

# **EDUCATION COMMITTEE**

Wednesday 5 November 2003  
*(Morning)*

Session 2

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## EDUCATION COMMITTEE

### 8<sup>th</sup> 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)

Mr Richard Baker (North East Scotland) (Lab)

Rosie Kane (Glasgow) (SSP)

Bill Aitken (Glasgow) (Con)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Robin Harper (Lothians) (Green)

#### THE FOLLOWING GAVE EVIDENCE:

Donna Bell (Scottish Executive Finance and Central Services Department)

Ruth Campbell (Scottish Executive Education Department)

Mike Gibson (Scottish Executive Education Department)

Naseef Huda (Scottish Executive Education Department)

Wendy Wilkinson (Scottish Executive Education Department)

Jo Young (Scottish Executive Education Department)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Peter McGrath

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

The Chamber



## Scottish Parliament

### Education Committee

*Wednesday 5 November 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 09:37*]

### Education (Additional Support for Learning) (Scotland) Bill: Stage 1

**The Convener (Robert Brown):** Good morning and welcome to the eighth meeting of the Education Committee. As I check my own mobile phone, I remind everyone, as we are in public, to ensure that their mobile phones and pagers are switched off.

A 9:30 start with a quick discussion beforehand has been a little tight for some members. I propose from now on to start meetings at 9:45, which allows us some time to discuss questions beforehand. I hope that that is acceptable to committee members.

The first item on the agenda is the Education (Additional Support for Learning) (Scotland) Bill, which was published recently and on which we are beginning our evidence taking. We are pleased to have with us a phalanx of officials from different Scottish Executive departments, led by Mike Gibson, who will give us an introduction to the bill, after which there will be questions from members.

**Mike Gibson (Scottish Executive Education Department):** I start by introducing the team. First, on my left, we have Wendy Wilkinson, who is leader of the bill team. Behind me, we have Donna Bell from the education finance and enterprise and lifelong learning division in the Finance and Central Services Department; Naseef Huda, an economist from the Education Department; and Jillian Boyle from the finance division in the Health Department. As you remarked, convener, we have a larger team than usual, but we want to be as helpful as we can to the committee and, if you want to ask us questions about finance, it is helpful to us to have our finance colleagues with us.

As many of the committee members will know, the bill is the result of a commitment given by Scottish ministers more than three years ago to review the current system for assessing and recording the special educational needs of children and young people. Since then, the Executive has consulted widely on what the new

system should look like. We have taken account of a range of views and opinions, including those of the previous Education, Culture and Sport Committee in its report on its inquiry into special educational needs, which was published in 2001.

The bill's basic aims are to modernise and strengthen the system for supporting all children's learning needs, now and in future. We want to promote the integration of services to support children with additional support needs and to reduce bureaucracy wherever possible. We want to improve partnership with parents and young people, ensure that the bill provides extra safeguards for those who are most vulnerable and ensure that we have a system that genuinely makes a difference to children and promotes their learning. The current system no longer reflects the many changes that have taken place in education over the past 20 years, not only in policies and legislation, but in practice, attitudes and expectations, and we therefore need a system that builds on where we are now—a system for the new millennium.

The draft bill was published for consultation in January this year, and as a result of that consultation a number of key changes have been made to the bill. Those are set out in the response to the consultation, which you all have, as well as in the annex to the letter that the minister sent to the convener last week. I do not intend to rehearse all the changes, but will mention four of the key changes from the draft bill.

The first is that a code of practice will be issued. It will be drawn up in consultation with all key stakeholders, set minimum standards and promote better joint planning, partnership and consistency throughout the country.

Another change is that parents will have the right to request a particular type of assessment—for example, a psychological and/or medical assessment—over and above the right to request that their child be assessed to determine any additional support needs. At present, the formal statutory assessment applies only to those who have or are thought to require a record of needs, which is something like 2 per cent of the school population, so the new provision goes well beyond what is currently available to parents.

Provision for future needs has been strengthened. The bill now contains a duty on educational authorities to get information about the provision that other agencies will have to make for the young person's future needs once they have left school and to plan accordingly to prepare the young person and support their transition to those other services, which must be done at least 12 months before the young person leaves school. That complements a duty in another section of the bill to provide information to other agencies at

least six months before the child or young person leaves school. A new duty has also been added to ensure that educational authorities inform other agencies when the child or young person actually leaves school so that the future support can be put in place.

The final change that I will mention is that the Scottish ministers can require education authorities to provide dispute resolution as well as mediation to further facilitate resolution for parents on matters other than those that are relevant to the formal appeal routes. The new process of dispute resolution is still being developed, but will aim in particular to address the concerns of parents whose child does not have a co-ordinated support plan—a CSP—but does have additional support needs. The minister has already written to the committee asking for your views on that service.

That is all that I wish to say as an opening statement. We are happy to take questions from the committee.

**The Convener:** I will kick off with a few introductory questions on time scales. Will you give us some indication of when it is proposed to bring the bill into force and what the time scale is on the code of practice, as committees get a little agitated about codes of practice—and other things—for which they do not know the time scales?

**Wendy Wilkinson (Scottish Executive Education Department):** The time scale will be influenced by the time it takes for the bill to get through the parliamentary process and be enacted. Considerable time will be spent preparing for implementation. There are subordinate legislation powers to put the operational details of the system in place. We estimate that once the bill gets through Parliament it will be 2005 before it starts to be delivered on the ground, partly because we will have to deal with the logistics of recruiting tribunals and establishing where they will be based, before we can introduce co-ordinated support plans. The appeal mechanisms have to be in place before the plans can be operational.

The code of practice will have to be drafted, consulted on, firmed up and issued in preparation for implementation. Ministers have already established an advisory group on additional support needs to help with advice on what, for example, should be in the code of practice. As well as setting up other groups, that group will be used to involve stakeholders and obtain the views of those who will operate and be beneficiaries of the system in developing the code of practice.

09:45

**The Convener:** Is it the intention of ministers to involve the committee in discussions on the code of practice? If so, will that be during the course of the bill's progress or will it be subsequent to the passage of the bill?

**Wendy Wilkinson:** I am sure that the minister would be interested in the committee's views both during and after the passage of the bill.

**The Convener:** There is reference in the policy memorandum to gifted children and children for whom English is an additional language. What sort of support would be provided to gifted children? It is an unusual category, which is not quite in line with other categories that you might be dealing with here.

**Wendy Wilkinson:** The phrase 'additional support needs' was aimed at any barrier to a child's progressing with learning. Education should be directed towards a child achieving their full potential. If educational provision is not meeting the specific needs of gifted children there is a possibility that they will not achieve their full potential and will become disaffected.

**Mike Gibson:** That is a fair point. It is about ensuring that we do not exclude any groups of youngsters. We would leave it up to the professional judgment of teachers in the first instance to decide which children need additional support. The fact that those children are gifted, or have English as an additional language, does not necessarily mean that they need additional support. However, they may need additional support, and we wanted to make that clear in the policy memorandum. We did not want to give a list of types of difficulties, because people tend to use that as a checklist. We wanted to give some examples to ensure that people think as widely as possible about what we are trying to get at when we speak about additional support needs.

**The Convener:** Section 1(1) defines additional support needs and indicates that a child has those needs where

"the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education".

That rather suggests that if they benefit at all they will have no entitlement to additional support. Is there an issue of definition here? Should we be tightening or, to be more precise, widening the definition?

**Mike Gibson:** I do not think so. School education is defined in section 2(1) of the Standards in Scotland's Schools etc Act 2000, which says that education

“is directed to the development of the personality, talents and mental and physical abilities of the child ... to their fullest potential.”

There is an issue there about ensuring that the education is directed towards ensuring that pupils are able to make the most of the education being provided. At the end of the day, because the definition is a broad one we are back to the professional judgment of those working with children about the scale of any additional support that a child requires or the scale of any barriers faced by a child.

**The Convener:** My point was slightly different. Under the definition, which seems narrow, if the child gets any benefit from school education, he or she does not have additional support needs—if one takes section 1 literally. I might be making a lot of fuss about not very much, but I want to be sure that you have identified fully the issues in the section. It is perhaps worth thinking about that later.

**Mike Gibson:** It is not the intention to decide that simply because a child gets some benefit from education, which could be minimal, they do not have additional support needs. We have to consider more broadly the extent to which the child is able to benefit from education. That has to be considered with the people who know the child and who know what they expect the child to make of education.

**Dr Elaine Murray (Dumfries) (Lab):** I want to know more about the number of children who will have CSPs in comparison with the number who currently have a record of needs. Page 14 of the financial memorandum suggests that your estimate is that about 50 per cent of those with a record of needs will go on to have CSPs. However, on page 35 of the Executive report, which sets out the response to the consultation, paragraph 70 defines a complex factor and paragraph 69 says that it is something that should “continue for more than a year.”

In paragraph 70 you mention a number of different conditions that could result in a child having a CSP, such as attention deficit hyperactivity disorder, dyslexia and autistic spectrum disorder. Given that wide category, is it realistic to suggest that something like 50 per cent of those with a record of needs would not get a CSP? Are there budgetary implications for the clarification of those who might be entitled to a CSP?

**Mike Gibson:** I will ask my colleagues to explain the process by which we arrived at that figure. In paragraph 70 we mentioned conditions such as sensory impairments and ADHD. We have given examples of children who might require a co-ordinated support plan. However, there could be children who fall into those categories who do not

require a CSP. We are trying to ensure that we focus on the needs of the individual child.

**Wendy Wilkinson:** The criteria for eligibility for a co-ordinated support plan are not based only on complicated or multiple factors. Another strand to the criteria is the need for services from outside education.

**Dr Murray:** If a child does not require services outside education, they will not get a CSP.

**Wendy Wilkinson:** That is correct.

**Dr Murray:** That was not completely clear from the report that was published last week. On Monday some of us heard from staff from a school in Dundee. Of the 22 young people in the resource centre, 14 had a record of needs. In the staff's estimation, most of those with a record of needs would also qualify for a co-ordinated support plan. The council officials were unable to estimate at this stage how many children in the council area would go on from a record of needs to a CSP. I wonder what model was used to get the 50 per cent that is mentioned in the financial memorandum.

**Mike Gibson:** It might be helpful if we ask Donna Bell from the finance department to answer that, because she was involved in the model and can explain it to you.

**Donna Bell (Scottish Executive Finance and Central Services Department):** As Dr Murray said, council officials and representatives of other bodies have found it difficult to estimate exactly what number of children with records of needs will transfer to CSPs. We have carried out a detailed analysis of the financial implications and of transition costs. As you will have gathered from the evidence that you have taken from audit colleagues, it has been reasonably difficult to ascertain the exact costs.

Where that was the case, we had to assess the financial risks as opposed to the concrete numbers. Although the bill team has a wide knowledge of what those risks might be, during the consultation process we went out to discuss with local authorities, the Association of Directors of Social Work and all sorts of other bodies what they thought the costs would be and what numbers they thought would emerge from the proposal. They found it difficult to produce any concrete figures for us, so we had to come up with a scenario-building process, in which we used the information and the range of numbers that we got from those organisations. That involved the bill team and other colleagues in going through different ranges and worst-case and best-case scenarios and so on.

