



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 1 October 2013

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EDUCATION AND CULTURE COMMITTEE

25th Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Bibby (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Clare Adamson (Central Scotland) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tam Baillie (Scotland's Commissioner for Children and Young People)

Marco Biagi (Edinburgh Central) (SNP) (Committee Substitute)

Juliet Harris (Together)

John Henderson (Colleges Scotland)

Laurence Howells (Scottish Further and Higher Education Funding Council)

Gordon McGuinness (Skills Development Scotland)

Professor Alan Miller (Scottish Human Rights Commission)

Sam Whyte (UNICEF UK)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 6

Scottish Parliament
Education and Culture
Committee

Tuesday 1 October 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in
Private

The Convener (Stewart Maxwell): Good morning. I welcome members to the 25th meeting in 2013 of the Education and Culture Committee. I remind all who are present that all electronic devices should be switched off at all times.

Our first agenda item is to decide whether to take items 4 and 5 in private. Do members agree to do that?

Members *indicated agreement.*

Children and Young People
(Scotland) Bill: Stage 1

10:00

The Convener: Our next agenda item is continuation of our evidence taking on the Children and Young People (Scotland) Bill. I welcome back Marco Biagi, who is here as substitute for Joan McAlpine.

I also welcome the panel: Tam Baillie is Scotland's Commissioner for Children and Young People; Juliet Harris is director of Together; Alan Miller is chair of the Scottish Human Rights Commission; and Sam Whyte is domestic policy and parliamentary manager for UNICEF UK.

This morning, we intend to explore a number of themes, including the duties that relate to the United Nations Convention on the Rights of the Child, the extension of the children's commissioner's powers, the named person and information sharing. Those will be our main areas of interest, although other issues might pop up.

We will start the questioning straight away, because we have a lot to get through this morning, including some budget scrutiny. I invite Jayne Baxter to begin.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning. I begin by asking the witnesses whether they think that implementation of the United Nations Convention on the Rights of the Child requires that it be incorporated into Scots law.

Tam Baillie (Scotland's Commissioner for Children and Young People): I will kick off.

First, I welcome the Scottish Government's intention of further embedding the UNCRC in the legislation, although—as my written submission makes clear—I think that the end point of that process should be incorporation. In fact, I have called on the Government to give us a road map to incorporation. The reason why is quite simply that I think that it will lead to better outcomes for children and young people. I have given some examples in the supplementary evidence on leaving care. The early age at which young people leave care is an issue that has taxed the committee. If UNCRC were to be incorporated into Scots law, it would be much easier for young people to seek redress when they leave care.

I know that the committee has had legal opinion—with respect, you have had one legal opinion—that questions the feasibility or the appropriateness of having the UNCRC incorporated into law. That is one legal opinion among many. Other lawyers and academics are of

the view that it is possible to incorporate the UNCRC into Scots law.

However, it is a complex issue for a number of reasons. First, because there are 54 articles in UNCRC, careful consideration would have to be given to how we could transpose our international obligations into Scots law and embed them appropriately and effectively.

Secondly, the articles cover a range of responsibilities, some of which are devolved, such as those that relate to education and health; some of which are devolved and reserved—for example, Westminster and the Scottish Parliament both have powers that relate to the standard of living—and some of which are clearly reserved, such as those that relate to asylum seekers. Another complication is that consideration would need to be given to what means of redress, in the event of breaches of the UNCRC, would be built in.

I have looked at the evidence, and I think that it must be quite difficult to make sense of the conflicting views on incorporation. The committee could use its report to suggest a parliamentary inquiry into the feasibility of incorporation of the UNCRC, which would provide the basis for teasing out some of the differences of opinion, and would allow proper consideration of incorporation rather than just seeing it as part of a complicated and wide-ranging bill. That is my first point.

My second point is about the ministerial powers. I have already given evidence that that element of the bill is rather weak, and the committee has heard evidence from others who concur with that perspective. The bill is weak on that because there are so many areas of discretion that it is difficult to see how the ministerial duty would be enforceable if it was not upheld.

We should go back to the UNCRC and look at the articles that could reasonably be included in the bill. For example, we already have “best interests” in our legislation because it is narrowly defined in the Children (Scotland) Act 1995. Best interests could reasonably be considered as something that could become part of the ministerial duty. We already have practices in Scotland that mean that the views of children and young people are sought and are seen to be relevant to the development of policy and practice, and the views of children and young people could reasonably be part of the duties that are included in the bill. In fact, I am giving the committee advance notice of amendments on which I would be prepared to do some work for stage 2.

My final point—

The Convener: Very quickly please.

Tam Baillie: The bill’s stated intention is that Scotland should become

“the best country in the world for children to grow up in.”

The Scottish Parliament has a proud record on children’s rights. There is my institution—Scotland’s Commissioner for Children and Young People—and the Scottish Human Rights Commission. Last week, I was at a meeting in the European Parliament as part of the new network of European ombudspersons and children’s commissioners, and I was at the table with members of the European Parliament who were thumping the table and saying that we need to make sure that the UNCRC is as firmly embedded in our legislation as possible. In their view, that is what will make the difference to outcomes for children and young people across Europe. I hope, therefore, that we can have much more discourse about the UNCRC and the potential for it to become more firmly embedded than some of the measures that are currently within the bill.

The Convener: Thank you. Do other witnesses wish to comment?

Professor Alan Miller (Scottish Human Rights Commission): Thank you convener and members of the committee for inviting the SHRC.

I want to pick up on the question and on Tam Baillie’s answer, with which I agree. This committee, the Parliament and the Scottish Government need to engage much more with the international human rights system, including the UNCRC, and with the experience of other countries and what they have done.

The part of the bill that we are debating and its hesitancy or reluctance to engage with the international human rights system is not of these times. It is an inhibited and inward-looking approach to the best way of promoting and protecting the human rights of children. I say that the approach is not of these times because we in Scotland are at a time when everyone is looking at the kind of country that we want to be in the future. What kind of Scotland do we want to be? What is children’s place in it? What is the place of human rights in it?

Even if after the referendum we have more devolution, we need only look down the road to Wales, which has, under devolution, taken a more positive approach through a duty of due regard to the UNCRC. If there is a yes vote in the referendum and we have independence, Scotland will be a member of the United Nations; we will have to be quite fast in understanding what the UN, the human rights system and the UNCRC entail, and what our obligations are. Even under the Scotland Act 1998, we have an obligation to observe and implement the United Kingdom’s international human rights obligations. We really ought to be thinking bigger. The bill and its retreat

from a previous consultation on incorporation of the UNCRC is not of these times.

As Tam Baillie said, this is an opportunity for us to get our hands much more around the human rights system and not to follow the path that the United Kingdom has taken, which has been to refuse repeated recommendations from the UN to incorporate the UNCRC, as well as other international human rights obligations. We should be much more outward and forward looking, particularly in these times.

Juliet Harris (Together): I echo what Tam Baillie and Allan Miller have said. I agree that now is the time for the Scottish Government to be ambitious about what we want to achieve for our children and young people. As you know, we keep on bringing incorporation to the committee's and to everybody's attention. If we are going to make rights real, and if we really want Scotland to be a better place in which to grow up, we need to be brave and to show that commitment in legislation.

We keep talking about incorporation because we see it as the way in which we can have a strong legal framework that enables the protection and provision of rights for children, and their participation in civil society and the decisions that affect them. Systematic, accountable and transparent consideration of children's rights is essential if we are to succeed in making children's rights real.

We want us all to have a common knowledge and understanding of what children's rights are and what they mean. It is important that adults, as well as children and young people themselves, understand children's rights. We need to know whether we are making rights real and what impact legislation will have on them. We also need to know that clear and consistent monitoring frameworks are in place so that we can see what impact legislation is having on children's outcomes.

For us, incorporation is the way in which we will achieve those aims, but we can take many steps on the road map towards incorporation. I urge the committee to consider some of the steps that can be taken, to look at the big picture and to be ambitious. If we are going to make rights real for children and young people, we have to look at what we are trying to achieve through incorporation and try to include that in the bill.

Sam Whyte (UNICEF UK): I will make a couple of brief additional points. First, UNICEF UK last year did a big piece of research on international examples of incorporation. One reason why was so that we could be clear about its impact on children. After all, that is why we are all here and that is what it is all about. We found that when countries had incorporated the UNCRC or had in

place legal measures on children's rights, that made a real difference because there was a cultural change and a legal shift for children whereby policy and legislation were developed differently and had a much stronger impact on children's services at local level.

There are examples of incorporation of the UNCRC in a number of countries, and there are examples of incorporation of its general principles. The clear message from the research is that the decision to give legal force to children's rights, whatever form that force takes, is the decisive factor in making a difference for children.

Obviously, UNICEF UK supports direct incorporation of the convention. We are of the view that civil and political rights, and economic, social and cultural rights are justiciable. I know that there have been some questions about that, but the UN Committee on the Rights of the Child is clear that economic, social and cultural rights can as appropriately interpreted by the courts as civil and political rights, so incorporation is certainly something that we would like to happen.

Briefly, on the duties in the bill, the fact that the Scottish Government is putting forward a statutory expression of children's rights is very important and it is not usual: across the world, state parties fail to do that. That principle is therefore very important in itself, but the duties that underpin that expression need to be strong and we feel that there is a long way to go in the bill.

Jayne Baxter: Which individual rights do you think are not already reflected in some way in domestic legislation?

Tam Baillie: I gave two examples of best interest. Children's best interests are paramount through the 1995 act, but we are trying to look much wider than that. To its credit, the ministerial duty will be across all ministerial functions.

The Convener: I am sorry; I would like you to clarify something. Jayne Baxter's question was very specific: she asked which parts of incorporation are not already reflected in some way in domestic legislation. You said that you had given an example from the 1995 act. Surely that means that it is already reflected in some way in domestic legislation.

Tam Baillie: Yes, but that does not apply to all matters concerning children; it concerns matters that are covered in the 1995 act. So, the intention—

The Convener: So, the UNCRC is reflected in some way in legislation.

10:15

Tam Baillie: It is reflected in a very narrowly—that was the word that I used—through the 1995 act. The UNCRC is not considered, for instance, in planning applications; the best interests of children do not have to be taken into account in such matters. The expansion of the best-interests criterion across all our considerations of children would be very worthwhile. You do not have to consider the best interests of children in setting the budget; you will simply discuss the budget. For a host of areas, if we really and truly want to put children and young people at the centre of our policy making and concerns, we must have a much wider perspective than is shown in how we have incrementally built up our legislation. That refers to just one of the UNCRC's articles, but it is one that I feel quite strongly about.

The views of children and young people are rarely embedded in legislation in a consistent way, but it is commonly accepted that our practices are about listening to the views of children and young people. We are in a different place now compared with where we were 10 or 15 years ago, but that is not properly reflected in all our statutes. However, there is an opportunity to include that in the bill as part of the ministerial duty. That would be a much stronger basis than anything that exists just now. Those are just two examples.

The Convener: Does anybody have a view that differs from that? No. Okay—I want to keep this moving along because we have a lot of areas to cover. Do you have further questions, Jayne?

Jayne Baxter: I am happy with what has been said.

Clare Adamson (Central Scotland) (SNP): I have a question for Mr Miller, who opened up the hypothetical situations for the future. At the moment, we obviously have a devolved Government, so certain aspects of legislation are not within the control of the Scottish Government. However, you raised the concern that the United Kingdom Government might go in a different direction, and there have been reports this week that it might actually drop the European convention on human rights. How will that impact on what we put in legislation in Scotland in terms of the UNCRC?

Professor Miller: Under the Scotland Act 1998 as it stands, there is an obligation on the Scottish Government to observe and implement the UK's international human rights legal obligations. The UK Government has said—or, at least, part of the coalition Government has said—that it will go into the next election with a manifesto commitment to repeal the Human Rights Act 1998 and possibly to withdraw from the European convention on human rights.

Liam McArthur (Orkney Islands) (LD): Excuse me, but it is the Conservative party that has made that commitment.

Professor Miller: Yes—I said “part of” the UK Government.

Liam McArthur: Yes, but it is the Conservative Party that has made that commitment.

