OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 27 January 2021

Session 5

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EDUCATION AND SKILLS COMMITTEE

3rd Meeting 2021, Session 5

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Daniel Johnson (Edinburgh Southern) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
*Iain Gray (East Lothian) (Lab)
*Jamie Greene (West Scotland) (Con)
*Ross Greer (West Scotland) (Green)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Oliver Mundell (Dumfriesshire) (Con)
*Alex Neil (Airdrie and Shotts) (SNP)
*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Simon Collins (In Care Abuse Survivors)
Helen Holland OBE (In Care Abuse Survivors)
Richard Lochhead (Minister for Further Education, Higher Education and Science)
Janine Rennie (Wellbeing Scotland)
Maree Todd (Minister for Children and Young People)
David Whelan (Former Boys and Girls Abused in Quarriers Homes)

CLERK TO THE COMMITTEE

Gary Cocker

LOCATION

Virtual Meeting

Scottish Parliament

Education and Skills Committee

Wednesday 27 January 2021

[The Convener opened the meeting at 08:30]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning, and welcome to the third meeting of the Education and Skills Committee in 2021. Please turn mobile phones and other devices to silent during the meeting.

We have a full agenda today, including a number of items to be taken in private. If members and witnesses could keep comments as concise as possible, that would be very much appreciated.

Our first item today is a decision on whether to take agenda items 9, 10 and 11 in private. Any member who does not agree to that should put an R in the chat box.

We agree to take those items in private.

Subordinate Legislation

Children's Hearings (Provision of Information by Principal Reporter) (Specified Persons) (Scotland) Regulations 2020 (SSI 2020/449)

08:31

The Convener: Agenda item 2 is consideration of a negative instrument. The details are in the meeting papers.

Do members have any comments to make on the instrument? I see no indication that anyone wishes to comment.

Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2020 [Draft]

The Convener: The next item is consideration of a draft instrument that is subject to the affirmative procedure. The committee will have the opportunity to ask questions of the minister and will then debate the motion on the instrument. As we are meeting remotely, members should record whether they are voting yes or no in the BlueJeans chat box. I will provide more details of the voting system when we reach that point.

I welcome Maree Todd MSP, Minister for Children and Young People; Ellen Leaver, head of the parents, providers and workforce unit at the Scottish Government; and Carolyn O'Malley, principal legal officer in the Scottish Government legal directorate.

Maree Todd will make an opening statement to explain the draft order.

The Minister for Children and Young People (Maree Todd): I know that the issue is of interest to the committee and across the Parliament, so I am pleased that we have laid an affirmative statutory instrument to introduce automatically funded early learning and childcare from August 2023 for all children whose parents defer their primary 1 start. The order will allow parents to make decisions about deferral on the basis of the needs of their child without facing uncertainty about financial barriers to ELC.

The change means that many more children will become eligible for funded ELC, so we must know that we have childcare spaces available for them. In December, we announced £3 million to support five local authorities to pilot implementation during 2021-22. We expect to include additional authorities in that pilot in 2022-23, which will further widen our evidence base. We are working with as many authorities as possible, within the funding available, and have established a deferral

working group to gather and share useful information. In the interim, I expect that any decisions made by local authorities on deferral funding requests to continue to be based on the wellbeing of the individual child.

In March 2020, due to the coronavirus, we made the difficult decision to pause the planned expansion of funded ELC to 1,140 hours per child. I am pleased to say that we have now legislated to reintroduce the statutory duty to deliver that obligation by August 2021. Although that progress is welcome, we must be mindful that delivery in parallel with our deferral commitment requires a balanced approach. Given the challenges that we continue to face, it is more important than ever to ensure that the required capacity and capability are in place to avoid further delay to the expansion to 1,140 hours.

I would also like to recognise the significant achievements of the Give Them Time campaign. The data that it has collected shows that local authorities are approving more requests for funded deferral, which is testament to how incredibly hard the councils are working to deliver funded ELC to Scotland's children.

I am happy to respond to any specific questions that the committee has.

The Convener: Thank you, minister. I have indications of a couple of questions.

Iain Gray (East Lothian) (Lab): Good morning. The minister knows that I have been a great supporter of the Give Them Time campaign, so she will not be surprised to know that I am pleased—as is the campaign—that this legal change is going to happen. She will also not be surprised to know how disappointed I am that it is not going to happen until 2023.

The fact is that we are correcting a legal anomaly so that parents have the right to decide, without reference to anybody else, whether it is best for their son or daughter to defer. Until that change comes into force, children who defer will not have the right that every other pre-school child has to fully funded hours for—[*Inaudible*.]—and, in this case, five-year-olds. Surely what a legal anomaly needs is not only to be reversed, but to be reversed quickly or immediately. Parliament asked the minister to reverse it, I believe, almost two years ago.

What is more, this particular effect applies only once to any individual child. Either they have the right or they do not, and if they do not have it, they cannot receive it retrospectively, because by then they will be six, seven or eight years old. The delay has meant that many children and families have not benefited from that right. To delay it until 2023 means that many—perhaps hundreds—of families will continue not to be able to avail themselves of it.

I have two questions for the minister. First, why on earth has it taken so long to do this, and why on earth is it taking so long to come into effect? Secondly, when it comes to the pilot that she just described, the Give Them Time campaign has pointed out—she thanked it for the data—that the five local authorities that she has chosen for the pilot already agree 100 per cent of applications. The pilot is nothing but a joke. Why do we not have a pilot that forces some of the councils that do not agree to deferral funding to agree it from now on?

Maree Todd: Thank you for your questions, Mr Gray. I agree that you have shown a great deal of interest in the campaign.

You will remember that Parliament asked us to legislate in this parliamentary session, and that is precisely what we are doing. We set a realistic timetable for the implementation of extended eligibility for all deferrals to ensure that the roll-out of 1,140 hours of funded ELC to all eligible children is not put at risk. It is just not possible for us to expect all local authorities to implement the new commitment at the same time as they are rolling out the 1,140 hours against the continued backdrop of the challenges that are imposed by the Covid-19 response. Therefore, we have set a realistic timetable for full implementation of extended eligibility for all deferrals.

It is important to note that the policy has the potential to have a significant impact on the number of new children who attend ELC. The total number of children who will become newly eligible for funded ELC in 2023 is around 20,000. Our pilot approach will help us to better understand the likely impact on numbers and to ensure that we have the space available in our ELC settings. We will work with all local authorities to consider what that means for their capacity.

The Convener: A number of members want to come in, so I ask everyone to be succinct as we have a very full agenda. First, Iain Gray has a quick supplementary question.

Iain Gray: I ask the minister whether she understands that, although Parliament asked her to introduce the change in this session and although we may be legislating for it in this session, it will not be introduced until the middle of the next session. Frankly, that is just sophistry.

Maree Todd: I am not sure whether there was a question there. We have certainly done as Parliament asked. We are legislating in this session of Parliament and I have explained the reason for the delay. I cannot implement the legislation now because it would put at risk the expansion to 1,140 hours.

Rona Mackay (Strathkelvin and Bearsden) (SNP): My colleague Fulton MacGregor has been very involved with the Give Them Time campaign. He apologises for not being here—he is at another committee meeting—but he asked me to put some questions that are similar Iain Gray's questions. Will more pilots be considered for this year, possibly in councils that are not already funding deferrals, and will the Government work ask the Convention of Scottish Local Authorities to permit self-funding in any ELC setting, if local authority funding for deferral is refused?

Maree Todd: This year, we are introducing only the pilots that have been announced, but we are considering expanding the pilots in the second year—next year. Our challenge is that we do not understand how the change will influence parental behaviour. We know that 20,000 children will become newly eligible, but we do not think that all parents with children in that age bracket will choose to defer. Estimating the deferral rates is really challenging, and we only have data for January and February at the moment. We cannot determine the relative importance of the offer of funded provision versus parental choice.

A further complication is that the extension of ELC—the expansion to 1,140 hours, which looks like a primary school week—will possibly influence parental choice for children who are born in January and February as deferral becomes more the norm, even though there will be no change in provision for those children. We are keen to understand the behavioural changes involved with the change before we continue the roll-out.

In terms of funding, I spoke to members of the Give Them Time campaign on 3 December. I met them, and that was one of their asks. I will certainly seek to ensure that, where possible, children are able to defer when their parents choose that. However, I refer back to the process: the child's parents should be involved in the decision making, and the decision should be made in the best interests of the child. As things stand, the process should ensure that parents who seek deferral for their children are able to access it.

Beatrice Wishart (Shetland Islands) (LD): I have supported the move to a legal right to funded deferrals throughout the Give Them Time campaign, but I have grave concerns about what the Government has brought forward. The minister will know that the people working on the campaign were disappointed by the announcement that a full right to deferral will not exist across Scotland until 2023. As has already been pointed out, the pilot councils were already accepting 100 per cent of applications.

This year—of all years—children have missed out on so much because of the virus. Some will barely remember socialising with anyone outside their bubble, and we know how critical the early years are to life chances and attainment. However, this August there will be a £4,500 price tag hanging over families who want to give their children more time. Children only start school once, and those starting this year may not remember what it is like to play with other children. Playgroups and social events have not been an option and nurseries have been stop-start. The plan for 2023 fails to recognise how difficult the next group of school starts may find the adjustment. We have taken evidence on that before, but I have yet to hear a convincing justification for why 2023 is the best that we can do. Why should deferral not be available to every family that thinks that it is right for them?

08:45

Maree Todd: I am acutely aware that this year has been really difficult for children. It is important to note that schools and ELC settings are working really hard to support their children at this time. They know that those children who are in primary 1 this year missed part of their ELC last year and have had a completely different transition, and come August they will be ready to support the next cohort.

As I have said many times, we, in Scotland, do not think of children as being school ready; we think of schools as being child ready. When it is clearly in a child's best interests to remain in ELC for an additional year, whether that is because of the impact of Covid-19 or otherwise, the current system of child-centred decision making should enable that to happen. It is important that decisions take into account the needs of the individual child rather than adhering to a blanket policy. Most children will be eager to start school in August, as normal, and I know that schools and ELC settings are carefully considering the needs of that cohort as they plan the transition.

Jamie Greene (West Scotland) (Con): Good morning, minister. I have listened with interest to the exchange thus far, but it is still unclear to me why a delay is needed. Perhaps you can clarify that, because I have not yet heard a full justification for it.

As you acknowledged, in the context of everything that has happened in the past year, some parents may not be convinced by your comment that

"the current system ... should enable"

deferral. There are no guarantees in there, and the problem for many parents is that if funding is refused, choosing to defer will come with a huge price tag for them.

I do not understand the link between the delay and the roll-out of 1,140 hours, nor the justification with regard to whether the issue is capacity or funding. My understanding is that there is capacity in the system, and that the problem is only in funding and could therefore be addressed immediately in the forthcoming budget.

Maree Todd: I have to disagree with that. The main challenge in introducing the policy is capacity. When we confirmed the new date of August this year for the roll-out of the expansion of 1,140 hours, careful consideration was given to deciding on a date that could be reasonably met, and which would not require approaches to be taken that would provide less flexibility for families and a poorer experience for children until longer-term solutions could be delivered.

We know that a change to ELC availability, such as extending the obligation to fully fund deferrals, could impact on capacity locally, and we have therefore set a realistic timetable for full roll-out. In order to ensure that the policy is implemented smoothly, we have in the interim established a pilot scheme to monitor the impact of the policy, to better understand the likely uptake of the entitlement and to inform the wider roll-out of the legislation.

