you have any views on the extent to which that legislation might address some of the concerns that we are discussing this morning?

**Jim Carle:** I should admit from the outset that I am on the group that is drafting the guidance for that bill and so, clearly, I would argue that it does address those concerns.

**The Convener:** I think that you have to declare an interest. [*Laughter.*]

**Jim Carle:** Everything that we are saying is being supported already by the named professional and GIRFEC process. That approach supports joint interagency working and is looking at culture, systems and practice. Over time it will have a significant impact on the work that we are doing.

The approach is extremely welcome, and the next critical stage will be the roll-out from children's services to adult services. We will have to ensure that we have all the information that we require to make a full assessment of the individual child's needs—that is where we must go next.

**Hugh McNaughtan:** In situations in which there is a reassessment, children who are a bit older—and even some children who are only eight or nine—begin to think, "Here's someone else asking all the same questions. Nothing happened before,

so why should I bother answering this time?" As time goes on, the assessment can be less and less fruitful for that reason. We must not lose focus on that because, whatever the process is, the child must be at the centre.

**Donald Urquhart:** My knowledge of the Children and Young People (Scotland) Bill is not as comprehensive as it could be, but I know that some of my fellow chairs, particularly in the west of Scotland, have concerns about the obligations that it will place on them at a time when resourcing is under significant pressure. That is not to say that the principles of the bill do not take us in the right direction. As Jim Carle said, as GIRFEC becomes embedded and becomes second nature to professionals, we should begin to see a significant difference.

**Neil Bibby (West Scotland) (Lab):** I want to ask about families who might fall between child protection services and universal services, in particular the health service. Health professionals are sometimes the only people who come into contact with children who are potentially at risk, so only they can identify neglect and harm.

GPs are often regarded as autonomous in the health service. I understand that the General Medical Council has issued good guidelines to GPs on child protection procedures but that GPs are not compelled to attend multidisciplinary meetings or undertake training. Are GPs interacting sufficiently with other agencies? What onus is put on GPs, and what more can be done to ensure that they engage? What happens if a GP refuses to take part in multidisciplinary work?

**Jim Carle:** I think that GPs are the same as any other group of professionals. We have some excellent GPs and some extremely good GPs, who will go the extra mile to be involved in a case of any type and particularly a child protection case. However, GPs are private contractors to a greater extent, and they are entitled, under the national contract that is in place, to act in the way that you outlined.

We would like a closer working relationship with GPs, and we would very much like there to be joint training with GPs, as well as with other professionals. We would like GPs to be much more engaged with us and to take issues forward.

I hesitate to be critical of GP colleagues, who really do go the extra mile. However, GPs see themselves as being the pivotal point at which issues can be raised with other agencies, for those agencies to take forward. GPs perhaps think that, once they have identified an issue, another agency will take it forward and they will not be directly involved. That aspect of the culture could be challenged so that things develop in a different direction and GPs become part of the wider team.

**Neil Bibby:** We have heard concerns about the pressure on health visitors. How big are their case loads? Are they too big?

10:15

**Jim Carle:** The main concern is that health visitors should have the appropriate amount of time to enable them fully to assess the children in their case load. Health visitors work really hard and do an excellent job, but in some areas they are overburdened and do not have the time or resources to enable them to make a full assessment of every child for whom they are responsible.

In some areas, including my area, the health visiting service has been completely reconfigured. In Ayrshire and Arran, we focus on pre-birth to five, working tightly with our maternity services team, and health visitors no longer work directly with GPs. We have moved health visitors away entirely from older age groups; they focus more comprehensively on much younger children, under the early years framework.

We can do something to change practice, but we currently do not have enough health visitors out there. We have a real concern about the number of health visitors who are approaching retirement age and our ability to recruit replacements for them. As we get better at working together, the burden on health visitors and other professionals is becoming greater.

We need more time and more resources. The issue is not going to go away. Some things could help, such as an integrated IT system, to enable us to access information appropriately and timeously. However, if we want to resolve the issues for the population of children in Scotland, the bottom line is that we need more professionals on the ground, working more tightly together.

**Neil Bibby:** We talked about sharing information. How do we share information and take an holistic approach to a child while maintaining confidentiality? Does the ethos of confidentiality in the health service present a barrier to multidisciplinary work and joint assessment?

**Jim Carle:** Yes, that can be a barrier. There are groups whose professional guidance—from the colleges, for example—will not fully align with the new guidance for the Children and Young People (Scotland) Bill. We are approaching different colleges to ensure that the guidance that they issue to their members is aligned with Government policy and the bill.

There is a challenge, for example in relation to getting adult mental health services to share information on a parent or carer whose mental

health issue or treatment plan might impact negatively on a child's upbringing. We must convince professionals that the solution for their adult is entwined with the solution for the children in the family. There is no healthy child without healthy parents, and there are no healthy parents without healthy children. We need to take a whole-family approach to resolving the issue.

We are rapidly getting places under GIRFEC. I think that we are convincing more and more professionals to get on board. Information sharing is becoming easier, but the issue is not resolved and we are certainly not at the end of the road.

**Neil Findlay:** What resourcing problems are agencies experiencing?

**Jo Macpherson:** For social work, one of the biggest challenges over the past two years has been retaining experienced staff. When staff depart, the people whom we recruit to replace them are invariably newly qualified. The challenge is to ensure that we do not overburden our remaining experienced staff, so that they can do their best work, while not overexposing staff and social workers who do not have the relevant experience to work in complex and high-risk situations, because that is not safe for them, for families or for the organisation.

We have taken measures, through mentoring and joint working for example, to address the issue and minimise its impact. For example, social workers and health professionals do joint visiting so that there is a shared approach to safety among the professionals who are involved.

**Neil Findlay:** Where are the experienced staff going?

**Jo Macpherson:** In statutory children's practice teams that I manage, social workers have usually moved to social work jobs that they perceive to be less demanding or challenging on a daily basis, where they feel that they will have more opportunity to do more constructive and in-depth work.

**Neil Findlay:** Do they move to other authorities, or do they go outwith the local government system?

**Jo Macpherson:** Some go to the voluntary sector or move to specialist jobs in other services, such as criminal justice. Many people leave for family reasons, too. It is not all about escaping, but there is no doubt that there are pressures on staff who work in highly complex and challenging situations.

**Neil Findlay:** You said that some staff move for professional reasons. We have heard in evidence that there is less time for the remedial work that social workers want to get involved in. There is less time to help people, as opposed to being the

big bad social worker who does something bad to people. Is that a reason why people move on? Do they think that there are better opportunities to do the work that they are trained to do, as opposed to the side of the job that is not very nice?

**Jo Macpherson:** That can be a feature. People can want an opportunity to do more intensive and, as they perceive it, therapeutic work. However, many people remain in post who are very skilled, who have practised effectively over the years and who work effectively with other agencies. There is mutual trust between professionals who know each other and work well to support families.

**Neil Findlay:** What flexibility do you have to help you to retain experienced staff whom you do not want to leave? Is there such flexibility?

**Jo Macpherson:** Yes. We have created flexibility by increasing the number of social worker posts. That has enabled highly experienced social workers to have more time to focus on the more positive and direct work with families that they appreciate. Some of the other work has been moved to the newer social workers who can manage it. We have created more capacity, in the hope that that will stabilise our recruitment position and help us to retain our more experienced and qualified staff.

**Neil Findlay:** Is pay an issue?

**Jo Macpherson:** I do not think that it is the main issue.

**Neil Findlay:** The Association of Scottish Principal Educational Psychologists talked in its submission about a forthcoming shortage of educational psychologists. When I was a member of West Lothian Council, the administration cut educational psychologist posts. The Scottish Government says that there is no longer a shortage of educational psychologists, but that is not what the association says. Do panel members think that there are such shortages?

**Jo Macpherson:** I am not aware of any.

**Jim Carle:** I am not aware of any. If we are to distinguish between children with significant behaviour problems and children who have a mental illness, there is probably a need for a more robust role for educational psychologists and an argument for increasing the workforce. However, I am not aware of issues.

**Neil Findlay:** Is that because that is not your field of expertise or because you do not think that there is a problem?

**Jim Carle:** Educational psychologists are directly involved in all the multi-agency groups with which we work and in the locality groups under the integrated children's services plan. We work quite

heavily with educational psychologists. I am not aware of specific issues.

**Neil Findlay:** In my experience in teaching, the waiting times for appointments with educational psychologists were huge. Is that still the case?

**Jim Carle:** It is much less the case than it was when I was in practice. I have not looked at the national situation, but we do not have that issue locally.

**Neil Findlay:** That is interesting. At last week's meeting, Brigid Daniel said:

"If you are going to remove a child from a situation, you need to do something to fix the situation before they go back."—[*Official Report, Education and Culture Committee*, 14 May 2013; c 2362.]

Who provides the services that will "fix the situation" before the child is returned to the family?

**Hugh McNaughtan:** As a panel member, I would expect to look at various things if we were to make an order for a child. If there was an addiction problem, we would expect the parents to sort that out, although we cannot put that in an order. If the problem was something else, we would expect education or social work services to deal with that if they could do so. We are talking about whatever is needed at that point for a family.

As has been said, we have got to make parents realise that they need to act quickly because, although nine months pass in the blink of an eye for us, that is a long time to an eight or nine-year-old. To get children stability and move them back home—if that is going to be possible—we need the parents to work with whoever they need help from. For instance, parents may need help with anger management, because anger can be brought on by addiction. We need everyone who is involved in the process to decide what is needed and ensure that the parent knows that they have to act quickly.

**Jo Macpherson:** A lead professional should be involved with every child and family to co-ordinate the work that needs to be done to ensure that children can safely return home to their families or their parents in a reasonable timeframe. That work should be clearly outlined, defined and measurable, so that people know when the targets have been met and when the child can return home.

**Neil Findlay:** That is part of the issue that we are investigating. There might be a temporary fix: the child goes back and then everything starts again. That gets to the crunch of what we are looking into.

**Jo Macpherson:** In West Lothian, most of the children who become looked after away from home probably do not return home quickly. Such a lot of work is done to support families and children

living at home in their own families that, when the decision is taken that children should no longer remain at home, a more permanent form of arrangement is likely to be needed. We are eternally grateful to the kinship carers in West Lothian who look after so many of our looked-after children and provide good care and the possibility of positive outcomes for those children.

**Neil Findlay:** Neil Bibby mentioned health visitors' case load. What would a typical social work case load be in West Lothian for a children and families social worker?

**Jo Macpherson:** A social worker works with about 15 families. We tend to take a view of families, as opposed to individual children. Some social workers work with fewer than that; that depends on the level of complexity and on their experience.

**Neil Findlay:** That is interesting. I think that it was said that the case load in Glasgow is 30 to 35 families.

**Donald Urquhart:** I think that it is. As the chairman of the child protection committee in Glasgow, I would say that that number is not indicative of the number of children involved, for example, as Jo Macpherson said. When the family group is very complex, the number of cases that a social worker carries is likely to be significantly fewer.

To go back to the question about health visitors, the scale of the problem in Glasgow is significant, compared with other authorities in Scotland, to the extent that we benchmark against other areas in the United Kingdom that have a similar demographic. We face issues of such a scale that we have to look at what areas such as Manchester and Birmingham are doing, at what the results of inspections by the Office for Standards in Education, Children's Services and Skills in those areas are and at what we can learn from the experience down there.

The significant challenge in Glasgow concerns neglect. There are a number of reasons behind that, such as drug and alcohol issues, mental health issues, poor quality housing and so on.

**George Adam (Paisley) (SNP):** The submission from the health commissioners suggested that there is not so much cross-boundary working together by organisations. To get that form of strategic planning, what would be the best way forward? Would it be to work with community planning partnerships and ensure better working together in that way? What is the panel's view?

10:30

**Jim Carle:** I think that community planning partnerships are located within the boundary, if you like, but the issue that we have is from the boundary into boundaries. As always, community planning partnerships certainly have a role to play in supporting the professionals, but the issue is at a slightly higher level than that. In this context, we are talking about community planning partnerships ensuring that their professionals have in place a health needs assessment for every child who is going to be transferred from a unit in a health board or local authority area to another area.

We must implement effectively the current guidance and legislation for those children and young people. I do not think that we are doing well enough on ensuring that the children who become looked after at home or looked after and accommodated have full health assessments in place. We have the information, but we are not pulling it together into a single format and we are not sharing it well enough with other agencies, including those across health boundaries. I would not want to pretend that we have got to the bottom of that issue yet, because it is a significant area for improvement.

**George Adam:** Does Jo Macpherson have anything to add?

**Jo Macpherson:** I do not.

**George Adam:** What did Jim Carle mean when referring to a higher level? How would you be able to interact at a higher level?

**Jim Carle:** The new inspection process that the Care Inspectorate has recently piloted includes health services and is picking up issues. In North Ayrshire, in our area, the inspectorate looked at children with a health needs assessment who had moved into the area and found that the assessments were quite poor.

The health service needs to recognise that it is responsible for the child and that it still has corporate parenting responsibility for every child who is born in its area and returns to it. We must develop systems that encourage and support that ownership so that we do not lose those children to the morass of different agencies trying to work together.

We have clear guidance that says that each child should have a health needs assessment completed. We also have the guidance on what is required in child and adolescent mental health services. Because of a number of issues, such as the availability of staff and resources and the speed with which transfers happen, there is a lack of notification from local authority partners outwith our area—not the partners that we work with, in the main—of when children come into our area, for

example. That is a significant area for improvement, but that is now recognised and we are trying to push forward quite rapidly on it.

**The Convener:** Neil Bibby has a brief supplementary question.

**Neil Bibby:** I will follow up on resources, specifically in Glasgow, which Donald Urquhart said has a particular problem with health visitors. We have heard that social workers' case load is possibly higher in Glasgow than in, for example, West Lothian. Do areas such as Glasgow that have a particular problem or high numbers of children in care have sufficient resources? Is enough emphasis placed on such issues in money being diverted to areas such as Glasgow?