After basing our assessment on the proportionality of financial risks, we went on to

carry out some sensitivity analysis to sort out the potential costs, with the final result that we were able to establish some costs from comparators in England and Wales or in other areas. When we had established the financial risks, we went on to do the sensitivity analysis, which Naseef Huda will be able to tell you a bit more about.

**Naseef Huda (Scottish Executive Education Department):** As Dr Murray said, we used the figure of 50 per cent in our model, which was based on consultation with local authorities. Some local authorities said that they felt that all their records of needs would be converted into CSPs but, for the reasons that Wendy Wilkinson outlined, we felt that that would not be the case. To be entitled to a CSP, someone would need services outside education.

We did some sensitivity analysis around the 50 per cent figure. If the number of CSPs as a proportion of records of needs went up to 70 per cent, that would increase costs across all local authorities by £2 million per annum.

**The Convener:** I want to pursue the financial side of matters. I notice that the financial memorandum identifies the costs of tribunals and various other things, but it does not seem to include the cost of any additional demands on the system in general that might result from the greater emphasis on inclusion. Given the Auditor General for Scotland's report and so on, should you not be making some allowance for the additional demands on the system that will result from the general move towards inclusion and the boost that the bill would give to that?

**Donna Bell:** In general, we have covered the financial aspects in detail. The conclusion that we have come to is that there should not be any new children out there who are not being dealt with. The bill may cause expectations to rise, but that is a question of managing expectations through the guidelines and the code of practice, which will come out in due course.

**The Convener:** We might come back to that in future questions.

**Lord James Douglas-Hamilton (Lothians) (Con):** I want to ask three questions on duties, the first of which relates to the duty of authorities to identify and address the additional needs of all pupils, which Mike Gibson has already mentioned. I would like an explanation of how authorities would be expected to identify and address those additional needs. Would that be covered by the guidelines that are set out in the code of practice that was mentioned in the opening statement? Would the guidelines cover the definition of "adequate and efficient provision"?

**Mike Gibson:** The simple answer is yes. We have already issued a fair bit of guidance that

explains the operation of the current system. We have a manual of good practice that gives advice to authorities and schools on how they should be providing for children with special educational needs. A whole plethora of advice and guidance is available.

When the new system goes ahead, the code of practice will have to ensure that it contains new guidance and advice to authorities on, for example, what we mean by additional support needs, how schools should set about identifying additional support needs and all the other issues to do with provision and making information available to people. The answer is yes—that task would have to be undertaken.

**Lord James Douglas-Hamilton:** I notice that there will no longer be a duty on local authorities to carry out what might be described as a multi-profession assessment, involving medical, educational and psychological assessments. Why will the duty to carry out such assessments disappear under the bill? Might that mean that, if a local authority did not wish to provide a particular service, it could refuse to provide professional advice in that respect?

10:00

**Wendy Wilkinson:** Views were expressed early in the consultation about the compulsory nature of the assessments that are required at present in considering whether a child requires a record of needs. One issue is that every child has to undergo a blanket set of assessments, whether or not they are necessary given the child's needs. For example, a child must undergo a medical assessment, whether or not that is relevant to their needs. Some people feel that that system is unnecessary and intrusive.

One of the aims of the bill is to introduce a more child-focused system that adapts to the child's needs, rather than the child having to adapt to the system's needs. Therefore, under the new system, assessments must be appropriate to the child's needs. The bill will provide the flexibility to allow that to happen and it will oblige education authorities to have in place arrangements for assessments and to publish the details of those arrangements.

**Lord James Douglas-Hamilton:** So it will not be open to authorities to withdraw certain types of services.

**Wendy Wilkinson:** As Mike Gibson mentioned, the code of practice will be used to set minimum standards. As a result of the consultation, ministers added a section to the bill that will give parents the right to request a certain type of assessment, such as a medical or psychological assessment. Education authorities will have to



meet such requests, unless they consider them to be unreasonable, in which case they must have grounds for doing so.

**Lord James Douglas-Hamilton:** Education authorities will be able to assist in identifying particular needs and to offer advice for children and young persons who are not in the public system, such as those who are educated at home or who attend independent schools. What is the reasoning behind that measure?

**Wendy Wilkinson:** The duties that the bill will place on authorities relate to the children whom the authorities are responsible for educating. Where the child is in the public schooling system, the duty to provide education should sit with the education authority. Given that it is a matter of parental choice to withdraw a child from, or not to enter a child into, the public schooling system, it was not seen as appropriate to make education authorities responsible for the provision of education for children who, not as a result of education authority arrangements, are educated at home or in independent schools. However, the bill offers authorities the power to help such children. Indeed, the parents of children who are not in the public system have the right to request the education authority to assess their child for additional support needs and to assess whether, if the child were in the public system, they would be eligible for a co-ordinated support plan.

**Lord James Douglas-Hamilton:** What would that mean, for example, for a child who suffers from dyspraxia and who is educated at home because they cannot cope in mainstream education without significant help? Would that child receive assistance?

**Wendy Wilkinson:** They would receive assistance if the authority were willing to provide it. For parents of children in the public system who are concerned about the provision made for their child, there will be appeal mechanisms and mechanisms for resolving those concerns, such as mediation and dispute resolution. Mechanisms will be put in place to endeavour to improve the provision in the public system and to resolve concerns that parents may have about that provision.

**Mike Gibson:** In your example, if the parents of the child with dyspraxia had withdrawn the child from the public system and were educating him at home, it would be up to the parents to approach the health trust or the local authority to get, for example, occupational therapy advice. There is no reason why they could not do that, but it would not be the duty of the education authority to do it for them.

**Ms Rosemary Byrne (South of Scotland) (SSP):** If parents are entitled only to request a

psychological or medical assessment and the compulsory assessments are done away with, my concern would be that some young people who have a hidden disability, such as Asperger's syndrome or a communication disorder, might not be identified. A number of children with social, emotional and behavioural difficulties could fall through the net and be labelled as children with bad behaviour rather than children who need to have their condition assessed and for whom appropriate treatment and education plans have to be put in place.

What is the thinking behind abolition of the compulsory part of the assessments? Why will only parents have the right to request formal assessments? What criteria will be used to assess those requests and on what grounds will they be refused?

**The Convener:** What do you mean by "only parents"? Parents as opposed to whom?

**Ms Byrne:** People can flag up their belief that an assessment is needed, but the legislation seems to give only parents the power to ask for one. It would be like my seeing that someone in my family needed to go to the doctor but waiting for them to make the decision to go to the doctor themselves. I think that the professionals who work with such young people should be in a position to ask for an assessment.

**Mike Gibson:** As you know, the formal statutory assessment applies to only around 2 per cent of the school population—basically, those pupils who have a record of needs or who are thought to require a record of needs. That is a small number of children.

The provisions in the bill go far beyond that. Authorities have a duty to identify and keep under review the provision for the needs of all children and young people who have additional support needs. Provision for the youngsters that you are talking about—those with behavioural problems or dyspraxia who would not have a record of needs in the present system—is well covered by the duties under the bill. Under the current system, education authorities have a duty to provide only adequate and efficient provision of education, including provision for special educational needs. All the other legislative requirements in the current system relate to children who have records of needs. The proposals give parents more rights in relation to their ability to request assessments and also give education authorities a duty to identify all youngsters who have additional support needs, not only those who currently fall into the group who require a record of needs.

**Wendy Wilkinson:** The bill gives parents the right to request that the authority assess their child but it also places on authorities an obligation to

carry out an assessment of a child if it comes to their attention through any means that the child might have additional support needs, unless it is deemed to be unreasonable to do so.

**Ms Byrne:** I am still concerned about psychological and medical assessments. In the proposals that are before us, I cannot see a means whereby psychological or medical assessments will be carried out if it is felt that a young person is having difficulties that have not been identified. I agree that there are many young people in the current system who have not been identified as having a specific difficulty. That would continue to be the case under the proposed system and I do not get a clear picture from you that psychological assessments, in particular, would be available. Such assessments are crucial if there is to be early intervention in certain conditions.

**Mike Gibson:** Psychological assessments will continue to be available. The bill provides that, if a parent requests a particular type of assessment,

“the education authority must comply ... unless they consider the request to be unreasonable.”

That means that, if a parent requests a psychological assessment, there is no reason why that should not take place. The existing legislation, however, places no duty on authorities to provide a psychological assessment unless the child is believed to require a record of needs. In effect, the provisions in the bill are stronger than those that currently operate.

**The Convener:** You are saying, in effect, that a psychological assessment would be carried out if the powers that be thought it necessary. In addition to that, a parent or, indeed, an interested professional could request such a report. Could the refusal of such a request be the subject of an appeal?

**Mike Gibson:** No. If a request were to be refused, there would be other options, such as mediation and dispute resolution, to take the matter forward. However, one hopes that that situation would not arise. An authority would have to have very good grounds for saying that a request for an assessment was unreasonable.

**The Convener:** Is there no one who would be in a position to take on the authority if it were to make an unreasonable decision? Would there be no right of appeal?

**Mike Gibson:** Dispute resolution would be one of the routes down which people could go.

**Mr Kenneth Macintosh (Eastwood) (Lab):** My question relates to duties and powers, which Wendy Wilkinson mentioned in response to Lord James Douglas-Hamilton’s questions. It has been brought to my attention that education authorities

will have a duty to assess the need for additional support for all pupils for whom they have responsibility. However, they will have power to make such assessments only for children under three, whereas under the current system they have a duty to assess children aged two or over. Why is that change being proposed? Obviously we are now diluting that duty so that it is merely a power in relation to two and three-year-olds.

**Wendy Wilkinson:** Under the current system, there is a duty to assess in relation to records of needs for children aged two and over. The new provisions will change that age from two to three, because three is the age at which children first attend pre-school centres and become the responsibility of the education authority. The definition of being within the responsibility of the education authority includes children who are

“about to be provided with school education”,

so a child would not simply become the responsibility of the authority on their third birthday. There is flexibility to allow authorities to assess a child’s needs prior to their third birthday, when they start to attend pre-school centres.

The bill does not retain a duty for education authorities to assess children from birth up to three years, but provides for a power to do so. That is because it would be difficult to implement a duty to assess all needs—we are talking about educational needs, rather than developmental or health needs—of children under three, who do not attend any of the authority’s establishments.

**Mr Macintosh:** If, for example, a child was born with cerebral palsy and the parents knew from its birth that the child would require additional support, how would they prepare the ground with the education authority when the child was at an early age?

**Wendy Wilkinson:** Indeed. That would likely be instigated by the health service, which would be the first port of call, or immediate assessor, in the process by which the child would be identified as having some form of additional needs. There is a power in place in the bill for education authorities to assist with such cases. They can do so for anyone under the age of three. The intention of the code of practice is that that will be encouraged.

Education authorities have the ability to send out peripatetic teachers to help and advise parents with the early development of the child. It would be good practice for education authorities to be involved from an early stage with children who have such complex needs. That is the way in which authorities can prepare for the time that the children come to pre-school centred education and then on to school education. The code of practice would encourage that.

10:15

**The Convener:** Will the code of practice give considerable attention to that?

**Wendy Wilkinson:** Indeed. Of course, with the definition of additional support needs now being so wide, the matter is not just about children who have the most complex needs, it is also about children with other needs.

**The Convener:** I think that Fiona Hyslop has a point on this subject.

**Fiona Hyslop (Lothians) (SNP):** I am happy for us to move on, unless any other member has further questions on assessment.

