EDUCATION COMMITTEE

Wednesday 10 September 2003
(*Morning*)

Session 2

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CONTENTS

Wednesday 10 September 2003

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EDUCATION COMMITTEE

4th Meeting 2003, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
*Rhona Brankin (Midlothian) (Lab)
Ms Rosemary Byrne (South of Scotland) (SSP)
*Fiona Hyslop (Lothians) (SNP)
*Mr Adam Ingram (South of Scotland) (SNP)
*Mr Kenneth Macintosh (Eastwood) (Lab)
*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
David Mundell (South of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Professor Julie Allan (University of Stirling)
Professor Gilbert MacKay (University of Strathclyde)
Professor Sheila Riddell (University of Glasgow)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Susan Duffy

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 10 September 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:38*]

Draft Education (Additional Support for Learning) (Scotland) Bill

The Convener (Robert Brown): Welcome to the fourth meeting this session of the Education Committee. I apologise for the slight delay in kick-off this morning—we just wanted to consider some of the subject areas for discussion. We are in public session so I remind everyone to switch off mobile phones, pagers and other things of that sort.

The first item on the agenda is further consideration of the draft Education (Additional Support for Learning) (Scotland) Bill. Members will be aware that the committee has been considering a number of areas in its pre-legislative scrutiny of the bill. We are pleased to welcome this morning witnesses who will give us expert guidance on the bill. They are Professor Sheila Riddell, Professor Julie Allan and Professor Gilbert MacKay and I thank them for attending.

Each witness will give us a few minutes of introductory comment and observation and then the committee will question them. This is not the Hutton inquiry; we have an informal set-up here.

Professor Julie Allan (University of Stirling): I am professor of education at the University of Stirling, where I work on teacher education and do research on inclusive education. I acted as adviser to the parliamentary inquiry into special educational needs. The evidence from that inquiry, particularly from parents, highlighted the problems that are associated with the present system of recording children's needs. It is cumbersome, time-consuming and bureaucratic. It is adversarial, and it leads to confrontation between parents and local authorities or schools. It is driven by the availability of resources or provision. It involves a conflict of interest between assessor and provider. It is relevant to only a small proportion of children with special educational needs and creates an arbitrary cut-off between 2 per cent of the school population and the rest of the children with special needs. Parents find it inaccessible and it does not access children's views. We found that it amounted to a geographical lottery throughout Scotland.

That evidence pointed overwhelmingly to the need to scrap the record of needs, or at least overhaul it. Mary Warnock, who started the process many years ago, has referred to the formal system of assessment as her committee's biggest mistake.

We are taking a bold step in trying to produce something else. I have contact with colleagues in overseas countries and they are interested in what we are doing, because they admire our boldness. The key challenge is providing an alternative system that safeguards the rights of children and their parents to equitable provision that is accessible to all. The difficulty is ensuring that the committee's aims, as expressed in the inquiry report, of achieving an inclusive education system for all children is not undermined by a new system for assessing children with special educational needs.

I felt that the inquiry report represented a radical departure from what we have had as educational policy in Scotland in relation to children with special needs. It was radical, because it shifted attention from the child and the child's problems to the school, the local authority and the Scottish Executive and identified the changes that needed to be made within the system. I hope that our new system of assessing children with special educational needs will also make the transition from the child's problems to the system's needs.

Professor Gilbert MacKay (University of Strathclyde): Thank you for the invitation to attend. I am professor of special education at the University of Strathclyde in Glasgow. I came to university work from a background in practice. I was the first psychologist in Shetland. I have worked in various parts of Scotland and was chief psychologist in one of the English county boroughs some time ago.

I came to academic work at the request of the old Scottish education department in 1975 when the curriculum was being revised. The department needed work to be done on communication for those who had never been in school before and who might not be able to talk, even at the time when they were leaving school. I did research in early communication for the department at that time and I have a continuing interest in communication as a specialism. Given the interest in autism that has arisen over the past 10 years, my communication interests have had to continue and I have a number of research projects running in that area, either through me or through my students and colleagues.

I am also interested in understanding the notion of quality in education for people who have the most severe disabilities. People who have severe autism or profound intellectual difficulties often find themselves on the periphery of the education system. The lessons that they bring from the periphery can be useful for the rest of the education system. Those people are often excluded from discussions. Even when we are discussing education in an inclusive context, the people with the most severe disabilities are often excluded. They are my chief area of professional interest.

09:45

I have a number of comments about the bill that may be worth noting. Broadly speaking, I have four positive comments, three rather negative ones and one in the middle. The first positive thing is that I commend the appearance of support. Julie Allan mentioned Mary Warnock talking about her worst mistake. In another arena, Warnock talked about the notion of the continuum of need—an idea that I could never relate to—as being naive to the point of idiocy. However, there is much talk of support in the Warnock report, and I commend the Parliament for seeing that as a priority. It is good to see that enacted.

Secondly, there are some aspects of the co-ordinated support plan that are commendable. Thirdly, I am very attracted by what appears in the draft notes on transition, particularly the transition from school services to adult services. That is an area that has needed teeth for a long time, and there are many aspects of the introduction to the bill that are helpful and highly positive. As a fourth positive point, clarification about the named person, which appears almost as an afterthought on page 17 of the Education (Scotland) Act 1980, as amended in 1981 and 1982, has been expanded and the position is now much more understandable. There are some good proposals there.

In between my positive comments and my negative ones, I will say that I was interested to see a reference to mediation appearing in paragraph 35 of the consultation document. I have a query over that, because I would like the authorities to anticipate the need for mediation by avoiding it and instead having services that aim to avoid conflict in the first place. Some authorities are doing that.

Now I shall say a little about the three points that give me some concern. First, as members will know very well, a number of family pressure groups and professionals are concerned about the disappearance of the need to record. Quite a number of people still see that as a powerful vehicle for enabling people to achieve their rights. If the duty to record will disappear, something with an equal strength should remain.

The second point that concerns me is the discussion of assessment. Assessment by professionals has been treated rather lightly. That reflects a current anti-testing movement, which I feel often does not have a terribly good basis in evidence, but has rather a strong basis in fashion. As a further downside of that, I would be concerned about people with no professional qualifications at all being involved in the voluntary assessments, which are mentioned in the introduction to the bill and which may be drawn on when drawing up co-ordinated support plans. We have plenty of evidence from around Scotland of commercial organisations that, in my opinion, are not doing a service to the families they claim to represent and may be providing a far worse service than anything that is offered by the professionally qualified statutory services.

I have one final point, although I do not want to go into too much detail. I am concerned about several aspects of the co-ordinated support plan. When I read a number of the aspects that are described in the introduction to the bill, I was reminded not of a Scottish law that will be passed in 2003 but of an American law—public law 94142—that appeared in 1975, and I would counsel Parliament against repeating mistakes that the Americans have made.

The Convener: That last point was slightly elliptical and we may come back to it.

Professor Sheila Riddell (University of Glasgow): I currently work in the Strathclyde centre for disability research at the University of Glasgow and I will soon move to the University of Edinburgh as a professor for inclusion and diversity.

I have been involved in the policy process for a number of years. I chaired the advisory committee on the education of children with severe low incidence disabilities and I was commissioned by the Disability Rights Commission to work as a drafter of the code of practice for providers of post-16 education and related services and the code of practice for schools, which came about as a result of part IV of the Disability Rights Act 1995.

I want to present a slightly less rosy view of the legislation. There are problems with the legislation and I think that parents have belatedly expressed what their difficulties with it are. When their views were sought, they strongly expressed their dissatisfaction with the record of needs system not because they did not like the document but because it was not nearly strong enough in guaranteeing the rights of their children to auxiliary aids and services. The record of needs in Scotland has never specified or quantified the aids and services to be provided, whereas, in England, case law has established that it has to.

Interestingly, the Disability Discrimination Act 1995 exempted aids and services because it was believed that the special educational needs legislation would deal adequately with that area. However, it seems that the record of needs set-up in Scotland never dealt adequately with the provision of auxiliary aids and services and that the new legislation will be even weaker in that regard. In some ways, this legislation could weaken the rights of disabled children and their parents at a time when those rights should be strengthened. It strengthens the hand of the local authority in terms of deciding who counts as having additional support needs, who should get a co-ordinated support plan and what should be provided.

The definition is problematic, as it is likely to exclude many disabled children. For example, if a child is blind, it may well be that all their services are being provided by education, not health and social services, and that therefore the local authority might say that that child does not warrant a co-ordinated support plan. That gap is an important point, as it could be that a large number of children will have no legal document to say what the local authority is going to provide for them. That is a major weakness.

On identification and assessment, the problem with records of needs was that local authorities did different things. The proportion of children who were identified as having special educational needs that warranted a record varied from 0.7 per cent to 3.6 per cent of the age group across the country. There is nothing in the legislation to suggest that the practice that results in that situation will change. Indeed, I am sure that it will continue or even get more pronounced because local authorities will have more power to decide how to interpret the legislation.

