EDUCATION COMMITTEE

Wednesday 3 December 2003
(*Morning*)

Session 2

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EDUCATION COMMITTEE
12th Meeting 2003, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Mr Richard Baker (North East Scotland) (Lab)
Rosie Kane (Glasgow) (SSP)
Bill Aitken (Glasgow) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING ALSO ATTENDED

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

THE FOLLOWING GAVE EVIDENCE:

Lorraine Dilworth (Record of Needs Alert)
Eddie Follan (Children in Scotland)
Katy Macfarlane (Scottish Child Law Centre)
Dorothy McDonald (Achievement Bute)
Donna Martin (Parents Awareness Forum Fife)
Eileen Prior (Equity Group)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Ian Cowan

LOCATION

The Chamber

Scottish Parliament

Education Committee

Wednesday 3 December 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:51*]

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

The Convener (Robert Brown): Good morning and welcome to this meeting of the Education Committee. I ask everyone to ensure that pagers and mobile phones are turned off. We have received apologies from Adam Ingram, who is not very well, so he will not be among us today.

In anticipation of the fact that there may be questions on legal aid, I declare my consultancy with Ross Harper solicitors in Glasgow and my membership of the Law Society of Scotland.

We will take evidence from two panels on the Education (Additional Support for Learning) (Scotland) Bill. The first panel comprises Katy Macfarlane from the Scottish Child Law Centre and Eddie Follan from Children in Scotland. We have received papers from the witnesses, but in accordance with the usual arrangements, I ask them to make an introductory statement.

Eddie Follan (Children in Scotland): I will make a brief statement—I will not cover the details in the written submissions. I am the policy manager with Children in Scotland, which is a national umbrella organisation for more than 300 voluntary and statutory agencies throughout Scotland. Our response is based on speaking to parents, children and young people and professionals. We welcome the bill in principle; nevertheless—and probably not uncommonly—we have concerns about particular aspects of it. We are more than happy to discuss those aspects with the committee.

Katy Macfarlane (Scottish Child Law Centre): I am the policy and education officer with the Scottish Child Law Centre, which is a charity that is funded partly by the Scottish Executive and which has been on the go for about 15 years. We deal only with matters that concern child law in Scotland. Child law is the law for people up to the age of 18. We have a telephone helpline, carry out consultation and produce leaflets and other publications on children's rights.

Our written response to the bill is fairly complex. We have certain issues with the bill, most of which relate to the rights of children under it. I am more than happy to explain those concerns further.

The Convener: I will start off by asking about the support for the bill's general principles, which involve the move from the record of needs to the co-ordinated support plan and related additional needs provision. Leaving aside the details, do you support the broad direction of the bill or do you have significant qualms about the principles?

Katy Macfarlane: We broadly welcome the bill because it is concerned more with targets for children to meet than with listing their disabilities and what they cannot do. The bill is forward looking.

As I said, we have grave concerns about the rights of children under the bill, but replacement of the record of needs system is probably long overdue.

Eddie Follan: I concur with most of what Katy Macfarlane has said. We certainly welcome the broad principles of the bill. Much of what the bill sets out to do is aspirational. As for broadening the scope to additional support needs and moving away from special educational needs, I agree that changing the way in which we consider those issues and focusing on what children can do, rather than what they cannot do, are important. We have concerns about children's rights, but I am sure that we will talk about them. Generally, we welcome the bill, but it has gaps that need to be filled.

The Convener: We have had evidence from different sources, and I am sure that we will hear evidence along similar lines this morning, that the bill is inherently discriminatory, because it makes a division between co-ordinated support plan children, additional needs children and the rest. As with rearranging the deckchairs on the Titanic, the suggestion is that the bill will not make a difference to the way in which the assessment of need is dealt with. It is also said that the issues concern resources rather than the rights of children. In broad terms, that is the proposition that some people put. What are your views on that?

Katy Macfarlane: The bill casts its net widely to bring in all children with additional support needs. That could pose problems, because the wider the scope, the less the focus is on children who need specific support in the education system. That poses a bit of a problem for us.

A big concern for us is that some children who currently have records of needs might not obtain co-ordinated support plans. They will have undergone medical, educational and psychological testing to show that they have compound, profound or specific needs, yet they might not have CSPs. That might lead to what some people might call discrimination.

As I said, the net is wide. We must focus on children with needs at the more profound end of the scale. We need to consider what we can do for all children without losing sight of the children who have records of needs and who will not have CSPs simply because their needs are being met by education authorities. Eddie Follan and I have had a conversation about that. I do not want to put words in his mouth, but I think that we come from the same direction.

Eddie Follan: I support that. On broadening the scope to additional support needs and discrimination, I think that at times we must be careful about what we do. If the law changes and we start using the term "additional support needs", sure as heaven, people will say that that is discriminatory. The main focus should be on supporting children to reach their full potential in education. That is the aspiration. How we go about achieving that is the issue.

I support what Katy Macfarlane said about co-ordinated support plans. The bill contains four tests: the factors must be complex or multiple; the factors must continue for more than a year; the factors must be significant; and, crucially, support must be needed from outwith an education authority. That is a big problem, because if someone passes three of the tests, because they have significant multiple and complex needs that will continue for more than a year, yet they do not receive support from outwith an education authority, they will not have a co-ordinated support plan.

Our submission says that we should focus not on where support comes from, but on whether support needs to be co-ordinated, either within or outwith an education authority. I have read some *Official Reports* of previous committee meetings, which show that it has been recognised that, even in education authorities, administrative structures and lines of accountability are different. We must remember that.

Who is to say that people within an education authority will work in a co-ordinated fashion? Given the role of new community schools in integration, education authorities could be providing more and more from within their own system. We have to be careful. If a child has complex and multiple needs and they receive all the support from within an education authority, we must ensure that that support is co-ordinated. From reading the bill, it seems to me that the co-ordinated support plan is the document to do that. I know that there is discussion about individualised educational programmes and I am happy to go into that in more depth. Discrimination is an important issue, but in a sense it is a side issue. We should be focusing on the needs of all children.

10:00

The Convener: If I understand you correctly, you are saying that the linkage between the CSP and needs outside the education sector is variable among different authorities, because they do different things, and is addressing the issue almost by way of a by-blow, rather than concentrating on needs.

Eddie Follan: Yes. I can understand to a certain extent the tension between resource and need, which has been well documented, but children should have their needs met and we must consider the process of how we do that. We have heard anecdotal evidence of one authority that is talking about employing its own occupational therapists. Peripatetic support, support for learning and educational psychology can be provided from within an education authority. How do we co-ordinate support if the peripatetic support is provided from a building in one part of town and a support for learning teacher comes in from another part of town? If we are going to co-ordinate support, where will we do it? It should be done in the co-ordinated support plan.

Katy Macfarlane: I back up what Eddie Follan is saying. There seems to be a ludicrous assumption that because support comes from within an education authority, it will already be co-ordinated and so the child will not need a co-ordinated support plan to bring together services from outside. From calls that I have taken in the Scottish Child Law Centre, I know that that simply is not the case within educational authorities. It is a fallacy to suggest that because one education authority is seeing to all the services that a child needs, the support is necessarily co-ordinated. That is a basic problem with the bill.

Eddie Follan: I ask Katy Macfarlane to say something about our discussion the other day about where education authorities are and whether people see themselves as being employed by the local authority or by the education authority.

Katy Macfarlane: I am on the SEN forum in Edinburgh and Eddie Follan and I had a huge discussion about the bill. I was confused, because I had been on the phone to the Scottish Executive asking whether it saw occupational therapy and speech and language therapy as being within the education authority's remit or as services outwith the education authority. A child with additional support needs who needed OT and speech and language therapy would not get a co-ordinated support plan if the services that they were getting were within the education authority. The Scottish Executive assured me that the education authority could buy in OT and speech and language therapy, which could therefore be seen as education authority services. When I took that information along to the SEN forum, I was completely done down and told that that was not the case.

That raised confusion, because if I did not know, having spoken to the Executive and having attended the forum, how on earth are parents going to know what their children's rights are so that they can take issues further should they need to? Let us face it: how many parents delve into whether the service comes from outside or within the education authority before they consider appealing? Parents do not do that; they just want the services to be provided. They do not really mind where they come from; getting the services is important.

The Convener: That is an important seam of interest that we will want to follow up with the minister at a later point.

Mr Kenneth Macintosh (Eastwood) (Lab): My colleagues might want to clarify that point. Section 2(1)(c) illuminates the situation. The bill says that a child or young person requires a plan for the provision of additional support if

> "those needs require significant additional support to be provided … by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education".

Katy Macfarlane: The legislation itself needs to be co-ordinated slightly better.

Eddie Follan: I take the point that is being made. I might be going off down the wrong track, but I read the words

> "any of their other functions"

as referring, broadly, to social work. However, there is a degree of vagueness. For example, what is the situation as regards an education authority that, in its functions relating to education, provides occupational therapy?

Mr Macintosh: I agree that further clarification is required. However, I think that we can be fairly confident that, in the circumstances that were described, a child would qualify for a CSP. We will doubtless return to the question of definition.

The issue of rights is quite a big area. Parents have used the record of needs to assert their rights. The CSP is designed not to replicate the record of needs system but to reduce confrontation. It is intended to promote co-ordination rather than being a statement of rights that can be used to lever resources out of the system, although it might be used in that way. I want to clarify whether the bill will mean that parents and children will enjoy more rights or different rights compared with the situation under the record of needs regime.

You have highlighted some specific points relating to the rights of foster parents, children under three and the definition of incapacity around the age of 16. We will return to those points, so you do not need to deal with them at the moment.

Do you feel that the CSP, coupled with the extra duties that have been placed on local authorities in relation to all children with additional support needs, improves on, differs from or worsens the current situation with regard to the rights that are enjoyed by parents of children with additional needs?

Katy Macfarlane: That is a huge area. The "Moving Forward! Additional Support for Learning" document, which was published by Cathy Jamieson a long time ago, when this area was first being examined, says:

> "The rights and views of children, young people and their parents should be respected and listened to".

However, I do not think that that is reflected in the legislation. You ask how children's rights have been improved or otherwise, but I do not think that children had many rights at all under the Education (Scotland) Act 1980. In 1980, children were not considered to have rights. Only in the past 20 years have children been given rights. Now they have more than they have ever had in history, but the bill does not reflect that. There are glaring gaps that mean that, in some circumstances, children have no rights at all. We are in a child-centred society these days and that means that we cannot be content simply to give children a say once in a while. The bill gives children a passive recipient role in relation to education.

Children have no right to ask for identification of their additional support needs. From calls that the Scottish Child Law Centre has received, we know that some parents do not have the wherewithal to take their child's case further. The fact that a child has additional support needs does not mean that they are so mentally incapacitated that they cannot do anything for themselves. In today's society, children are aware when they cannot do things that their peers can. If they know that they can get help in that regard, they will try to get it. They need to be able to ask for that level of help. There must be an element of the legislation that gives children the right to ask the education authority to identify their needs. Ideally of course, they should be able to ask for an assessment.

Mr Macintosh: I do not want to interrupt, but what you are arguing is a strong case for the general approach that you want the bill to take. May I bring you back to the way in which the bill differs from the current situation? Rather than describe what we might aspire to, will you tell us what the current situation is? Can parents ask a local authority for identification of their child's needs?

Katy Macfarlane: Under the 1980 act—

Mr Macintosh: There is a duty on the local authority to identify a child's needs and there is a right for parents to ask the authority to assess their child. Will you be a bit more specific about that right?

Katy Macfarlane: Under section 61 of the Education (Scotland) Act 1980, the local authority, the parent and a young person can ask for the three assessments—medical, psychological and educational—to be done, with a view to opening a record of needs. That is the current situation.

Mr Macintosh: So parents can ask for a record of needs to be opened?

Katy Macfarlane: Yes. The results of the three assessments will determine whether or not a record of needs is opened.

Mr Macintosh: That mechanism encourages people to open a record of needs. It is arguable that many parents resort to a record of needs as a device to assert their rights, rather than—

Katy Macfarlane: It is more as a device to get their child's needs met.

Mr Macintosh: Indeed, yes. Under the bill, parents will have rights whether or not they open a CSP; they will have rights simply because their child has additional needs. Is that not an improvement?

Katy Macfarlane: At the moment, a parent can ask for a child to be assessed, not necessarily with a view to opening a record of needs. For example, if a child has attention deficit hyperactivity disorder, which in many instances is not recognised as significant enough to open a record of needs, the parent can still ask for an assessment. There is no bar to a parent saying that they think that their child has a certain level of needs and asking for an assessment. Parents have that open-ended right.

The rights in the bill are not an improvement; they are probably consistent with current rights. There is certainly no move forward in giving parents extra rights.

The Convener: Are we getting a bit mixed up between parent's rights and children's rights?

Katy Macfarlane: Children do not have the rights. They did not have them in the 1980 act and they do not have them in the bill.

The Convener: That is not what I thought you said earlier. Let us be clear about this. We are talking about parents' rights at the moment. Your position is that there are no children's rights to request records of needs at the moment.

Katy Macfarlane: Yes. I am consistent in saying that. There are no children's rights under the Education (Scotland) Act 1980 and they have not appeared in the bill. Children simply do not have the right to ask for their needs to be identified—as I think the term is.

Mr Macintosh: Let us consider the key area of contention. Many parents feel that the record of needs gives them certain statutory rights, and the record of needs is certainly used as a lever for resources. Does the record of needs actually give parents such rights? Let us face it: we think that many parents might lose the record of needs for their children and not qualify for a CSP. Many new rights are established under the bill, for example the right to a placing request at a special school, but does that meet the existing gap in the current rights? Are there rights that are currently enjoyed under the record of needs that will not be replicated under the bill?

Katy Macfarlane: The legal rights of the parents of the many children who currently have a record of needs, but who will not qualify for a CSP, will be lost.

Mr Macintosh: That is exactly the point that I am getting at. What are those rights?

Katy Macfarlane: Only if a child has a CSP will their parent have access to the tribunal if they wish to contest whether or not the CSP should have been opened in the first place. However, if the CSP is not opened, that leaves the parent without any legal redress, as they will not have access to the tribunal. A huge number of parents whose children currently have records of needs, but who will not qualify for a CSP, will lose their legal right. Their only form of redress, other than simply challenging the class teacher about IEP targets or personal learning plans, will be under section 70 of the 1980 act. Parents could go along and discuss the matter with a teacher but, if the teacher refuses to do anything about it, there will be nothing that parents can do. An IEP is only as good as the teacher who prepares it.