**Donald Urquhart:** I am the independent chair of the Glasgow child protection committee and I am not as closely involved in the financial issues in terms of the settlements for Glasgow City Council and NHS Greater Glasgow and Clyde, so I am probably not in the best position to respond to your questions. However, at yesterday's child protection committee meeting, we discussed the amount of work that has gone on in relation to looked-after and accommodated children and the amount of additional investment that the council has committed to reducing the number of children in residential care and diverting them into kinship care or foster care. A significant amount of resources has been channelled towards that, which has been diverted from other areas of the local authority's budget.

The senior social work manager who spoke to a paper yesterday said in response to a question from one of our health service colleagues that it is difficult to identify the demand sitting behind the number of children who are accommodated. That unspecified demand is a dark figure that we do not know about and which is likely to have resourcing implications.

One issue in particular applies across Scotland. In a discussion recently with our link inspector from the Care Inspectorate, there was an indication that all the professionals who deal particularly with child protection, which I am directly concerned with, are working under pressure. That reflects the resources available. There is only so much efficiency that we can get out of an individual before they begin to suffer. A huge amount of really good work is going on individually and on a multi-agency basis but, when people are under pressure, they will give at some point. The people who are likely to suffer from that will be children and families.

We have to be conscious that we are placing a significant burden on individual practitioners. That situation applies across all the agencies and the

third sector organisations that contribute to looking after children effectively in Scotland.

**The Convener:** Thank you very much. I thank all the panel members who have come along this morning to give us evidence.

I suspend the meeting briefly so that we can change panels.

10:35

*Meeting suspended.*

10:39

*On resuming—*

**The Convener:** We have our second panel of witnesses today for our inquiry into decision making on whether to take children into care. I welcome to the committee Carolyn Brown, who is an area deputy principal psychologist and is from the Association of Scottish Principal Educational Psychologists; Dr Helen Hammond, who is a paediatrician; and Detective Chief Superintendent Gill Imery of Police Scotland. Good morning to you all and thank you for coming.

Clare Adamson will begin the questioning.

**Clare Adamson:** We have taken evidence on the different methods for referring to the hearings system, and it was noted in evidence that 80 per cent of non-offence referrals to the hearings system are from the police. Last week, one of the academics who gave evidence—Brigid Daniel—suggested that the hearings system needs to be reserved for cases in which compulsory measures are necessary. What are your opinions on that? Do the police really continue to refer children to reporters in such large numbers, in comparison with other agencies? Why do so many of those referrals not reach the hearings stage?

**Detective Chief Superintendent Gill Imery (Police Scotland):** I can certainly answer the first part of your question, on the motivation behind referrals from police officers. Members will appreciate that first-line officers have an insight into people's lives and homes that many agencies do not. Officers are trained and encouraged to identify vulnerability, and the grounds on which they refer range from children being in a household in which there has been a domestic incident, to a parent having been arrested for a crime, to its being apparent through attending an address for an unrelated issue that there is neglect in the home, to the way in which the home is set up; for example, there may be no food or adequate heating or clothing for the children in the house.

It is one of the performance indicators for the new national force—Police Scotland—so we are

very interested in keeping track of the level of referrals from us. We started as one force for Scotland on 1 April. In the first month, Police Scotland's 14 divisions made more than 10,000 referrals to other agencies. In Edinburgh alone, the figure was more than 1,000 in one month. I appreciate that that is a high level of referrals.

There might be an argument for tiered referral. My view is that we should not dissuade front-line police officers from highlighting their real concerns about what they see in their duties, as I have described.

Obviously, I am not best placed to respond to the second part of Clare Adamson's question, on what happens thereafter, and I do not think that my colleagues would necessarily respond either—I am not landing them in it.

**The Convener:** I know that you cannot answer the second part of the question, but does that indicate any issues with the referral process in the first place? In other words, are police officers correct in saying that children should be referred to the children's reporter? Should the children be referred elsewhere? Is the fact that the number of referrals does not equate to the number of hearings indicative of an issue in how referrals are being made?

**Detective Chief Superintendent Imery:** I think that it is. I should clarify that the numbers relate to referrals to all agencies, but there is something in there about trying to separate out the lower-level concerns; I am not talking about things that meet the threshold for child protection per se. Colleagues on the previous panel referred to GIRFEC. Police Scotland is very committed to getting it right for every child and to working with partner agencies across the country to do that. The introduction of a named person in a school or health environment to deal with lower-level concerns is really positive. We could start to differentiate between concerns that are very early indications of what might manifest as problems later on, and quite chronic issues that are pressing and which need a response now. I suppose that we are all motivated to try to invest in the former in order to avoid the latter.

10:45

**Carolyn Brown (Association of Scottish Principal Educational Psychologists):** Under the GIRFEC framework, there are multi-agency groups in some areas in Scotland—in some areas they are called young offender management groups—through which the police and other agencies work to divert certain youngsters to interventions that are more appropriate than a children's hearing. For instance, if a young person has been charged by the police, some kind of drug

intervention, work in school or other approach might be more appropriate.

A number of different routes can be taken, and that can help to manage referrals to the reporter, to an extent. In some instances, the approach has meant that referrals have dropped by as much as 50 per cent.

**Liz Smith:** I will come on to questions about sharing information. Detective Chief Superintendent Imery talked in a previous answer about the possibility of having two tiers of referral. Will you expand on how that might work?

**Detective Chief Superintendent Imery:** In this area, which used to be the Lothian and Borders Police area, child concern forms were piloted in an attempt to capture lower-level concerns that would not meet the threshold for a child protection referral to the reporter, so that there could be intervention at an early stage. We are in the process of transition to the new service, and we are taking good practice from all over Scotland, so Police Scotland is looking at rolling out child concern forms as part of our approach to vulnerability in communities. Now that we have amalgamated the forces, we have a fantastic opportunity to get the best of all worlds and to ensure that there is a consistent response throughout Scotland, so that communities receive the same level of service, wherever they are.

**Liz Smith:** The previous panel and witnesses at last week's meeting said that there are in some cases difficulties to do with sharing accurate information, particularly for health professionals. What are the barriers to effective information sharing?

**Detective Chief Superintendent Imery:** As always, it comes back to training and communication. In truth, there should be no barriers to information sharing. In this country we have come an awful long way in overcoming inhibitions about sharing information. Data protection is oft blamed for inhibiting such sharing, but the legislation makes it very clear that information can be shared to prevent crime and to protect people—especially children. I am not for a moment saying that that works everywhere to the same extent.

However, there has been enormous progress and there is no reason why information sharing should not happen. GIRFEC is a good shared principle, to which we are all working. One of our performance indicators is to do with the percentage of case conferences to which police are invited and which we attend—it is currently about 90 per cent across Scotland. There is real willingness to share information. As I said, if anything, we are sharing too much.

**Liz Smith:** You said that there is willingness to share information, which might be true, but we have heard concerns about people's ability to do so, partly because people come from very different professions and the system is not unified. Do you have comments on information technology or other concerns that the previous panel talked about?

**Detective Chief Superintendent Imery:** There are challenges to do with systems that do not speak to one another. We have that challenge in Police Scotland, which has legacy systems from eight police forces, all of which held information in different formats, to varying degrees. Part of the work on identifying vulnerability that I am talking about is the creation of a vulnerable persons database that we can all share and contribute to. That is the situation within one agency and I am sure that it is replicated with other colleagues.

I think that the system is working. There are workarounds; locally, people are creative about finding workarounds and sharing information appropriately, either at an inter-agency referral discussion stage, at the very earliest stage, or later at a case conference in the more formal setting.

**Dr Helen Hammond:** Health has often been seen as the big culprit in not sharing information. We have come a long way in the past 10 to 15 years in terms of GMC guidance, the guidance that medical defence unions give to practitioners and so on, so people are much clearer now not only that they may share information but that they have an obligation to share information—certainly in child protection situations.

That is not as clear if we are at that earlier level of concern about neglect in families—before we have reached a child protection threshold, which seems, in a sense, to free people up to share information. We have a little bit more work to do on training and support for professionals who are involved in the GIRFEC work streams at that earlier level. That is coming along and we are making good progress. People have a much better understanding of what the Data Protection Act 1998 says and means, but there are questions about what is relevant and proportionate and how we ensure that information, once it has been shared, is kept up to date.

**Liz Smith:** Concerns have been expressed in evidence, including the concern that it is very difficult to get professionals to agree on definitions of neglect. To what degree does that lack of agreement on the extent of neglect compromise the work that you do?

**Dr Hammond:** I think that people understand—certainly health professionals are clear about neglect. There is an issue of varying thresholds; in

a city such as Edinburgh, practitioners who work in certain parts of Edinburgh probably have a higher threshold for what they think amounts to neglect than do professionals who are working in more affluent areas.

**Liz Smith:** Is that a problem?

**Dr Hammond:** It is a problem because it leads to a lack of equity and consistency. Again, once we are working more regularly in a GIRFEC way—in an interagency way—across Lothian, applying the same principles and pathways, that should improve. However, there has been a problem with varying thresholds.

**Liz Smith:** You have highlighted the issue in Lothian, where you believe GIRFEC can change things. Are some local authorities better at working in a GIRFEC way and at ensuring that we do not have that problem, while in other local authorities that problem is more prevalent?

**Dr Hammond:** In Lothian, I work across four different authorities, but I am not clear about the situation across the whole of Scotland so I cannot answer the question.

**Carolyn Brown:** The situation is complex, as has been established in various written submissions. You have to look at it in a number of different ways. There is a lack of standardisation of resources among the professions and a lack of standardisation of procedures. On the procedural element and the structures that local authorities and health boards have in place, we are working towards that, from a GIRFEC point of view. There has been some success on that, but I agree with Dr Hammond that there is still work to be done.

Sharing of protocols is crucial, but we need to do that with an eye on the whole of Scotland. A significant further look at resources is needed in respect of achieving parity across Scotland. We have already heard about health visitors and I think that educational psychologists were also mentioned. In both those professions—along with others, I suspect—there is no standardised provision.

**Liz Smith:** Would you defend a policy to include health visitors in the key groups that can address the issue at the very earliest stages?

**Carolyn Brown:** I will leave that question for my health colleague, but it seems as though there is a good argument for that.

**Dr Hammond:** The past 10 years has seen a shift away from health visitors having direct contact with very young children towards their having other roles and responsibilities, which has been an unplanned result of pulling back on regular surveillance of children.

We all understand that health visitors should not be routinely and repeatedly seeing very healthy, normally developing children, but we have lost something in terms of the direct contact between families and health visitors, which allows families to bring concerns and problems to their health visitor, whom they know well, and allows the health visitor to have a really good grasp of developmental stages and to pick up issues early on.

Not everybody would share that view, but as a paediatrician I can say that, from children's point of view, we have lost something. Health visitors are hugely important. They are the first line of our defences in terms of picking up children who have problems and families who are in difficulty. We need to redress the balance in that respect.

**Neil Findlay:** Dr Hammond said that in different areas of Edinburgh there are different thresholds or different views of what constitutes neglect. One of the issues that we have heard about throughout the inquiry is hidden neglect, or "middle class neglect". For example, parents who are professionals might be more articulate in challenging you and the assessments that you make. Will you tell us about your experience of dealing with such situations and the challenges that they throw up?

**Dr Hammond:** It is more difficult to identify neglect of that sort. Sometimes we identify it when a child is physically not growing. Sometimes we see it in the child's social and emotional development, if they are experiencing emotional deprivation in a very busy household. Such issues are very difficult to address. It comes back to our understanding of the breadth of neglect, and to training and knowledge of the research literature.

**Carolyn Brown:** It is very difficult to pick up that sort of neglect. The sorts of difficulties with which the youngsters present follow through to schools. A great deal of evidence gathering and a great deal of skill are required. It also goes back to the point about information sharing. There is an issue about balancing children's rights with parents' rights under the legislation, which can be damaging to young people in the circumstances to which you refer.

**Neil Findlay:** Can you explain that a bit further?

**Carolyn Brown:** In relation to the legislation on additional support needs, the more articulate parent may make a case that is more to do with meeting their needs than the child's needs. That might relate to placing a child in a special school when that is not really required.

**Detective Chief Superintendent Imery:** The police insight is into children who come from more troubled backgrounds. The insight that the police as an agency can have into children who might

meet the threshold for care is skewed towards households to which we would be more likely to be called. The issue of hidden neglect, which occurs behind a façade of professional affluence, is much less likely to come to the fore, from a police perspective.

**Neil Findlay:** Are professionals robust enough in challenging such parents?

**Dr Hammond:** Those of us who have had a lot of experience probably are. However, I worry about the next generation. It takes a lot of experience, knowledge and understanding to be able to manage such situations. A strong multi-agency, multidisciplinary team approach is also needed. In those cases, we need to share the evidence and understanding that we have and make a plan together about how to address the situation. Families in those circumstances can be very difficult to tackle.

11:00

**Carolyn Brown:** That is right, and it takes up a lot of resources and time.

**Colin Beattie:** We have received evidence that many kinds of assessments are done by different professionals at different times. There seems to be a strong indication that professionals tend to go through a process of reassessment of what the previous professional has done, without taking into account the judgment, experience and skills of that other professional. Is there any way to stop things going back to scratch every time? That seems to be a waste of time, and it could delay things for the child.

**Carolyn Brown:** I do not think that professionals do go back to scratch on every occasion. There are a lot of good examples of very effective joint professional working. The structures and processes to provide the capacity for professionals to work together have to be in place, and co-ordination mechanisms are required in local authorities to ensure that the information is being shared.