**The Convener:** We will move on to questions on different areas. I will come back to you in a minute.

I should have welcomed Robin Harper MSP to the meeting. He is sitting in on the meeting because of his interest in this particular area.

We move on to the question of appeals.

**Mr Macintosh:** I will start by addressing the new dispute resolution service that the minister outlined and to which you have begun to refer this morning. I am slightly unclear about what the dispute resolution powers will look like. Will the service be independent of the local authority in the way that mediation services and appeals tribunals are? Will it take decisions and will they be binding on the parties to the dispute?

**Wendy Wilkinson:** The detail of how the dispute resolution service will operate in practice is still being developed. As you know, the minister has written to the committee and is keen to hear the committee's view on what a dispute resolution service should offer. Issues such as independence would certainly be a factor in those considerations, as would the question whether the education authority would be legally bound to respect the decision on whatever the dispute resolution procedures might be.

One model that we have been looking at is the complaints procedures model for social work services. In that model, a case is referred to an investigating officer who looks afresh at the case with a view to seeking a solution. If a solution is not reached and the customer is not satisfied with the arrangements, the case can be referred to a panel. In the social work services model, the panel contains three members, one of whom must be independent of the local authority. That is how the independent element is assured. That model might be one that we could use in this scenario.

**Mr Macintosh:** Would the disputes resolution procedure be a general one for all disputes between parents and local education authorities or would it have a specific remit to specialise in additional support needs?

**Wendy Wilkinson:** The procedure would specialise in additional support needs. The scope of the bill is only around additional support needs. My understanding is that we could not introduce a dispute resolution service for all parents through the bill. It has to be for parents of children with additional support needs.

**Mr Macintosh:** Could we expect, for example, that a member of the panel will have expertise in that area? I am thinking of the way in which a tribunal works.

**Wendy Wilkinson:** Indeed, if that is the model that we use.

**Mr Macintosh:** We are to take evidence from parents and other people. Bizarrely, the most common disputes that I am aware of tend to be over the choice of school and health provision and not over education provision. If we look specifically at health provision, the appeal procedure does not give any concrete mechanism by which parents can appeal the decision or behaviour of health authorities or other authorities that provide certain services to their children.

Let us look at the example of a child who is receiving several hours of occupational therapy. If that provision is reduced, the parents might think that the decision is harmful to the child. They might suggest that it would be more beneficial to increase the service. I think that that sort of dispute is not covered.

You say that a general duty exists, but there is no direct accountability. How will the duty work in practice? How will you make health authorities answer for their decisions to provide therapy services or other services?

**Wendy Wilkinson:** It is important to note that the health provision that we are talking about is intended to support a child's learning. It is health provision that deals not only with a child's health, but with the child's education.

On the appeal mechanism to the tribunal, the tribunal's jurisdiction covers education authorities, which are given the lead role mainly because they have a statutory duty in relation to the child's education—that is their *raison d'être*. We expect the education authority to be one of the key parties at the tribunal; the other key party would be the person who appealed. It would remain open to the health service provider to attend the tribunal hearing to argue the case for the provision in the co-ordinated support plan that is being appealed.

As for the outcome of the tribunal, direction of the tribunal will be to the education authority, not the health authority, because the education authority has lead responsibility for determining and implementing the co-ordinated support plan. However, the bill says that other agencies, such

as health authorities, are obliged to help the education authority when it asks for assistance. For example, an education authority might have to ask for speech and language therapy provision to be made for a child. Those obligations in the bill bind health authorities to provide help.

**Mr Macintosh:** That was my understanding, but I am still trying to work out how, if an education authority wants an extra couple of hours of speech therapy that the health authority refuses, the education authority can enforce that request in practice. Can a parent appeal a CSP purely because of the speech therapy that is available, for example?

**Wendy Wilkinson:** Such an appeal would be on the detail in the co-ordinated support plan about the provision that will be put in place for their child to achieve specific learning objectives.

**Mr Macintosh:** So a parent could make such an appeal.

**Wendy Wilkinson:** Yes.

**Lord James Douglas-Hamilton:** In some cases, education and health needs are intertwined. Would it not make sense to bring health boards under the tribunal's jurisdiction, too?

**Wendy Wilkinson:** One difficulty is that, as you say, grey areas exist between educational needs and wider health provision, which would make it difficult to draw the line on health provision issues that should go to the tribunal. Should the tribunal's jurisdiction extend to all health provision, or simply to health provision that is directed purely to education?

**The Convener:** Is that really an issue? The definition would be in the bill. We are surely talking not about all health provision, but about health provision that is linked to education provision.

**Mike Gibson:** That is right. Wendy Wilkinson makes the point that it can sometimes be difficult to draw the line between what is required from a health point of view and what is required for education. For example, a child with cerebral palsy might need an operation to help him or her to access school. How do we decide whether that is health provision purely for the child's well-being, or whether it has an educational component attached to it—as it has—which would mean that it was approached under the bill? Complicated issues would arise for a tribunal, which might be seen as straying into matters that it does not have the expertise to deal with.

**Wendy Wilkinson:** One aim of the co-ordinated support plan is better facilitation of co-ordinated working by agencies. The view was taken that we continue to need a lead agency to have overall responsibility for a child's education and the provision that is put in place to support a child's

education. If that responsibility was shared, there would be a danger that co-ordination would start to fall away. Agencies might not work jointly so well if there were disputes over who was responsible for what and who would be held accountable for what. Ministers feel that the duties that the bill's provisions place on health and other agencies to help education authorities are sufficient.

**The Convener:** If we accept what you say about that, Ken Macintosh's point still remains valid. If somebody requires two hours of speech therapy or some other form of therapy that is provided by the health board, who would ensure that that happened? What provision is there to approach some outside agency for such provision if there is a problem?

**Wendy Wilkinson:** The education authority would still have the responsibility to ensure that the provision was put in place.

**The Convener:** Yes, but the education authority will probably not have the resource if provision is by an outside agency. How would the education authority make it happen? Local authorities are replete with examples of disputes between their own departments, never mind between departments and outside agencies. That is a key issue that needs to be pinned down very precisely. I accept that, in the background, people are trying to work in partnership and all that, but if it does not work for whatever reason, how do we make the thing happen?

**Wendy Wilkinson:** When the co-ordinated support plan is being prepared or reviewed and the provision that the child needs is being discussed, the education authority would not take decisions on that in isolation. We are promoting partnership working, whereby a multidisciplinary team will consider the needs of the child and determine what learning outcomes the child can be expected to achieve and what provision needs to be put in place in order to achieve that.

**Mr Macintosh:** I have another point, which is an observation that I want to make. The example of cerebral palsy that Mike Gibson gave is an interesting one. I know of a case in which the parents of a two-year-old with cerebral palsy wanted their child to attend the Craighalbert Centre but they were in dispute with the local authority over whether the child could do so. It is interesting that the local authority will no longer have a duty to provide for the needs of such a child. The local authority will have powers but no duty to provide that, so parents will have less power. I would be happy if the issue were clarified. It should be made more obvious to parents and local authorities what rights they have in such situations. The source of that dispute was the question of who had the right to argue for the place at the school.

**Mike Gibson:** Was that child under two?

**Mr Macintosh:** The child was two years old.

**Mike Gibson:** If the child had just reached the age of two, the parents could ask for a record of needs. If the child fitted the criteria, the authority would have to supply that.

**Mr Macintosh:** I should add that the dispute has been resolved, but I am aware that applying individual examples to the bill can help to illuminate matters. I am not quite sure where the bill would have helped that family in what was a fractious dispute, although it was resolved satisfactorily.

I want to move on to consider the appeals tribunal and the question of legal aid. The minister has currently ruled out legal aid. Is that right?

**Mike Gibson:** It will not be available for representation at the tribunal.

**Mr Macintosh:** My understanding is that that is because parents and people in a similar position who are appealing to other tribunals do not have access to legal aid. Is that the case for any tribunal?

**Wendy Wilkinson:** It very much depends on what is being considered by the tribunal. If the tribunal is determining anything with regard to civil rights and obligations under article 6 of the European convention on human rights, legal aid may be available. It has been considered that the tribunal that the bill will set up will not be in that situation, because it will not consider civil rights and obligations.

**Mr Macintosh:** Is it not the case that the tribunal will be the last recourse for parents? After they have appealed to the tribunal, parents will have no legal remedy available to them by which they can enforce their rights. Therefore, the tribunal is in effect the last place to enforce their rights.

**Wendy Wilkinson:** They will be able to appeal on a point of law or seek a judicial review, which is open to all parents, but what you say is broadly right.

**Mike Gibson:** Mr Macintosh has described the situation accurately. The position is that the tribunal is the final stop, except in the circumstances to which Wendy Wilkinson referred. At the end of the day, the tribunal should be the best place to make the final decision because it will have impartial experts who will have built up some understanding from case law about what the issues are. It is like a referee's decision—one might not like it, but the members of the tribunal are perhaps the best people to reach a decision.

**Mr Macintosh:** I understand that and I appreciate the need not to be adversarial, but it may be that a lawyer is the best person to

represent someone at a tribunal. People want their rights to be effectively argued and that is what lawyers do. Those who are worst off might therefore be disadvantaged, as always happens with special education needs.

10:30

**Wendy Wilkinson:** It is important for us to aim to have tribunals that are family friendly and not adversarial. The tribunal will make its decisions and judgments on the basis of the facts rather than on how well the case was presented by legal representatives.

**The Convener:** At this point, I declare my interest as a solicitor and my link with Ross Harper solicitors of Glasgow.

**Mr Macintosh:** I have a line of questions about placing requests, but I am conscious that I am asking a lot of questions.

**The Convener:** Carry on.

**Mr Macintosh:** Special schools cost more than local authority schools, but we seem to be building into the bill the ability for local authorities to dismiss a placing request on the ground that it will cost more. Paragraph 63 of the explanatory notes states, on schedule 2 to the bill:

"A further ground of refusal applies where the request is for an independent special school, but the education authority can make provision for the child in another school and this school is more suitable, including with regard to cost, than the specified school."

That implies that if a special school is more expensive and the education authority feels that the cost would be unreasonable, it can decline a request.

**Mike Gibson:** There is no change from the current position, which is that an education authority need not agree to the placing request if it can make provision at its own school. If the education authority argues that the provision that it can make in one of its local schools is appropriate for the child, that would be a reason for it to refuse the placing request.

**Mr Macintosh:** In that case, the parents can go to a placing requests appeal. However, if the issue is not a placing request, where can they go? The convener mentioned appeals for a review of the additional support that is given to a child where a parent is unhappy with that support. If such a child does not have a co-ordinated support plan but is getting additional support and the parents want to question a decision, where do they go? Other than the dispute resolution procedure, is there no other appeal mechanism or recourse?

**Wendy Wilkinson:** We hope that, in the first instance, the parents would go to mediation to try

to find a solution. The dispute resolution procedure would then be open to them and, if the case was about an administrative decision by the authority, it might be relevant to go to the public services ombudsman. Cases could also go to judicial review and there is the option of a section 70 complaint to the Scottish ministers under the Education (Scotland) Act 1980.

**The Convener:** I have a question about placing requests. As I understand it, certain types of placing requests will, under the bill, go to the tribunal. If one were making a placing request for one's child to go to a different school and any of the issues that have been mentioned arose, legal aid would be available and the matter would be dealt with by the court. There is arguably a more complex issue where a placing request is made and the case goes to a tribunal without legal aid. Is not that an anomaly?