Mr Macintosh: Currently, there is no tribunal, so a right is being created under the bill. There might be discrimination—to which we can return—between those who go to tribunals and those who do not. If a child has a record of needs, what rights do the parents currently enjoy that will—

10:15

Katy Macfarlane: Parents can challenge certain bits of the record of needs. I welcome the bill because there are certain bits of the record of needs with which I do not agree. One of parents' major complaints is that they cannot appeal against part 5 of the record of needs, which is the bit that says what measures the local authority will take to address the child's needs. That is the one part that parents are desperate to challenge, but which may not be challenged.

Mr Macintosh: Indeed, but a new right is being introduced, so that is an improvement. However—

Katy Macfarlane: Yes. I am not denying that there are some improvements. I am not saying that the whole thing is absolutely terrible.

Mr Macintosh: No, no—I am sure that you are not saying that. I am sorry. It is difficult in this atmosphere, here in the chamber, where we are almost having to shout across at each other. We are just trying to establish what the issues are.

Many parents think that they have rights embodied in the record of needs, but it is quite difficult to pin those down. The right to a placing request is one of them. It is only possible for parents to apply for their child to go to a special school if they have a record of needs. Clearly, that is unfair on those children who might want to go to a special school, but who do not have a record of needs. That is being addressed under the bill. I am trying to work out how those parents whose children currently have a record of needs—particularly those who might lose that record of needs and not get a CSP—will lose out legally. It would be quite unfair if they did lose out.

Eddie Follan: That is a difficult question, and it is difficult to pinpoint what the implications are. As Katy Macfarlane was saying, parents whose children have a record of needs can appeal particular parts of it, apart from part 5, which is to do with provision.

If I may go off on a side issue here, I will return to the main one. There is also an issue about the annex to the CSP. The Executive has said that it has changed the annex, which would be one part of the co-ordinated support plans that would not be appealable. Having changed that, the Executive has apparently said that the annex will just be a day-to-day record and progress report. I am not sure whether some people might have an issue with that.

I return to the main point. The big issue is that there is no clear legal route that a parent of a child who has additional support needs, but who does not have a CSP, can go down. The exceptional circumstances are those of a section 70 appeal to ministers. Such an appeal can take up to 18 months. In its own evidence, the Executive admitted that only a fraction of 1 per cent of people have appealed under section 70 of the 1980 act. A further issue is that many people do not know about the section 70 provisions. This is a matter of the provision of information to people, so—

Mr Macintosh: I am sorry to interrupt, Eddie. I do not—

Eddie Follan: I am not pinning your question down, am I?

Mr Macintosh: We will return to tribunals and mediation shortly, so we will want to explore that matter in depth, but I want to finish off this point. I am sorry to pin you down on this matter, and it may be that there is no answer. Currently, parents can appeal certain sections of the record of needs. That seems to be the only legal right that is available to them now, which they might lose under the bill. This is a difficult question, but what will they actually lose? They have other rights that will be replaced, not just for children with CSPs, but for all children with additional support needs. Is there anything that parents can appeal under the record of needs now that they will no longer have the right to appeal?

Katy Macfarlane: I would like parents to be able to challenge what will be the equivalent of part 5 of the record of needs. That is not addressed in legislation. The right of appeal to the tribunal is limited in what parents can appeal. The question whether or not to open or review a record of needs—

The Convener: With respect, that is not quite the question that Ken Macintosh is asking.

Katy Macfarlane: I understand what he is asking. The current legislation does not address the level of appeal that I would like parents to have.

The Convener: We take that point, but I ask you—I am sorry to press you—to deal with Ken Macintosh's point, which I ask him to rephrase.

Mr Macintosh: I am not trying to put you on the spot. We have had plenty evidence that parents feel that the record of needs gives them rights, so we do not need to be convinced of that; nor do we need to be convinced that parents—particularly those whose child might qualify for a record of needs and not get a CSP—are worried that they will lose rights. However, we are obliged to find out exactly what rights they will lose and that is quite ambiguous at the moment. There is a feeling that parents will lose rights, but I have not heard a clear definition of what rights they will lose, which is what I am trying to pin down.

Katy Macfarlane: I do not think that they will lose rights, because the level of rights that they had before was not that significant, and what they will have under the bill is no better than what they have under the current system. Parents will not lose rights, but they will not get any more rights. Does that answer the question?

Mr Macintosh: Yes.

Katy Macfarlane: Nothing has improved: the bill is not a way forward, because things will stay constant. Under the CSP, parents will be able to challenge the same things that they can challenge under the record of needs. There is nothing more, but there is nothing less.

The Convener: We will move to a question from Dr Elaine Murray. I know that Rosemary Byrne also wants to ask a question on the matter, but first we will see whether it is covered by Elaine Murray's questioning.

Dr Elaine Murray (Dumfries) (Lab): I seek clarification on what you said about children's rights to ask for a record of needs. From the statement that Katy Macfarlane made, I got the impression that a child with capacity had that right. That is what it sounded like.

Katy Macfarlane: No, absolutely not.

Dr Murray: So the child has no right to request a record of needs.

Katy Macfarlane: Under the 1980 act, young people, parents—

Dr Murray: That is fine. I only wanted to clarify, because I perhaps misheard what you were saying—it sounded as though a young person might be losing rights.

I invite your comments on capacity and the fact that a child does not have the right to seek an assessment or to appeal to the additional support needs tribunal.

Eddie Follan: For a start, that is inconsistent with other legislation. There is a view that the issue is too complex for a child over 12 with capacity to appeal, even though a child of that age can appeal a school exclusion, which seems to me to be fairly complex. Children in Scotland's view is that the bill should be consistent with not only the United Nations Convention on the Rights of the Child, but the Children (Scotland) Act 1995 and the Disability Discrimination Act 1995, under which children over 12 with capacity can appeal on fairly complex grounds—the Disability Rights Commission is examining how it works with young people because of that provision. If the legislation that we make in Scotland is to be consistent, there seems to be no clear reason why, under the bill, children should not be able to appeal.

Dr Murray: Is that a matter on which the bill should be amended to ensure that it is aligned with legislation such as the Children (Scotland) Act 1995?

Eddie Follan: I would certainly like it to be amended. Another issue, on which Katy Macfarlane touched, is that some parents—not all parents, for goodness' sake—do not have the get-up-and-go that the young person might have to get something changed. We mentioned parents' gatekeeper role, but parents should not always be the gatekeeper for the young person, even if that applies to only a small number; if the young person is able to make a decision and wants something that there is a way to get, they should be allowed to go down that road.

Dr Murray: Is there any potential conflict within the legislation? An example might be the parent's right to make a placing request to a special school as opposed to the child's right to inclusion—or vice versa, if the child wished to be placed in a special school and the parent did not wish that.

Katy Macfarlane: A lot of laws run in tandem, and there does not have to be conflict.

Dr Murray: I am asking whether there is a conflict of interest within the proposed legislation, not between the proposed legislation and existing legislation. For example, under the bill, the parent has the right to make a placing request to a special school. Does that in any way conflict with the child's right to inclusion?

Katy Macfarlane: On the surface, there would appear to be conflict if the parent wanted a placement for the child in a special school and the child wanted to insist on the right to inclusion, or vice versa. However, if there were sufficient services and support for a child in an inclusive placement in a state school, would the parent ask for a placement outwith that? I presume that parents ask for a placement for their child in a special school because they feel that the service and support that their child would get in the main stream would not be sufficient. If mainstream support were sufficient, there would be no necessity for the parent to ask for a placement.

Dr Murray: So there is no potential area of conflict between the bill and the Standards in Scotland's Schools etc Act 2000?

Katy Macfarlane: If a case went to a court or tribunal, the basis of the court or tribunal's decision would be what was in the child's best interests. The reasoning behind the decision would not be whether the parent's or the child's rights were superior. The issue of who brought the case does not have anything to do with it. The child's education rights and the level of support that the child receives would be the paramount considerations.

Dr Murray: To sum up, you feel that that issue could be resolved by the tribunal and that it is not an area of contention.

Katy Macfarlane: Absolutely, as long as the tribunal's focus was the welfare of the child and the educational benefits to the child.

Eddie Follan: We support that. If we are talking about children being able to appeal, obviously there could be a conflict if the parent wanted one thing and the child wanted another. We agree that the tribunal would have an arbitration role in such circumstances.

The Convener: I want to be clear about definitional terms. When you say that you want children to have rights, I presume that you mean that they should have the right to apply for various things under the bill. How do we define a child in this context?

Katy Macfarlane: Legally, a child is someone from zero to 16. A child with capacity is someone who has been assessed as having the capacity to make decisions. The law presumes that, at 12 and over, a child who has the capacity to make decisions is of a sufficient level of maturity to throw their view into the pot with everyone else's views.

The Convener: So what you seek is for the bill to provide rights for children from 12 to 16?

Katy Macfarlane: Yes, we seek rights for children with capacity.

The Convener: Plus involvement for other children?

Katy Macfarlane: Absolutely. There should be involvement even for a child who does not have capacity. Even if the involvement is at the low end of the scale, there is a level of involvement in which even children with the most severe needs can participate.

The Convener: So you would make a distinction between the right to apply for various things and how that right should be dealt with once those things have been applied for, if you follow my point.

Katy Macfarlane: Yes.

When I looked through the recent "Report of the Consultation on the draft Additional Support for Learning Bill", I noticed that paragraph 58 recognises that children have rights to instruct a solicitor under the Age of Legal Capacity (Scotland) Act 1991. However, the Executive reasons that the parents' duty to safeguard and promote their child's welfare and health and to represent their child somehow overtakes the child's independent rights. Paragraph 58 goes on to say:

> "There are, however, statutory responsibilities already placed on parents, so they are responsible for safeguarding their child's health, development and welfare."

It seems that those duties on parents would replace the child's right, but I do not agree with that at all. In Scotland, children have independent rights. We pride ourselves on the fact that we are a very child-centred society that recognises that children have the right to take action under their own identity. They do not have to be an adult to do that.

The Convener: That is perhaps the underlying point.

Eddie Follan: I am not trying to sell this, but Children in Scotland did a children's rights audit of Executive and parliamentary activity in 2000-01. The audit showed that children's rights was a growing issue during the passage of various pieces of legislation and that the Parliament was increasingly recognising the issue. As Dr Murray mentioned, we would seek an amendment to bring the bill into line with other legislation and with the kind of change that has taken place in the way that children are viewed and in the way that their views are taken into account. We could get something quite positive by doing that.

The Convener: Does Rosemary Byrne still have a question on this?

Ms Rosemary Byrne (South of Scotland) (SSP): I want to pick up on Katy Macfarlane's points. Currently, with the record of needs, there is a review process and, in many areas, good practice means that the young person is highly involved and is given training on how the review process works and how to handle it. Do you feel that the bill will not cover that? Are you saying that instead of bedding in that practice, we have done the opposite?

10:30

Katy Macfarlane: Children's rights have to be entrenched and enshrined in the legislation. It is difficult enough where children have rights to ensure that they are exercised and observed. Unless the rights are enshrined in the legislation, children simply will not have them because, let us face it, it is much easier to take decisions about children—especially children with additional support needs—without their input. It is much easier, more efficient, and much less time-consuming. That is what happens now.

Ms Byrne: I wanted to move on to that. It is not only children with co-ordinated support plans who should have a say; those with additional support needs should also have a say.

I will move on from that—

The Convener: I will come to you in due course on other issues. If your point arises from this point, however, that is fine.

Ms Byrne: It arises from the previous discussion on assessment and identification. The points that were made by Katy Macfarlane and Eddie Follan are relevant.

I am concerned—as are many members and witnesses—that there may be a lack of identification, especially with additional support needs. I am not saying that the present system always succeeds in identifying young people, because lots of young people fall through the net and are not identified. Will the bill improve that situation, or do we need to move further to ensure that assessment and identification will happen as a matter of course, when they ought to?

Eddie Follan: The bill aspires not to miss any support needs that a child may have—for example, we talked about children who have English as a second language. We welcome the idea that we will be looking at a broad spectrum. I have read that people have said that children with social, emotional and behavioural difficulties will be covered more by the bill, and that provision for them should be improved. We welcome that.

We welcome the fact that parents will be able to request particular assessments. As far as I believe, that will not be limited to requests for medical assessments; parents will be able to request a range of assessments, including medical, psychological and educational assessments. However, the bill does not say that parents are entitled to ask for care assessments, and they should be included. Care assessments, which are generally about the whole family, are important because sometimes the young person's needs are about their family, not just about themselves.

Katy Macfarlane has another point on the nature of compulsory assessments.

Katy Macfarlane: Is it appropriate for me to talk about assessments just now?

The Convener: Yes.

Katy Macfarlane: I welcome the fact that the bill casts the net widely and that all children's needs will be identified. However, I would have hoped that that was happening with the existing legislation on records of needs, so I do not see that there will be a great deal of improvement, other than that it will be enshrined in legislation that all children with a huge range of additional support needs will need to be identified. That goes without saying.

In our response to the original draft bill, we said that we were very much in favour of compulsory assessments. I feel that the removal of compulsory assessments was a big step backwards. Many parents know when something is wrong with their child. A parent who asks for an identification to be made of their child's additional support needs could find that the identification is done without an assessment having been made. How can that happen? Assessments do not always have to be done by means of the child sitting down, flicking through a flip book and saying, "That one. That one. That one." An assessment does not have to be like that.

The Executive seemed to be saying that parents do not want their children to be compulsorily assessed. I completely disagree with that. Parents want their children to be assessed if it means that the child will get an accurate diagnosis and the services and support that they need. What parent will say, "Don't bother assessing my child"? I welcome the fact that parents will be able to ask for an assessment, but the provisions are not set out clearly enough. Parents need to be able to ask for a range of assessments, which, as Eddie Follan said, should include a care assessment.

A doctor would never tell me that I had terminal cancer as soon as I walked into their surgery. If that happened, I would ask whether the doctor was going to assess me. I would say, "Are you simply going to observe me for five minutes and make a diagnosis that will have a lifelong, profound effect on me?" I would not put up with that.