At times, there is confusion among certain professionals about what information is most appropriate, which can lead to an identification of a need to do further assessment. There was talk earlier of a common culture, which is sometimes referred to as a shared language, but there is work still to be done in that regard. For instance, when a youngster leaves education, it is highly effective to ensure that all the educational information is made available, alongside everything else, rather than their having to do an IQ test to access services. That is an example of where we could break down more barriers.

**Colin Beattie:** The Association of Scottish Principal Educational Psychologists makes the point:

“A shared multi-agency perspective about neglect does not currently exist within local authorities.”

It might be an aspiration to get there, but we are not there at the moment.

**Carolyn Brown:** That is right. I do not know whether my colleagues wish to comment about that. As we have already mentioned, there are pockets of very good practice and there is a national risk assessment tool, and we are working towards a national framework that captures all that, but we are not there yet. That is exemplified by what we experience on the ground as regards some young people—but not all.

**Colin Beattie:** What needs to be done to improve that?

**Carolyn Brown:** We need to do a number of things. We need to develop an overall national framework that incorporates specific data gathering around the extension of looked-after protocols. In local authorities, more and better predictive data needs to be used with regard to the resources that we actually need. The risk is that, when we are working together to identify neglect, any resource shortfall in the local area could impact on the identification process.

We have already said that resources are variable—specifically, the availability of professionals and of adequate care resources. I suggest that we need to consider how to address that, as well as refining the joint practice and shared information processes that we already have. We cannot have one without the other if we are to get the most effective provision. The difficulty at the moment, which has been mentioned, is the current pressures on staffing and the local authority cuts. All this is having to be done within limited budgets.

**Neil Bibby:** Strategic resource planning is also mentioned in the written evidence from the Association of Scottish Principal Educational Psychologists, which states:

“There is a pressing need to address staffing shortfalls in specialised support services.”

Will you expand on the resource issues? Which specific areas lack resources? Is it one particular agency or is it across the board?

**Carolyn Brown:** You have already heard from other people that there are significant pressures across most services. I think that that is true of everybody. I do not particularly want to make this a platform for educational psychologists but, in the written evidence, I draw attention to the fact that educational psychologists are in a difficult place at present in terms of staffing. In 2001, when the

Currie report was sanctioned by the Scottish Government, it was deemed that there was a crisis in the educational psychologist provision across Scotland. At that point, the provision was just under 380 full-time equivalent psychologists. It is now 388, and the difficulty is that we have had our funding cut.

Some 25 per cent of psychologists are over 55, so they are eligible to retire shortly. We are concerned that we will be unable to attract educational psychologists to the profession in future, and we are worried that we will not be able to fulfil our integral role in carrying on all the implications of GIRFEC and the young people's bill.

**Neil Bibby:** Would you say that there are not enough staff for multi-agency decision making? Is the result of that for children in care that one agency drives an agenda and the others acquiesce? That could happen if, for example, educational psychologists do not have the necessary resources or time.

**Carolyn Brown:** There is a risk of that. I do not want to go on about educational psychologists, but they have a unique role. They work at all levels of the system, which is critical to contributing to planning for young people in care. We are aware that it is difficult to recruit psychologists to rural services as it is. The answer is yes, basically.

**Neil Bibby:** My next question is on GIRFEC and, for want of a better phrase, the postcode lottery, given that there are different policies in different areas and they have different impacts. GIRFEC has been with us since 2006 and it has been further developed since then. What is preventing GIRFEC from working properly?

**Dr Hammond:** The issue was getting all the protocols, pathways and training in place, and now it is about resources. To follow on from the comments of my educational psychology colleague, I add that the world of paediatrics is under great stress at present. It is extremely difficult to recruit, particularly to the community paediatrics part of paediatrics and to child protection and services for vulnerable children. That is a huge issue. Although, in a sense, the paediatrician plays a relatively small role in the big picture, they are important. I go back to what my colleague said about confronting some very difficult situations. In giving medical evidence to courts and so on, paediatricians play a crucial role.

In particular, there is a tendency to see the assessment as more important than the contribution that the professional might make to a multi-agency, multidisciplinary planning meeting. However, from where I am sitting, health professionals of whatever kind can often contribute more in that multi-agency setting to a

good discussion about the child and to making a plan for the child than they might do sitting in their consulting room doing an assessment. We need to be thoughtful about that and we need to be careful in our planning about how we shape health services so that we properly support GIRFEC and the pathway for looked-after children and child protection.

**Detective Chief Superintendent Imery:** One barrier is the structure in Scotland, where we have 32 local authorities, 14 health boards and previously eight police forces. Police and fire are the first agencies to have undergone that kind of radical restructuring, but there is definitely an issue about the extent to which we can achieve consistency as one part—and, actually, the smaller part—in such discussions. By the time an issue gets to us, it is too late and everything else has not worked. The police are only a tiny part of the whole context, but they are the only part of our response to communities in need that is being reorganised.

As I mentioned earlier, we currently have the chance to identify leads for areas of work or workstreams to provide a direction for all police response across Scotland, but there is no such equivalent in other settings. From a partnership point of view, that can be challenging because, when I am setting up groups for Scotland, I am looking for someone who can sit with a similar mandate for areas such as education and health to realise consistency for public protection across the country. At the moment, we cannot do that.

**Joan McAlpine:** I have a brief supplementary for Ms Brown on what she said about the difficulties that the 2001 report threw up for educational psychologists. What is your view on the response to that 2001 report? I am surprised to learn that more educational psychologists were not recruited as a result, given that there was probably more money around then than there is now.

**Carolyn Brown:** At the time, more educational psychologists were recruited and the courses were fully funded. In the survey data that ASPEP collects, which we have given to the Scottish Government, we have basically seen a fall in the number of educational psychologists in Scotland, which was much higher five years ago than it is now. Off the top of my head, I cannot quite recall the number, but it was way over 400. Over the past three years, there have been significant cuts across Scotland, so that is why we are back to square 1.

**Neil Findlay:** You have partly answered this, but we heard competing evidence this morning from Mr Carle, who said that there was no issue, as far as he was aware, with the provision of educational psychology. However, we have heard

a completely different perspective from you. Certainly in my experience of teaching in schools, there were huge waits for initial appointments, delays and all that kind of thing. Is that the reality on the ground at the moment?

**Carolyn Brown:** I heard Jim Carle's evidence, but I would refer back to my point about the lack of standardisation across Scotland. It may well be the case that there are more educational psychologists in Ayrshire, but that is perhaps for those authorities to comment on. However, certainly, on the ground, most psychological services in Scotland are reporting that they are struggling. The data that we have collected shows that at least 60 per cent of services are reporting that they are having difficulty meeting all their statutory requirements.

11:15

**The Convener:** To be fair, it was not just Mr Carle who said that. Mr Findlay asked all four members of the first panel about that, but none of them thought that there is a particular issue with educational psychologists. It is interesting that your opinion is clearly at odds with the opinion of those four witnesses.

**Carolyn Brown:** I take that point, and I heard that. That is understandable because, obviously, those witnesses might see educational psychologists turning up to the meetings that they have prioritised. On Neil Findlay's point about the waiting list in schools, psychologists have always tried deliberately not to have waiting lists, but there is no doubt that they are having to prioritise meetings and not turn up to things or start to have waiting lists.

**Neil Findlay:** We all have heavy workloads, as the second item on our agenda verifies but, if our work is delayed, no one is harmed or injured. However, if your workload and that of the professionals with whom you work get so large, people are harmed or injured—that is the reality. Are the professionals with whom you work struggling with the amount of work that they are having to take on? We are trying to establish what the case load of professionals is. How many people would, say, an educational psychologist have on their case load?

**Carolyn Brown:** Again, that is variable across Scotland. Psychologists tend to work on an area basis, with clusters of schools and population. Some psychologists work to 6,000 per psychologist; others work to less than that. It is complex because of the range of services that psychologists offer, which go from casework to being part of strategic planning groups and research. I do not want to take up the committee's

time, but I am happy to give you more information about psychologists' workload.

**Neil Findlay:** That is why you are here.

**The Convener:** If you want to write to us with detail, we would be happy to accept that.

**Carolyn Brown:** I would be happy to do that if it would be helpful. We have a workforce planning report that I would be happy to send to the committee.

**The Convener:** Thank you.

**Neil Findlay:** What about other professionals with whom you work? You deal with those people day in, day out. Are certain professionals or sections struggling, or is it just everybody who is under pressure?

**Carolyn Brown:** Are you talking just about psychologists?

**Neil Findlay:** No—I am talking about the professionals whom you work alongside in any discipline.

**Carolyn Brown:** The answer is yes. I back up what has already been said to the committee, which is that professionals generally are working under pressure. One role of psychologists is to support school staff. We provide quite a lot of support even just to headteachers in dealing with the pressures that they feel they are under. It is fair to say that the pressure is throughout the system.

**Neil Findlay:** Would any of the other panel members care to comment on that?

**Dr Hammond:** I think that that is right—the pressure is across all disciplines. Certainly in health, people are feeling the pressure and having to prioritise in a way that they would not have done previously. For example, a paediatrician will now go to a child protection case conference only if there is a specific reason to do so, because we just do not have time. That is not in children's best interest. Carolyn Brown is right that the situation is the same across the board.

**The Convener:** I thank the panel for attending. The session has been helpful. If any of the panel members wishes to send us additional information, we would be most grateful for that.

11:19

*Meeting suspended.*

11:24

*On resuming—*

## **Post-16 Education (Scotland) Bill: Stage 2**

**The Convener:** Welcome back. Item 2 is day 2 of our consideration of the Post-16 Education (Scotland) Bill at stage 2. We aim to consider all the remaining amendments today, if at all possible.

I welcome to the committee Mike Russell, the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. I also welcome Marco Biagi.

I hope that everyone has with them a copy of the bill, the second marshalled list of amendments and the second list of groupings of amendments.

We will begin by—

**Neil Findlay:** Convener, can I raise a few points before we begin, if that is possible?

**The Convener:** No, it is not. We are in the middle of stage 2 consideration. What are your points about?

**Neil Findlay:** They are about the procedure that we will be going through today. Given the volume of amendments that we have to consider and the timescale for doing that, I find the position that we are in on the bill—and the position that the committee is in more generally—unsatisfactory. We have two major bills before us—

**The Convener:** I am sorry, but your points are not relevant. It is not appropriate to raise them now. We have this week and next week.

**Neil Findlay:** If you will allow me to develop my points, you will see that they are relevant.

As parliamentarians, we have a duty to scrutinise legislation properly and to hold the Government to account for its decisions. In effect, we have just two more weeks to go through more than 150 amendments. In my view, that is neither possible nor desirable.

Let me use as an example the group of amendments on the membership of college and regional boards. As I understand it, the person who moves the lead amendment will be expected to refer not just to their own amendment, but to the many others in that group—I think that there are another 56 amendments in the group—in a single contribution. That is a ridiculous situation to be in. It is an insult to the committee and to Parliament.

Is that the way in which you intend to proceed, given the multitude of amendments that have been lodged for consideration?

**The Convener:** Thank you for those comments. As I said, I do not think that they are relevant to what we are about to do. If you wish to make a complaint about parliamentary procedure, you should take it up with the appropriate committee and the parliamentary authorities.

I know that you are a relatively new member of Parliament, but this is the normal procedure that we go through. It is the procedure that has been gone through on every bill that I have come across over the past 10 years. It is the normal, routine process at stage 2. It is not unusual in any way. During my time in Parliament, we have dealt with a substantially greater number of amendments to a bill at stage 2 in exactly the same way.

If you have a problem with the parliamentary process, you should take it up with the relevant parliamentary authorities.

I now move to—

**Neil Findlay:** Convener, if I might respond—

**The Convener:** No, I am sorry, but I intend to move on.

**Neil Findlay:** That is disappointing. I will take the matter up with the parliamentary authorities.

**The Convener:** That is what I suggested that you do, because this is not the appropriate place to raise such issues.

### **Section 5—Regional colleges**

**The Convener:** Amendment 72, in the name of the cabinet secretary, is grouped with a number of other amendments.

**The Cabinet Secretary for Education and Lifelong Learning (Michael Russell):** It is clear that there are a lot of amendments to be considered at this meeting and at a subsequent meeting, if it takes place, but the bill is a highly technical bill and some of the amendments relate to small changes in wording that affect a number of provisions, although the intention is summed up in a single amendment.

Consultation and collaboration are an important part of the fabric of the bill. There are a number of amendments to the consultation and collaboration provisions. Some seek to strengthen the existing requirement, while others seek to build consultation and collaboration into newly proposed provisions. I hope that all the amendments will be welcomed by the committee, because they are genuinely intended to expand consultation and collaboration.

Amendments 84 and 97 deal with statutory consultation before ministerial guidance on appointments is issued. It is important that the appointments guidance is developed with the

benefit of the sector's knowledge and experience. It was always my intention to consult before issuing the guidance. In requiring that ministers must consult before issuing guidance, amendments 84 and 97 place such consultation on a statutory footing.

Amendments 72 and 86 deal with relevant trade unions and student associations. The views of college staff and students are a key consideration in any decision to designate a college as a regional college or to assign it to a regional strategic body. Amendments 72 and 86 will ensure that the statutory consultation that is required before ministers make an order that designates a college as a regional college or which assigns it to a regional strategic body includes consultation with relevant trade unions and student associations.

In amendment 110, we are responding to concerns that the Scottish Trades Union Congress helpfully raised about the consistency of consultation requirements. Amendment 110 specifies particular persons that the Scottish ministers are required to consult, in addition to the education authority for the area in which the college is, or is to be, situated, before making an order to establish a new college, to close a college, to merge two or more colleges or to designate a further education college as a higher education institution.

11:30

In all cases, ministers will have to consult the Scottish Further and Higher Education Funding Council. Apart from orders that establish a new college—as there will be no college to consult—there will be a requirement to consult the college, any regional strategic body, the relevant trade unions recognised by the college or representative of its staff, and the student association.

