EDUCATION COMMITTEE

Wednesday 14 January 2004
(*Morning*)

Session 2

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EDUCATION COMMITTEE

2nd Meeting 2004, 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

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 3

Scottish Parliament

Education Committee

Wednesday 14 January 2004

(*Morning*)

[THE CONVENER *opened the meeting at 09:46*]

Item in Private

The Convener (Robert Brown): Good morning and welcome to the meeting. I am sorry for the slightly late start: I was caught on the phone just before I was to come to the committee room. I ask members to ensure that their mobile phones are turned off.

Agenda item 1 is consideration of whether to take in private item 4, which is on our draft stage 1 report on the Education (Additional Support for Learning) (Scotland) Bill, in accordance with committees' normal practice. Do members agree to take that item in private?

Fiona Hyslop (Lothians) (SNP): It will probably be no surprise that my general view is that we should consider draft reports in public unless we have a good reason not to. The last time we considered whether to take an item in private, our discussion related to a draft report on the budget and I asked the committee to reflect on whether we had to take the item in private. I do not think that the stage 1 report contains anything that would lead to difficulty.

Partly because of the way in which you chair the committee, convener, we have evolved a co-operative way of working, which would not be prejudiced if we took the item in public. If we could continue the tone of our discussion last week, there would be no problem with discussing the report in public. I suggest that we take the item in public rather than in private.

The Convener: Are there any different views?

Rhona Brankin (Midlothian) (Lab): I have no problem with the suggestion.

Lord James Douglas-Hamilton (Lothians) (Con): The usual practice is to consider draft reports in private, but I am content to abide by the majority decision.

The Convener: It is fair to say that the decision is evenly balanced. The Conveners Group has discussed the issue and the Procedures Committee continues to consider it. I would prefer to have a standard parliamentary approach to draft reports, but I detect that the committee's view is that we should consider the draft report in public.

Mr Kenneth Macintosh (Eastwood) (Lab): I agree, but I am slightly uneasy. I suggested to Fiona Hyslop last week that we could have discussions in public because the committee has not had a disagreement that it could not resolve—today will probably be the day when that happens.

The Convener: It might be.

Mr Macintosh: The signs are good that the discussion will be as constructive as all our sessions have been. However, when I thought about the issue later, it seemed to me that holding only some sessions on draft reports in public might flag up the ones that we consider in private as being particularly difficult or exceptionally problematic. This is a slightly tricky area. Although I had thought that we should deal with the matter case by case, I can see that that lack of consistency could be a problem.

Having said all that, as a previous member of the Procedures Committee, along with Fiona Hyslop, I think that we should assume that our meetings will be held in public as often as possible, including—where possible—when those meetings involve discussing draft reports.

The Convener: My view was slightly changed by last week's meeting, in which we dealt with the issues in public in a satisfactory manner. On the other hand, I am conscious that for some bills—such as the bill in the previous session that involved the dispute about stock transfer—there are advantages to meeting in private in order to get a coherent committee view. However, my assessment is that, on this occasion, we should continue to meet in public for consideration of our draft report on the bill. Is that agreed?

Members *indicated agreement*.

Petition

Early-years Education and Child Care (PE523)

09:50

The Convener: Item 2 is consideration of petition PE523 and the further paperwork and Executive response that we have received. The petition was submitted by Unison in the previous session and was forwarded to us. Members have the Executive's response before them.

As is clear, a significant number of reviews are taking place and I am inclined to think that we should let the Executive complete those reviews. We could perhaps consider the petition further at a suitable point—which I guess might be in the early autumn—when the reviews will either be completed or be heading that way. We would then be able to get more solid information and perhaps carry out more successfully our duty to hold the Executive to account on the issue. Have members any thoughts on that approach or any other comments on the response?

Mr Macintosh: I agree with your suggestion, convener. I welcome both the petition and the response from the Executive.

The situation is difficult. Many of us will have strong personal sympathies with nursery nurses who strike because they feel that they are badly paid—none of us would consider that nursery nurses are particularly well paid—but that is not to say that we approve of their going on strike or that we should even encourage the notion that the Executive is responsible for setting pay levels for nursery nurses. That is the background to the petition.

We have responsibilities and duties in many areas. I was encouraged by the extent to which the Executive is taking action on the issue. We should allow that action to take its course. We should not raise false expectations among nursery nurses that we will address a problem that must be resolved between them and their employers.

The Convener: Arguably, our committee is not readily equipped to do that or to comment generally on pay issues.