The Convener: What is best practice in schools? Is that the key point? We are getting into definitional issues about assessment, yet the central issue is whether young people's needs are being identified adequately and competently by best practice, whatever that is, in the school that they attend. If that is not happening, in those exceptional cases, we need to ask what the parents' rights are to trigger a formal arrangement. Is not that the nub of the issue?

Katy Macfarlane: Having spoken to health visitors, I understand that a lot of the pre-three and pre-four identification of needs is done by parents. I am sure that you would not disagree with the fact that parents have more knowledge than anyone else about their child. Once the child gets to nursery or school, they have to find that there is a level of competence in their teachers. I am not suggesting for one second that all teachers should be medically trained, or trained in child psychiatry or psychology, but they should be able to pick up on a child's obvious ailments or needs. I believe that that would be a kind of assessment. After that, the child's case would have to be taken further.

However, I hope that an initial identification of the fact that something was wrong would be followed by assessments. Identification on its own is simply not enough. A follow-on process of assessments is needed to confirm or deny the initial identification of need. It is crucial that the bill contains a measure that specifies the right of a parent, young person or child to ask for a set of assessments.

The Convener: Right. I think that we have your evidence on that one.

Fiona Hyslop (Lothians) (SNP): My understanding is that the bill gives parents rights to ask for assessments, as you are proposing. I can see that both of you are nodding when I say that. I understand that the bill also provides for individuals outwith the education field who work with young people to ask for assessments. Do you agree that that should also be in the bill?

Katy Macfarlane: I agree with that. However, at what point can a parent ask for an assessment? Is it once the needs have been identified and the child is not getting the support that they need? Do the parents then ask themselves whether the next stage is to ask for an assessment, or do they do that when they realise that their child's needs have not been accurately or substantially identified? At what point does the right kick in?

Fiona Hyslop: You should ask that question of the Executive. We are a committee of the Parliament and we are seeking your views.

Katy Macfarlane: The bill is very woolly on that subject. Parents simply want to know what they can do. They want to know what the first step is and once they have done that, they want to know what the second step is. They should not have to wonder whether they can exercise their rights.

Fiona Hyslop: Can I move on a bit?

Katy Macfarlane: Yes, sure.

Fiona Hyslop: I want to cover the situations in which young children in particular are not covered by mainstream education. I will start with the age at which duties and responsibilities start. At the moment, it seems that a two-year-old can have access to a record of needs, whereas the bill seems to assume that the new system will apply from the age of three upwards. That is probably because a view has been taken that health practitioners are responsible pre-three and education practitioners are responsible post-three. Should that be changed?

Katy Macfarlane: When children have substantial needs, it should not matter whether they are two or three. I agree that health practitioners tend to have much more input pre-three; that is why many needs that begin to show in a young child are identified by health visitors. Health visitors have the primary input with the mother and the family. From the age of three onwards, because of the compulsory nature of nursery or pre-school education, it is probably appropriate that education practitioners should become involved.

Fiona Hyslop: Does the legislation need to be changed?

Katy Macfarlane: Yes. I am not sure whether Eddie Follan thinks the same way.

Eddie Follan: The legislation gives the education authority the power to get involved with the under-threes, to ensure that needs are met. However, transition is also an issue, which could be dealt with in the code of practice. We have to be clear about how to co-ordinate support, even for two-year-olds who are heading towards pre-school education and then school education. We have to start as we mean to go on. In the code of practice, at least, I would like to see a range of fairly firm structures for the transition period between the ages of two and three. If we do not get that right, the systems could fall down.

Fiona Hyslop: There are concerns that the bill may not currently cover that.

Eddie Follan: I do not think that it covers it. However, it could be covered in the code of practice.

Fiona Hyslop: Some things are in a grey area between the bill and the code of practice.

Katy Macfarlane: There should be a duty to liaise. When health practitioners have identified need that will affect the child for more than a year—perhaps for all its life—there should be a duty to liaise so that, before the child goes to nursery, services and support are in place. That will allow the child to be accepted into the education part of their life, from three onwards.

Fiona Hyslop: What are your views on children who are educated at home—either permanently or temporarily if, for example, the parent is in dispute with the local authority? Does the bill cover their rights adequately? Should the duties of local authorities be extended to cover such children?

What about private schools? Is it satisfactory that the organisation could request support from the local authority, which could comply if it wanted to but would not be under a duty to do so?

Katy Macfarlane: If parents opt out of state education, I do not see it that they have opted out of everything. We are focusing on the parents' right to opt out and not on the child's right to have his or her needs met.

Fiona Hyslop: That is what I am trying to get at. Does the bill protect the rights of such children?

Katy Macfarlane: There are some non-mandatory duties on education authorities to take a role in the education of a child who is being educated in the independent sector. However, there does not seem to be a mandatory duty on the education authority to put in place the same level of services that it would put in place for a child in the state sector.

If parents want to opt out, that is their prerogative. However, I see no reason why their child's needs cannot still be identified. If a parent opts out, do they have to pay for any assessments, and are they—rather than the education authority—responsible for ensuring that support is in place for their child? If we had it that way, the rights of the child would not be the focus. We would be saying to a parent, "If you want to opt out of the education system, you will be opting out of everything." I do not think that that is right, because the child still has rights that should be addressed. The fact that someone opts out of the national health service and goes for private health care does not mean that they do not get the same services.

10:45

Fiona Hyslop: I do not want to debate the point; I just want to obtain a view on whether the bill is sufficient in those areas.

I also want to ask about the concerns that have been raised in relation to foster parents. Under the bill, will foster parents have the same kind of rights as natural parents, or is there a gap? The fact that there is not comprehensive state nursery provision for three and four-year-olds means that many working parents have children of that age who are in private nursery education. There seems to be some confusion about whether the duties and responsibilities of the education authority will be the same in relation to those nurseries as they will be for the more limited number of state-run nurseries, which operate from 9 to 5. Does there need to be some sort of clarification there? Local authorities may want to have the same duties but, as the bill stands, they might not have those duties in relation to private nurseries.

Eddie Follan: On home education, there are some concerns—among organisations that work in the field and which support parents who educate their children at home—that the duties do not go far enough. I just wanted to add that for the record.

I have not heard a great deal on the subject of foster parents, although I appreciate that there might be complexities. I take it that you are referring to authorities having a duty to provide for children at their schools whose parents are foster parents. I am not quite clear about that.

Fiona Hyslop: I am talking about rights to make requests for assessments.

Eddie Follan: If a foster parent is looking after the child from day to day and is familiar with their needs—I imagine that they would be working closely with the authority anyway, through the social work department—we would certainly say that the foster parent should have the right to make requests and should be supported in that process by the local authority.

Fiona Hyslop: What about nursery education for three and four-year-olds?

Eddie Follan: That is a more difficult issue. We have not considered private nurseries specifically. If there is a child in a private nursery who has been excluded from a state nursery because of lack of provision, of course the authority should have a duty to provide for them and to support the child at that nursery. Is that what you are asking?

Fiona Hyslop: The bill is not clear on that. We have had differing opinions from directors of education, the Convention of Scottish Local Authorities and other witnesses about the status of three and four-year-olds in that situation.

Eddie Follan: The position on that might be a bit woolly; I am sorry that I cannot shed any more light on that. We would certainly say that, if a child who was entitled to a place in a state nursery was in a private nursery because of lack of provision in the state nursery, the authority should have a duty in that regard.

Fiona Hyslop: You might want to follow that up, after you have given the issue closer consideration.

Eddie Follan: Yes.

Katy Macfarlane: I want to take up what Fiona Hyslop said about foster parents' rights under the bill. I am a bit unclear about that. I am looking up the interpretation section to see whether the bill's definition of "parent" follows the definition in the Children (Scotland) Act 1995, in which a parent is someone with parental responsibilities and rights, or the definition in the Education (Scotland) Act 1980, which is much wider. If the bill follows the rights and responsibilities definition, there needs to be clarification on what a parent is, because it is a parent who is able to ask for such services.

The Convener: Can we stick to the principle of the issue? I think that we agree that the principle is that foster parents should have a right in the context of the bill.

Katy Macfarlane: Yes, but I think that that needs to be clarified, because the interpretation section does not contain a definition of the word "parent". It needs to include such a definition and I think that the definition should follow the wider 1980 definition rather than the narrower Children (Scotland) Act 1995 definition.

Fiona Hyslop: Thank you.

The Convener: That is helpful. We move on to other matters. Rosemary Byrne will follow Rhona Brankin.

Rhona Brankin (Midlothian) (Lab): I want to ask about mediation, tribunals and resolution of disputes. There is a new duty on education authorities to make provision for independent mediation services. What are your views on that?

Eddie Follan: Our view has always been that if mediation is to be independent, it should be separate from the authority. The issue is about perception and culture. We accept that the Executive is trying to change the culture of provision for special educational needs, but we also have to accept the nature of the system. The Executive recognises that to make the system run smoothly, we need to put in place systems such as dispute resolution, mediation and tribunal systems. We would all love to live in a world where people get on and there is no conflict between parents and schools, but the perception, and for some people the reality, is that parents cannot agree with authorities. If the system of mediation that is introduced is provided by the authority, it will not have the parents' full confidence.

If we are to have mediation, it should be independent mediation. Enquire, which is based at Children in Scotland, provides a good independent mediation service that is not tied to an authority. I understand that local authority mediation can work on occasions; I have heard anecdotally that local authorities provide good housing mediation services, but sensitive issues are involved in special educational needs and it would help to change the adversarial culture if mediation was independent from the local authority.

Katy Macfarlane: I agree with Eddie Follan. Mediation absolutely has to be independent from the education authority. Without that, parents' trust will be quickly lost. Parents go along to mediation thinking that the mediator is on the side of the education authority. It is only when they get there and find that the mediator is apparently a disinterested party that they start to relax and realise that they can say things.

Mediation will not always resolve disputes, but even if there is no resolution, mediation is well worth it if it improves the working relationship between the parent and the education authority. If that relationship is improved, it is a successful mediation. I am an independent mediator in special educational needs with Enquire. I am a firm believer in mediation as a means of dispute resolution, and I cannot extol its virtues enough. It is well worth doing, and it is much cheaper.

Rhona Brankin: So, you welcome it, but the issue is the extent to which it is independent. The Executive says that mediators cannot be involved in any way in providing education services or in decisions that relate to education provision. That is a step towards ensuring independence, and I assume that you welcome that. Are you saying that, despite that provision being built in, it is not independent enough?

Eddie Follan: We think that the Executive should go one step further and that mediation should be independent of the authority. To return to the issue of culture, if a parent asks a mediator who they work for, the answer is, "Well, I work for the local authority". That can undermine the relationship, particularly for people who have fought hard to get to where they are.

Rhona Brankin: What are your views on the proposed independent additional support needs tribunals and their jurisdiction?

Eddie Follan: We welcome the tribunals for parents and, I hope, children to go to. We have two concerns about the tribunals, which are related to legal aid and jurisdiction. I will talk about jurisdiction first.

We do not see how co-ordinated support can be achieved if a tribunal has no jurisdiction over the actions of health authorities and local authorities. I read some of the evidence that the committee heard previously and it seems that a health authority does not even have to send a representative to the tribunal, although I understand that it may do so. I work with health professionals who would like there to be a duty on health authorities to provide support.

We hope that the tribunals' jurisdiction can be widened. That would be a good example of joined-up government, with health providers working with local authorities and education authorities. If a person's case reaches the stage of going to a tribunal, but the health service cannot, for some reason, provide support as the tribunal directs, the person involved will lose faith in the tribunal process.

Rhona Brankin: I understand that where a tribunal has directed an education authority to amend the content of a co-ordinated support plan, other agencies will have a duty to assist the education authority in implementing the plan.

Eddie Follan: I will look at the bill again, but I think that local authorities must have regard to other agencies but have no legal duty to involve them. I will come back to you on that if I am wrong.

Rhona Brankin: That is an important point. We need to be absolutely clear about the situation.

Eddie Follan: Okay. We will check that out.

Legal aid will be available pre and post-tribunal, but there will be no legal aid for representation at a tribunal, which could hit hard the pockets of the people on the lowest incomes. I doubt that such people could afford any legal representation. We must be careful to avoid the situation that has arisen in some tribunals in England, where people have forked out between £2,000 and £6,000 for legal representation. People whose cases go to a tribunal will be fairly desperate for a decision in their favour and they will use their resources to try to achieve that.

If there is to be no legal aid for representation at tribunals, advocacy will have a key role to play. We want there to be a level playing field at tribunals, but that will not be the case if a local authority is represented by a solicitor and a parent has only a supporter with no particular legal knowledge. Parents will need support. I know that there are problems and complexities in relation to legal aid and tribunal legislation, but advocacy will have an important role at tribunals.

The Convener: Is your preference to legalise the tribunal system and have a panoply of lawyers on both sides, or to avoid that situation so that the educational issues can be emphasised?

Eddie Follan: I understand the Scottish Executive's point about wanting tribunals to be family friendly and as open and relaxed as possible. However, as I said, people will have been through a fairly lengthy process before their cases reach a tribunal. The presence of an advocate, who would work on behalf of the person—or the parent—who lodged the appeal, will ease the change in the culture, but that will take time and I remain to be convinced that the system can be as family friendly as people would like it to be.

Katy Macfarlane: I agree with that. The tribunal system will certainly not be family friendly. Yesterday, a solicitor who works for a local authority told me that he is the guy who turns up at appeals against, for example, exclusions, so a solicitor is present at such appeals. I am keen that disputes that get as far as a tribunal should not, at that stage, be at a level at which solicitors are required to represent clients. There is room for that to happen when a dispute reaches the Court of Session, where an advocate will represent the client.

The tribunal level certainly has to be a friendly—if it can be called that—forum for discussing the dispute. However, we will have an imbalance even at the outset if the person who represents the education authority is a hardened solicitor who has appeared at many hearings and is up against a parent or—if we can get them along—a child who has never been in front of anything like a tribunal before. Parents are already liable to back down. Indeed, through my work, I know that parents back down before they go before an education appeal committee over an exclusion because they just cannot accommodate it. Although they might have received advice and assistance up to that point, no one accompanies them or represents their views at the appeal stage. The same will apply to the tribunal: the parents will be completely outnumbered and totally terrified about what will happen.

11:00

Rhona Brankin: I understand that legal aid will be available before and after a tribunal hearing for those who qualify. However, the issue is whether it should be available during the tribunal. Presumably, we have to try to keep things family friendly and create an environment in which people are not directly opposed. As you say, we must keep things balanced in that respect.