The financial impacts are not insignificant. The challenge is that we are currently unable to estimate those, so when we incorporate the additional duty, we will build that into the multi-year funding agreement that we reach with local authorities. There is real uncertainty around the uptake and therefore the annual additional revenue that is required; it could range from £33 million to £82.5 million per year. A pilot approach gives us the opportunity to monitor the likely uptake of the entitlement and improve our understanding of the consequent impact on available capacity and the financial implications.

The Convener: That exhausts questions under item 3. We move to item 4, which is the formal debate on motion S5M-23665. If members wish to take part, I ask them to indicate that by putting an R in the chat box. I ask the minister to move the motion.

Motion moved,

That the Education and Skills Committee recommends that the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2020 [draft] be approved.—[*Maree Todd.*]

The Convener: A number of members want to come in. I will bring in Beatrice Wishart first.

Beatrice Wishart: Parents must immediately be given the legal right to defer primary 1 and to have it replaced with funded early learning and childcare. The only question that should be in parents' minds is whether putting off entry into P1 is the best thing for their child. I believe that the Government has the ability to remove that extra financial barrier and to empower parents to do what they feel is right. Consequently, I cannot support the measures.

Maree Todd: The approach that we are already taking under the existing legislation puts the best interests of the child absolutely at the centre of the decision, and that must be the top priority in the decision. That has been set out in our statutory guidance for local authorities, and that is the first and foremost thing that should be in the minds of local authorities, too. A reminder of that statutory duty was sent to directors of education when we informed them of the proposals that we are considering today. I am disappointed if Beatrice Wishart cannot support this significant improvement and future commitment.

The Convener: As we are meeting remotely and it is not easy to see members on screen, we will vote on the instrument using the text box on BlueJeans. Once I ask the question on the motion, I will ask members to put a Y for yes, an N for no or an A for abstain in the text box.

The question is, that motion S5M-23665 be agreed to.

We are not agreed, so there will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gray, Iain (East Lothian) (Lab)
Greer, Ross (West Scotland) (Green)
Johnson, Daniel (Edinburgh Southern) (Lab)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)

Against

Greene, Jamie (West Scotland) (Con)
Mundell, Oliver (Dumfriesshire) (Con)
Wishart, Beatrice (Shetland Islands) (LD)

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Motion agreed to,

That the Education and Skills Committee recommends that the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2020 [draft] be approved.

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [Draft]

The Convener: Agenda item 5 is consideration of further subordinate legislation. This draft Scottish statutory instrument is subject to the affirmative procedure. As members know, affirmative instruments are considered under two agenda items. The committee will first have an opportunity to question the Minister for Children

and Young People, after which we will turn to agenda item 6, which is a formal debate on motion S5M-23764, on approval of the draft rules.

I again welcome the minister, Maree Todd, who will be speaking to the motion. She is joined by Tom McNamara, the head of youth justice and children's hearings at the Scottish Government, and Margaret Main, a lawyer in the Scottish Government's legal directorate. I invite the minister to make an opening statement.

Maree Todd: Thank you for the opportunity to introduce this draft instrument. The central objective of the draft rules is to ensure a proper opportunity to participate for the brothers and sisters, and all those with similar relationships, of children coming before hearings. That especially applies where decisions could be made that will affect their contacts and relationships with the child who is subject to the hearing.

The draft instrument makes detailed provision for siblings around prior notification, invitation to attend and rights to make representations, to be accompanied or represented by another person and to be informed about the outcome of the hearing as it relates to their interests. That will allow a broader and more inclusive approach to be taken to siblings' involvement in children's hearings.

The rules follow the decision of the United Kingdom Supreme Court in the cases of ABC and XY last year. As the committee is aware, those cases considered siblings' participative rights in children's hearings. The Supreme Court's decision recognised that the legislative scheme behind children's hearings is compatible with children's article 8 rights, but we all want Scotland's childcare system to move from compliance towards excellence. The Government therefore lodged amendments to what became the Children (Scotland) Act 2020 to enable the changes to happen. The reform will also enable Scotland to honour important aspects of the independent care review promise on siblings.

The draft instrument refines aspects of children's hearings procedure in important additional areas. It mainstreams the electronic authentication of signatures and introduces more flexibility in electronic participation. Both those measures were important features in last April's emergency Coronavirus (Scotland) Act 2020. There is a shared appetite to hold on to those innovations for the benefit of families, decision makers and professionals.

The draft instrument empowers decision makers to exclude from hearings people whose conduct is dangerous, intimidating or disruptive. Exclusion may be necessary to obtain the views of a relevant person in, for example, a domestic abuse situation.

The draft instrument enables earlier sharing of independent reports and assessments among professionals. That is aimed at promoting better preparation and more informed and productive discussions at hearings.

I am happy to take questions from members.

The Convener: No member has put an R in the chat box to indicate that they wish to ask the minister a question. As there are no questions, we will move to item 6, which is the formal debate on motion S5M-23764.

Motion moved,

That the Education and Skills Committee recommends that the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2021 [draft] be approved.—[*Maree Todd*]

Motion agreed to.

The Convener: I thank the minister and her officials for attending to present the Scottish statutory instruments.

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill: Stage 2

08:57

The Convener: Item 7 is an evidence session on the bill. I welcome our witnesses. I have a note from the clerks that says that David Whelan from Former Boys and Girls Abused in Quarriers Homes is in attendance but that we are still waiting for confirmation of Mr Aitken's attendance—we will bring him on board if he manages to join the meeting. We also have Helen Holland and Simon Collins from In Care Abuse Survivors and Janine Rennie, the chief executive of Wellbeing Scotland.

I ask members to indicate that they wish to ask a question by putting an R in the chat box.

Iain Gray: The witnesses will know, because they were there, that the evidence that they gave at stage 1 led in particular to the recommendation in the committee's report that the waiver whereby survivors who are to benefit from the redress scheme must waive their right to seek justice in the civil courts should be removed from the bill. The witnesses will have seen from the correspondence with the Deputy First Minister that he is going some way to mitigate some of the waiver's effects. For example, he has listened to the evidence that more time is needed to allow survivors to decide whether to accept a redress payment and sign the waiver or to refuse the payment and keep their right to civil justice.

My question to the witnesses is simple: in your view, and in the view of the survivors whom you represent, is that enough of a change, or do survivors still feel that the principle of the waiver undermines their confidence in the bill?

09:00

The Convener: If any panel member wishes to come in, they should indicate that by putting an R in the chat function. As I cannot see everybody on the screen, I am afraid that raising a hand will not help very much.

Janine Rennie (Wellbeing Scotland): We had a meeting with a large team of survivors yesterday. We also have a team of survivors who have introduced a petition about the waiver. Survivors are not satisfied at all by the changes that have been proposed. They still feel that the waiver is a betrayal of everything that they have been through over the years and a large number of survivors have said that they would fight it all the way if they felt that a waiver was still going to be in place in the bill.

They come back to the same argument, which is that a lot of survivors would sign the waiver but, years later, circumstances might change. For example, there might be a case that was not able to succeed; however, more survivors could come forward and then it would be able to succeed. Survivors feel that, when they signed the waiver, they would not know all the possible ramifications, which might be two or three years down the line. Things are changing all the time, with more survivors coming forward and more ability to seek civil redress.

Survivors want the choice to seek that, and a number of them have told me that they feel that the waiver is a betrayal. The meeting yesterday was very angry; every meeting that we have had has been the same, and nothing that has been produced has changed that. They feel that it is an absolute betrayal and that their choice should absolutely be respected.

Although I understand that there has been a waiver in a lot of other countries, survivors feel that the situation in Scotland is unique and should not be considered along with evidence from other areas.

Helen Holland OBE (In Care Abuse Survivors): In relation to INCAS and the many survivors who engaged with the consultation, I agree that there was an element of misunderstanding—that is probably the right word—across the board. The biggest issue with the waiver is that it is linked to contributions. It is all well and good to say that Scotland is unique, but it is not unique in the sense that we are talking about redress, and there has been redress in many countries.

Even if I went down the civil court route, for example, the reality is that I would probably need to sign a full and final settlement agreement or some kind of financial agreement at the end of that process; if I was doing an out of court settlement, I would probably have to do the same thing.

The survivors have the right to go down the civil court route. In relation to the bill, we are now talking about a prolonged period of time of six months for the survivor to get independent legal advice. Within that legal advice, the survivors would be able to make a choice. What is coming across from our members is that, although everybody is talking about rights, they have not heard people talking about choice.

Survivors have waited a long time for this coming and—quite frankly—many have already made that choice for themselves. We have members who are going down the civil court route; equally, we have members who are patiently waiting for the redress scheme to open. It will never suit everybody; I do not dispute that at all.

There appears to be a lot of confusion, which for me is the biggest difficulty. People do not fully understand that there would be an agreement at the end of any financial settlement. The reality is that it has happened in every other country in the world. My concern is that, if it does not happen here, care providers will simply stand back and do nothing. They will not engage unless there is a waiver and, if there is no waiver, who will pay the redress? It would have to be the taxpayers of Scotland, and how is that justice for the survivors? It would mean that, at the end of the process, the care providers would walk away without acknowledgement of the fact that the people who allowed the abuse, or the organisations where the abuse took place, had not been held to account. I do not know any survivor who would find that to be justice.

I am not saying that there is an easy answer; it is extremely difficult. It is not for us to decide—it is for the committee to decide. That is the predicament.

The Convener: Thank you very much. I will bring in Simon Collins.

Simon Collins (In Care Abuse Survivors): It was helpful for Helen Holland to speak before me, because she has explained the views of INCAS members. I am aware that there are different views and legal opinions on the waiver. Now that the committee has heard the INCAS view in general on the waiver, I return to the question that was asked, which was whether we are satisfied with the steps that are proposed as the bill goes from stage 1 to stage 2. There are a couple of things to say. First, the increased length of time to consult is essential—that is recognised and welcomed.

Secondly, if there is to be a waiver, which is still a big issue that others will engage with, it is also essential that consideration is given to making the waiver capable of revocation. Survivors do not believe that every organisation that undertakes to contribute will follow through. That doubt is based on what has happened in the past; it is not wild supposition, because it is based on examples. Survivors want to know that, if they sign a waiver and waive their rights, conditions have to be met, and that, if those conditions are not met, they have the right to put the waiver aside and pursue an action.

The issue that remains is the provision of proper advice. From our written submission, members can see that I am still concerned about the interpretation of sections 89(2)(d) and 89(3) of the bill. Section 89(2)(d) says that a survivor will be given cover for legal advice on

“whether to accept an offer of a redress payment and sign a waiver”,

but section 89(3) suggests that that will not include

“legal advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment.”

That reads as meaning that people will not be able to seek legal advice before they engage in a process and before they make an application—that is how I understand it. However, if it is intended to be at the point when the waiver is signed, it is totally unacceptable. You cannot waive a right without full understanding of what the right is.

That part of the bill must be made clear, because my reading of it is not clear. It must be made clear that, at the time that a survivor has to sign a waiver—if they are to sign a waiver—they will be given proper advice. I suggest that that should mean counsel’s opinion on the prospects for and likely outcome of civil litigation. That is the only way that someone can make an informed decision.

The Convener: Mr Whelan has been able to join us. I will bring him in shortly, after quickly going back to Janine Rennie.