Professor Miller: Yes.

Liam McArthur: Just for the record.

The Convener: I think that was what Mr Miller said.

Liam McArthur: He said “part of the coalition Government”.

I like to be explicit about that.

George Adam (Paisley) (SNP): You are a bit touchy.

Liam McArthur: Well, I am no more touchy than you are.

Professor Miller: If that is an indication that the Liberal Democrats are clearly not going to take that position, I would certainly welcome that.

Liam McArthur: Nick Clegg made that explicit at our conference a week ago.

Professor Miller: I would certainly welcome that. However, if a future UK Government's position was as I described, that would not take away the responsibility of Scotland, if it continued to be a devolved part of the UK, to do what the Scotland Act 1998 says, which is to observe and implement existing UK international legal obligations, part of which is to implement the UNCRC. In all devolved areas, it would be open to the Scottish Government—and it would be its responsibility—to take a different direction from that of future UK Governments by doing more to implement the rights of children.

The Convener: I would like clarification on a couple of points. Some witnesses have called for full incorporation, but how can we possibly fully incorporate the UNCRC under the current settlement? It has already been stated that some requirements are devolved, some are reserved and devolved, and some are reserved, so how could we fully incorporate the UNCRC? It does not seem possible to me.

Tam Baillie: You can incorporate the UNCRC as far as the devolved powers allow. However, I suggested that we have a parliamentary inquiry in order to tease out what can be done under the current constitutional settlement. The timing of such an inquiry might well open up other possibilities.

Parliamentarians—in particular, this committee—have an opportunity to consider seriously the steps that we could take towards incorporation. You are right: that is the very reason why I have highlighted the different levels of devolved and reserved powers.

That is not the only matter which makes incorporation of the UNCRC complex. I would warmly welcome the committee's recommendation of the UNCRC. It would help us to map out what can and cannot be done within whatever constitutional settlement we reside.

Sam Whyte: The Human Rights Act 1998 is domestic law. If that act is repealed—we strongly hope that it will not be because it applies equally to children and adults—the international obligation would still apply, unless the United Kingdom Government were to withdraw from the European convention on human rights, and it would certainly still apply to the UNCRC.

It is probably worth noting that the UNCRC would need to be incorporated with regard to devolved matters, and that most things that would affect children in their day-to-day lives are devolved matters. It is quite important to remember that. The UK Government has also recognised that children should be able to raise concerns, whether they relate to reserved or devolved matters, with the Scotland's Commissioner for Children and Young People, because children do not care about that distinction, but are concerned with what goes on in their lives now. There is an element of flexibility there, as well.

The Convener: I have one final question before I bring in Neil Bibby. Let us take the right to play as an example. Are you really saying that if we incorporate the UNCRC in domestic legislation and there is then a challenge, with somebody saying that their rights were somehow breached because they were forbidden to play, or their play was stopped, it would be a matter for the courts to decide?

Tam Baillie: I would not start with the challenge. I would start with the impact that that right has on our approach to play.

The Convener: That is not my question. The question is: are you saying that if the right to play is incorporated in domestic legislation in the way that seems to be suggested and there is then a challenge, that would be a matter for the courts to decide?

Tam Baillie: As an end point. I will go back. The purpose of having a rights—

The Convener: That is a yes.

Tam Baillie: It is a yes, but the real impact will be on the approach that we take to children's

exercise of that right to play. As of now, to be honest, we pay lip service to children's access to play, particularly that of children with disabilities. They come at the tail end of every consideration.

Yes, the end point may well be a right of redress through the courts, but the real impact will be on the way that we approach play and serve our children by paying proper attention to cognitive and social development through play. We do not pay nearly enough attention to that. In fact, there has been general guidance to state parties that are signatories to the UNCRC on how they can give better effect to that. The real impact will come not through whether this is challengeable through the courts but through how we deal with our children. It is how we make sure that their developmental needs are met through, in this instance—

The Convener: I am sure that we accept that we have to look at both ends of the problem.

Tam Baillie: Yes.

The Convener: Although I accept what you are saying in terms of the cognitive development and rights of children, particularly disabled children, I am posing a hypothesis when I ask whether we are really saying that we want our courts to be involved in considering a potential breach of the right to play.

Tam Baillie: At the end of the day, rights of redress would be built in, but those would not determine what action we take to make sure that children actually enjoy that right to play. That will rest with policies and implementation at the local level. Effectively, the impact will be an improvement to the attention that we give, and how we deal with, children's enjoyment of the right to play. That is the intention of the right—it is not to look just at the end point.

The Convener: I ask Sam Whyte to be brief as I want to move on. I just wanted to clarify that point.

Sam Whyte: In countries where children have enforceable rights, there is no evidence of a massive increase in strategic litigation or children going to the courts. It is rarely in children's best interests to end up in a court environment. That would be looked into in relation to any roll-out of incorporation.

The Convener: Thank you.

Neil Bibby (West Scotland) (Lab): Concerns have been expressed in written evidence and this morning about the weakness of the proposed duty on ministers, which states that they must keep the UNCRC requirements "under consideration". I hope that they do that at the moment. Stronger duties have been suggested, such as duties to have due regard to or act compatibly with the convention. What is your preferred duty, and what

would be the practical effects of changing the duty from keeping the requirements under consideration to the one that you propose?

Tam Baillie: I have already commented on that.

Juliet Harris: We need to look at the qualities of the duty that we want. We want a duty that gives children's rights systematic, accountable and transparent consideration. We want to be able to see, when ministers are considering children's rights, how they are doing that. Are they doing it in every instance? How are they accountable for children in their consideration?

We want to see not only the systematic consideration of children's rights in ministerial decision making, but the impact of that systematic consideration in the decisions that they make around children, and how that decision making translates in terms of policy, legislation and service provision.

I cannot go into detail on exactly what duty we want, but it is really important that, whatever duty we get under the bill, it requires systematic consideration of children's rights across all areas of policy making, including, for example, in relation to the environment and transport, and not just those things that directly relate to children. Ministers should be held to account so that we know what has been involved in their decision making, and we need to see the results and what they found out through the decision in the practical application of legislation.

From our perspective, a duty to act compatibly with the UNCRC would be a strong duty that had all those qualities.

Professor Miller: It is a good question that points to what we said earlier about the need to have a more open, honest and mature debate about the different ways in which incorporation can take place.

We are fortunate in Scotland in that we have quite a lot of experience of devolution through the Scotland Act 1998 and the Human Rights Act 1998 and how they combine as part of the existing constitutional arrangements in Scotland. There has been a lot of learning and, by and large, it would be agreed that the combination of the two acts has worked pretty well. The Parliament is used to the requirement to comply with the European convention on human rights in its legislation, and public authorities understand their duty to act in a manner that is compatible with the ECHR, as do the courts.

A duty to act compatibly with the UNCRC would be similar to the arrangements under the Human Rights Act 1998 in relation to the European convention on human rights. That is just one approach and we need to have an open and

mature debate and learn from the experiences of other countries, but given our experience under devolution, that is one path to be explored.

Sam Whyte: UNICEF UK would like a stronger duty on ministers across Government. As Juliet Harris mentioned, the duty needs to be meaningful and a real departure from the status quo. Fundamentally, we want a duty that covers both process and outcomes. A duty to act compatibly with the UNCRC would work reasonably well, but there are other examples. The original duty that the Scottish Government proposed was a due regard duty. That reflects the legislation in Wales, which has had a transformative impact on the Welsh Government and its approach to children's legislation and policy.

10:30

There are many types of duty, but the principle is to get systematic consideration of children's rights not only in areas that deal with children's services but in areas that do not do that day to day. The key thing for us is to ask about the underpinning mechanisms that make the duty work in practice. At the moment, it feels as if those are missing from the bill, so we are looking for things that will achieve that systematic consideration, whether that is a child rights impact assessment or a really detailed reporting duty.

The bill asks ministers to report on what they have done to implement the convention, so it does not monitor how they are delivering the duty, which is a weakness in holding Government to account. In Wales, one thing that has helped to roll out the duty and to make a difference across Government is a children's scheme that sets out how the duty works in practice. We would welcome more clarity from the minister on how the consideration duty will work in practice. The wording is rather unusual.

Neil Bibby: Sam Whyte mentioned the original proposal in Scotland to have a due regard duty, as there is in Wales. Why does Wales have a due regard duty and we do not? He also mentioned the children's scheme in Wales, and I understand that the Welsh also have child rights impact assessments and that UNICEF has called for those to be in the bill. What difference would child rights impact assessments have?

Tam Baillie: Your first question was why there is no due regard duty in the bill, which has to be a question for the minister. The Government produced a rights for children and young people bill, in which that was the main proposal, but now it is not in this bill, so I think that that is a matter for the minister.

The second question was about child rights impact assessments. We have consistently called

for such an impact assessment, because that would provide a better understanding of the impact of the Government's proposals. I still say at this stage that I would encourage the Government to look at doing that; again, that is something that you might want to put to the minister.

I would like to add something about the ministerial duty, which I have already commented on. This is not just about a ministerial duty but about what happens at the local level. It is public bodies that make a difference and have the responsibility to do their best by our children and young people. It may be worth considering, at stage 2, how we can strengthen the duty on public bodies, because they are the ones that, day in, day out, either realise children's rights or do not.

Juliet Harris: I would like to answer the second part of Neil Bibby's question, about child rights impact assessments. As you know, we have written to the committee on behalf of Together and its members about the need to undertake a child rights impact assessment on the bill. We feel strongly that there is a need for child rights impact assessments to be introduced as routine, in relation to not just this bill but all future legislation, because that would ensure that any unintended consequences of legislation were considered, predicted, monitored and, if necessary, avoided or mitigated.

The committee has spent a lot of time talking about the named person and information sharing, and there is still a debate going on about where the balance lies between the child's best interests, the right to privacy and the need to share information in relation to early intervention. That should really have been picked up earlier in the process, and it would have been if a child rights impact assessment had been undertaken in the early stages of the bill's development. That is a key example to bring to the committee's attention. It highlights the importance of ensuring that child rights impact assessments are introduced in the bill and are routine from now on, to ensure that children's rights are considered in every piece of policy making and that those debates take place earlier on, when legislation is first put together, rather than at this later stage.

Sam Whyte: One of the interesting things about child rights impact assessments is that they are used as a tool worldwide. They are not a new concept and they are very much seen as a way to help develop policy that really works for children. They are used in Wales, and there have been some significant changes there, not least through the increased involvement of children in shaping and developing policy and in being engaged in budget discussions. They are also well used in Sweden, Norway and Belgium, where they have impacted on how Government works.

There are also examples of local child rights impact assessments, not only in Australia and Canada, for example, but here in Scotland. We are working with Glasgow City Council, which helped to develop a child rights-based approach to the delivery of services. Such ideas are being introduced elsewhere, in places such as Fife and Edinburgh. The process is fairly familiar to most people who develop policy or services.

The Convener: You will have seen the correspondence from the Government on the issue. Its view is that much of the work that would have been done through a child rights impact assessment has been done through the work that it has carried out—the consultations and all the other stuff that it has done. Why is it necessary to carry out a child rights impact assessment if all the work has been done but is just not called that?

Tam Baillie: I do not agree with that assessment. It would be much more comprehensive to work through the document methodically with regard to the proposals' impact on children's rights. If what you suggest is the case, it should be no problem for the Government to produce a child rights impact assessment on the basis of the work that it has already done. Despite repeated requests, it has failed to do that, and its reluctance to carry out a child rights impact assessment on the very piece of proposed legislation that is designed to progress children's rights is mystifying. To me, it does not make sense that the Government has not produced a child rights impact assessment, although we have offered it plenty of assistance.

Juliet Harris: In the letter that we received from the minister in which she explained the reasons why a child rights impact assessment of the bill had not taken place, she listed the impact assessments that have taken place: the privacy impact assessment, the equalities impact assessment and the business and regulatory impact assessment. The one thing that is missing there is the specific needs of children and the impact of the legislation on children of different ages. The minister talks about the equalities impact assessment and the fact that the bill has been assessed according to its impact on lesbian, gay, bisexual and transgender children and children with a disability, but that does not take into account how the bill will affect children of different ages. The needs of a very young child are very different from the rights of a teenage child. The bill needs to recognise the different ages and stages of child development, and that would have been unpicked in a child rights impact assessment.