Katy Macfarlane: That is right. After all, such an approach softens the blow a bit. Legal aid is available before and after an appeal, but for parents the terror sets in during the appeal itself when they are faced with the president and two panel members of a tribunal asking questions and questioning experts. The parent then has to cross-examine those experts. Such a system is not going to work fairly and something needs to be put in place to alleviate the situation.

Rhona Brankin: Since the draft bill was published, a new dispute resolution service has been added to the mediation service. Do you welcome such a move?

Eddie Follan: We have yet to see the details of the dispute resolution service. Certainly, anything that will help to change the current culture will be good.

That said, I would be slightly concerned if the dispute resolution service was seen as the only place where, as Kenny Macintosh pointed out earlier, all the people who did not have a co-ordinated support plan but had additional support needs would go. As far as I understand it, there is no legal redress through the service.

Moreover, we need to address the question of independence as far as the service is concerned. Committee members are probably sick of me going on about independence, but we are not sure who will provide the service—whether, for example, it will be the education authority—or how it will work. We need to see some plans about the service. As a result, although we give a cautious welcome to the proposals, we need to explore them further.

Katy Macfarlane: We are concerned about the legal standing of these services. For example, there is no legal basis to mediation. It is a voluntary forum and no one has to comply with the end result. The same applies to the dispute resolution service. No one will be legally bound to comply with any resolution, which poses a few problems for parents.

The Convener: I think that the proposal will raise a few issues for us to examine.

Elaine Murray has just pointed out that under section 24(2) the term “child” has the meaning given in the 1980 act. I think that we will probably want to clarify with the Executive whether that will have any implications for foster parents.

Katy Macfarlane: I see that the word “parent” is also included in section 24(2), which means that it will have the wider definition. I had not appreciated that.

Ms Byrne: I want to follow on from questions about the tribunal system to ask about the number of disputes that might arise. It has been estimated that about 50 per cent of those who currently have a record of needs will not be transferred into the CSP system. What are your views on the transition period after the record-of-needs system stops altogether and the amount of dispute that that could lead to? Do you have views on an interim period or do you feel that existing records of needs should transfer? What view should we take of that point? When the bill is enacted, there could be many disputes. Do you see any possible resolution?

Eddie Follan: That is a big issue. An estimated 17,000 children overall will be affected, with 7,000 of those not having a CSP. I can only imagine the strength of feeling that there might be within that group. It remains to be seen what impact that will have on a fairly new tribunal system. We thought that through and several things could be done that the committee might want to consider.

First, I was interested in the parallel system that has been aired as a continuation of the record-of-needs system. I can see the complexities, but that is one option. Another option is that everyone who has a record of needs should qualify for a CSP. However, it is up to the committee and the Executive to consider that idea and the complexities within it. I do not know whether this would be a good idea, but lowering the threshold for the CSP and reducing the numbers of people who do not get one would be a good start.

I go back to my point about support that is provided outwith the education authority. If the CSP criteria are lowered, many people’s concerns will be addressed, in part at least. If that can be done, it might mean that more people will get a CSP and that is the key.

I do not know how well parallel systems would work. Large amounts of the 1980 act will be repealed by the bill, and I do not know how that will work, either. However, if we lowered the CSP threshold and took into account those children with significant complex and multiple needs that last for more than a year, that would cover some of our most vulnerable children.

We should focus on co-ordination and the need for co-ordination, not on where it comes from.

Katy Macfarlane: I agree entirely. If a child has already been assessed as having complex, profound or specific needs, we have to consider those needs rather than consider where the services come from. The service should be needs based rather than resource led. As a result, children who currently have a record of needs would have a sufficient level of needs to have that record instantly translated into a CSP.

We get many calls about the lack of co-ordination of education services. Will that situation change overnight? I doubt it. The co-ordination problems in education authorities will last right through into the new legislation, and that issue has not been addressed at all. The education authorities have to get their fingers out and get themselves organised because there will be a huge number of complaints and the tribunal will find itself inundated with claims from parents and children about those who had a record of needs but have not been given a CSP.

Lord James Douglas-Hamilton (Lothians) (Con): You call for a number of changes. Would you be prepared to submit amendments to the bill based on your recommendations? For example, the Scottish Child Law Centre seeks

> “more specific duties imposed on education authorities to ensure that there is consistency in and coordination of assessments”.

Secondly, both witnesses have recommended that there should be appeals for children over the age of 12 and under 16 who have capacity.

Thirdly, Children in Scotland’s submission says that there are concerns about the length of time for transitions. There is also a recommendation for a duty, the implication being that

> “there is no duty upon any agency receiving information about a young person due to leave school to take any action upon receiving the information.”

I do not expect an immediate answer but could you consider those matters? You are expert witnesses and if you could tell us how those recommendations could be implemented, that would enable us to weigh each issue on its merits and come to a view. That would be enormously helpful.

Eddie Follan: We will certainly do that.

Katy Macfarlane: Yes.

The Convener: Thank you. We have had a long and sometimes heated session on some important issues. We are grateful for your input and your participation. As Lord James has said, if you have other points to raise, whether they are general or by way of suggested amendments, we will be more than happy to hear from you.

We will take a short break.

11:10

Meeting suspended.

11:19

On resuming—

The Convener: We resume after our well-earned break to welcome our second panel of witnesses on the Education (Additional Support for Learning) (Scotland) Bill. We are pleased to welcome Lorraine Dilworth from Record of Needs Alert, Eileen Prior from the Equity Group, Dorothy McDonald from Achievement Bute and Donna Martin from the Parents Awareness Forum Fife. As before, we invite each witness to make a brief opening statement.

Lorraine Dilworth (Record of Needs Alert): I am a parent of three children with special educational needs, two of whom have records of needs. I have more knowledge than many parents have, because my children have been in independent specialist schools in England and in a unit that is attached to mainstream schools, so through personal experience, I have had a flavour of all the different types of provision for my three children.

I represent the views of parents who have joined RONA—Record of Needs Alert. Those parents are very concerned about the principles behind the bill. I also have another hat—I am the director of Independent Special Education Advice, which advises and provides representation and advocacy services to more than 1,200 parents throughout Scotland. We have grass-roots knowledge about what is happening, about parents' and children's rights, about what parents and children have been denied and about the bill's implications for those parents.

Eileen Prior (Equity Group): The Equity Group is a Scotland-wide membership organisation that comprises parents of children with additional needs, adults with disabilities and education professionals. Our remit is concerned with inclusive education. We work with and support families and professionals to achieve excellent inclusive education. As a group, we have been enthusiastic about the work of the Parliament since its inception, until now. It is fair to say that the Equity Group believes that the bill is a disaster in the making for every child, every family and every local authority in the country, and, ultimately, for the Government.

The Convener: That was fairly clear.

Dorothy McDonald (Achievement Bute): I am a parent of two children, one of whom has disabilities. I represent Achievement Bute, which is a voluntary organisation that a group of parents on the Isle of Bute established five years ago to support families of children with disabilities on the island. We have contributed to several consultations.

We believe that the bill is fundamentally flawed. We agree with the principle that the record-of-needs system needs to be replaced, but the bill proposes its replacement with a more bureaucratic system that will be unworkable in practice.

Donna Martin (Parents Awareness Forum Fife): I have three children, one of whom has special educational needs. I am part of a small group that was established in Lochgelly by parents who all have children who are in mainstream education and who have experienced difficulties in the past few years with the level of support. Some of our children have records of needs and some have a Fife summary of intervention, but we are all concerned about what will happen when the bill comes into force.

The Convener: Thank you very much. Incidentally, I should have welcomed Jeremy Purvis MSP to the meeting. He is not a member of the committee but he has an interest in the subject.

The committee, which hears from all the big organisations, has also been interested to hear representations from parents, who have different perspectives. We are keen to hear what you have to say in answer to our questions. I want to be clear about your position on the bill. I have picked up reasonably clearly that several of you, at least, are against the general principles of the bill. I ask Lorraine Dilworth and Donna Martin to give their views on the general principle of the proposed move from the record of needs to the co-ordinated support plan and on the proposals on additional support for learning, as opposed to the detail of the bill. Do you like and agree with the thrust of those proposals?

Donna Martin: I agree that we need change, but I am very concerned about what will happen and about which children will get a co-ordinated support plan, which children will get a personal learning plan and where our children will fit into the system. When I went to a consultation meeting about the bill, I was the only parent among a lot of professionals and I sat and listened to them. They were undecided about what children were going to get and were arguing that there was not enough direction. I do not believe that that direction will come from the Scottish Executive, and I feel that children will suffer if there is not enough direction from the Executive.

The Convener: So you are really looking for clarity about how the bill will work. Are you also concerned about standardisation across Scotland?

Donna Martin: Yes. It is confusing for parents, who do not know what will be on offer or what their children will actually receive. I know that a lot of my fellow witnesses are well up on the subject, but parents who are just coming into the education system will find it very confusing indeed.

Lorraine Dilworth: RONA has always maintained that the record-of-needs system was not the best system, but it was the only system that parents could use. I point out that the system was not set up just to get resources but to keep children under review and to monitor them. That important point seems to have been lost.

As I see it, the bill is no different from the Education (Scotland) Act 1980 in respect of special educational needs children. All that it does, as we have said clearly in our submission, is change the terminology from special educational needs to additional support needs. People talk about bringing more children into the system. Under the 1980 act and the Scottish Executive's circular 4/96—I do not know how much the committee knows about that circular, but it interpreted the act to help people through the legislation—gifted and able children could be included in the system. The circular says that able and gifted children could get a record of needs. I know that children with social and emotional difficulties are recorded in some local authority areas, so I cannot see the difference between the 1980 act and the bill.

Roughly 30,000 children are classified as having special educational needs. If the 1980 act had been policed and enforced as it should have been, we would have had a workable system. My fear is that, in 20 years' time, we will be back in the same situation with the legislation that is before us today.

The bill gives more powers to local authorities and reduces the statutory rights of parents and children. At the moment, 17,000 children have a record of needs. Their parents have rights and so do the children. Children who have special educational needs but who do not have a record of needs have limited rights. Under the bill, there will be more children with limited rights, because they will not have a co-ordinated support plan. Why are we doing that? Why not give all the children a CSP?

The Convener: Is it your view that a lot would turn on documentation and the way in which it is used, on the standards that are used in schools and on the code of practice that is to be brought in? Do what you perceive as the bill's deficiencies turn to some extent on how it will work in practice, just as you say the 1980 act has not worked as it should have done in practice?

Lorraine Dilworth: The 1980 act and circular 4/96 did not alleviate the situation or meet parents' aspirations about how their children's needs were going to be met. As I said at the outset, that act was not policed or enforced. The record of needs was meant to be a working document, but it was never used. Most schools have them locked away in a filing cabinet.

The Convener: Is the bill, with the deficiencies that you perceive it to have, capable of being remedied in practice by the code of practice? Can the bill and the various other documentation work if they are used differently from how the record of needs was used?

Lorraine Dilworth: No. To me, the code of practice will be another piece of documentation that will state—as circular 4/96 states—that it is not legally binding, so it will be necessary to go to judicial review. The matter will be about interpretation of the code of practice. Wording is very important and that is where problems lie in the 1980 act—authorities interpret it in one way and parents interpret it in another. Unless the code of practice is written in very specific terms and has some clout behind it, it will not be any good.

11:30

Dorothy McDonald: I attended Scottish Executive seminars on the bill—the seminars that were held during the consultation period and the recent seminar that explained the bill and the changes that have been made to the final draft. Every time I asked a question like, "Who do you envisage the co-ordinator of a co-ordinated support plan to be? Will it be a teacher or an educational psychologist? Could it be someone from an outside agency?" The people who drafted the bill did not have answers, but kept saying that that would be in the code of practice.

It is worrying that legislation that is being written will be dependent on a code of practice that has not been written, and it is worrying that even the people who drafted the bill do not seem to know what the situation will be like. Every teacher to whom I have spoken and people to whom I have spoken in education authorities and health authorities all say that they do not know who will co-ordinate the co-ordinated support plan: nobody knows the answer. To produce a bill that is so dependent on an as yet unwritten, untried and untested code of practice seems to be completely unwise.

The Convener: There are various arguments about that. In fairness to the Executive, its intention is to consult groups—yours and others—on the code of practice as the bill proceeds, but that suggestion has not been met with enthusiasm or the feeling that it is the right answer.

Lorraine Dilworth: The parents were not consulted on the draft bill. We were left out in the cold and none of the questions that we have asked the bill team have ever been answered, although our children are the people whom the bill will directly affect. The committee must realise how frustrated many parents are and how dubious we are that this will be done in the best interests of our children.

Eileen Prior: Where the Equity Group is coming from is the belief that we in Scotland should be moving to a rights-based system. I have three children, two of whom need additional support to learn. According to what I read in the bill, one of the children is legally entitled to the support that he needs but the other child has no rights. Is that right in today's Scotland? I do not believe that it is right that one child has legal rights while another does not. In Scotland we need a system where all of our children have rights. Education is the only public service that does not have a robust system for complaints and for resolving disputes. Here we are, entering into yet another round of legislation and another phase of consultation and we have not addressed the fundamental issue.

The Convener: The Equity Group's submission argues that we should have ripped up all the stuff about different sorts of plans and that there should be one central plan. Being realistic, is not there an issue about the bureaucratic resources that would be required to bring that about against the background of the personal learning plans and so on that are proposed? The aspiration that you express may well be one for the medium-term future but, in terms of what can be done effectively now, your proposal would divert resources from dealing with the problems that you rightly bring to the committee's attention.

Eileen Prior: I disagree absolutely with you. What is being created is a bureaucratic nightmare in which a two-tier or perhaps three-tier system will be introduced. Personal learning plans and co-ordinated support plans are being introduced. As far as the Equity Group is concerned, the personal learning plan has the potential to be a document that is held by every child in Scotland. Every child should have one and it could have three pages or 30 pages. The personal learning plan will get as much input as it needs; it is robust enough and it will be legally binding, so every child would have the same set of legal rights and the same document.

There is no reason why we should have another segmented system, where the weird children over here with additional needs have another system. We do not need that—we need a system in which all of our children get the support that they need.

Dorothy McDonald: Our submission says that Achievement Bute thinks that a two-tier system would be created for children who have additional support needs. In fact, a three-tier system would be created, because there would be children who have additional support needs but who do not need co-ordinated support plans, children who have co-ordinated support plans and children who have no plan. In practice, good teachers already plan for every child in their schools whom they teach. Informal mechanisms already exist and every child in Scotland receives a report card.