Amendments 161 and 178 develop a helpful suggestion made by the Educational Institute of Scotland in its written evidence at stage 1 that the general consultation and collaboration duties for regional colleges and regional strategic bodies should include obligations to consult and seek to collaborate with the unions. I agree with the EIS, and indeed the amendments reflect that there is value in requiring regional colleges and regional strategic bodies to consult and seek to collaborate with student associations.

Amendments 73, 75, 87 and 89 make clear that regional colleges and regional strategic bodies have obligations to consult and collaborate, including obligations to consult and seek to collaborate with the Open University, which is an important body to do that with.

Amendment 123 tidies up section 22 of the Further and Higher Education (Scotland) Act 2005, on the SFC's consultation and collaboration duties, so that the post-16 education body and regional strategic body labels, for which the bill makes provision, are used. It also adds any body that appears to Scottish ministers to be representative of trade unions in Scotland—as matters stand, that is likely to be the STUC—to the list of persons in section 22(2) with whom the SFC must consult when it considers it appropriate to do so in the exercise of its functions. The other persons are trade unions representative of staff for post-16 education bodies or regional strategic bodies and a body of persons representative of students in post-16 education bodies, which is likely to be the National Union of Students Scotland.

Amendment 124 tidies up section 22(5) of the 2005 act by updating the persons listed there.

Amendment 109 amends the regulation-making power in section 3(6) of the Further and Higher Education (Scotland) Act 1992, which is broadly a power for ministers to make regulations to prescribe requirements that boards of management of incorporated colleges must comply with in discharging their functions, to reflect that the bill will confer functions on incorporated colleges through amendments to the 2005 act. It will also require ministers to consult those listed in the amendment before regulations can be made, for which the 1992 act currently makes no provision.

Amendment 85 is another tidying-up amendment. It makes clear that although ministers will, before making an order under proposed new section 7C of the 2005 act to assign a college to a regional strategic body, be required to consult the college concerned, they will not be required to do so where the college does not exist. I suppose that it is a metaphysical amendment. In particular, the amendment acknowledges that the order in question could, in principle, be a combined order, made in exercise of both the power in proposed new section 7C and the power to establish a new incorporated college.

I am happy to support Marco Biagi's amendments 164 and 182. I agree that it is important that there is a specific requirement to consult trade unions and student associations on election rules for staff members on both college and regional boards and student members on regional boards.

I am very sympathetic to Neil Findlay's amendment 148, but it serves the same purpose as amendment 182. Amendment 182 is framed in a way that is consistent with the rest of the bill, which amendment 148 is not, so I ask Neil Findlay

not to move amendment 148. The point is covered.

I thank Neil Findlay for lodging amendment 131. It is important for regional colleges to consult appropriately. However, in my view, that is already achieved by the way in which proposed new section 23B(3) of the 2005 act is framed. It provides that

“A regional college must, where it considers it appropriate to do so in the exercise of its functions, consult”.

Amendment 131 would have the effect of removing the notion of

“where it considers it appropriate to do so in the exercise of its functions”.

I do not support that approach, because I think that, fundamentally, it is appropriate that a regional college has the discretion to consider whether consultation is appropriate.

Amendment 131 also has a technical deficiency, in that although it would place a regional college under a duty to consult persons listed in proposed new section 23B(3), it would mean that no provision was made for the purpose—the why—of that consultation or for when such consultation was required. Both matters are addressed in proposed new section 23B as drafted. Amendment 131 therefore would give rise to uncertainty on what was required of a regional college.

Amendment 131 would also unintentionally introduce an inconsistency in what is required in terms of consultation on the part of regional colleges under proposed new section 23B on the one hand, and regional strategic boards under proposed new section 23J on the other. Therefore, I cannot support amendment 131.

Liz Smith’s amendments 140, 141 and 143 reflect the position of Scotland’s Colleges that regional strategic bodies should consult college trade unions via the assigned college, on the basis that the college is the employer of the college staff. Technically, the amendments would mean that when regional strategic bodies consult relevant trade unions in circumstances required by the new sections, they would do so by means of their assigned colleges. I think that that scenario is simply not workable. Colleges play many valuable roles, but speaking on behalf of college trade unions is not one of them. I am confident that the unions agree with that point.

College trade unions will be key stakeholders of regional strategic bodies and it is important that those bodies consult and collaborate with them. That will not interfere with the college’s role as the employer of college staff and the negotiation frameworks that they will have in place. For those reasons, I cannot support the three amendments in Liz Smith’s name.

I turn to Neil Bibby’s amendments. Amendments 158 and 175 would require regional colleges and regional strategic bodies to consult community planning partnerships; amendments 159 and 176 would require them to consult community health partnerships; and amendments 160 and 177 would require them to consult transport providers. Amendment 178 would further require regional strategic bodies to seek to collaborate with community planning partnerships. It is always the case when specifying lists of consultees that a judgment must be made on where the line should be drawn. The bill as introduced reflects our view that regional colleges and regional strategic bodies ought not to be required to consult or seek to secure the collaboration of community health partnerships or transport providers, although there is nothing in the legislation that would prevent such consultation should the relevant bodies deem it appropriate.

Amendments 158, 175 and 178 relate to the interface with community planning partnerships. The Government will consult this summer on a draft community empowerment and renewal bill, which will deal with how public bodies should engage with and support community planning. That seems to be a more appropriate vehicle for considering the matter, as it would ensure a consistent approach to those important issues across public bodies in Scotland. I therefore do not support amendments 158, 175 and 178.

I move amendment 72.

**The Convener:** Thank you very much. I call Neil Findlay to speak to amendment 131 and other amendments in the group.

**Neil Findlay:** Thanks, convener. The bill has been a mess from day one and has been criticised by numerous stakeholders, including college and university students, lecturers, support staff and many trade unions, including the EIS, the University and College Union, Unison and the National Union of Students. The bill appears to have been badly thought out from the start as well as being badly drafted. At best, it is a shoddy piece of work; at worst, it is an utter shambles. Professor Griggs probably gave it the most enthusiastic endorsement when he said that it was “okay”.

Weeks ago, Scottish Labour called for the bill to be withdrawn or delayed. With every dozen amendments that the cabinet secretary submits, we are more and more convinced that that was the right call. This is the first time that I have had to sit through parliamentary proceedings on a substantive piece of legislation, and it has not been a very edifying experience. The bill is not so much being amended as almost completely rewritten. That is not my understanding of what the stage 2 process should be about. We have now

had almost 200 amendments to the bill, most of which have come from the cabinet secretary—the situation is absurd.

In moving amendments 131 and 148, I will also speak to the other amendments in the group.

Amendment 131 would ensure that consultation with regional colleges was carried out as a matter of course rather than when considered appropriate. Consultation should be inclusive and regarded as a good thing, and amendment 131 would remove the discretionary element. Amendment 140 would ensure that there was consultation with trade unions and student associations before changes were made to election rules. Again, we see that as a positive thing.

Amendment 172 would extend consultation to stakeholders before a regional college was created. It is good for trade unions and student associations to be included in the bill as proper consultees, so we support amendment 172. On amendments 158 to 160, CPPs and CHPs should be consulted in relation to local regeneration and regional changes. Transport issues are very important, so we think that transport providers should be consulted. On amendment 73, the bill as introduced appears to have forgotten all about the Open University, which seems to confirm the rather shoddy nature of the bill's drafting.

We support amendment 161. Regional colleges should seek to secure collaboration with trade unions and student associations.

Amendment 75 again refers to the Open University. Skills Development Scotland is not referred to accurately in the bill as introduced, which seems rather remarkable.

I am wading through my papers. Amendment 164 would ensure consultation with trade unions and staff representatives when election rules are being amended. It is similar to amendment 148.

Amendment 84 would ensure that Scottish ministers consult before issuing guidance on appointments. That is welcome, but the amendment again illustrates the point that the Scottish Government did not put such a provision in the bill as introduced. That appears to be a problem, but we support the amendment.

Amendment 85 is a tidying-up amendment, which we support.

Amendment 86 would extend the list of stakeholders to be consulted before colleges are assigned. Again, the amendment illustrates that the Scottish Government did not consider at the beginning the need to fully involve and consult trade unions and student associations.

We have questions about amendment 140, which appears to allow regional strategic bodies to consult trade unions through assigned colleges. I know that some trade unions have concerns about that, and we need clarity on what it would achieve.

Amendments 175 to 177 would extend the list of stakeholders to be consulted—I have already mentioned that—and we support them.

Amendment 87 is another tidying-up amendment. The provision was omitted at the beginning of the process.

Amendment 178 also relates to trade unions and student associations. We think that that provision should have been included in the bill as introduced.

Neil Bibby will expand on amendment 179, which is on regional strategic bodies securing the collaboration of community planning partnerships for local regeneration.

Amendment 89 is another of the tidying-up amendments that relate to the Open University and SDS. There appears to be an inconsistency all the way through.

Amendment 141 relates to regional strategic bodies consulting trade unions. We have the same questions about that amendment and amendment 143 as we have about amendment 140. Liz Smith might be able to clarify the position.

We support amendment 97, as it will ensure consultation with the listed stakeholders before guidance on appointments to regional boards is issued. That is to be supported.

Amendment 182 is similar to amendment 148, to which I have already spoken. We will see how matters proceed when it comes to the vote.

I am almost halfway there, convener.

We support amendment 109, which will ensure consultation by ministers before regulations on the requirements with which boards must comply are made.

Amendment 110 is on the requirement to consult before the power to open, close or merge a college is used. Again, we question why that provision was not considered when the bill was drafted. However, we support amendment 110.

Amendment 123 is consequential to the amendments that relate to consultation before regulations are made. It is just a follow-on from amendment 109.

I have finished, convener.

**The Convener:** Thank you. I remind members that they should move amendments only when invited to do so. It is not necessary to move them at other times.

11:45

**Neil Bibby:** I echo Neil Findlay's comments about the number of amendments. It appears that the bill is being rewritten.

Section 5 is on consultation and collaboration. My amendments 158 to 160, 175 to 177 and 179 are aimed at ensuring that colleges benefit the local economy and continue their vital aim of meeting the needs of the communities in which they are situated. Colleges play a hugely important role in helping the Scottish economy but what is missing from many parts of the bill is recognition of the essential role that they play in their communities and regions.

The purpose of amendments 158, 175 and 179 is to ensure that colleges fully engage with community planning partners in their areas. Community planning partners should be consulted by colleges. Colleges are a vital part of the community and should work with community planning partners where possible. As well as meeting the local community's general needs, it is vital that colleges meet the local area's economic needs. Engagement with community planning partners will help colleges to play a role in local regeneration and social inclusion. That relates to other amendments that I have lodged, which we will discuss later.

We must recognise that many colleges provide opportunities not just to young people but to older learners; they give many people a second chance in life.

Amendments 159 and 176 seek to ensure that colleges engage and work with community health partnerships. Unfortunately, many of the communities in which colleges are situated have high levels of health inequality. It is important that colleges consult community health partnerships and, where possible, work with them to resolve issues where there is an overlap between health and education services.

Amendments 160 and 177 would ensure that transport providers are consulted by and work with colleges. They are important amendments, particularly given the regionalisation agenda. We hear increasing concerns about the prospect of courses not being available at local colleges due to their being moved to other campuses in the region. We have heard about services being cut in Dalkeith and moved to the other side of Edinburgh. In my area—the West Scotland region—I hear concerns about the possibility of a lack of transport for people wanting to travel from Clydebank to Greenock. Such a situation would be very problematic indeed.

I would prefer courses to be retained at their present location. However, if they are to be moved to different parts of the region, there must be

engagement with transport providers to ensure adequate transport provision for staff and students between college campuses. That is necessary in relation to the regionalisation agenda. Even if that agenda was not happening at the same time as the bill, it would make sense to consult and work with transport providers that serve local colleges.

I support the cabinet secretary's amendments 73, 75, 87 and 89 to include the Open University, and amendment 72 to include trade unions and student associations as stakeholders. Amendment 131, in the name of Neil Findlay, which states that colleges "must" consult, is important. We must reinforce the importance of consultation.

The wording in amendments 161 and 178 is similar to that in amendment 72, although it emphasises collaboration.

Marco Biagi's amendment 182 and Neil Findlay's amendment 148 are on consultation with unions when election rules are being amended. I support Neil Findlay's amendment; if it is not agreed to, I will support Marco Biagi's amendment.

Amendments 84, 97, 109, 110, 123 and 124 all relate to wider consultation by ministers. If we are requiring colleges to consult, it is vital that we ask the same of the Scottish ministers.

Amendment 86, in the name of Mike Russell, will require colleges to consult trade unions and student associations. As Neil Findlay said, such a provision should have been in the bill as introduced.

I am not sure of the impact of amendment 140, in the name of Liz Smith, on negotiations with unions. Unions need to be consulted directly by the body that makes decisions and should not have their views represented through a third party.

**George Adam:** We keep being told that provisions that are the subject of amendments should have been in the bill as introduced, and Mr Findlay will probably say the same about amendment 161, which is in my name. However, I am a relatively new MSP and this is democracy in action, as far as I am concerned. This is what we do. We consult, we look at what is available and we work with partners to ensure that we have a bill that can deliver. That is what has happened. It is not that there was nothing there, as some Labour members have suggested.

Amendment 161 would enable regional colleges and regional strategic bodies to consult and collaborate with trade unions and student associations. The issue came up in the EIS's written evidence. It is probably a good idea to amend the bill in that way, partly because of the evidence that has come through. We have gone through the process, as is proven by my lodging the amendment.

**Marco Biagi (Edinburgh Central) (SNP):** I echo what George Adam said. It is a sign of the success of the parliamentary process that bills can be improved so effectively.

Amendments 164 and 182, in my name, are concerned with the election of members to boards. At stage 1, the STUC said:

“Before varying the rules for the election of student and staff members, the board should have to consult trade unions and student representatives. The Bill should be amended to take account of this.”