There has been huge diversity in the way in which Scottish local authorities have implemented assessment. The document that has been produced by the Accounts Commission reveals that some local authorities took 63 months to open a record of needs. There is nothing in the legislation that will tighten the regulations or say that there will be a code of practice similar to the one that exists in England, which is extremely clear about the responsibilities of local government. Up until now, Scotland has had nothing of a legally binding nature; we have had only guidance. Local authorities have sometimes not taken the guidance seriously as there are no penalties for not doing what the guidance says. There should definitely be a code of practice.

There are also problems arising from the meshing in of this legislation with the Disability Discrimination Act 1995. The Disability Discrimination Act 1995 meshes not too badly with the UK legislation but does not mesh at all well with the Scottish legislation. As I said, that means that there will be problems in ensuring that children with additional support needs, special educational needs or disabilities get access to auxiliary aids and services. In good local authorities, it will all probably work okay. However, we cannot assume that all local authorities will discharge their duties as they should. We also need to bear in mind that the enthusiasm of the local authorities for the bill has, to some extent, been driven by their concerns about the cost of educating children with special educational needs. They regularly overrun their budgets. I therefore have anxieties about spending on children with special educational needs being maintained if the bill is passed in its present format.

The special educational needs tribunal is a very good thing, although some local authorities do not like it because they believe that it will make situations more adversarial. However, our research and research that has been conducted in England suggests that the special educational needs tribunal that exists there is not used equally by all sectors of society. There are very few appeals by families from minority ethnic backgrounds and the appeals are concentrated in the south-east of England, with very few appeals in Newcastle and poor areas. Although the tribunal gives greater access to justice on the face of it, we know that not all sectors of the community will use the new rights. If people are under huge stress, the last thing that they will think of doing is taking a case to the special educational needs tribunal. Also, the tribunal will not be able to hear DDA cases. The special educational needs and disability tribunal in England—the SENDIST—will hear DDA cases, but the one in Scotland will not be able to do so.

I hope that I have not sounded too negative about the bill. This is the time to think about what the problems may be, and parents have signalled that they are not particularly happy with the bill. I have tried to be as clear as I can about what the problems are. If we face up to the problems, we can perhaps begin to avoid some of the pitfalls. At the moment, there is a danger that the rights of children and parents will be weakened, not strengthened, and that the hand of the local authorities will be strengthened.

The Convener: Thank you very much. You have all given us quite a bit of food for thought. I observe that the DDA link point that Sheila Riddell raised is something that we might want to take up with the Disability Rights Commission in due course, to seek its comment.

I will start by asking panel members about the rights side, which Sheila Riddell touched on. My impression—right or wrong—is that a lot of information comes in verbal form, from meetings, from advocates and from mediation. The importance of having a statement of some sort in writing is one of the themes that you are pushing. Do you not think that the CSP and the associated, more generalised individual learning plans that other children have will meet that need? Do you think that the detail needs to be strengthened?

Professor Riddell: I carried out a research project for the Scottish Executive on the use of individualised educational programmes. We found that IEPs never specify resources to be provided by the local authority; they say only something about what is going to happen about teaching and learning in schools. The IEP is a useful document in that regard, but it says nothing about access to auxiliary aids and services. Also, the research showed that parents and children were rarely—in fewer than half the cases—involved actively in the construction, maintenance and evaluation of the IEPs. There has been a tendency to say that IEPs will solve the problem but, in their present format, they will not do that job. They will do a different job, which is useful, but not the job of ensuring that the rights of access to aids and services are safeguarded.

The Convener: Part of the reason for replacing the record of needs with the co-ordinated support plan was the requirement to focus more adequately on the needs and outputs—what came out of the record, rather than the record of needs itself.

Professor Riddell: But you cannot expect children with quite severe impairments to achieve in school unless the aids and services are available to enable them to do that. Teachers will not like the proposal either, as they will regard it as mainstreaming on the cheap. I am a strong supporter of inclusion but, unless it is adequately resourced, it simply will not work.

10:00

Professor MacKay: There is even considerable concern about the IEPs and what goes on in the name of target setting. I return to the American legislation, which has proved to be a bureaucrat's dream and a practitioner's nightmare. It adds to paperwork and does not improve teaching. My concern about much of the work that I have seen in IEPs in Scotland is that the same thing is happening: targets that can be seen to be met are chosen because that is what the paperwork demands. We should be talking about vision rather than bureaucracy leading education. That is my core concern. We record the recordable and we confuse assessment, which is about evaluating where children are, with curriculum—the quality of experiences that they should be having in school.

The Convener: Although the committee has considerable sympathy with that viewpoint, will you elaborate on how the situation might be tackled in legislation or administration and focus on what you regard as the more central issues rather than the recordable ones?

Professor MacKay: One should be looking at the types of target that are set. We want to avoid what the Americans experienced—their equivalent of inspectors descended on schools, picked out an individualised educational programme and said, "This target has not been met. How did you meet that target?" That simple specification of a child's outcomes of education is inappropriate. It is often extremely inappropriate when a person has severe disabilities. I will take the extreme case of a child who might be dying or a child who has a progressive condition. It makes no sense to set targets for them. We want targets to have a human face and a sense of purpose that can be checked up on. I am not sure that that can be specified easily in legislation.

The Convener: Is there a paradox there? Professor Riddell says that we want matters to be stated more clearly so that parents and children know their rights and you say that there is much that cannot be stated. How do we deal with that dilemma?

Professor Riddell: We are talking about different things. Professor MacKay is talking about the daily teaching targets for the child. He gave the example of a child with a terminal illness. One would not say that that child would go on to greater things, but one could still state the aims of education and care for the child and what one was trying to achieve.

One of the problems of the IEP—and CSP—is that it is expected to do two different things. It is expected to state what the teacher will do on a daily basis to educate the child and that is very important. At the same time, however, it is expected to state what the local authority will provide in terms of aids and services. It is unlikely that the policy will be able to do both jobs satisfactorily. The likelihood is that the IEP will cover the teaching and learning aspect okay, but it will say virtually nothing about the aids and services that are necessary for the teaching and learning to take place.

Professor Allan: The Audit Scotland report highlighted some serious problems in relation to national health service provision. The bill allows the NHS a get-out clause if making provision interferes with some of its other clinical observations. As Professor Riddell says, it will be difficult to ensure that multi-agency support is available.

A solution could be to think about targets in relation to service provision rather than learning outcomes. The idea of specifying learning outcomes assumes a causal leap or indeed a leap of faith from what the teacher does to what the child achieves. When they talk about what children achieve, many teachers will report that there is tremendous progress and then that progress might recede a little. Or, they might emphasise progress of a social or emotional nature. We seem to be fixated on learning outcomes in our discussion of targets in the bill and that is unhelpful. I suggest that we need to make the shift to thinking about the targets for the services.

The Convener: This is an important theme. Do members want to pursue the points that the witnesses have made?

Rhona Brankin (Midlothian) (Lab): I am surprised by the direction that the discussion is taking. I thought that it was generally accepted that one of the problems with the record of needs is that it does not say what we expect young people to learn.

Professor Riddell: I am strongly in favour of IEPs, which specify learning outcomes. For far too long, we have had very low expectations of disabled children. We have not been clear about what they are expected to do and what teachers should do. Teachers find it helpful to be clear about short-term and long-term goals, especially when they are working with children whose progress may be difficult to trace over time.

Although resources and teaching and learning are connected, they may not be dealt with very well in the same document. At the moment, we have the record of needs, which deals with resources, and the IEP, which deals with teaching and learning goals and outcomes. It may be better to keep the two separate. I am not convinced that the CSP will work. I am worried that it will be the same as the IEP and will specify only teaching and learning goals. That is good, but it says nothing about the resources that are required to achieve learning.

Professor MacKay: At the moment, standard good practice is that every child with a record is seen every year, although legislation does not require it. That gentler, less legal approach ensures a much higher-quality evaluation of what the child has achieved and where the child may go than something that is specified simplistically.

Professor Allan: It has also been recommended that all children should have personal learning plans. The Executive is very keen to drive that proposal forward. Are we saying that all children will have personal learning plans and that some will have IEPs and CSPs? We need to be sure that we are pushing the principle of inclusive education. It is not helpful to have different and discrete plans for different sections of children.

Rhona Brankin: It strikes me that we need to be careful that we do not exclude young people even more by separating the different documents. One of the great benefits of five to 14 and higher still is that they are an inclusive curriculum. Children who in the past never had learning outcomes within the curriculum framework are included. There should be a clear relationship between outcomes, targets and teaching plans for children, and what are perceived as the barriers to their achieving those targets. A barrier may be that they need to have access to some technological support or extra teaching time. We do not want to separate the documents that deal with targets from those that deal with barriers.

Professor Riddell: How will the bill guarantee that local authorities will provide the technological solutions that children need to be able to access teaching and learning? It does not matter if we decide to have one document; that is fine. However, we must not lose sight of the resources that are necessary to overcome the barriers. The changes that we are discussing will affect only a small proportion of children. We need to focus resources on the very small number of children—1 or 2 per cent of the total—who have significant impairments or learning difficulties, for a range of reasons. We must not take the resource issue out of the equation.