I have looked into how Learning and Teaching Scotland is piloting personal learning plans; I understand that PLPs are about formative and summative assessment and that they look backwards and forwards. They consider what the child has done and what the child will be able to do.

I have two children. Young parents coming into the system have been mentioned. Such parents with young children will send those children to school and expect that they will be taught, that their report cards will be received and so on. Why should the parents of children who have significant support needs have different expectations? Surely such parents should be able to know that their children will be supported regardless of their level of needs, and that a single system will apply to everybody, although some children's PLPs might be small whereas others' will be big.

The Convener: Okay. Your general views on the bill are coming through reasonably clearly.

Rhona Brankin: I want to ask about tribunals, mediation and dispute resolution. The bill proposes a new duty and a new power for parents to ask for independent mediation. What are your views on the bill's mediation proposals?

Dorothy McDonald: Mediation presupposes conflict. People do not need mediators when they get married—they need mediators when they get divorced. Why should we start on the basis that a system is being set up that presupposes that there will be conflict? Mediation can be useful where there is conflict, but at the beginning of the process, most young parents who are not sure whether their child has difficulties at school, or whether something is wrong, do not need mediation. They need information, advice and advocacy early on. If those are provided, they can discuss and resolve situations with class teachers, schools or local authorities. To start on the basis that mediation is needed is to ask the wrong question.

Lorraine Dilworth: To a certain extent, I agree with Dorothy McDonald. I deal with quite a few parents and most say that professionals do not see them as equal partners—the white-coat syndrome. I have read *Official Reports* of the evidence that has been given and a lot of blame has been put on parents. My job involves enabling parents to become equal partners and giving them advice, support and information through which they can make informed decisions about their child's education in partnership with professionals. However, professionals tend to suffer from we-know-best syndrome.

On conflicts and mediation, I have done mediation work to support parents throughout Scotland. There are a couple of flaws in the proposals. The bill proposes that education authorities will have a mediator from another department. Parents will not put up with that, because the mediator will not be seen to be independent. The mediator must be independent of the local authority.

Mediation has no teeth and there is no legally binding agreement. We have seen parents going through mediation, in which the authority and the parents have agreed to plans for extra support and provision of extra communication technology or other equipment, but six months later, the parents have come back to us to say that the authority has withdrawn the support. That then leads the parents back into a conflict situation, but they might have withdrawn their appeal because they were going through the mediation process. That means that they have to bide their time again until they can get back to an appeal stage. At that stage, you can be sure that they will not go through mediation a second time. There is concern that, although mediation might sort things out, it is not legally binding. It has to be independent of the local authority.

Rhona Brankin: On the additional support needs tribunal, the jurisdiction of tribunals is limited to education authorities. What are your views on independent tribunals?

Lorraine Dilworth: I find it strange that the tribunals are called additional support needs tribunals because they are not available to every child who has additional support needs. It would be better if they were called co-ordinated support plan tribunals.

My concern about the tribunals is that they will have jurisdiction only over education. Our attempt to ensure that all the services pull together in a co-ordinated way is not helped by the fact that health services, social work services and so on have in effect been given opt-out clauses; if they do not have the necessary staff, they do not have to provide services and are not accountable to anyone under the tribunal system. This must be the first time ever that I have felt sorry for local authorities, but the burden to ensure that the child's needs are met will rest solely on them.

I understand that, earlier, someone raised speech therapy and occupational therapy. I would like to clarify that point. Occupational therapy is a health provision, but speech therapy is, if a child has a record of needs, an education authority provision; a lot of money is given to education authorities to purchase that. It might be that, under the CSP, if the authority is purchasing speech therapy provision, the parents might have an input but the fact remains that, with regard to occupational therapy and physiotherapy, the social work department answers to no one. How can we enforce a CSP, individualised educational programme or PLP if half of the people who are involved with the child are not accountable to anyone? That seems to be ridiculous.

I want to repeat what the previous witnesses said about the tribunals and to stress that parents will need legal representation: it will be wrong if they do not have it. We have been to a great many appeals and have seen things that would make your hair curl. Usually, solicitors or well-versed local authority representatives are present on behalf of the council, and parents who are emotionally involved in the situation are expected to go up and question witnesses. Many parents cannot do that, which is why they need legal representation. The tribunal will be the last chance for their child.

Dorothy McDonald: I appreciate that there was a wish to make tribunals family friendly and not to make people think that they are dealing with a huge issue. However, by the time a situation has reached tribunal, it will be a huge issue. Presumably, the mediation and dispute resolution work will have taken place before the case gets to the tribunal.

The bill will create a quasi-legal situation. When I spoke to people on the bill team, they told me that legal representation has to be provided before and after the tribunal, because that is what happens in every other kind of tribunal under tribunal legislation. However, legal aid will not be provided for representation during the course of the tribunal. That means that, unless they can afford it, parents will be denied legal representation in the quasi-legal setting that will be created. I agree with Lorraine Dilworth that most local authorities would not dream of going into such a situation without some sort of legal representation.

Also, no cognisance has been taken of the fact that there is an imbalance of power. Local authorities have huge power behind them but parents, generally speaking, do not. If the right to legal representation is taken away at that stage, parents will find the situation very difficult. Under the bill, one can appeal to the Court of Session on a point of law—that reinforces the point that it is a legal situation. Let us not kid ourselves; it is a legal situation and parents should have the right to legal representation.

The only other thing that I would like to say about the tribunal is that in Argyll and Bute we do not have an education authority. We have a community services department, which is education, housing and social work all joined together. I think that several local authorities, including Dumfries and Galloway, do not have separate education authorities, so how do they fit in with the bill?

11:45

Rhona Brankin: Finally, what are your views on the new powers to make provision for resolution of disputes when a co-ordinated support plan is not an issue? Do you welcome them?

Lorraine Dilworth: I have not seen the paperwork, but I would say that, at the end of the day, it needs to be legally binding. We are to have mediation and tribunals, we have the existing appeals system—which is absolutely appalling—we will have exclusion appeals, we will have the Disability Rights Commission appeal system, and we are now bringing in dispute and resolution systems. How will parents, without any support, work their way through all those different systems and know to which appeal they should go?

There is a flaw in the memorandum, which says that if one makes a placing request and appeals against the decision not to open a co-ordinated support plan, one goes to a tribunal. If the tribunal agrees that a co-ordinated support plan should not be opened, it will refer the placing request to the appeal committee of the local authority. The problem with that is that one has only 28 days in which to lodge an appeal with the local authority appeal committee. How will that work, between the old legislation and the new legislation? There is incompatibility there.

Also, if a child who has a co-ordinated support plan is excluded from school, would that child go to the exclusion appeal committee, to the DRC because the school had not put a strategy in place to enable the child to access the system, or to the tribunal service? Who overrules whom?

Eileen Prior: Call me Mystic Meg if you wish, but I foresee a situation in which the system will become totally paralysed by parents who are articulate and determined to get the support that their children need. They will go through every single mechanism and, by God, there are enough of those. Our teachers and local authorities will not spend their time teaching children, but managing the paperwork that goes with that. In three, four or five years' time, there will be a report from Audit Scotland that says, "My God, this is costing us a fortune"—and it will.

Dorothy McDonald: I will make a point about the inequalities that will be created, particularly for parents who do not have the wherewithal, do not know what their rights are, or are unable to go so far on behalf of their children. As Eileen Prior said, parents who are able, willing and articulate will go to appeal and will go through the system. However, there are thousands and thousands of children whose parents are unable to do that and who will not get near the system. Those children's needs will not be met. The money that will be used to promulgate the system will all be focused on the dispute resolution side, whereas what we actually need is for the money to go into support at the early stages in schools.

I was at a meeting at which one of Her Majesty's inspectors of education said, "We do not have many appeals in Glasgow. We have lots more appeals in Edinburgh because there are many more middle-class articulate parents in Edinburgh." I do not know what that tells us other than that many parents will not get anywhere near the system. That will not be because their children's needs will be wonderfully met, but because they will think that they could not possibly go through all those arrangements to ensure that their children's needs are met.

Rhona Brankin: I want to follow up what Eileen Prior said about the system's being snowed under with bureaucracy. At what point in the system will that happen?

Eileen Prior: The first point will be when parents and families whose children have a record of needs find that their children are no longer entitled to that or to a co-ordinated support plan. Those families will simply view the record of needs as the thing that has been their ticket to resources and support for their child. They will then launch into working their way through the system. That may involve an awful lot of effort, hard work and pain for those families, but having gone through it all once, they will go through it again. That will simply paralyse the system. The costing of the number of appeals has underestimated by a long way what will happen in reality.

If parents who are happy with the current level of support think that that support will potentially be withdrawn—to be frank, there is always that potential—they will say that they need a legally binding document. That brings us round full circle. We simply should not be in the situation where only children who have a co-ordinated support plan have legal rights: all children should have the legal right to the support that they need.

Rhona Brankin: Convener, is someone going to take up that point? I think that we need to bottom that one out. My understanding is that children have existing legal rights to an adequate education.

The Convener: Does Wendy Alexander want to ask about that?

Ms Wendy Alexander (Paisley North) (Lab): I want just to play back a little of what we have heard. I accept that there is a risk that the system could become snowed under because of the attempt to define needs more clearly. Obviously, the committee is trying to ensure that we redress the fundamental imbalance of power that people have mentioned without the system's becoming snowed under.

First, so far I have heard that people want an independent system of mediation; witnesses have said that there must be some system that falls short of legal redress, but which allows for quick action and is independent. Secondly, I have heard that people want legal representation at the additional support needs tribunal. Thirdly, people want an obligation to be placed on all services that might have a role. The obligation should not apply only to the local education authority but to health services, social work services and whatever. Fourthly, people believe that the definitions are not broad enough.

The committee is perhaps struggling with the possibility that if we were to act on all four of those elements, we would contribute to the risk that the system would become snowed under. If we were to provide that mediation should be completely independent, that there should be legal representation, that all local authority services should be obligated to give account of themselves—which is proper—and that a wider spectrum of children should be involved, our committee would struggle to ensure that all the resources did not go into the dispute resolution process rather than into enhancing the quality of educational provision.

Although we want to redress the balance of power, the risk from providing an overly legal route is not simply that only a certain percentage of parents might be equipped to take full advantage of it but that legal systems and independent national systems take time. We must try to avoid building in delay, because early intervention is one thing that might overcome some of the difficulties that we are talking about.

I do not know whether we can resolve the problem here, but the evidence that has been provided by the witnesses' organisations and others should perhaps suggest ways in which, for example, mediation could be independent without its being slow just because it was being run on a national basis. We also need to hear how, for example, full legal representation could be provided without that slowing things up or, for example, how all services could be obliged to account for themselves without that slowing things up further. That is an issue that we are trying to deal with in the bill.

How do we avoid resource capture by a tiny number of people and how do we get speed and early intervention into the process while maintaining the balance of rights that people are searching for?

Eileen Prior: If resources are put in at square one when a child enters the system—I hate the phrase "enters the system" but that is, in effect, what happens to the child—and if there is a system of advocacy so that families are informed, and local authorities know that families have been informed and know that families and children have rights, the situation will be quickly resolved and people will receive the support that they need. We end up having disputes because of the imbalance of power. Often, disputes rumble on and on because families try mediation and other systems that they think might get them what they want but which do not. We know of families who have tried for four, five or six years to get the support that their children need—it can take that long. However, if things are done properly right from the start, people do not even reach the stage of tribunals or disputes. Things are sorted out on a level playing field right from the start.

The Convener: That is always assuming that, in the first place, adequate resources exist at the same level throughout all local authorities. That is the $100 question.

Eileen Prior: In our evidence, we say that the bill is predicated on a definition in which children's additional support needs are based on what the local authority can provide. We know from experience that we cannot base a view on whether a child needs a co-ordinated support plan on what the local authority provides. In some local authorities, a child may not need a co-ordinated support plan but, in others, where services and support are at a lower level, he or she will.

Supporting a child in school is not rocket science—many schools do it very well. However, we are not very good at sharing knowledge and experience, or at being welcoming to families and children.

The Convener: Does anyone want to add to Wendy Alexander's original points on widening rights, bureaucracy and dispute procedures?

Lorraine Dilworth: If a bill places a duty on all services, gives independence to mediation services and makes their decisions legally binding and allows for tribunals and legal representation, you will find that local authorities will not try parents as they do at the moment. At the moment, local authorities are quite happy to refuse a placing request for a child because they know that the appeals system, when matters reach that stage, will favour them. The appeals system is supposed to be independent, but the Scottish

Committee of the Council on Tribunals wrote in a report in 2000 that the system was not independent and that people were badly trained.

When we go to appeals, we will say to a parent, "We are 99.5 per cent sure that you will lose. Your only recourse is to the sheriff court—if you can get legal aid. If you can't get legal aid, you'll need to find £15,000." We know of parents who are remortgaging their houses so that they can take the local authority to court because they were not granted their human right to a fair trial at the local authority appeals committees.

The Scottish Executive statistics do not include the number of placing requests that were made for grant-aided or independent schools, which is appalling. We do not know how many people are going through the appeals system and how many people are being refused support for special needs.

12:00

Dorothy McDonald: Resources have to be made available to support children. That was one of the points that we made in our evidence. We welcome the idea of emphasising support, but the children have to receive it.

My daughter was diagnosed with cerebral palsy when she was 13 months old. All the agencies—mainly the health agencies—got involved in the pre-school period. In Argyll and Bute we have the pre-school assessment team system—I do not know whether that system is in place throughout Scotland—in which many agencies get together to sort out what is needed. Before my daughter started school, we had in place a physiotherapist to go into the school and a speech and language therapist to help out. We went up to the school and some alterations had to be carried out. All that was put in place. Her record of needs was not opened until much later, so those measures were not dependent on the record of needs; they were dependent on the fact that we had a reasonable system in place in Argyll and Bute for children with obvious additional support needs.

On Bute, completely the opposite situation applies for children who have a hidden disability. I know of a parent who knew that something was not quite right about the way in which her child was being educated around primary 1 and primary 2, but it took her four years to get any support. Yes, she now has a record of needs for her son and, yes, there is support, but had the school at the early stages provided the support, she probably would not have gone down the road of looking for a record of needs.

