EDUCATION COMMITTEE

Wednesday 19 November 2003
(*Morning*)

Session 2

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EDUCATION COMMITTEE

10th 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 GAVE EVIDENCE:

Anna Boni (Association of Scottish Principal Educational Psychologists)
Lesley Bruce (Chartered Society of Physiotherapy)
George Haggarty (Headteachers' Association of Scotland)
Kim Hartley (Royal College of Speech and Language Therapists)
Bryan Kirkaldy (Association of Directors of Education in Scotland)
Felicity McElderry (National Association of Paediatric Occupational Therapists)
Alan Ross (Association of Directors of Social Work)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Peter McGrath

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education Committee

Wednesday 19 November 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:49*]

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

The Convener (Robert Brown): Good morning and welcome to the 10th meeting of the Education Committee in this session. This morning we are taking further evidence on the Education (Additional Support for Learning) (Scotland) Bill. I ask people to switch off their mobile phones and pagers in order to ensure that we can proceed without interruption.

We have two panels this morning: the first is composed of various high heid yins—the directors of various bodies. We have Bryan Kirkaldy from the Association of Directors of Education in Scotland, Alan Ross of the Association of Directors of Social Work, Anna Boni from the Association of Scottish Principal Educational Psychologists and George Haggarty, head of St John's High School, who is representing the Headteachers' Association of Scotland. I welcome you all to the committee.

I think that I am right in saying that each of you will speak for a couple of minutes to supplement the submissions that we have received from you. After that, we will move to questions from the committee, if we may. Who wants to kick off?

Bryan Kirkaldy (Association of Directors of Education in Scotland): Good morning. I am a senior manager in Fife Council's education service. The Association of Directors of Education in Scotland welcomes the broad intentions of the bill to modernise, broaden and strengthen the approach to children who have additional support needs. We also welcome the stated intention to reduce bureaucracy in the system and to replace the outdated record-of-needs system, which was established by the Education (Scotland) Act 1980.

At the moment, local authorities and schools throughout Scotland are working in the context of significant legislative change. A raft of new legislation applies to children in the school system. Some of that is the result of disability legislation and some of it concerns part 15 of the Standards in Scotland's Schools etc Act 2000. The net effect is a requirement on schools to build their capacity and to become progressively more inclusive. We have to do that in a systematic way that considers the whole school organisation and the capacity of the school so that it can become more inclusive for young people. We are keen to maximise what is ordinarily available locally, informally and speedily for children and families as part of the mainstream process.

As part of that process, we are keen to minimise the use of separate statutory processes, which are necessarily bureaucratic, lengthy and cumbersome. We operate on the principle of the least intrusive but most effective intervention. That principle is important for children and families and also in terms of the capacity of the system to deliver. That is the context in which we have examined the bill.

Members will see from our submission that we have a number of concerns about specific proposals. We believe that those proposals are likely to undermine the bill's broad intentions to reduce bureaucracy and make the system operate more speedily and effectively for children and families.

Anna Boni (Association of Scottish Principal Educational Psychologists): We welcome the opportunity to give evidence orally and in writing to the Scottish Parliament.

We have concerns about the expectations of a bill that is drafted in purely educational terms and about the resultant pressures that might arise from the code of practice, which is—in a sense—filling the gaps. We hope that the bill will lead practice and we wish for legislation that has some longevity.

George Haggarty (Headteachers' Association of Scotland): Our association broadly welcomes the bill and, in particular, welcomes the concept of additional support needs. We recognise the challenging diversity within school populations in Scotland. We have concerns, however, about the balance between youngsters who have a formal co-ordinated support plan and those who have additional support needs. Schools have in place at the moment various levels of planning for such youngsters; we do not want schools to have to increase significantly those levels of planning.

At the same time, we hope that the resources that are identified in "Moving Forward! Additional Support for Learning" are used to support the intentions of the bill. We want a system that is realistic about what can reasonably be expected of schools and their teaching staff. At the same time, we welcome the opportunities for parents to be increasingly involved.

I also want to highlight the issue of the extent to which the bill will enable schools to achieve integrated delivery of services. I am not sure that that aspiration will be effectively achieved, especially if many of the responsibilities remain with education authorities and are less clearly placed on the other agencies and authorities. We hope that the bill will not lead to a system that is more demanding of the school sector—we are thinking of the focus that could be put on the apparent failure of schools to deliver additional support needs.

Some children have complex needs and it is difficult to identify obvious solutions to some of their difficulties, particularly in their adolescent years. We endorse the bill's intention that there should be better recognition of the spectrum of need in our schools.

Alan Ross (Association of Directors of Social Work): The Association of Directors of Social Work also welcomes the general thrust of the bill and the aspirations therein. Some areas do not fully resonate with the Children (Scotland) Act 1995, but that is the nature of new legislation; some of that will be worked out in the definitions in the new code of practice and in the case precedent that ensues from new legislation.

We particularly endorse the prominence that is given to the universal services—particularly education in this bill and hopefully health in pursuant legislation—to anchor services for all children in the vast continuum of need. We endorse fully the views of the Headteachers' Association representative and of the Association of Directors of Education in Scotland on ensuring that the resources exist to alter the culture's mindset and to support the education service in delivering to all children. Although my services are fully behind that, resources and assistance are required to carry through the bill's aspirations.

The Convener: We are all conscious that a significant management role will fall on you and your colleagues to ensure that the bill delivers in practice. On support or otherwise for the bill, I was particularly struck by Mr Kirkaldy's comments and submission. On the one hand, you say that you support the bill but, on the other hand, your detailed comments seem to go against the framework of the bill in relation to how the new arrangements would be delivered. I would like you to elaborate on that; we have first to get the framework right, but you seem to have considerable criticisms about the way in which the Executive is proceeding in that regard.

Bryan Kirkaldy: We support and welcome the broadening of the concept of special educational needs to additional support needs, which reflects current practice. We have understood for some time that children with special educational needs are simply one fragment of a continuum of children who require additional consideration within schools and services.

The risk is that co-ordinated support plans might be associated with that whole population. The co-ordinated support plan is an individual statutory document, which will entail a bureaucratic process—it is difficult to see that process taking less than six months for an individual. If you consider the definition of children who might be eligible for a co-ordinated support plan to be as wide as we do—we believe that it might cover as much as 15 per cent of the school population—the risk is that we will take a much larger group of children through the bureaucratic process than we do in the record-of-needs system, which covers about 2 per cent of the school population. The stated intention of the bill is to modernise, simplify and speed up the process. We support that, but the detail of how the definition of children who might be eligible for co-ordinated support plans will be applied undermines that intention.

The Convener: Are there any other general observations on the central theme of the bill? We will consider issues in more detail in a minute.

George Haggarty: The increased numbers will be an area of debate. Under the bill, we would in a school of 900 pupils have 120 children who have particular additional needs. My school currently has about 90 youngsters who have individualised educational programmes or individual behaviour plans—support for their behaviour or educational development. We currently have 34 children with records and 24 who need base support. I do not argue that all 120 would need co-ordinated support plans, but I stress that levels of planning are required of schools even before we switch over to co-ordinated support plans.

The emphasis on the involvement of an agency for more than a year is critical. The process will still leave children who have complex and multiple needs without formal co-ordinated support plans. The issue hinges fundamentally on whether parents think that there will be a guarantee of more resources because their youngster has a CSP or whether it will be recognised that there will be resources for children who have multiple and complex needs, even if they are not put formally through the co-ordinated support plan. A lot will hinge on parents' perceptions.

10:00

Anna Boni: A number of planning documents are already in the public domain. I would like to mention the success for all initiative, on which I have a bit of detail, if that would be helpful. Through the children's hearings system and through health services, we have plans for children who have very complex needs. We already have individualised educational programmes that meet the needs of a wide range of children, but it is not clear to me how the plans would work together—especially in relation to the children's hearings system, where account would be taken of a number of children who have multiple needs. In my view we will, instead of reducing bureaucracy, be taking up a lot of professional time with producing plans but not necessarily on outcomes for children.

Alan Ross: Following that point, I can envisage children's hearings regarding the CSP as an avenue into a resource bank, just as the record of needs was. Tensions could be set up, which it might be possible to resolve through practice. Given the varying amount of education plans—individual and personal learning plans—the looked-after and accommodated children forms, the forms for children's hearing assessments, the CSP requirements, and the assessment of all children prior to reaching the CSP threshold, we need to sit back and ask how we can better integrate the assessments, forms, bureaucracy and legislative base. We must do that instead of simply adding another tier of legislation that requires another tier of bureaucracy. I support the reference to the children's hearings.

Rhona Brankin (Midlothian) (Lab): I want to pick up on the issue of bureaucracy and to follow on from what you said about whether the bill could conceivably be an opportunity to develop a more integrated approach to sit alongside the children's hearings system. I will then ask about integration of IEPs, PLPs and CSPs and so on. Will you expand on how you think plans can be integrated to allow them to work better within the children's hearings system?

Alan Ross: I will have to sit back and think about that. We already have a process whereby the school refers the child to the social work department, for example. We would then be requested, through the children's hearings system, to prepare reports, to take into account the views of the school, the parents, the child and the other agencies involved, and to submit the various reports to the children's hearing. That would be a fairly comprehensive assessment if it reached a hearing or a post-hearing review. The views of the school would be accommodated in a pro forma that was laid down by the relevant authority and—if the child became a looked-after and accommodated child—in a pro forma that was laid down by the Scottish Executive; such forms are called the LAC forms.

The fact that the LAC forms have an education module means that we would be coming at the issue down a different avenue. The school would carry responsibility for the creation of a CSP that took into account the social work department's and children's hearing's views, and the views of other agencies. Melding those views together is quite awkward because of the Scottish Executive requirement to produce the LAC forms. A great deal of resource and implementation time and energy has gone into rolling out the LAC forms in the past few years; they are seen as being fairly crucial to progressing the responsibilities to children under the Children (Scotland) Act 1995.

Rhona Brankin asked about better integration. The better integration of services that I see happening on the ground—in schools and in councils—has been very positive in the past few years. I am rather concerned that the bill will bring with it tiers and tangents to what are now central forms. Although those will be reconcilable some time down the line, the energy that will be put into that might be quite substantial. In response to the question, I already find it hard to reconcile the various planning assessment forms and mechanisms and the bill will bring a new one.

Anna Boni: All agencies have to meet their statutory duties—we are describing education and social work statutory duties. Those are our prime functions and, at the moment, they continue to be separate. We have just heard about the way in which the children's hearings system works and how the record of needs works. I cannot see anything that will necessarily bring those together; we might continue to have parallel lines.

Rhona Brankin: We might want to explore with the minister what sort of thinking has gone on in that area.

I am interested in following up the business of the continuum of need and the different types of paperwork that are associated with that. I am conscious of the fact that personal learning plans are still in a relatively early stage of development, but we want to be reassured that the bureaucracy is only as big as is necessary to deal with the needs of children, families and schools. Will you say something about that?

George Haggarty: Although we are worried about the levels of bureaucracy and paperwork, I make the point that our central concern is about active involvement of the different agencies in supporting young people. We certainly have gaps in the system at the moment.

To give a specific example, I believe that some young people face mental health problems, some of which go back to their early childhood. When children have experienced traumas without ever having received proper counselling, it is frustrating to encounter their problems in a more pronounced way in high school when they are in their adolescent years. There are things that such young people cannot manage. If we trace their problems back and ask how something happened, we might find that there has been a murder in the family, or something dramatic like that, and that the child has never been counselled.