Ms Rosemary Byrne (South of Scotland) (SSP): It is a pity that the petition has been around for so long and will continue to be around until the autumn at least. We have a duty to consider the education of our young children and to look at the conditions of service and the national strategy that is in place for nursery nurses. I know that reviews are going on, but it will be a pity if we do not join things up to take the issue forward.

I propose that we should consider the issue that the petition raises. In particular, we should consider a national pay structure and national conditions. We should also look at the training of nursery nurses. All those things have been requested in the one package. Although the reviews are under way, the matter will drag on and on.

The education of our youngest children should be our priority. Until we have a joined-up service, in which there are satisfied professionals working, our youngest children will not receive the best service. We have a duty to consider the issue carefully and not to let it hang around until the autumn, which is a long time away. The dispute is already taking place.

We need to acknowledge that the current pay structure, under which individual local authorities come to agreements, does not help but just creates more disunity within the service, as different authorities provide different pay settlements for nursery nurses. That does not happen in teaching, which has a national structure and a national strategy. That is what we need for nursery nurses. The sooner we get it, the better.

The Convener: We agreed our work programme not too long ago. Even if we commenced a report in a timescale that the work programme would allow, we would hardly be likely to complete our work before the Executive's reviews are completed. We would benefit from having the work of the Executive review committees before us on a series of issues that seem to be involved.

Mr Adam Ingram (South of Scotland) (SNP): There is a strong case for the committee to review the Executive's progress. We previously discussed the issue last June or last October. Some of the feedback that we received concerned the Executive's substantial investment in the area. The size of that investment alone imposes a duty on us to scrutinise effectively. There is a strong case for reviewing progress. I am not suggesting that there should be a massive exercise, but a short, sharp inquiry might be the way forward.

I was particularly concerned about the progress of sector skills councils, which we inquired about. Little progress appears to have been made. Indeed, I think that we are still waiting for the completion of a Westminster consultation. For all those reasons and for the reasons that Rosemary Byrne has flagged up, I believe that we should consider the matter in some way.

The Convener: Do members think that there should be a short, sharp review? I confess that I do not think that there should be. There seems to be a whole series of issues relating to training, qualifications, resources and patchy provision across the country. I do not think that any of us would dispute that provision must be consolidated and built on at some point, but surely to goodness we must have the Executive's reviews before we can sensibly consider the issues.

Dr Elaine Murray (Dumfries) (Lab): You are right, convener. As Ken Macintosh says, many of us have a great deal of sympathy with nursery nurses and would agree that they are underpaid, but there would be no point in pretending that a committee review could resolve the current pay dispute—the committee is not in a position to resolve the dispute. As Ken Macintosh says, it would be wrong to raise expectations in that way.

I tend to agree with you, convener. It is clear that a lot is going on. On the sector skills council, the response that we received to the letter that was sent to Patricia Hewitt said that the consultation period would end on 1 December 2003, after which the results of the consultation would be considered. Until we have the results of that consultation and of some of the work that the Executive is undertaking, we will not be in a position to make a judgment about what is going on. We need to let some things take their course before we can inquire into the issue in any meaningful way. Doing something earlier for the sake of doing something would probably not achieve much.

Rhona Brankin: The sector is so fundamental that we must consider it properly and timetable a thorough look at it. I would prefer to do that rather than simply to react to a petition.

The Convener: Obviously, timescales are an issue. Some members have said that the matter is urgent and that things must be done now, whereas others have said that we should wait for the outcome of the reviews before progressing matters. I think that the latter option would fit better with our work programme, although that is an incidental issue to some degree. If we decided to take the former option, we would have to displace something that is already in the work programme, as a number of sessions would be required to get a handle on the issues, which have overtones of the administrative difficulties that were involved with free personal care.

Fiona Hyslop: We must deal with the sector properly. Many things are happening and there are many things that we cannot influence, but we do not want to sit back and do nothing. Many reports and reviews will be published, are in the process of being published or have been published—we can consider them, even if we cannot deal with some of the work until the autumn. It might be helpful if the committee appointed a reporter on the issue to keep us in touch with the development of the sector skills council.

The Executive says on the second page of its response that it expects a final report on the integrated early-years strategy towards the end of the financial year—I presume that that is in the next few weeks. It might be helpful if one of our members could keep us in touch with the progress of reviews and reports in preparation for our comprehensive look at the sector. For example, I understand that Lewis Macdonald will make an announcement today about launching a number of sector skills councils in Scotland, although, for obvious reasons, that will not cover the early-years strategy. However, rather than waiting until October, when we will have a full inquiry, we need to keep up to date with all the reviews and the work that is going on so that we can hit the ground running when we have evidence sessions and so on.