Parents do not go to court unless they have a problem. That is my point—if resources are made available to provide support at the earliest stage, most parents will be happy. The problem with the bill is that it will not provide for that. All the resources will go into the framework, but parents will desperately want to get support.

The Convener: We will need to struggle with that issue. Lord James Douglas-Hamilton will move on to a slightly different area.

Lord James Douglas-Hamilton: You represent a great many parents throughout Scotland. Have you and the grass roots been properly consulted on and involved in the drafting of the bill?

Dorothy McDonald: I used to be a member of the SEN advisory forum, which came to an end in March. At the time, I wrote to the Executive saying that it was important that, whatever was put in place, parents should be involved. I understand that a new advisory committee has been set up. I have never been asked to go on it and I have never been told how it was made up—I do not know how the people who are on it were chosen. I think that there is one parent on it, although I am not sure, because I do not know how the Executive went about setting the committee up.

During the consultation period, seminars were held throughout Scotland, but the number of seminars was limited and people had to apply quickly. I know parents who applied to go to the seminars but found that there were not enough places. When I went—I think that this was Donna Martin's experience, too—there were lots of professionals there who had not even read the draft consultation document, yet many parents did not have the opportunity to attend.

Lord James Douglas-Hamilton: So parents have had relatively little input into the drafting of the bill.

Lorraine Dilworth: I have to agree with that. RONA took up the issue with Cathy Jamieson, the former Minister for Education and Young People, and members of the Education, Culture and Sport Committee. We were told that the measures went out to schools. RONA held a number of meetings throughout Scotland—in Perth, Falkirk and all over—to inform parents about the proposals. We wrote to all the parents whom I see and to parents who contacted RONA and they were appalled that such legislation was going through and that they had not been consulted.

We were still having meetings after the seminars finished. One MSP—I cannot remember who it was—asked how many parents got into the seminars. I think that the answer was less than 1 per cent in some areas. We certainly tried to have at least one parent represented, but parents were furious because they could not get in—they were told that there were no places. At the seminar that I attended, a parent turned up on spec to try to get in and was about to be refused entry when I butted in and said, “Wait a minute. You don’t have a lot of parents represented.” In that case, the parent got in.

The parents and professionals who attended the seminars asked the facilitators a lot of questions. If somebody is consulting somebody on a draft bill, surely they should know the answers to the questions that they are asked, but none of our questions got answered, so I do not think that there was any consultation.

Eileen Prior: In my book, consultation is not about going out with a draft bill to ask people what they think about it; it is about going out to ask parents and professionals involved in the support of children with additional needs, “What are the problems that we need to solve?” To be frank, if the record of needs is the problem, the bill is certainly not the answer. We were presented with a draft bill, so the Executive was confining what we were talking about. That is not the way in which to consult.

Lord James Douglas-Hamilton: Is there a particular problem with the children of people who serve in the armed services? The children concerned will move around a lot with their families and may have to go abroad. Is that a problem that the bill does not cover?

Lorraine Dilworth: I deal with a number of armed services families and I raise the issue at every meeting to which I go, because that group of children is always missed out. I was on the review of educational psychology at the Scottish Executive and I raised the issue there. The feedback that we get from such families is that, because they move about from country to country and might be in an area for only two years, the local authority services are slow to act. I can cite some cases of a local authority saying, “You’ll be moving on in two years and we do not want to put that burden on another local authority.” However, what about the child’s potential and their needs at that time? There is a group of children who will not come under the bill but whom I would want to come under it, because there are problems, especially if the children have special educational needs.

Lord James Douglas-Hamilton: What are your views on the rights of foster parents under the bill?

Lorraine Dilworth: I had a meeting with the bill team, because I felt that foster parents could not specifically access a placing request or the right to a co-ordinated support plan. A minute was taken of that meeting. We have that minute and, although the bill team agreed with us on the issues that we raised, they said that the matter was not for the bill. We found that strange, as looked-after children come under the bill and foster parents will not have the same rights as parents to make placing requests or to ask for a co-ordinated support plan.

Lord James Douglas-Hamilton: You have sent in important representations. Could you consider your recommendations on the bill and send us possible amendments? I am thinking of your recommendations on home-educated children, children under three, mediation, legal aid and transitional provisions. It would be invaluable to us if you could, in due course, send in draft amendments so that we could weigh each on its merits.

Lorraine Dilworth: That would be no problem at all.

Rhona Brankin: The children of people serving in the armed forces have been mentioned. My understanding is that the bill covers youngsters who are deemed to face a barrier to learning, which might be that they have had to change school time and again. Are you suggesting that the problem is that education authorities are reluctant to open records of needs under the existing system because the youngsters are in their areas for only a short while?

Lorraine Dilworth: The problem is with opening records of needs and making placing requests. We need a fast-track system for such children, because their families may be in an area for only a short period. Some local authorities play on that fact, because they know that the children of people in the armed forces will be in their areas for only two years.

In everything that I have read that accompanies the bill, mention is made of Gypsy Travellers, asylum seekers and ethnic minorities, but there is no mention of the armed forces—they keep getting missed out. The children of people in the armed forces are ignored. Unless something is written in—for example, in the code of practice—those children will continue to be missed out.

Rhona Brankin: My understanding is that they would be included, but we need clarification on that.

The Convener: We will follow that up. I am conscious of time—we need to move proceedings on.

Mr Macintosh: I want to repeat the line of questioning on rights that I pursued with the previous panel. We have already talked about the fact that there is a perception that parents whose children have a record of needs at the moment and who might not have a co-ordinated support plan under the new system will be losing rights. What rights that they currently enjoy do you think that they will be losing?

Lorraine Dilworth: My daughter will lose her record of needs. Under the current system, I can appeal against her diagnosis, the statement of her special educational needs and the services that are to be provided. Circular 4/96 makes it clear that part IV of the record of needs is about not only the child's statement of needs, but the services that are to be provided. With the record of needs, I can also appeal about the placement.

My daughter will not get a co-ordinated support plan. I will have no right to make a challenge if someone tries to change her diagnosis, nor will I be able to challenge what is put in place for her. I will be able to make a placing request and to take that through the local authority's appeals system, but that, too, will be problematic. Under the current system, a parent who wants to appeal against a placing request bases that appeal on the record of needs and the assessments that were carried out to open that record of needs. If they do not agree with those assessments, they can bring in an independent body to challenge them.

If a parent does not have a co-ordinated support plan, they will not have those assessments; they will not have a document that they can use to say to the appeal committee at the tribunal, "I am sorry, but the authority said that it would provide X, Y and Z, but it no longer provides them." It will be problematic for parents to present their case. How will a parent be able to put forward the case that their child has been refused entry into a mainstream school because of age, aptitude or ability if they do not have any documentation that says what the child's aptitude and ability are? Under the bill, many rights will be lost.

Mr Macintosh: Although the bill will extend the ability to make a placing request to those who are outwith the co-ordinated supported plan and record of needs systems, those who currently rely on the record of needs will lose out on the bulk of documentation. However, parents will not have to have a co-ordinated support plan to ask for an assessment—they can do that anyway.

Lorraine Dilworth: Yes, parents will be able to ask for an assessment, but the authority will be able to tell them that they are not getting it and they will have no right of appeal. Parents will be able to ask to have their child identified as having additional support needs, but the authority will be able to refuse that request and there will be no right of appeal.

I am talking about the wording of the bill. It says "assessment or examination", which can include "psychological or medical assessment". Many authorities will interpret that as saying that a parent's child gets one or the other; many parents will interpret it as saying that they are entitled to both.

Mr Macintosh: The and/or point is important and we will pursue it. I think that local authorities will have a duty to meet any parent who makes such a request, but we will have to explore how quickly they have to do that and what would be reasonable.

Lorraine Dilworth: The bill mentions an "unreasonable" request. The question is how "unreasonable" is defined and in whose eyes a request is "unreasonable". If someone is given the right to ask, they must have the right to disagree if the authority says no.

Mr Macintosh: That is right. However, the purpose of the dispute resolution process is to resolve that matter.

Lorraine Dilworth: Will it do that?

Mr Macintosh: That is what we are asking.

Eileen Prior: Surely the point is that we should not be considering how the dispute resolution system works; surely we should be considering how we can avoid disputes. You are assuming that the parent has the wherewithal—the skill and the confidence—to say to the school that they do not think that their child is learning as well as he or she could be and to ask what needs to be done. Not all parents do that and not all parents have the wherewithal to do it.

That returns to the power issue. Parents are not in a position of power. Most parents who have typical children drop their kids off at 8.55 am and pick them up at 3.15 pm—the school barely sees those parents. To be frank, for most schools, that is just lovely, thank you very much. However, parents of children with additional needs know their children. We have spent the first five years of their lives educating them and finding out what works for them. We are an incredible resource for teachers and schools, but teachers and schools are only just learning how to access that resource and to open their doors to us.

12:15

The Convener: We explored that issue well with the first panel of witnesses. Do we need to pursue the matter?

Mr Macintosh: Yes, because this is the first time that anybody has said that specific rights exist. The previous panel said that no rights existed, but Lorraine Dilworth just named two or three rights. I am not sure about the right in relation to placing requests, but she made a strong argument that the ability to add weight to an argument with documentation that accompanies a record of needs will be lost.

Lorraine Dilworth also listed the right to appeal against diagnosis and the right to appeal against the decision on services that are to be provided, which are granted under the record of needs system but which parents will not enjoy if their children just have additional support needs. I am not entirely sure about the situation, so I would be grateful for an explanation. Once a record of needs is opened, are the services provided by the health authority?

Lorraine Dilworth: Services could also come from the education authority.

Mr Macintosh: What services are you talking about? I am looking for an example of a situation in which someone such as you has tried to exercise that right—successfully or otherwise—but would not be able to do so under the new system.

Lorraine Dilworth: My oldest son had a record of needs and I was one of the lucky parents who read up on the legislation and applied that to my son’s record of needs. Part IV of his record of needs specified daily speech and language therapy. My son was in a unit for children with communication difficulties that was attached to a mainstream school and he was the only child in the unit who received daily speech therapy, because that was provided for in the right section of his record of needs.

Many people consider the IEP to be a separate document from the record of needs, but what I managed to do with my son—and my daughter—was to have the broad developmental targets put into part IV of the records of needs on appeal. That meant that the multi-agency team and I could monitor my son’s development and see whether he achieved the targets. That will all be lost under the co-ordinated support plan system—if children do not have co-ordinated support plans, they will certainly lose that.

We must ensure that services meet a child’s needs. In England, a statement of special educational needs will say that a child will receive speech and language therapy for half an hour daily, for example, and will detail how that will be developed. We in Scotland do not have that, because many professionals say that children’s needs change and services change. That is true, but we can amend and update a co-ordinated support plan or an IEP to reflect that. Why should services be open to interpretation as appropriate? Appropriate speech therapy learning support might mean that such therapy happens once a year for some children, but daily for some children in a good area with a good school.

Eileen Prior: A personal learning plan has the potential to deal with that, because it is a working document. Children are involved in developing their personal learning plans. The professionals who are involved in supporting children can and should also be involved in that. Our argument is that we already have such measures, so why are we adding another layer?

Mr Macintosh: You have argued that point well. Before we move on to another subject, I will ask about definitions, about which I remain puzzled. I know that Eileen Prior—perhaps Dorothy McDonald, too—does not accept the principle of differentiating and of having three tiers. However, if we are to go down that route—although I am not saying that we must—how do we draw the definition?

Currently, provision is unfair across Scotland. The existing weaknesses that you have highlighted in your submission are that there is postcode differentiation and differentiation by services. Depending on where a child lives, they might get a record of needs or they might not. The new system tries to extend some rights to all children with additional support needs. How could we change the definition for a CSP in the bill to make it fair, recognising that some children require more services of a level that is outwith the daily resources of a school? That is the thinking behind the bill. How can we get a fair definition that encompasses that, if the current definition is not fair?

Dorothy McDonald: I do not think that it is possible to get a fair definition. Currently, under the Special Educational Needs and Disability Act 2001, children with disabilities as defined by the Disability Discrimination Act 1995 are entitled to expect to go to school and can expect the school not to discriminate against them. However, as Professor Sheila Riddell mentioned in her evidence, the 2001 act—which is reserved legislation—was introduced on the assumption that the auxiliary aids and services that are needed for a child with a particular disability would be provided under the SEN framework and the new bill. However, the bill does not say anything about that at all. In fact, it makes the current legislation—the 2001 act—less effective for such children.

There might well be a definition of disability for discrimination purposes, so that schools do not discriminate against children who fall within that definition. However, the bill is not about discrimination; it is about support, and all children need support at some point. I do not think that it is wise to ask, “How much support for which bit?” We are talking about a sliding scale and the support cannot necessarily be defined.

Mr Macintosh: You have made that argument forcefully. The committee is in a difficult position. We could adopt your view—we may do so—and reject the definition of a CSP because it is unworkable and would be discriminatory. Alternatively, we may decide that the bill is an advance on the current situation and that we want to make it workable and as fair and equitable as possible, to which end we may want to try to improve the existing definition. We must either try to make the bill work or throw it out—perhaps that is the way to do it. However, do you have any thoughts on how we might improve the definition rather than reject it entirely? That sort of thinking would be welcomed, although I am not discounting your suggestion that there should not be a definition at all. That point has been acknowledged.

The Convener: I am conscious of the need to move on to other areas. Perhaps that is an issue that the panel could think about and, in accordance with Lord James's suggestion, come back to us on. The question is complex and we might get an answer to it in that way. Would you be prepared to do that?

Dorothy McDonald: There is no such definition under any other legislation. The National Health Service Reform (Scotland) Bill, for example, is not suddenly going to define people who have complex needs or needs that are additional to the norm. What do you mean by the definition? It is not possible to define children with additional support needs.

The Convener: So you are saying that it is not possible for you to come back to us with a definition.

Dorothy McDonald: I do not think so.

The Convener: Is that the view of everyone on the panel?

Lorraine Dilworth: We are talking about the level of support that a child needs. The Standards in Scotland's Schools etc Act 2000 clearly states that every child has the right to reach their potential. It is that potential that we must tap into—whether it is a low potential, a high potential or whatever. Every child has the right to reach their potential: that is the starting point. What is the child's potential? What is the gap between their potential and where they are currently at? What support is required to get them to reach their potential? I do not think that we need to collate two three-tier systems to be able to do that. Nor do I think that the issue is solely about resources, as I have found that some of the resources are working in the way that they were working 20 years ago. We need to review that and apply the resources better before we start flinging new money anywhere.