We feel that that sort of issue needs to be addressed. In high school, we are sometimes at a loss, although we give as much extra support and time to such young people as we conceivably can. What I am pointing to is that, although paperwork and bureaucracy is an issue, beyond that there is the issue of identifying the right agency and ensuring that it is actively involved.

Some of our psychological services in this country are certainly under-resourced. I have had experience of some extremely difficult situations: I have had young people who have had problems from the age of three, but for whom we have only started to identify an agency around the age of 14 or 15. We should focus on the problem of bureaucracy. We need to get the right agency identified early enough and we must require its involvement. By the time that they are of the age that I am talking about, some of those young people are entering adulthood without their problems ever having been addressed.

I know that that sounds dramatic, but some of our most challenging children certainly have issues with their mental health. I say that without in any way stigmatising the problem.

Bryan Kirkaldy: If I may go back to my earlier point, we need to build the foundation of what is ordinarily available. That needs to be as strong as possible both for personal learning plans and for individualised educational programmes. We need to reserve the more statutory elements for the top of the pyramid, so that we do not go first to the statutory elements when we respond to the population. We should try to build the foundation of what is ordinarily available informally and quickly for families and children at school level.

That also applies to interagency work. The context of “For Scotland’s children: Better integrated children’s services” and integrated community schools is that we aim to develop networks and teams of agencies at school and community level that can respond quickly and readily to families’ needs. Again, we would prefer that the outcomes did not have to be achieved through a cumbersome statutory mechanism; rather, we would prefer those to be part of the everyday opportunity for families and children at local school level.

Mr Adam Ingram (South of Scotland) (SNP): You emphasise in your submission that you would like the definition of those who will require a CSP to be narrowed down. The submission proposes that we should

> “Amend the definition to include the criterion of other agency support that *is not ordinarily available.*”

To my mind, there is an obvious tension between, on the one hand, your trying to ensure that all the services that a child might need become available—therefore, they must be covered by the bill—and on the other hand, your emphasis on the need to focus on services that are out of the ordinary. Such an approach might raise parents’ fears about whether their child will get the resources. Is that not the nub of the issue about the legislation? The suspicion is that significantly more resources may not be made available and that resources will be spread thinner across greater numbers of children. How do we fix that?

Bryan Kirkaldy: In a way, that is the nub of the issue. We need parents to have confidence in the system’s capacity to deliver. We need a system that can deliver equitably according to greatest need—a system that can prioritise resources accordingly.

The Association of Directors of Education in Scotland’s suggestion is that co-ordinated support plans be used only where co-ordinated support is not ordinarily available. That would focus support on the area where there is a perceived shortfall between the family’s perception of what is being offered and what the services can deliver. That would target the use of a more cumbersome and necessarily bureaucratic tool on the area of shortfall rather than its being used routinely, which in effect would be to use it without adding value to the situation on the ground.

Mr Ingram: Would not that be quite difficult to establish? How would you build that use of CSPs into the system?

Bryan Kirkaldy: In everyday terms, planning for children’s educational arrangements takes place in discussion between the family and the school. Those discussions are often also attended by an educational psychologist or other support services. The process is defined by the extent to which agreement is reached and confidence is built between the family and the education service.

It is good when a family is satisfied and happy with the co-ordinated support that is planned. The education service hopes within days of that to move informally and readily to put the plan into action. However, if dissatisfaction arose on the part of the family about what was proposed, we suggest that that is the point at which the requirement to go into a different process—one that might necessarily be more cumbersome—should come into play.

The Convener: Surely that is what the bill is intended to do? The intention behind the abolition of compulsory assessments is to make the process more informal and to make it a part of the school mechanism.

Bryan Kirkaldy: I agree that that is the stated intention of the bill. Our criticism relates to the detail of the definition of eligibility for the co-ordinated support plans. We think that the detail of that aspect undermines the principal intention of the bill.

The Convener: One of the submissions touched on the question whether it would be possible to build on a basic document such as the IEP. Which of the working documents in the school could be used as the starting point for whatever is built on top of it in terms of bureaucracy and so forth? What would be the most appropriate mechanism, document or procedure with which to do that?

George Haggarty: I think that it would be the IEP—the individualised educational programme. If we go back, even to the early 90s, it was in the interests of head teachers as well as parents at that time for more children to be identified and to hold records of needs. At that time, authorities committed resources including auxiliary support and so on only for children who had records of needs. Authorities have become much more responsive to the needs of children and the needs of schools; they now go beyond the boundaries of the records.

That is where the IEP comes in. Children who come up to my school from primary schools have to have their need for training care assistant support, an alternative curriculum or a small-group setting specified. That can be done through the IEP. It would reassure parents in a number of cases that support for their child would be resourced and planned in a proper sense.

I would also like to think that that would mean that some parents would not see the need to resort formally to a CSP as some sort of guarantor of resources. Authorities would need to be resourced so that they could be responsive to needs. They must not simply be able to say to schools, “You have only X number of children with records of needs, therefore staffing equals Y”. In my experience, a number of authorities have already moved more responsively.

Ms Rosemary Byrne (South of Scotland) (SSP): I apologise for being late. I hope that I am not going to ask about an area that has been covered already.

I was interested in what George Haggarty said about children with mental health problems. If additional support needs arrangements are to include young people with social, emotional and behavioural difficulties, it will require a huge amount of extra resourcing, planning and cross-agency working. What are the witnesses’ views on other agencies’ duty to comply? Is “duty” a strong enough term, or should we word that more strongly? Who is going to be accountable and who is going to be responsible? I am interested in what George Haggarty said about the IEPs. Will the witnesses elaborate on their views on whether the IEPs, which have been developed across education authorities and are well embedded, are the correct vehicle for record keeping and planning for additional support needs?

10:15

Bryan Kirkaldy: I agree with what George Haggarty said about IEPs. They are well embedded in the system throughout Scotland and schools use them in consultation and co-operation with families and agencies. They are the foundation for what we should be doing every day in schools. We are starting from a strong position.

Financial responsibility is a matter of great interest to us. The bill seems to suggest that there is a failure to align responsibility with financial power, so local authorities have responsibility for the young person’s outcomes and achievements, but other agencies will have the power over whether those outcomes are delivered. That failure to align responsibility and power is serious; it concerns us and it is not practical. It is a result of the bill’s being education-only legislation. That could be addressed in a number of ways, one of which is to have a different framework for legislation, such as having a children’s bill, which puts duties on other agencies. Another way is to make other agencies accountable for outcomes. The education authority will be accountable to a tribunal for failure to deliver, but other agencies might have the power of delivery.

Anna Boni: The documents to which I referred started being developed in 1999 and in 2002 they were sent to all schools, local authorities and psychological services. The documentation is there and good practice has been developed. Children with social, emotional and behavioural difficulties are challenging to the systems that we have, because their difficulties are not resolved quickly. Many of our support structures are not as yet developed for the long term; that requires co-operation of a different order. I look to the bill’s being changed to accommodate that. A year in these young people’s lives is not enough; we may need 12 or 15 years.

Alan Ross: On the duty to comply, I believe that section 21 of the Children (Scotland) Act 1980 permits a local authority to require another agency to provide services where the local authority is not able to do so itself—provided that the agency has the resources so to do. There is an opt-out in that respect.

The bill seems to refer to local authorities as having the power to seek of other agencies. The bill refers to education in one part and to education authority—in pursuance of its local authority duty—in another part. There is ambiguity about who is who in seeking assistance from other agencies. An education authority could seek assistance from a social work department and a social work department would quote section 21 of the 1980 act and require the education authority to do exactly what social work had just been asked to do. We could get into legislative hieroglyphics.

My point is that, if resources are not aligned with requirements, and if people are not required to deliver, it is possible to find caveats in all legislation to say, "If we don't have the resources, we can't". Many judgments down south have shown that community care can take resources into account when assessing need. There is a real tension in that respect.

I imagine that health services would not be very happy if we were given power over their budgets, which would be the effect of saying that they must deliver. Fundamental to that, however, is some accountability through the appeal process, so that people can be called to account in a subsequent appeal—or whatever it is that legislation might allow.

The ADSW is concerned that we have moved from "special educational needs" to "additional support needs"—as stated in the bill. The subsequent documentation from the Scottish Executive talked about "additional support for learning". We now have "individualised educational plans", which are to be seen as a building block for that support. I would much rather look at the individual support plan. Perhaps it is about the use of words. The aspiration of the bill is to provide holistic legislation for children, but if we focus on the words that we use and not on that aspiration, we could get drawn down to dealing only with the building block of the school and the child's interrelationship with the school. We could end up working on a deficit model that simply looks at what is wrong with the child and what we have to do better to make the child better. In our view, the aspirations behind the bill are slightly grander than that.

Certainly, as it stands, the IEP is probably one of the best building blocks that I can see, particularly if the IEP were to take account of some of the wider views, as it is anticipated will happen under the proposals to draw children with social, emotional and behavioural difficulties into the process. Mental health and other issues could be well constructed under an IEP if it were made more sophisticated, rather than a social work device or module such as we use in our assessment.

The Convener: I want to get a handle on IEPs. There seems to be broad agreement that the IEP is probably the most sensible tool to build on in respect of the bill. Roughly how many children, in percentage terms in schools across the country, have IEPs?

George Haggarty: I think that the number in my school is 10 per cent.

The Convener: Is that typical?

Bryan Kirkaldy: It would vary according to the social characteristics of the school intake. That said, the figure is broadly in that area.

Rhona Brankin: What are the criteria on which an IEP would be opened?

George Haggarty: Most authorities have up to five stages of intervention. Stage three is the point at which we would start to open an IEP. It is the stage at which the normal routines and resources of the classroom, department or school are not resolving the youngster's difficulties, in terms of either their learning or behaviour.

One critical point to make about IEPs is that the best IEPs are intelligible to the young people; the plans speak a language that the youngster understands. IEPs are not written in jargon that addresses the service's perception of things. They can be actively used by support staff as a point of discussion for young people.

Another critical point to make about IEPs is that they start the process of regular review. In my own school, the review would be held weekly, believe it or not, as part of the agenda that is set to address the progress that the child is making. As the committee will appreciate, some youngsters will be much more on the agenda than others. I like the idea of the individual support plan—the name has a certain logic to it.

I will return to the point about whether IEPs cover 10 per cent or 15 per cent of the school population. In our submission, we made the point that some young people do not show problems in school although they have significant problems in their background. It is all credit to them that they cope so well. We also made reference to the problems that have not surfaced in a school context but that may be known to other agencies through things that the young people have told us informally. At the moment, it would not be typical for those young people to have an ISP or an IEP in their school. They will, however, get pastoral support, even if in a sense they are coping very well with the demands of school life.

The Convener: So, there is a need to draw information that is held by other agencies into the school at the proper time.

George Haggarty: When it is needed.

Lord James Douglas-Hamilton (Lothians) (Con): Am I correct in thinking from the evidence that you have already given that you would be content for the duty for compulsory assessments to be withdrawn in moving to the new system? What should that mean in practice?

Bryan Kirkaldy: Yes, we would be pleased if compulsory assessments were withdrawn. It would be in tune with the idea of building more universal, readily accessible assessments at school level and using more specialised assessments where necessary and where agreed with families. As you will know, the 1980 act required medical and psychological assessments for all children who had records of needs, and in many cases those assessments were redundant. Children were therefore being subjected unnecessarily to assessments, and professional agencies were being tied up in the process. We would welcome the removal of compulsory assessments.