10:00

Mr Macintosh: Fiona Hyslop's suggestion is helpful, but I would rather that the whole committee were kept informed. I do not wish to rely on a reporter now and then; I would like Executive correspondence and initiatives to come to the whole committee. One of the first issues that we discussed from the previous committee's legacy paper was an inquiry into the early-years sector. I supported holding an inquiry at the time, but, now that we have prioritised our agenda, this does not seem like the right time to progress with that inquiry.

A lot is happening in the area. I notice that there have been advances in relation to SPRITO and the relevant sector skills council. The whole area of sector skills councils is difficult—for example, we need to consider whether we should have Scottish councils or United Kingdom ones. I do not wish to marginalise all those issues. The role of a reporter is useful on some issues, usually when it comes to investigating something that the whole committee cannot take the time—

The Convener: It is usually a narrower issue.

Mr Macintosh: Exactly. I do not want to lose sight of the fact that the committee will return to the matter. Rather than appointing a reporter, we could write to the Executive and ask it to ensure that you are kept informed, convener, so that you can circulate the information to us as you receive it.

Lord James Douglas-Hamilton: I support that. Timing is essential and we should avoid duplication. I remember clearly that, when the House of Commons Select Committee on Scottish Affairs did a lengthy report on employment, the process took more than a year. By the time the report came out, the Administration had already taken many decisions on implementation. The report was superseded by events—it was irrelevant, it carried no impact or weight and a lot of time was wasted. If the Executive keeps us informed on the progress of the reviews, we can return to the matter at the most appropriate moment and make an input that would have some effect and be of use.

The Convener: Okay, let us try to come to a conclusion. If I read correctly the view of the committee, everyone is hugely concerned about the matter, which is an important and significant issue for Scotland. The question that we face is about timescales and the proper way of acting. I do not think that there is an appropriate role for a reporter—that role is more useful in a consideration of a narrower issue, on which an individual member can do some useful investigative work.

In this instance, I suggest to the committee that we follow Ken Macintosh's suggestion to ask the Executive to keep us in touch on the specific developments that are detailed in the response and that we return to the matter as part of our work programme as the opportunity arises. I guess that that might happen in the latter part of the year, when the reviews come out.

As Lord James suggested, it is not our job to mirror and shadow the Executive; it is our job to hold it to account. The proper time to do that is when it pushes ahead with the policy proposals that will result from the reviews. We can then do something useful.

What are members' views on that suggestion? I appreciate that there is some division on that point, but I am trying to crystallise matters.

Ms Byrne: When we have the results of the reviews—as soon as possible after conclusions have been reached—can we make a commitment to reconsider our work programme if there is a feeling that we can move forward before the autumn? My main concern is that the issue has been lying around for a long time. We might find ourselves having to join everything together and, in that regard, it worries me that there are bits here and bits there. I wish that the review had been full, thorough and joined up in the first place. We cannot change that now, but it would be useful to make a commitment to examine our work programme while we are monitoring the review process. We should not leave the issue behind.

The Convener: We will not leave it behind. I take the committee's views on the matter seriously and I think that that suggestion is helpful. I would add that we could ask the Executive to give a bit more clarity as to when it expects the various reviews to be concluded. That would give us an idea of when it would be most useful for us to fit into the process. Would that be acceptable to the committee?

Members *indicated agreement.*

The Convener: I do not think that it matters too much what we do with regard to the petition at this point.

Rhona Brankin: We should agree to note the petition.

The Convener: That would be sensible, as we will not lose sight of the issue as progress is made. Do members agree to note the petition?

Members *indicated agreement.*

The Convener: We will write to Unison to inform it of our decision.

School Transport Guidelines

10:06

The Convener: Agenda item 3 concerns school transport guidelines, which is another issue that was first raised in a petition. I believe that we took the issue back on board earlier this session at Fiona Hyslop's request. We have received a further response from the Executive on some of the points that we raised when we last discussed the matter. We were concerned about the fact that we did not get all the answers that we were seeking when the officials were before us. However, the response from the Executive is much more comprehensive.

Fiona Hyslop: The response is helpful and gives more information about the context than we were able to gather when we spoke to the officials. The Parliament recently had an interesting members' business debate in which the Minister for Transport talked about the transport division's perspective on the issue. That was useful, because previously we had heard only the Education Department's views.