Professor Miller: I will comment briefly, as I know that the convener wants to move on to the

other areas that were identified at the beginning of the meeting.

I agree with the previous comments and will add one thing. On impact assessments, one of the lessons from how Parliament has operated since devolution is that, no matter who is in government, more transparency and more explanations need to be given to the public, not just about views received through consultation but about what the Government made of those views, what analysis it carried out and what reasons it has for agreeing with one point and not another.

As regards the Children and Young People (Scotland) Bill, one of the Government's reasons for not doing more to incorporate the UNCRC was that that might have been in conflict with the perceived rights of parents under the European convention on human rights. A lot of consultation submissions, including one from the Human Rights Commission, said that that created a false conflict, and that the two instruments can be harmonised. If that is the reason for the Government's being hesitant on incorporation, it should be taken off the table. If the Government does not agree with that, let us hear more of its reasons and arguments. We have not had that sort of engagement, transparency or open debate, and that makes it difficult to accept that there has been adequate impact assessment, even on something so straightforward. The issue has not been brought out into discourse, nor has satisfaction been given.

Liz Smith (Mid Scotland and Fife) (Con): Mr Baillie, I take you back to some interesting remarks that you made in your opening statement about one of the difficulties with the bill, which is that there is potentially conflicting legal advice. You said that it was perhaps inadvisable that the committee had taken only one piece of legal advice on this, and implied that other people who wish the UNCRC to be incorporated had different advice. Where do you think that there is a point of conflict between the advice that you have had and the advice that has been given to us on why it is not appropriate to incorporate the convention? I am not asking you to define—

Tam Baillie: No—that is okay.

Liz Smith: Where are the issues regarding a disputed legal opinion?

Tam Baillie: There has been very broad criticism that it is bad law, bad policy and bad practice, but that is simply not the case in the view of other academics and legal experts. As I said previously, I think that the committee should facilitate the opportunity for the conflicting views to come across. The advice that I have had is that it would be possible, within the devolved powers of the Scottish Parliament, to look at the

incorporation of the UNCRC, notwithstanding the point that was raised earlier about the differences between devolved and reserved powers.

Liz Smith: Can I push you a bit further on that? When you say that something is bad law or good law—

Tam Baillie: It was not my phrase; I was paraphrasing.

Liz Smith: There are different interpretations of those words. Do you think that any of the legal opinion that we have been given about specific areas of the bill is not accurate?

Tam Baillie: The blanket statement about it being bad law, bad policy and bad practice has been made. The Government is hesitant—I hope that the committee is not—about going for something more substantial in terms of the UNCRC. I want to dispel that and give the committee confidence that it could go further. I understand some of the reluctance to do so, which is because of the advice and the discourse so far.

Liz Smith: Do you believe that the people who are advising you and others who want incorporation dispute some of the content of the Government's spelling out of why it does not think that the UNCRC should be incorporated? Is there a dispute about that?

Tam Baillie: Yes. I am not clear what the Government's hesitancy is about. I do not think that it has been made explicit. I would be most interested to hear the Government's explanation of, for instance, why it did not go for the option of a due regard duty or why the ministerial duty is framed as it is and is not firmer in terms of what is expected of our ministers. I think that the Government has stepped back from the option of a due regard duty. I gave a cautious welcome to that proposal, although it is not perfect. However, the proposal in the bill is a much weaker ministerial duty. The point of dispute is that we could go beyond where the ministerial duty sits just now. Our legal advice is that we could go beyond that and, even within the confines of devolved powers, look at incorporation.

The Convener: I will bring in Liam McArthur at this stage.

Liam McArthur: I am interested in what Alan Miller said about the interaction between human rights legislation and the Scotland Act 1998. Professor Norrie has probably been the most outspoken critic of incorporation among the witnesses that we have had so far. He suggested that the common-law structure of Scots law makes it inadvisable to go down the route of full incorporation. Just to be clear, is it your opinion that the interaction of human rights legislation with our common-law structure should allay any fears

that incorporation would pose perils and all the rest of it, as has been suggested?

Professor Miller: Yes, absolutely. I know that everyone has their views about this or that case or that judicial decision, but the Human Rights Act 1998 and the Scotland Act 1998 have by and large worked well as pillars of the constitutional arrangements of a devolved Scotland. We are all quite familiar now with what that means for each of us. In addition, there is a provision in the Scotland Act 1998, which is perhaps one of the secrets of that act, for the Scottish Government to observe and implement the UK's international obligations. We can have different legal opinions about incorporation and different interpretations of the implications of that but, from the point of view of the rights of children and outcomes for them, it is ultimately implementation of the UNCRC that really matters. That is already a duty under the Scotland Act 1998 and it really needs to be put into practice much more.

The Convener: Sorry, but can I come in on that crucial point? Many people have said that we have to incorporate the UNCRC, but Professor Miller has just suggested that we have to ensure that those duties, principles and rights are taken forward in Scotland through our domestic law but not necessarily through incorporation. I was going to ask a question to ascertain the practical impact of incorporation as opposed to the cultural impact. Many of you have mentioned the cultural change, but I want to look at what the practical impact of incorporation would be versus doing all the same sort of stuff through domestic legislation without actually going for incorporation. What is the difference?

10:45

Sam Whyte: I will try to answer all those points at once. In common-law countries, the principles of incorporation hold. It is about realising children's rights. The agenda is progressive, but it is legally possible. The Human Rights Act 1998 provides a good model, but it is not the only model and some of the principles that Tam Baillie is seeking, particularly in relation to UNCRC article 3, on best interests, and article 12, on the right to express views, could be incorporated into Scots law for all children.

There is confusion around what we mean by incorporation, whether it is the direct transposition of the UNCRC into Scots law, or something else. UNICEF UK is certainly not suggesting that you should take the UNCRC as written and put it into Scots law. However, we should look at creative drafting and at where we can build on the standards that already exist in Scots law. Certainly the UNCRC was designed to be a minimum standard, so if there are stronger standards in

Scots law, such as best interests being paramount rather than a primary consideration, they trump the UNCRC; that is quite an important point.

Ultimately, some of these discussions come down to economic, social and cultural rights, which are substantive and well-articulated rights. They have been made justiciable in all manner of ways and in all manner of countries, including in UK legislation under the Child Poverty Act 2010.

We therefore have examples of where incorporation is possible. You could go all the way and have direct incorporation, or you could go with principles or ministerial duties. However, the challenge in Scotland and, more widely in Wales and the rest of the UK, is that taking a completely non-legal approach to implementing children's rights means that there can be gaps; some children will have access only to certain rights in certain settings, and things can get missed. That is an issue for children in Scotland in the future.

Professor Miller: I will be very brief because I know that you want to move on, convener. To answer the direct question, there are different models of incorporation around the world. The best practice and most modern trend of incorporation is giving constitutional protection to international human rights treaties. Incorporation can be done in other, less effective ways through specific legislation or administrative means, but giving constitutional status is regarded as modern best practice.

What that means in Scotland pre and post-referendum is where we are at just now. If we get devolution, one way would be to give status to the UNCRC and other international human rights treaty obligations within the Scotland Act 1998, or writing into a piece of legislation such as the bill that the overarching framework and direction should be implementation of the UNCRC.

The Convener: We cannot do that. We cannot put that into the Scotland Act 1998. The UK Government would have to do that.

Professor Miller: That is right. If we have an independent Scotland, it could be part of a written constitution.

The Convener: I am sure that you are very keen to speak, Tam, but surely that has covered the point.

Tam Baillie: I will pass on it.

The Convener: Thank you. I want to move because we want to cover a number of areas.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to look at the part of the bill that enables the children's commissioner to investigate individual complaints. One of the first things that jump out is the assumption in the

financial memorandum that there will be between one and four investigations per year but that that will require three extra staff and £160,000. That seems to me, as a layman, to be an awful lot of money. Is it in line with what other bodies require for individual investigations?

Tam Baillie: That would be true if the power to investigate were the only power to be introduced, but two powers will be introduced for the children's commissioner. The first is a power of investigation, which it is estimated will be used between one and four times per year, although the financial memorandum says that that figure is "speculative". Underneath that, there will be a power to investigate without recourse to formal investigation. In my estimation, that will involve hundreds of cases; I say that from the experience of my office not having an investigatory power but still getting hundreds of inquiries, many of which could be regarded as complaints under the new arrangements. Even if there are only one to four formal investigations using the full powers of investigation, there is another section in the proposed legislation on the handling of individual complaints, and you need only look at the number of complaints handled by our complaint scrutinising bodies to see how I arrived at my estimation of where the major resource implications will be for the office. Hundreds of complaints will come in that can be stopped short and dealt with without going for full investigation.

Colin Beattie: Would three extra staff handle hundreds of investigations?

Tam Baillie: I have been in discussion with the Scottish Government about the resources that would be required. I am reassured by some of the measures that the Government says it will review, such as information technology and staffing requirements. There is a certain amount of estimating going on, but it would be wrong to look at the additional resources to the commissioner's office just through that lens of formal investigations. The main impact will come from those cases that come to the office as a result of complaints being made that do not require full investigation.

Colin Beattie: Under the proposed new powers, the commissioner will have powers only of recommendation in relation to complaints. How is that going to work?

Tam Baillie: That refers to the powers of recommendation following full investigations. If you look at our scrutiny landscape and ask any of the scrutiny bodies, you will see that there is an absence of complaints from children and young people. I think that it is my responsibility to build on the work that has already been done on direct contact with children and young people. This is not about an investigatory power of last resort; it is

about early resolution, so that we improve children's situations without having recourse to formal complaints procedures. In the majority of instances, I would expect to be liaising with local public bodies, as I said earlier, because they are the authorities that will improve children's lives. That effort will not just be focused on the investigatory power.

Colin Beattie: Do you feel that having the power to make recommendations is sufficient?

Tam Baillie: Yes. If that is how we conduct a full investigation, I would expect recommendations to be made with timescales for review and the opportunity for public bodies to report back on what action they have taken as a result of the recommendations. I would not put it more strongly than that, but in the majority of instances it will be about early resolution by agreement.

Colin Beattie: The bill does not allow the commissioner to investigate issues that could be investigated by somebody else. Can you give some examples of how that would arise?

Tam Baillie: That is already in the existing power. In fact, I have been encouraged by the discussions with other scrutiny bodies, facilitated by the Scottish Government. The power is framed in such a way that an investigation can take place where rights, views and interests have not been properly taken into account. That is a wide-ranging scope of responsibility, and if those powers are agreed by Parliament, part of the responsibility on me will be to narrow that down so that it makes sense to children and young people and so that it makes sense in what is quite a complicated scrutiny landscape.

Colin Beattie: One area where there is potential for overlap is with the Scottish Public Services Ombudsman, whose written evidence states:

"it is not immediately clear from the legislation where the boundaries between their and our role will be."

The ombudsman covers the public sector, but the commissioner covers the voluntary and private sectors as well. How do you see those overlaps being resolved?

Tam Baillie: We are in active discussion with the Scottish Public Services Ombudsman and with the other scrutiny bodies to ensure that the power is neither too wide, so that it becomes unmanageable for the office, nor too narrow, so that it does not achieve the redress that the Scottish Government has stated in its framing of the powers in the bill.

Colin Beattie: On a general basis, do you know of cases that you would have wished to follow up but were not able to follow up?

Tam Baillie: There are several instances where cases come into the office and I tentatively send probing letters to those concerned while knowing full well that I do not have power of investigation as it stands now. We have to respond to those cases because people often come with legitimate concerns when they feel that the rights of the child or children about whom they are concerned have not been taken into account. Those cases get a response at local level, but I could take them further if there was an investigatory power. In fact, I want early resolution of complaints. I do not want complaints to come up routinely to the commissioner when they could and should be dealt with at local level.