Lord James Douglas-Hamilton: Is that the view of all of your colleagues who are giving evidence?

George Haggarty: I understood that the idea was that it was not compulsory in all cases, but that where an education authority requested an assessment from an agency, the agency was required to provide it. I would not like that fundamental point to be overlooked.

Anna Boni: From the psychological services point of view, most services throughout Scotland have an open referral system where parents can write in and ask for an assessment. We would not see the need for the statutory requirement. We might want to ensure that that knowledge is more available to parents, but we feel that a system is already in operation.

Lord James Douglas-Hamilton: I am not sure that an authority is required to respond—

George Haggarty: I thought that that was in the consultation paper. The gap that I referred to earlier is there because some agencies either have no active involvement with a young person or there can be significant delay in the response.

Lord James Douglas-Hamilton: Do you think that children's panel documents should be made accessible to those concerned? Who should bear the responsibility and be accountable for ensuring that that happens?

Alan Ross: Sorry, I did not quite understand the question. Are you referring to children's hearings documents?

Lord James Douglas-Hamilton: There may be children's panel documents relating to children who, for one reason or another, have antisocial behaviour problems or other difficulties. Those documents could be very relevant to the child concerned, and to the education authority and the school. Should those documents be made accessible? Who should be responsible for ensuring that that becomes a reality?

Alan Ross: The current—and fairly recent—legislation under children's hearings rules and regulations, the "S" judgment from down south and various other judgments have led to legislation that allows all reports to the children's hearings to be available to the child and to the parents. The school is, in general, fully involved in the production of those documents, and any teacher attending a hearing would have full access to the documents. Education authorities and local authorities are a single agency under data protection legislation, so the sharing of information is perhaps not as complex as it is in other areas such as health and the police. Any productions for, and any results of, children's hearings in documentary form are made fully available to the child, to the parents and to relevant agencies where they attend the hearing or have an input to it.

Lord James Douglas-Hamilton: Are you satisfied that the school receives the information?

Alan Ross: There are practices throughout Scotland that can be improved. In general, however—I can speak only for my own part as opposed to for the ADSW—I am comfortable with the information sharing that goes on at that level for that purpose.

Fiona Hyslop (Lothians) (SNP): I want to return to the issue of power and responsibility and how education authorities can request support from other agencies. The submission from ADES talks about optional help from other agencies. Education authorities can make requests from any other local authority, health board and so on but, interestingly, social work departments in the same local authority are not even mentioned in the bill.

The ADES submission mentions options, including first,

> "a single budget held by a single agency",

which is quite different from the principles of the bill; and secondly,

> "to include the relevant agencies in a joint accountability".

We took evidence last week from the NHS Confederation in Scotland, which seemed to be quite happy for the Parliament to make the responsibilities of other agencies more explicit in law should it want to do so. I am interested in other views on that: would you support that or would you be more comfortable with a code of practice? How do you think that joint working can work? Do we need to put something more explicit in the bill or do we move away from joint working completely and go with the options that you have suggested in your submission?

10:30

Bryan Kirkaldy: I am advised that the reason that social work services are not mentioned in the bill is that the education authority that is considered to be the legal entity is the council, so the social work service and the education service are both part of what the bill describes as the “education authority”. It might have been clearer to have referred to it as a local authority, because the phrase “education authority” is misleading—it certainly misled us at first.

The more immediately practical of the two options that we have suggested to deal with the misalignment of power and responsibility is the second one, in which other agencies’ accountability and responsibility for meeting needs and delivering services could be sharpened. The first option—to move to a single budget and agency—would require a different kind of legislative framework, such as a children’s act.

Alan Ross: You might have noted that, south of the border, the green paper “Every child matters” has resulted in the formation of children’s trusts that bring health, education and social work services together under one children’s services director. That is one structural route that we could take, and, although I hesitate to rush down a structural route, some accountability is needed.

Social work has the example of children who, 10 or 15 years ago, might have faced long-term stays in hospital, but would not be in hospital today and have been moved to the community. Huge resources go into supporting those community placements. With ASL and the presumption of mainstreaming, more of those children remain in local schools and do not go to external schools. The resources that I have to commit to that process—for sitter services, support services, domiciliary care services, local residential respite and local community foster care respite—have expanded exponentially, and we are struggling desperately for resources on that front. In a similar scenario in elderly care, a huge transfer of resources from health to elderly adult services was sought, but in some of the most complex and, I might add, expensive cases for children, no such resource transfer has taken place.

Education services ought to have the lead role in pursuing what we want for Scotland’s children, and social work services ought to align behind education services to support them fully with the resources, case co-ordination requirements and expertise that they have, because that is quite a massive task for education to have to undertake if we are going to fulfil the aspirations of the bill.

Fiona Hyslop: Are you suggesting that the pooling of funds is aspirational, could work similarly to the joint futures agenda and would not require a legislative framework—it would not require changes to the bill—but that the issue would be how it was rolled out, and that you would want some strengthening of accountability?

Bryan Kirkaldy: Yes.

Ms Wendy Alexander (Paisley North) (Lab): I will pursue the issue of accountability. There are circumstances in which things go wrong, and they are more likely to go wrong in circumstances in which all the agencies are not working together. That leads me to two things that we want to elicit for the *Official Report*. The bill provides for a duty on education authorities to make provision for independent mediation, and I would be interested in the witnesses’ view on the mediation proposal.

After mediation, the next stage is the tribunal and, in matters relating to co-ordinated support plans, jurisdiction of tribunals is limited to education authorities. That takes us into the difficult issue of the accountability of other bodies. Is mediation the right intermediate step towards a tribunal, and is it right for it to be independent? On the tribunals, the lead responsibility lies with the education authorities, but how do we ensure that other agencies live up to their responsibilities?

The Convener: I am not sure that that was a supplementary question; nevertheless, perhaps our witnesses can deal with it, since they have been asked.

Bryan Kirkaldy: Yes, we support the introduction of mediation in the light of the fact that parents’ rights have been strengthened in the bill. Under the record-of-needs legislation, parents were not able to appeal the placement that was proposed by the education authority. The bill proposes that they should be able to appeal that, and we see that as fair and a natural development of justice. Associated with that right come tribunals; and associated with tribunals comes mediation. We support both those developments.

We are concerned about the association between the co-ordinated support plan and the tribunal. We would have preferred the vehicle for the tribunal not to have been the co-ordinated support plan; we would have preferred a specific statutory record or process to have been used for the tribunal. If we associate co-ordinated support plans with tribunals, we will associate them popularly with resource allocation and will distort resource allocation as a consequence, inflating the number of co-ordinated support plans that are opened. We would have preferred co-ordinated support plans to have been disconnected from the tribunal and a specific statutory instrument to have been used for tribunal purposes.

We believe that only a small percentage of families would seek to go to tribunals and we would wish local authorities to be held accountable for minimising that number, as that would be an indicator of how effectively authorities were meeting families' needs ordinarily at school and community level.

The Convener: Am I the only one to whom that suggestion sounds more bureaucratic than what it seeks to replace, in that it involves a separate process, which you were castigating at the beginning as not being the way forward? Is not separating out the statutory appeal, the paperwork and all of that going to be even worse than other mechanisms of dealing with this—mechanisms that come organically from problems that may have emerged in the system?

Bryan Kirkaldy: The record of needs carries a statutory process within it. We try to manage it as efficiently and effectively as we can, but it is hard for us to get that process below about 24 weeks because of the statutory involvements in it. The same will apply to CSPs. There is no way that an instrument that will be used for appeal purposes will be slim; it will have to be cumbersome. Our suggestion is that we confine the number of cumbersome mechanisms that we use to that small percentage of people who require and want to take an appeal route and that we maximise the use of ordinary, sleek procedures.

Fiona Hyslop: I have two further points to cover. My question is for the Headteachers' Association of Scotland. There is obviously going to be an issue about staff resources and training. Initial teacher training can help in implementing the bill, but the concern is more about the training of teachers who are in place. How much time do you think that such training will take? Do you think that you have sufficient resources for it, bearing in mind the McCrone agreement, contact time, and so on? Are the resource implications reasonable, or do you have concerns about them?

George Haggarty: The key question, from the schools' point of view, is whether the issue belongs only to the support-for-learning staff or to all the staff. Newly trained teachers are becoming more aware that additional support is an integral part of their job. There is also a job for good, committed and experienced teachers; however, the subject boundaries in a high school are an obvious barrier to fulfilling the needs of children who require a greater level of support.

A lot of experience is building up in our schools with a much wider range of children, and children with social, emotional and behavioural difficulties are probably the hardest for staff to respond to. It is not so much that there is no reward in that, but that there is no immediately obvious progress. The whole process will be a mystery to most teachers, and I would not want to say that they have to learn the bureaucratic procedures. However, support can be provided. Our psychological services in Dundee are actively involved in training teachers, on a voluntary basis. When I see that work going on, I see a model of what more teachers should gradually experience.

Fiona Hyslop: You think that that will happen naturally and will not be an undue burden.

George Haggarty: I think that it will happen naturally. Following the McCrone development, it is at the moment an open question for us whether, in some sense, the stranglehold of subject boundaries will be broken. I put on public record the fact that we have a major concern in Scotland that guidance has been significantly negatively affected by job sizing. The guidance staff in our schools are fundamental to all the processes that we have been talking about this morning. However, it appears that, in many schools, there will be much less incentive for staff to go into guidance, which would be a major problem in schools' delivering all that we have been talking about.

Bryan Kirkaldy: There are two aspects of the financial memorandum that we are interested in commenting on. Section 15 of the Standards in Scotland's Schools etc Act 2000 introduced the presumption of mainstreaming. Because it was a late amendment, it was not financially costed by the Parliament; therefore, the Auditor General has produced some estimates of what the cost might be. That is the context in which we are operating the whole development of inclusion. It would be a mistake to consider the specific administrative costings associated with the bill in isolation from the broader question of the costs of inclusive education and mainstreaming. Those costs have been estimated at somewhere in the range of £38 million to £121 million in revenue a year. We believe that to be, potentially, a conservative range; however, that is the Auditor General's view.

The administrative costs associated with implementing the bill will be entirely dependent on the percentage of the population of children who will be eligible for co-ordinated support plans. If that is 0.5 per cent of the population—as is suggested in the supporting documentation to the bill—that will be reflected in the costs that have been produced in the financial memorandum. If it is up to 15 per cent of the population, as we suggest that it might be under the definition that is given, those costs will need to be multiplied by a factor of up to 30.

Dr Elaine Murray (Dumfries) (Lab): As it is drafted, the bill seems to be open to interpretation. We have seen a variety of estimates for the number of CSPs that will be required, ranging from half the current population with records of needs—the current population is just over 2 per cent—plus another 0.6 per cent of the population, to your estimate of 15 per cent. At the Finance Committee yesterday, somebody suggested that the figure could be as high as 20 per cent. The upper limits are similar to the estimates of the number of people who will have IEPs, which could give rise to confusion between the IEP and the CSP. We felt that the matter might be clarified in the code of practice. I was, therefore, slightly surprised to discover that ADES, in particular, seems to be wary of the code of practice to the extent that it would consider not supporting it if it felt that it was prescribing inputs irrespective of context, as you say in your submission.

I would welcome your views on the possible confusion between CSPs and IEPs and who is eligible for them. I would also welcome your views on the code of practice. If we did not have a code of practice, it would be difficult to clarify the confusion that surrounds what makes somebody eligible for a CSP.