**Wendy Wilkinson:** In the case of an appeal regarding refusal of a placing request where the child has a co-ordinated support plan, you are right to say that the appeal will be directed to the tribunal. The view has been taken that, in such an appeal, because the child has a co-ordinated support plan, they have, by definition, complex needs that are enduring. It was therefore felt that the tribunal would be best placed to consider which school the child should attend, particularly because that decision will have a bearing on the delivery of the plan.

**The Convener:** I am not arguing about that. I am saying that, despite the complexities that are involved, no legal aid would be available, whereas arguably it would be where there was an ordinary placing request without such problems.

**Wendy Wilkinson:** An appeal and ordinary placing request would go to the education authority appeal committee. I understand that no legal aid is available for attending an education authority appeal committee. The second recourse is appeal to the sheriff court, but the number of cases that reach appeal at the sheriff court are very small—we are talking about around 0.01 per cent of all placing requests.

**The Convener:** I accept that, but wonder whether any consideration has been given to the anomaly that might arise in respect of different rights in different circumstances through the creation of the tribunal and the new line of approach. Do officials want to reflect further on that, in the light of questions that have been asked?

**Wendy Wilkinson:** Okay.

**Ms Byrne:** I assume that it will not always be necessary for parents to apply for a placing request. I will take you through my understanding of the current system so that you can clarify

matters. If a young person has a review as a result of their record of needs prior to transition time, currently, during the review process, professionals and parents who attend the review can recommend a placement in, for example, a specialised setting rather than in the mainstream secondary school. Will such a system still be in place? Parents will be taken through something of a minefield in respect of placing requests and I share concerns about the lack of legal aid.

**The Convener:** Will you confine yourself to asking questions, Rosemary?

**Ms Byrne:** I will come to my question.

Will you clarify whether there will be inequality in opportunity? We must point up problems. Am I right in saying that some parents will perhaps buy in their own legal aid, if they can afford it? That would mean that parents who could not afford it would be disadvantaged.

**Mike Gibson:** I will pick up on your first question and perhaps ask you to refresh my memory on your second question. You mentioned transition and a youngster with a record of needs going from a primary school to a secondary school. You said that, under the current system, a parent could make a placing request for a special school, as the child had a record of needs, and you asked whether that system still applied.

**Ms Byrne:** I will clarify that. The professionals at the review could make a recommendation.

**Mike Gibson:** That is absolutely right. Under the bill, a co-ordinated support plan would not be needed to make a placing request for a special school. Currently, a record of needs is needed in order to make a placing request for a special school, but the bill will open up the system so that things are easier.

**Ms Byrne:** Perhaps I do not quite understand the point that you are making. The point that I am trying to clarify is that, although parents would be part of the decision making at a review, there would be a recommendation from the professionals. With or without a co-ordinated support plan, can those professionals still make a recommendation?

**Mike Gibson:** Yes. The professionals can make a recommendation, but, in effect, the parents would make the placing request. If, for example, the professionals made a recommendation, the authority agreed and everybody was happy, the parents would not need to make a formal placing request. However, if a dispute occurred and the professionals said that they did not want to send a child to a particular school and the parents disagreed with that, the placing request mechanism would come in. The parents would then make a placing request for the school that

they wanted, which is similar to the current situation.

**Rhona Brankin (Midlothian) (Lab):** I want to clarify something. Let us take the case of a child with complex needs that required multidisciplinary support, who attended primary school and whose parents wanted them to go to the local secondary school. Under the presumption of mainstreaming, the parents might make the assumption that their child's needs should be met in the local secondary school. Do they have a right as parents to have their child placed in that local secondary school and have the child's needs met?

**Mike Gibson:** The question of rights is a difficult one. If the authority said, "We don't want the child to go to that mainstream school. We want the child to go to a special school," the parents could say, "No, I want my child to attend a mainstream school." It would then be up to the authority to show that some of the exceptions that apply to the mainstreaming legislation apply in that case. There are three exceptions, including whether the mainstream school is suitable to the ability and aptitude of the child or whether the school would be detrimental to the child. The authority would then have to show that the exceptions applied and that therefore the child could not be educated in the mainstream school.

**The Convener:** Rosemary, do you have any more questions?

**Ms Byrne:** It is important that we examine anything that we feel will not give people equality of opportunity. I would like the officials' views on the lack of legal aid. Is it the case that only those parents who can afford to take a legal representative to a tribunal will be able to do so?

**Wendy Wilkinson:** There would be nothing to prevent parents from taking along supporters or a legal representative if they so chose.

**Ms Byrne:** So you are saying that parents could pay a lawyer to go along with them if they can afford it.

**Fiona Hyslop:** My question is on the replacement of records of needs and the move to co-ordinated support plans. You say that 50 per cent of those who currently have a record of needs will have a co-ordinated support plan. That will mean that 50 per cent of those who currently have a record of needs will not have a co-ordinated support plan and the record of needs will be withdrawn. What legal guarantee can you give in the bill that the support needs of such people will be met? If the child does not have a CSP, their parents will not have access to tribunals. Moreover, section 3 states that local authorities are not required to do anything that

"is not practicable at a reasonable cost".

However, the mediation and dispute resolution will lie with the same education authority that is arguing that the cost is not reasonable.

**Mike Gibson:** The issue about what is practical at a reasonable cost would hold anyway because, in a sense, authorities will not be able to do anything that is unreasonable. That would still stand, so authorities would have to be mindful of it. If you describe a position where a youngster does not have a record of needs—

**Fiona Hyslop:** No, I am asking about those who currently have a record of needs but who will not have a CSP.

**Mike Gibson:** The minister has already written to local authorities to state that he fully expects that provision will continue to be made for youngsters who currently have a record of needs but will not have a CSP, so there is no reason under the new legislation why, if someone had a record of needs but will not have a CSP, provision for them should not be met. We should bear in mind all the other duties in the bill on education authorities and all the other rights that parents can pursue if they feel that things are not working out as they should for their child who had a record of needs but has no CSP. However, ministers' expectations are that those youngsters' needs should continue to be met.

**Fiona Hyslop:** What happens when the needs change—as happens often—of a child who had a record of needs but will not get a CSP? Alternatively, what happens to a child who is born after the bill comes into effect and who would have had a record of needs but does not get a CSP? How can we ensure that the legal requirements for support are met for that child, given that the child's parents will not have access to a tribunal and dispute resolution lies with the same authorities with which they are having the dispute?

**Mike Gibson:** Towards the beginning of the bill are outlined all the duties that education authorities are required to fulfil, which is to identify, address and keep under review provision for the needs of all children with additional support needs. That would include those who had a record of needs but who will not have a CSP. Education authorities will still be under lots of duties to ensure that those children's needs are met.

We have talked about the additional rights of parents to ask for assessments, mediation and dispute resolution. We have not worked out the details of dispute resolution, but a dispute resolution system will not be credible unless some sort of independence is involved. If the people involved are not seen as honest brokers, the system will have no credibility. When a dispute resolution system is set up, ministers will probably monitor it carefully and examine the decisions that

are made. It is important to ensure that parents feel that they get a fair deal or have had a fair hearing, although that does not mean that parents should always get what they ask for.

10:45

**Fiona Hyslop:** Do you appreciate the anxieties of parents of children who currently have a record of needs but who will not have a CSP?

**Mike Gibson:** Absolutely.

**Fiona Hyslop:** What is the thinking behind CSPs, which, despite being a passport to a range of other services and stronger legal support, are restrictive and selective? It seems to me that the proposed system has been driven by the needs of the service provider; children will get a CSP only if they need more than education support. Will that top-down approach to management in what is a fundamental change to the system deny children the right to be at the centre of the system?

**Mike Gibson:** I will answer that question, but I will ask Wendy Wilkinson to come in. One difficulty with the record of needs is that, in a sense, it does not guarantee much. A record of needs contains a statement of what a child needs and a summary of impairments. Those two aspects of the record can be challenged and an appeal can be made to the Scottish ministers if the parents disagree with what is written. However, we know well that parents are most interested in the part of the record that details the provision that the authority will make to provide for the young person's needs. If the parents disagree, they cannot do anything about it, because there are no appeal rights.

In that sense, the record of needs is not as powerful or as potent a provision as people think it is, whereas the CSP certainly is powerful because it focuses on learning outcomes and allows parents to appeal if they are unhappy with the outcomes or with the provision. The CSP is a more powerful mechanism than the record of needs is.

Your question was about what will happen to young people who do not have a CSP but who might have had a record of needs. I will ask Wendy Wilkinson to come in, but in answer I point to the provisions in the bill that impose duties on education authorities to provide for children or young people and to the measures that introduce rights for parents to challenge an authority if they feel that their child's needs are not being met.

**Fiona Hyslop:** Why will somebody who does not have a CSP have fewer rights than somebody who has one?

**Mike Gibson:** The rights are different only in relation to the appeal mechanism that will be implemented. If a child does not have a CSP and if

the parents feel that the provision is not appropriate, they can follow certain channels.

You might ask why we need CSPs in the first instance. That issue was the subject of consultation and two broad views emerged. One was that there should not be a separate plan such as the record of needs or co-ordinated support plan; the other was that there is a group of children who are so vulnerable that we must ensure that the system can meet their needs. In the future, if the system is sufficiently co-ordinated and joined up, we may not need co-ordinated support plans, but ministers felt that we have not yet reached that position.

**Fiona Hyslop:** So, from what you have said, the CSP is intended to help the system to deliver rather than to recognise the needs of the child. The plan is intended more to help co-ordination between health and education authorities and other bodies.

**Mike Gibson:** It is the other way around. The intention is to identify a group of children who need highly co-ordinated services because they are the most vulnerable and to put in place a system to ensure that those children get what they need.

**Fiona Hyslop:** I was going to move on to another question.

**The Convener:** Before you do, I will bring in Lord James Douglas-Hamilton.

**Lord James Douglas-Hamilton:** Is it not the case that several thousand youngsters with records of needs will not have CSPs? Would it not be sensible to have transitional provision to get those youngsters through the present system? Many parents believe that the safeguards are stronger with records of needs than with CSPs. A change to the new system overnight could cause a lot of consternation and anxiety.

**Wendy Wilkinson:** Once the bill is enacted, we will have to give careful thought to how we move from the current system to the new system.

**Lord James Douglas-Hamilton:** Can that not be provided for in the bill rather than left to officials to do afterwards?

**Wendy Wilkinson:** It would be difficult to run the two systems in parallel, partly because much of the bill repeals the provisions in the Education (Scotland) Act 1980 concerning children who require records of needs. It does not seem right to leave some children in the current system while other children are in the new system, especially given that ministers take the view that the new system is an improvement on the current one.

**Lord James Douglas-Hamilton:** With respect, a small group of children is numbered at several



thousand in your document. That is not a small group.

**Wendy Wilkinson:** That is one of the reasons why the minister has written to ask all local authorities to endeavour to guarantee that provision will continue to be made for those with a record of needs who might not get a CSP. The fundamental principle of the bill will be that all children who have additional support needs will have those needs met.