The Convener: Thank you. May I push you a little bit on some of that? You said at the beginning of that line of questioning that you would expect there to be hundreds of complaints that you might want to look at—

Tam Baillie: That may come to the office.

The Convener: I am trying to get to the nub of this because the bill is quite clear. I have it in front of me and you know well that, as it is drafted—it is in section 5(2)(2A)—you cannot investigate an issue that someone else could investigate. Could you give some specific examples of those cases that you mention that could not be investigated by somebody else?

Tam Baillie: The Scottish Public Services Ombudsman considers process. Much of that consideration of a complaint is whether proper processes have been followed. I would get in at an earlier stage, where there are legitimate complaints that children may make. Take for instance the example that I gave at the top of my evidence, of children leaving care at too early an age, who are then out of the care system but feel that they are of an age when they should be provided with additional supports, even with additional care placements. The committee has that under consideration now, with the leaving care proposals. That is the kind of instance in which I would consider there was a role for the commissioner, in terms of the full investigation.

The Convener: If a young person leaves care, the current rules are pretty clear, no matter what we think about the age at which they leave care. They can ask for help and that is assessed by a local authority and so on. What is your role in that case?

Tam Baillie: If they are still 16 or 17 and leave care and subsequently become homeless, it is arguable that they are the on-going responsibility of the local authority. Right now, those young people languish in those particular placements. We do not revisit young people who are in that position. You asked for an example.

The Convener: Is that not the role of somebody else? Is there nobody else who would be involved in that case?

Tam Baillie: I am not aware of anybody else picking up those cases.

The Convener: If that is the case, that is an example of one that nobody else is investigating. What would be the purpose of your investigation in that case? What outcome would you expect of that investigation given that, under the rules, nothing would have gone wrong?

Tam Baillie: I come back to the different levels of power. We elevate complaints to the level of investigation only in exceptional instances. Most of this is about resolution at an early stage. Given early notice and the speed to be able to respond to it, we should get in at that early stage without taking it through formal investigation.

The Convener: We are going around in a circle here. What is this formal investigation? What are the specific examples of formal investigations that you would undertake that nobody else could undertake?

11:00

Tam Baillie: We are still developing those criteria, but they will relate to serious breaches of children's rights of such significance that they would have an impact on the practice of public bodies in general. In all likelihood, such cases will have gone through other complaints processes. After all, my objective is to ensure that local complaints processes are, where possible, used at the earliest possible stage.

The Convener: Given that definition of what you would investigate, which I would agree with, it sounds as if we would be talking about a very small number of cases.

Tam Baillie: It is still a matter of speculation whether we are talking about one to four cases, but I point out that those are the formal investigations, not the complaints. The complaints will be resolved early on or will be elevated to full investigation. We still have to work things out in that respect. I have provided a very rough outline of the kind of criteria that I would be looking at for formal investigations, but the key point is that the bulk of the work that will take place under the individual complaints-handling procedure will consist of individual complaints that have not been elevated to full investigation status.

The Convener: Thank you. Liam McArthur has a supplementary question.

Liam McArthur: On a similar theme, my understanding is that in referring complaints to, for example, the ombudsman the person in question

must demonstrate that all local avenues have been exhausted. From your comments about early intervention and resolution, it appears that that will not be a requirement on a complaint that is brought to the commissioner.

Tam Baillie: We need to act speedily on complaints from children and young people, and making them exhaust all local complaints processes would not be the best approach. It might be that I will have to refer a high number of cases back to those local processes, but I do not think that setting such a criterion would assist children and young people who wish to make complaints and who wish the commissioner to handle those complaints.

Liam McArthur: But are you not running the risk that those local avenues might be routinely circumvented? Are there not good and sound reasons why all local avenues should be exhausted first? Perhaps—and I suspect that the ombudsman will agree—early intervention might prevent a situation from reaching a certain extent by the time it is referred to him.

Tam Baillie: The answer is no because of the judgment that my office will be exercising. I have mentioned several times that we will refer and signpost back to existing complaints processes; in fact, those processes are my preferred option.

Having discussed the operation of this approach with several local authorities, I have in the main been encouraged by their response with regard to setting it up. Some time between now and the bill's enactment, we will look at the detail and discuss how wide the scope will be, how we will interpret it and how it will sit with other investigatory bodies. I think that memorandums of understanding will form the basis of our relationship with those bodies, and we will need to be clear about how we look at cases that should have but which have not been dealt with at a local level. It would definitely be my preference for local complaints processes to be used.

Liam McArthur: So you do not think that there is a risk that you would be intercepting processes that would otherwise be followed by the ombudsman or, indeed, that you may subsequently act as a point of contact for those who have exhausted their lines of inquiry with the ombudsman and are looking to challenge findings.

Tam Baillie: I do not want to create another complaint-handling layer; I am interested in resolving the problems of children and young people at the earliest stage. You are right to suggest that judgment must be exercised to ensure that the power is not seen as meddlesome. As I said earlier, we will ensure that we refer back to what is happening at local level, because that is

where changes and improvements can be made in children's lives.

The Convener: I want to pick up on this issue, because I am still not clear about it. You said that this would be a judgment and you mentioned what your preference would be. Are you saying that you have the right to decide whether to intervene in these cases at an early stage? That is not the case with other bodies that investigate such matters, which automatically send back cases that have not gone through the proper and full process.

Tam Baillie: Yes. As the bill is framed at present, it gives discretion to the office of the commissioner. I am saying that I will use careful judgment in how it is exercised.

The Convener: So you will have that discretion. If you took up a case at an early stage because you decided that it was right to do that rather than refer it back through the full process, and then you investigated it and it went through whatever process—

Tam Baillie: I would case handle it at that stage rather than—

The Convener: Okay—you would not investigate it, but you would be involved in it. If, at the end of the day, it came back to you as a formal complaint for investigation, where would that leave you? You would have looked at it at an early stage, and then you would look at it again at a later stage.

Tam Baillie: Yes. That is a fair point. In setting up the complaints function, I will have to look at that possibility. It is quite a tricky process. We are considering it now and we have an opportunity to continue doing that as the bill proceeds, but it is a fair point and one that I need to attend to in setting up the function and considering how it will operate so that we do not compromise the formal investigation.

The Convener: Indeed. In effect, you need to do that for your own protection.

Tam Baillie: I agree.

The Convener: Thank you. We have questions from George Adam.

George Adam: Good morning. My question is about named persons and information sharing. Last week, Bill Alexander from Highland Council told us that, as a practitioner, things have moved on dramatically for him with the model that the council now uses in that it can get information and proactively deal with children and young people's issues.

Section 26 states:

"A service provider or relevant authority must provide to the service provider ... any information which ... the

information holder considers ... might be relevant to the exercise of the named person functions”.

Are the provisions on information sharing needed in order to ensure that the named person service works properly?

The Convener: We will start with someone other than Tam Baillie, if he does not mind. I will give him a rest.

Juliet Harris: I am afraid that I will not be very good at answering the question. We have been debating the issue among Together’s membership and there are mixed perspectives on whether the provisions in sections 26 and 27 are needed or whether it would be possible for the named person function to operate effectively within the current information sharing parameters.

As a membership organisation, we do not have a consistent view among our membership on whether we need sections 26 and 27 or whether robust, clear and concise guidance would fulfil the role instead. We agree that it is essential to get the right balance between the child’s right to privacy and the need to share information, and we also need to ensure that we consider the best interests of the child. Whatever information sharing provisions are introduced through the bill, they must ensure that practitioners can make clear, good judgments about when to share information and also when to act on it when it is shared. We must ensure that any information sharing is appropriate, relevant and in the best interests of the child.

I am afraid that we do not have an exact position on whether sections 26 and 27 are needed, but there is agreement that they are not precise and clear and that the wording needs to be changed if they are to be included in the legislation.

Sam Whyte: I concur with all of that. I simply add that the right to privacy, whether it is under the ECHR and the Human Rights Act 1998 or the UNCRC, is really important for children’s confidence in approaching services when they have a problem in their lives. There is something missing from the bill—if indeed it is necessary to lower the threshold from significant harm to concern about wellbeing—in that there is an issue of informed consent, particularly in relation to children. They need to know where the information will go, what it will be used for and where it will end up. That principle needs to be at the heart of any child rights approach to looking at information sharing.

Professor Miller: Going back to our earlier discussion, one of the advantages of having an overarching rights-based framework is very relevant to the bill. The named persons provisions, as regards both the information sharing and any

intervention by a named person, have the potential of interfering with the rights of both parents and the child unless the bill is consistent with the existing human rights framework and an element of proportionality is used. That is required under the Human Rights Act 1998. The bill needs to be interpreted and applied in a way that is consistent with the right to respect for private and family life, which governs information sharing and state intervention into family life.

It could be clearer. One would hope that training and guidance can address the connection between the bill and the existing framework of the European convention on human rights—let alone the UNCRC, to refer to the discussion that we had earlier. The lack of a clear recognition of the framework in which the bill sits understandably gives rise to some concerns. It can be made to work, but it would be made to work most effectively if more explicit references were made to the existing law whereby any intervention or information sharing must be done when it is proportionate—the minimum necessary to achieve the aim, whether that is preventing harm to the child or ensuring the child’s privacy or that of the parents.

More explicit guidance is needed, if not in the bill—which is preferable—then certainly in training, guidance, best practice and so on.

The Convener: In March this year, the information commissioner stated:

“proportionate sharing of information is unlikely to constitute a breach of the [Data Protection] Act in such circumstances.”

That was in reference to a risk to a child or young person that may lead to harm. In other words, it was not that the harm was actually happening but that it might happen. We are talking about the wellbeing point in the cycle, and the information commissioner seems to think that, as long as the sharing of information is proportionate, it is a reasonable thing to do. Would you agree with that?

Professor Miller: Yes, but it would be better if that were more clearly understood and shared by practitioners, and if they did not think that there was some distinction between what the bill is trying to do and where the threshold is, and what I am saying and what the information commissioner is saying. There needs to be more coherence.

Tam Baillie: I support the named person provisions, although they are not perfect. A named person must be considered for three to four-year-olds, who spend a lot of their time in nursery provision, through private, partnership or state providers. That point needs to be considered.

The key point is about the resources for health visitors. It is not a matter of whether or not they

can carry out the function of named person; it is about whether they can carry out the function of health visitor. The Government has chosen to overmap that with the function of named person. I endorse the previous evidence that you have received from the Royal College of Nursing and others regarding the urgent need for us to do something about health visiting. In principle, however, I absolutely support the named person provisions.

I wish to comment on how section 26 is framed. You have rightly made the point, convener, about the issue being one of wellbeing, which we define as safe, healthy, active, nurtured, achieving, respected, responsible and included—

The Convener: You are better just saying “SHANARRI”.

Tam Baillie: That definition is very wide. The duty as currently framed is that, if some information might be relevant, it ought to be shared. That is a very wide scope, and it is a significant shift from instances in which there is a risk of harm.

Therefore, you may be advised to consider amendments at stage 2 regarding how specific that wording could be, particularly the word “might”. The provisions read as if there is virtually no information that someone would not share, just in case it “might be relevant”. There is a responsibility that information holders ought to share it. There is potential to tighten up the bill so that the provisions become proportionate; I think that the way in which they sit now is disproportionate to the intention. The provisions are well intentioned. We want to capture those children whose wellbeing is being compromised and who are living in neglectful situations. That is exactly what we want to do—but we do not want to have too much information.

11:15

We have examples of where too much information causes difficulty. Through the 2000s we had a year-on-year increase in referrals to the Scottish Children’s Reporter Administration, mainly on the back of the police automatically referring children who were involved in domestic abuse incidents. That almost brought our system to its knees. You heard last week about the better management of that process through pre-referral screening to sort out the children who we are genuinely concerned about from those who are just caught in the system. We must give serious consideration to the issue. I agree that there should be an increase in information sharing, but it must be proportionate to the objective that we are trying to achieve.

George Adam: I am a practical man and I am trying to establish how we can make the system work in the real world. Bill Alexander told us how the system worked in Highland Council. The only issue that Highland Council seemed to have with the named person was when the process was not enacted. Once people involved in the process understood what it was about and what it could offer, they saw it in a positive light. He also mentioned that the whole system is based on the getting it right for every child principles and that information sharing is done according to best practice in line with the information commissioner’s ideals. With all that in mind, is that not a practical, sensible, successful way for the model to go forward?