Janine Rennie: I have a clarification to make. Helen Holland alluded to survivors not understanding, but it has been clear to me throughout that survivors have a really clear understanding of the process. When survivors receive legal advice at the beginning of the process, they do not know the future and what the prospects are for a civil action three years hence. A lot of survivors have expressed that concern to me.

I forgot to mention that the insurers have not been at all clear about whether they will contribute to a redress scheme. Although for, say, Quarriers homes, some survivors might sign a waiver, there might be a large cohort—we have worked with 135 survivors from Quarriers homes—that will not sign. An organisation contributing to the waiver scheme will not mean that there will not be litigation against it because, although one survivor might waive their rights, another 100 survivors might not. I do not see that there is an incentive for insurance companies to contribute to the waiver scheme.

The survivors do not see a connection between the contribution of organisations and whether they have accepted the waiver scheme. They are not really interested in whether organisations have signed up to that. They are more interested in receiving maximum compensation and justice for what they have endured.

The Convener: David Whelan, would you like to come in on that? I appreciate that you were not with us when the question was asked.

David Whelan (Former Boys and Girls Abused in Quarriers Homes): Good morning. Can you hear me?

The Convener: Yes, we can.

David Whelan: Sorry about that. There was an issue in logging on.

I picked up some of the last part of the conversation. I understand that it was about the waiver and contributions. For us, the issue is about those two things being linked. There was no suggestion of that in the consultation; I agree with Janine Rennie, who said in her submission that no linkage was made.

When it comes to the waiver, I find it extraordinary that—[*Inaudible*.]—may want to contribute, such as Quarriers. Those residents will have to sign a waiver, if the scheme comes into place. If other institutions do not contribute, their former residents will not have to sign a waiver. Whoever thought that up has created a system that discriminates completely against various residents, at a basic level.

We have been told that the waiver is based on contributions that will come from the insurers. FBGA has worked out the liability for the current Quarriers cases. It is significantly lower than what the Scottish Government is asking the organisation to contribute. Insurance companies are commercial private companies and therefore have a financial interest whenever they do business. Why does anybody think that insurance companies would contribute to a scheme far more money than is their current liability, as they are being asked to do? I do not understand the rationale behind that plan.

If I missed part of the question, convener, you can give it to me and I will be happy to answer.

The Convener: We will keep the debate going, Mr Whelan, and if you want to come back in we will bring you back in. I will bring in Helen Holland briefly, before we go back to Iain Gray.

Helen Holland: I have a very brief response to what Janine Rennie said. What I meant by survivors being confused was to do with the consultation paper and process in that the link between the waiver and the contributions was not clear.

The Convener: Thank you. I will bring Iain Gray back in.

Iain Gray: I am happy for colleagues to come in.

Rona Mackay: To move on a wee bit, what are the witnesses' views on the variations between payment levels and the maximum level of payment? Do they think that higher payment levels might make survivors more amenable to the waiver? If there was less of a difference between the different levels of redress scheme payment and civil court awards, would that make a difference to witnesses' views on the waiver?

Helen Holland: I think that it would—absolutely. In comparing the redress scheme with civil court action, we must consider the reality that many survivors are over 65. For them, and especially for the pre-1964 survivors, who, let us remember, have no choice about the court option, if the settlement figures were more in line with civil court action—again, with the correct legal advice—yes, absolutely, that would be deemed fairer for the survivors who engaged with the redress scheme.

09:15

If a survivor comes to the redress scheme and, within that period their legal advice is, "Actually, with the evidence that you've got, you would be better taking civil court action", it will be for the survivor to make the choice. If a survivor says to their lawyer, "I know I could probably get more from civil court action, but, for me, it's about more than finance," that needs to be respected as well. It is unique to the individual, but my understanding from the consultation process is that the majority of survivors who have been waiting 20 years just want it to be done and dusted. They want to be able to move on with their lives and put all this behind them, because the longer it goes on, the longer they have to engage with those thoughts and memories. Therefore, just on the basis of what has been said, it probably would make a difference to the survivors.

Simon Collins: Helen Holland mentioned that a higher level of payment would assist. I want to make two points, one of which is about the difference between the proposed levels of payment and the payments that were made in Ireland. Looking at the responses to level 1 payments, reference is made regularly to the intention to set up a non-adversarial system. I cannot understand why, from a legal perspective, that is linked to the level of payment. The benefit of the non-adversarial system is the ease of access for those who apply and the reduced legal costs. As a lawyer, suggesting that legal costs should be reduced could get me turned out of my private clubs, but there we are. Reducing legal costs is the advantage of the scheme, but that should not affect the level of payment, because the abuse that has been suffered is what triggers a level of payment. The fact that we have made it easier to access that should not justify a lower level of payment.

Helen Holland mentioned the pre-1964 survivors. When consideration of redress was first raised along the lines that we are talking about today—it has been discussed for many years—

one of the significant moments was Angela Constance announcing that there would be a bill to remove the time bar. David Whelan, Helen Holland and others were in the room at the time. The promise that was made was that those pre-1964 survivors, who cannot have their time bar removed, will be treated equitably, in a way that is comparable to the position of post-1964 survivors. The only way that that can be achieved is by the pre-1964 survivors being able to achieve through this scheme what they would have achieved through the courts. Unfortunately, for obvious reasons, there is a reducing number of pre-1964 survivors, but if we are to deliver on the promise that was made back then, and which has continued to be made, pre-1964 survivors must be eligible to be assessed for the payment that they would have achieved in court, because they do not have the option of going to court. There should not be an upper cap on that.

On the banding of payments, there are huge jumps, from £20,000 to £40,000 to £80,000. In paragraph 80 of its response to the committee's stage 1 report, the Scottish Government states:

> "We remain concerned that a wider range of payment levels may result in different payments being offered for similar experiences."

Wherever you draw a line and people on one side of the line receive one payment and people on the other side of the line receive another, there will be people who fall either side of that line whose experiences might be similar. When there is such wide banding, the difference is double the payment—it jumps from £20,000 to £40,000 to £80,000. That is much starker than if the difference were less, so a greater number of bands and more assessment are needed.

The Convener: Mr Aitken has managed to join the meeting, so I welcome him.

David Whelan: I thank the clinical professionals whom we commissioned to write a response to the Government's draft assessment framework on behalf of Former Boys and Girls Abused. It is clear that many elements were missing from the Government assessment paper.

Based on the consultation, it became very clear that survivors wanted their individual experience recognised in any process, and that they wanted further assessment of testimony that would recognise the whole experience of the survivor—not only the abuse experienced but the life circumstances. Aggravated circumstances are not currently recognised in the assessment framework. Experience of sexual incidents, disability and racial discrimination—a number of children suffered abuse in Quarriers homes because of their colour—are a significant handicap to survivors as they enter the labour market, because of what occurred. There is a loss of opportunity, which is not addressed.

That goes to the heart of what the payment system actually is. It should be there to address the whole-life experience of the survivor. Currently, the figures go from £40,000 to £80,000. The financial memorandum makes clear that the Scottish Government based its calculations on the fact that everyone will be pushed down into a calculated sum and the majority of payments will be around £32,000.

First, I do not know how the Government arrived at that calculation, without seeing the detail. Secondly, the payment levels can certainly be expanded and improved; we only need to consider other schemes. If what we and our clinical professionals have said is missing from the assessment framework is addressed, those gaps will also be addressed. The payment level should go all the way up—beyond £80,000 to £100,000 and £125,000 for the most extreme and exceptional circumstances.

I ask the committee to have a good look at the Lambeth children's homes redress scheme and its modelling approach, which identified levels on a scale and matched them with people's experiences. The Lambeth model is excellent. Eighty-three per cent of applicants to the Lambeth model received payment, council legal fees were 7 per cent and applicants' legal fees were 10 per cent.

We want a survivor-centred, trauma-informed process that—as the convener has said—puts the survivor at the centre of the process. It is difficult to see how the Government's figure was arrived at. We are working with the model that came out of the consultation, but, from my recollection, there were no other models on the table. We have considered Janine Rennie's model, and there is merit in some of that. However, we are working with the Government's model, and there was no choice of others, based on my recollection.

We have tried to improve the bill as best we can and to help the Government. I want to thank the Scottish Government, particularly John Swinney and his officials Claire Soper and Donald Henderson. We recognise that there has been significant progress in latter years, which has happened under Mr Swinney's brief. We thank him for that and for engagement with Scottish Government officials. The conversations are difficult but that can be overcome and we are committed to working with the Government to overcome those difficulties.

The Convener: Thank you, Mr Whelan. I am going to bring in Ms Rennie.

Janine Rennie: [*Inaudible*.]

The Convener: Ms Rennie, we missed the start of that.

Janine Rennie: Can you hear me now?

The Convener: Yes, we can.

Janine Rennie: On the question of whether survivors would accept the waiver if there was a higher level of payment, the survivors have been very clear that they would not. They still feel that they should have the choice. They know that there are plenty opportunities where, if there has been double counting of money then, as with the criminal injuries cases, there could be other ways of reclaiming any money that has been paid out. The survivors are very clear about that.

It is not about the amount of money. The survivors have been very clear that it has nothing to do with the money; it is about the betrayal that they feel. They are clear that they would never agree to the waiver. They feel very strongly about that, and they wanted me to stress it.

I welcome David Whelan's paper. That is the first time that we have ever really talked about the impact on survivors. When I was reading through it, everything that was said about the long-term impact on survivors of abuse resonated with me. I do not think that the levels of redress are adequate. We have been delivering the In Care Survivors Service Scotland since 2008—for 12 years—and I have worked personally with survivors on a therapeutic basis. The level of physical, emotional and all other forms of distress that we have seen in everybody that we work with is significant. Essentially, £80,000 is two years' salary for a lot of people, whereas we have worked with people who have never been able to work because of the severe distress that they have faced. How do you compensate them for that? I feel really strongly about that.

I should also say that the clients do not want a panel; they are very unhappy about the idea of a panel. They do not want to have to speak about their experiences to anybody else, because they have done it so many times.

Since we started, 12 years ago, we have worked with thousands of survivors in a clinical way and we have a huge number of incredibly thick clinical files. Survivors have said to us that they are quite happy to access their files and then present them as evidence. That shows the significant levels of physical and emotional distress that survivors have faced. In some ways, survivors feel that those files are their evidence.

Some of those survivors have worked with us for the whole 12 years, and one of them gave me a letter to bring to the committee. He feels really strongly that nobody represents him and that he has to speak for himself. He knows that there are other survivor organisations but he feels that nobody represents him and that he has been betrayed for the whole of his life. That particular survivor has not worked for the past 20 years because of the level of abuse that he received, and he lives in poverty. He said that he might feel compelled to take the money but that he might want to kill himself a year later because he had felt compelled to take it.

That is what we need to consider. As David Whelan's paper shows, we are dealing with human beings who have been through distress that nobody should ever have to experience in their lives. They were betrayed and let down.

I find it really uncomfortable that we are arguing over a waiver, because it should not exist. It should absolutely be the case that the survivors get the choice that was taken away from them as children. They did not have a choice then. They were placed into a care setting against their will and their lives were essentially destroyed.

09:30

We cannot take the choice away from them. It is what we have all been fighting for for years, and the survivor who I referred to has been fighting for it for his entire life. We should not take away the choice for those survivors as to how they receive their redress and whether they go to a civil court or to the redress scheme. No amount of legal advice will be able to make them understand what it will mean to them when they make that decision. That is what is important to me, because I know survivors who settled but then felt horrible about that. We need to think about what the impact of suicidal ideation will be down the line, as I do not think that that has been considered.