Amendments 164 and 182 aim to do that in a way that is in keeping with the language and terms used in the rest of the bill.

**Liz Smith:** The key issue for me is to ensure effective consultation and collaboration through an approach that is agreed rather than imposed. Colleges expressed concern that some aspects of the bill could lead to new structures being put in place, when nothing about the existing structures is regarded as particularly inadequate. We are in danger of putting duties on colleges that are unnecessary or do not need legislative underpinning.

In light of that, I lodged amendments 140, 141 and 143, which are designed to clarify the consultation procedures by ensuring that regional strategic bodies would consult trade union representatives via the recognition and procedural arrangements of their assigned colleges. It is important that the consultation process is agreed by all stakeholders—that is part of the nature of the bill, so we need to tidy up the bill considerably in that regard.

I note the cabinet secretary’s comment about the metaphysical nature of amendment 131. I am glad that he clarified the matter, because I could not work out exactly what the amendment was intended to do. I was also in a little doubt as to the implications of amendment 85, not least because I am not sure of its effect on the day-to-day running of a college, which is a concern.

I do not have particular concerns about some of the other amendments in the group, because I think they help make that collaboration and consultation process a little more effective. However, I have concerns about amendments 164 and 182, because I am not entirely sure why they are necessary. There would be implications for some of the groups concerned if we were to be restrictive.

**Liam McArthur (Orkney Islands) (LD):** I expressed concerns before now about the bill putting unnecessary and excessive powers into ministers’ hands. However, I think that there will be opportunities to debate that later this morning. A number of amendments in this group address concerns that we raised at stage 1 on improving

the quality and breadth of consultation with a number of key stakeholders as well as staff, employee representatives and the wider community. I welcome the inclusion of the Open University. Positive steps are being taken in this group of amendments.

**Michael Russell:** I clarify that I am happy to support amendments 164 and 182. Essentially, they would ensure that staff and students are consulted on election rules. If there is no such consultation, we are not entirely sure what the rules will look like when they come forward. It is about broadening the consultation process, which is why I support Marco Biagi’s amendments 164 and 182.

The amendments in this group are designed to improve the consultation process. There is always scope to improve a bill, which is why stage 2 is so important. A range of bodies have come forward between stage 1 and stage 2 to suggest improvements. Indeed, I examined very closely the evidence given at stage 1 so that I was able to make improvements to the bill. The only person whom I asked to talk to about improvements to the bill who came forward with not a single improvement was Mr Findlay. I regret that, because the opportunity exists for Labour to participate in the process.

With that in mind, I press amendment 72.

*Amendment 72 agreed to.*

**The Convener:** I call amendment 156, in the name of Neil Bibby, which is grouped with amendments 157 and 162. I call Neil Bibby to move amendment 156 and to speak to the amendments in the group.

**Neil Bibby:** The reason for amendments 156 and 157 is to ensure that colleges support economic regeneration and social inclusion and cohesion in their area.

At a time of such high youth unemployment, it is vital that our colleges play a key role in supporting young people into work, which is what amendment 156 aims to ensure. Colleges are essential in the fight to tackle youth unemployment. They also support older learners who want to retrain for employment to get a second chance in life, as we discussed earlier, and they support economic and social regeneration in our communities.

Scotland’s needs in terms of colleges are important, but what is missing from the bill is a specific regional focus. Different regions face different challenges and have different needs and priorities. A regional focus allows for a tailored approach to the different challenges that each area faces.

There has been a focus on widening access to higher education, but we need to ensure that

social inclusion is also promoted in further education. That is what amendment 157 is about. Learners might face challenging circumstances, so we need to ensure that colleges do all they can—and continue the good work that they already do—to encourage people from disadvantaged backgrounds to take advantage of the opportunities in training and retraining that are available at their college.

12:00

The widening access agenda should be a priority in our colleges and should promote social inclusion and cohesion in the communities that those colleges serve. We should also take account of access for groups that are protected under the Equality Act 2010.

Amendment 162, in the name of Joan McAlpine, seeks to offer some clarity in the bill on what regional colleges must have regard to. I would welcome that clarity, but I have some concerns that the amendment could be unduly restrictive, and I believe that colleges are already taking account of many of the points that it addresses.

Amendment 162 mentions the need for colleges to have regard to the United Kingdom context. I believe that a careful balance must be struck in that respect with the need—which I mentioned earlier—for regional colleges to have a regional focus. We are part of the United Kingdom, and I question whether the balance is right on that front. Many people from our colleges go to work in the rest of the UK, whether we like it or not, and I am not sure that a requirement simply to have regard to the UK context gets the balance right.

I move amendment 156.

**Joan McAlpine:** Amendment 162 inserts a new section into the 2005 act that would require a regional college to have regard to certain matters in exercising its functions. Those matters include skills needs in Scotland, issues that affect Scotland's economy, social and cultural issues in Scotland, the desirability of sustainable development, and the United Kingdom and international context.

The amendment's purpose is to recognise the importance of the new regional structure and to ensure that, in moving to that new structure, regional colleges do not become insular or consider only their own interests while ignoring the bigger national picture. In response to Neil Bibby's comments, the amendment's inclusion of the UK context makes that clear. It is very outward looking.

The Government has already made provisions to address the issue in the bill in respect of regional and strategic bodies, but to my mind the

requirement holds just as true for regional colleges. Amendment 162 therefore seeks to give regional colleges similar duties to have regard to a range of matters, including national skills needs and economic, social and cultural issues in Scotland. It also places a legal duty on regional colleges to have regard to educational and related needs, including—importantly—support needs.

**Liam McArthur:** I do not have a problem with the policy intention of any of the three amendments, although I share some of Neil Bibby's scepticism about whether we need to be quite as prescriptive as amendment 162 appears to be. I certainly understand that regional colleges—and indeed regional boards—ought to take those things into consideration, but I am not entirely sure that they need to be set out in the text of the bill.

**Liz Smith:** I share the policy intentions. If there is one measurement of colleges' success, it lies in dealing with social inclusion and reaching out to students who do not come from the traditional college background. I am content with amendments 156 and 157. I am not particularly against amendment 162—it is probably a little prescriptive, and whether or not it is actually required is a matter for our judgment.

**Clare Adamson:** I generally support the stated intentions of all the amendments. However, I have concerns about amendments 156 and 157.

In the Central Scotland region that I represent, the Lanarkshire colleges have quite a complex arrangement. There are quite different and geographically dispersed localities, and we have had a merger of two colleges, with independent colleges in the region as well. I find it difficult to see how amendments 156 and 157 would address that situation and enable a regional view of what is happening to be taken, particularly in that region. I will be interested to hear the cabinet secretary's comments on those two amendments.

**Neil Findlay:** When I met the head of a college recently, social inclusion was the main issue that she wanted to speak to me about. I think that we should put that consideration into the bill; it would be a positive move.

We have some questions on Joan McAlpine's amendment, but it is largely to be supported because it refers to skills, issues affecting the economy, social and cultural issues and all the rest of it. We support the three amendments in the group in that they add to what we already have.

**Colin Beattie:** I find amendment 131 a wee bit confusing. It requires a regional college to consult—

**The Convener:** Sorry, Colin. We are not discussing amendment 131. We are discussing amendments 156, 157 and 162.

**Colin Beattie:** Apologies.

**The Convener:** I call on the cabinet secretary.

**Michael Russell:** Amendment 162 gives regional colleges similar duties to those of regional strategic bodies to have regard in the exercise of their functions to a range of matters including national skills needs; economic, social and cultural issues; and the wider context in which they find themselves. That is positive.

The amendment places a legal duty on regional colleges to have regard in the exercise of their functions to the educational and related needs including the support needs—that is an important part, which has not been mentioned—of those who may become or are students of those colleges, so it underpins the expectations and the delivery. It is an important amendment in that regard.

I support the principle behind amendments 156 and 157, but they need to be looked at more carefully in the context of the overall drafting of the bill. This might not be the best place to include the commitment that we should make to economic and social regeneration, and social inclusion and cohesion. We can make that commitment, and it will be a useful addition to the bill. I am in favour of improving the bill through the democratic process, and this is an example of where two useful amendments have come from an Opposition member. However, they need to be better integrated into the bill.

I make a genuine offer. If Mr Bibby is willing to work with us, we will take away amendments 156 and 157 and look at them, and there will be a stage 3 amendment that does exactly what they intend to do but within the context of the bill. That is perfectly possible and feasible. I make that commitment to the committee because the amendments represent an important extension of what we are trying to do, and that is helpful to us.

I support amendment 162. I would like Mr Bibby not to press amendment 156 and not to move amendment 157. I make a commitment that we will work with him—I will do the same thing later when we come to another amendment on the matter—so that we can include the idea and ensure that it will work.

**The Convener:** I call on Neil Bibby to wind up and tell us whether he will press or withdraw amendment 156.

**Neil Bibby:** I welcome what the cabinet secretary said about the importance of including the items in the bill. It is vital to support our colleges, but we should also consider the Scottish

Government's wider economic strategy and the need to tackle poverty. Improving social inclusion is one of the main priorities in that strategy, so I would have been surprised if that support had not been given.

I intend to press amendment 156 and move amendment 157, but if they are not supported I will certainly welcome the opportunity to work with other parties to ensure that the items are placed in the bill at a later date.

**The Convener:** The question is, that amendment 156 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 156 disagreed to.*

*Amendment 157 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 157 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 157 disagreed to.*

*Amendment 131 moved—[Neil Findlay].*

**The Convener:** The question is, that amendment 131 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

*Amendment 131 disagreed to.*

*Amendment 158 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 158 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 158 disagreed to.*

*Amendment 159 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 159 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 159 disagreed to.*

*Amendment 160 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 160 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 160 disagreed to.*

*Amendment 73 moved—[Michael Russell]—and agreed to.*

**The Convener:** We move on to minor and technical amendments. Amendment 74, in the name of the cabinet secretary, is grouped with amendments 76, 88, 90, 103, 105, 119 to 122, 10, 129 and 130.

**Michael Russell:** In every process of legislation, there are minor and technical amendments that tidy up a bill and make small changes that are required as the process goes through.

Amendments 74, 76, 88, 90, 103 and 105 insert the word “The” in front of the references to “Skills Development Scotland Co. Limited”. The amendments ensure that the body is referred to by its registered company name.

Under amendment 129, regional colleges and regional strategic bodies must have regard to the full range of provision in their region. The net effect of proposed new section 35(3) in the Further and Higher Education (Scotland) Act 2005 along with amendment 129 is that, under the duties of regional colleges and regional strategic bodies in proposed new sections 23B and 23J of the 2005 act, they will not, other than in the case of the Open University, be required to consult or collaborate with other post-16 education bodies simply because those bodies deliver distance or open learning to residents in the locality of the regional college or regional strategic body; whereas, in exercising the duties to secure coherent provision in the locality of the regional college or regional strategic body under proposed new sections 23A and 23C of the 2005 act, regional colleges and regional strategic bodies will be required to have regard to the full range of provision that is provided by all post-16 education bodies in their localities, including provision only

by way of distance or open learning. That is what the amendment achieves.

Amendment 130 will ensure that changes in funding arrangements will not remove colleges from the scope of the Protection of Vulnerable Groups (Scotland) Act 2007. Amendment 119 will replace a reference to “fundable” body with “post-16 education” body, which is the new term introduced by the bill to describe all publicly funded colleges and universities.

12:15

On amendments 121 and 122, Neil Findlay sought assurance during stage 1 that there would be no ministerial role in the board appointments of staff and student members. We clarified then that there would be no ministerial role in such appointments and that, as now, there would be no elections for those members. That was always the policy intention, but the bill currently provides the possibility for an order-making power that would in fact allow for ministers to appoint board members, including staff and students. The provision does not require or specify a ministerial role in that regard, but it does not explicitly debar the possibility. I think that it is best explicitly to debar the possibility, which is what amendments 121 and 122 will do.

Amendment 10 will remove the word “fundable” from section 9(11) of the 2005 act. The amendment is appropriate, given the intention that assigned colleges will in due course not be fundable bodies and so the limitation should apply to them, too.

Amendment 120 will enable ministers to be given powers to continue with or remove members of college boards administratively in connection with the coming into force of an order to designate a college as regional or to assign a college to a regional strategic body.

I move amendment 74.

**The Convener:** No other members have indicated that they wish to speak to the amendments. I presume that the minister does not need to wind up.

**Michael Russell:** I think that that would be pushing it.

*Amendment 74 agreed to.*

*Amendment 161 moved—[George Adam]—and agreed to.*

*Amendments 75 and 76 moved—[Michael Russell]—and agreed to.*

*Amendment 162 moved—[Joan McAlpine]—and agreed to.*

*Section 5, as amended, agreed to.*

## **Section 6—Colleges: boards of management**

**The Convener:** The next group is on membership of college and regional boards. Amendment 77, in the name of the cabinet secretary, is grouped with amendments 29, 132, 133, 30, 31, 79, 80, 134, 135, 81, 32, 163, 33, 82, 83, 34, 35, 37 to 41, 92, 93, 146, 147, 71, 94, 181, 95, 96, 54, 55, 98 to 102, 184, 185, 56, 57, 112, 63 to 65, 113, 114, 66, 67, 115, 68, 69, 116, 117 and 70.

If amendment 33 is agreed to, amendment 82 will be pre-empted. If amendment 83 is agreed to, amendments 34 and 35 will be pre-empted. If amendment 114 is agreed to, amendments 66 and 67 will be pre-empted. If amendment 117 is agreed to, amendment 70 will be pre-empted. It might also be worth making the point that members may, but need not, speak to every amendment in the group.

I call the cabinet secretary to move amendment 77 and to speak to all amendments in the group.

**Michael Russell:** Clearly, this issue is at the very heart of the bill, given the interest shown in lodging amendments. The membership of college and regional boards is one of the key issues that is addressed by the bill. In my view, the package of Government amendments will improve the arrangements that are set out in the bill. That is the purpose—I remind members again—of this part of the process.