**The Convener:** Is there any reason why the children who have records of needs but who will not have CSPs could not swing in under the tribunal arrangements? The central point is the loss of legal rights, which people feel that they have fought very hard to get. Whatever the objective reality is, there is a perception about this very sensitive area. Is there any reason why there could not be a transitional arrangement under which for a period of some years children with records of needs who do not get CSPs could be fed into the tribunal system? I accept that the arrangements might have to be slightly different, but those children would nevertheless retain the legal rights that they have at the moment.

**Wendy Wilkinson:** There are several reasons. One would be that the record would have to be maintained. The criteria for a record of needs are different from those for a CSP. The appeal rights for the record of needs are also different; provision cannot be appealed.

The CSP will be focused on the child's strengths. It will outline learning outcomes and the provisions that are required to meet those outcomes. The record of needs does not detail any of that. We would therefore be asking the tribunal to consider two different systems using two different criteria. If those with a record of needs could not appeal the provision that is being made for them, disputes regarding the provision would have to be dealt with via another appeal route through mediation to dispute resolution. That could be very complicated.

**Dr Murray:** The central concern that we all share with parents relates to children who have a record of needs but will have an individualised educational programme—IEP—instead of a CSP. If the parents feel that the local authority is not meeting that child's identified support needs, what recourse will they have? Will they have as much power in law as they had with the record of needs?

**Mike Gibson:** Under the current system, the parents could appeal to the Scottish ministers. In effect, there are very few such appeals—a fraction of 1 per cent, or 30 appeals out of 16,000 to 17,000 records. The problem is that, even under the appeals system, an appeal cannot be made

against the provision that is being made for the child. That is one of the difficulties with the records of needs process. There is a statement of the child's needs and an assessment profile that describes the child. However, the real meat of the record is in the provision that will be made to meet the child's needs. If the parents disagree with that, they cannot appeal against it. That is one of the weaknesses of the process.

The record of needs is a legal document and it gives a statement of the child's needs. There is a mechanism for appealing to the Scottish ministers, but only 30 out of 17,000 use it. There is also a right to a regular review, but the meaning of "regular review" is not specified in the legislation. Time after time, inspectors will find records that have not been reviewed for four or five years. Time after time, they will write inspection reports to the education authority, saying, "Please ensure that records of need are reviewed more regularly."

The record of needs indicates future needs provision, but that is covered in the bill for a wider group of children. We might therefore argue that, under the bill, not much would be lost if there were no records of needs.

**Mr Adam Ingram (South of Scotland) (SNP):** I would like to develop that point. You indicated that the new legislation will not be implemented until 2005. What happens to those children who are coming into the system now or who come into the system over the next 18 months? Will a record of needs still be available for them? How can we ensure that local authorities do not backslide and avoid keeping records of needs, using the excuse that new legislation is on the way?

**Wendy Wilkinson:** The current statutory provisions, including those under the 1980 act, remain in place. All current statutory obligations on local authorities with regard to records of needs remain in place. In the letter that the minister wrote last week to all local authority chief executives, which was copied to health authorities, he reminded authorities of the fact that the obligations that exist under the current legislation will remain in place until the bill is enacted and commenced.

**The Convener:** Is there any reason why people with records of needs who will not get CSPs under the new arrangements could not, in the meantime, and if they so wished, be deemed to require to have a plan? There is the perception of a security issue, which I think the whole committee is concerned about. I think that we would want to ensure that all options are explored.

**Mike Gibson:** I know exactly where you are coming from. The issue is that the criteria for the record of needs and those for the CSP are different. If the same mechanism is used for appeals to the tribunal in both cases, that makes things extremely difficult.

**The Convener:** Is there any reason why, in the meantime, authorities could not be required to give a CSP to those who would not otherwise get it? That could perhaps be some sort of temporary provision until the end of primary school.

**Mike Gibson:** That takes us back to the criteria. Let us suppose that there are two groups of children with CSPs. If one group fulfils the criteria as stated in the bill and the other group fulfils the criteria through the record of needs, that would require legal provision that would be difficult to write into the bill.

**The Convener:** You have already indicated that not many people have taken advantage of the appeals mechanism anyway, so we would not be dealing with a large number of people.

**Mike Gibson:** The people with records of needs have not taken advantage of the appeals mechanism because it is not very effective. The mechanism involving the tribunal will be much more effective. The grounds on which an appeal can be made before the tribunal are framed in terms of a child having a CSP. It would almost be necessary to write a whole new piece of legislation to cover what could be appealed against in cases of children who had a record of needs instead. Currently, it is not possible to appeal against provision on the basis of a record of needs. It would be extremely difficult to make draft legislation that covered both groups.

**Lord James Douglas-Hamilton:** To ensure that there is no doubt, I should mention that I am a non-practising lawyer.

Is there not a danger that parents could see administrative convenience as more important than the interests of the child? I appreciate the difficulties of running two different systems simultaneously before a tribunal, but surely the problem should not be insurmountable if there is the will to surmount it.

11:00

**Mike Gibson:** It would be extremely complicated to run the systems side by side, particularly given that aspects of the 1980 act will be repealed, as Wendy Wilkinson indicated. Perhaps another way of looking at the issue is to go back to the provisions of the bill, which offer much more support and protection to people than the current system offers. One could argue that, under the current system, if someone does not have a record of needs, their rights and the duties on authorities are not very strong. If someone had a record of needs but will not have a CSP, they will still, under the bill, have much more opportunity to challenge the authority, if they wish. Many more duties are imposed on authorities to ensure that children's needs are met.

**Wendy Wilkinson:** At issue is what will happen under the new system to those who are within the current statutory system. Will they gain or lose from the changes? We need to address those concerns and to decide whether to do so through legislative provision or through other means when supporting the implementation of the changeover. At the moment, ministers take the view that we should do so not through legislation, but through other means.

**Fiona Hyslop:** From the policy memorandum, it is clear that the provisions of the bill are designed partly to extend the legislative framework to encompass more children, which would be welcomed. However, I have serious concerns that the financial memorandum does not back that up. To return to Robert Brown's earlier question, I do not see how you can anticipate that you will provide a wider legislative framework—which, by implication, means making more service provision for more children—and not have a significant increase in the general spend. The figure of £2 million for local authorities has been mentioned. Does that mean that there is a bill of £60 million a year for the co-ordinated support plan? Can you explain that further?

**Mike Gibson:** Before handing over to my colleagues, I will say something about general funding. Funding in the area of special needs is increasing. Members may know that we are increasing funding by about 35 per cent between this year and next year. Inclusion funding will rise from £20 million to £25 million. Funding for accessibility strategies will rise from £9 million to £17 million. Funding for special educational needs training will remain constant at £8.4 million. Even if we leave aside the bill, funding is increasing. The funding that I have just described is relevant to the provisions of the bill, because it is all being used to meet the needs of children with special needs or additional support needs. Any new funding for the bill is a matter for the minister, who will make any announcements about that.

**Donna Bell:** As Mike Gibson indicated earlier, because there are so many grey areas and so many different areas are drawn into the framework of the bill, it will be difficult to decide what is a direct result of the bill. A number of other initiatives are in place that overlap with the provisions of the bill. I refer to integrated community schools and some current health-related endeavours. The national priorities action fund and the changing children's services fund address many of the issues. Earlier, I said that it is not the case that new children are being created. There are resources to deal with the children in question and the associated issues. The bill brings together the framework that will allow progress to be made with a concerted effort.

**Fiona Hyslop:** That sounds as if there will be more children within the legal framework. However, present support needs are not being met by the resources that are available and the bill will not provide additional resources to meet the wider additional support needs. I am concerned about those who have such wider needs, rather than about those who have a record of needs or who will have a CSP. I am not convinced that the many children who need a lot of help are getting it. If they are not getting it under the current legal framework, where will the budgets come from? I appreciate Mike Gibson's point, but considerable resources will be needed to provide additional support.

**Wendy Wilkinson:** We worked with local authorities in developing the financial memorandum. One of the issues was trying to identify where there are gaps in services. It was difficult to quantify where those gaps are and what the cost differential is.

**Fiona Hyslop:** The fact that something is difficult does not mean that it does not have to be done as part of the legislative process that we must go through. We must be satisfied with the financial memorandum if we are to progress with the bill.

**Donna Bell:** As we said, we have attempted to cost ranges of potential financial implications. It is a question of deciding where in the range we think a realistic cost will fall. Our economists have been involved in trying to ascertain where it will fall. I am sure that you will understand that it is difficult to predict the future. There are uncertainties in the area that we are discussing; all that we can say is that provision is being made elsewhere to fill the gaps. It is difficult to decide what will be a direct result of the bill and whether funding should accompany it or should be directed from other sources.

**Fiona Hyslop:** I suggest that we approach the minister and ask whether we can have access to some of the background scenario planning for the financial memorandum.

**The Convener:** Yes. I mention in passing that the Finance Committee is to undertake an examination of the bill's financial implications as well, and access to that material might be relevant to that consideration. We could follow your suggestion.

I wonder whether Elaine Murray can provide any ministerial insight on the matter.

**Dr Murray:** I am a bit concerned about a statement that Donna Bell made earlier. She said that she was not anticipating additional children coming into the system and that expectations should be managed. We are considering extending the legislative framework to encompass

more children, which Fiona Hyslop has just been talking about, and we have also talked about children with transient needs coming into the system—such as children who are bereaved, who have illness in the family, or who need some support because English is not their first language. I cannot quite reconcile that with the earlier statement.

**Donna Bell:** Those children are in the system at the moment; there is no debating that. The issue is the level of support that they receive. There are already duties in place that suggest that those children's issues should be dealt with. The question is one of providing the framework around those legislative aspects to consolidate the responses to those issues, rather than of creating new needs. The needs are already there.

**Dr Murray:** The needs may already be there, but they might not be being met. I would have hoped that the bill was about meeting the needs that are there.

**Donna Bell:** Absolutely.

**Dr Murray:** Therefore, meeting those needs must have some resource implications.

**Donna Bell:** That is what I am saying. As I have said, it is difficult to decide what will be a direct result of the bill. We can go back to the example that Mike Gibson gave about whether an operation is the result of an educational need or a health need. Where does that cost fall? The end result should be that the child gets the services that they need. The funding might come from various routes—it might come from health, education or social work. The important part is that the child eventually gets the services that they need.

**The Convener:** However, the bill surely raises expectations on, for example bereavement. We were told on at least one of our school visits that most schools did not have the facility to deal with a temporary issue such as that that could nonetheless have important consequences. There is also the issue of children with emotional, social and behavioural difficulties, which are likely to be recognised more fully in the CSP arrangements than in the record of needs. Are additional demands not likely to arise if the bill is implemented in the spirit in which it has been drafted?

**Mike Gibson:** That is a fair point. I will deal with bereavement first. In good practice, if a child needs support because of bereavement or some traumatic event, schools will respond. Good professionals will take account of such needs, so in the bill we are trying to set standards and acknowledge that youngsters with—in the case of bereavement—temporary, transient needs exist and schools should respond to those needs.

Youngsters with social, emotional and behavioural difficulties are a good example, because they are already in the system and we know that other initiatives and funding seek to meet their needs. That illustrates a point that Donna Bell made: lots of funding streams exist. Although I am not saying that there will be no additional costs as a result of the bill, it is important that we do not try to draw a circle round it and say that X, Y and Z are going to happen and we need X, Y and Z simply because of the bill. The changing children's services fund will be up at nearly £66 million in 2005-06. It is examining ways of reconfiguring services and achieving better joined-up working. It is not unreasonable to expect that some of that funding will impact on the implementation of the bill. I have also mentioned inclusion funding and accessibility strategies. All those are aspects of funding that aim to improve provision. Therefore, we hope that any financial demands that the bill imposes on the system will be met partly by what is already available. We are not saying that there will be no new demands, because there will, but not all demands that the bill covers are new.