The Convener: I am sorry, but we must move on to a different issue. We have gone round in circles a bit on that one.

Fiona Hyslop: I would like to stay on the issue of legal rights. Lorraine Dilworth mentioned that the parents of children with a record of needs have the right to appeal against a decision on the services to be provided, but it has been put to us that they do not have legal rights in relation to that support. Will you comment on that?

The final sentence in Achievement Bute's submission states:

> "Any new legislation must focus on the needs of the child and place a duty on service providers to ensure the child's support needs are met."

We have been told that the bill will achieve that, but you obviously do not think so. What are your comments on that?

Lorraine Dilworth: Circular 4/96, which is a Scottish Executive publication entitled "Children and Young Persons with Special Educational Needs: Assessment and Recording", states that

> "the identification of special educational needs … and the relevant aims and objectives of provision and the services to be provided"

are to be covered in part IV of the record of needs. Given that part IV can be appealed, that means that the decision on the services to be provided can be appealed. Many people work with the assumption that the authority puts that information in part V, which cannot be appealed. However, if, like me, a person can work the system, they know that the services that are to be provided are also put in part IV, which means that that decision can be appealed.

Eileen Prior: Many local authorities spend a lot of time ensuring that the record of needs is a worthless document. They put information into part V, knowing full well that parents cannot appeal that part, but part IV is often vague nonsense that does nothing to develop the support for the child. That is what I am talking about when I say that resources go into the administration, not the delivery.

Fiona Hyslop: A number of witnesses have mentioned that the IEP is a potential vehicle for a single system. I am concerned that we might weaken rights if everything were put into one system through the IEP. Would a single system work if there were similar rights and a system of tribunals for appeals? From your experience of IEPs, are you satisfied that they could be the correct vehicle to provide the necessary documentation, recording and reviewing in a single system? The experience of the implementation and working of IEPs seems to be variable across the country.

Lorraine Dilworth: I have a lot of knowledge of IEPs because many parents send me their child's IEP. Although the IEP was a good idea and was meant to involve a multi-agency approach, I find from talking to teachers that they are left to make up IEPs in their dinner hour and that many teachers have not had training. Some authorities have provided training and have good codes of practice for teachers on how to deal with IEPs, but the parents and children are not involved. Some of the IEPs that I have seen were really poor. We would need a standard with which IEPs would have to comply and they would need to be dealt with on a multi-agency basis, not only by teachers in their breaks. Teachers would have to be given time to work with other agencies on the aims and objectives for the child. The IEP could be used as the basis for a single system, but parents would want it to be legally binding.

Eileen Prior: The piece of paper that should be used is the personal learning plan, not the IEP. None of us knows what the co-ordinated support plan will look like, but the personal learning plan has been piloted throughout Scotland. At least one of our members has been involved in one of the pilots—she e-mailed me last night with her thoughts on it, which I will leave with the committee. One of her children has autism and the other has no additional support needs, but both of them have engaged in the process and have thoroughly enjoyed being part of it. The little girl who has autism has started writing in her plan, even though she has never written or engaged in that kind of activity before. Her mother is delighted, although she would like a few points to be changed.

The personal learning plan could be used as the basis of a single system. Our efforts should go into ensuring that that works; if it does, there will be no need for co-ordinated support plans, which would create yet another layer.

12:30

Dorothy McDonald: My daughter has a record of needs and an IEP. She also receives an end-of-term report card and we go to parents' nights. She attends a mainstream class in a mainstream school, where she gets a lot of good support. The best support that we receive comes during the five minutes before 9 am, when I drop her off at school. If I am not happy with something, or I want to raise an issue about her support, I can go into the school then, speak to her class teacher and resolve the problem informally, without an IEP or record-of-needs meeting. I have attended such meetings about my daughter at which 12 people have been sitting around the room; they have obviously spent time writing reports and coming to the meeting and support staff have been put in place for them so that they could attend—but nothing much has been discussed at the meeting and nothing much has happened as a result.

The most essential support that we get probably comes from the meetings that take place at certain times of the year, for example when my daughter is transitioning from one class to another, when the new and old class teachers, the new and old support workers and I get together informally to say, "Right. She's going into primary 6. What do we need to do? What worked when she was in primary 5 and what will work now?" Parents really appreciate that informal and welcoming approach, which works in practice.

When we focus on all the paperwork, we miss the point. Teachers are scared stiff of having to deal with yet more bureaucracy; they want to teach and to provide support in the classroom. They need more training and there are all sorts of issues about that, but if we focus on informal support rather than all the paperwork, life will be better. Parents who feel supported do not always need to have recourse to the legal appeals procedure.

Fiona Hyslop: You have presented a consistent line of argument. However, if there were to be a single plan—whether that was a PLP or a new additional support plan based on the PLP or the IEP—would there not be a danger that, because all children had a plan that contained varying degrees of information, it would be left to individual teachers to interpret the level and extent of support services that children should receive? As you said, it might be difficult to define the child's needs. Would there be a danger that teachers might get caught up in bureaucracy for every child? The children who really needed extra support—both in terms of time and physical support—might not get it, because teachers would be too busy operating a single PLP system that tried to create an ideal world in which all children received some degree of support. If we were to have a catch-all system, would there not be a danger that children who really needed support would lose out?

Dorothy McDonald: No, because teachers already provide that support. Every child in Scotland gets a report card at the end of the year and systems are already in place to assess and plan for all children's educational needs.

We need a system in which it is easy for people to understand what happens in every child's case. Everybody understands that children go to school and get report cards, and they would be able to understand that every child also had a personal learning plan. The majority of children in a mainstream class would have similar PLPs, in the same way that they have similar end-of-term reports, but each PLP would contain points that were individual to the child. A universal system, which teachers and parents recognised, would be much simpler because teachers would not be able to say, "Co-ordinated support and mainstream teaching are not my department; the learning support department deals with that."

As a parent of a child, with quite significant disabilities, who attends a mainstream class, I want my daughter's class teacher to say, "Nina

McDonald is one of 26 children in the class, just like everybody else." I do not want her to think, "Nina is the kid with the CSP, so the learning support department should deal with all that." I want my daughter's support to be mainstreamed, which is the best way to ensure that she receives the support that she needs. If we want to create an inclusive society, in which disabled children grow up to feel that they are part of our society, we must start in schools, by making those children feel that they get the same treatment as everybody else.

A teacher once said to me, "You will not want to come to the parents' night because you had your IEP meeting the other week." I said that I wanted to come, because I wanted to see my daughter's pictures on the wall and the clay model that she had made. Why would I not want to do that?

If a parallel system is created, all that happens is that a huge number of children—although they may still be a minority—will be shunted off into a category of being something else, or not the same as the rest of us. The bill gives a huge opportunity to bring special needs provision back into the main stream for everybody.

Eileen Prior: Can I just say that, although I slightly slandered local authorities earlier on, an enormous amount of good work is going on out there. An enormous number of teachers are doing fabulous work. I have brought a home-school diary that belongs to one of our members, which I am happy to leave with the committee. It is about her son Ross and covers the period from—I think it was18 August this year—when he started school to the present. It tells the story of a wee boy, his teacher and his mum and dad, all of whom are learning to work together. One diary entry covers an instance when Ross threw a cup away because he did not like it. The diary records the suggestion that a clear cup would be tried on the next day to see whether Ross might like it better. The diary covers dead practical stuff—the sort of stuff that is happening in schools at the moment. The system does not have to be bureaucratic.

The Convener: A central theme is emerging that it is what happens in the schools that is important. That is the main thing that should be concentrated on and encouraged. I think that we have to build on that theme.

Dr Murray: Lorraine Dilworth spoke about one of her children who has a record of needs. She said that her daughter would not get a co-ordinated support plan. I was struck by that. Organisations such as COSLA, the Association of Directors of Education in Scotland and so forth seem to be confused about who will be eligible for co-ordinated support plans. I do not want to ask you to disclose personal information, but is the bill clear about which children will be able to get a co-ordinated support plan?

Lorraine Dilworth: The bill refers to children with "complex factors" who require "significant additional support" from other agencies. My daughter gets only learning support. That, however, does not make her special educational needs any less than those of a child who gets support from other services. Her disability impinges severely on her education. She has an intelligence quotient of 120, but she cannot access her full IQ without support at school.

I am convinced that, because social work or other agencies are not involved, my daughter will not get a co-ordinated support plan and yet her disability affects the whole of her life. I am talking not only about what happens in school, but also about what happens outwith it. Children with special educational needs do not stop learning when they are out of school. We support her learning and follow it through outwith the school.

I am concerned that, because more and more parents of disabled children want their children to go to mainstream schools, resources will be allocated first and foremost to children with CSPs. Because my daughter had a record of needs, I was able to go into the school with her, get a language dropped and get her daily learning support right away. If there is no longer the legal right to enforce a record of needs, the resources will go to the child with the CSP and not to my daughter.

Dr Murray: Fairly significant sums of additional money are going to go into additional support. If you do not have the legal right for your daughter to receive additional support, are you confident that that support will be delivered for her?

Lorraine Dilworth: No, because at the moment every school is chasing its tail. The bill puts everything firmly in the hands of the learning support teacher and the school. It says, "This is your problem. Deal with it." The bill does not bring educational psychologists and other professionals into the picture; they are brought in as the last resort. It is the teacher who has to identify the need. How can a teacher who has not been trained identify a child's problems? I think that the speech therapy, occupational therapy and physiotherapy services have given evidence on that.

Compare the fact that it took me until my son, who did not have a record of needs, was in his third year of secondary school before I was able to ensure that the school gave him learning support, with the fact that my daughter, who walked in with a record of needs, got that support right away. She was allowed to drop French because she could not cope with her own language, never mind French, and it was judged that her time would be better spent in learning support. You can put as much money into the school as you like, but it will go towards what is necessary in the school, not what is necessary for a particular child. The important issue concerns the resources that are required to allow the individual child to attain their potential.

Dr Murray: Are you saying that, although that is the intention of the policy, it cannot be delivered in practice?

Lorraine Dilworth: Definitely.

Dorothy McDonald: The bill gives legal rights to children with a co-ordinated support plan, but not to other children with additional support needs. Local authorities that are strapped for cash will obviously say that they have to meet the needs of the kids with legal rights first. Reading the legislation, I believe that my daughter would be eligible for a co-ordinated support plan, but I know of parents whose children need an awful lot of learning support in the classroom, rather than multi-agency support, and that would mean that they would not have a co-ordinated support plan. Those parents are worried that they would lose that learning support because the authorities would not be obliged to provide it.

Ms Byrne: I want to ask about the estimates in the financial memorandum, but I think that we have covered a lot of that already. However, in case there is something that you want to say on that, I will ask you to give us your view on the estimates that have been given.

Could you also comment on the wider interpretation of the category of additional support needs? That category will include children with social, emotional and behavioural difficulties, looked-after children and so on. You do not have to respond, but I would be interested to know your views in that regard.

I would like to make a point that I believe is pertinent to what was just being said. I tried to come in on the discussion, but was unable to. My point relates to the need to simplify the system. Eileen Prior touched on the fact that the system will be cumbersome, as it involves appeals, tribunals, mediation—

The Convener: Rosemary, could we deal with the resources question first, before returning to this question?

Ms Byrne: Some of this has been touched on and it is perhaps a bit unfair to take too long over it, but I would like to know what you think of the proposals for assessment, examination and identification. Do you agree that if that system were better planned and resourced so that the needs of children were identified at an early stage by parents, teachers and professional assessors, the rest of the process would be smoother and there would be fewer appeals and less need for mediation?

Eileen Prior: Yes.

Dorothy McDonald: I know of a parent whose child has autism, but does not have a record of needs because she felt that there was a stigma attached to having a record of needs. The child is in a mainstream school with lots of support. The reason why that is working is not because of the safeguard that is provided by the record of needs—because the child does not have one—but because the school took her seriously when she said that she wanted to work in partnership with it. She was listened to by the school and, because the autism was diagnosed at a young age, she got a lot of support from health workers and so on and was clear about the kind of support that her child needed.

That has happened without a record of needs. The key to it was that the school and the education authority were able to provide support and they were happy to work in partnership with the parent; they took the parent seriously. All the stuff in the bill about dispute resolution and so on is leading to misconceptions and the presupposition that parents are out for a big fight. We are not. We want to be taken seriously and we want the authorities to acknowledge that parents are a huge resource for supporting children. If people started taking that seriously, we would be much further along. No money went into bureaucracy in the case I mentioned; it all went into support.

12:45

Ms Byrne: Part of my point is that there is a lot of good practice; you have all identified that in some way. I wonder how much consideration was given to good practice before the bill was drafted. I would like to hear Lorraine Dilworth's point of view.

Lorraine Dilworth: That is fine, and there is good practice out there, but there must be something in legislation that stops bad practice happening. We have to acknowledge that there is also bad practice. Why have 1,200 parents come to my organisation? We do not advertise. Those parents have not come across good practice.

I was appalled by the financial memorandum for the bill because the amounts needed have been so underestimated. I was appalled that there was no guess at the number of children that might come under the bill, so I went and did a wee bit of research; mothers do those things.

The 2001 census published by the Scottish Executive in August this year gives very good numbers. There are 30,000 children with SEN, and 15,000 of them have a record of needs. There are 11,400 looked-after children. There are 15,119 children with an ethnic background. We have 362 Gypsy/Travellers and 121,000 free school meals.

All those children could come within the provisions of the bill.

There are also exclusions: 37,442 children were excluded; 45 per cent of those children were getting free school meals; 4 per cent had records of needs; and 3 per cent were looked-after children. Fifty six thousand children were reported to the children's reporter system.

So how many children are we talking about? The budget set out by the financial memorandum is based on the 30,000 children with SEN. Where is the money going to come from for all those other children that are going to come under the bill? I am sorry, but that financial memorandum does not reflect what the bill is trying to do.

On Rosemary Byrne's question about assessment and identification, I made much of the and/or issue, but if a parent or young person wants to be assessed, it is important that that assessment is not carried out by the school doctor, but by a specialist. A lot of our parents were told that their children were just socially and emotionally disturbed and, when they were finally properly assessed, it turned out that they had Asperger's syndrome or dyslexia, for example. If we keep addressing the fact that those children are socially and emotionally disturbed, but do not address the root cause of that, we will never be able to help those children. Assessment is very important but, although a parent can request assessment, the bill will leave it up to the local authority to pick the medical officer and educational psychologist.