The Convener: Surely two messages arise from that. One is that resources must be adequate. We must measure them and assess what is involved. The second is the need for effective joint working between local authorities, health boards and others. We need to get the structures right. A single document will not work if there is a chasm between the agencies involved. Given what happens in community schools, I hope that one of the big ideas will be to make the document more inclusive.

Professor Riddell: Again, that is one of the problems with the bill. The record of needs legislation made multiprofession assessments mandatory, but the bill does not insist on that approach. Therefore, education professionals will decide whether health and social services should be involved. Colleagues in health feel that they are being sidelined.

The Convener: We will stick with this line of questioning for a little while.

Mr Kenneth Macintosh (Eastwood) (Lab): Professor Riddell said earlier that the record of needs deals with resources. My understanding is that although parents used the record of needs as a lever to guarantee resources, it was not designed to deal with resources. I understand that part of the purpose of the bill is to reduce confrontation—we will return to that issue later—and to clarify the roles and rights of participants, such as parents, children, teachers and health professionals. However, the bill is not necessarily—or even primarily—about resources. I am confused. Perhaps we need to separate the resources issue from the bill. I can understand parents being worried about resources, but I do not envisage the CSP being a resource-lever vehicle in the way that the record of needs was.

Professor Riddell: There was always a lack of clarity about the record of needs. Soon after its introduction it diverged from the comparable statement of needs in England, which also derived from the Warnock report. Scottish local authorities said that they should not be obliged to provide the resources that the record of needs specified. There has always been a lack of clarity about that. However, there was at least an understanding that local authorities would provide the resources specified in the record of needs.

The position is much stronger in England, where case law states that a local authority must provide the resources that the statement of needs specifies. The DDA exempted auxiliary aids and services on the understanding that the SEN legislation was doing that job. If we are saying in Scotland that the SEN legislation is not going to do that job, the DDA becomes toothless for disabled children, which would be a real problem.

Professor MacKay: Soon after the first records were implemented in 1983, parents discovered that section 5 of the record of needs, on the resources to be provided, could be considered a statement of what was “adequate and appropriate education”, which is the term in the 1980 act and which was used as a powerful vehicle. That point does not seem to be in the introductory notes to the draft consultation document.

Fiona Hyslop (Lothians) (SNP): I think that there is a serious problem regarding the number of children who have a record of needs. An increasing number will get IEPs and a much smaller number than at present will get a CSP. On the issue of resources, my understanding is that both the IEP and the CSP were meant to specify services that need to be provided. Our challenge, as a committee, is to ask how meaningful resources can be ensured for those services.

I will focus on the CSP. Professor Riddell gave the example of a blind child who needs only educational support and so will not get a CSP because health services are not involved. That is a serious concern. I am interested in what the other witnesses think we need in order to strengthen provision. Is there a case for saying that all children who have a record of needs should have access to a co-ordinated support plan, which should be driven not by a resource agenda that exempts the health service but by an agenda that acknowledges the severity of an individual’s needs and their consequent need for services?

Professor Allan: I would argue that the decision to allocate a child a CSP should not be based on the need for external agency support. Multi-agency support has been a central feature in the new community schools initiative. That approach has helped to resolve problems, allowing early intervention by, for example, a speech and language therapist, who might pop by. That could involve simply giving the teacher advice on what to do in the classroom, rather than giving the child a formal assessment. Such support offers much closer liaison between health and social professionals and teachers and has meant that problems have not always needed to be dealt with in a formal way.

We are imposing external agency support as a last resort. I can envisage a scenario in which schools will try to deal with problems and will look to external agencies only when they cannot do any more themselves. Schools will use that as a lever for extra financial resources, which would be a retrogressive step. It would be unhelpful to have external agencies as the determining factor.

10:15

Ms Wendy Alexander (Paisley North) (Lab): It is difficult to design legislation in order to attain a certain quality of experience, which is what we are struggling with in this instance. I do not come to this area as an expert and I would appreciate some guidance. The anxieties of parents seem to fall into two categories, one of which is to do with securing quality of educational experience in the classroom, which is partly about learning outcomes and partly about the quality of the experience itself. That is the part that works well—most parents will meet a committed teacher and the conflict or difficulty does not necessarily arise there. The IEP brings some uniformity to that process and will work in circumstances where dialogue might not have worked. However, there is a second form of dialogue and that invariably leads to conflict and frustration. That is to do with how the parent, in addition to engaging the classroom teacher, engages the health board and the local authority. The problems are most manifest where there is a need for services and aids.

Although we share the aspiration to promote both those dialogues, we shrink in horror at the thought of holding two separate dialogues—that would be like asking teachers, “Please, please, please can you have more meetings?” How can we secure both those dialogues under the CSP umbrella? One of the dialogues is about learning outcomes around the IEP, but how do we secure the second dialogue, which is about the obligation of local authorities and other bodies? What are the mandatory aspects of such an obligation? A similar approach has been covered by case law in England and the committee probably has some leverage in ensuring that the second dialogue takes place, but I, for one, do not know how that can be done.

Professor Riddell: It should be clearly specified that local authorities must say what resources they will provide to enable children to access the teaching and learning that they need. That should be legally binding and there should be a code of practice to ensure that local authorities do things in a timely manner and that parents and children get involved at appropriate points. Those two things should be built in.

Perhaps we should rename the plan and talk instead about an additional support plan. By its very name, a co-ordinated support plan suggests something that children get only if it involves many services. Some children with significant needs can have all their needs met through education.

Professor MacKay: Some structural changes might also require to be made in local authorities. I am running a project in South Lanarkshire for pre-school children with autism. Aside from the play technique that we have been using with the children, visitors to the children’s homes can act as a bridge between the services and the local authority. To have bridges like that in position is almost covered already in the introduction to the consultation with regard to the various categories of named person involved. There is some potential for exploiting such good practice, although that is difficult to legislate for. There is scope in the consultation for some promising action.

Professor Allan: There is scope for that, but we need to go further. As Karen Gillon said in the Parliament about the Education, Culture and Sport Committee’s “Report on Inquiry into Special Educational Needs”, the views of parents and children have to drive and guide services. We need to find ways of enabling parents to come forward so that they can ask questions and do not feel that they have to sit and wait until they are invited to meet other service providers.

The Convener: We have given that topic a reasonable run. Aspects of it might emerge later. I suspect that we will want to read your evidence carefully and come back to you about some of your comments. We will move on to other questions.

Dr Elaine Murray (Dumfries) (Lab): My question is not altogether unrelated. The bill will introduce the idea of additional support needs for a much wider set of children. It recognises that those needs could be temporary or ones that have not been defined before. I have a slight anxiety that we do not really know how many children that could affect. I am also anxious that, by defining the broader category, we will raise expectations among pupils and parents that those needs will be met and that, in attempting to meet those needs, we could detract from the support that is available for children on a CSP.

We must be careful to quantify the resource cost of meeting those broader needs. There is no point in raising expectations if local authorities and other agencies are not able to meet those needs. What are your views on how broad the category of additional support needs might be? How much of the school population might fall into that category? What are your views on the funding implications if the Executive has to provide additional resources to local authorities and other agencies to meet those needs, particularly in the Scottish Executive Education Department? We need to know that now, rather than get into trouble with the Auditor General later on.

Professor Riddell: There are already issues with IEPs, which were considered to be resource neutral. In fact, they are not resource neutral and it will require a lot of time to implement them properly. Therefore, if more children have IEPs, teachers will spend more time developing and maintaining the IEPs rather than teaching the children.

If we were talking about children who are behind with reading having support plans, we could find that, in some schools, very high numbers—perhaps two thirds of the class—might qualify because there is a strong association between social class and educational attainment. In other areas in which children are performing very well and in accordance with expectations, extremely few children would have IEPs or CSPs. The resource implications will vary greatly according to social location. That point needs to be taken seriously and, unless the resources are available, I would counsel against introducing a system that will include lots of children. We are much better focusing the additional resources on the small proportion—the 2 per cent or whatever—of children who actually need such support to be able to be educated and included in the main stream.

Dr Murray: So you would counsel against introducing IEPs for large numbers of children.

Professor Riddell: IEPs have been implemented very differently in different local authorities. At the moment, a higher proportion of children have them than have records of needs. However, teachers say that the reason that parents and children are not properly involved in those documents is because there are not time and resources enough to implement them. Nobody has ever tried to cost the IEP; it has been assumed that it can be implemented within existing resources. As the Audit Scotland report says, we have to cost measures before we introduce them, and nobody has tried to cost the IEPs at all. I do not know what the cost would be—figuring out what the cost might be would be a big exercise.

Professor MacKay: I wonder whether the notion of the personal learning plan would give some idea as to what additional support would be. If every child has a personal learning plan, notions of which measures are special and additional—measures that depart from the norm, which is almost the definition that is used in the current legal framework—would become clearer.