Government amendments 80, 82, 83 and 112 to 117 are best viewed as a package that will establish that principals of regional and assigned colleges will be ex-officio members of their college boards. As it stands, the bill offers flexibility on that issue, as was the intention in the Griggs report. We regarded it as properly a matter for the board itself to determine whether the principal should be a board member.

However, I accept that it became clear during stage 1 that there are strong concerns in the sector over the potential consequences of principals not being automatic board members. There are strong arguments on both sides of the issue, and I have carefully considered both. On balance, I have been persuaded that the best course is to remove any doubt about the membership of principals, even though that goes against the Griggs recommendations.

I am pleased that Liz Smith agrees with that conclusion, given that her amendments 29, 31, 34, 36, 39, 63 to 67, 69 and 70 aim to achieve the same objective. I am therefore happy to support amendments 29, 31, 39, 63 to 65 and 69, given that I would have lodged identical amendments if Liz Smith had not got there first. I ask the committee to support Government amendments 80, 82, 83 and 112 to 117 and invite Liz Smith not

to move amendments 34, 35, 66, 67 and 70, on the basis that their purpose is already achieved by the amendments for which I have indicated support. Those two groups essentially go together and produce the effect on which I think we would all agree.

Amendments 71, 93, 96, 98, 99, 101 and 102 concern assigned college chairs being members of regional boards. That takes forward the theme of board membership and ensures that the college chairs would be members of the relevant regional board. The University of the Highlands and Islands working group has already recommended that for the arrangements at UHI. The university is taking that forward, although we will consider other details of that later today.

The success of regionalisation in multicollege regions will depend on the close working relationship with the regional strategic body and its colleges. That should be reflected in the composition of the regional board. I thought that the issue might be covered in guidance, but I am happy to take forward Colleges Scotland's recommendation that that be in the bill. That is another example of an organisation coming forward with suggested improvements that are welcome.

I thank Colin Beattie for lodging amendment 71. He is correct to identify the issue, but the point of his amendment is achieved by Government amendment 93 and I therefore ask him not to move amendment 71.

Amendment 81 means that assigned college boards will have two student members, which will create parity with the arrangements for student membership of regional colleges and regional boards. The amendment ensures that there is healthy student representation on boards throughout the college sector, and I know that it will be warmly welcomed by student associations throughout the country.

Amendments 32 and 33, in the name of Liz Smith, have the cumulative power of appointing the members of an assigned college board, which in effect removes the power of the regional strategic body and hands it to the college. My difficulty with that is that it subverts the clear hierarchy that is required to exist in multicollege regions in order for regionalisation to work. It is clear that regionalisation can work only if there is a body in each region that is ultimately responsible for the funding and coherence of education in that region. In single college regions, the position is very straightforward: the regional college is the accountable body. However, our decision not to force college mergers allows for the possibility of multicollege regions. The existence of those regions necessitates the creation of a pre-eminent body that is ultimately responsible for the effective

distribution of funding and the coherent delivery of education. The arrangements for appointments to assigned college boards are a consequence of that hierarchy.

There are also strong reasons for opposing amendments 32 and 33, given that they essentially mean that assigned college boards would be self-appointed; I do not think that that would be good governance. I therefore invite the committee to reject the amendments.

Similar issues arise in relation to Liz Smith's amendments 30, 37, 38, 40, 41, 54, 56 and 57. The purpose of those amendments seems to be to remove any role for ministers in the approval or appointment of the ordinary board members of assigned colleges, regional colleges and regional boards in all circumstances. Although I am sure that that is Liz Smith's intention, it is the polar opposite of the improvements that we seek to make to the college sector's governance arrangements. The amendments would see the sector proceed with self-appointed and self-perpetuating boards. I cannot think of any other examples of public sector boards that operate in that fashion; it does not represent good governance.

Moving on to the proposals for assigning colleges to regional strategic bodies, it is clear that several such colleges—for example, City of Glasgow College—will be institutions of significant size and importance. I have listened carefully to the view of the sector that a board size of between seven and 10 members, as currently provided for in the bill, might not be enough to ensure that those large institutions are most effectively governed, in terms of both manpower and skills base. Amendment 79 will therefore increase the minimum and maximum number of members of the board of management of such colleges to 13 and 18 respectively.

In a similar vein, amendments 77 and 92 would increase the minimum size of regional college boards and regional boards from 12 to 15. The primary driver is that there has to be an adequate balance between places that are reserved for specific members—for example, students and staff—and those who are there because of their specific skills. Should the committee accept amendments 77 and 92, that would create parity across the sector in terms of the maximum size of college boards.

Amendment 94 caps the number of regional members that can be appointed by the board at nine. If one thinks about it, this is another consequential amendment. It is important that the significant number of additional prescribed board members does not unbalance the board. Amendment 94 ensures that the size of a regional board does not become unmanageable, since the

board can never be more than the number of prescribed members, plus a maximum of nine people who are appointed by the regional board for their skills. Should there be an imbalance between prescribed members and those who are appointed by the board, we would be able to increase the minimum size of boards by laying an order under the negative procedure.

Amendments 55 and 68, in the name of Liz Smith, would place a minimum age of 16 on board members across the college sector. I do not regard those amendments as necessary. There are numerous examples of public bodies whose boards do not set a minimum age for their members, and that has not presented any difficulties at all. The Scottish funding council itself, the Scottish Police Authority and the National Library of Scotland are all bodies that do not do that.

Amendment 134 would increase the number of staff members on assigned college boards from one to two. Amendments 132, 133, 135, 146 and 147 would replace the election of staff members on college boards and regional boards by staff who are elected by recognised trade unions. I agree that it is important that the role of unions is recognised in governance structures, but I am not yet persuaded that staff can have no direct role in electing staff members, and I cannot support the amendments as drafted. However, I can give an assurance that there will be at least two staff members on all incorporated college boards and regional boards. I wish to reflect further on whether they are appointed by means of an election involving all staff, by means of trade union nomination or by means of something that mixes the two. I will return with amendments at stage 3. On that understanding, I ask the committee to reject amendments 132 to 135, 146 and 147.

Amendments 163 and 181 would require an assigned college board and a regional board to include a community representative. It is important that boards are able to draw on members with a wide range of skills and experience. Someone with experience in the community that a college serves would be vital to the board's work. However, that is best left to guidance. Ministers have power under the bill to issue guidance. I will consult on that guidance to ensure that we get it right in the context of all the sorts of people we need to deliver an effective governing body.

Regarding Neil Bibby's amendments 184 and 185, one of the key functions of the regional board is to plan college provision across the region. In my view, it is correct that principals of assigned colleges have a right to attend meetings of the regional board in order to provide that board with professional advice on curriculum and other learning matters. Paragraph 13 of new schedule

2B to the 2005 act, as inserted by the bill, already recognises that there may be occasions on which the principal should be excluded from participation. Amendments 184 and 185 seek to constrain the discretion of the chair and to have participation decided on a case-by-case basis. Under existing principles of administrative law, the chair would be expected to act reasonably. That seems to be sufficient. On that basis, I ask the committee to reject those two amendments.

I hope that amendments 95 and 100 will be controversial—sorry, I mean uncontroversial. I am sure that members here could make anything controversial, but I hope that those two amendments will be uncontroversial. They are designed to eliminate the possibility of the chief officer of a regional board also being the chair of that board. It is obvious why that is undesirable. That would clearly undermine the ability of a board to hold the chief officer to account if he or she were also the chief officer of that board.

I move amendment 77.

**Liz Smith:** The cabinet secretary is correct in saying that this group of amendments deals with the heart of the bill in many respects. This is also the area of the bill that has caused the greatest difficulty, not least because there has been a considerable lack of clarity in a number of areas of drafting. There have been considerable issues about the size and membership of college and regional boards and their general working practices.

Amendments 29, 31, 34, 35, 39 to 41, 63 to 67, 69 and 70 relate to the right of the college principal, whether in a regional or assigned college setting, to be on the board as a result of his or her office. That is in line with what I believe the college sector perceives to be good governance, and I am pleased that the cabinet secretary has intimated his intention to recognise that. When the cabinet secretary sums up, will he confirm which of amendments 34 and 35 he wishes me not to move, given that they have the same purpose? I either misheard him or he did not read out quite the right numbers.

There is an issue around the practicalities as far as the principal is concerned. It would be difficult for the principal of a college to be excluded from the board, not least because we are trying to ensure greater strategic co-ordination. There is a practical issue there, as well as the principle of good governance.

Amendment 29 designates the principal as an ex-officio member of the board. Amendment 31 is consistent with principals being on the board. Amendment 34 removes reference to the principal being appointed to an assigned college board and

instead being a member of the board by right of position.

12:30

Amendment 35 removes reference to the principal being appointed to the board in certain capacities. Amendments 37 and 38, in line, will determine only the appointment of the chair rather than that of the other board members. Amendment 39 prevents ministers from removing a principal from the board, which is consistent with amendment 29. Amendments 40 and 41 limit the power of ministers to remove or replace board members to exclude the principal of a regional or assigned college.

Amendments 30, 32, 33, 37, 38, 54, 56 and 57 should be seen in the context of amendments 136, 137 and 151, which relate to the introduction of a code of governance for regional colleges, regional strategic bodies and the assigned colleges. They propose to limit the ministerial powers of appointment and removal to determine any terms and conditions of appointments to the chair only, similarly for assigned colleges to limit the ability of the regional board to approve other board appointments in the same way.

Amendment 30 removes the ability of Scottish ministers to approve the appointment of the remainder of the board. Amendment 32 allows the other board members in the assigned college to be appointed by the board itself. Amendment 33 removes the requirement for other members of assigned college boards to be appointed by the regional strategic body. Amendments 37 and 38 limit the powers of ministers over boards' terms and conditions to the chair only for the regional and assigned colleges. Amendment 54 removes the ability of ministers to approve the appointment of the remainder of the board and amendments 56 and 57 do the same in the context of the other non-ex-officio members of the board.

Amendments 55 and 68 restore a minimum age of board membership to 16. On the advice of the sector, I deem that to be an appropriate age to take on the relevant responsibilities and liabilities for many of the issues in college management, which include financial matters.

Amendments 66 and 67 remove reference to the principal's appointment to the board being distinct from their appointment as principal and amendment 69 removes references to the principal's appointment to the board as being distinct from their appointment as principal. Amendment 70 removes reference to their conduct at the board if not a member.

I refer to Colin Beattie's amendment 71 with regard to the assigned college chair being on the regional board by right of position, in terms of

amendment 93. Unless there is a compelling reason for the wording change, I assume that the college chair would not then have that ex-officio status on the regional board by definition so I am minded to support amendment 71.

I have concerns that amendment 96 further extends ministerial powers on board appointments. In section 24 of the 1992 act, paragraph 7 of the schedule has been repealed. Under those provisions, a person was not eligible for appointment to any college board if they had already been removed from office on another college board by the secretary of state. Amendment 96 would restore some of those repealed powers.

Amendments 112 and 128 allow ministers to make changes to the provisions in respect of the regional boards' constitution functions or administrative arrangements. However, as far as I can see—unlike amendment 112—amendment 128 is not subject to the affirmative procedure. Instead, it is subject to negative procedure. I have concerns about that.

Amendment 171 allows the Scottish funding council to review the fundable bodies to check that they are compliant with section 7(2) of the 2005 act. It provides that the Scottish funding council must have regard to the suitability of the body that it is providing funding to, with particular consideration being given towards governance arrangements, financial procedures and complaint and grievance procedures. Amendment 171 applies equally to UHI and the other strategic bodies. It provides the power of review only and it would not allow for change of the structure of regional strategic bodies. However, it may be introduced as particularly relevant to UHI to allow for a review if there is concern that it is not best serving the colleges.

Amendment 187 gives regional boards the powers to form and promote companies. As I understand it, the purpose of that is to allow for joint ventures or spin-out companies from the boards. I am a little cautious about the intention of that amendment but I will wait to hear other evidence.

**Neil Findlay:** Amendments 132 to 135, 146 and 147 all relate to trade union representation. Amendments 132 and 133 ensure that staff representation is drawn from the trade unions at the college. Staff are an essential component of any successful college and should have representation from lecturing and non-lecturing unions. As they are key stakeholders, we think that that is appropriate.

Amendments 134 and 135 seek to ensure that the boards of assigned colleges will, like regional colleges, have staff representatives drawn from

the relevant trade unions. In that respect, the amendments are similar to amendments 146 and 147 and we see such moves as beneficial to the operation of colleges as a whole.

Although we support amendment 77, which seeks to increase the minimum number of board members from 12 to 15, we wonder why it has been lodged and where the demand for such a move has come from. Perhaps the cabinet secretary will address that issue when he winds up on this group.

As for amendment 29, which refers to the principal of the college sitting on the board, it appears that this might have been an oversight in the original bill. After all, there is no real reason why that should not happen and we support such a move.

Amendment 30 seeks to delete the requirement for Scottish ministers to approve the appointment of other board members. It appears that that was a step towards centralisation too far even for the cabinet secretary, and I think that the amendment is a good move.

Amendment 31 appears to be a tidying-up amendment to ensure that principals are approved by ministers. I have to say that, given the complexity and the number of amendments that we are dealing with, I think that we are getting a bit tied up in knots over all this stuff.

Amendment 79 seeks consistency by ensuring that assigned colleges have the same number of board members as regional colleges. We also support amendment 80, which seeks to allow principals to be appointed to the board of an assigned college. As amendment 81 is similar to amendments 134 and 135 in my name, I hope that the cabinet secretary will support them.

Amendment 32 seeks to allow the appointment of other board members to the board of an assigned college to ensure that the position is the same as that with regional colleges, which, again, is good for the sake of consistency. Neil Bibby will cover amendment 163 when he speaks to this group of amendments.