Bryan Kirkaldy: I shall speak historically, first of all. The record-of-needs system was monitored to see how many records each authority opened, irrespective of a context of IEPs. In my view, an authority that was effectively operating an IEP system at foundation level would be less likely to open more records of needs and that would be a positive indicator. However, in the outcome accountability to Her Majesty's Inspectorate of Education with which local authorities had to comply, that was often used as a positive indicator. If local authorities did not have many records of needs, that was a matter for criticism. That was an example of how the 1980 act was outdated and did not reflect best modern practice. In that context, we are wary about the code of practice. If the code of practice focuses on outcomes for children and families, we will support it. If it prescribes inputs, irrespective of context, we will be extremely cautious about it.

10:45

Dr Murray: I thought that the indicator was the length of time that it took to open a record of needs rather than the number of records of needs, because the figures vary greatly between local authorities. It is clear that as people are in different socioeconomic circumstances, local authorities cannot all be expected to have the same numbers of records of needs.

Bryan Kirkaldy: It is true that the statutory performance indicator is the length of time that is taken to open a record of needs, but we were held accountable for numbers.

Dr Murray: Your evidence is almost that, in some circumstances, you would oppose a code of practice. If no code of practice is produced, how do we clarify who is entitled to a co-ordinated support plan?

Bryan Kirkaldy: My comment is simply about the quality of the code of practice and its focus on outcomes. We would support a code of practice that was intended to ensure good-quality outcomes and equitable outcomes for children throughout Scotland.

Anna Boni: I support that. We would be concerned if the code of practice dealt solely with expectations about professionals and not with outcomes for children. Previous guidance may have focused on professionals and been prescriptive. We are aware of the different contexts in which authorities throughout Scotland operate. If we focus on outcomes, we must be careful to ensure that the code of practice is effective in rural and urban settings and is not a prescriptive code that could cause problems.

Dr Murray asked about IEPs. The question relates to the educational component. I understand that a co-ordinated support plan requires services from outside education, which is the major difference between an IEP and a co-ordinated support plan.

Dr Murray: The problem with the bill is that the word "and" rather than "or" has been used, which makes the situation less clear.

Anna Boni: Yes.

George Haggarty: We need a code of practice, because it will set a standard of reasonableness in the system. We considered the idea that a parent could ignore mediation and go straight to a tribunal. In procedural terms, that is fine, but we hoped that more emphasis would be placed on mediation and conciliation and on what is regarded as reasonable, which is one matter that a tribunal would test.

Some parents have an open-ended expectation about their children. They may have an intractable problem and may say that nobody has ever addressed their child's needs. That is a problem, but the danger is that such an open-ended approach can come to a tribunal. I guess that even a tribunal would not be in a position to produce an obvious solution to that child's needs.

The code of practice should embed reasonableness, conciliation, mediation and active support for parents and young people. I do not want a system under which parents could go straight to the tribunal because they thought that nobody in the system had ever done anything for their child, because some parents would do that.

Fiona Hyslop: Local authorities are not responsible for children who are educated outwith the public education system, but they would comply with requests in relation to children who are under three, home educated or in private schools. Are you comfortable with the provisions in the bill that deal with that?

A bit of confusion is felt about the provision for three and four-year-olds who are in private nursery education not because their parents prefer that, but because 9-to-5 state provision is not available to most of the working population. Are you comfortable with the provisions on and your responsibilities for three and four-year-olds in private nursery education? Does that provision rely on an arrangement between private nurseries and local authority education departments? Could that be clarified? I assume that you want to have more responsibility for those three and four-year-olds.

Bryan Kirkaldy: We are broadly content with the provisions in the bill. We expect to take responsibility for three and four-year-old children who have additional support needs.

Fiona Hyslop: Do you expect to do that whether they are in local authority nurseries or private nurseries?

Bryan Kirkaldy: Yes.

Anna Boni: The City of Edinburgh Council is an example. We have private partnerships with more than 130 nurseries. We also have psychologists who provide services to those nurseries and all the children in them. We are already moving forward on that.

Fiona Hyslop: You are comfortable with the provisions on that.

Anna Boni: Yes.

Alan Ross: The provisions—or, at least, the recommendations—that the “For Scotland’s children: Better integrated children’s services” report makes are that education should act as the universal anchoring service for services to all children and should draw in the other services as required. Although that is an aspiration, it is one to which many people subscribe.

In the same document, health is given the lead role for anchoring all the services to children up to pre-school age. Health’s ownership of that cohort, or age group, of children will be crucial to the future of children. I encourage our health colleagues to take that lead role and to bring in education colleagues, where necessary, on the specifics of education for three to four-year-olds. Under “For Scotland’s children”, health is called to account; it has to provide transition routes into education that are understandable to children and families. I just wanted to remind the committee of “For Scotland’s children” and the health element.

Fiona Hyslop: Yes, we do not want to miss anything.

George Haggarty: I might have misread the bill, but we were concerned about the idea that an authority would be expected to grant a placement request to an independent school. Our caveat was that that could be done, provided that the equivalent provision was not available within the authority.

Another factor was the idea that independent schools could resort to the local authority for formal assessments and professional support. I presume that that would be resourced and paid for; I would not expect that simply to be a burden on the local authority.

Fiona Hyslop: I am not sure that that is clear, but we can pursue the issue with the minister.

Mr Kenneth Macintosh (Eastwood) (Lab): I want to return to a few points, because I am not sure that I am entirely clear about some of the issues. In their submissions, Anna Boni and Bryan Kirkaldy made a point about the CSP being based on an individual medical model, as opposed to a systemic approach. Will you expand on that remark, because I am not sure that I fully grasp it?

Anna Boni: I was referring not only to the co-ordinated support plan but to the model of assessment that leads up to it. Educational psychologists are trained in human behaviour and we work systemically on a number of levels. We work with children within a context; we do not use a deficit model in which the child is out there. We have different solutions depending on the context. We would find out different things depending on whether the child was at home, in a nursery or in a school. That sort of systemic assessment, which is based on context and the surrounding support, is important.

We are not looking for problems in children. Let us consider behaviour, for example. Children rarely have behaviour problems in every secondary school subject; the problems will be worse in some subjects than in others. We are interested in why that is—we want to know what is going on in the different classes and how we can change that. If we remove the child and work with him in isolation, we do not get that knowledge and the focus is wrongly the child. We are interested in how systems can change around children to support them. It is rare that children are able to change for themselves. We would resist models that took away that very important information.

Mr Macintosh: Why do you think that the bill does not allow that? I would have thought that it allows a child-centred approach.

Anna Boni: I think that the reason for that is that the co-ordinated support plan is for the child, not necessarily for the context. We are focusing on the child. Terminology such as “psychological assessment” is highly misleading, particularly when it is accompanied by the phrase "medical assessment". People have good experience of doctors. When they read sentences with such phrases in them, they have the same model in their head. We are keen to show that that is not how we work. We are constantly faced with parents who expect that that is how we work, because of the association.

Mr Macintosh: That is a common assumption.

Anna Boni: It is.

Bryan Kirkaldy: I would relate the issue to what I said in my introductory remarks. The effect of the raft of legislative reform in the context of which we are working is that we need to develop the capacity of all schools to become progressively more inclusive. That is the requirement of the disability legislation and section 15 of the 2000 act.

In Fife, for example, we have nine ingredients for what makes an inclusive school. We are actively encouraging schools to develop those nine ingredients in their school planning and accountability processes. We find that such a school development approach is consistent with a social model of disability, because we know that disability is relative to context. For example, a youngster who was considered in one school to have a severe special need might in another have that need adequately met, depending on the design of the curriculum, the attitude and skills of staff and so on. As the proposed legislation centres on individual assessment and planning, it tends more towards a medical than a social model of explaining disability. There is a tension in that respect.

Mr Macintosh: But taking a parental rather a provider perspective might give us a different approach to the matter. As I understand it, the bill also seeks to reduce conflict between parents and all your organisations. For example, the CSP is not arbitrary; it has very clear criteria. Anyone with needs outside those provided by an education service will qualify for a CSP, which means that there is a very clear division and everyone can see whether they qualify. Although some cases might have to go to a tribunal, we will not have the same kind of judgment that is currently made with regard to a record of needs and which constantly leads to conflict. Do you not welcome that?

Anna Boni: There will be no confusion in that respect if a percentage of the young people on the co-ordinated support plan have complex or multiple long-term needs. The issue is the size of that percentage of the population and the realisation that, as Bryan Kirkaldy pointed out, agencies work at a number of levels. As a result, we could be involved with children and working with schools and teachers long before a co-ordinated support plan is introduced. Input is made and solutions are found at different levels. I am concerned about the percentage of children who will qualify for a CSP. Indeed, the criteria might not be as you have described them.

Mr Macintosh: I know that this is anecdotal, but it was suggested in all the schools that we visited that fewer children would have CSPs than currently have a record of needs.

George Haggarty: That would be the case if the bill emphasised the involvement of a different agency. However, any reference to multiple and complex needs brings the focus back to the child and the nature of their difficulties. As I have already said, children with such needs might not have a CSP, which means that the essential criterion is the involvement of an external agency. Indeed, the need to involve an external agency might be part of the overall definition. For example, such an agency might not have been identified at the point at which a CSP is sought. That would be the core distinction for parents. In particular, it would be helpful if the core definition included reference to the fact that the CSP would last up to a year or beyond.

Mr Macintosh: I understand that. However, the involvement of an outside agency is clearly included in the definition of a CSP, although I can see that it might give rise to some dispute.

In his submission, Bryan Kirkaldy suggests that the definition should be amended to include a reference to "ordinarily available" resources. Is such a definition not very arbitrary? It seems so judgmental that the situation would vary from authority to authority and encourage greater battling and conflict between parents and authorities about what is "ordinarily available". For example, you might get different forms of support in Perth, Stranraer and elsewhere.

Bryan Kirkaldy: It depends on how one sees that matter. The last thing that we want is conflict between families and services. Whatever happens, we want a system that supports families in a co-operative relationship with schools and education authorities.

Over the past 20 years in Scotland and the UK, the identification of youngsters who have various additional support needs has been steadily burgeoning. The trend is continually rising. A steadily increasing percentage of the school-age population would be considered to come into categories such as autistic spectrum disorder, attention deficit hyperactivity disorder, dyslexia, dyspraxia or whatever, most of which would fall well within the range of additional support needs and would require the support of other agencies.

We must ensure that we do not design a system that unnecessarily takes that population—which is part of the continuum of children in Scotland—out of ordinary processes and into something more statutory and separate. The point of the CSP kicking in where ordinary resources are not sufficient is that it will be used to add value for children and their families. However, we must be realistic: in some circumstances, there will be a shortfall in resources and families will need ways in which to deal with local authorities and schools. The system is not intended to escalate conflict, but we must recognise that, in some situations, tension will arise between a family's aspirations and what the system can deliver. We need a mechanism to handle that, but we must not apply that mechanism willy-nilly to large percentages of the school-age population.

11:00

Mr Macintosh: I agree totally with what you say, but I think that that is what the bill will achieve. You say that, because the CSP will be a statutory measure, it will become a device that parents will use to battle for resources, which will mean that the CSP system will duplicate the failings of the record-of-needs system. The record of needs was not designed to lever resources out of the system but, because it gave statutory rights, it was used for that purpose. You say that the CSP will be used in exactly the same way because it differentiates one group of children and gives them additional rights to lever resources out of the system.