Professor Allan: It is impossible to quantify or predict the number of children with special educational needs or the number who might have additional support needs. We seem to be facing an epidemic of attention deficit hyperactivity disorder. That may be because of better identification or a shift in perceptions about children with behavioural problems, but we cannot say how many children will come on stream.

Dr Murray: Professor Riddell referred to the problems in areas of deprivation, and there could be some tension between the needs of people in areas where poverty is a factor and the fact that there could be more demand in middle-class areas where people think that they have identified learning problems in their children. Could there be conflict over resources in different areas?

Professor Riddell: That is a real problem. If we look at the impairments of children who have records of needs, we find that the biggest group is children with moderate learning difficulties, followed by children with social, emotional or behavioural difficulties, which is also a big group. Children with sensory impairments and physical impairments make up a very small group compared with those larger groups. It is those large groups of children with moderate learning difficulties or social, emotional or behavioural difficulties that have the strongest association with social class.

We have never recognised fully the association between deprivation and disability, and we need to build in the resources for the children who have the greatest need. We find, for example, that the majority of children who are identified as having dyslexia are middle class. We need to be very careful, as you implied in your question, that resources are distributed on the basis of need and not simply to the most articulate.

The Convener: To what extent are people with problems that need to be dealt with identified by the current procedures? You seem to be suggesting that there is under-identification in areas of deprivation. For what it is worth, we heard last week from the Auditor General for Scotland's department that there was not a strong statistical connection between deprivation and children with learning difficulties. Is there a significant area of under-identification and, if so, are there ways of dealing with that?

Professor Riddell: We certainly know that there is a strong association between the level of basic literacy and numeracy skills that a child has achieved when he or she starts school and his or her social class. That is indisputable, and the association continues all the way through to final external examination attainment.

It is difficult to be clear about the cause of the difficulties, because children are not born with things stamped on their foreheads. If a child has learning difficulties, it may be decided that the reason for that difficulty is dyslexia. However, in a school where levels of reading attainment are generally low, one might simply say, "Well, it's the neighbourhood." At the moment, we probably assume certain areas of causation for the difficulties that are identified, but that may not be the case at all. I would be surprised, however, if anybody said that there was not an association between literacy and social class, and therefore between learning difficulties and social class.

The Convener: I suppose that it depends to some extent on how the question is phrased.

Professor MacKay: "Learning difficulties" is a broad expression; I normally do not use it, because of the confusion that it can cause. I prefer to subdivide learning difficulties into more specific areas.

Lord James Douglas-Hamilton (Lothians) (Con): I would like to ask three questions about parental choice, the first of which is very general. What do you foresee the role of parental choice being, and do you foresee that role being bigger under the new proposals or smaller?

Professor Riddell: If parents are to have a genuine choice of placement in a mainstream school, rather than in a special school or unit, we must ensure that resources, aids and services are equally available in all locations, otherwise people's choices will be skewed and they will place their child in a special school or unit because they know that the resources are already there. The bill will have big implications for parental choice.

Lord James Douglas-Hamilton: I know that this is a difficult question to answer, but do you think that the concerns of parents will focus more readily on those children who might be on the borderline and might or might not get a co-ordinated support plan, or on those children who are most in need and have most severe learning difficulties?

Professor Riddell: Do you mean in terms of making positive choices of school?

Lord James Douglas-Hamilton: In terms of parents' concerns. Where do you think that their concerns will be focused most strongly?

Professor Riddell: If, at birth, a child has a quite clear and significant impairment, the parents are obviously concerned about that from the word go. However, the difficulties of many children who do not make the progress at school that might be expected may never be identified, and their parents might not even be aware that the children are having difficulties. That level of achievement might simply be the norm for their neighbourhood.

10:30

Lord James Douglas-Hamilton: You were asked about deprivation and the lack of awareness of special needs. Is there likely to be a greater lack of awareness in the areas of greatest deprivation?

Professor Riddell: I would not want to suggest that parents in areas of deprivation are not concerned about their children's education. However, there might be a general expectation in some areas that children will attain less. The evidence of examination attainment throughout Scotland shows that that is clearly the case. We should be extremely upset about that.

Lord James Douglas-Hamilton: Yes. In relation to the involvement of parents and the question of rights, you said that there is a lot of case law south of the border but a good deal less in Scotland. Would it assist greatly if a code of practice or code of conduct, whether voluntary or compulsory, were to be put in place? Or should rights be enshrined in the bill? Under the bill's proposals, do you envisage that the families of the children concerned will have more rights or fewer rights than they have had in the past?

Professor Riddell: As I have said, we need a code of practice to ensure that local authorities fulfil their duties towards children with special educational needs and disabled children. The DDA places clear duties on local authorities to avoid discrimination through less-favourable treatment or failure to make reasonable adjustments. However, that legislation is not strong enough to ensure that local authorities are compelled to carry out their duties.

Lord James Douglas-Hamilton: For the benefit of the committee, can you clarify whether there have been cases in Scotland on this subject?

Professor Riddell: We have an appeals system, but there have been fewer appeals in Scotland. Our research suggests that that is not because Scottish parents are all absolutely delighted, but because the system has been so obscure and opaque that only the most motivated parents have ever tried to use it.

Professor MacKay: The Scottish approach tends to be to avoid legislation when that is possible. We do not have a national curriculum—allegedly—and that is one of the reasons why we have been able to bend the five-to-14 curriculum, to some extent, to suit all children, if the argument is accepted. I would not accept that the five-to-14 curriculum is properly inclusive; nevertheless, we have had the freedom to bend in a way that legislation south of the border has not allowed. Similarly, our education of pupils with special educational needs—EPSEN—documents and our manual of good practice already provide good guides. One wonders whether legislation is always the best way in which to secure good practice. If it secures it, that is fine. However, that is for the committee to decide.

On the question of parents' rights, from my reading of the consultation document I would say that there appears to be no going back on any rights that parents already have. There seems to be an extension of powers and rights in the draft bill, and I welcome especially the powers and rights that are being extended to the young people explicitly at several points in the document.

The Convener: Professor Riddell has expressed her view on the idea of having a code of practice. You say that you would not necessarily want more legislation, but a code of practice would not be in the same category as it would be a more inclusive way of doing things. Do you support the call for a code of practice?

Professor MacKay: We have something like a code of practice, and I would have no great worries about having one. The 1993 code in England—

Professor Riddell: I disagree. The manual of good practice is well intentioned. However, because it is just guidance, if local authorities do not want to follow it they do not do so. There are many things in the manual that local authorities simply do not do. For example, the manual recommends that there be a staged process of assessment, yet most local authorities simply do not follow that recommendation.

Professor MacKay: Perhaps that is because it is not a good idea.

Professor Riddell: A recent local authority survey showed that one third of teachers had not even heard of it. Unless there is regulation, people will not follow such recommendations.

Professor Allan: The committee recommended that all schools adopt the index for inclusion that was developed by the Centre for Studies on Inclusive Education, but the Executive was unresponsive to that recommendation. The index is a better document than is the manual, because it focuses on the need for the school to change its ethos and structures in order to be inclusive.

Professor MacKay: The Welsh Assembly has just decided to accept the index for inclusion as one of its guides for the evaluation of schools.

The Convener: Presumably, a code of practice would assume an element of agreement across the board on what it should contain and what is good practice. Is there such agreement? There was a suggestion in the brief exchange between Professor MacKay and Professor Riddell that there was disagreement in crucial areas among the people with an interest and knowledge in the field.

Professor Riddell: Obviously, there will be disagreement; academics will disagree on just about everything. Professor MacKay and I are not approaching this from exactly the same direction. However, we, as educators of our children, have a duty to decide what is good practice and children have the right to the same good practice whether they live in the Highlands, East Lothian or wherever. The manual of good practice specifies what should be done throughout Scotland. However, because it is only guidance, it has no teeth. There is no compulsion for people to do what it suggests. A code of practice would provide regulation and local authorities would have to follow it or they could be brought to a tribunal.

Professor Allan: It is difficult to compel people to follow good practice and people have different ideas about what good practice consists of. The committee's recommendation was that the views of parents and children must guide practice. The disabled children with whom I work have a clear idea of what constitutes good practice. Part of our problem in special needs is that we have not listened enough to children and their parents. I recommend the manual of good practice, consolidated by the views of young children and their parents, which would allow them to say what is in their best interests. The guiding principle is what is in the best interest of the child, rather than what professionals think they know is best.

Fiona Hyslop: The implication of all this is the extension of the principle of mainstreaming. That will mean that all teachers will have to ensure that they can meet properly the needs of children with additional support requirements. What will have to be provided to ensure that teacher-and-learning training takes place? I noticed that some of you touched on that in your publications. Is there a place in the bill for ensuring that the training takes place?

Professor MacKay: The problem would be fitting that into legislation. A number of things are occurring. Every student teacher in Scotland is introduced early to the notion of supporting pupils. Nearly every student teacher in Scotland says that they do not have enough training on it and that they would welcome more. Module 4 of the chartered teacher scheme is on collaborative working across schools, so teachers who are aiming to attain that standard would be given a useful introduction and would do school-based work related to it.