Amendment 33 seeks to remove the strategic body's power to appoint other board members, with the purpose of giving colleges the autonomy to appoint board members other than staff and student reps. In proposing to delete paragraph 3A(3) of schedule 2 to the 1992 act as inserted by section 6 of the bill, amendment 83 seeks to allow principals to be the chairs of boards, and we would not support such a move. Amendments 34 and 35 also relate to the issue of allowing principals to be the chairs of boards, to which I have just referred.

With regard to amendment 136, we agree with the concept of an FE governance code for

assigned colleges and look forward to its being issued in due course. I have already addressed the issue that is covered in amendments 37 and 38, which seek to delete the power of Scottish ministers to appoint other board members.

Amendment 39 seeks to remove the power of Scottish ministers to remove the principal of a college. Such a move makes sense; after all, if colleges are seen to be mismanaged, we would still want someone to try to improve the situation.

Amendment 40 seeks to remove the power of ministers to replace board members after they have been removed. If board members have been appointed by a college, why should their replacements be appointed by ministers?

Finally, amendment 91 seeks to delete the power of Scottish ministers to intervene if assigned colleges' financial affairs have been mismanaged. That clarifies the role of Scottish ministers and regional strategic bodies but, again, it should have been made clear in the original bill.

**Neil Bibby:** On amendments 163, 181, 184 and 185 in my name, I have already spoken today about the importance of colleges meeting the needs of the communities in which they are situated. As has been said, a great deal of concern has been expressed about what the regionalisation agenda might mean for local courses and colleges. Specifically, people are worried about cuts in provision and are concerned that colleges might work less with and for the local community.

In amendments 163 and 181, I propose that colleges have at least one member whom they feel is representative of the local community, to ensure that college boards maintain a community focus. The amendments are reasonable, given that they would ensure that the views of the local community would be heard in the college boardroom.

Amendments 184 and 185 relate to participation at board meetings. Amendment 184 adds a line about circumstances that would give rise to a material conflict of interests. An example of that could be to exclude a principal from a discussion on setting his or her salary. I listened to what the cabinet secretary said about the chair having discretion, but I think that more clarity is required, as is required for amendment 185, on whether the principal should not in any circumstance attend board meetings that appoint board members.

I will try to speak to some of the other 53 amendments. On Mike Russell's amendment 77, I support the increased membership of regional boards to between 15 and 18 members, although that obviously has to go alongside the increase in staff representation.

I support Liz Smith's amendment 29, which allows the principal to sit on the board, although I do so with the caveat that I mentioned earlier.

On Neil Findlay's amendments 132 and 133, I support the move that would recognise the trade unions that represent the majority of either support or teaching staff.

I support Liz Smith's amendment 30, which deletes the requirement for ministers to approve other board members. Why should the minister feel the need to approve those members? That is a case of centralisation going too far. I also support Liz Smith's amendment 31, which is a tidying-up amendment.

I support Mike Russell's amendment 79, which provides that assigned colleges will have the same number of board members as regional colleges.

I support Neil Findlay's amendment 134, which ensures that there will be two staff representatives on the board of a college that is not a regional college, and his amendment 135.

I am pleased that the cabinet secretary recognises, in amendment 81, the same problem: namely, that if boards are going to increase in size, staff representatives should increase, too. Again, trade unions that represent a majority of teaching and support staff should be represented on boards.

I support Liz Smith's amendment 32, which allows for other board members to be appointed to assigned colleges so that they are the same as regional boards.

Liz Smith's amendment 33 deletes the power of regional strategic bodies to appoint other members of the board. That amendment recognises the concern that regional strategic bodies may have too much power, at the expense of the autonomy of assigned colleges.

I support amendment 82, in the name of Mike Russell and supported by Neil Findlay, which would increase the number on the boards of assigned colleges so that they have parity with regional colleges. I echo Neil Findlay's comments on the FE governance code.

I have one last point. When the cabinet secretary sums up I would welcome clarification, if possible, about whether vacancies for board members will be publicly advertised.

**Colin Beattie:** Quite simply, amendment 71 inserts a provision for the chairs of the assigned colleges to be members of the regional college boards by right of position. Members are probably aware that the bill says that boards should have between 12 and 18 members. The regions that would be affected by the amendment would be Glasgow and Lanarkshire, which have no more

than three constituent assigned colleges each. Therefore, that should not have an impact in terms of having to change the overall numbers on the board.

I lodged amendment 71 as a probing amendment; I have noted the cabinet secretary's response and will reflect on that.

**Liam McArthur:** As I said at the outset, I remain concerned at the level of interference that ministers have, in terms of both board appointments and the operation of the boards. As with the first group of amendments, the amendments in this group address concerns about collaboration and consultation. I think that the cabinet secretary was right to point to a to-ing and fro-ing of arguments about whether principals should automatically be members of boards. Like Liz Smith, I happen to think that, for a good number of reasons, the argument for what has been proposed—to formalise that role—was undoubtedly stronger, and I am glad that it looks as if we are set to do that.

12:45

The amendment that seeks to restrict the ability of ministers to remove a college principal addresses some of the concerns that were raised with us at stage 1. Likewise, I support the amendments that will remove the requirement for ministers to approve members of regional boards. Even Russel Griggs, when he gave evidence to us, implored us to focus on what came out at the end of the pipe rather than on every decision that led up to that point.

In relation to lowering the age limit, I hear what the cabinet secretary says about practice in other areas, but I am bound to say that the arguments that he used to resist the amendment in question are similar to those that many members of the committee have used in questioning whether it is appropriate to put such powers in the bill rather than leave it up to the college sector to take decisions that best reflect the needs of the communities and others that it supports. I look forward to hearing what the cabinet secretary says when he winds up.

**George Adam:** I have some sympathy with amendments 132, 133, 135, 146, 147 and 134, but I find the drafting quite clumsy and I think that there might be a better way of approaching the issue in the future. There are questions to do with whether the people concerned would be elected or staff-appointed members, and whether staff members who are non-union members would be represented. As someone who is a trade unionist, I know that that is a bit of an issue.

I have an issue with amendment 163, because it says "representative of the community". How do

we define what that means in the regional areas? Would we go out on to the street and say, “You’ll do—you’re on the board”? I think that that amendment is rather clumsy as well. There might be a better way of addressing the issue.

**Michael Russell:** The discussion has been wide ranging and has included many issues. I will address some of the detail point by point.

Liz Smith asked about Colin Beattie’s amendment. Government amendment 93 has the same purpose as that amendment and I think that it would achieve the same thing, which is why I asked Mr Beattie not to move his amendment. Essentially, he got there just before we did, just as Liz Smith got there just before we did on a range of other amendments.

**Liz Smith:** If I may intervene, that was not what I was asking for clarification on. I am sorry—I misheard you.

**Michael Russell:** I am just about to give you the clarification that you requested, but you did mention that.

**Liz Smith:** Yes, I did.

**Michael Russell:** Government amendment 93 will have the same effect as amendment 71, which is—I say this with the greatest respect to Mr Beattie—technically deficient, in that it refers to “the regional strategic body” when it should refer to the regional board. I am sure that Mr Beattie will reflect on that, regardless of whether he moves the amendment.

The amendments that I asked Liz Smith not to move were amendments 34, 35, 66, 67 and 70. I said that I was happy to support amendments 29, 31, 39, 63 to 65 and 69, but perhaps that is giving too much detail.

Mr Findlay asked where the issue of principals on boards had come from and suggested that there was some sort of deficiency in that regard. I pointed out that Russel Griggs raised the issue. It was discussed at considerable length at a variety of meetings and has been discussed in committee. On balance, it seemed that the right thing to do was to move in the direction that has been proposed, which is what I am trying to do.

The issue of board numbers has been discussed by a number of boards—it was discussed with me most recently by the City of Glasgow College. It relates to the Glasgow and Lanarkshire regional boards, particularly the Glasgow one, which will be a very large-scale regional board. In the circumstances, it seemed sensible to move on that.

Liz Smith’s amendments on the way in which boards are nominated would lead us back to the bad old days, if I may say so, when college boards

were self-appointed and self-perpetuating. I believe that the trade unions did not want that to be the case. I cannot imagine that supporting her proposals would do anything other than continue those arrangements, and it would seem wrong to do so. The bill takes a different approach—a balanced approach, which we have developed by listening to the sector.

I can confirm to Mr Bibby that the guidance will say that vacant board positions should be advertised, so there will be plenty of opportunities. When we look later at how those things happen, it will be absolutely clear that the process is open and transparent, much more so than the process that has existed to date and been in place for 20 years.

*Amendment 77 agreed to.*

*Amendment 29 moved—[Liz Smith]—and agreed to.*

*Amendment 132 moved—[Neil Findlay].*

**The Convener:** The question is, that amendment 132 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### **Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 132 disagreed to.*

*Amendment 133 moved—[Neil Findlay].*

**The Convener:** The question is, that amendment 133 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### **Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 133 disagreed to.*

*Amendment 30 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 30 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 30 disagreed to.*

*Amendment 31 moved—[Liz Smith]—and agreed to.*

*Amendments 79 and 80 moved—[Mike Russell]—and agreed to.*

*Amendment 134 moved—[Neil Findlay].*

**The Convener:** The question is, that amendment 134 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 134 disagreed to.*

*Amendment 135 moved—[Neil Findlay].*

**The Convener:** The question is, that amendment 135 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 135 disagreed to.*

*Amendment 81 moved—[Mike Russell]—and agreed to.*

*Amendment 32 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 32 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 32 disagreed to.*

*Amendment 163 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 163 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

*Amendment 163 disagreed to.*

**The Convener:** I remind members that, if amendment 33 is agreed to, I will be unable to call amendment 82 because of pre-emption.

*Amendment 33 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 33 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 33 disagreed to.*

*Amendment 82 moved—[Michael Russell].*

**The Convener:** The question is, that amendment 82 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McArthur, Liam (Orkney Islands) (LD)

**Against**

Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 8, Against 1, Abstentions 0.

*Amendment 82 agreed to.*

**The Convener:** I remind members that, if amendment 83 is agreed to, I will be unable to call amendments 34 and 35 because of pre-emption.

*Amendment 83 moved—[Michael Russell]—and agreed to.*

**The Convener:** Amendment 136, in the name of Liz Smith, is grouped with amendments 137, 43, 150 to 152 and 155.

**Liz Smith:** On college governance, I begin with the same principle that I spoke to last week when we debated governance in the university sector. There is a need for an effective balance between

accountability for public money, which is proportionately greater in the college sector than in the university sector, and responsible autonomy, which is a phrase that is now used just as much in colleges as it is in universities. Colleges fully accept the need for some Government direction, but not to the extent that it interferes with college management or seeks to undermine the flexibility and autonomy that colleges have enjoyed since 1992.

On that basis, there has been concern about the Scottish Government's desire to have greater powers over colleges, particularly in relation to approving board appointments beyond that of the chair. Two of the college principals who attended committee gave substantial evidence expressing a wish, which they believe is widely shared by the sector, to have a code of governance similar to what there is for the university sector. They want the code to be agreed between the sector, the Scottish funding council and the Scottish Government, rather than being imposed. They also want the condition of grant funding to be adherence to a code of good governance as drawn up by all stakeholders.

Amendments 136 and 137 are designed to ensure that there is compliance with an agreed code of governance. Amendment 151 is designed to ensure that it is the Scottish funding council rather than ministers that is given the authority to decide on what can be defined as good governance. If it was the other way round, there would be a danger of ministerial interference.

I move amendment 136.

13:00

**Liam McArthur:** Last week, of course, we debated the importance of good governance in universities. It is self-evident that we should look to do the same in our colleges. Variations in the details of the respective codes may be entirely appropriate, but I see no reason why the ways in which we hold the governing bodies of our colleges and universities to those codes should vary.

As a result of the amendments in the group, the code would—and should—be developed in close co-operation with staff, students and other stakeholders, as well as the funding council and ministers, of course. Along with the amendments relating to board membership that we have just considered, there is an opportunity with this group of amendments to allay some of the fears about the extent of ministerial control that is being sought and which could be subsequently imposed.

I very much support Liz Smith's amendments 136 and 137 in that regard, and her amendment 151 makes adherence to the code by regional

colleges and boards a condition of grant. Amendments 150 and 155, in the name of the cabinet secretary, appear to look to achieve much the same outcomes. I prefer the approach in Liz Smith's and my amendments in the group, but I will listen with interest to what the cabinet secretary has to say.

Amendments 152 and 43, in my name, reflect specific concerns in the area that relate to the way in which the University of the Highlands and Islands is structured and operates and how the bill's provisions are likely to interact with that. Members will recall the letter that we received from the chairs of Inverness College, Moray College and Perth College of the UHI earlier this month, which detailed their concerns. The college chairs reminded us of the UHI's unique structure. There are nine colleges; six of them are incorporated, two are run by local authorities, including Orkney College, and one is internally funded. Whatever their differences, all those colleges are invaluable to the communities in which they are based, and no other region comes close in scale to the Highlands and Islands. Although the colleges are already impressively networked, each campus provides a critically important engine for the local economy and community and offers opportunities for tailored skills development and genuine lifelong learning.

As things stand, the Highlands and Islands will be the only region in Scotland to be managed by a non-FE body, with the UHI court being designated the regional strategic body for delivery of FE in the region and the FE board being a sub-committee of the court. That presents potential difficulties for both future funding and governance structures. The amendments in my name are an attempt to reflect and address those concerns, although I appreciate that further refinement of their wording may be required and that part of the solution might lie outwith amending the bill. Nevertheless, I believe that a solution needs to be found.

Amendment 43 looks to put in place safeguards that will ensure that FE provision is considered separately from HE provision in the UHI by representatives from the colleges and that moneys that flow from the funding council for FE reach their intended destination. I believe that that would honour a commitment that the cabinet secretary gave to the UHI colleges that there would be a double lock to ensure that FE provision remains fully safeguarded in the colleges.