The Convener: Thank you. I see that both Mr Whelan and Ms Holland have indicated that they want to come back in on that point. However, I note for the record that I am bringing Ms Mackay back in and that Ms Wishart, Mr Johnson, Mr Greer and Mr Greene all want to ask questions as well, so if the survivors do not mind, I will not come back to you this time. You may address previous points when you answer the questions going forward, if you want to do so. I want everyone to have the opportunity to say their piece and to ask their questions, if that is okay with everyone. I will go back to Ms Mackay just now. [*Interruption*.] I think that Ms Mackay has finished her questions. I will move now to Ms Wishart.

Beatrice Wishart: What are the witnesses' views on the composition of the redress panel? I would like an understanding of where they are on that at the moment.

David Whelan: The redress panel should have a wide range of skills. Clearly, it is basic that it

should be trauma informed. We suggested in our first submission what the skill set might be. The important thing for us is that the panel is independent and impartial and has lawful discretion to make independent and impartial decisions. We believe that the words "lawful discretion" in relation to the panel should be included in the bill.

I want to go back to a couple of previous points. We have had legal advice from international lawyers that, in the Scottish circumstances, the waiver will be unlawful, even if the Government tries to argue that there were different circumstances in the Irish case. We had that confirmed last night by the international lawyers who worked on the Irish case. I am saddened that we have got to this point and that, as Janine Rennie said, we are arguing over a waiver that has many strands to it but is supposed to make the scheme successful. It is just incredible.

I am also astonished by the deafening silence from the Catholic church and the Catholic establishment. We have not heard anything. I do not represent the children who were in those institutions, but I think that the Parliament has a clear duty with regard to the voluntary contributions. Quarriers, CrossReach and Aberlour have committed to trying to find a way to make contributions if the conditions are right. We believe that, if the waiver is not there, people will be able to make those voluntary contributions. People are looking at Aberlour, Quarriers and CrossReach, but they have already committed to the voluntary contributions. I think that we should be looking the other way, at all the organisations that have not committed to the voluntary contributions.

The other point that I want to make is about eligibility. The Government must understand that we are really struggling with the fact that the Scottish child abuse inquiry has investigated all these institutions but it is not legitimate for former residents in half of them to access the redress scheme. How can you have a system, on which there has been an inquiry, that denies those former residents access to a redress scheme?

We are saying to the Government that it has a once-in-a-lifetime chance to redress all the issues. Ireland has done that. It is now setting up its third redress scheme, which will take about three months—it is due to start in April.

The Irish route is addressing all the issues of all the survivors from every institution. The Scottish Government needs to consider doing that, too. The Government will have to revisit the issue. We are telling it that it has an opportunity to address the issue and make the scheme one of the best in the world. We, in Scotland, are the last to do anything—let us stop pretending that that is not the case.

The Convener: I will bring in Ms Holland at this point.

We seem to be having a wee bit of trouble with the connection.

Helen Holland: Can you hear me now?

The Convener: We can hear you, but we cannot see you.

We can see you now.

Helen Holland: I am sorry about that. I got logged out of the system.

The consultation papers mentioned the redress panel, but, to be honest, there has not yet been a great deal of discussion around who would be on the panel, and so on. That has still to be covered. We ask that the panel members be qualified with trauma-informed and financial qualifications—whatever the situation requires—but those conversations have not taken place yet.

On the issue of who is engaging with whom on redress, we are not privy to the conversations that are taking place between the Government and care provider bodies. That might be right, in a way, because the burden of responsibility of deciding who is paying what should not lie on the shoulders of the survivors. They are already carrying so many burdens, and that would be yet another one.

As I said, the conversations have not taken place yet, so it is difficult to answer the question.

The Convener: Okay. I have not seen any indications from Ms Rennie or the other witnesses that they want to come in on that question, so I will go back to Ms Wishart.

Ms Wishart has indicated that her question has been answered, so I will move to questions from Mr Johnson, please.

Daniel Johnson (Edinburgh Southern) (Lab): I have two related questions on the evidential requirements for redress, so I will wrap them into one. There was a lot of detail on that topic in the written submissions, and we have examined the matter quite a lot. My questions follow on from Janine Rennie's comments.

My first question is: what should the evidential requirements be for making an application? Do the witnesses agree with Janine Rennie's points? How should the requirements be formulated, so that it is clear and easy for survivors to present that evidence?

Regarding my second question, I received a direct communication from a survivor who is keen that any information or evidence that is obtained by redress Scotland be provided to survivors. Many survivors do not necessarily know everything that happened to them, including where

they were, or why. It is therefore possible that redress Scotland could obtain information that survivors simply do not have. That is not a matter on which we took evidence, so I am interested in hearing from witnesses about the possibility of requiring redress Scotland to hand back any information that it holds, subject to the protection of other individuals' privacy.

My two questions are on evidential requirements and the requirement to hand back any information to survivors at the end of the process.

Simon Collins: At INCAS, we have a lot of experience of engaging with the child abuse inquiry. It is clear from what Janine Rennie said that there are organisations, such as hers, with which survivors engage and to which survivors spend a lot of time explaining the traumas that they have suffered, to the extent that they relive them. Whatever the basis of the evidence gathering, at all stages, it should be borne in mind that, whenever it is possible to gather evidence from a source without requiring survivors to go over very painful ground, that is the only appropriate approach.

I welcome the fact that an approach will be made to the inquiry. Many, although not all, survivors who want to come forward have engaged with the inquiry, and that is one means of gathering their evidence. Therefore, I welcome the fact that an approach has been made to Lady Smith about whether the information that is already held there can be used.

On the point about returning information, I am aware that, in the course of giving evidence to the inquiry, survivors have encountered documents relating to them that they have not seen before, including records that had been lost. Survivors might have spent many years struggling to find that information and, in some cases, put together a sense of identity from it. I cannot speak on behalf of survivors, but I have observed the distress that can be caused when such documents are locked back in a vault because they are part of confidentiality arrangements. Having observed the reaction of survivors, it seems to me that information that is obtained should be left with the survivor to use as they wish.

David Whelan: As Simon Collins said, we do not want the survivor to have to keep retelling their experience, as they will have repeated it many times. For us, it is important that the survivor is at the heart of the process and chooses the support mechanism that they want to take them through it.

On evidential requirements, people ask me, "David, when did this all happen?" For FBGA, it all started in 2002. I pay special tribute to two women who had the courage and tenacity to highlight the Quarriers abuses. They were in the media in 1984—one was Jan McQueenie, and the other was Doris Black. They were ostracised by the state and the Government because they had the tenacity to raise issues in the media about the abuse that they suffered in Quarriers in the 1940s, 1950s and 1960s. Unfortunately, they are now deceased, but their families will have some evidence, which is where next of kin come into it.

09:45

I have a second point, on evidential requirements. In our submission, we talk about the standard of proof, which needs to be lawful. We keep hearing from the Government that the process is not a civil proceeding, but we want the evidential standard of proof to be robust and credible. My concern, if I have one, is that the pre-1964 records of many survivors were destroyed, which means that much of what the committee might consider to be evidence that would normally be available to meet the requirements is, unfortunately, not available to survivors. We are concerned that, if the bar is set too high, it will exclude many survivors. The committee needs to consider that when it thinks about where the threshold should be set. We have an open mind on that—we have addressed it with regard to what I have just said.

On the governance of redress Scotland, it is important to put on record that we believe that redress Scotland should be independently regulated, with independent audits and impartial surveys of its functions. It will not give survivors confidence if the whole process is embedded in the Government. If a report were to come out from the Government that said that the organisation was doing fine, it would not, unfortunately, be independent or impartial.

On the gathering of evidence, we are concerned about what happens to the evidence when it is submitted to the process. Where does it go? Where does the consent and permission of the survivor start and end? If the survivor submits a document that requires to be validated, we believe that there is a need to go back to the survivor to ask for permission. There should not be a unilateral decision to send the document to a third party without the permission and express consent of the survivor.

On sharing information and data, I agree completely with Mr Johnson. If redress Scotland has information to which a survivor has not previously had access, it needs to find a way to share that with them while abiding by the data protection legislation. Redress Scotland cannot simply take the view that it can hold everything. If it has information on people who have not been able to access that information, it should share as

much of that data and information as possible with the individual.

Janine Rennie: It is important that going for redress is a survivors' process. It should be for survivors to choose which information they provide to whatever body is set up. We have been very much involved with the advance payments scheme in respect of access to records. Since the In Care Survivors Service Scotland was established, in 2008, one of its main roles has been to access records for survivors, so we already hold substantial records that survivors have been looking for over the years. A lot of the client files will contain their access-to-records information, with evidential information on what care home they were in and so on.

As I said when I gave evidence previously, one concern is the number of fires and floods that have occurred, which means that a lot of evidence unfortunately no longer exists. We have had reports back from two of the care homes that we are currently dealing with to say that there are absolutely no records. We have tried our hardest to go through school records and all sorts of different routes to find evidence that people were in a certain care home and, from that, to provide evidence that abuse took place, but it has been really challenging.

One important point that comes across all the time from survivors is that, when clients access their records, those are their records—and they should have support to go through them. We initially developed the model of access to records through the Care Leavers Association down south, which gave us some support in setting it up, drawing on its experience. It came across clearly from the association that there would be things in files that people did not know about. For instance, siblings had no idea about all sorts of information, which was a surprise to them. For their safety and to address risk, it is really important that people are supported through the process of accessing their records. We have been encouraged by the advance payment team, who have provided support and worked responsibly with us to ensure that we can access client records. We hope that that will continue. In Care Survivors Service Scotland has 12 years' experience of that.

The records should belong to the survivor—I have been clear about that from the beginning. Every bit of information on a survivor should belong to the survivor—and that fits with the general data protection regulation, or GDPR. If the panel manages to find any additional information, it should go to the survivor first so that they can choose what information is then shared, as somebody would if they were looking to give their general practitioner's records to an insurance company. What information is shared should be the survivor's choice, as there might be aspects of their past that they do not remember being discussed and they should have a chance to reflect on that.

I would ask the panel to reflect again: how would you feel if some stranger got hold of your GP records and there were things in there that you did not want anybody to know? It should be the survivor's choice what is known. The redress scheme is the survivor's scheme, and it should absolutely be their choice what is shared within that.

Helen Holland: At the moment, there is an assumption that there will have to be a high level of evidence, but nothing has been said in the debate or anywhere else to suggest that. The whole point of the redress scheme is that the evidence required would be less.

I take on board exactly what is being said. For years, survivors were told that records did not exist and so on, but the child abuse inquiry has proven that to be absolutely wrong. For example, I was told that there were no procurator fiscal records, but they appeared before I was due to give evidence, so the reality is that there are records that are not being made available.

In the redress board, perhaps something could be put in place whereby the people who hold the records are compelled to provide them and the survivor—together with a support worker—is able to go through the records, not necessarily for the sake of proving that they were abused or whatever, but to find whatever it is that they wish to put before the panel.

INCAS's position is that providing any evidence that is already out there, in order to avoid a survivor having to go through their experience over and over again, has to be a priority.