Thanks to Scottish Executive finance, I am working on a project to examine collaborative working among professionals for the support of children with developmental disorders and we will bring out that work over the next six months—the package will be available for all schools.

We still have a problem—this is probably where the Parliament will need to pronounce—with the current diploma courses for teachers doing what is called support for learning. Those courses lead to the qualification to work with pupils who need support either in mainstream schools or in special schools. To some extent, the qualification's existence is being challenged by the introduction of the position of chartered teacher. We would like a better articulation of post-graduate work so that support for teachers who are working towards that qualification is ensured and perpetuated. There is a bit of a problem there, and legislating for it would be very difficult indeed, but we could perhaps answer more questions on that. It matters a lot to us.

Professor Allan: Issues of inclusive education and social justice need to be more central in teacher education programmes for the ordinary class teacher. At the moment, they are tacked on. The General Teaching Council's benchmarks in the standard for full registration also tack on those things in a very deficit-oriented approach, so teachers just have to perform inclusiveness. They have to show that they have regard to those principles, but that will not allow them to meet the mainstream requirement or cater for children with additional support needs. We need a radical overhaul of the way in which we teach our ordinary class teachers.

Fiona Hyslop: You say that we need a radical overhaul and we have touched on teacher training, but of course there are huge implications for continuing professional development. If a huge number of children are identified as having additional support needs, whether those needs are low level or more extensive, there will be huge implications for every teacher's work. Although I agree that legislation is not necessarily the way to resolve that issue, there is an accompanying policy agenda that goes with the bill. Are we moving fast enough for that policy to accompany what will come as a result of the bill?

Professor MacKay: Broadly speaking, no.

Professor Riddell: There is clearly a need for training at different levels. All teachers need to know how to include children in their classrooms, but we must not neglect the training of specialist teachers—for children with visual and hearing impairments, for example—who have specific skills. We will not be training many of those teachers, but their training is very expensive as there are no cost savings, so we must ensure that those programmes do not die out. Universities look very carefully at the cost-effectiveness of all the courses that they teach, and if they are not being properly resourced universities cannot continue to subsidise courses that are not being properly funded. We need to revisit that issue.

The DDA places duties on local authorities to train all staff, but most local authorities do not have those training programmes in place at the moment. They are now planning to train senior managers, but they have not yet got to the stage of training all teachers and staff.

Professor Allan: One of the difficulties associated with training is knowing what kind of expertise is appropriate for inclusive education. We know that the teachers feel that they do not have enough knowledge of special needs, but the Executive thinks that it is providing all sorts of wonderful training packages, which are just going into cupboards. We have reached an impasse over the exchange of knowledge, and we need to get parents and children into the training arena. In my experience, they have been able to work with teachers and have been able to devise inclusive solutions on a local basis.

When the committee presented its report, it said that inclusion is not about specialist knowledge and techniques, but about the blood, sweat and tears of parents who have been excluded. We need to use that experience to guide us in our training.

Rhona Brankin: Do you agree that it is important to educate school managers as well? In my experience, that is an appropriate training that is hugely lacking. Does the current training for senior management adequately meet the challenges of managing an inclusive community?

Professor Allan: I do not think that the qualification for headship meets those obligations at all, because it focuses on managing the problem. It is not about including children and the values associated with that; it is about dealing with the problems that children bring.

Rhona Brankin: Thank you for that answer. It is a matter that we will have to consider again.

10:45

Mr Adam Ingram (South of Scotland) (SNP): I would like to ask the panel to reflect on the resource implications of what we have been saying. Under the current system there have been a fair few conflicts, particularly between parents and local authorities, on what parents can access for their children. What is your assessment of the unmet need under the current system? Will what is proposed change that? Will we get more resources into the system through the new legislation, or is the new legislation likely to lead to a much greater demand for resources? Will that be a major concern?

Finally, I would like to ask Professor Riddell about her comment that we should target resources very much on the 2 per cent of the school population with severe and enduring special educational needs that cannot be accommodated within the education system in the way that most kids seem to be accommodated at the moment.

Professor Riddell: For some children with severe and multiple impairments, the cost of their education is very great. Some children have educational and health and social services packages that cost more than £100,000 a year. We have to recognise that if those children are going to be included and even educated adequately, it cannot be done cheaply. It will always be expensive. We have to ensure that sufficient resources are directed to that group. Local authorities are very concerned because they think that it is possible that too many resources are being focused on that group.

I was not saying that we should neglect the 10 per cent above that who have great difficulty in accessing learning, but I think that the concentration of resources may not be as necessary with regard to that group. Additional support and smaller classes will be necessary for that wider group, but its needs can be accommodated without the extraordinary extra resources that will be necessary for children who are blind, who have severe hearing impairments or who have very severe multiple difficulties.

Mr Ingram: If we get extra resources into the system in general, it could mean more classroom assistants, more teachers, and a reduction in the pupil-teacher ratio. We could also deal with the ADHD problem that you mentioned, through the use of nurture groups that I learned about at a conference on Friday; in those groups, teachers take kids out of class and teach them how to deal with mainstream classes. Those additional support needs could be dealt with if more resources were going into the system. Is there anywhere in the legislation that we need to specify the resource that will be required to deal with the special education needs that you are suggesting should be met?

Professor Riddell: The first thing that we could do would be to ask local authorities to be clearer about the costs that they are incurring. Until recently, local authorities did not know how much it cost to educate different children and different groups of children. The cost will not be the same in different settings; for example, the cost will be very different in different geographical locations. Local authorities need to be better at accounting for costs than they have been until now.

The Convener: How easy would it be to do that? Bearing in mind the fact that we are trying to mainstream some of the provision, it seems slightly paradoxical to then separate it out for accounting terms.

Professor Allan: It is particularly difficult to account for the costs of mainstreaming provision. We undertook a comparison of the costs of mainstreaming and special provision many years ago and we could not really do it. Much of what is done to achieve mainstreaming is invisible, which is how it should be.

Professor MacKay: If inclusion is to be more than just a slogan, the appearance in a school of a speech therapist or a physiotherapist is likely to benefit not only the targeted children but others. Therefore, there would be a rolling resource. Making provision creates the need for more provision, because intelligent working across the professions occurs and the therapists become part of the system.

Mr Ingram: I return to one of my original questions. Can you quantify the unmet need in terms of required resources? To address the problem, how much more do we need to spend on special educational needs than is currently being spent?

Professor Riddell: Those are difficult questions.

Mr Ingram: I know.

Professor Riddell: The situation is similar to that in health, where infinite amounts of money could be spent. Local authorities do annual audits of need and they always reckon that there are far more needs than they can cater for. Interestingly, professionals in education are far behind those in health in assessing the economics of what we do and its outcomes. In a system in which resources are limited, we should be more aware of what things cost and what outcomes they produce. If we were aware, we might find that there were long-term benefits in having effective mainstreaming. At the moment, nobody knows because nobody has looked at the figures. Of course, we cannot hazard guesses because the issues are complex and difficult.

Professor Allan: It is also difficult to identify performance indicators for inclusion, partly because we have not asked children and parents what it feels like to be included. The inclusion indicator in the new community schools initiative is the reduction in the number of children with records of needs; I do not understand how that is supposed to signify inclusion. We need to devise better ways of demonstrating what inclusion does and what it looks like.

Ms Alexander: One of the drivers of the bill was the need to address parents' and children's anxieties about the system's accessibility, responsiveness and inclusiveness. We have referred to some of the challenges. Clearly, the objective is conflict avoidance, but it is proposed that the mediation services and independent tribunal will deal with any conflict that arises. All the witnesses referred to those two aspects in their introductory statements. However, I want to give them the chance to put on record anything else that they want to say around how we legislate for the mediation services or the independent tribunal.

Professor Allan: I am uneasy about mediation, because I think that it implies conflict. I am also uneasy about the tribunal consisting of people who have experience of working with children with special educational needs, because that presupposes that they will be professionals. I would like the tribunal to recruit from a wider net that included voluntary organisations and parents, who might, indeed, have an interest in children with special educational needs.

Professor MacKay: Mediation is certainly one of the current priorities, but I am worried that mediation could be a way of encouraging parents not to pursue what they would like to achieve for their child. That is why I feel that mediation should not be a statutory obligation for local authorities, which should try to anticipate conflict by good services, such as early pick-up. Parents of children who have been diagnosed as autistic tend to ask, immediately after diagnosis, what happens next. They feel unsupported and lost at that time. If they are in a good authority area, they will be picked up quickly and made to feel part of a good service structure. I do not know to what extent that can be legislated for. Perhaps a formal structure could be introduced that would ensure the strengthening of pick-up once a child is identified as requiring considerable support.

Professor Riddell: I feel extremely positive about the recommendations on mediation and the new tribunal. We have been slow in Scotland to develop proper tribunal systems. There have also been huge problems with local authority appeal committees, which have not operated properly. The new duty on local authorities to provide mediation services will mean that, in general, their services will improve. That means that parents will be less likely to go to the press as a sort of desperate emergency measure, and local authorities will take on board what parents say at a much earlier stage. It will make services more responsive and accessible, which is what we all want.