**The Convener:** There is an element of mainstreaming the finance as well as mainstreaming the provision.

**Rhona Brankin:** My understanding is that children with social, emotional and behavioural difficulties are quite a large group of the young people who are currently excluded from the record of needs but who will come under the umbrella of co-ordinated support plans. I welcome that, as the lack of provision for them has been a huge gap. Is the Executive saying that more joint working is going on for such youngsters, through the new community schools and the development of youth strategies, but that their parents have no right to make demands and the authorities have no duty to implement inter-agency working?

**Mike Gibson:** That is right for some youngsters with social, emotional and behavioural difficulties. Obviously, all the provision about which we have talked applies to children with social, emotional and behavioural difficulties, such as the duties on authorities to ensure that they identify and provide for such young people and the rights of their parents to mediation and dispute resolution, and I am sure that most people agree that that is a good thing.

You are also right that that is a group for which a number of local authorities rightly or wrongly felt that it was inappropriate to have records of needs. Part of the problem with the record of needs is the way in which it is written—it speaks about impairments, for example. The language of the record of needs is not appropriate to many youngsters with social, emotional and behavioural difficulties.

Those with the most enduring needs who need a co-ordinated support plan will now be brought into the system, which will be more appropriate, because it will focus on learning outcomes. The bill is forward looking and I do not know of any other countries that are implementing similar measures. It reconceptualises what we mean by special educational needs and tries to include under one label a lot of disparate groups by saying what set of duties and rights should apply to them. That is about mainstreaming and pulling everything together and it must be a strength.

11:15

**Rhona Brankin:** Is it true to say that the largest group of young people who will have co-ordinated support plans and who currently do not have a record of needs will be youngsters with emotional or behavioural difficulties? On additional costs, are you saying that because of the considerable development of youth strategies and new community schools, much of what would have been new cost is already being met through mainstreaming and other developments? It is not just a question of saying that all the youngsters that fall outwith the record of needs will now be covered by the CSP.

**Mike Gibson:** That is precisely right.

**The Convener:** I have a question on mediation, which has been touched on in passing. There is to be greater provision of mediation, whether from the local authority or elsewhere. I might be viewing this as a lawyer, which might be wrong, but bearing in mind that the dispute is always with the local authority, is there not an inherent conflict of interest that makes it inappropriate for the local authority to provide mediation?

**Wendy Wilkinson:** The bill aims to address that issue by obliging local authorities to provide a service that is independent of their other functions as set out in the bill. Whoever is providing the mediation service will have to be independent of the decision-making functions regarding additional support needs.

**The Convener:** There is a slightly technical argument about how people view the system. The perception is important as well as the fact of justice being done.

**Wendy Wilkinson:** We have to consider the perception of independence and the trust that parents will have in the system. We want to monitor that aspect of the bill to see how effective it is in practice.

**Mr Macintosh:** My first question is on cost. Section 3(2) states:

"Subsection 1(b) does not require an education authority to do anything which ... is not practicable at a reasonable cost."

Is that a new legal formulation, or was it in the Standards in Scotland's Schools etc Act 2000? Is it a new control that we are introducing for the first time?

**Wendy Wilkinson:** It has always been there implicitly, in that local authorities cannot spend public money unreasonably. The wording has been included in the bill to make that more explicit.

**Mr Macintosh:** My understanding is that there has always been an undercurrent of families feeling that local authorities make decisions on the ground of cost, despite the fact that they have no right to do so. It is slightly worrying that we are now making that statement explicit. Capability Scotland has written to tell us that a legal judgment was made in the House of Lords about an English case whereby it was specifically stated that local authorities cannot make decisions on the ground of cost alone.

**Wendy Wilkinson:** You are right. They cannot make decisions on the ground of cost alone. However, it is fair to say that, in using and being accountable for the public purse, cost is considered at some point. Some people have referred to section 3(2) as a get-out clause for local authorities. The most important factor is to ensure that the needs of the child are addressed.

**Mr Macintosh:** There is a wide variation in practice, but the idea is to make explicit what is already happening.

**Mike Gibson:** If the wording was not there, it would still be implicit.

**Mr Macintosh:** There is probably a slight worry about making it explicit and giving it legal status.

I have another question about the idea of a co-ordinator, which is mentioned on page 7 of the policy memorandum. The memorandum states:

"Each individual plan will be overseen by a CSP co-ordinator and there will be a person for the parents or young persons to contact for advice and information."

Does that refer to two separate people?

**Wendy Wilkinson:** There could be two separate people or there could be just one person.

**Mr Macintosh:** Who decides? Can the young person choose their contact person?

**Wendy Wilkinson:** The education authority will be responsible for determining who the co-ordinator will be. It is expected that, in practice, they will take account of the views of the parents and the child who is involved.

**Mr Macintosh:** Do you think that it would be good to have a co-ordinator or similar person for additional support needs generally, as opposed to having one just for CSPs? That differentiates between the treatment of children who benefit from having a CSP and the treatment of those who have additional support needs generally. If a child

receives a range of support, through the education authority, they should also have a point of contact—perhaps not a co-ordinator—for advice and information.

**Wendy Wilkinson:** With regard to the co-ordinated support plan, the co-ordinator will—as the name implies—be responsible for co-ordinating the services and for liaising between the various agencies that provide the support. For those who do not have a co-ordinated support plan, there is provision in the bill for education authorities to have to provide the name of an information officer who will be somebody whom people can contact. That will be in addition to what is provided for those who have co-ordinated support plans and will be available to all parents, who will be able to obtain advice about the system, provision and the assessment arrangements regarding additional support needs.

**Mr Macintosh:** I was looking for that.

We have talked about personal learning plans, IEPs and CSPs. Will individualised educational programmes be the main vehicle for providing for additional support needs in schools?

**Wendy Wilkinson:** At the moment, when a child does not have a co-ordinated support plan, IEPs are likely to be used along with personal learning plans. Personal learning plans are still at the development stage. The way in which the personal learning plan and the IEP interact is being examined, and whether the IEP should become an extra couple of pages in the personal learning plan is being considered. For children with a co-ordinated support plan, the IEP will be subsumed by the co-ordinated support plan and they will have just one plan, not the extra plans as well.

**Mr Macintosh:** There is no mention of IEPs in the bill; however, that is not a failure to mention them.

**Wendy Wilkinson:** No.

**The Convener:** I am conscious of the time. We have run on a bit.

**Rhona Brankin:** I have a question about transitions into adulthood. I believe that there have been some changes to the bill, following the consultation. Could you take us through those? Having worked in the system, I am of the view that one of the strengths of the future needs assessment was the fact that it was required to take place a considerable length of time before the youngster left school. I also understand that one of the strengths of the record of needs was that it applied until a youngster was 19. Can you clarify what changes have been made in that area?

**Wendy Wilkinson:** Additional sections have been added to the bill as a result of consultation on future needs and the way in which education authorities will have to plan and prepare a child for

the transition from school. There is now an obligation on education authorities to seek information from other agencies—post-school agencies—regarding the support that they are likely to provide for a child once the child has left school. That relates not only to educational additional support needs; it can refer to the broad range. That must take place at least 12 months before the child is expected to leave school.

It is then expected that the authority will work with the other agencies in determining what preparation it can involve the child in, in the period before they leave school, that will support them in the transition to the support that will be provided after they have left school. Again, it is about multidisciplinary working towards planning and preparing the child for the transition when they leave school.

Section 11, which was in the draft bill, is about the education authority providing information to other agencies at least six months before the child leaves school. That is the information flow going the other way, from the education authority out to the support agencies, when the time for the child to leave school is approaching. There is a new duty on the education authorities to tell those agencies when the child leaves school, so that the post-school support can be put in place.

**Rhona Brankin:** For how long will that apply to the young person?

**Wendy Wilkinson:** The post-school support is provided under legislation other than the legislation that we are discussing. This bill relates to education. Once the child leaves school education, other welfare, health and community care enactments oblige other agencies to provide support for them.

**Rhona Brankin:** Who will be responsible for ensuring that the young person has continuing support when they leave school? When a young person is in school, it is felt to be important for someone to have responsibility.

**Wendy Wilkinson:** Part of the aim of moving towards more integrated services is that agencies that work together will be aware that a connection needs to be made when someone moves from children's services to adult services. There are a number of initiatives to help such people, particularly those with the most complex needs. For example, the Beattie report makes recommendations for key workers to be involved. Further, local area co-ordinators are being put in place for people with learning disabilities. Such key workers will act as a link as the young person moves into young adulthood and beyond.

**Rhona Brankin:** Is it possible that they would continue to see the same key worker?

**Wendy Wilkinson:** Yes.

**The Convener:** I am conscious that we have gone on for a long time on this issue. We dealt with the question that Adam Ingram was going to ask while he was out of the room. Would he like to add anything?

**Mr Ingram:** I was going to focus on mediation and appeals, but I think that we have covered a lot of that area.

At the outset, the convener asked about firming up the proposals and how the code of practice, the independent mediation service and the dispute resolution practices will work. Will we be able to see details of those elements before the bill is considered by the Parliament? If so, when?

**Wendy Wilkinson:** The minister aims to provide members with working drafts of the key pieces of subordinate legislation prior to the beginning of stage 2.

**The Convener:** I understand that we will not see a draft of the code of practice, however.

**Wendy Wilkinson:** That will take substantially longer to prepare. We have started considering what the code of practice will have to contain and the bill contains a new section that highlights what needs to be covered.

**Lord James Douglas-Hamilton:** How many more children do you estimate will be covered by the proposals relating to additional needs than are covered at the moment? Might the estimates of increased expenditure have to be revised because the costs might be more substantial than was expected?

**Mike Gibson:** There is always a possibility that cost estimates will have to be revised. As Donna Bell said, the children are being provided for. We have asked local authorities to identify gaps in provision, but they have been unable to do so. With the introduction of the bill, there will be an increase in the quality of services. I appreciate the frustration about the availability of precise numbers in this area, but, given the definition that we have for additional support needs—as was the situation with the definition that we had for special educational needs—it is extremely difficult to give them.

**The Convener:** I am conscious that we have given you a hard morning, but I think that it is important to get the framework right at the beginning. We are all grateful for your time and effort and for the good humour with which you have answered our questions.

I propose to take a five-minute break.

11:29

Meeting suspended.

11:42

*On resuming—*

## School Discipline

**The Convener:** Item 2 on our agenda is on school discipline. This item continues our discussion from a previous meeting. We will take evidence on the Executive's position paper on school discipline; we are pleased to welcome Executive officials Jo Young and Ruth Campbell for their delayed moment of glory with the committee. Would you like to say anything by way of introduction?

**Jo Young (Scottish Executive Education Department):** You asked us for a position paper. The paper that we have circulated was prepared a couple of months ago, round about the time of the debate in Parliament on "Better Behaviour—Better Learning". The Executive's position was set out during that debate by the ministers who are responsible for education. I imagine that the committee would like to go through some of the detail of both the position paper and the paper from the Scottish Parliament information centre, which was produced in August and gives a comprehensive overview of the issues. We will be happy to talk through those issues and to come back to you on anything that we cannot cover today.