Many of our members who applied to the advance payments team thought that they did not have anything—they were told that they did not have anything—but the support people in the advance payments team or the people who were dealing with the applications were able to find that evidence. There is a lot of evidence out there that people think is missing, but it is still there. I am not, however, saying that that will be the case for everybody—some survivors will have difficulty, and I would not sit here and say otherwise.

Going back to the question about the basis of evidence, we do not know what level of evidence is being asked for at this stage. Until there is clarity on that, we are making the assumption that a high level of evidence will be required, although my understanding from the feedback both from the minister and from officials is that the level of evidence that will be required will be much lower. Given how the scheme has been set up and how

things have been written, the redress is said to be more trauma informed, and there is no desire to make survivors relive all their experiences. That is my understanding, to date, of how the redress scheme is being set up. I may have picked that up wrongly, but I do not think so.

David Whelan: I agree completely with what Janine Rennie says and also with a number of the points that Helen Holland raised. Mr Swinney is on record as saying that the evidential requirement will be lower—that is in our submission. The committee and the Parliament will have to come to an agreement on where to set the standard of proof, so that it matches the lower evidential requirement.

The Convener: We will move on to questions from Mr Greer.

Ross Greer (West Scotland) (Green): Let us turn to the issue of fair and meaningful contributions from organisations, following up on something that Helen Holland said in response to the first question from Iain Gray. There is some tension around the matter of fair and meaningful contribution. If we work on the assumption that contributions will be met directly by the organisations—probably from their reserves, because it is not a scheme that the insurers will engage with—the challenge becomes how to ensure both an appropriate level of contribution from the organisation and that any survivor who comes forward is able to get financial redress, no matter what.

That takes us to the point that Helen Holland made about how much comes from the Government and is public money. Some organisations will be able to cover all that is asked of them, although whether they do so is up to them, as it is voluntary. However, given that we cannot predict how many people will come forward and how much the sums will be, it may simply not be financially possible or realistic for some organisations to cover it all themselves. Also, some organisations may wish to give a lump sum at the start of the process but, by the end of it, survivors' demands of that organisation might outstrip that sum.

I am not asking the panel to come up with a solution, and I recognise that what survivors want, overwhelmingly, is redress from the organisations, not from the Government. However, it would be helpful to hear the witnesses' reflections on what it would mean for survivors if we ended up in a situation in which organisations made what was broadly regarded as a fair and meaningful contribution but that did not cover the demand, so that financial redress for some survivors came overwhelmingly from the Government.

David Whelan: Respectfully, Mr Greer, I disagree with what you are saying about survivors expecting the institutions to carry the complete burden of redress. The ultimate responsibility lies with the state, so it should be a shared burden. The providers, as we can see, have asked that conditions be set so that contributions are fair and meaningful, affordable and sustainable, which would enable them to contribute.

We believe that that would also enable lots of other institutions that wish to contribute to do so. Some of the institutions no longer exist, so there is, again, an issue with the waiver. Some of the institutions have trust funds that are on-going and that operate slightly differently, but they may wish to contribute a sum. I think that the committee needs to take an open view of the matter, because every organisation will be different.

The expectation is that, based on numbers, one organisation could pay more than another organisation that is very rich today or that maybe does not exist but that has assets all over the place that could be accessed. The scheme has to operate in a way that makes it attractive for institutions to contribute.

10:00

It is inevitable that some institutions are not in existence and other institutions cannot afford to contribute. It is on record that the survivors do not wish to damage the institutions. The issue with the contributions is about the waiver. I apologise for going back to that, but I will tell you what we have told Quarriers. I have been asked by survivors what I will say to Quarriers if the waiver comes in. We have told Quarriers that we recognise that it is trying to reconcile and that it has made huge steps, just as the Scottish Government has made significant steps to address the issues in the past few years, and we recognise that it wishes to contribute.

Generations of children have been failed by the organisation, and the organisation recognises that through the child abuse inquiry. We are saying, "Don't fail the current children and current users." If the waiver comes in, we will say to Quarriers, "We respectfully acknowledge that, but we're asking you to keep that contribution and put it into enhancing the aftercare service and back into current services. If you put us in a position in which we have to sign something that is unlawful and that will not hold the Government to account, will not hold the abusers to account"—as Helen Holland said—"and will not hold the institution to account, we do not wish to sign that, so keep your contribution and put it into non-redress and enhance the aftercare service."

Janine Rennie: David Whelan makes an interesting and useful point about aftercare. We have worked with and have evidence of 367 care establishments. As well as that, we have evidence of probably as many foster carers who abused children in the past. Barnardo's, Quarriers, the Catholic church and other large institutions are a bit of a distraction from that. Although a number of survivors were abused in those settings, many of the settings have not even been investigated by the child abuse inquiry. As David Whelan said, a lot of institutions are no longer with us—they shut down years ago—and a lot of foster carers are no longer alive, so there is no way that they could contribute to the scheme.

Another thing that the survivors said to me loud and clear is that they feel that there is a focus on particular institutions and that that excludes them entirely. That is the wrong approach, because it makes survivors feel that some organisations are in the limelight as the ones that have abused children. Obviously, the child abuse inquiry has been focused on those organisations, but a whole load of survivors feel lost in among that. They are the ones who were perhaps abused by a small institution. There might be two, three or four people who were in that institution, but it is no longer there, so there is nobody to be held accountable.

A large number of survivors say that it is the absolute responsibility of the state. A number of the homes that they were in were institutions that were run by the state, perhaps through local authorities, so the survivors feel very strongly that, in a way, the issue of institutions paying into the scheme does not affect or apply to them. Even if we get what would be perceived as a reasonable contribution from an organisation that is now running as a charity that helps people, survivors will worry and have concerns about that, as David Whelan said.

It is important to see that that is in no way the answer, because it will miss out all those people. How do you answer those who will be excluded because their foster carer died 10 years ago and cannot contribute to the scheme? You need to think about what we are dealing with—it is not just what is in the public eye or in the big stories; it is every single establishment. As I said, Wellbeing Scotland and In Care Abuse Survivors have evidence of abuse in 367 establishments and by probably just as many foster carers, so it is not an easy issue to consider.

The Convener: We will go back to Ms Holland and then back to Mr Greer.

Helen Holland: Mr Greer, I appreciate the fact that you were not asking us to come up with solutions. However, I agree with Janine Rennie that many survivors were in foster care and the reality is that the foster care system is under the care of the local authority, so the Government would be responsible for covering the costs. There are also establishments that, because of the length of time that has passed, no longer exist, and the redress relating to them, unfortunately, would probably lie with the Government as well.

However, when care provider organisations could contribute to the scheme—and there are still quite a few of them—our opinion is that they should do so. Ninety per cent of survivors have said that they want contributions to come from the state, which was primarily responsible, and from the organisations, which, in many cases, were aware of the abuse but did nothing about it.

This is not an easy issue for the panel. Ross Greer made it clear, when he asked the question, that it is not for the survivors to come up with solutions to every question. Survivors have enough of a burden on their shoulders without having to come up with all the solutions for redress. Yes, we can give input, and I am grateful for being able to do that—as, I am sure, David Whelan and Janine Rennie are—but the reality is that it is not for us to come up with the solutions. Redress has taken place all over the world, and there have probably been the same difficulties. I never expected Scotland to be different; I always knew that this was going to be the most difficult part of everything that we have done over the years, and that has absolutely proven to be the case.

Ross Greer: The answers to my question have been more than adequate, so I do not feel the need to come back in, although Mr Whelan might wish to come back in on that point.

The Convener: Mr Mundell has a supplementary question in the same area—it is either on Ross Greer's question or on the previous one—so I will go to him first, and then Mr Whelan can wrap up his responses to both questions.

Oliver Mundell (Dumfriesshire) (Con): My question is supplementary to the question before Mr Greer's—I was probably slow in typing into the chat box. It follows up on the points that Daniel Johnson made and is about the burden of proof and evidential requirements.

I am not looking for the witnesses to come up with the solutions, but I am interested in their thoughts on whether survivors and victims would expect a different level of evidence to be provided for the higher award payment or whether they would expect the approach to continue to be that the same burden of proof and evidence would be required across all the payment levels.

David Whelan: I fully support what Helen Holland said in response to the previous question—I want to put that on the record. In fact, I

would say that Helen has just answered the next question as well, because it is really not down to us what evidential levels will be required. We are being asked to come up with various solutions. Although we can help to explore those, we feel that it will be for the panel to make the ultimate decision, and it should have the power to do so independently and impartially.

If you are saying that there should be certain thresholds for certain payments, we would agree. However, I say that with caution in relation to the evidence that is available to survivors. For example, a 1964 survivor might struggle to find evidence that meets the higher threshold. The Scottish Government has already acknowledged that such a survivor will also be disadvantaged by not being able to access civil litigation. As Helen Holland said, we will continue to explore with the Government solutions for a number of the questions that have been raised, and we hope to help it to find those solutions.

The FBGA feels that, just as is the position with the Scottish child abuse inquiry, in which there will come a point at which the chair has to make decisions, there will also come a point at which the proposed independent and impartial decision-making panel will have to make decisions. I reiterate that provisions on the panel's discretion, independence and impartiality should be in the bill. It needs to be given such powers.

Simon Collins: The part of the question that I noted asked whether, if a standard brief were to be set, it should follow that a higher standard should be applied when higher payments were sought. The simple answer has to be no. The standard of evidence required to establish that abuse has taken place must be the same; it is the level of payment that should reflect the level of the abuse. Someone who has suffered the most horrific level of abuse as a child and throughout the rest of their life should not have to meet a higher standard of evidence to establish it than someone who suffered abuse that, although still horrible, could be considered to have been at a lower level. The standard should not change.

I want to raise a point of which the committee might already be aware. The inquiry's experience has been that various organisations have been called upon to observe survivors' evidence and have the opportunity to put questions to them. However, not a single survivor who has given evidence of the abuse that they have suffered at the hands of those providers has had their evidence challenged by them in any significant way. At the end of every passage of evidence, the providers have been given an opportunity to make submissions, and they have either accepted it or have stated that, although they might not know what happened, they are not saying that the survivor's position as it was advanced is untrue.

So far, that position has been adopted by a number of organisations. Whatever else might be said about providers seeking to avoid liability, it seems that, when they are publicly faced with the situation, there is no appetite among them for suggesting that those who have been brave enough to come forward and share their childhood experiences should be disbelieved. I suggest that, if an organisation has spoken at the inquiry and has accepted, without dispute, that abuse has happened, the panel should be able to take that into account as a relevant factor for consideration when it weighs up redress claims.

Janine Rennie: [*Inaudible*.]—That was one of the tensions that was mentioned by most of the survivors to whom we spoke. We also did a survey that asked them about it, and around 90 per cent said that they did not want there to be a scale. They did not want survivors to have to meet different levels of evidence, because that might make one feel that their experience had been worse than someone else's whereas the situation might just be that the other person had been unable to provide the same level of evidence.

As I have said previously, some survivors have never told anyone in their family that they were sexually abused and they will never tell anyone else about it. Yesterday, I spoke to one of the survivors whom I counsel, and he said that he will never tell anybody that he was sexually abused, even if doing so meant that he would get redress at a higher level on the scale.

It is really difficult. We need to look at the complexity of the issues and consider whether people feel comfortable about disclosing abuse.