Tam Baillie: Yes. You must remember that Highland Council has developed the model over 10 years and has done it in the absence of legislation. If we are to try to have consistent practice in Scotland—I understand why that is the case—we have to be very clear about which duties we put in the bill and how they will be enacted. I flag up that the committee might want to look at some amendments to the precise wording of section 26 so that it has the same intention as the current provision but a much more proportionate impact on people at local level.

The Convener: Before I bring in Liam McArthur, you said that section 26(2)(a) is disproportionate where it refers to information that “might be relevant”. Section 26(4) states that

“Information falls within this subsection if the information holder considers that”—

and goes on to describe and define how that provision would operate. Do you not think that that is sufficient?

Tam Baillie: We are getting into a stage 2 debate. I would prefer it if section 26(2) said “which is relevant” or “is considered relevant” as that would tighten the definition. You must remember that you are putting duties on people where they ought to share information, so you want to be as clear as possible, particularly since the definition is that of SHANARRI, which is very wide-ranging. The intention is still the same: it is to ensure that we capture the children who we are concerned about in relation to whom the sharing of information does not take place. It is a debate for stage 2.

The Convener: I am concerned that, if we tighten the wording up in the way that you suggest, we effectively will not make the progress that we all want to make.

Tam Baillie: That is a matter for debate. As the provision sits at present, you will have to be very clear in the guidance about exactly what pieces of information ought to be shared. My understanding

of SHANARRI is that it is a deliberately wide-ranging definition of wellbeing for our children.

Liam McArthur: I will follow up on that point. You have talked about the risks that are associated with the broad terms of SHANARRI. The other element is the lack of consent for the information sharing. Is there a risk that when consent should not be a factor—when there is perhaps a risk of harm—the bill casts a degree of doubt about information sharing generally and therefore people will not make a distinction between welfare and wellbeing, which poses problems? The point that you made about Bill Alexander's evidence is pertinent, as Highland Council is operating in a pre-bill environment, but when you start putting stuff into legislation it becomes a bit clunky and is rather a blunt instrument, so we must get the wording right. Is there a risk that the question of consent bleeds into cases where the issue is welfare?

Tam Baillie: You have to carry parents with you. We are principally talking about parents when the information is shared. By and large, good practice would be that people are aware of information sharing, that it is consensual and that people know exactly what is happening. You would need to build that into the guidance, given that there could be a wide scope for information sharing. I do not think that it is the bill's intention to have such a wide scope for information sharing, but my reading of it is that that could be its impact. You could avoid some of the difficulties of too much information being shared if you narrowed down the definition.

Liam McArthur: In terms of welfare, it is very easy to see why you would not necessarily want to go down the route of securing consent, but I struggle to see why that might be relevant in the case of wellbeing. Can you help me on that?

Tam Baillie: I return to what you will put in the bill and the expectations of the officers or workers who are responsible for trying to interpret what they ought to share. It is not so much about the sharing of information but about what people do with the information. The Western Isles report shows that information was shared time and again but not acted on. The guidance must indicate the purpose of sharing information and there should be an expectation that action would flow from that. Focusing on information sharing per se might mean that some key aspects would be neglected. What is required is more informed action for children whose wellbeing might be compromised.

Clare Adamson: I want to ask about children's rights and getting it right for every child. Given that GIRFEC will be put in statute as a result of the bill, the Government has produced a recent report, which states:

"The GIRFEC approach has been built up from the UNCRC. Accordingly, ensuring that the approach applies in the way public services operate will put the UNCRC into practice for each child."

The report has done quite comprehensive mapping of SHANARRI within the GIRFEC principles and the UNCRC. Do you agree with the Government's position on that? If not, can you say what you think is missing in the Government's rights perspective on GIRFEC?

The Convener: Professor Miller, if you do not mind.

Professor Miller: Sorry, but I thought that the question was directed at Tam Baillie.

The Convener: I am sure that he will contribute in a moment

Professor Miller: Tam Baillie might say more on the specifics, but more broadly, I think that there is a lack of consistency between different parts of the bill. For example, we had a discussion earlier about the investigative and complaint handling powers that are given to SCCYP, the section 1 duty and the UNCRC. Parts of the bill talk about wellbeing, the named persons and the service plans, other parts talk about the duty on the Scottish ministers and other parts talk about SCCYP being given the power to take into account the rights, views and interests of the child. There is no consistency. I think that that is the Scottish Human Rights Commission's concern.

Whether we are talking about information sharing, intervention, or how Tam Baillie and his colleagues go about using the powers that they are given, those powers can best be used only in the shadow of what the law is. If you do not have a law that enshrines the rights, views and interests of the child, that will impact on the effectiveness with which you can handle complaints or conduct investigations. Therefore, there must be greater consistency throughout the different parts of the bill. As we said at the outset, if the bill had a more explicit reference to the UNCRC and to the existing human rights framework that is provided by the Human Rights Act 1998 and the European convention on human rights, a lot of the bill's inconsistencies could be reconciled in a way that would make the bill much more effective and lead to better outcomes for children.

Sam Whyte: One of the realities for children is that rights come into their own at a local level in their day-to-day lives. We were quite disappointed not to see in the bill a duty on public authorities to implement the UNCRC, which would reflect the duty that has been proposed for ministers. There is a reporting duty on public authorities in relation to the UNCRC, which is very welcome, but it is limited in that it does not require an action. One would hope that best practice in the

implementation of GIRFEC would achieve that, but unfortunately it is our experience and that of others that that is not always the case.

One of the reasons for the lack of a child rights framework permeating the whole bill is the fact that the original two bills have been merged into one. There are some obvious points in part 3 of the bill at which you could begin to build that child rights framework at a local level to support the full roll-out of GIRFEC across Scotland, whether that is done by stating explicitly in the bill that children and young people need to be consulted when children's services are being planned throughout the local area, or whether there is an explicit requirement to consult a child on the content of his or her individual plan.

Juliet Harris: I echo what Alan Miller and Sam Whyte have said. Together believes that there is much scope for greater consistency and coherence across the different parts of the bill. That is missing as a result of the fact that, rather than GIRFEC coming from the UN convention, Jane Aldgate's research, to which you referred, shows what GIRFEC is and maps the convention into it, instead of having the convention as an overarching framework for children's rights by which GIRFEC is underpinned. It is a bit of a back-to-front exercise and that is why the bill lacks coherence.

There is a lot of scope in part 3, and we welcome the duties around children's services planning, but the aims of a children's services plan are all framed around wellbeing and we feel that, although part 1 concentrates on children's rights, part 3 is about delivery of services that have a greater day-to-day impact on children's lives, as Sam Whyte said, and they are underpinned by wellbeing. We think that there is therefore scope to bring the rights duties into part 3, so that children's services planning is underpinned by rights and wellbeing. In that way, we can have coherence between the ambitions of GIRFEC in promoting children's wellbeing and the principles that are enshrined in the UNCRC around children's rights.

At stage 2, there will be a lot of scope for amendments to bring together rights and wellbeing, to ensure that all elements of the bill, from the aims of children's services planning and of named persons, are underpinned by rights as well as by wellbeing.

Tam Baillie: In many instances, children's rights are realised in Scotland—you can put together documents to show where their rights have been realised—but too often, they are not. Part 1 of the bill contains a requirement to produce reports on the steps that public bodies have taken to better realise children's rights. I think that you could improve on that by requiring action as a result of that, rather than just having a reporting

requirement. In that way, you will get some of the consistency that witnesses have talked about and you will marry up ministerial duties and duties at local level, because it is at local level that that really counts. I strongly recommend that the committee look at the place of public bodies in the ambitions that have been laid out in the bill about Scotland being the best place in the world for children to grow up.

The Convener: I thank the witnesses for their evidence, which has been very interesting indeed. We have covered a lot of issues, and I appreciate you taking the time to come to the committee to give us your views.

Our final evidence-taking session on the bill will be next Tuesday, when we will hear from the Minister for Children and Young People. I am sure that many of the issues that have been raised today and in other oral evidence sessions, and in all the written submissions, will be put to the minister next week. I thank all those who have given oral and written evidence for their contribution to our work.

11:29

Meeting suspended.

11:32

On resuming—

Draft Budget Scrutiny 2014-15

The Convener: Agenda item 3 is an evidence-taking session on the Scottish Government's draft budget for 2014-15. The committee has agreed to focus its scrutiny on the Government's youth employability commitments, their funding and how the policy focus on younger learners has impacted on lifelong learning, and I welcome to the meeting John Henderson, chief executive of Colleges Scotland; Laurence Howells, interim chief executive of the Scottish Further and Higher Education Funding Council; and Gordon McGuinness, head of industry and enterprise networks at Skills Development Scotland.

Before we move to members' questions, I have a general question for the panel. The Government has made various youth employability commitments that we will no doubt get into the detail of, but I wonder whether it would be useful if you could set the scene for those commitments and briefly outline the progress that has been made by each of your organisations in helping to deliver them and the progress that still has to be made.

Gordon McGuinness (Skills Development Scotland): Thank you for the invitation to give evidence. We are working hard primarily around the modern apprenticeship programme. Last year, the programme was delivered to 25,000-plus people—indeed, that is our target for this year—and the vast majority of those apprenticeships went to young people between 16 and 24. The programme is working well with a good success rate for sustainability into employment, and we will build further on it.

As a result of moving to a co-commissioning model for our employability fund, we have put a number of initiatives such as training for work and get ready for work into a common fund and have co-commissioned them with our local authority employability partners. It is still early days as far as that change is concerned, but initial results have been positive and we maintain a strong focus on progression into sustainable employment.

We are heavily involved with our local authority partners in the wage subsidy programme, the youth employability Scotland fund, and in promoting that activity through the combined our skillsforce website. The website is focused primarily at employers to ensure that they understand the offers not only from national organisations such as Skills Development Scotland and Jobcentre Plus but from local authorities, a number of which have allocated additional funds for wage subsidy and have put in

place additional support measures to get young people back to work.

Things have gone pretty well but the economic climate is still very challenging and there are still a large number of employers that we would like to commit to recruiting young people. Through the Scottish skills planning model, which we refer to in our submission, we are highlighting the cross-sector work that we are doing and some of the demographic challenges that certain businesses are facing, and we are encouraging more employers to commit to recruiting and developing young people to give them business continuity and sustainability.

Laurence Howells (Scottish Further and Higher Education Funding Council): I, too, thank the committee for inviting me to give evidence. Our main actions to support all Government policies are set out in the outcome agreements that we negotiate with universities and colleges; as you know, that process is now two years old and is heading into its third year.

The expectations that we place on colleges and universities are based on what they address in their outcome agreements, and we negotiate improvements with them. For example, colleges are expected to set out in their outcome agreements their role, along with other partners, in delivering opportunities for all; to plan the curriculum taking into account local employers' needs and their local demographic; to dovetail their provision with other partners; and to increase success rates and reflect improved quality of provision in the targets that they set for themselves.

The shift towards provision for young people across the whole of Scotland in the recent set of outcome agreements, with 70 per cent of all provision now focused on young people, is reflected in our current priority. Of course, the situation will vary in different regions because the agreements that we strike with individual regions will, quite rightly, be different depending on their different circumstances.

I also want to mention our role in relation to universities, which, after all, will have a similar if not quite as direct impact on this target group. Our expectations in that respect relate to the universities' role in widening access; in that regard, it is particularly important that I highlight the extra impetus that we have given to two plus two and one plus three arrangements with colleges, whereby people or indeed young people can start on a higher national certificate course and then seamlessly progress to degree-level provision, by providing an extra 1,000 places in that area.

We are on a journey with outcome agreements, which essentially articulate what will be provided in return for the funding provided to colleges and universities, and I look forward to the set of agreements that we will negotiate in the autumn. I think that we have already reached common agreement on their structure, their content and the ambition that they should express.