I was trying to suggest that the idea behind the bill, as I understand it, is that the definition that will be used in deciding who will qualify for a CSP will provide a clear criterion, although there will always be some dispute. The criterion will not be based on the judgment or assessment of individuals, but will be whether a child has multiple needs that require the involvement of different agencies. The idea behind the bill is to minimise the number of children who will receive CSPs to those who have the most complex needs and to focus on co-ordination rather than resources. I am not sure why you think that the bill will not work. Why do you think that 20 per cent rather than 2 per cent of the school population will receive CSPs? I understand that only a small number of children will qualify for CSPs which, I hope, will reduce the haggling over resources.

Alan Ross: The definition that you mention, which is a worthy basis, is as wide as it is long because children are involved in many agencies through schools, including voluntary organisations that support mothers and medical organisations. All children with attention deficit hyperactivity disorder are involved with other agencies and all those with autistic spectrum disorder are involved with health agencies. As the net that the bill will cast is extremely wide, we will have to hone down the group to those children who have more complex needs, which will introduce a gradation of assessment and need, at which point the more able parents will take action. Parents are, rightly, desperate for their children to receive the best outcomes, but social work services work with parents who do not have sufficient self-will and self-belief to advocate strongly on behalf of their children. We will end up with something similar to the record of needs and all the arguments that pertain to it.

To return to a point that one of your colleagues made, education colleagues already do a great amount of mediation and work to disarm conflicts. I suspect that a great industry in mediation, rather than good practice, will arise as a result of the bill. Given the number of children in schools with whom social work, health, voluntary sector or other support agencies are involved, the net will be wide. The argument will then be about how to define upwards. To a lay person in education—which I admit freely that I am—that sounds like an argument about who should get a record of needs. That is our concern.

Mr Macintosh: That would be concerning.

My final point is about the code of practice. We are trying to move to a system that avoids conflict and prevents CSPs from being used as a lever to obtain resources. The vehicle to allow parents to establish equity of treatment will be the code of practice, of which you say you are wary. The code will allow parents to ensure that, no matter where they live in Scotland, they can access the resources and support for their children that they wish. It surprises me that you should be wary of that when it is perhaps the strongest tool in support of parents and when it offers you the protection of written guidance on how to arbitrate in certain situations.

Anna Boni: We are not against the code of practice because of the parental rights element. My concern is that the code of practice is a document that fills gaps and that we are trying to make the bill work through the code of practice. That will reduce some of the parental statutory rights that we would have if we had more overarching legislation. The code of practice will become a more complex document that all professionals will have to carry with them at all times. It could also be extremely complicated for parents to find their way through because it is not a parent-friendly, supportive document.

Alan Ross: How will the code describe to parents their right to ask for a medical assessment of an 11-year-old child when a Health Department circular, precedent and the medical professions state that the child has a right to refuse or agree to medical assessment if they have sufficient understanding of the process involved? The guidance will have to address a number of key issues, some of which are fundamental to the rights of children.

Bryan Kirkaldy: We would welcome a code of practice if its intention were, as you describe, to look at equitability of access and provision for families and children throughout Scotland, rather than to prescribe inputs.

The Convener: I am conscious that one or two people want to make supplementary points. However, I have a more general question about resources. The committee has visited a number of schools and seen best practice here and there throughout the country, but we think that we have been sent to places where things are working much better than in a typical, average school. Will the school representatives give me a handle on the resource position in the typical school to deal with the requirements of the bill and the general move towards inclusion that underlies it? Are there sufficient resources in a typical school?

George Haggarty: The biggest constraint in many schools is accommodation. We built an extension to our school, which gives us model accommodation, but many schools simply do not have alternative accommodation. Schools are no longer running one alternative curriculum; they run various layers of alternative curricula including some for individual children. That is when one hits the staffing resource problem. Some authorities are more generous than others with the staffing resources that they give. A few authorities still hold to a support-for-learning model in which one gets support-for-learning staffing and that is all. However, more authorities have had to acknowledge that there is a wider spectrum—SEBD, special educational needs and so on.

In relation to expertise, one of our colleagues commented on the need for staff development, which is certainly an issue. Where there can be a shortfall in a school is in providing not a huge amount of money but enough additional money for alternatives such as outdoor education or activities in the community. Schools find it difficult to find money for that in their basic budget, but if an authority gives them the support, it is worth while. Members will appreciate that some youngsters need an alternative pattern to their week; they need a few slots in their week that are different from standard schooling. That resourcing is available in some authorities and not in others.

Even in our newest schools we have not always been as imaginative as we have needed to be as regards flexibility and variety in the accommodation that is available to give those alternative levels of support.

The Convener: People are saying to me that they will struggle to deal with the requirements of the bill, particularly against the background of resources and the job-sizing implications that you touched on. How serious a problem is that for schools throughout Scotland?

George Haggarty: Some schools are already models of better resourcing and better practice, but I would not say that that applied to 50 per cent of our schools. I think that more than 50 per cent of our schools currently require some attention. As members know, the policy on improved accessibility strategies has already been identified as a challenge for authorities and schools in respect of accommodation. I am not talking about anything excessive. If a school’s capacity is fairly full, the biggest problem will be in identifying an alternative location. As members know, some authorities have off-site provision for young people who are still within the educational system. I do not know whether everybody would endorse that model, but support is needed.

In cities such as Dundee, we recognise that the council’s communities department has resources at alternative locations in the city that are normally not seen to be actively involved in the education of young people. Again, that raises the issue of staffing and who would go to such places. Outreach services are required for some families, but my staffing does not allow me actively to support that requirement.

Lord James Douglas-Hamilton: I understand that the bill means that gifted children could be considered to have additional support needs. Is there a risk that many families will consider their children to be gifted and therefore that the number of children who would be considered for additional support needs could be greatly increased beyond the number that was originally anticipated?

Bryan Kirkaldy: The intention is that additional support needs will encompass gifted children; children who suffer discontinuities in their education as a result of illness; children who have suffered from family upsets, children with social, emotional, and behavioural difficulties and chronically ill children; as well the categories that I mentioned earlier, such as children with dyspraxia; dyslexia; attention deficit hyperactivity disorder and so on.

Your question is part of a bigger question that relates to the breadth of the definition of additional support needs, which Kenneth Macintosh asked about. The definition is broad, which we welcome. It is appropriate that society and schools should become progressively more sensitive to the diversity of the population that they support. My only caveat is that we should not associate cumbersome bureaucratic processes with such identifications, which must be part of everyday, inclusive education.

Rhona Brankin: Are you satisfied that the bill makes adequate provision for transitions from school onwards?

Anna Boni: I have been involved in work in association with the Beattie report and have found that the Beattie model is already in operation in most authorities. There are inclusiveness projects and key workers, transitional arrangements are being considered, schools are developing more appropriate arrangements and people are starting to plan for children around the age of 14 who have more complex and multiple needs. Such things are already in place and I am not sure what the bill adds to them. Perhaps Beattie is more inclusive than the bill in his approach.

Bryan Kirkaldy: Our view is that the bill is broadly supportive of current good practice and is therefore not problematic. It broadens the scope of those young people whom we must be concerned about when they leave school and allows all of them to participate in a planning process that is appropriate to the degree of their difficulties or their additional needs.

Alan Ross: The requirement to notify other agencies and then to be proactive in planning for children leaving school is one thing, but references to the receiving agencies and the transition process itself are singularly absent or singularly unclear. The proposals fall short of being a good basis for transition. I know that Careers Scotland made a submission to the Finance Committee yesterday that estimates all sorts of shortfalls. I have concerns about transition and know that, at the hard end of need, parents sometimes have a desperate experience of transition.

George Haggarty: I would like to return to what Lord James Douglas-Hamilton said. It is important that children with particular abilities are recognised as having additional support needs. I do not imagine that identifying those children will necessarily lead to co-ordinated support plans—I do not think that they will require that level of support—but we should acknowledge that they would benefit from an individual support plan or an individualised educational programme, although such support would still be within the normal provision that is available within the school. I would not expect that it would lead to the more formal processes that we have been discussing this morning.

11:15

Ms Byrne: I want to go back to co-ordinated support plans and complex and multiple needs. That is one of the major issues for parents who have concerns about meeting the needs of their children. There is some confusion and I wonder whether Anna Boni can provide clarification. From my experience, I know that many young people require multi-agency support. Our discussion leads me to believe that there is a school of thought that all children who have multi-agency support will require a CSP. If we go down that road, we will be overwhelmed. It should not necessarily be the case that they all require CSPs. I think I am picking up the same view from the panel. Can the panel clarify their views? Anna, can you help us?

Anna Boni: It depends what we mean by multi-agency support. Already there are systems involving social workers in schools that engage children in community education and transition groups. Young carers are involved in lots of activities, but I would not necessarily expect those young people to have co-ordinated support plans. That would work against the young people buying into those activities, because they would view them differently. They need to view positively those activities and others, such as involvement in the sports initiative. Young people benefit from a lot of positive initiatives that have come through new community schools and other avenues. In a sense, we are concerned about the population further down, but those are solutions for those young people. I would be concerned if every single youngster who required multi-agency involvement had a co-ordinated support plan, because we would be overwhelmed.

George Haggarty: I take you back to the multiple and complex needs of these children. Originally, I took the view that we needed just to emphasise the multi-agency involvement, but it is clear that we need to have a sense of children's multiple and complex needs, too. The school process of stages of intervention is our mechanism for identifying children for whom the ordinary, normal routine provision is not enough. In some cases, that is because we are looking at something that is deep seated. The involvement of psychological services, with which we must have a close relationship, is fundamental. We have a lot of informal as well as formal discussions with psychological services about the needs of various young people but, as members know, some children remain a mystery to their parents, never mind to us. That is the reality that we will continue to live with. However, adolescence does not last forever.

The Convener: Thank you. This has been a useful session. If the witnesses want to get back to us with particular information or points that arise following their contemplation of the evidence—not least on the interrelation between IEPs, individual progress plans and all the rest of it—to help us to get a handle on the numbers, that would be helpful. They can also get back to us on any points that arise during the progress of the bill. We are grateful for their involvement this morning.

I suspend the meeting for a few minutes.

11:18

Meeting suspended.

11:28

On resuming—

The Convener: I reopen the meeting as we are refreshed after the break. I welcome our second panel of witnesses: Felicity McElderry, from the National Association of Paediatric Occupational Therapists, Lesley Bruce, from the Chartered Society of Physiotherapy, and Kim Hartley, from the Royal College of Speech and Language Therapists.

Kim Hartley (Royal College of Speech and Language Therapists): As well as being a practising speech and language therapist in the field of adult learning disabilities, I am the Scottish officer for the Royal College of Speech and Language Therapists, which is a professional body that represents 1,000 therapists working in Scotland. More than 50 per cent of those therapists work in education and the majority are employed by the NHS.

The brief that I have provided for committee members describes who we work with and how therapy is delivered. Members of the college generally agree with and welcome the bill. There are two recurring themes on the bill in our submission. The first is multidisciplinary and multi-agency working, which is about the development of a culture of mutual respect for and recognition of the knowledge of evidence-based best practice, skills and experience of all parties involved in provision for children with additional support needs.

In the policy memorandum, the emphasis is very much on the development of joint planning and partnership working, which we very much welcome. However, we are concerned that that does not come out in the bill. In section 3 of the bill, on general functions of education authorities in relation to additional support needs, it appears that the education authority determines the adequacy and efficiency of provision and has the power to review that as it considers appropriate.