10:15

Many survivors were not part of the original consultation—way back, when the scale was first presented—and they felt that the scale was the only option that was being presented to them in the subsequent consultation. They say that, if they had been asked the question, they would have said, "No—there should be a reasonable level of redress for everybody," and that everybody should be treated equally, because we cannot scale the impacts. Somebody might have had an experience of abuse that affected their entire life, whereas somebody else might have experienced abuse and managed to function in life, going on to live in a really fulfilling way. It is therefore very difficult to make such an assessment.

With all due respect, even if the decision-making panel is made up of a lot of professionals, they are not going to be able to make such an assessment without knowing the survivor, and they will not get

to know the survivor during the time for which they access the panel.

Throughout my years of working in the field—I am now standing back from it a bit, because I am the chief executive of an organisation—I have seen survivors pitched against survivors, and it has been really damaging for everybody throughout the process. I am really concerned that we could have a process that would continue that.

David Whelan: Some of what Janine Rennie has said has merit. If we had had more time, we could have scrutinised the model that she is talking about. That would have been helpful.

On the evidential thresholds and requirements, we say in our submission:

> “these Redress evidential levels are required to be robust and credible, to prevent fraud and support genuine applications.”

We are talking about the process here. There has to be a recognition that this is public money and it must be managed appropriately and properly.

Helen Holland: In response to what Janine Rennie said, I note that our members have made it perfectly clear, as did the people who engaged with the consultation, that they do not agree with a flat-rate payment. I cannot think of anything that would be more unfair. How could that be justified? Some people went into care as toddlers, and we have a member who did not leave the care system until the age of 24. They were not signed off from the care system until then, and they suffered horrific abuse during that period.

I am not saying that abuse does not take place only for a few months, a year or whatever, but the reality is that people’s experience of the care system is unique to them and there are individual circumstances regarding the length of time they were in care, the level of abuse, and so on. In the opinion of the people of INCAS, it would be unfair to make a flat-rate payment across the board, and they would not see that as justifiable. If anything, it would probably cause even more division among survivors.

This is about justice. It is about survivors being able to walk away from redress feeling that they have achieved justice and that they can get on with their lives and start repairing the damage that has been done to them.

The Convener: Mr Mundell, do you have a final question, or are you content?

Oliver Mundell: I am happy with those answers, which were helpful. I clarify that I do not have a strong view one way or the other; I just wanted to highlight that it is a complicated issue.

The Convener: I will go back to Mr Whelan for a final comment, because he has put an R in the chat box. I say to everyone that, if there is something that you wanted to say today but have not been able to say, you should get in touch with our clerks and we will ensure that it is shared with the committee before we start our stage 2 deliberations.

David Whelan: I agree with Helen Holland. As you can see from the clinical assessment paper that we provided to the committee, this is about the individual and their unique experience. That is what we are talking about. The work is survivor centred and survivor informed. It is about the individual and their lifelong experiences in relation to what may have happened to them in care.

The Convener: I thank the survivor organisations that have been with us today for their willingness to engage with the committee during this process. Your evidence has been extremely helpful.

I will suspend the meeting for two minutes, to allow the minister to join us and the current witnesses to leave.

10:20

Meeting suspended.

10:22

On resuming—

Impact of Covid-19 on Further and Higher Education

The Convener: Welcome back to the meeting. We move to item 8. I welcome Richard Lochhead, Minister for Further Education, Higher Education and Science; and Roddy Macdonald, head of the higher education and science division, and Alan Scott, senior policy manager at the Student Awards Agency Scotland, both from the Scottish Government.

I invite the minister to make an opening statement and ask members to indicate that they wish to ask questions by putting an R in the chat box.

The Minister for Further Education, Higher Education and Science (Richard Lochhead): Good morning, convener. I hope that you can hear me okay.

The Convener: Yes.

Richard Lochhead: I thank the committee for the opportunity to give evidence this morning. Much has happened since we last met. We have supported many students to return home for the winter break, and we have also set out how best to enable their safe return for term 2. Our European Union exit transition also came to an end.

The new coronavirus variant has thrown up serious challenges, and our colleges and universities and the community learning sector, as well as all students and staff, have a significant role to play in our national effort. The enormous amount of work that has been undertaken in recent months by the staff in our institutions, the accommodation providers and our students has helped to limit the spread of the virus and ensure everyone's safety, and it should not be underestimated in such challenging circumstances. For that, I thank everyone involved.

We published guidance on 15 January and some frequently asked questions on 22 January to provide the clarity that is required by college and university staff and students and their families about the arrangements for the start of term 2. For most students, the message was and remains for them to stay at home. Across the country, we are asking people to limit their movement and interactions, so those students who returned home for their winter break should not return to term-time accommodation unless they have been advised to do so by the university or college. The only exceptions to that are the small number of students whose attendance is absolutely critical and whose education cannot be delivered remotely or postponed. It is worth remembering that all arrangements are subject to the future review of Covid-19 conditions in Scotland.

With learning being predominantly online throughout January and February, I understand that that is not the education experience that students expect or deserve. We must always remember that this has also been a difficult time for college and university staff, professionally and in terms of looking after their own wellbeing, and I have been impressed with the way in which they have gone above and beyond in providing their students with an education in the most trying of circumstances.

On student wellbeing, colleges, universities and accommodation providers have a duty of care to students. We expect institutions to ensure that students are fully aware of the new measures that are in place and that they have the support that they need to study remotely.

We have further supported student mental health and welfare by making available additional resources, and we continue to support National Union of Students Scotland's think positive initiative, which now has a Covid-19 focus.

I have asked accommodation providers to treat students who are living away from home sympathetically and to take their circumstances into account so that they are not disadvantaged. I welcome the many examples of universities and other providers offering significant discounts, rebates or refunds to students, and I strongly encourage other providers to consider how they, too, can treat their students sympathetically. I understand that many students are now taking advantage of the provisions in law to withdraw from accommodation leases, and I have written to providers and students to remind them of that provision.

A positive development was confirmed yesterday. The Government announced £30 million of additional funding to support institutions and others that have lost revenue because of accommodation costs, and to provide further support for students who have been affected and find themselves in hardship because of the crisis. That will allow college and university students who require extra support to be able to access it, and it will help to relieve the pressure on institutions that have faced additional costs arising from rent refunds and rebates and other accommodation issues.

I am pleased to tell the committee that I am creating a short-life task force that will assess the impact of Covid-19 and the pandemic on student hardship. I want that route to determine whether the measures and mechanisms that are currently

in place are sufficient to mitigate student hardship in further and higher education at this time. The group will convene for the first time during the next few days.

Being aware of the potential long-term impact on educational attainment and the financial impact that the pandemic is having on our colleges and universities, I have agreed to the setting up of a task force to consider those issues while looking to term 3 and beyond.

Today's new higher education statistics for 2019-20 show that a record number of students were enrolled at Scottish institutions and that the number of Scotland-domiciled students was at a 10-year high. Members might be aware that, for this academic year, the Universities and Colleges Admissions Service also reported that acceptances by Scotland-domiciled students are at a record high for institutions in Scotland.

Importantly for higher education, the statistics also bring the good news that the widening access interim target in higher education that 16 per cent of full-time first-time degree entrants to Scottish universities should be from our 20 per cent most deprived areas has been exceeded. I thank everyone in the sector who has helped to ensure that that important milestone has been reached.

I have said this to the committee many times but it remains absolutely true: the challenges for all in further and higher education have been unprecedented, as has been the response. It is to the enormous credit of all the agencies, the college and university staff, the students and the unions that their response to the most difficult of circumstances has been so helpful and positive. It has made a huge difference. I greatly appreciate that, and I look forward to working with them and the committee throughout the remainder of the academic year.

The Convener: Thank you, minister. We already have seven members indicating that they have questions, so if you were succinct with questions and answers, it would help us to ensure that everybody gets their opportunity this morning.

The first questions are from Oliver Mundell.

10:30

Oliver Mundell: Does the minister have any information on the number of people applying for university next year? In anecdotal feedback, I have had suggestions both from young people and from one institution that application numbers to university for next year are down, most likely as a result of fear of a repeat of the situation that we have seen this year, whereby some young people have spent more time at home than at university, as well as the concerning scenes that we have seen in relation to Covid testing. Has the minister picked up on that?

Richard Lochhead: I thank Oliver Mundell for that question, which highlights an important issue in relation to the impact of the pandemic on the plans of people—particularly young people—in Scotland for next year.

The UCAS deadline for higher education was, of course, extended; it is not until the end of this month. We therefore will not have any official statistics in relation to the first window for a few days yet. However, I have no doubt that many young people will be reflecting on where we are at the moment and taking a bit more time before they make a final decision on their plans. We are in a very challenging period—we are in the middle of a national lockdown—so I understand why young people may be thinking like that.

Nonetheless, it is important that we encourage our young people to take decisions as quickly as possible, to submit their applications to UCAS in the remaining time available and in future windows, and to look to the future. Although I know that it is very challenging just now and that it does not seem so obvious in the middle of the pandemic, we will get through this. It is really important that our young people take advantage of the further and higher education opportunities in Scotland.

Although we have not yet had any specific feedback, we are—as the committee can imagine—paying close attention. We await those initial statistics from UCAS in the next few days.

Oliver Mundell: Some institutions and courses will be more affected than others—particularly practical courses, which people feel have been so limited this year that there has been no point in being on them. Will you look at additional financial support and at the support that is available for such courses and institutions so that they are not affected in the longer term by what is likely to be a one-year issue?

Richard Lochhead: We will look at all those issues. As I said in my opening remarks, one of the reasons why I set up the short-life task force was to consider the impact in term 3 and the challenges that our colleges and universities are facing.

Colleges, of course, face even bigger challenges, because the short-term nature of college courses means that there is no built-in time—so to speak—to catch up, as there would be for a university degree over two, three or four years.

I assure Mr Mundell that the purpose of the task force is to look at that and to work out how we can help as many young people as possible to

complete their learner journey in this academic year. In addition to that, the task force is, of course, looking at what the options to help people might have to be if other plans have to be put in place. The Scottish Government has to work with our institutions in relation to any financial consequences of that.

Oliver Mundell: Are you mindful of the importance of protecting the long-term future of smaller further and higher education institutions?

Richard Lochhead: Yes—absolutely. We are working very closely with the Scottish Funding Council on the impact of the pandemic, as well as on wider challenges that have been there for some time. We are getting regular updates. I assure the committee again that our colleges and universities will get through this. The Scottish Funding Council, in particular, has shown enormous flexibility in the way in which it is delivering the funding to our colleges to help them get over their challenges.

Daniel Johnson: I understand that, last summer, provision was made for the potential extension of dental courses. At the time, dental schools in Scotland advised students that that was a possibility. I have been informed by a constituent that it is now actively being considered; that is the information that one dental student has reported to me.

Specifically for dental courses, and for other practical courses such as medicine, will the minister confirm whether there is going to be a requirement to extend completion dates and course lengths in order for people to complete the practical elements that it is not possible to complete right now?

Richard Lochhead: Clearly, the lack of face-to-face teaching has had an impact on some courses more than others. Daniel Johnson is quite right to highlight dentistry, which is mentioned most frequently to me as being affected. I know that the universities that have dental courses are looking at contingency plans to help dental students to graduate. However, I also know that that is challenging at the moment, because, quite clearly, there are some practical aspects of that course that students have to complete before they can qualify.

The Cabinet Secretary for Health and Sport and her colleagues are closest to this, because they engage much more closely with the universities on medical and dental degrees. I would be happy to send some follow-up information to the committee. However, I know that the University of Glasgow and other universities are actively considering the issue.