Amendment 152 picks up that theme. It acknowledges the UHI's specific needs and leaves open the option of establishing an FE committee of the UHI court, although there are possible pitfalls there in the cost implications and the problems with scarce resources being further diverted away from the front line in Orkney and

elsewhere in the region. I know that the cabinet secretary shares many of the concerns that I have expressed, and I look forward to hearing what he has to say and to seeing whether the amendments in my name offer at least a possible way forward in that regard.

**Michael Russell:** At stage 1, Colleges Scotland made representations that, as with the HE sector, governance principles should be developed for the college sector and that college bodies should be required to comply with those principles as a condition of grant. That was a helpful suggestion, and I am very happy to support a code of governance for the FE sector. I understand that Colleges Scotland intended adherence to such a code to replace the ministerial role in appointment, whereas I intend them to sit alongside each other. We have just discussed board appointment matters, of course.

Amendment 150 and consequential amendment 155 draw on the HE governance provisions that are contained in proposed new section 9A of the Further and Higher Education (Scotland) Act 2005, which we debated last week, and mirror them for college sector bodies. I make the point to Liz Smith that the similarity is strong between the powers in the college and university sectors. Indeed, they mirror each other, and that is intended.

Amendment 150 will insert new section 9AA into the 2005 act, which will allow ministers to impose conditions on the funding council to require certain bodies in the college sector to comply with such principles of good governance as the funding council determines constitute good practice. The bodies in question are colleges that will continue to be funded directly by the funding council, regional strategic bodies—both regional boards and the UHI—and assigned colleges. If ministers imposed a relevant condition, it would be for the funding council to identify the principles with which the bodies must comply. Again, that is an arm's-length arrangement, which I know Liz Smith is particularly keen to see—it is there in the amendments. I invite the committee to support amendments 150 and 155.

Amendments 136, 137, 43, 151 and 152, from Liz Smith and Liam McArthur, relate to a code of governance for the FE sector. There is consensus that the principles of good governance ought to apply. However, we should not lose sight of the fact that some colleges—Newbattle Abbey College and Sabhal Mòr Ostaig—are not regional and will continue to be funded directly by the funding council. Such principles should be applied to them as well, and it would be inconsistent of us not to do that.

Amendment 43 concerns a regional strategic body that is not a regional board. In other words,

that would currently cover the UHI. The amendment would require the UHI to comply with any principles relating to its governance structure or its administrative arrangements when allocating funding to any of its colleges. There is concern in the college sector that the university might not deliver the recommendations that were agreed by the UHI working group in October. I certainly agree with Mr McArthur on many of the issues that are involved.

Amendment 43 seeks to address those concerns, and I am grateful to Mr McArthur for lodging it. However, on its effect, I do not consider it appropriate that, in the case of the UHI alone, governance principles should extend to

“administrative arrangements when allocating funds”.

In other amendments, we have of course tried to avoid administration and management becoming confused with governance. In those circumstances, the wording of amendment 43 is problematic.

I am in no doubt whatever that the UHI must deliver the agreed governance structure. I pay tribute to those in Perth College UHI and elsewhere who have brought the matter to members’ attention. If I am not sufficiently reassured on that point within the next few weeks—that is, by stage 3—I will lodge an amendment to achieve that end. I give that commitment to Mr McArthur and Liz Smith. It is a vital point. There have been enough problems with the issue over a period and we need to resolve it once and for all within the structure. I make that commitment, but the wording of amendment 43, which has been discussed with members of the regional board and others, is not sufficiently accurate or precise to achieve the aims in the way that we wish to achieve them. I am happy to work with Mr McArthur and Liz Smith and with Highlands and Islands members who are concerned about the issue to get the approach absolutely correct.

I am sympathetic to the aims of amendments 136, 151 and 152. However, amendments 136 and 151 do not cover bodies that would continue to be funded directly by the funding council, and the differentiation that would be achieved by amendment 152 is not necessary. It would be possible for the funding council to identify different principles for different regional strategic bodies, but regional strategic bodies will already have such powers to impose conditions under proposed new section 12B(2) in the 2005 act.

I believe that amendments 150 and 155 in my name will achieve our aims on a regional code of governance and are sufficient. On the amendment that specifically addresses the UHI issues, I give my commitment that, before stage 3, we will

resolve the issue with the members involved and others so that there is absolute clarity on the structure. As Mr McArthur said, that is set out in the recommendations of the working group and has been accepted by the UHI, but there is still considerable concern that it has not been properly implemented.

**Neil Bibby:** I support amendments 137, 43, 150, 151 and 152.

On the issue of governance, I want to briefly put on record the importance of transparent external audit. I understand that, since 2000, external audit reports have had to go to the Auditor General for Scotland. Given the importance of good governance, it is clear that we need high standards of external audit. I just wanted to put that on record and to seek reassurance from the cabinet secretary, perhaps at a later point, on the importance of external audit, whether that be in the code of governance or whatever.

**The Convener:** I call Liz Smith to wind up the debate and to say whether she wishes to press or withdraw amendment 136.

**Liz Smith:** I thank the cabinet secretary for his concern about these very real issues. We as a committee were struck by the points that were made very forcefully about having a good code of governance in the college sector, which I think should mirror what goes on in the university sector. I am therefore grateful to the cabinet secretary in that regard. I hear what he says about the UHI situation. We have all been burdened with letters and emails from people in colleges within UHI who feel that we have not quite got things right. I hear what the cabinet secretary says about working together on that. I will press amendment 136.

**The Convener:** The question is, that amendment 136 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 136 disagreed to.*

*Amendment 164 moved—[Marco Biagi]—and agreed to.*

*Amendment 84 moved—[Michael Russell]—and agreed to.*

*Amendment 37 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 37 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 37 disagreed to.*

*Amendment 38 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 38 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 38 disagreed to.*

*Section 6, as amended, agreed to.*

**Section 7—Colleges: mismanagement**

**The Convener:** We come to section 7. Amendment 165, in the name of the cabinet secretary—

**Liam McArthur:** Convener, it would be helpful if you could indicate when we are looking to stop. I was under the impression that we were stopping at quarter past 1.

**The Convener:** We were originally thinking of going to half past 1. I had hoped to stop earlier, but we are going to go to half past 1. We will certainly stop at the end of section 7.

**Neil Findlay:** Some of us are taking part in the debate this afternoon, and we obviously hope to have something to eat before we do that. Would you consider finishing at quarter past 1 to give us time to prepare for the debate and take in some nourishment?

**The Convener:** The committee is able to and entitled to carry on at this time. I appreciate the difficulties that members face, which is why I am saying that we will complete consideration of section 7. We will mostly be voting on amendments; there is very little to debate in this section, except for two amendments, so I hope that we will be very quick.

**Neil Findlay:** Is it in order to move a motion to finish earlier?

**The Convener:** It is not.

Amendment 165, in the name of the cabinet secretary, is grouped with amendments 166 to 168, 91, 189 and 125.

**Michael Russell:** I shall be as brief as possible. Amendments 91, 125, 166 and 167 all relate to the provision made about the position of the Scottish funding council in the context of mismanagement of colleges and, in the case of amendments 91 and 125, higher education institutions and regional strategic bodies as well.

During stage 1, stakeholders and committee members raised concerns about a perceived complexity and a lack of clarity about the accountable hierarchy linked to the new college regionalisation arrangements. Those concerns were very much focused on multicollege regions and included concerns about the accountability arrangements for assigned colleges and the Scottish funding council's role in them.

I said at stage 1 that I would reflect on the matter further. I now propose amendments with the aim of making the accountability arrangements in respect of bodies' roles and responsibilities as clear, straightforward and workable as I can. Amendments 169 to 171, which we will cover in the next group, are also relevant to that aim.

The bill as introduced would give ministers powers to issue directions to the Scottish funding council or regional strategic bodies in the event of financial mismanagement. The principal substantive effect of amendments 91 and 125 will be to alter what the bill as introduced provided for in relation to ministerial powers of direction in cases of mismanagement, so as to remove ministers' power to issue directions to a regional strategic body in the event of financial

mismanagement at one of its assigned colleges. I am sure that that will please Liz Smith, among others.

13:15

Amendments 91 and 125 will otherwise have the effect that the provision for ministerial powers of direction will be made in consolidated form in section 25 of the 2005 act as amended by the bill, rather than in section 25 and new section 25A of that act, the latter of which the bill as introduced would have inserted. The amendments will remove the provision that would have inserted section 25A into the 2005 act and instead provide for more extensive amendment of section 25.

Amendments 166 and 167 will alter the terms of new section 24 of the 1992 act, on mismanagement by incorporated colleges' boards of management. In the bill as introduced, new section 24 of the 1992 act would have provided that one of the grounds on which ministers would be empowered by order to remove any or all of the members of an incorporated college's board of management for reason of mismanagement would be that the SFC, in the case of a regional body, or a regional strategic body, in the case of a college assigned to it, had informed ministers that it took the view that the college was no longer a body that satisfied the fundable body criteria that are set out in section 7(2) of the 2005 act.

Amendments 166 and 167 will change that position, so that it will be for the SFC only to decide whether any college, regional or assigned, no longer meets the fundable body criteria. Provision will no longer be made for a regional strategic body to have that role in relation to one of its assigned colleges. I hope that the benefit of that is clear. That clarifies where the power lies.

At stage 1, stakeholders and committee members expressed concern about the scope of the provisions in the bill that would confer on ministers order-making powers to remove members of incorporated college boards of management and regional boards. I have reflected on that. One of the grounds on which ministers were to be empowered to remove board members was a failure to properly exercise functions, which I accept could allow ministers to intervene in a wider than desirable range of circumstances.

Amendments 165 and 189 will remedy that by narrowing that ground for removal so that it is framed in terms of a failure on the board's part to "discharge any of its duties",

rather than the wider concept of functions. Amendments 165 and 189 strike a more desirable balance between allowing boards the autonomy to

get on with the job and enabling intervention when something goes wrong.

I do not think that Neil Bibby's amendment 168, to provide for a right of appeal for persons removed from an incorporated college board for reasons of mismanagement, is necessary or desirable. I absolutely agree that the exercise of ministerial powers to remove board members should be subject to appropriate scrutiny and challenge, but it must be understood that ministers will not be able to exercise the powers whenever they please.

Ministers will be able to exercise the powers only when the specific circumstances set out in new section 24(1) of the 2005 act apply. The powers will be exercisable by order subject to negative procedure, which will provide scope for parliamentary scrutiny. Of course, an individual who was removed could seek to challenge the order by means of a petition for judicial review, should they consider that there are grounds to do so. Taking account of all those factors, I believe that there is already adequate scope for scrutinising and challenging the exercise of the powers.

I move amendment 165.

**Neil Bibby:** The reason for amendment 168 is to allow an independent appeal panel to review a decision to remove a board member. Some sort of safety mechanism should be in place. If a member of staff is removed, they have the right to appeal, so it is reasonable that a board member should have the same right if they are removed by the cabinet secretary. I would expect the cabinet secretary to think that that was reasonable and I am disappointed that he does not.

The fact is that the cabinet secretary's judgment could or would be called into question in certain circumstances. Given his reported comments to members of the college profession that, if he had had the power to remove them, he would have done so, his judgment has been called into question previously.

In taking evidence, we heard concerns about the level of ministerial control so, although I hope that the cabinet secretary's judgment will be sound in such situations, I also hope that members will support amendment 168 to allow an independent appeal panel to review decisions to remove board members. That would reassure people who might find themselves in that position.

The cabinet secretary says that the amendment is not necessary or desirable, but I think that a former board member in such a position would find the provision necessary and desirable. The aim behind having the option of a judicial review, which would be a costly and time-consuming exercise,

might be best supported by my amendment to have an independent review panel.

**Michael Russell:** In winding up, I simply repeat what I have said. My amendments will give the funding council greater responsibility and remove the ministerial function. In those regards, they meet all the objections that I have heard to date. Mr Bibby's amendment is technically questionable and, in terms of what needs to be done, it would not work at all.

**Neil Findlay:** Will the cabinet secretary take an intervention on that?

**Michael Russell:** No, I have finished summing up.

**The Convener:** The question is, that amendment 165 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

*Amendment 165 agreed to.*

*Amendments 166 and 167 moved—[Michael Russell]—and agreed to.*

*Amendment 39 moved—[Liz Smith]—and agreed to.*

*Amendment 40 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 40 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 40 disagreed to.*

*Amendment 41 moved—[Liz Smith].*

**The Convener:** The question is, that amendment 41 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### For

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)  
Smith, Liz (Mid Scotland and Fife) (Con)

#### Against

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

*Amendment 41 disagreed to.*

*Amendment 168 moved—[Neil Bibby].*

**The Convener:** The question is, that amendment 168 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**Liz Smith:** Convener, I indicated that I wanted to speak to that amendment. I just wanted to ask for a little clarification when it comes to stage 3.

**The Convener:** You cannot do that during the vote, obviously. I am sorry, but I did not see you indicate.

**Liz Smith:** I indicated to speak.

**The Convener:** I apologise—I did not see you indicate.

#### For

Bibby, Neil (West Scotland) (Lab)  
Findlay, Neil (Lothian) (Lab)  
McArthur, Liam (Orkney Islands) (LD)

#### Against

Adam, George (Paisley) (SNP)  
Adamson, Clare (Central Scotland) (SNP)  
Beattie, Colin (Midlothian North and Musselburgh) (SNP)  
Maxwell, Stewart (West Scotland) (SNP)  
McAlpine, Joan (South Scotland) (SNP)

#### Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 1.

*Amendment 168 disagreed to.*

*Section 7, as amended, agreed to.*

**The Convener:** That ends consideration of stage 2 amendments for today. We will return to the remaining amendments next week.

*Meeting closed at 13:24.*

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