Ruth Campbell is the expert on discipline issues and she is certainly more expert than I am. She will talk briefly and then we will answer your questions.

**Ruth Campbell (Scottish Executive Education Department):** The SPICe paper gave a good overview and a lot of factual information about discipline. Members will be aware that discipline is a complex issue. Promoting positive behaviour in schools is about teachers and the ethos of the school but it is also about care and welfare and about removing a range of barriers to learning, including pupil disaffection. The Executive is taking a broad approach. That approach is largely covered in "Better Behaviour—Better Learning: Report of the Discipline Task Group" but it has been added to by a range of other things, such as the co-ordinated support plans that have been talked about this morning. In addition, there are other ways of ensuring that children and young people are supported in overcoming whatever barriers to learning may be affecting their behaviour.

We know from our work with local authorities that they are making steady progress in implementing the programme of work that was described in "Better Behaviour—Better Learning". However, we are also concerned that we should

not fuel any lack of confidence in schools or among teachers, nor should we contribute to a general fear of young people. We need to provide support and encouragement to the professionalism of teachers, so that they can continue to work in schools and to meet the challenges of working with young people who experience barriers to learning.

11:45

**Lord James Douglas-Hamilton:** I would like to ask about bullying prevention. In the past, leaflets have been issued by educational systems outside Scotland. What guidance and information are you now giving on such leaflets? Are the leaflets that you are producing working, do you feel that they are altogether satisfactory and is there a strong demand for them?

**Ruth Campbell:** There is continuing demand for the leaflets and we continue to distribute them when requested. We are aware that we need continually to refresh awareness raising of bullying, and we are committed to producing a series of leaflets rather than just saying, "Here's our leaflet," and distributing it. We are working on a means of involving children and young people more in developing future materials, so that we have more to say on the matter.

**Lord James Douglas-Hamilton:** Are you quite happy with the effectiveness of prevention services in trying to prevent bullying rather than picking up the problem afterwards?

**Ruth Campbell:** Bullying needs to be seen in the context of the whole school. As well as promoting other aspects of positive behaviour, one of the main aspects of preventing bullying is to promote a positive school ethos. The leaflets that we provide and the information that is provided to teachers through the anti-bullying network also help to prevent bullying. However, we must continue to produce information and to ensure that material is available to pupils, parents and teachers.

**Dr Murray:** Before I ask my question, I would like clarification on section 7 of your paper, where you mention funding streams. You quote a figure of £10 million for "Better Behaviour—Better Learning", and then four other funding streams. Are those annual sums or are they totals over a period of years?

**Ruth Campbell:** There is funding through the discipline task group allocation and through alternatives to exclusion. That is funding that authorities receive year on year.

**Dr Murray:** So is the £11 million for alternatives to exclusion per annum rather than over three years?

**Ruth Campbell:** It is per annum.

**Dr Murray:** Thank you. That clarifies matters.

I was interested in what you said about staged intervention and in the fact that 27 out of the 32 local authorities take part in that at the moment. Do the other five not take part because they have other similar local initiatives, or do you anticipate that the scheme will be rolled out to all local authorities?

**Ruth Campbell:** The authorities that are not participating withdrew for a range of reasons; there was no one specific reason. Some authorities took part in initial training and then decided not to progress with staged intervention because they were implementing other programmes. We are continually encouraging authorities to take up the offer of our support for staged-intervention training. It is encouraging that East Ayrshire Council is now co-ordinating training initiatives within Scotland, so that authorities do not have to send trainees down to England.

**Dr Murray:** Is East Ayrshire Council going to evaluate the scheme as well as undertake the training?

**Ruth Campbell:** Yes. One of the important aspects of staged intervention is dissemination. We must ensure that more practitioners and authorities are aware of what is going on in the schools that have implemented staged intervention, and of the success that they are achieving.

**Dr Murray:** Do you intend to publish the findings of that particular programme to ensure that the Parliament and others can get the benefit of them?

**Ruth Campbell:** Yes. We would like to produce a regular magazine that draws together the experience of practitioners who are involved.

**Rhona Brankin:** I want to ask about initial teacher education and continuing professional development. One of the criticisms is that not enough core time has been allocated to initial teacher education and that it has been difficult for schools to find enough time to consider whole-school approaches and to develop individual teachers' skills. What is being done to ensure that that area of work is being given more time and made more of a priority?

**Ruth Campbell:** You will be aware that a review of the whole area of initial teacher education is being carried out. As a result, I will not go into that matter. However, as far the recommendation in "Better Behaviour—Better Learning" on looking at teacher training is concerned, authorities report to us that they are focusing very much on the probationer induction programme and on ensuring that probationer teachers have specific training on promoting positive behaviour. Many authorities are

setting up mentoring and other systems to ensure that probationer teachers are getting the right support. That is an encouraging step and we should see the benefits of it over time.

However, I feel that we need to explore more with authorities what is happening with multidisciplinary training. Colleagues are also investigating that in relation to integrated community schools. We are taking these matters forward on a broad front.

**Jo Young:** The minister confirmed that the review of initial teacher education would include classroom management and discipline issues. I assume that the committee has received information on the review's remit and membership. If not, I am sure that that can be made available.

**Rhona Brankin:** I would be interested to find out how work on that whole area is being fed into the review of initial teacher education.

**The Convener:** That information would be helpful.

**Ms Byrne:** I am interested in the results of the Educational Institute for Scotland survey and in recent newspaper reports that highlight teachers' frustration at the lack of support that they are receiving. They think that "Better Behaviour—Better Learning" has given them more work but without the resources to back them up. What feedback have you received on that issue? Is the crux of the problem resources, lack of staff development or a mixture of those, or is it because the policies that are set out in "Moving to mainstream" and "Better Behaviour—Better Learning" are not being fed through to staff, who therefore lack understanding of them? Do you have any insight into the background of that?

**Ruth Campbell:** The authorities that have discussed with us their progress with "Better Behaviour—Better Learning" have largely been positive. Given that the report contains wide-ranging recommendations, I think that that is a very encouraging sign and indicates that the recommendations are hitting the mark with schools and authorities with regard to what they think will help to promote positive behaviour.

However, although it is important to listen to teachers' frustrations, the issue is complex and isolated incidents are, perhaps, reported that unfairly inflate the picture of what is happening in Scottish schools. On the whole, schools are doing a good job as far as their pupils are concerned. Indeed, that is coming through in their progress reports.

**Ms Byrne:** My point is that more young people in mainstream schools have been identified as having social, emotional and behavioural difficulties. From the EIS survey, which I believe



was carried out in Dumbarton, from the feedback that I have received and from my own background, it is clear that ordinary class teachers feel a great deal of frustration about the support that they receive in working with young people. Have local authorities asked you for more staff development or more support staff, such as classroom assistants, to try to resolve the problem?

Given the various bills that are being considered, we could end up with a major problem with teachers' feeling disillusioned. They are at the chalkface, working with young people, and if we do not allay teachers' fears and work with them, none of the provisions that are being proposed will work successfully.

**Ruth Campbell:** We have commissioned research to investigate how authorities are deploying additional staff through the range of funding streams, including the national priorities action fund. That will allow us to understand better how authorities deploy learning support, behaviour support, classroom assistants, behaviour coordinators, home-school link workers and the whole range of staff that schools now use to meet the challenge of the kinds of pupils whom you describe. Research is under way, and we will be able to report on it when it is complete.

**Ms Byrne:** Will you be considering the various means of funding as part of that research? There are community school roll-out funds and there is money for social inclusion partnerships, for example. Could it be investigated whether the multiplicity of funding streams is part of the problem? If the funding was cored, and if strategies were made more long term around that funding, perhaps people would have a better overview of what support will be on offer in their schools.

**Ruth Campbell:** We have asked for specific feedback from authorities in their next report on "Better Behaviour—Better Learning" so that we can find out what packages of funding they are using to promote positive behaviour. We are aware that people in some parts of the country have social inclusion support, for example. We are trying to get a better picture about how money is being used.

**Jo Young:** Beyond that, we are considering how people are using funding streams in integrated or new community schools. In some places, that funding is being used in the context of changing children's services. We would like to find ways to make it easier for people to avoid having to go along too many different funding routes in the future. Ministers have made it clear that they want to work to the general principle of removing as much bureaucracy as possible, and not just in education.

I return to the point about supporting teachers. The minister has made it clear that he is concerned about teachers' concerns. He met a lot of people over the summer, including union representatives, and listened to their concerns. There is no simple solution. It is a matter of working out what has been done at schools where things are working and where there is a positive ethos, and what ingredients lie behind that. That way, we can build a positive cycle and we can learn from things that have gone well while recognising—not downplaying—the issues that people have raised.

**The Convener:** Is it fair to say that most teachers have been complaining about a large increase in the incidence of low-level indiscipline, rather than in the number of major attacks on teachers? How will you be able to assess your success in that regard and in relation to the various funding streams? How will you know whether the various measures that have been taken are working or not?

**Ruth Campbell:** As you will be aware, we have a number of statistical collections. Those for exclusion, attendance and absence are the key ones that indicate levels of pupil disaffection. There is also a collection of data on the incidence of antisocial behaviour and violence in schools. Because of the introduction of the Scottish exchange of educational data—ScotXed—we have been able to ensure that we are collecting information that we can look at intelligently so that instead of just getting broad headline figures we can dig deeper and find out what the differences are as regards different kinds of behaviour. That will be helpful in the long term.

**Mr Ingram:** I return to the question of children with social, emotional and behavioural difficulties. What approaches are being taken with regard to curriculum flexibility? One approach that I am interested in is called the nurture group approach, which I understand has been adopted by some primary schools in Glasgow and Lanarkshire. The kids who have such difficulties are taken out of the class and nurtured, as it were, and then returned to the class, where they often become exemplars. What kind of action are we taking along those lines? Will that kind of curriculum flexibility impact on the Executive's current curriculum review?

**Ruth Campbell:** Most authorities have reported to us on their approaches to curriculum flexibility for older age groups, but fewer have reported on what they are doing by way of early intervention. We want to explore that area in more depth with the authorities. A number of issues arise to do with transitions. The transition from nursery school to primary school must be considered as well as the transitions from primary school to secondary school and from secondary school to adulthood.

Nurture groups have been a useful idea—tried by a number of authorities—in considering the transition from nursery to primary and in ensuring that children have the social skills to cope with school. We want to draw on the experience of those groups. We have received evaluation reports and we hope to be able to share them with other authorities.

12:00

**Mr Ingram:** We have limited resources and it would be sensible to target them, using an early-intervention approach, to maximise impact. Do such early-intervention approaches come into the Executive's thinking?

**Ruth Campbell:** One of the recommendations in "Better Behaviour—Better Learning" is that local authorities should look at early-intervention strategies, especially for children with social, emotional and behavioural difficulties. Nurture groups are part of that approach. We want to explore with local authorities what else can be achieved. Many local authorities work hard—through sure start and other programmes at pre-school level—to identify children who will need additional support. They try to provide support in the transition from nursery school to primary school.