John Henderson (Colleges Scotland): It is clearly very important for colleges to respond to young people's needs. As we know, high youth unemployment is a huge problem in Scotland and colleges are very much at the forefront of giving young people the skills to move into the labour market.

As Laurence Howells said, there has been a refocusing of college activity, and that has been due not only to a steer from Government but to the funding constraints that colleges have been under and the choices that have had to be made. Young people have been prioritised, but a price has been paid with regard to lifelong learning and adult learners going into colleges. No doubt we will talk about that later.

Nevertheless, the colleges have been delivering what they have been asked to deliver through the regional outcome agreements and are preparing these young people; indeed, as Laurence Howells pointed out, 70 per cent of college activity is focused on them. Of course, that is all taking place against a backdrop of deep cuts in college budgets over recent years and there have been consequences for other learners.

The other issue that I want to mention in this context is the huge structural change that colleges are going through. Despite that huge structural reform, which is being carried out very successfully, colleges have kept their eye on the ball in delivering for these young people. That has been a huge challenge for colleges but it has also been a great success.

The Convener: Thank you. We will go on to talk about a number of areas of concern to members, and we will start with Clare Adamson.

Clare Adamson: I will concentrate on youth unemployment, which the Government is right to focus on. As a member of the European and External Relations Committee, I am aware of how big a challenge it is across Europe, not just in this country.

In the 2014 budget there are cuts to the education maintenance allowance and to the post-16 transition to employment. What impact will those cuts have on tackling youth unemployment?

The Convener: Who wants to start? Does anyone want to say anything? My eye has come to rest on Gordon McGuinness.

Gordon McGuinness: That is fine. Those cuts will not be in areas that affect SDS. We are trying to deliver greater efficiency in the reach of our services and how our staff deliver and we know where we are with public service funding—there are financial constraints. We seek to make the best use of the funds that are available to us directly and to work in partnership with, for example, the third sector and others to make our resources go that bit further. The cuts to the EMA and in other areas do not directly impact on SDS at this stage.

Laurence Howells: Our main concerns are college funding and the student support funding that we provide. As we have said before, it is good news that the college budget stabilised in cash terms, so from our point of view, that enables there to be provision.

On the student support side, which is next to the EMA question, it is worth mentioning that for 2013-14, we were pleased that we were able to increase the rates per head of that funding. I am not aware of the detail of the EMA funding; I apologise for not having an answer for that one.

John Henderson: The interim report from the Wood commission is hugely important on the point about the transition of young people into college and the labour market and there is great potential for improvement in that area. We have taken our eye off the ball of young people and colleges working in partnership. My submission shows quite a fall in the number of college and school partnerships. The Wood commission report is very welcome and we could deal with it if the resources were available for those partnerships, which help to make the transition less of a cliff. If students at school can get used to going to college for part of the time, and vice versa, there would be a much smoother transition between school and college, as well as in preparing for the labour market.

I do not have the detail on EMAs, but it is fair to give credit to the Scottish Government that we still have an EMA system in Scotland. The number of young people coming through into the college system shows that, in spite of restraints on funding, the EMA cuts are not proving to be a disincentive to people coming to college.

Neil Bibby: Given the focus on the provision for 16 to 19-year-olds, particularly in colleges, why has the number of young men who are not in education, employment or training increased from 14.7 to 14.9 per cent, and the number of women who are not in education, employment or training increased from 10.1 to 11.7 per cent in 2012-13? The question is for all three of the witnesses.

Gordon McGuinness: The numbers will vary according to labour market performance. Compared to the UK, we have made good

progress north of the border. We do see regional variations in the level of unemployment and we seek to work and deploy our resources to address such regional disparities. However, that is subject to the general rises and falls in the labour market. We have made reasonable progress in challenging economic circumstances.

11:45

Laurence Howells: I think that that is right. The difficult economic circumstances and the challenges that young people face lead to a need for more and better provision. Improving the connection between schools and colleges, as John Henderson mentioned, and SDS improving the guidance and advice that we offer to young people on how to progress their lives are key in that respect. That also points to the need for us to continue to focus resources on that group and perhaps be more inventive in the future about the kinds of provision that are available. As John Henderson said, the Wood commission might have some ideas to offer in that field.

John Henderson: This is speculation—I do not have any evidence for it—but I think that, because of the changes in the labour market, whereby there are more higher-level service jobs, young men are finding it more difficult to get entry-level jobs in the labour market. I think that the Wood commission idea of introducing younger people to vocational skills might be more motivational for young males than for young females. I am speculating that there could be more of a problem for young men with low skills entering the labour market than there is for girls.

Neil Bibby: The number of young people who are not in employment, education or training has gone up in spite of the focus on 16 to 19-year-olds, so I am not sure that the situation is fully down to the labour market statistics, but I take your point. In that case, how do we measure the success of opportunities for all? How do we know that it is having the required effect, if the number of young people who are not in employment, education or training is going up?

Gordon McGuinness: Opportunities for all is a broad strategy. SDS measures its performance in that regard regularly—we report to the Government on a six-weekly basis—and we measure ourselves against the national performance framework. As an overall offer, opportunities for all covers a whole spectrum of activities. It is a Government offer.

We have intensified the support that we provide through job coaches, not just in schools, but for young people in the NEET category, and we aim to provide a follow-up service for all those young people. Regular contact is made with young

people in an effort to get them back into active learning and other activities that will progress their employability.

Laurence Howells: It is also worth saying that the agencies work together. We regularly meet SDS, which tracks information on students and offers information, advice and guidance. Our key question—with SDS and the other partners, such as the community planning partnerships—is to what extent colleges are playing their part in delivering opportunities for all. That leads to questions about the type of provision that is available, which is one of the reasons why we have encouraged colleges to offer more work placements as part of their courses. To build on John Henderson's point, we all recognise that the experience of working while in a learning environment is good from the point of view of increasing people's motivation and participation.

John Henderson: I honestly do not have any easy answers. It is clear that there is a structural youth unemployment problem, as well as a problem that relates to the economic recession. The labour market has changed over the past decade and young people are finding it more difficult to enter. Colleges cannot change the labour market. All that we can do is try to address the situation by enhancing the adaptability of young people who come through the college system. As well as giving them narrower vocational skills, we can give them broader employability skills. One hopes that, when the economy picks up, they will be able to adapt and go into the labour market.

On enterprise, colleges are preparing young people for a different type of labour market in the future, in which they can create their own business. We know from our daily experience of dealing with small and medium-sized businesses in Scotland that many of those business owners have come through the college system and have made a great success of setting up their own business and then going on to employ people. Colleges are playing a role in changing young people's mindset and helping them to view that as a possible route for them. Colleges are offering that enterprise approach through their education system.

Neil Bibby: I agree with Mr Henderson that colleges do fantastic work to help young people back into employment. However, given the budget cuts, there are concerns about course provision and lack of choice. What happens if a young person cannot access the course that they wish to study? How flexible are the opportunities for all scheme?

John Henderson: I will answer that, and I am sure that my colleagues will too. The proposition has never been that a young person going to

college can do any course that they want. There has to be a match with what can realistically be provided. There must be realism about what the labour market in a particular part of Scotland can deal with when matching a young person with course provision. There has to be negotiation around that, rather than someone asking why they cannot do the course that they want, although the college does not offer it.

Laurence Howells: It is important that colleges work hard to try to match learners with the right course for them, taking into account their skills, experience, learning stage and ambitions. It is also important that the college has a duty to refer anyone who comes to it for provision that it does not offer or that is not right for them, to somewhere else that might be better for offering the provision.

Gordon McGuinness: At a local level, we work in partnership with our community planning partners in assessing where young people are in the skills and employability pipeline and looking at the various offers that are available to them from not just us and the local authority, but potentially other voluntary sector partners and the local college.

In relation to SDS's contribution to the opportunities for all scheme last year, we had 12,700 young people going through modern apprenticeships and 9,500 going through the get ready for work programme. Fairly significant numbers were supported.

The Convener: I will briefly follow up this line of questioning. The figures for youth unemployment in Scotland are lower than those for the rest of the UK and the employment rate is higher than that in the rest of the UK. However, I think that the overall figures mask a lot of individual differences. Mr Bibby read out earlier figures for male and female 16 to 19-year-olds who are not in education, employment or training. The male rate stayed pretty static in 2011-12, but the female rate went up from 10.1 to 11.7 per cent. The overall increase is almost completely due to the increase in the rate for young women. What actions do your organisations take to address that kind of statistic? The circumstances are that, for whatever reason, the figures for young males not in education, employment or training have stayed pretty static, but those for young women have increased, so young women are affected more than young men are. What actions do you take to try to deal with that situation?

Laurence Howells: From our point of view, the key aspect would be the negotiations with the colleges about the outcome agreement. One of the expectations that we have about that conversation between my organisation and the colleges is that we will look at local circumstances. Obviously, one of the things that is taken into

account is the pattern of potential clients for the college system. We would ask a question about the gender balance in that regard. If the gender statistics were particularly skewed in one direction or the other in a particular part of the country, we would ask the college whether it had thought about how it adapts its provision to better meet the needs of its local population. That kind of on-going dialogue and the local intelligence that we might get from the CPP, national statistics or other sources is what we would put on the table for discussion.

I am confident in saying that the colleges are very thoughtful about how they react and respond to those sorts of changes. The key thing for them is to make what they provide attractive or appropriate to a particular group and to reflect the needs of potential local employers and the local economy. We and the colleges need to get that balancing act right.

John Henderson: I will speculate again on what might be one of the reasons for the gender imbalance. The male figure is probably steadier because of the structural difficulties in the labour market. The female figure might well have gone up because of the combination of structural as well as cyclical changes in the economy. Fewer jobs are available because of the economic downturn, and that seems to impact proportionately more on females. That could account for the rise, but I am simply speculating; I do not know whether that is the case.

What can the colleges do about that? Well, colleges cannot change the economy. As Laurence Howells said, all that colleges can do is prepare those young women for the opportunities that will arise in the future. It is sometimes said that colleges offer too many hairdressing courses. I do not accept that. We have to be careful about saying that a particular type of course and college is wrong. Such a course might well give young students a range of interpersonal and softer skills, and it might give them something that cannot be put down as a qualification—confidence and belief in themselves, which will mean that they can go on and do something. We should not underestimate the level of self-belief that a college education can give to young people.

Gordon McGuinness: At a local level, although the change in the female rate has been negative, it is difficult to pick up on those movements in terms of delivery. It might be reflected in the contract reviews of our training providers. The retail sector, for example, has been through a troublesome time, so there might have been a fall in recruitment in that area. We can analyse service and contract performance at that level.

The issue for individuals is where they access the best service for guidance and training support

that is available to them. We would focus on that at the local level.

Clare Adamson: Mr Bibby talked about the college cuts. As we went through the college reforms, I was concerned about the amount of reserves that were sitting in colleges. I understand that the cabinet secretary was clear that money should not be sitting in banks: it should be used for delivery of services and improving outcomes for young people. That was why a cap of 10 per cent was put on the turnover of reserves that colleges could have.

We took evidence from Professor Gallacher last week. I cannot remember his exact words, but he said that colleges were operating surpluses and that they wanted to safeguard and protect those reserves by forming trusts and arm's-length organisations. Are you aware of that? Do you have any comment to make about reserves being used in that way?

John Henderson: There is quite a lot in what you say so I will try to unpick some of it. I am sure that Laurence Howells will also want to come in.

The latest Audit Scotland report on reserves in colleges says that the current cash reserves would cover just slightly more than the number of days that the Scottish Further and Higher Education Funding Council says that colleges should have in the bank. Yes, there are reserves, but those reserves are not like profits that need to be ploughed back into the college for capital projects or for meeting some of the costs arising from restructuring. We should acknowledge the fact that a lot of the costs of restructuring have been paid by the colleges themselves.

I do not recognise the 10 per cent figure, although the funding council might have something up its sleeve that I have not heard about.

On the question about what might happen in the future, that refers to the reclassification of colleges by the Office for National Statistics that will put them into the public sector in future rather than the private sector. That will affect colleges' ability to accumulate reserves and engage in commercial activity to add to their income, which accounts for something like 25 per cent of their overall turnover, which is significant.