In section 6, on assessments and examinations, the bill refers to the education authority determining who is appropriate to carry out assessment. Section 10 is on the duty to seek and take account of views, advice and information, but the duty is to seek advice only from people whom the education authority thinks appropriate and only in relation to children and young persons as the authority thinks appropriate.

11:30

Section 19, on other agencies to help in the exercise of functions, refers to education authorities specifying the help that they believe is required. In speech and language therapy, the experience of working in education is that there is an evident lack of mutual recognition of the knowledge of evidence-based practice, skills and experience of all parties involved in provision for children with additional support needs, although there are many examples of good practice in some authorities. That was made explicit in the recent SEN review of therapies when education authorities were reported as having the perception that therapists interfered with the educational process.

The college wishes the bill to be more explicit about the multidisciplinary and multi-agency decision-making process. In response to the comments that the previous witnesses made, we support the idea of aligning power and responsibility.

The second recurring theme in our submission regards concerns about speech therapists' ability to deliver on the bill. Section 19 refers to health agencies having to comply with requests. We say in our written submission, and in other relevant documents, that we have great difficulty in delivering adequate services now. Further, in the explanatory notes, to which previous witnesses referred, it appears that there is a belief that the bill's provisions will cost less than does the current record-of-needs system. We do not see how that can be the case, particularly in light of the fact that the bill will involve more children than does the current system and that therapists' duties could be extended to include co-ordination of CSPs.

Felicity McElderry (National Association of Paediatric Occupational Therapists): I am the professional adviser for our organisation, which is a UK-wide organisation for occupational therapists working with children, with members throughout Scotland. Occupational therapists are employed mainly in health, in some independent organisations and in local authorities. We work with a full range of children with special needs.

The breadth of occupational therapy involvement with children with special needs or additional needs is only now beginning to be fully recognised in the education setting. Occupational therapists are concerned with functional needs, so we might deal with motor skills, including skills that children need in schools, such as handwriting. We are also concerned with the areas of independence and self care, with perceptual skills, which might be needed for reading, and with assessing the need for and providing appropriate equipment. That might range from specialist information technology equipment to access to special seating and postural support. We are also involved in major adaptations, such as access initiatives, which are becoming an increasingly important area of involvement.

We broadly welcome the bill's recommendations, but we have reservations and concerns about it. For example, the bill does not seem to recognise fully how integral therapies are to helping children with additional needs to access fully the physical and learning aspects of the curriculum. We are also concerned about the responsibilities identified in the bill in respect of joint accountability between health and education. We want more clarity on that.

Occupational therapy services are under huge pressure and there are very long waiting lists—waiting times can be up to a maximum of four years in Scotland. Therapists are very concerned about whether they can offer a level of service to children that ensures their real participation in the curriculum, which is what we want.

I am worried that we have not identified the full costs of inclusion or integration with regard to the knock-on effects that that has on services within and beyond education.

I am also concerned about the responsibility of education authorities to identify needs and refer appropriately. Many children are missed out because therapists are not there to provide advice about what they may need. In my written submission, I highlight the transition area for adolescents and older children; we know that referrals are sometimes not made to suitable therapy services that would assist the youngsters to transfer to appropriate adult services that offer what they need.

Lesley Bruce (Chartered Society of Physiotherapy): I am the superintendent physiotherapist in west Fife. I have been working in paediatrics for about the past 20 years and am currently the chair of the clinical paediatric physiotherapy network.

The CSP Scotland welcomes the move away from the record of needs, which is a health-based and prescriptive document, and the move towards multi-agency working. We particularly support social inclusion in mainstream education of children with complex special needs. We support the parent and the child having a more pivotal role in the provision of support and their involvement in the child's educational plan.

We are looking to the bill to enable and promote existing good practice, and not to restrict our ability to work in a multi-agency environment and a new culture of supportive education.

Fiona Hyslop: A key aspect of the bill is the multi-agency working that has been mentioned. You have expressed some concerns in your written and oral evidence about how that aspect will work. What would need to be done to strengthen the provisions in the bill? Will therapists be caught in the middle, between education authorities saying that certain therapy is needed and health boards necessarily having restrictions in supply and resourcing?

Kim Hartley: That is the difficulty that arises at present and is why we support some alignment of power and responsibility.

The case of speech and language therapies is slightly different from those of the other therapies, in that a number of years ago special moneys were provided to the education authorities so that they could meet the demand for speech and language therapy. Unfortunately, in many circumstances that money has not been transferred to the health authorities, or there has been tension about what the education authority would like the speech and language therapists to do, which is sometimes contrary to best practice and to the evidence-based practice of what we should do for children and young people. We have some experience of that situation and that is what we want to move away from.

Fiona Hyslop: Do you want there to be provisions in the bill to ensure stronger accountability of health authorities?

Kim Hartley: It would be good if the health service were jointly accountable for delivery of services with education, but the budgets have to be shared rather than remain in the control of one or the other. The budgets must be pooled, as suggested in the written submission from the Association of Directors of Education in Scotland. The second option in paragraph 2.4 of its submission is one that we particularly support.

Lesley Bruce: I would certainly support joint, aligned budgets. That is working well in the joint futures sector, where I also work. Our concern is how we get into individual schools to give the children who will be dissipated across the community the support that they need, which they received when they were attending special schools.

We are looking for support to ensure that we have the right number of therapists and the right skill mix to provide the level of care and service that is needed. We are not always seeking highly skilled specialist therapists—although those are short on the ground and I do not underestimate the problem. We also seek therapy support workers, for example, who might be joint funded between local authorities.

Felicity McElderry: It would be fair to say that health resources have been concentrated on adult services to a greater extent than on children's services, which is a concern. It would be good if there were a re-emphasis of resourcing to meet children's needs.

The mainstreaming agenda has not just moved children from special provision into mainstream provision; it has raised awareness in the education service of a range of special needs that perhaps did not get adequate support in the past. Children's needs were not fully identified and staff were not aware of therapies that might be used to help children. For all those reasons, we would like the health and education services to have more shared responsibilities.

Fiona Hyslop: Comments have been made about needs that are unmet by current provision. Do you anticipate that increased need will be identified as a result of the bill? What will be needed to bridge the gap?

Felicity McElderry: The need for considerable resourcing has already been identified. We will have to increase the pool of trained therapists and consider the options for capacity and skill mix in the recent Scottish Executive review of therapy services in Scotland.

Fiona Hyslop: Were your organisations involved in the initial work on the financial memorandum? Should there be a review of that, and if so, would your organisations want an input into that review?

Kim Hartley: To my knowledge, my organisation was not involved in the preparation of the financial memorandum and we would certainly support a review of it. We engaged with Audit Scotland's review of the presumption to mainstream.

In relation to your earlier question about what will be needed to meet increased need, I agree with Felicity McElderry that the bill will lead to a demand for greatly increased resources. The committee might refer to the work that is going on through the future directions strategy, which is the allied health professions strategy for Scotland, to develop a policy on recruitment, retention and returners in relation to therapists. Obviously, results will not happen overnight.

There might be tensions around making health authorities accountable for something that is beyond their powers and involves further education and the other work force confederations around the health service. However, the work force confederations might offer us a positive way forward, as they are multi-agency bodies that consider the provision of the work force in the health service. I imagine that the education authorities, as major stakeholders in health, will play their part in those confederations.

Fiona Hyslop: It is envisaged that the education authorities will usually be the agencies that are responsible for overseeing CSPs, but that they could delegate that responsibility to, for example, professionals from your specialisms. Are your organisations happy with that provision or do you have concerns about it?

Lesley Bruce: Over the past 10 years we have worked much more closely with local authorities, so there is already an integrated approach to providing care in schools. We are happy to take responsibility for planning the support mechanisms, but we need to think about how we finance those packages of care in the long term. I am relatively happy with the proposal.

Fiona Hyslop: Do you think that, for example, a physiotherapist could be the person with lead responsibility for the CSP and that they could draw in resources from elsewhere?

Lesley Bruce: I do not think so. The bill talks about having a co-ordinator—

Fiona Hyslop: That is what I am asking. Would you be comfortable with someone from your profession being designated as a co-ordinator?

Lesley Bruce: Yes. It is a good idea for the co-ordinator to be an independent person who is not allied to education, health or social work. We have found that that works well within the joint future agenda.

11:45

Felicity McElderry: We would have no problem with an occupational therapist's being the co-ordinator. Indeed, as occupational therapists have such a broad view of matters, their experience might be relevant. However, it comes down resourcing—people would need time to make the proposal work efficiently.

Kim Hartley: I agree with the points that have been made about resources in relation to the number of people and the skills and knowledge that would be needed for therapists to be able to co-ordinate effectively. We encounter that issue in relation to education because there is poor awareness of the contributions that the broad spectrum of disciplines can make to a child's progress. For example, we heard earlier that the contribution that work with communication disability can make in relation to mental health work is poorly recognised.

If other agencies were responsible for CSPs, it would be possible to emphasise the team approach and to start to break down the competitiveness that exists between health, education and so on as regards who takes the lead. That would enable us to act as a body of people who were focused on supporting the child. The matter of who takes the lead should not be important; there should be in the team a shared understanding of what everybody can do and everyone in the team should be able to co-ordinate. We support the idea because it would be a symbol of more integrated working.

Fiona Hyslop: The Chartered Society of Physiotherapy's submission raises concerns about the ability of the education authorities to take responsibility for three and four-year-olds who are in private nurseries because nine-to-five nursery education is not widely available to the majority of the population. This morning, we were told that it was felt that the education authorities would have lead responsibility under other legislation. Are you satisfied with that or would you prefer something stronger in the bill?

Lesley Bruce: I would prefer something stronger in the bill. I do not see a lot of activity in that regard from the education authorities that I work with.

Felicity McElderry: At the moment, the bill does not highlight the needs of those children or the need for integrated working and a multi-agency approach.

Lesley Bruce: Nursery education presents an opportunity to get involved at an early stage and to iron out many issues that might become more major when the child goes to school. It is important that action is taken early in a child's life.

The Convener: Felicity McElderry mentioned that some people face a fairly horrendous four-year waiting list for occupational therapy. Is there also a resource problem in relation to current demands across the other specialisms?

Kim Hartley: A recent document with a long title, "A Scottish Executive Review of Speech and Language Therapy, Physiotherapy and Occupational Therapy for Children and Speech and Language Therapy for Adults with Learning Disabilities and Autistic Spectrum Disorder", reported on the difficulties with the level of provision.

For example, in Glasgow, there are children who are considered to be possibly on the autistic spectrum who have to wait a number of years for assessment. That reflects the frustrations that were expressed by our education authority colleagues this morning and should give members a flavour of the difficulties that exist.

Lesley Bruce: Children are not waiting for years for physiotherapy assessments, but there are problems with regard to consistency of input. We may do an assessment and we may be able to establish a programme of care, but it might be as much as six weeks, or more, before we can revisit that child. We therefore rely heavily on auxiliary or parental support to implement programmes of care.

Lord James Douglas-Hamilton: I have two questions. First, are you in favour of removal of compulsory assessment? Secondly, do you support replacement of the record of needs with a co-ordinated support plan?

Lesley Bruce: Yes, I support the change away from the record of needs to a co-ordinated support plan, because the record of needs was very prescriptive and health biased. The co-ordinated support plan has the opportunity to be much more agency orientated, with the parent and the child being central to the plan so that they are in charge of how it develops.