**Fiona Hyslop:** I was going to cover the areas that Rosemary Byrne covered, so I will now cover gender issues. The SPICe briefing paper highlighted the fact that far more boys than girls are excluded. As a result, resources are targeted at boys rather than at girls and girls' difficulties become invisible. In the review of policy, will you ensure that the needs of girls are not neglected just because boys present more obvious problems?

**Ruth Campbell:** We are very carefully considering gender differences and what we can do for both boys and girls. That is another area in which we want to hear the views of local authorities. We have no specific plans at the moment, but we are aware of the issue that Fiona Hyslop raises.

**Fiona Hyslop:** Research shows that there are differences in the difficulties that are faced by boys and girls. The discipline task force has a clear plan of action and has identified best practice. This is an obvious case of an area in which we must avoid a gender divide. The behavioural issues that affect the new generation of young girls are perhaps different from those that some of us who are a bit older can remember. We do not want that generation to slip through the net just because you have not done work on the issue. The rolling out of policies and best practice and the work of the discipline task force is happening now; if no work

is being done to address the gender divide, I am concerned about when it will be done.

**Jo Young:** There may be work going on that does not come under the initiatives that we have discussed. Initiatives can end up being labelled in one particular way. For example, I know that—

**Fiona Hyslop:** I do not mean that the girls' discipline agenda should be an initiative; I just mean that we must ensure that front-line services, provision and support in the classroom must address girls' needs as much as they do boys' needs. The last thing that we need is more initiatives—we want practical measures.

**Jo Young:** What I meant was that there might be other things happening—for example, through the health-promoting schools route, in which gender issues such as body image are being considered. We might be able to gain information from that without having to do a wholesale review. We can report back on different stages of the work.

**Fiona Hyslop:** It would be interesting to receive any reports on these issues.

**Mr Macintosh:** I want to ask about the anti-bullying network. How does it come into the funding streams? You suggest that you will be going out to tender in a couple of years' time. Is funding for the anti-bullying network totally separate from local authority funding for dealing with bullying in schools? If it is put out to tender, will it affect that local authority funding?

**Ruth Campbell:** No. The funding is totally separate.

**Mr Macintosh:** Do you know roughly how much that funding comes to? Is it additional to the other funding streams mentioned in the position paper?

**Ruth Campbell:** The funding is about £120,000 a year. We are commissioning a comprehensive needs assessment to ensure that the service that we contract in future is what stakeholders need.

**Mr Macintosh:** Is there any evidence from uptake by parents and children that the service is being used and meeting demand?

**Ruth Campbell:** It is being well used. Pupils, parents and teachers are using the phone line, the e-mail service and the website extensively.

**Lord James Douglas-Hamilton:** When is the revised guidance on exclusions likely to be issued?

**Ruth Campbell:** Shortly.

**Ms Byrne:** Will you ensure that you take into consideration young people with mental health problems, which are becoming a bigger issue in our schools? Following on from Fiona Hyslop's

point about gender, I think that we must identify young people who have mental health problems and the treatment and support that are appropriate for them and their families. I know that that issue will overlap into other areas.

Finally, exclusion is still a contentious issue. Have you carried out any research on whether the number of alternative placements that local authorities are providing has decreased, remained static or increased over the past few years? The issue is relevant, because such places will always be needed for some young people. How much have you examined the matter in your review?

**Ruth Campbell:** On the latter question, the revision of the data collection that I described will allow us to look more closely at the kinds of alternative provision that are available during an exclusion and the period of time for which they are provided. Those data will provide us with much more in-depth information.

What was your first question again?

**Ms Byrne:** It was about mental health issues.

**Jo Young:** Mental health issues are on the agenda. Indeed, we are discussing them with the mental health programme through the Health Department. The people involved in the programme are very interested in finding out how to address mental health issues in schools and we have to find the best way we can do that within the existing framework—which will include integrated community schools and the work on discipline and additional support needs that members heard about earlier—to ensure that whatever we do is embedded in the system and that we find any gaps. As you can imagine, there is a spectrum of activity between promoting mental well-being and finding out how teachers can identify children who have mental health problems and respond to them. We must think about all those issues.

**Ms Byrne:** Will you also examine the agencies that offer child and family mental health services in health board areas to find out whether what you are doing provides adequate support for young people and their families?

**Jo Young:** At the moment, we are simply trying to get a quick snapshot of local authority provision, put that together with the existing frameworks and identify a sensible way forward. However, we should bear it in mind that a lot of other activity is going on and we should not overload the system.

**Rhona Brankin:** I wonder whether you would clarify a statistic for me. It is sometimes claimed that teachers are experiencing more difficulties as a result of pupils moving into main stream. How many youngsters are now in special education provision? Is there any significant difference between the number of youngsters in main stream now and the number in main stream in the past?

**Ruth Campbell:** I would have to clarify that and get back to you.

**Rhona Brankin:** That would be useful.

**The Convener:** In paragraph 2.2 of the position paper, you refer to the summary report that is based on local authorities' interim reports. Are those interim reports published? If not, why not, bearing in mind the fact that local authorities have primary responsibility for delivery and should be accountable to local electorates in that regard?

**Ruth Campbell:** We do not wish to burden local authorities with masses of reporting, and—

**The Convener:** I am asking more about how reports are dealt with once they are made.

**Ruth Campbell:** One of the reasons why we wanted to produce a summary report was to provide a public document that gave an overview. Together with authorities, we are still working on that now.

**Jo Young:** It is up to authorities to publish their own reports locally. I cannot think of any reason why they could not do so.

**The Convener:** During the previous session, there was a similar issue with HECA reports—reports made under the Home Energy Conservation Act 1995. In that case, a national report was made, but there was some resistance to publishing the detail of local reports. There is perhaps an echo of that in this case. It is an important issue, and I would have thought that it might be reasonable for local authority interim reports to be made available either as part of the national report or in some other way. Could I ask you to take that point on board and have a think about it?

There are no further questions. I thank the witnesses for their time, for which the committee is very grateful.

I am subject to the committee's view, but I think that we probably do not want to take the matter further at this point. We could, however, consider it at a later point in our work programme, after we have finished consideration of the Education (Additional Support for Learning) (Scotland) Bill. Is that acceptable, or do members wish to return to some aspects of the discussion?

**Rhona Brankin:** We have discussed how the thinking behind promoting positive behaviour is being fed into teacher education, and it would be useful to get more information about that. I would also welcome some feedback about how those curricular approaches that have proved successful are being fed into the review of the curriculum.

**The Convener:** There are one or two things to which we will return. Are there any other matters that the committee wishes to raise?

**Rhona Brankin:** We should also think about developments with the numbers of people in mainstream and special education.

## Scottish Youth Parliament

12:11

**The Convener:** The final item on the agenda concerns a letter from the education and lifelong learning committee of the Scottish Youth Parliament, which wants to establish a relationship with this committee. I am open to suggestions, but I am inclined to suggest that the clerk and I, and possibly Lord James Douglas-Hamilton, the deputy convener, meet representatives of that committee and find out more precisely what it wants to do. We can then return to the committee with suggestions. Do members have any thoughts about the best approach?

**Rhona Brankin:** I agree that it would be useful for you to meet representatives of the Youth Parliament. I am aware that the Executive and local authorities have been examining the whole area of how young people can engage in policy development, for example through youth forums or school councils. I would be interested to find out what the current thinking is on how young people are engaged in a broad sense so that, while recognising the importance of the Youth Parliament, we can examine the whole area of engagement with children and young people.

**The Convener:** That is separate from the question of how we progress with the proposal before us.

**Rhona Brankin:** I was making the point that I would not want us to engage only with the Youth Parliament. I think that the committee should be taking an interest in how young people are engaged with in a general sense. I am not suggesting that we hold an inquiry, but we might seek information from the Executive about what it thinks best practice is and the stage that things are at.

**The Convener:** Some sort of toolkit was developed by the Executive, and it might be worth looking into that. We will return to that question in a few seconds.

**Dr Murray:** I am pleased that the Youth Parliament has contacted us. I feel that, over the first four years of the Parliament, the Youth Parliament ran one way while the Scottish Parliament ran along beside it, with very little contact between the two. There did not seem to be much of an exchange of views.

I note the issues that the Youth Parliament committee has agreed to prioritise. When you are in conversation with its members, you might wish to find out how much they know about what is going on in the Executive. If the Youth Parliament can devise a document for eradicating bullying

altogether, then perhaps it should be the main Parliament, rather than us. I wonder about the extent to which members of the Youth Parliament are aware of some of the things that are going on in this committee and of what is going on in the Executive. Improved communications with the Youth Parliament would be very welcome.

**The Convener:** One possibility might be to have an informal session with members of the Youth Parliament and with other people in the field. That might be on an issue of the Youth Parliament's choosing. We could explore a suitable format for that.

12:15

**Mr Macintosh:** I agree with the suggestion that you and the deputy convener could meet representatives of the Youth Parliament. There are various things that we could suggest that would be beneficial to us. Once we have decided on our work programme—it is fairly well established at the moment—we should send a copy of it to the Youth Parliament's education and lifelong learning committee and ask it to make its views known on the subjects that we are dealing with. We would, of course, want it to work the other way, too. That committee's agenda will not necessarily be the same as ours, so it will be interesting to see what its priority issues are at the moment. It will be interesting to hear from members of that committee directly how they feel they can contribute and how they would like to liaise with us. I know that Sean Hanlon and many others were delegates to last week's Commonwealth education conference and spoke in the chamber.

**The Convener:** Would it be fair to summarise the matter by saying that the committee is keen to have an effective interrelation with the Youth Parliament, and particularly with its education and lifelong learning committee? We will explore what is possible with them, taking on board Rhona Brankin's point about how wider engagement can be developed. Rhona, I think that you wanted us to write to the Executive about what it is doing on that at the moment.

**Rhona Brankin:** Yes, but we need to think about more than just engaging with the Youth Parliament. We must consider ways of engaging with representatives of youth from right across Scotland. I am not saying that the Youth Parliament is not representative, but I know that there are other areas of youth engagement that we should not miss out.

**The Convener:** Let us consider that with the clerks and bring the matter back to the committee in due course. There may be the possibility of an informal event of the kind that we have vaguely mooted, which might also answer some of our concerns.

**Mr Ingram:** I would like to ask a question about the timetable for stage 1 of the bill. Have we got a target date for a stage 1 debate?

**The Convener:** Broadly, the objective is to complete our stage 1 report by January, with a view to having the parliamentary debate on stage 1 later in that month. The timetable that we are working to, with initial witnesses and then a revised list when we know who wants to give evidence and what their contributions are, should allow us to fit in reasonably well with that time scale. There will undoubtedly be the usual press towards the end, but that is the plan.

**Mr Ingram:** Will we get some feedback on potential witnesses at the next meeting?

**The Convener:** I think that we have discussed that before, or at least circulated a draft programme, have we not?

**Martin Verity (Clerk):** Yes, and I think that the convener is suggesting that we have an item on the agenda for 19 November to discuss possible witnesses up to the end of the year.

**The Convener:** That is right. We have agreed on the initial witnesses—the obvious people, if you like—from whom we are going to hear, but there may be other people whom we will want to add to that list once we have seen who submits written evidence and who approaches us about the matter. They may be representatives of smaller groups, or individuals, but we can make a final decision on those later witnesses once we know exactly what the story is. The meeting on 19 November is designed to come just after the end of the advertisement period for evidence on the bill.

*Meeting closed at 12:18.*



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