Daniel Johnson: I would be grateful for that information, particularly if it could be specific about which institutions are considering it and what the likely length of deferment might be.

Obviously, the inability to conduct face-to-face teaching is widespread throughout the sector. Has the minister a specific figure for the percentage of undergraduates and postgraduates who have returned since the Christmas break, and what does he expect that figure to reach in the coming weeks? It is not going to be a static picture.

Richard Lochhead: That is a difficult question to answer precisely. However, the guidance that we laid out for the return this term anticipated no more than 5 per cent of students being on campus across Scotland. We have no reason to believe that that has been breached to any great degree. We are keeping a very close eye on that. From all the feedback from our universities and, especially, from our colleges, we know that there are very few students on campus at the moment.

When it comes to students who stayed over for Christmas—who did not return home—I think that around 6,000 or 7,000 stayed in purpose-built accommodation, although, of course, many others will have stayed in private rented accommodation. From meeting families and from students, I have dozens of anecdotes about those who are still living at their student accommodation because they did not go home for Christmas in the first place.

It is difficult to give a precise number, but that figure of 5 per cent is our estimate.

Daniel Johnson: I will leave my questions there, but I add to my request: I understand why the minister's health colleagues would be better placed to answer questions on medicine and dentistry, but it would be very useful to have in writing from him details about any similar deferments for other courses that have practical elements, such as in science.

Richard Lochhead: Yes.

Ross Greer: Minister, when you came to the committee last May—I think it was then; certainly, it was before the end of the 2019-20 academic year—you expressed a little concern about the variability in how further and higher education institutions were using their student hardship funds, as there might have been an indication that students at some universities and colleges were finding it easier than those at others to access those funds. Given that we are now quite far on from that, in terms of both the phases of the hardship fund moneys that have been made available and the pandemic situation, do you now have a clear breakdown by institution of the number of requests that were made, of how many were granted and of how much was paid out? You obviously know how much each institution got to administer the funds, but do you now have a clear

idea of how they administered them? If you do, are there remaining concerns about variability?

Richard Lochhead: In recent days, I have seen the figures, and the money is going out the door—there is clearly a need for hardship funds. As I said, the picture is variable across all institutions: our colleges, as well as some universities, have put a lot of their money out the door while some of the latter perhaps have some balance left in their funds. After yesterday's announcement, we are propping those funds up by a further £20 million. From the £30 million that was announced, £10 million goes to our institutions to help them to offset some of the losses from accommodation refunds, cancellations and so on, and £20 million goes via the SFC to institutions for hardship funds.

I have spoken to many of the teams that allocate those funds and that deal with the applications in institutions around the country. The applications have been made a lot more flexible over the past few months, and the limits on the amount of money that can be given out have been lifted. I do not detect major issues at the moment, but we are keeping the process under review. As I mentioned in my opening remarks, we have set up a task force, which will meet for the first time in a few days and will bring together various advisers who work in universities, as well as student representative bodies and agencies, to consider what issues have arisen out of the hardship funds.

One of my issues is the co-ordination with other funds in society that are available to students, because the picture of where they can go can be complicated for them. Awareness raising—ensuring that all students are aware that the funds exist and that they can access them if they qualify—is another issue. If the committee wants me to write back to it on the matter, I can give you more detail.

Ross Greer: It would be useful if you could provide further information in writing—perhaps some version of the data, which you mentioned that you had seen in the past couple of days.

My second question is specifically about college students and access to remote learning. A number of lecturers and students have raised concerns with me about unequal access to remote learning, for all the reasons that we are familiar with in relation to schools. When the committee and Parliament discussed the issue in relation to schools, it was mentioned that COSLA had tried to assess the level of need—how many laptops would be required and how many families would require assistance with setting up a home broadband connection, for example. What equivalent assessment has been done to figure out the actual needs of college students in relation to remote learning? Do we know how many college students needed a laptop a few months ago and how many still need one now?

Richard Lochhead: The colleges, in particular, have put a huge amount of effort into ensuring that laptops have been distributed to students. We launched a £5 million digital inclusion fund, which helped 13,500 post-school learners—13,000 of whom were college and university students—and we have a record of how many have been helped through our funds. The universities and colleges have topped up those funds with their own and have sourced their own laptops.

The Scottish Funding Council is working on the issue of digital access, which is significant—as part of the budget discussions, the colleges have raised with us the fact that that work is on-going. Again, families who have students in the household can access other sources of funding; I am talking only about the funding that we have issued through further and higher education sources.

Ross Greer: I appreciate the information about the funding that has been made available, but my question was specifically about the assessment of need, in which you said—I think—that the SFC is involved. Has a clear assessment been done? Was a number produced at any point that is equivalent to the number that COSLA produced for the number of school pupils who needed a laptop?

Richard Lochhead: I have not seen such a figure from the SFC yet, because it has been a moving feast, with a lot of on-going work. As I have said, colleges and universities make laptops available through their own funds as well as through Scottish Government funds. I know that Colleges Scotland has considered the issue, too, and it might have more up-to-date figures than I have now.

The Convener: Are you finished, Mr Greer?

Ross Greer: I will leave it there, convener. We can follow up the issue in writing.

10:45

Iain Gray: In November, when the committee heard evidence from the minister about the impact of Covid on universities and colleges, he said that the Scottish Funding Council was advising him. Today, the SFC has advised that universities' losses because of Covid amount to about £132 million. Is the £10 million of support that you announced yesterday not woefully inadequate? That is less than 10 per cent of what the SFC says our universities need.

Richard Lochhead: [*Inaudible*.]—pandemic that is taking its toll on the finances—

The Convener: We missed the start of your response, minister. Will you start again? I think that you started to speak before your microphone was on.

Richard Lochhead: The pandemic has had an enormous financial impact across society and in our colleges and universities. The Scottish Government has been keen to help where it can. We provided more than £160 million of support to our colleges and universities—that was more than £100 million for our universities and more than £60 million for our colleges—before yesterday's announcement of £30 million.

Of the £130 million that Iain Gray referred to as being the cost of the pandemic to universities, £32.5 million is estimated to relate to accommodation issues such as rent refunds. We have provided £10 million towards that; that is not the full £32.5 million, but we will consider what more we can do to help. Of course, the draft budget will be presented to Parliament tomorrow.

I absolutely accept that this is a really challenging time. When I spoke to the committee previously, the projected deficit for our universities as a result of the pandemic was about £176 million, whereas the latest figure is down to £50 million. At the beginning of the pandemic, we talked about potential deficits of hundreds of millions of pounds, but the picture has been moving because of the nature of the pandemic. I assure Iain Gray that we are paying close attention to the financial challenges that our universities and colleges face.

Iain Gray: In their submission, the universities have made it clear that they will need about £200 million of additional funding in tomorrow's budget to achieve sustainability. I will not ask the minister whether that will be in the budget, because I know that he would say that we will find out tomorrow.

The minister could fix a simple component of the financial problems that universities face. He said that statistics show that record numbers of Scotland-domiciled students are going to Scottish universities. That is welcome, but one problem for universities is that those students do not pay tuition fees and the Scottish Government does not fully fund their tuition—it pays only a part of the fees. The Scottish Government prevents universities from charging those students fees—I support that—but it does not provide all the funding for those students. Every additional such student is a financial burden on universities when they are under financial pressure for all sorts of reasons.

A simple and fair way of supporting universities would be for the Scottish Government to fully fund its free tuition policy. Will the minister do that?

Richard Lochhead: I fully accept that further and higher education faces a range of challenges, but we are getting outstanding outcomes from our colleges and universities. I gave statistics to show the fantastic job that our universities are doing in producing graduates; likewise, our colleges are exceeding their targets for full-time-equivalent students. The Scottish Funding Council's review is under way, and the issues that Iain Gray mentions around sustainability funding are among the reasons why I commissioned that review.

There has always been cross-subsidisation within our universities. Overall, the rate of full economic cost recovery is higher in Scotland than it is in the rest of the UK, although I accept that, within that, the figure for the teaching element is below that in the rest of the UK. Iain Gray rightly highlights that that figure is well below 100 per cent. Part of the thinking now is about how we address that, and that forms part of the SFC's review.

We are, of course, taking the universities' budget submission into account. I do not have to tell you that a 20 per cent increase in the universities budget is a huge ask and, given the state of public finances in Scotland, a very tall order. However, we are taking on board the overall pressures that the sector faces.

Iain Gray: Does the minister really need a review to tell him that it would be only fair for the Scottish Government to fully fund its own free tuition policy?

Richard Lochhead: We invest well over £200 million every year in free tuition in higher education, which benefits our students in Scotland. There is a fee of £1,820 for each place that we fund in universities. Over and above that, the teaching element in the Scottish Funding Council is brought in for each student. Depending on the course that is being studied, there are different groups of payments. All the groups of payments were increased by 1.7 per cent for this year, so there was a slight increase in the teaching element provided to our universities.

We have maintained more than £1 billion a year for higher education in Scotland in the face of 10 years of austerity and the other financial challenges that we are facing. There is tomorrow's budget coming, too.

Rona Mackay: I wish to ask the minister about the guidance on essential attendance by staff and students. Do you think that any additional guidance is needed? In your opening remarks, you said that you expect institutions to look after students' wellbeing. Is expecting them to do that enough? Do you think that they have enough guidance on that?

Richard Lochhead: The universities have assured us that they are making a huge effort to support those students who are staying on campus at the moment, as well as those who are in the very few situations in which face-to-face teaching is proceeding, to ensure that that is extremely safe. Of course, there is guidance on that. There is no evidence that face-to-face teaching is not safe, in terms of the pandemic. The overall approach to students returning to university and college relates to transmission of the virus.

I think that the guidance that we have is satisfactory—I have not received significant feedback since we published it. We have regular discussions with the trade unions as well as with the institutions and student representative bodies. I understand that the situation is evolving all the time, and I hope that the guidance is working well and that the universities are abiding by it. We stay in close contact with them, and, if that is not the case, people are not shy in coming forward.

Rona Mackay: Do we have a complete picture nationally, or are some institutions better than others at dealing with the situation? Are any of them having difficulty with it?

Richard Lochhead: Clearly, universities and colleges are anxious about students' ability to complete courses and qualifications. The current guidance reflects the national lockdown that we are in just now, so it is a very difficult issue. We will have to consider carefully any future guidance, as the lockdown will be reviewed. I understand that the Scottish Government will say more about education next week, which will give more clarity to schools and, indeed, to colleges and universities.

We are in a really difficult place at the moment. Clearly, colleges and universities are anxious about the impact on learning, and we have to balance that with protecting people's health, so we are keeping the situation under constant review.

Beatrice Wishart: I will ask about rent rebates. I have been stopped in the street by families who are locked into contracts for university accommodation. They want to support their children as much as possible, but they do not know whether they should continue the contracts, in the hope that there will be an opportunity to return to campus later this year, or whether they should give them up. What is your advice to students and families in that situation? What is being considered to help students to cope with private contracts this year?

Richard Lochhead: I welcome the decisions that have been made so far by many universities to refund or cancel rents or to allow people to get out of their contracts, even without giving 28 days' notice, which is helping tens of thousands of students across Scotland. Of course, each university is autonomous and we cannot dictate to them how to run their buildings and accommodation blocks. However, they are doing their best to help people, and we discussed earlier the financial impact of their doing that—they are clearly doing it although it is costing them.