The Convener: How important is it that the providers of the mediation service are from outwith the local authority, bearing in mind the fact that the conflict would be with a section of the local authority?

Professor Riddell: The plan is that the new tribunal will be independent, like the English tribunal system. All the reviews of the English system have been very positive.

The Convener: I meant the mediation service.

Professor Riddell: Sorry, I thought that you were talking about the tribunal. There needs to be a little bit of arm’s length between the mediation service and the local authority, but clearly the mediators will be paid by the local authority, so there will be a slight conflict of interest. That is not a problem, as long as the mediation service is being paid for and as long as the mediators know that they are acting not for the local authority but for the parents.

The Convener: I was trying to get at the local authority making the provision as well as paying for the mediation service. Local authorities already have mediation services for neighbour disputes and various other matters and they think that they have some expertise in that direction. Would the perception of a lack of independence in that situation be a difficulty?

Professor Riddell: We will have to be careful to ensure that, when the service is set up, it is made clear that it must operate independently. In England, parent partnership services are paid for by local authorities, but they are meant to operate independently. There is a delicate balance, but we must ensure that it is struck.

Professor MacKay: Paragraph 37 of the consultation on the draft Education (Additional Support for Learning) (Scotland) Bill talks about not being prescriptive. Does the committee have any views on the form that the services might take? I am thinking of the good specialist mediation that has been provided by voluntary interest groups, such as those on autism and intellectual disability. Are we talking about a new structure called the mediation service, or will mediation be something that is bought or commissioned?

The Convener: We are concerned about where the mediation would best come from, who and what is available, and building on existing practice. The service should also be perceived by parents to be independent, so that it is workable and practical. It will not work if it is not perceived in that way.

Professor MacKay: From what I know about autism and spina bifida, specialist voluntary organisations would be seen as trusted by both sides, but they would not be members of a distinct mediation service, with a capital “m” and a capital “s”. They would provide a service called mediation, which might have to be paid for. Creating the structure for that would be an interesting challenge.

Rhona Brankin: One of you mentioned the problems with transitions. I do not think that the record of needs document has served young people well during transitions in their education. Very few youngsters have records of needs opened before they go to school, for example, yet many youngsters need the involvement of many professionals even before they get to primary 1. One of the other issues about records of needs is that different authorities, and even different schools within local authorities, interpret them differently. For many youngsters, it is not until they have reached secondary age that people think, “Oh God. They need a record of needs,” because the situation is harder to manage in a secondary school. Similarly, there are big issues about the future needs process, and what happens to youngsters when they leave formal education. To what extent do the draft bill’s proposals address some of the issues around transitions?

Professor MacKay: The principles that are noted—especially for transition from school to adult years, which concerns me a lot—seem very sound, but there might be concerns about the amount of teeth that the legislation has to achieve effective transition. I would want a statutory requirement for adult services to be involved in the final two years of school and for that to continue into life beyond school. I do not think that the future needs assessment has lived up to expectations. That is a pity, because the thinking behind it was wise enough; it just does not deliver.

That raises questions for the provision of adult services. One can have the best possible assessment and view of the future, but if the services beyond school do not exist and there is no requirement to provide them, the well-managed transition leads nowhere.

11:00

Professor Riddell: The record of needs placed a mandatory duty on local authorities to organise a future needs assessment involving social services for every young person. Of course, there were quite a number of young people who had special needs but did not have records, and they slipped through the net. Who will get a CSP is now even vaguer. We know that there will be disabled children who will not qualify for CSPs, so the danger that children will slip through the net has not yet been addressed.

We must ensure that the process is effective when it kicks in. People sometimes thought that future needs assessments were bureaucratic and did not lead to action, so we must ensure that any new system does lead to follow-up action. I remain concerned that there will be children who could benefit from a future needs assessment who will not get one.

Professor Allan: I am impressed by the fact that the bill takes a lifelong view; it thinks ahead and is not just about schooling. However, practically, I do not think that there is enough time to make the arrangements. In one place, it states that the assessment will be made six months before the child leaves schools, but that allows nowhere near enough time for future services to be notified.

Rhona Brankin: That has given me plenty to think about. Thank you.

Mr Macintosh: I want to return to the subject of mediation and confrontation in the system, which Julie Allan mentioned. The previous record of needs system seemed almost to encourage confrontation between parents and local authorities. It encouraged parents to view local authorities as barriers to services rather than as providers of services, and it seemed that each party was on a different side of the fence, instead of being on the same side, trying to educate the child. Will the proposed replacement system tackle that fundamental problem? There will perhaps always be an argument about whether children get enough resources, but will the new proposals reduce conflict? Does the bill put in place a system in which both sides will be seen to be working for the needs of the child?

Professor Allan: As I suggested, having mediation implies that there will be conflict, and we perhaps need to recognise that there will be dispute. My concerns are chiefly about provision in response to placement requests. It seems that there are more get-out clauses for local authorities, which could refuse a placement in a mainstream school if it meant employing another teacher or having another class or, most worryingly, if they felt that the placement of a child was to the detriment of discipline in the school. Parents who see that will see confrontation and will not trust local authorities to respond to their placement requests. I think that the bill as it is presently written makes things worse, not better.

Professor Riddell: Having an independent tribunal will probably make matters easier. Before, parents were frustrated because the appeals system was so inaccessible and there were only about 30 appeals a year. The appeal route was not regarded as viable. Now, local authorities and parents will know that any dispute will go to an independent tribunal and the matter will be decided full stop. Sometimes the local authority will win, so to speak, and sometimes the parents will win. The tribunal will be an avenue for the alleviation of frustration and will make local authorities improve what they do, because they will not want cases to go to the tribunal. In the past, there was a lack of clarity about what the record of needs was for and what it should say about services. That is why parents got so worried and anxious about the issue. It is much better to have clearer avenues.

Mr Macintosh: I agree with encouraging clarity. The more objective the criteria for deciding whether somebody gets a CSP or a record of needs, the less confrontational the process should be—theoretically. The CSP currently has weaknesses, but it seems to be clear who will get it.

Professor Riddell: I do not think that it is clear at all who will get it.

Mr Macintosh: You do not.

Professor Riddell: No. It is up to the local authority to interpret who gets it.

Mr Macintosh: Can the earlier point about the problem of having PLPs, CSPs and IEPs be clarified? What is the solution to the problem? Should CSPs be expanded to cover all children, from those with low-incidence disabilities right through to those at the other end of the spectrum? That could cover 20 per cent of children. Should the definition be changed so that a child with low-incidence difficulties, who perhaps does not need an external agency, qualifies?

Professor MacKay: I think that you will find that we are all a bit anxious about CSPs. With their current broad remit, we almost want CSPs to replace the record of needs—I am paraphrasing there. To extend the CSPs to cover 20 per cent of children would be a huge administrative burden, and I am not sure what such an extension would achieve. I am much keener on the idea of having PLPs for all children and working down from there to assess who needs additional support to such an extent that it has to be recorded more formally.

Mr Macintosh: So you would retain PLPs, IEPs and CSPs, or groove the IEPs between.

Professor Allan: We should get rid of IEPs and have PLPs for all children, with an additional support section for those who need it.

Professor MacKay: A good PLP is an IEP.

Professor Riddell: It is not realistic to have IEPs for every child in school with the level of detail that is currently specified. Already teachers cannot cope with the amount of work that is involved in IEPs and they will not get sufficient additional educational resources to help them cope. It would not necessarily be a good use of money to produce detailed documents for everybody. A small group of children at one extreme of the spectrum needs very detailed planning; another group needs more detailed planning; and then there is a group that clearly needs planning, but which can be dealt with within the five-to-14 curriculum or within standard or higher grade courses. We must be careful about how we use the available money. We must target it effectively.

Professor Allan: Personal learning plans have the potential to be exciting and learner directed. Where teachers and children have worked together on targets that are about reciprocity, intersubjectivity and broad learning, the PLPs have worked well. PLPs are not just another form of target setting; they are a much more imaginative approach to children's learning that puts them in control of some of their learning.

Mr Macintosh: I have a final question on trying to reduce confrontation. There will always be arguments about resource levels for those with need. If many of the arguments are about defining whether somebody needs a CSP—I am not sure whether that is the case—it is important, as Professor Riddell said, to make the position clear. Can we make it clear in the legislation? Could the committee add something to the bill to clarify the position or should we leave that to a code of practice or improved regulation of the existing guidance, as Professor Riddell suggested?

Professor Riddell: Legislators should have an idea in their heads of the proportion of children that will have CSPs. I do not know whether any of you has any idea about that.

Fiona Hyslop: It is not our bill; it is the Government's bill.

Professor Riddell: Fair enough. However, at the moment, the bill is so vague and the terms are so broad that some local authorities might interpret it as being 20 per cent of the school population and others might interpret it as being 0.5 per cent. That is not acceptable.