Lord James Douglas-Hamilton: Do you favour the removal of compulsory assessment?

Lesley Bruce: In the main, yes—although it is important that parents have the opportunity and the right to request assessments, and that it is quite clear that they have that right if they wish it.

Lord James Douglas-Hamilton: Does that represent the views of all three witnesses?

Felicity McElderry: I have some concerns about the co-ordinated support plan. If it removes some of the bureaucracy and time delays involved in the record of needs, that will be entirely helpful. I agree that it is more family and parent focused. However, I have some concerns about education authorities' being fully aware of which children might need those plans. It seemed from the earlier submissions that one criterion for those plans was that there should be multi-agency involvement from outside the school. I would be very concerned if that were to preclude early involvement of therapies, at the level of IEPs or even earlier. Early preventive involvement—help or sometimes just advice to teachers on whether it is appropriate to refer—may be a good way of preventing later problems and may avoid the need for a CSP later on.

Kim Hartley: In relation to the removal of compulsory assessment, we would support anything that moved more in the direction of the assessment path's being determined by a broad knowledge and understanding of the sort of services and support that different people can offer. We would look to the code of practice to develop that knowledge so that there was something explicit about how, for example, speech and language therapists could have a role in X, Y or Z.

If we could expand knowledge about the fact that challenging behaviour might be indicative of a wide range of difficulties that a child might be having, we might make it easier for teachers to make appropriate referrals. At the moment, because that shared knowledge and understanding does not exist, children are not being referred to the right people and are therefore not receiving the right services. That is our worry.

Rhona Brankin: Could I just clarify the reasons why there are considerable waiting lists for some therapy services in different parts of Scotland? Is that the result of staff shortages?

Felicity McElderry: It is the result of a range of issues. Staff are in short supply, but posts are also in short supply. In the main, posts are not funded by health authorities to meet demand, but there are certainly some difficulties in recruitment because of the overall shortage of trained therapists. There are also difficulties as far as children's services are concerned, particularly in occupational therapy in terms of pre-registration training for working with children. There are also difficulties in postgraduate training. Therapy services often have, if you like, to try to grow therapists once they have started work, which entails a lot of supervision, support and in-house training. That puts demands on already small and restricted services. There are a number of factors that affect the situation.

From the occupational therapy point of view, the number of available posts seems to show a keenness and enthusiasm to work with children. We could certainly capitalise on that, but the posts have to be there in the first place.

Rhona Brankin: Was the shortage of specific posts recognised in the review of therapy services?

Felicity McElderry: I think that it was recognised to some extent. We clarified that in our response to the review. In some cases it was felt that the vacancy rate was not very high, but there might be only two therapists in post in the service, which makes the situation very different from considering vacancy rates in services that have much larger staff numbers.

Rhona Brankin: Are you satisfied that, under the bill, there is adequate provision for youngsters prior to their leaving school for when they leave school?

Felicity McElderry: I have to say that I am not satisfied that that is the case. My concerns about that go back to the point about education authorities' knowing what services to enlist to move youngsters on to independent living and to give them all the skills that they will need for further education, employment or even work experience. There is a big shortage of support for those youngsters once their needs have been identified and there is not much clarity about the services that young adults might use when they are moving on.

Kim Hartley: From a speech and language therapist's perspective, post-school provision is not good. I work with adults with learning disabilities and so have to receive young people when they come into the adult services. Edinburgh has next to no provision of speech and language therapy in the further education colleges to which young people might go. The adult learning disabilities service is pretty stretched; I believe that that is common to the rest of Scotland. Obviously, I am just talking about children with learning disabilities, but there are problems.

I echo Felicity McElderry's point that, although there is a lot of work going on around transitions—which is very welcome—the engagement of the receiving services in that transition process is not as good as it could be. It is often a surprise to the local learning disabilities team that a person with significant community care needs is arriving in their community without the team's having had adequate opportunity to prepare.

There have been some improvements; some receiving services are, for example, focusing on transition by setting up transition teams, which is improving communication. However, there are difficulties with communication and transition once the person leaves school.

Rhona Brankin: There is no duty on FE colleges in the bill.

The Convener: No.

Lesley Bruce: I have been working alongside Brian Kirkaldy on revamping how we progress children on to the adult sector. We have started much earlier with children—between 12 and 14—and we have taken a multidisciplinary approach. When the child approaches the transition, we start to bring in some of the learning disability services to do particular activities with them. They might introduce the child to Jabadao sessions or take them to a leisure centre where activities are taking place, or they might introduce them to further adult education. It is a different way of approaching the system, but it has to start early. A 12-year-old might not be due to leave school for years, but planning has to be done way ahead.

Rhona Brankin: The bill says that a year is the minimum.

Lesley Bruce: It says a year, but that would be too late.

The Convener: Is it generally understood that a year is not long enough from the point of view of the three specialisms that are represented before us today?

Kim Hartley: More than a year is needed to prepare a child who has major comprehension difficulties for such a major life event as leaving a secure community where they might have been for up to 12 years. They need to experience new environments and get the opportunity to meet new people. That obviously involves a lot of co-ordination.

The Convener: I want to pick up on Fiona Hyslop's point on tertiary education—although further education and higher education are not within the remit of this committee. Is there an issue to do with the adequacy of resources at that level compared with school level?

Kim Hartley: Yes. It is a huge issue.

Felicity McElderry: I would like to finish the answer to the previous question. Because occupational therapy services are in such short supply, much emphasis has been placed on early intervention with young children. That is seen as the most effective use of resources. When youngsters move on to secondary school, they often do not receive services at all. We would like there to be a longer lead-in time for transition. It is not that those youngsters should be accessing services all the time—that may not be appropriate—but when needs arise, there should be services that offer long-term planning to support them through transition.

12:00

Dr Murray: My understanding of the issue may not be correct and I do not have the paperwork with me, but I thought that the legislation would require the plan to be complete at least a year before the child left, rather than its being started a year before the child left.

Anna Boni of ASPEP felt that the bill would not add value to the existing good practice to do with key workers that arose from the recommendations of the Beattie committee. You are obviously concerned about the involvement of therapy services. Are we missing an opportunity to strengthen the requirements in the legislation for the times of transition? Are the problems principally to do with financial resources and human resources, or can we address a legislative failure in order to add value to the existing good practice? Could the bill address the problems of transition, or are the problems operational?

Felicity McElderry: We have to understand and highlight the needs of young people. The services must be needs led and we have to consider the required outcomes. As it stands, I do not think that the bill will improve the situation. I agree that the bill should be more explicit.

Dr Murray: Could those issues be addressed in the code of practice?

Felicity McElderry: Yes—perhaps so.

Mr Macintosh: You all spoke about the lack of clarity in lines of accountability and responsibility. That lack was thrown into sharp relief during consideration of appeals tribunals. How would your services respond to an appeals tribunal? Currently, the education authority has to appear before an appeals tribunal, but if the service concerned were one that your organisations provided, how would you be represented at that tribunal? Would you respond directly to the tribunal or to the education authority? Have you considered how the bill will affect that?

Lesley Bruce: In all my working years, I have never been involved in a tribunal, so it is difficult to know how we might respond. If things had reached the stage of a tribunal, it would be an indication that our multi-agency working had not been effective enough and that a parent had real concerns. I would hope to support the parent as much as possible, to be open and honest, and to be as helpful as I possibly could through the process. Are you asking me how much time appeals tribunals might involve for our service?

Mr Macintosh: No. My experience—I do not know whether it is yours, too—is that the amount of time that children get with a therapist is a bone of contention for many families and parents.

Kim Hartley: That is a key point, which gives me the opportunity to pick up on something that Anna Boni said. Just because we work for a health body, that does not mean that we apply a medical model. We apply the social model of disability. To suggest that because of our employer we do not have a broader spectrum reflects a misunderstanding of evidence-based best practice. We frequently encounter that difficulty.

I explained in my written submission that in speech therapy—I suspect that it is the same in the other two therapies—there are two elements to therapeutic programmes. There is direct and/or indirect work. Sometimes we get to a tribunal and people say, "We want you to see the child one-to-one for half an hour a week." Evidence-based best practice might suggest that that is not the best thing to do. The traditional view is that if therapists spend half an hour in a room once a week with a child, that will make a difference to the child's functioning for 24 hours a day, seven days a week. Parents and our education colleagues must recognise evidence-based best practice. The fact that they sometimes do not is an underlying difficulty that creates a lot of tension.

Mr Macintosh: I assumed that Anna Boni's points were directed not at people like you but at people like us and at parents and teachers, because we automatically assume that a medical model is used and that you will be measured according to the minutes that you give a child. Let us assume that we spread the word and people understand that you can provide an effective model of care based on best practice and experience. There will still be disputes—often caused by a lack of understanding—and those disputes will end up being resolved at a tribunal. That is the point that I am making. We can work towards ensuring that they do not go to a tribunal but, when they do, how will they be resolved? How will the tribunal assess your service's input to a child's care?

Kim Hartley: The question relates to who determines the best way forward for a particular child. Every therapist has to be registered with the Health Professions Council. In order to be a registered practitioner, one has to apply the clinical guidelines that have been developed through evidence gathering and professional consensus. The guidelines may state the best way of dealing with a child with certain difficulties and I would hope that the tribunal would recognise the authority of those guidelines. I do not want to undermine the status of lay people, but what we do with children should be based on clear evidence, rather than on what people would like to see happen.

Mr Macintosh: I appreciate that, but parents will go to tribunals when their child who has been getting an hour with a therapist every week does not get that hour any more. That can be for various reasons. It may be nothing to do with the fact that the child does not need the therapy; it may be because no therapy is available or because of waiting lists. Have you thought about how you respond? Do you go to the tribunal in person? Do you wait until the education authority tells you what to do? Do you have a duty to the tribunal? It is not clear how the tribunal's decision directly impacts on you.

Felicity McElderry: That is made clear in the bill, although the tribunal does not seem to have the power to make a decision on other agencies' input. That is a concern and it could be frustrating for parents for the reasons that you describe.

To return to the other point, therapists are moving forward, because of the evidence base, to consider needs-led provision and the provision of services in different ways. It is important for therapists to build in regular reviews; a situation in which a child has an hour's therapy a week for a certain number of months is no longer appropriate. Regular reviews are required and they should take place in partnership with parents, families and teachers.

I see no problem with direct involvement with tribunals, as that can be helpful. Where there is concern about a particular therapy, the people with the expertise need to discuss that with and work alongside the family. However, tribunal panels need to be skilled in dealing with the relevant aspect of the child's function and to have access to training and expert advice, whether that is from experienced practitioners in the local service or from professional bodies. Cases have arisen in England in which advice has been taken that we would not consider reflected best practice. Local authorities have been somewhat confused by the advice that they have been given at tribunals because they have not sought independent advice.

Mr Macintosh: On that point, it is my understanding that health boards would not accept a private assessment that was produced by a family and that such an assessment would not be recognised by therapists. Am I right about that? The bill will place a duty on local authorities to take account of independent assessments that are produced by parents to justify their child's needs. I could be wrong, but I think that, when a parent has such an assessment made, it tends to be rejected not by the education authority but by the health professionals, who will say that it does not reflect their professional judgment. Is that the case, or am I misreading the situation?

Lesley Bruce: If an education authority had an independent assessment made of a child who it knew was having physiotherapy, speech therapy or occupational therapy locally, the authority would refer that assessment to the local supplier of the service.