In the past few days, we have written again to other providers of student accommodation in Scotland, asking them to ensure that they are being sympathetic and helpful, and pointing out the guidance to them. With regard to private landlords, I accept absolutely that that is a difficult situation for families. There is a myriad of circumstances, and many students are still in private accommodation while others are not. It is difficult, even for the universities and institutions, to have a picture of who is still living in a private rented flat and who is not. My advice to families is to download the guidance about students not returning to campus and to send it to their private landlords. I know constituents who have done that and secured a significant discount on their rent for a few months. I can only urge students to speak to their institutions and to take advice from them—they should be very sympathetic—and those in private rented flats to ensure that they show the guidance to their landlords to try to get a discount or rebate. Those who are experiencing financial difficulties should apply for the hardship funds.

Beatrice Wishart: That is helpful. Daniel Johnson touched on the issue that I want to raise about students returning to courses that involve practical elements. Unsurprisingly, some are not keen to return, but they are worried about being penalised for missing parts of the course. Have universities been asked to be sympathetic to students who want to delay in-person elements of their courses? Is there an assurance that there will be no detriment to students who want or need to stay at home?

Richard Lochhead: The institutions have said that they will do their utmost to ensure that no student is disadvantaged by the pandemic. Clearly, they face a challenge with those courses for which, quite simply, students must complete practical or face-to-face teaching elements before they can qualify. We cannot have students graduating from college to fit gas boilers unless they have actually dismantled and put back together a gas boiler—they cannot do that online. The same is true for some of the university courses that we have spoken about.

Those are the difficult issues that we face, particularly in colleges, where there is a lot more practical work required for qualifications, but also in universities, for some of those courses for which there are face-to-face requirements. I have set up the task force to bring the agencies, the

institutions, student representatives and trade unions around the table to consider what needs to be done to help all students in Scotland to complete their learner journey. When we look at the options, everything will have to be on the table, because we are in an unprecedented—I hate to use that word over and over—situation. I have no doubt that the solutions will be unprecedented as well, to ensure that we can help everyone to complete their learner journey.

The Convener: We will now have questions from Mr Neil.

Alex Neil (Airdrie and Shotts) (SNP): My questions follow on from your point about the task force. As you know, Richard, the transition from school to university and/or college is an issue. Will the task force look at those students who are due to transition from school to university or college this year? Clearly, there are big challenges this year that would not normally have existed, not least of which is the fact that blended or remote learning has been in place for most of this year.

More generally, what is being done to monitor the mental health and welfare of existing students in the college and university sectors—both those who are in attendance for the reasons that you have outlined and those who are learning remotely? As for school pupils, it depends on whether they are remote learning in an overcrowded house in a poor area and without access to the equipment that other students may have, and so on. That can obviously start to drag people down. Are we monitoring the wellbeing of students as well as looking at the additional challenges of transition this year?

11:00

Richard Lochhead: Looking at the transition of pupils from school to college or university, and from college to university, is one of the key purposes of the task force that we are setting up. We recognise that there are significant challenges, not least for planning. What will the figures be? How many people will be coming? Those are significant issues, and they will be at the heart of the task force's work. Likewise, John Swinney, as the Cabinet Secretary for Education and Skills, is looking at the schools situation and what the implications are for the senior phase.

I have to admit that one of my biggest challenges has been in monitoring and measuring the impact of remote learning on the mental health of students. We do not have a perfect way of doing that yet. I have asked the question several times, and, as I have said before, we have given more resources to institutions for mental health services, which have been warmly welcomed.

A lot of great work is going on at the coalface, with new counsellors being employed by colleges and universities over the past year or two and still being put in place, as well as through existing student welfare services. They are doing their best to reach out to students and to stay in contact with them. I have heard a variety of anecdotes from students who feel that they have been made aware of the help that is out there for their mental health, although others, of course, say that they are not aware of it. We have to keep a close eye on the impact of remote learning on the mental health of young people, and I assure Alex Neil that we raise that issue in every conversation that we have with the sector—indeed, it raises the matter with us.

The Convener: Do you have any more questions, Mr Neil?

Alex Neil: In the interests of time, I am happy to pass on.

The Convener: I will take a couple of supplementary questions from Mr Greene and Mr Greer before we come to the end of our questions. If anyone else has a question, they should indicate that now.

Jamie Greene: I want to press the minister further on the money that was announced to support universities and students. I appreciate that the detail is to follow, but students will be looking for reassurance that some of that money will support them directly through rent refunds. Will you elaborate on whether the money is going to the institutions, to enable them to fund students, or whether some of it will go directly to students?

As others have mentioned, not all students live in halls of residence that are owned by universities. Many live in houses in multiple occupation, private rented accommodation or private student accommodation. They will have been away for almost four months—perhaps longer, in some cases—yet they are still under contract to those organisations. Will any of the money go to them, and how will that work in practice?

Richard Lochhead: Yes, £20 million out of the £30 million that is going to hardship funds will be available to students. That will also take into account the fact that many students have not been able to work, as they have lost their part-time jobs in hospitality and so on because of the pandemic. Their financial situation is compounded by the fact that they have less income because of that, yet they are paying rent for accommodation that they might not be using, have not been able to get a refund for, or whatever. We are asking the institutions to be as flexible as possible.

You are correct in saying that we made an announcement yesterday of money that is coming

out of this financial year. Over the coming days, more detail will be worked up to give some guidance to colleges and universities about the funding.

As I mentioned, I have spoken to many teams that are working at the coalface on student hardship issues, and the committee may wish to take evidence from some of them. It is fascinating to speak to them—they are extremely passionate about what they do and are busting a gut to help students. They are doing an amazing job, and I pay credit to them.

As I said, we are giving the institutions some flexibility. Given that we are talking about a significant amount of money on top of the other hardship resources that are already in the system, including the £5 million that we announced before Christmas, I expect that it will be helping many students who have rent issues and their families.

Jamie Greene: Thank you. That is helpful.

We all commend the great work that is being done on the ground in colleges and universities, especially the good work of NUS Scotland. As you know, its survey was quite worrying, because it showed that, even at the moment, a quarter of students are simply unable to pay their rent and around a third are unable to pay their bills. My concern, which I hope others share, is that we will see students drop out and give up on their further or higher education. Has there been any analysis of the effects of Covid on participation and drop-out rates or on the number of those who are taking up further or higher education next year? Has the minister had any thoughts about how we can support those on the ground who need money today or yesterday rather than in the weeks and months ahead?

Richard Lochhead: I expect the new hardship fund money to be made available and out the door quickly—that will be in our guidance. We do not put many conditions on the funding. There are conditions relating to due diligence, but we give the institutions flexibility in how they use the funds. The funds are discretionary; therefore, to a significant degree, decisions on whom to give the money to and how to allocate it are in the hands of the institutions.

It is difficult to measure the number of student withdrawals and the number of young people who are being put off going into further and higher education in the future. We have discussed the matter with colleges, which have been giving us warning signs that they are worried about deferrals and certain cohorts of students becoming disengaged from college. The longer the students learn at home, the more they feel disengaged and might drop out. We are asking the colleges to keep us up to date with that information. We do not have a specific picture at the moment—the latest lockdown is only a few weeks old—but the information will become available in due course. We must do our best to support students while they are learning remotely.

With regard to the Government's overall pandemic policy, we have to protect people's health and balance the harms going forward. As the Minister for Further Education, Higher Education and Science, I am conveying to my colleagues in Government the harms in further and higher education, and one of the harms that we must try to avoid is young people becoming disengaged.

As Colleges Scotland gives us more information, we will do our best to keep the committee up to date.

Jamie Greene: That would be hugely appreciated. That data is vital in monitoring the situation on the ground.

I guess that we do not know what we do not know about the virus, but do you have any idea of when students will be able to return to face-to-face learning? It looks as though it might be March at the very earliest. When they do return, what plans does the Government have for a testing regime that will give college and university staff and students confidence that the institutions will be safe places to return to?

Richard Lochhead: The question of when university and college students can return to campus is a huge one, and it is probably above my pay grade. At the moment, we are still in a challenging situation with the virus. Our initial guidance was that, from mid-February, it might be possible for more students who are on courses for which face-to-face learning is absolutely critical to go back, although we are talking about a small number of students. For other students, the general message is to stay at home until the end of February. The beginning of March is the earliest that we can anticipate beginning a further staggered return of students to colleges and universities.

I am not now in a position to say more on that. Next week, we will be in a better position to see whether the mid-February review might allow more students to go back to meeting face to face, where that is essential. We will update people on that next week.

I am trying to remember your other question—sorry.

Jamie Greene: It was on testing.

Richard Lochhead: The testing regime for returning students is up and running. It is very quiet—a skeleton staff is employed in the universities at this stage and until the end of

February at the earliest—but the testing is happening, and we have extended it to students who are returning and to those who have stayed on campus. Several thousand students have stayed on campus or at term-time accommodation, and they are entitled to test as well. We have extended who can get the test, and the regime is in place as we speak.

Ross Greer: I will follow up Beatrice Wishart's line of questioning. Can you confirm that, if a student requests the termination of their tenancy agreement under the terms of the Coronavirus (Scotland) (No 2) Act 2020, there is absolutely no need for their accommodation provider to ask them for medical advice or a note from their GP?

Richard Lochhead: That is absolutely the case. We have made that clear in the frequently asked questions section on the Student Information Scotland website, which we updated in the past few days. I advise all students and their families to use Student Information Scotland and its website, where they will find the guidance as well the frequently asked questions.

It is unacceptable for any accommodation provider to ask for doctors' notes or any other evidence that the pandemic is the reason why a student wants to withdraw from their lease. Providers should be sympathetic and should just accept the word of a student that the pandemic is the reason why they are making the request.

Ross Greer: You will be aware that a number of colleges—in particular, Forth Valley College—are converting a number of their lecturer positions into instructor positions or some variation on that. They are, in essence, asking the same people to do the same job but for less pay and with weaker terms and conditions. Have you engaged with colleges on that specific issue, and are you concerned about the effect that that will have on a lecturing workforce that is already under immense pressure, for obvious reasons?

Richard Lochhead: I have spoken to the Scottish Funding Council about that, and I have asked it to give me a report on it, to see whether the professional standing of lecturers in our colleges is being affected negatively by some colleges employing more instructors. The SFC will get back to me with its opinion on whether it is having that impact.

We want to support the position of lecturer being a professional position in our colleges of further education. Of course, colleges have always employed instructors, who are often people from workplace environments who have skills to pass on but who are not lecturers. However, in the light of the concerns that have been expressed to me by the trade unions, which have already met to discuss the issue, it is important that we have an assurance from the Scottish Funding Council that the practice is not having any negative impact on the lecturing profession in further education.

Ross Greer: That is very interesting to hear. When are you due to receive the SFC's report?

Richard Lochhead: I am very encouraged by the SFC's review, which I think is going to be quite radical. We have seen the phase 1 report, in which the SFC published many of the themes that the consultation brought out. Some exciting themes have been identified by institutions and other observers and commentators who have submitted their views about the future of further, higher and tertiary education in Scotland.

The phase 2 report is due to be published next month, and I hope that that will still happen. The Scottish Funding Council has been absolutely snowed under because of the pandemic, so that deadline might slip slightly. However, I am sure that it will keep the committee up to date.

The Convener: I thank the minister and his officials for their attendance today.

11:15

Meeting continued in private until 11:52.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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