The Convener: Our understanding is that several thousand fewer people will have CSPs than have records of needs.

Professor Riddell: Given that the group that we are talking about is much bigger and includes Traveller children, refugees, asylum seekers and so on, how come we will end up with fewer children having CSPs than have records of needs? This has not been thought through.

The Convener: It certainly seems to be an issue that we should return to.

Lord James Douglas-Hamilton: The great variation in local authority practice has been mentioned—I believe that Professor Allan used the phrase "a geographical lottery", which is an awesome prospect. How can we best get some consistency into the system and avoid great differences in approach across the country?

Professor MacKay: There are two approaches. One would be to go for the best set of legislation and guidance possible. The second, which relies on the fact that we are a small country, would be for the practitioners to meet to ensure that, as far as possible, there is uniformity of service, within the limits of good service.

Professor Allan: As Kenneth Macintosh suggested, we need to make it easier to avoid confrontation by specifying who gets a CSP and who does not. Identifying an arbitrary cut-off point—whether it be 2 per cent or 5 per cent—was a mistake in relation to recording, and leverage ensured that the figure began to creep up. The figure of 2 per cent was invented by Mary Warnock and it was useless. We need to specify the criteria in terms of inclusion—we must ask what an individual child needs if they are to be included intellectually, socially and emotionally. Of course, that might not be external agency support. Once we have specified the criteria, we will be able to give education authorities a clearer steer. We cannot leave it to them to make judgments, as they have demonstrated that they cannot do that effectively.

Professor MacKay: The current flexible ruler of

> "the need to keep under continuing review"

is quite a powerful set of words and might be helpful in this context.

Professor Riddell: The definitions in the Education (Scotland) Act 1980 are remarkably similar to those that the draft bill uses to determine additional support needs. The 1980 act says that a child has special educational needs if they have much greater difficulty in learning than most other children of their own age or are disabled, and the draft bill says that a child has additional support needs if they are likely to be "unable without the provision of additional support to benefit from school education provided".

Given that the definitions are similar, I cannot see how we will end up with fewer children having CSPs than have records of needs. Which children who currently have records of needs will be cut out of the system?

Fiona Hyslop: That is exactly the question that we will ask of ministers.

It is desirable for everyone to have a personal learning plan, but how practical would that be? Would that simply lead to teachers spending a huge amount of time on bureaucracy and less time teaching children? Do you support the fact that the factor that will determine whether a child has a CSP will be the involvement of external agencies? Should the determining factor be need?

Professor Riddell: I do not support the idea that the criterion should be the involvement of external agencies.

Professor Allan: A major strand in new community schools is that teachers have taken on PLPs, even though they create more work for them, because they have to meet pupils regularly to discuss issues such as target setting. Teachers feel that the PLP system has worked and has enhanced learning. In a sense, the system has released teachers to get on with other teaching and learning activities, while the child directs his or her learning. The system is a workable solution for all children, including children with additional support needs.

11:15

Professor Riddell: I agree, but we should not take resources away from other aspects. For most children, PLPs should be dealt with through personal and social education. Children should work closely with their guidance teacher. We do not want unnecessary additional bureaucracies to be put in place.

Rhona Brankin: To return to the criteria for making the decision about which children should have co-ordinated support plans, one of the groups of young people who would not necessarily require such plans would be kids with dyslexia-type difficulties. If the school is properly organised, such children can access measures such as laptop computers and special examination arrangements without the need for more inter-agency involvement. That is my understanding about that large group of youngsters.

Professor Riddell: There is the issue of ensuring that assessments are done properly. The Scottish Dyslexia Association is not particularly happy with the present quality of assessment and teaching techniques. I hope that discussions with that group will take place to ensure that it is on board with the new arrangements. Otherwise, it might be most unhappy.

Professor MacKay: A person with developmental dyslexia is likely to require services beyond teaching, such as optical advice. Does that require co-ordination of support? I was asked to raise that issue with the committee as it is a concern among colleagues. Pupils and families might be put at a disadvantage by the absence of the need to record.

Rhona Brankin: The instance that Professor MacKay cites is clearly one in which a co-ordinated support plan would be needed, but in cases in which the school provides the required services, a plan might not be needed. However, I agree that parents of youngsters with dyslexia-type difficulties need reassurance that the child's needs will be met.

Professor Riddell: Arguably, at present, some children who should have a record of needs do not have one. As Rhona Brankin knows, children with social, emotional and behavioural difficulties often do not have a record of needs, although they should have one.

Rhona Brankin: A good feature of the draft bill is that it will address that situation.

Professor Riddell: Some children in special schools and residential special schools in Scotland do not have records of needs or IEPs. If we are to take children away from their neighbourhoods and put them in special provision, they should have a close, carefully structured education and review. Arguably, more children, not fewer, should have CSPs.

The Convener: I suspect that the question of children with social, emotional and behavioural difficulties will loom large as we examine the detail of the draft bill—the issue will probably involve a lot of the missing millions.

The session has been stimulating, although it has gone in a different direction from the one I expected, given the other evidence that we have heard. The witnesses have given us a lot of food for thought. I am grateful to them for giving us their time and for their contribution. If they have anything to tell us as our work continues, I invite them to give us their input and, I hope, we will take their views on board. We will wish to return to a number of issues in much greater detail. I am not sure whether some of the witnesses' comments have not destroyed the whole structure of the bill.

We will want to pursue or at least contemplate and consider a whole series of things from all of that, but I rather think that we will want to read the *Official Report* of today's evidence. It has raised many issues that we will want to return to.

Perhaps we can have five minutes in a later meeting to reflect on some of the points that the professorial team has raised. Clearly, we will need to return to the disability discrimination issue that was mentioned. We will also need to reconsider some of the issues about how the different categories are analysed.

Fiona Hyslop: We could usefully do that as part of our preparation before the bill is published.

The Convener: Yes. We will want to pursue a number of issues with ministers.

Lord James Douglas-Hamilton: The professors might like to provide us with written information. I just mention that one point that arises from what has been said this morning.

Children's Therapist Services (Scottish Executive Review)

11:20

The Convener: The next item is the Scottish Executive's review of children's therapists. There are two rather heavy reports—a summary report and the general one. I asked that they be put before the committee, because it seemed to me that the review is highly germane to the subjects that we are discussing. We do not need to have a lengthy debate on the issue this morning, but members can raise any points that they have. For example, the review highlights issues about the adequacy of staffing levels in some therapy services, which would be relevant to our consideration. Does anybody want to make any observations on the reports?

Rhona Brankin: The review's recommendations are germane to what we discussed earlier. It would be interesting to get feedback from the Executive about the extent to which the report's recommendations will have implications for additional support for learning.

The Convener: Should we make a formal approach to the Executive at this point, or should we just bear the matter in mind for questions to Executive officials and ministers when we begin our proper scrutiny of the bill in due course?

Rhona Brankin: It would do no harm to ask the questions.

Mr Macintosh: It should be pointed out that the review document is out for consultation. The Executive is asking for comments by the end of October, so we should give our response after that. I imagine that the Executive will not want to pre-empt anything before then.

The Convener: That is probably right.

Rhona Brankin: We cannot go into the review in detail, but it is clear that the Executive needs to consider the issues that are raised.

Mr Macintosh: I was interested to note that the Executive will examine the way in which therapy services are managed. There is potential conflict between the health professionals and the education professionals, who are managed in entirely separate ways. Teachers have a more structured timetable with perhaps less freedom to control their own time. That can be quite an issue for the way in which therapy services are delivered in schools. There is a real clash of cultures that does not get picked up on. I would not mind asking a question on that issue.

The Convener: Last week the Auditor General's people touched on management. I was struck by the theme that showed that inclusiveness of service was a bit more advanced in rural schools, and that a lot of the provisions are being put in place in community schools—obviously, there are other schools that do not fit either of those categories terribly well. There are quite a lot of issues that we will want to consider, such as how the services are provided and managed, and how the professional standards impact on the teachers.

Dr Murray: You mentioned, for obvious reasons, the greater number of people who are in mainstream education in rural locations. At the same time, the report flags up issues such as the lack of therapists in remote and rural areas.

The report also recommends that NHS boards consider why people with learning disabilities experience difficulties in getting services. Those issues are important to the bill that will come before us. As Kenny Macintosh said, the bill is up for consultation so, given that we are all signed up to the idea of joined-up government, it might not be appropriate for us to probe whether some of the issues that are described in the review will be addressed.

The Convener: The timings might fit quite well. If the consultation period finishes in October, we will get the bill at around that time. By the time that the ministers give us their evidence, we might be in a position to ask them about the responses they have had to the consultation and whether the Executive has formed a view. That is probably the proper time to pursue such questions.

Fiona Hyslop: I agree with that, but we also want to consider co-ordination between the provision of health services and education—if the CSPs last the pace after this morning. That might be a useful aspect to consider when we take evidence from the health boards. As part of stage 1 consideration of the bill, I hope that we are going to examine how health boards think the CSPs will work. We could then pick up on some of the issues and recommendations that the health boards make as opposed to just taking the ministers' points of view. That is how we can usefully draw out some lessons from the review for the bill.