Mr Macintosh: I am talking about parents who have a private assessment made of their child.

Lesley Bruce: I take it that those parents would say that the assessment was evidence for increasing therapy.

Mr Macintosh: Exactly.

Lesley Bruce: If a director gets such a statement, they often go back to the health authority for its opinion and the two opinions are considered together. We would also consider where the assessment had come from. We would take cognisance of assessments that are done by bona fide groups such as Bobath Scotland, but in other cases we might say that the knowledge base of the group that has made the assessment is not as sound as we would like it to be. We are often asked for our opinion on independent assessments.

Felicity McElderry: There is sometimes recourse to my organisation and probably to those of my colleagues as well. We represent professional bodies that have independent advisory services that authorities can use if they find it difficult to make a decision on what they view as conflicting advice.

Mr Macintosh: I want to flag up the fact that we are building into the bill the right for private assessments to carry more weight than they have done in the past. I worry that that might be a source of conflict.

Kim Hartley: In some cases, there is already conflict. Private therapists have different motivations and might recommend a particular line of therapy that would not necessarily be recommended by a public sector therapist. There are different motivations on both sides. Although we would not want to restrict anyone's access to any therapy that they wanted to take up, we would seek reassurance that those therapists were properly registered and accredited by the Health Professions Council in partnership with a professional body.

The Convener: You are saying that there is an element of discretion based on the expertise of the person and your knowledge of them, for example.

Kim Hartley: Yes.

12:15

Felicity McElderry: Our good practice would recommend that the child and the family be kept at the centre of the procedure so that we do not end up with various professionals fighting over the child. Problems can arise, however, and we recommend that the therapists involved communicate with one another. They might have arrived at different findings for good reasons—the timing of the various assessments, for example. Some of the issues can be resolved through communication.

Ms Byrne: Will there be sufficient resources in schools to pay for the work that you will need to do, given that additional support needs will be identified and that there will be more demand for your services? How do you feel about the facilities that exist? Should we examine that area?

Lesley Bruce: Facilities are woefully inadequate in many cases. Often, the only place where I can work is the medical room, which has a bed in it and other equipment, as well as lots of stuff that the school stores in there. It is difficult to get a flat area in which to work with the children. Working in the classroom is encouraged and we do that as much as we can. Occasionally, however, especially with children who have attention problems, we have to work outside the classroom.

The issue is about sharing facilities and having respect for other people's professions. Head teachers should be advised that they need to try to find somewhere suitable for us to work. It would be helpful if there were a code of practice that included such advice.

In the area in which I work, three schools have been built through private finance initiative funding. However, in no case were any of the professions asked what disability access would be required or what facilities ought to be put in the school. We are still mystified about what arrangements have been made. There should be collaboration at the design stage to ensure that new schools have appropriate facilities.

Kim Hartley: I agree that, often, the physical resources that are available in the school are not conducive to effective therapy. The access strategies are welcome. A big part of that, for us, relates to communication in the school. That means that a lot of work will go on in relation to indirect therapy as well. Indirect therapy is about training, supporting and providing guidance to the teaching staff and the teaching assistants. The time available to provide that, through one-to-one discussions, training sessions and staff support sessions, is pretty tight. That causes a few problems.

Felicity McElderry: Facilities vary a lot and are limited in some places. The access strategies give us great opportunities to ensure that people use facilities properly and get advice from therapists about what might be needed. Because therapists will not use the areas all the time and would not expect to have space set aside for them permanently, the areas that they use could, if they are designed well, be used for a variety of other purposes.

Ms Byrne: Convener, I hope that we can suggest that the code of practice—

The Convener: We will discuss our conclusions in due course. The point has been taken on board.

Ms Byrne: I read Felicity McElderry's comments about assessment and intervention. I ask her to elaborate on her views on more complex assessment needs and the guidance on that issue that she thinks is required in the code of practice. What does she mean by more complex assessment needs?

Felicity McElderry: I was referring to children who have been somewhat overlooked in the past, such as those who have developmental co-ordination disorder, one element of which is dyspraxia. As well as their motor needs, those children often have associated language needs and difficulties with aspects of perception, and they frequently run into problems with self-esteem and psychological functioning, particularly those who are cognitively able. Although if one met such children they might superficially appear not to have a major disability, they often have complex problems that affect all aspects of learning in school. The evidence shows that we can do a lot to help that type of child—not only those with that specific diagnosis—particularly if we intervene early, but we must ensure that they are not missed.

Ms Byrne: Is there existing good practice on the issue that we could examine?

Felicity McElderry: There are examples of local good practice that would illustrate my point.

Ms Byrne: It would be worth while if you could provide some information about that.

The Convener: I will ask the question about schools that I asked the previous panel of witnesses. I dare say that the involvement of therapists in different schools, situations and local authorities varies substantially. Is there a preference for the best way in which to do that? Is it best to have people stationed in schools or for them to be responsible for a number of schools and to visit them from other headquarters? Is there a best way in which to achieve a feeling of working together?

Kim Hartley: We could provide the committee with information on existing models of good practice throughout the country.

The Convener: That would be helpful.

Felicity McElderry: We hope that the provision of occupational therapy services will be flexible. Things are changing and there is more possibility for the relocation of services, perhaps within community schools. We do not want people who provide services to be based in a centre that is seen as a health centre from which they go out to work in schools. If anything, such centres are simply a resource base. Multi-agency approaches and interdisciplinary working take place on school grounds.

The Convener: Is the arrangement whereby people serve a discrete cluster of schools, such as a secondary school and associated primary schools, helpful?

Lesley Bruce: That can be helpful, but therapists tend to follow the child. The arrangement you describe could be helpful when children move from a feeder primary to a high school. However, children often go to a mainstream primary, but because they need a little more support in secondary school, they go to a school with a different catchment area. In such cases, the therapist tends to follow the child.

In Fife, a pre-school approach is being adopted that involves six teams. Therapists are part of individual teams and they return to the base at the beginning and end of the day, but they work in a multi-agency team for most of the working day. That approach will be extended into primary and secondary education.

Felicity McElderry: We are discussing a complex area of work. We try to ensure that the teams in our service are as integrated as possible, which means considering integration between OTs who work in social services and those who are in health. We bring together the skills of both so that only one therapist sees the child, which is much more cost effective and much better for working with families and teachers. Within the teams, we aim to have specialists on particular matters, such as adapting school buildings. Team members can call on specialists within their team to provide support with a particularly complex piece of work relating to a child.

The Convener: Thank you very much. That is helpful. The committee is grateful for your input this morning and there are one or two points that you might come back to us on. If, on reflection, there are points that you want to let us know about, we would be grateful if you raised them. Your input on the bill has been helpful.

Child Protection Reform

12:25

The Convener: The final item concerns child protection, which was raised at an earlier meeting by Rhona Brankin and others. We have before us the response from the Minister for Education and Young People and the Deputy Minister for Education and Young People, as well as the clerk's note.

It may well be that we should discuss the matter when we discuss the committee's forward work programme, but does anyone have any comments in the meantime?

Rhona Brankin: I support the matter being included in our work programme. I would like the committee to take evidence on the matter.

The Convener: A paper on the work programme will come to the committee next week. We can perhaps have a detailed discussion on the matter then, vis-à-vis other priorities.

Fiona Hyslop: It is interesting that in the letter, and in the debate last week, the minister talked about the proposals to have a conference in the new year with all the different agencies to drive the programme forward and to consider the proposals on multidisciplinary inspection, which he intends to publish early in the new year. That might be an opportune moment for us to examine the proposals.

I am conscious that the committee has engaged with HMIE, not necessarily formally but in informal briefings, but I do not think we have given such attention to the social work services inspectorate. It will have far wider responsibilities after the introduction of the multi-agency inspection service, so I am keen that we engage with it. I assume that we can liaise with the minister on the time scale so that we choose an opportune moment for our work that ties in with when the Executive publishes its proposals. We should either feed into the conference or examine what is produced as a result of the conference.

The Convener: That matter has been very much in my mind and in the mind of the deputy convener as we have considered potential issues for the work programme. I am sure that we will want to consider it, subject to timetabling issues.

Ms Alexander: I want to deal with the same issue—the multi-agency inspection team—but I want to do it from a slightly different angle.

It is not the job of the committee to parallel all the work of the Executive, which has hundreds of people to do the work. Our role is to scrutinise whether the Executive is fulfilling its role properly. My anxiety about the multi-disciplinary approach is that there is a three-year programme and the Executive said a year ago that it was going to come up with a tough new multi-agency inspection team. There is no more detail on that in the letter. The ministers say that they will publish plans early in the new year. That is encouraging, but the slight anxiety is that the Executive has stated that it hopes that the first pilot will be completed after three years.

Many of the Executive's other proposals are good, but they are essentially exhortations to third parties. None of us would expect the education system to run without having HMIE in existence, and it is clearly laudable to try to adopt a multidisciplinary approach.

The letter from the ministers indicates that we will have had only one pilot at the end of three years. That pilot needs to be evaluated before the system is put in place, so that means that, after the programme has been initiated, it will be more than four years before the multi-agency team is likely to be in place. In the letter from Donald Anderson, we received an honest, helpful and encouraging response to all that has gone wrong. He indicated that the process will be helped by external scrutiny and support, and that it is vital.

I am anxious that we should write to Peter Peacock and ask whether if we have one pilot, or even two pilots, by the end of three years, which then need evaluated, the implication is that it will be more than four years before the planned inspection team is up and running and operational throughout the whole of Scotland. That would reflect our role, which is to scrutinise the Executive rather than to hold parallel inquiries to investigate whether the Executive could do better. I am not against our improving the proposals, but I think that our first responsibility is to perform our scrutiny function by writing to the minister.

Dr Murray: I support Wendy Alexander's comments. We should remember that the initial impetus for some of this work was the death of Kennedy MacFarlane three and a half years ago. We are talking about pilots that might be complete two years hence. In the period since Kennedy MacFarlane's death, there have been other high-profile cases in which the lessons had not been learned and I am concerned that the time scale for bringing real actions to bear will be so protracted.

12:30

Lord James Douglas-Hamilton: I strongly support what Wendy Alexander said. In addition, I hope that another item can be added to the list in the minister's letter. The independent report on the tragedy of the death of Caleb Ness recommended that the guidelines be amended. As far as I can see, the letter contains nothing about amending the guidelines. That specific call for action needs to be addressed.

Fiona Hyslop: The issue is the time scale—I want to know now what the social work services inspectorate is doing about cases. I also want to find out what proposals there are to make changes; it would be reasonable to ask that in the new year. We need to find out whether legislative change is necessary. We will be facing a bill to beef up the powers of HMIE, even though it says that it would hardly ever use such legislation. It is quite clear that the social work services inspectorate, rather than HMIE, might need legislation. We need to know not only where we are at the moment, but what the proposals are and whether the time scale is satisfactory.

The Convener: I am more than happy with that. We might or might not want to proceed on the specific issue of child protection or on the wider issue of social work resources. There are a number of different ways in which we might want to deal with the issue in the work programme. In relation to the minister's letter, we have a note of all the relevant matters and we will follow them through.

Are there any other observations?

Rhona Brankin: I would be keen to have the minister in front of the committee at an early stage to address the issues in question.

The Convener: Okay, we will include that in next week's discussions. I am grateful for everyone's attendance at what has been a fairly lengthy meeting.

Meeting closed at 12:31.

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