The Convener: Could that not be dealt with by the proposed code of practice? It is an important point, but it is down to good practice.

Lorraine Dilworth: Yes, but even if it is in the code of practice, it depends on how that code is interpreted. It has to be firmed up. It is not an and/or situation; parents have to have the right. If we are really talking about a multi-agency approach and the involvement of parents and young people, why does the bill not stipulate that the parents have to discuss and agree with the local authority who they want to assess their child?

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I am grateful for the opportunity to ask a question. I want to pick up on the point that you and other witnesses have raised about the differences in quality of provision. The bill seems to assume that there is universal coverage of standards throughout Scotland. It is interesting that we have a geographical spread, and Donna Martin and other witnesses have mentioned the differing levels of provision. I am also interested in the points about raising the quality and using best practice.

Do the witnesses have any observations on section 22 of the bill, which will put a duty on education authorities to publish the standards of quality that they provide and to state the level of involvement of parents and children themselves in putting together CSPs? Do they see that as beneficial, notwithstanding the decision that the committee will have to take on whether or not it agrees with the general principles?

Dorothy McDonald: My experience has been that local authorities publish information about children in their children's services plans and nobody reads it. Any information that is published must be published in a format that people will understand and read. I would like there to be more recognition of the fact that there are many parents out there with skills and resources. Lorraine Dilworth's organisation and other organisations, such as our very small-scale island organisation, advocate on behalf of one another and get information about different things. In Bute, we have a really good relationship with the schools and with learning support services, and they take us seriously. That is one of the things that needs to be addressed, because I know that that is not the case across Scotland. I know parents in other parts of the country where that is not the case, and that is the sort of thing that needs to be addressed.

Eileen Prior: One of the things that the Equity Group is working on at the moment, with funding from the Scottish Executive, is an inclusive learning network. We are working with teachers and parents from six local authority areas across Scotland, looking at inclusion and education and working out with them some ways in which it can work. My response to Jeremy Purvis's question is that, in reality, there is not one answer. Again, that is a common misconception—that there must be one thing that is just the ticket and will sort out the problem for these children. There is no single answer, because every child is an individual. What it always comes down to is the relationship between the parent and the teacher and between the parent and the head teacher.

In our experience, the variation in quality and quantity is not just about local authorities. It rests fundamentally on the willingness of the head teacher to ask, "How do I do this?" and to be willing to learn how to do it. There are lots of people out there who are willing to learn. As I said, parents and teachers are learning together through the inclusive learning network. It is the first time that that has ever been done, and it has been hugely successful. It is at grass roots level that we can make a real difference.

The Convener: I would like to ask one small question on a technical matter. It concerns something that Lorraine Dilworth mentioned to me in conversation earlier. I think that the Disability

Rights Commission has a tribunal that is linked, in English legislation, with the English tribunal equivalent to that proposed for the co-ordinated support plan. Should we be aware of an issue with regard to the division of the ability to appeal and to take things to a tribunal?

Lorraine Dilworth: In England, if a disability rights issue comes up, it can be dealt with by the tribunal. What you will find is that there is a crossover between the co-ordinated support plan and the disability rights issue, and even exclusion legislation. As parents, we would want the same rights as English parents have and we want the tribunal services to deal with disability rights issues. I was told by the bill team that the only reason that our tribunals will not be able to deal with DRC issues is that we did not have tribunals when the act that set up the English arrangements was passed. It seems that an act of the Westminster Parliament is needed, but I would really like the committee to ensure that the matter is addressed again.

Dorothy McDonald: I touched on that very point earlier. For example, although the Special Educational Needs and Disability Act 2001 deals with reserved matters, there is a code of practice for Scotland’s schools. Under that legislation, children with disabilities have a right not to be treated unfairly in schools and schools should make reasonable adjustments for their education. Under the Education (Disability Strategies and Pupils’ Educational Records) (Scotland) Act 2002, which is a piece of Scottish Parliament legislation, Scottish local authorities also have a duty to plan for the inclusion of children with disabilities. However, neither of those acts covers the issue of auxiliary aids and adaptations. As a result, a school might say that the reasonable adjustment would be providing a hoist or something like that, which is technically an aid and adaptation. That aspect is supposed to be covered by the current SEN framework, but it does not seem to have been addressed in the bill.

The Convener: So the link between those aspects has to be made.

Dorothy McDonald: Indeed. There is not enough linkage. Reading over the previous evidence, I found that Professor Sheila Riddell made the same point. Although the bill was always intended to cover that matter, it does not appear to do so robustly enough.

The Convener: I am aware that we have had a very long session. We are very grateful for your input, your insights into the matter and the time that you have given us today. I am sure that we will have arguments about the complex and important issues that have been raised for some time to come. As Lord James Douglas-Hamilton said earlier, if you want to come back to us with anything, or if you have any points that, on reflection, you want to share with us, please feel free to write to us.

Work Programme

12:57

The Convener: The final item on our agenda is consideration of the work programme. I want to deal with the item, because we have discussed it before and we have to make some moves on it. However, I hope that our discussion will not take too long. A paper on the item has been circulated to members.

Putting the matter into perspective and taking into account the fact that we will be dealing with two bills, I have identified with the clerks that there is perhaps scope to carry out one shortish and one longer inquiry over the next year. One slot might be available early in the year and there might be another slot after Easter.

A number of issues such as school discipline are on-going and we are also waiting for a number of responses with regard to child protection. As for other issues that we might consider, we might want to return to youth organisations later. I am minded to suggest that the whole issue of educational research, which I have raised before, might be a suitable subject for a shortish report. After all, the question whether we are receiving the right input and research is fundamental to the rest of the subject. Members may feel that early-years learning is a major subject that we will have to tackle at some point, although we might not have enough time to do so now.

After that introduction, I seek members' views.

Rhona Brankin: I am very keen for the committee to examine child protection. Over the past few years, the committee's work has been heavily weighted towards education. I think that it is time for the committee to examine the hugely important issue of child protection.

I also want the committee to carry out some work on youth strategies, because that subject has important ties to other committees' work on young people, particularly those in trouble. We have an opportunity to find out what positive steps can be taken to work with young people in the community and to meet their needs.

Fiona Hyslop: I find this extremely frustrating. After all, we spent time over the summer working out our future plans. We should stick to them.

The Convener: I do not think that we reached any decisions on those plans. We simply had an initial shot at them.

Fiona Hyslop: That is open to interpretation. The curriculum was the long-term agenda item that we had agreed to take forward. As far as early-years nursery education is concerned, we should deal with the petition on that matter in the course of regular business. In that respect, we have waited for a response from the Executive for two or three months now.

I agree with Rhona Brankin that it is imperative that we concentrate on child protection. As we discussed a couple of weeks ago, we should home in on the matter and immediately address it in a short-term inquiry in the new year. Perhaps after that we could examine the monitoring of McCrone at some point in the spring.

The Convener: I do not think that child protection is a short inquiry. Many issues are involved, so it would be a longer inquiry on anyone's terms.

13:00

Fiona Hyslop: Our job is not to replicate what the Government is doing. Wendy Alexander made the point a few weeks ago when we last discussed our work programme that our job is to find out exactly what the Executive is doing on the time frame for the implementation of McCrone. That is our scrutiny purpose. I do not want that to be part of a long-term inquiry; we can do something on it immediately, perhaps in January or February.

The Convener: I am not talking about long-term inquiries but about the time that any inquiry will take.

Mr Macintosh: I am confused, because I did not think that we had agreed our plan. I certainly do not remember agreeing child protection as the priority—not that I am saying that it should not be. We have an awful lot of legislation either before us or coming before us, which restricts us. I still feel that the curriculum is the area that is most important for us to deal with. It is difficult to know how to juggle short and long-term inquiries.

The Convener: The Executive is dealing with the curriculum and will consult on it. We do not want to conduct work on that in parallel. As part of our scrutiny role we will consider what the Executive comes up with. The curriculum is important, but we will not be able to get to grips with it until late 2004 or early 2005.

Mr Macintosh: It is difficult to find a balance between not conducting work in parallel and still being ahead of the game. We do not want to come in after the Executive has made up its mind what is happening. There are a number of issues to consider, but I am unclear as to how much time we have to deal with any of the major ones in depth. My understanding was that we were going to get a paper examining what we could do on the curriculum and one other issue, covering what room we have next year and what would be feasible in the time available. I know that that is a funny way of looking at the issue.

The Convener: I do not think that we need a decision on the bigger inquiry at the moment. We certainly need to come to a quick decision on what we do early in the new year once we have finished stage 2 of the Education (Additional Support for Learning) (Scotland) Bill so that witnesses can be geared up. We do not want to delay doing that too long. We will get the letter back from the Executive on school discipline in a week or two and that will probably be on the agenda for our first meeting in January. We might want to have a briefing on where the Executive is going with the curriculum before we decide on our longer-term inquiry. We could come to a view on what we do as a shorter inquiry. I suggest research. Rhona Brankin touched on the youth strategy. Without having the youth strategy, there is a bit of a hole in our ability to engage in that issue.

Fiona Hyslop: You are giving your interpretation of what we should do. You have mentioned research and youth organisations—evidence was helpful at the time. With respect, I do not think that we should keep repeating ourselves in trying to shift the agenda. It is clear that the longer-term inquiry should be on the curriculum and we will manage other issues, such as school discipline, continuously. The onus has to be on the committee to carry out its scrutiny role in relation to child protection and we should have a short, sharp look at where we are with McCrone—that does not need to be a long inquiry. It is imperative that we consider those two issues. We have to take a strategic view on the curriculum; the other issues are additions to the agenda and are surplus to what we considered at our away day in the summer.

Lord James Douglas-Hamilton: I support the recommendations in the following order. First, we should hold a short inquiry on research, because it helps to identify sensible ways forward. Secondly, Rhona Brankin requested an inquiry into reforming child protection. A number of recommendations were made in the Caleb Ness inquiry—which was very distressing—and I am not certain that they are all being implemented. That need not be a long inquiry, but it is a high-profile issue of public concern, which our constituents would expect us to follow up. Thirdly, monitoring McCrone is of vital importance to teachers.

The Convener: I seek to clarify members' thoughts on child protection. Although you are right that a number of issues are urgent, there are longer-term issues to do with social work, for example, which—as Rhona Brankin rightly said—the previous committee did not get into but which we are willing to examine. Is the issue the immediacy of the matters that arise out of the Caleb Ness case and associated concerns, or is it something more fundamental?

Mr Macintosh: It is something more fundamental for me. I do not want to have an inquiry as a reaction to Caleb Ness, although that is a very important issue. The issues are those that you and Rhona Brankin raised, such as the shortage of social workers in certain areas.

Ms Byrne: I agree. We need to examine social work. Research is also important. Also, it is essential to have a quick look at McCrone, to see where we are.

The Convener: How can we resolve the issue? There is support for a wide range of options. There is no support to examine early-years learning immediately. That is a big and important issue, but we do not wish to address it immediately, if I am correctly judging the feelings of members. Can we take that out of the immediate concerns and come back to it later?

Members *indicated agreement.*

The Convener: That will reduce the scope. We are also agreed that school discipline is not a subject for an inquiry at the moment. We have on-going work in that area. I should have said in passing that I had a brief discussion about transition colleges with the convener of the Enterprise and Culture Committee. We might be able to work something up on that, but that will be for later and will not affect the work that we are currently discussing.

Rhona Brankin: If we did some work on the curriculum, would that not cover that?

The Convener: The issue is partly to do with the curriculum, but the discussion focused on colleges, 14-year-olds and other issues. We could consider that issue further but, given the timetable, it would be best to do that later this year or next year. We will leave it out at the moment. In addition, nobody has raised assessment and league tables as an issue. We seem to come back to the curriculum, McCrone, research, child protection and youth organisations.

Dr Murray: Why does an inquiry on research have to be done immediately? It seems to have come out of the ether. I do not remember discussing it. Unless we can be sure that there is a particular focus or that we can influence something by holding the inquiry, I do not see what it would achieve.

Rhona Brankin: We could get a paper on it.

The Convener: Does the committee agree to pursue that issue in that fashion, and find out from the Executive where it stands on educational research and what support it is giving? We can feed that into later work.

Dr Murray: We need a paper that identifies the issues for us—if there are any—and tells us whether the committee could be engaged in a positive way. It is more important that we perform other inquiries in which we have a scrutiny role, rather than get involved in an inquiry that may not do anything.

The Convener: I am aware that the suggestion is mine, following discussions that I had with some organisations, but there was a degree of support in the committee for the issue, so I would not like to leave it. We can follow it through in the way that has been suggested, and raise it with the Executive, as we have done with other issues, to see what we get back and to give it a focus. That would deal with the research issue without getting into an inquiry.

Rhona Brankin: I think that the Audit Committee is going to examine McCrone.

The Convener: That may be worth doing. McCrone is important. I have picked up a number of issues from different organisations. I am not sure, however, if we are in a position to add value with a short report.

Ms Byrne: We could get an update on where everything is and whether things are working to time scales. That would be useful for us all.

The Convener: We are beginning to iron out the issues. We will ask for information on research and McCrone. That leaves the curriculum, child protection and youth organisations. Youth organisations are important, but I envisaged dealing with them after the youth strategy is available. James, you supported youth organisations; how do you feel about that?

Lord James Douglas-Hamilton: Child protection is more important.

The Convener: In that case, we have decided that child protection and the curriculum are the central issues. Both of those will produce long, rather than short, reports. There is a lot in both of them. The committee probably agrees that child protection is the more urgent matter, because of the on-going scrutiny issue. Can we kick off on that? We can work up something on what we might consider and focus on. We can seek a briefing on the Executive’s thinking on the curriculum, and have a formal or informal seminar at a later point to find out where the Executive is going. We can then discuss how to feed that into our work. Is that broadly acceptable?

Fiona Hyslop: Yes, if we can complement it with what we discussed in the summer. I suggested wording to Martin Verity on how we should be taking a more strategic position than the one we anticipate the Executive taking. We should draw on the work that was done by the previous committee and the national debate on education.

The Convener: That is valid. I think we have agreement and enough for the clerks to move forward on. I appreciate that it has been a long meeting today, but it has been worth while.

Meeting closed at 13:11.

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