The Convener: Subject to the committee's agreement, we have it in mind to take evidence from a panel of therapists from different specialties during stage 1 of the bill. We can then explore some of the issues directly with representatives of the different professions.

Fiona Hyslop: Yes—we want to take evidence from the therapists, but Ken Macintosh's point was that management of the services is the key. We want to find out how health board managers see themselves working in co-ordination with local authorities in providing those services.

The Convener: We are moving towards the idea that the review is a major contribution to the debate on the provision of the services. We want to explore the issues with ministers, as well as with the key professionals and managers. It is probably best that we do that through the formal evidence-taking sessions at stage 1 of the bill.

Budget Process 2004-05

11:29

The Convener: Agenda item 3 is the budget process. Members have a paper in front of them. We do not yet have the budget, but I understand that the paperwork will become available soon. Martin Verity will give us an introduction to the paper.

Martin Verity (Clerk): The paper that has been circulated gives a background briefing. As the convener said, the budget has not yet been issued, although we expect that to happen no later than tomorrow. The purpose of the paper is to seek the committee's endorsement for the process of dealing with the budget, which involves taking evidence from the minister at the committee's meeting on 24 September.

The Convener: We might want to come up with some provisional thoughts about the areas that we want to explore or perhaps on which we might want a background briefing. When we discussed the budget process at the away day, we took the broad view that we might want to have a familiarisation exercise at this stage because, as a new committee, we need to familiarise ourselves with the sources of education funding and how they fit together. Wendy Alexander has raised the issue of relationships with local authorities and transparency of funding. We need to think about all such matters. The ability to link Executive and parliamentary decisions on funding matters with what happens on the ground and the contrary issue of the discretion and autonomy of local authorities to make their own priority decisions are quite important both to the bill and to the funding of education in general.

Ms Alexander: From my experience on both sides of the committee table, I am not sure that questioning a minister is necessarily always the best way of elucidating a subject area. [*Laughter.*] I am not against the idea—I just think that it is an inadequate way of determining what is happening in the bigger picture.

Elaine Murray and I also have the privilege of being members of the Finance Committee, which is pushing for subject committees to dig into the details of areas of the budget. However, before that happens, we should perhaps ensure that we have a broad and comprehensive overview of education spending. I will not embarrass anyone around the table by asking them, but will simply say that, if someone were to ask me about significant shifts in trends in education spending since the creation of the Scottish Parliament, I would struggle with the question. Indeed, we all would. That is a shortcoming in our understanding of the issues.

As a result, we should on 24 September question the minister if our scrutiny of the budget demands it. However, we should also try collectively to reach some understanding of how education spending has changed in Scotland over the past 10 years and its implications for the next three years. That would involve examining the trend of significant shifts over 15 years, so we should perhaps think about appointing a specialist adviser on educational finance issues on whom we might call only two or three times a year. Such an adviser would be familiar with a broad overview of the budget and would help us to dig down into one or two areas. Indeed, in that respect, I have highlighted the opaque nature of so much education spending.

Although the Executive has clear priorities in education, it then sends the money to local authorities, who might have different views on the matter. The Finance Committee certainly feels that the non-transparency surrounding the issue cannot pertain for ever; however, that committee would be happy for subject committees to use the next year to begin to get a handle on the issues. I accept that we will not be able to appoint an adviser in the next three days, but I think that it might be useful if, in the next year, we have a couple of discussions about what has happened over the past six or seven years and where things are headed in the next three.

The Convener: The issues that you have highlighted also arise in relation to the important matter of spending on early years intervention, which straddles our area and other committees' areas.

I ask Martin Verity's view on the question of a specialist adviser. Would such an appointment need the permission of the Conveners Group?

Martin Verity: Yes, it would. However, we could prepare a suggestions paper for the committee, invite the committee to decide on whether it wants to appoint a specialist adviser and take the matter from there.

Rhona Brankin: It would be very interesting to find out how the Scottish Executive Education Department is beginning to plan for the expenditure that will be involved both in the issues that we have discussed this morning and in effective mainstreaming.

Given recent newspaper reports about the Scottish Qualifications Authority, it might also be useful to seek the minister's reassurance about funding for that organisation.

The Convener: In practical terms, we clearly cannot appoint a specialist adviser before our immediate questioning of the ministers. However, we could readily ask the Scottish Parliament information centre to carry out some background work into the issue and, perhaps, to help us with questions to the ministers. Does the committee feel that we should consider appointing a specialist adviser when we come to assess the forthcoming budget bill in more detail?

Dr Murray: I certainly agree with that. We have to recognise that we could not have had an adviser in place right now, even though in an ideal world it would have been useful.

At the moment, we do not have a lot of information. For example, we have not yet received the draft budget bill or announcements on end-year flexibility.

The Convener: We will get them on Thursday, I think.

Dr Murray: We will need to do a lot of interrogation of level 3; we will need to look particularly at the increased costs of McCrone and at why the figures were underestimated. I do not know how much information we can receive before the minister comes to the committee, but we will need a lot of detail so that we can be more informed.

The Convener: Wendy Alexander made a point about existing trends and there is some information in the background paper about that. SPICe can help us and give us some starting points. We will have to learn from the minister about proposed changes and the implications for this year's budget.

Fiona Hyslop: There was an interesting comment this morning about less attention being given to the economics of education than to the economics of, for example, the health service. I take Wendy's point about getting a perspective and a general view of where education is going. We should certainly do that for this bill, bearing in mind the Auditor General's comments about mainstreaming provision. It would also be useful when we consider early-years financing. We are committed to a strategic piece of work, which is to consider the three-to-18 curriculum generally. That work may also help to inform our discussions on the economics of education for planning for future years. We should put things in that context and not simply look at the bill as it goes through its stages.

The Convener: That is right. We will have to consider the effectiveness of spending as well as its transparency.

Mr Macintosh: I want to pick up on Rhona Brankin's point about doing specific work on special educational needs and additional support for learning. We are all aware of the difficulties of following funding in that area. Our meeting last week showed up the difficulties in making comparisons between local authorities. It would be good to be able to pull that information together. There might be some work for us in considering overall levels of expenditure throughout Scotland. That would allow us to question the Executive on how it makes judgments using such difficult data. We might then be able to consider how to arrive at a more equitable settlement.

The Convener: It will not be possible to do all that through the budget process. We have discussed therapy issues and we had the Auditor General's report last week—those are contributions to what is an evolving picture. Getting precise information will be difficult.

Mr Macintosh: What did you suggest that SPICe might do?

The Convener: SPICe could give us background information about education spending figures since 1999.

Mr Macintosh: So, are you suggesting that SPICe should give us an overview rather than look into additional support for learning or special educational needs?

The Convener: There will be strands that we would want SPICe to pick out, such as early-years learning, additional support for learning and one or two other themes. Somebody mentioned McCrone earlier and that will be quite an important theme—in fact, it will probably be the overriding theme. That may lead into work that we will want to do later, once we have had time to assess how well McCrone is working. SPICe can give us general information, figures, hints and directions.

Mr Macintosh: Without wanting to overload SPICe, could we also get an idea of what funds are ring fenced in local authorities and which are part of grant-aided expenditure?

The Convener: That information is reasonably gettable, is it not?

Martin Verity: My colleagues are nodding.

Lord James Douglas-Hamilton: At a later stage, there will be a case for asking a special adviser to look into areas where there are particular pressure points in the budget. ASL is an obvious example, as is McCrone. There may be many other specialised areas, such as the education of travelling people and the extent to which that is successful.

The Convener: There have also been a number of changes, such as special schools' moving from central funding to local authority funding. The effects of that will have to be teased out—for example, are there economic factors involved in having smaller numbers in special schools?

Mr Macintosh: I believe that that change has been postponed and will not happen for six years. Special schools will still be grant-maintained centrally.

The Convener: I thought that local authorities already had an input into the purchase of services and so on.

Mr Macintosh: There are seven special schools in Scotland that are grant-maintained centrally. That will continue. They therefore have a special status.

The Convener: Okay, I think that we have given SPICe researchers a hint of the work that we will be doing. They should be able to help us. We would have to make a case for having a special adviser. A number of themes have emerged in which we would be greatly assisted by an adviser. Shall I ask the clerks to produce a report with proposals that can go to the Conveners Group?

Members *indicated agreement*.

The Convener: Does anyone else wish to raise points on the budget? If not, we will proceed on the basis that has been suggested: we will see the minister and follow up on issues if we are so inclined. Background information from SPICe will help us.

Fiona Hyslop: We could pick up on Rhona Brankin’s point about the SQA. We need assurances from the minister on that.

The Convener: I presume that there is existing information on how much has gone into the SQA. I cannot remember when it was set up, and I am not sure what changes there have been. We will raise those issues with the minister.

Finally, Martin Verity will update us on our work programme in private.

I thank members for their attendance and look forward to seeing you at our next meeting.

Meeting closed at 11:41.

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