We are talking to Government about ways of allowing the colleges to retain that commercial activity for the benefit of students and the community. We think that a way of doing it is to have either one or a number of arm's-length trusts that would be independent of the colleges but would be able to safeguard the money, which could then not be consolidated into accounts. I am sorry if I am getting slightly technical, but to keep

them separate would mean that the colleges, students and communities could still benefit.

However, I take your general point. Colleges are not in the business of making profits for profits' sake. If they generate reserves from their commercial activities, that is simply to plough money back into the good of their students and communities.

12:00

Laurence Howells: I do not want to add to that. I simply say that I do not recognise the 10 per cent figure.

Clare Adamson: I could be wrong about that.

The Convener: I think that it did come up, to be fair. I recognised it when you said it, but if it is no longer relevant, we can ignore it just now.

Neil Bibby has a supplementary question. After that, we will move on to the next area.

Neil Bibby: My question follows on from the earlier question about the number of women who are not in education, employment or training. I think that Mr Henderson said that that might be down to the jobs market. Is it not the case that the number of women in colleges has significantly reduced over the past couple of years as well? That might be another factor in the figure.

John Henderson: As a result of the budgetary cuts and decisions by Government, the number of college students aged 25 and above has fallen quite dramatically over recent years. More women aged over 25 than men were engaged in further education in colleges, so the cuts have disproportionately impacted—

The Convener: Sorry, but can I interrupt you? The question and the figures that we have all been talking about concern 16 to 19-year-olds. Any changes in relation to over-25s cannot be the explanation for that.

John Henderson: I do not think that there has been a change in the under-25s between females and males.

Neil Bibby: According to figures that I have in front of me, the head count figures for 16 to 18-year-olds were 66,353 in 2008-09 and 57,592 in 2011-12, so it would appear that in terms of head count there has been a reduction in the number of courses available to 16 to 18-year-olds.

Laurence Howells: I do not recognise those figures, but if it would be helpful I would be happy to go away, do an analysis and provide that to the committee.

Neil Bibby: The figures are from the Scottish funding council Infact database.

John Henderson: I do not know whether this is actually the case, but I will explain why I think that the two things can be consistent. The numbers in terms of full-time equivalents have probably held up, but the actual numbers may have fallen. We are seeing more full-time provision in the colleges focused on all age groups, but particularly that young age group, and a fall in part-time provision, so the two things can both be true. We can have the overall numbers falling, but if we look at the figures in terms of full-time equivalents and overall activity, as the Government and the funding council do, the overall activity could be staying steady. However, Laurence Howells has offered to clarify the position.

The Convener: Thank you. We will move on from that area.

Colin Beattie: I would like to focus on modern apprenticeships, because they are a key initiative. There seems to be considerable success in delivering on the target of 25,000-plus modern apprenticeship starts, and there seems to be a trend of increasing rates of achievement over the past five years. However, the percentage of people who have completed the programme and achieved the requirements that are attached to it is running at about 79 per cent.

What steps are taken on completion of modern apprenticeships to track leaver destinations and follow up whether young people fall into the category of being NEET?

Gordon McGuinness: You gave the figure of 79 per cent—I would use 77 per cent—for achievers and leavers. I am not sure of the full—

Colin Beattie: The figure of 79 per cent came from SDS, by the way.

Gordon McGuinness: Okay. Apologies.

A recent survey has shown that around 90 per cent are still in employment six months after. An important point about the modern apprenticeship programme in Scotland is that everyone has employed status, so they are in a job all through the apprenticeship programme and the vast majority continue in employment.

Those who leave do so for a range of reasons. Obviously, 16 to 19-year-olds—as many apprentices are—may start and decide to do something else after a period.

Statistics are not great at measuring how much young people have benefited from the programme. They could have been in it for 80 per cent of their qualification and then have left before their final achievements. It is difficult to evidence and justify how those young people benefit from the programme.

Colin Beattie: Presumably, we have people whom we have identified as falling into the NEET category. How do we track them after they complete a modern apprenticeship to find out what their final destination is?

Gordon McGuinness: That is what I am saying. The survey that we recently undertook showed that a high percentage had retained employment with their employers or had gone on to new employment.

Colin Beattie: Do you have a percentage for that?

Gordon McGuinness: I will find it for you.

Colin Beattie: We have talked about achievement rates, which your submission says run at 79 per cent. What needs to be done to improve those achievement rates? What do you do with somebody who does not successfully complete a modern apprenticeship or achieve the outcomes that should be associated with one?

Gordon McGuinness: Our contracts with training providers, whether in the public or private sector, are geared towards output-based funding. Some of the qualification frameworks, such as those for electricians, will achieve percentages in the high 90s.

There will always be young people who decide to do something different after a period. They might start in a retail job but decide to move elsewhere, and the system will show that they have not completed.

We have a programme of contract management and improvement. Our skill investment advisers work with the training providers continually to raise their performance. You will have seen from our submission that, over a period of years, that has had a continued positive improvement rate.

Colin Beattie: So you are still in touch with people after they have completed a modern apprenticeship.

Gordon McGuinness: They would still be in the labour market and would still fall within our services, but the vast majority of those who achieve will be in employment and will continue to work.

Colin Beattie: What do you do with someone who does not successfully complete a modern apprenticeship but fails?

Gordon McGuinness: They would come back into the system through the offers that are available through the opportunities for all programme. If they present themselves to our offices, they are able to get further support.

Colin Beattie: Do you not have any formal process for tracking them?

Gordon McGuinness: We do not have such a process for anyone coming off the back end of an apprenticeship programme. If they were under the age of 19, they would come back to the benefits system. That is where we and local partners would pick them up. We would probably follow up with their training provider on why they had left the programme.

Colin Beattie: Would there be any benefit in having a more formal process for keeping in contact with and tracking people who have not successfully completed the modern apprenticeship? There are obviously a variety of reasons for failure. How far do you go in analysing that? Would there be a benefit in having a more proactive approach to dealing with them?

Gordon McGuinness: The approach probably is pretty proactive through the relationship with the training organisation, with which the apprentice will have built up a relationship and a record of achievement.

I can go back and do a further analysis of those who fall out of the system and with whom we lose contact, but I think that the numbers will be pretty minimal, to be honest.

Colin Beattie: Convener, it might be interesting to see that figure.

The Convener: I am sure that Mr McGuinness will send it to us.

Colin Beattie: Sir Ian Wood's commission for developing Scotland's young workforce made a recommendation—I will spare you the full quotation—on the role that the modern apprenticeship programme has to play in supporting the Scottish economy and aligning skills to sport economic growth. What is your comment on that? Do you support it? Is it the right approach?

Gordon McGuinness: I am very supportive of it. The submission might have contained the skills planning model, a diagram that was used. We will continue to use that model. It does three things: tries to connect with employers to get their views; helps to shape the supply-side, in terms of colleges' and our provision; and informs careers guidance on where the jobs will come up and what they are, and tries to bring that to life. The work that we have done through the industry leadership groups and with colleagues in the funding council focuses on that forward demand from industry in order to shape provision, get a better return from existing investment and fill any gaps where we see opportunities in the future.

Colin Beattie: Are you saying that the work that you already do fits in with the report?

Gordon McGuinness: Yes, very much so.

Colin Beattie: Is there any additional work or additional realignment that you need to do, assuming that the Wood report finds favour with you?

Gordon McGuinness: Our process is ongoing. A joint skills committee sits between us and the Scottish funding council. We will do an industry review, for example of the energy sector or hospitality and tourism, and take our report to that joint skills committee, which is an advisory body made up of academics and business personnel. The committee takes a view and offers guidance to the funding council and to SDS on where provision needs to be reshaped. That process, as described in the skills planning model, is ongoing and we have made good progress since it was adopted last year. It is about continuously improving the provision that we have.

Liam McArthur: To follow up on that point, the headline figure of 25,000 modern apprenticeships is impressive and their work-based nature has wide benefits as well. Do you have to hand figures for the number of modern apprenticeships that are in the public sector, the private sector and the third and voluntary sector?

Gordon McGuinness: I do not have those to hand but I can provide them.

Liam McArthur: That would be helpful. I have posed the same question to the minister and have been encouraged simply to celebrate the fact that the 25,000 figure is met.

I want to return to the quote from Sir Ian Wood's interim report in which he talks about more actively targeting

"Modern Apprenticeships towards supporting economic growth and areas of the labour market where the long term prospects of young apprentices are greatest."

Nobody would simply look to rest on their laurels but it does suggest that until now there has not been active targeting.

From your own dealings, whether within the skills group or from discussions with the Wood group, are you aware of any specific concerns, for example, is there perhaps a lack of engagement by the private sector in particular industries, which needs to be addressed?

Gordon McGuinness: I would probably add two things. We have seen fairly significant restructuring of the UK-funded sector skill councils—several of them have either consolidated or have lost Scottish managers—and the connection to their industry base. Sector skill councils are charged with delivering labour-market intelligence, and with maintaining and keeping qualifications up to speed with changes, whether in technology or otherwise. There has been a shift there.

SDS and the Scottish funding council are engaged with all industry leadership groups. A big part of our work around building skill investment plans is a challenge process of going back into the industry leadership group and, where possible, getting somebody from industry to lead that process. In the energy sector, for example, we have an energy skills action group, chaired by Frank Mitchell from Scottish Power networks. The group considers forward projections within the various energy sub-sectors, the provision that is available and where we need to fill any gaps in research or evidence-based future projections.

That is a very practical way to engage with all industry leadership groups. We have engaged with approximately 16 industry bodies, to invite conversation and encourage greater participation in the skills and how we shape that future agenda.

12:15

Liam McArthur: I was going to move on to greater participation. Do you sense that the modern apprenticeship scheme relies heavily on a number of usual suspects in particular sectors, or has there been an improvement? My understanding is that the proportion of companies in Scotland engaged in modern apprenticeships is less than the proportion south of the border, which does not detract from the overall headline figure, but it suggests that the scheme is reliant on a smaller number of players punching above their weight.

Gordon McGuinness: You could say that, but you are not comparing like with like. The commitment north of the border to employ the young person in an on-going job is different from what you would see down south. We are looking at ways to bring into the programme smaller employers that have not committed before, and a number of pilots for shared apprenticeship schemes are being considered. Construction and engineering still play a big part in that offer and, within that, we are looking at a number of the engineering companies that are involved in national groups but which have moved away from committing to an apprenticeship programme in recent years, perhaps because of uncertainty about the future.

We are actively engaged with the Federation of Small Businesses, chambers of commerce, the Scottish Council for Development and Industry and the Confederation of British Industry in relation to our skills force, bringing together all the national offers and trying to simplify the amount of information and access to services. We are involved with all the business organisations in trying to address those issues, and I hope that we will minimise the number of young people who are

missing out on opportunities through lack of information.

Jayne Baxter: The committee has heard evidence from a number of witnesses who say that the cutbacks in college funding are affecting levels of staff and their capacity to do outreach work and to support female returners, people with additional support needs and those who want to reskill and change employment direction in their later years. We have also heard that colleges play an essential role in supporting that learning activity, because they are flexible and local and they offer childcare. However, if the money is not there to do that any more, where does that leave all those people, and what can colleges do to improve their chances? If there is nothing that they can do, what are the options for female returners, adult learners and people with additional support needs?

John Henderson: You are absolutely right. The consequences of the reduction in college funding have fallen largely on adults, and we seem to have retreated from colleges' role in lifelong learning. They do what they can with the resources available but, as Laurence Howells and I have both said, where 70 per cent of provision is focused on young people there is not much left for adults. It is curious in a way, because investing in that initial stage of education and training rather assumes that jobs in the economy and in society will remain static in future, and we know that that is not the case. We know that people's lives change and that the economy changes, and yet we no longer seem to have the capacity in the college system to respond to those changes, when people who have left the labour market as adults need new skills to get back into the market. Often, that group is largely women, and the numbers that we have provided show that the consequences of the reduction have fallen disproportionately on women.

Fortunately, up to a point, the Government has put some extra money in and is beginning to recognise that fact, but I would argue that more needs to be done, both in terms of the future needs of the economy and in terms of colleges' ability to build social capital in Scotland's communities. That is quite hard to measure, but when it is not there you notice the consequences in the justice budget, in the health budget and elsewhere, because colleges are so good at preventative spend.

Laurence Howells: There were two halves to your question, one of which was about the impact of cuts on staffing numbers in colleges, and John Henderson has ably answered the other half.

To focus on the first half of the equation, we are in the middle of a set of reforms designed to produce larger, more efficient, more coherent colleges that are responsible for provision in their

regions and able to plan effectively. That is an important part of the reforms, in that it leads to a more efficient sector that is able to deliver provision in a well-planned, coherent way. That has led to a certain number of staff leaving the system, but the evidence is that the system is more efficient than it was and is therefore enabled to support greater numbers of students than would have been the case had we not made the reforms.

Gordon McGuinness: The last time I met you, convener, I had been chair of Reid Kerr College for the past few years, and I worked with it through the merger process. The observation that I would make is that there has been a reduction in funding, but there is still a significant amount of resource available for the colleges to deploy, and they do that very well. They are a key resource across the country, and SDS looks forward to working with them in a regional context to share information and to highlight where the changes in the economy will be taking place.

Jayne Baxter: On a slightly different, albeit related, topic to do with funding, there has been a £1.25 million cut in funding for the energy skills academy. I read in our notes that the work that has been done will now be mainstreamed. I do not know what that means. What does that mean in terms of what is provided through colleges? Does that mean different sorts of courses or additional places, or has that £1.25 million just gone out of the system? What has been displaced to allow those places to be mainstreamed? Is that linked to the 1,500 low-carbon fund places, which are referred to in other papers that I have in front of me? I do not really understand what is happening around energy skills, the college sector and the Scottish economy.

Gordon McGuinness: That is probably a timing issue. Last year, a significant capital investment was made through energy skills Scotland. A number of the universities and colleges in the north-east benefited, as did Heriot-Watt University and Forth Valley College. On the back of that capital investment, there is also the energy skills challenge fund. Last year, we supported about 750 people through that programme. A number of colleges and trade organisations bid into the fund; Orkney College, for example, got contracts.

The low-carbon skills fund is slightly different. We fund that on a 50:50 basis with companies. It might be used with staff who are working in new technologies—air-source heat pumps, for instance—and who require new skills. That is a different funding pot. The Government has made a commitment for 1,000 places this year through the energy skills challenge fund, and we are in dialogue with the Government about the final budget for that. As regards the disbursement of

that fund, we have already taken about £750,000 to contract.

Jayne Baxter: Is it age related? Can people of any age do that sort of training?

Gordon McGuinness: Anyone can apply for it. Because of some of the operating conditions offshore, employers are looking for younger employees aged 21-plus. We are trying to target individuals who are making transitions within their careers, who might have been in automotive mechanics and are moving across, for instance, and they tend to be in a slightly older age group.

Liam McArthur: I will follow up on a couple of points. John Henderson was talking about the effect of focusing support on those in the 16-to-24 age group. You spoke about a reduction in numbers in the 25-to-69 group. The figures in your submission show a reduction from just over 160,000 in 2008-09 to between 108,000 and 109,000 in 2011-12. I was also struck by another point that you made in your submission, which was that almost two thirds of that 108,000 had no qualifications at all. What is your feeling about the effect that the reduction in numbers is having on the cohort of people who would previously have benefited from those learning opportunities and on their ability to get back into work?

John Henderson: It is likely to have a profound effect. If they cannot get into college—because they have no qualifications or because the places are not there any more—the ability to get the skills to get into the labour market will no longer be there. I would argue that there is also a ripple effect. A few years ago, one of our award winners was an unmarried mother who had no qualifications but who went back to college and gained them. I was struck by two things that she said. The first was that her confidence rose to such a level that she felt able to go back into the labour market. The other interesting thing that she said was that her children now saw the value of education. If, as a society, we deny older people the opportunity for education, I worry that the ripple effect will mean that their children will say, “Why should I bother with education?” If, as a society, we do not respect education and inculcate that respect through parents to their children, there are risks.

Liam McArthur: You talked earlier about the budget reduction. Are we seeing the effects or impact of that now, or is it your expectation that we will see more of an impact in the coming years?

John Henderson: I think that it will be a long-term impact that will not be seen immediately. We will see an impact on the opportunities that are available for adults, and we might even see an economic impact. This might be difficult to prove, but our economy might be less effective if we do

not reskill adults. Most of the workforce are not young people entering the labour market; they are people who are already in it. As the labour market changes, if we cannot upskill those people, I suggest that the Scottish economy will not perform at its optimum level.

Liam McArthur: The other figures that leapt out at me from your written submission are those on staffing numbers. You and Mr Howells have conceded that there has been a reduction in staffing levels. The figure that I have is that, from quarter 2 in 2009 to 2013 there was an overall reduction of 3,200. Last week or in an earlier evidence session on the budget, the point was made forcefully that, although it might be more efficient if we try to maintain the number of courses and full-time equivalent students with reduced staffing, the quality of what is provided will be inferior—perhaps not in every instance, but in a number of cases—because of the ratio of staff to learners. Do you concede that that is a concern? Is it happening already?

John Henderson: The recent Audit Scotland report on colleges said that we need to keep a careful watch on the impact of losing quite a lot of experienced staff in colleges. It is too early to see any evidence of the impact of that. Given the large proportion of college funding that goes on staffing costs, as funding falls it is inevitable that staffing levels fall. Through the regional outcome agreements, we need to watch for the impact on performance indicators, and I know that the funding council will do that. Education Scotland will assess externally the quality and range of the provision in colleges. I think that the jury is out on the impact of that.

Laurence Howells: To add to John Henderson's point about the outcome agreements, some of the key things that we put in place in those agreements are the measures on quality. We have particularly focused on retention, which is important, and completion rates. In the outcome agreements, the colleges have committed to enhance and improve retention rates, at the same time as taking forward the reforms. I underline John Henderson's point that we are working jointly with Education Scotland to ensure that maintenance of quality becomes an important thing and that regional colleges use their economies of scale and their systems to effectively underpin ways of tracking and supporting learners, and that they provide the support that is required through the process.

Liam McArthur: Obviously, the headline figures and quality assurance will be helpful, but they perhaps do not capture those who need additional levels of support, which becomes more difficult when the ratios are higher. Is that being picked up and dealt with through the outcome agreements?

12:30

Laurence Howells: Indeed. We require all colleges to work with individuals to develop individual learning plans that reflect their needs. Part of the funding package that is provided includes an allowance for extended learning support and other aspects. A particular focus that we have with Education Scotland in its reviews of colleges is the extent to which they are supporting people's needs. It is also worth saying that if that support is not provided, we will not see the results in retention rates and performance indicators. It is quite important to reflect the fact that individual colleges have set themselves targets to achieve and that they will be held to account for the delivery of those targets.

The Convener: I have a brief question for Mr Henderson. You quite rightly pointed out that we must be careful about the balance that we strike between young learners and adult returners and what it means for the balance of the economy. I certainly agree with that. However, do you not also agree that, during this time of economic difficulty, it is quite right for us to reprioritise resources from those who have been doing college courses when they are over the age of retirement? Those resources should be shifted to those who are at the younger end of the scale, such the 16 to 24-year-olds, rather than being used for those who are of retirement age.

John Henderson: If you accept the proposition that college budgets should be cut, I accept that, given high youth unemployment, it is right to prioritise available resources on the young. However, I suggest that just as we take the view that investing in the capital infrastructure of Scotland is important—the bridges, the roads, the new railways—investing in human capital in Scotland is equally important. The problem is that the budget is too small and the impact of the cuts on adults has been disproportionately large. We should keep our focus on young people, but I would like to see more resources made available for more provision for adults.

George Adam: I would like to ask Gordon McGuinness questions on partnership working. What steps have been taken by SDS to ensure that everyone is joined up from schools to colleges to employers small and large? You have answered some of that question today, but what are you doing to ensure that that is all happening? It is no easy task for you.

Gordon McGuinness: That is correct. In our early days of operation, we offered to have a service delivery agreement with every single local authority in Scotland, and that was accepted. I do not know whether many national agencies have gone down that route. The offer was made to provide training and support services in schools

and that was reflected in an agreement with each local authority. It was then embedded into the community planning partnership. Like a lot of other agencies in which we could see that level of activity, local employability partnerships would operate as part of the community planning partnership.

I talked earlier about our work with industry leadership groups and we are following that up this year in conjunction with the funding council and Scottish Enterprise to do regional skill assessments. We are about to complete a pilot in the Highlands and we will undertake those assessments across the board. After the demise of local enterprise companies, some took the view that there was not the same level of scrutiny or understanding of what was happening in local and regional labour markets, so that new service that we are offering to bring to the table will help to inform future planning and allow the alignment of training provision with the future needs of the labour market. That is a commitment to an ongoing process.

I also touched earlier on the our skillsforce website and the partnership offer database. Mr Swinney challenged us to align Scotland's employability service better. Probably for the first time ever, everything is on the one website. It is still not perfect and we are working with partners to tweak and shape it as well as communicating with businesses to make sure that they are aware of what is happening. We also have a modest resource on the ground so that we can work with local partners on connecting companies up to that service. We set a great deal of store by that service and our chief executive leaves it open to partners to challenge it at all times. If they feel that they should be getting more, we sit down and talk it through, and relationships with our partners are pretty positive.

Laurence Howells: I strongly support the joint working between my organisation and SDS, particularly on bringing together the demand in sectors and in regions.

Liz Smith: As a committee, we are asked to scrutinise the budget in the normal way, but in recent times the committee and its predecessor committee have had issues with the interpretation of certain budget lines. Following the reclassification of colleges—this is not about the debate on whether the current approach is right or on how the issue should be addressed—I understand that the full expenditure and income for the sector now has to be set against the central Government's departmental budget lines. Is that correct?

Laurence Howells: Effectively, yes.

Liz Smith: What is the impact of that on our ability to scrutinise the income for the college sector and how that money is spent?

Laurence Howells: The budget now includes a set of lines about what income the colleges earn—essentially, that is their commercial activity—but the committee's focus ought to be on the line showing direct Government support. That is what buys education provision for students in Scotland, which is what we have always provided. The other lines are really to do with conventions of Government accounting.

Liz Smith: Following the reclassification, I understand that the reserves—unless moves are made to put them into arm's-length trusts—become one body of money rather than remain with separate colleges.

Laurence Howells: The technical issue is that, if that money was spent, it would be spent against Treasury spending targets, so it would need to be given budgetary cover by the Government. In effect, that means that those reserves would be frozen and could not be spent. The arm's-length trust idea is one that creates an ability for that money to be used by colleges for the benefit of education in their regions.

Liz Smith: Let me just be clear about this, as I am a bit confused on what exactly that means. If those separate trusts are set up, will colleges still be able to decide how the money is spent, or will it be up to the Scottish Government to decide?

Laurence Howells: It will be up to the trust to agree how the money is spent. We imagine that the way in which that would work is that the college or region would request the money from the trust. When the money was put into the trust, it would be specified what purposes it would be spent for, which would be only for the development of college education in that locality. Therefore, it would not be decided by the Scottish Government.

Liz Smith: To scrutinise how effective college spending is, we will need to look at the budget line, which is obviously now defined in a different way, plus all those trusts. Is that correct?

Laurence Howells: An important point is that the trusts will be set up in such a way that the money can be used only in line with Government policies. It is important that those trusts deliver that requirement, but they will be legally set up to do that.

Liz Smith: Will charitable status be accorded to the trusts?

Laurence Howells: That is the plan at the moment, yes.

Liz Smith: Is that your understanding, Mr Henderson?

John Henderson: Yes.

The Convener: I thank the witnesses for their evidence this morning, which has been of great assistance to the committee in examining the draft budget.

Our final evidence-taking session on the draft budget will be next Tuesday, when we will hear from the Cabinet Secretary for Education and Lifelong Learning. As we have agreed to take our next two items in private, I now close the public part of the meeting.

12:39

Meeting continued in private until 13:02.

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