There are aspects of the issue that we would want to consider further—we have made our point about the holistic approach—and I think that we should continue to monitor it and return to it at a later date. It was helpful to be reminded that there is a wider context to the issue. However, how can the committee keep in touch with the wider issues, particularly in relation to the environmental aspects? We must ensure that the Executive is aware of the problems that are arising due to the lack of a joined-up approach to the matter.

The Convener: Would it be helpful to return to the matter during the budget discussions? I accept that the issue is not wholly financial, but the budget is a good way of keeping track of certain issues annually.

Fiona Hyslop: Yes. We should also flag up the issue with the Local Government and Transport Committee and the Environment and Rural Development Committee. The Scottish Parliament should ensure that the Executive has a joined-up approach to the issue. We might not be able to drive that forward at the moment, but those other committees might be able to pick up on elements of the issue in their work.

The Convener: We can bring the matter to the attention of those committees if members think that that would be helpful. My concern was that the Executive officials were not all that aware of what was happening in parallel in other fields, such as the work that is being done on green transport plans. If that is the case with the Executive officials, I suspect that it might well be the case with local government officials as well.

Rhona Brankin: I agree with Fiona Hyslop. This committee raised some interesting alternative suggestions and issues such as sustainability and whether the two-mile limit was sensible or should be replaced by a system in which transport is available to all pupils on an ability-to-pay basis. We also discussed the yellow bus model that operates in the United States and I know that the Executive is keeping a close eye on some pilot projects in the UK. Although the issue will not be the subject of a big inquiry, I think that it is sufficiently important for us to return to it and to consider some policy matters.

The Convener: When should we return to the subject, in your view?

Rhona Brankin: Perhaps in the early autumn.

Dr Murray: I agree. Although what the minister has said is generally helpful, I am slightly disappointed by the response in relation to the principles of the school transport policy. However, that might not be surprising, given that we asked only a short, sharp question. The evidence that we heard from the officials suggested that the current policy depends on the parents' duty to send their children to school rather than on any transport-based policy or any desire to reduce the number of cars that are used on school runs. As a result, I support the suggestion that we return to those issues at some point.

The Convener: I know that we are all quite busy with the Education (Additional Support for Learning) (Scotland) Bill at the moment, but I wonder whether Fiona Hyslop's suggestion of appointing a reporter at some later point would be a way of progressing the issue.

Rhona Brankin: I am more than happy to do that, if it helps the committee. After all, I am already corresponding with people and working on a number of the issues.

Mr Macintosh: I echo Elaine Murray's comments. Although the minister's letter is welcome and he tries to reassure us that he is clearly committed to a joint approach, its mixture of response and evidence is not entirely convincing. In particular, there is no mention of the fact that the policy guidelines do not refer explicitly to sustainability issues. In the first paragraph on page 2, he says:

> "We shall include appropriate cross references in future circulars."

"Appropriate cross references" are not enough. We want the Education Department to introduce a policy that states explicitly that local authorities should give equal consideration to transport and environmental issues. I am looking to the minister or the Executive to make such a statement at some point. It need not come in the form of a circular; it could be included in a speech at a conference or in a statement to Parliament. In any case, I seek something more from the minister than this letter. That said, I do not know when such an opportunity will arise. However, if the committee agrees, we could let the minister know that, although his response is welcome, we are looking for something more substantial and concrete.

The Convener: We might have dealt with this before, but does anyone know whether Her Majesty's Inspectorate of Education has a role in relation to school transport? I rather think that its representatives said that it did not.

Mr Macintosh: They said that it did not when we asked them.

Rhona Brankin: I thought that HMIE had a role in that respect. We could check that out.

The Convener: Particular issues in the Education (Additional Support for Learning) (Scotland) Bill, which is exercising our minds at the moment, also relate to school transport. Perhaps we should consider some of them.

Fiona Hyslop: If Rhona Brankin is willing to take on the role of reporter, it would be helpful if she thought about how to progress the issue. In particular, given that we are expecting the Executive to work in a joined-up way, the committees of the Parliament should do the same.

The Convener: Are you suggesting that Rhona Brankin, in her role as reporter, should come back to the committee with some ideas about progressing the matter?

Rhona Brankin: I am happy to do that. I note that, at the end of his letter, Peter Peacock says that the guidelines

"are very much part of an ongoing process. It is always a matter of judgment though as to whether new developments and initiatives in the future should trigger a"

review

"of the general circular".

As a result, I do not think that we are at the end of a process. The Executive is relatively open to suggestions and it would be useful for the committee to take forward that work.

Lord James Douglas-Hamilton: I certainly support Rhona Brankin's appointment as reporter, because the process is on-going. If I remember correctly, I raised the issue of the inspectorate. I believe that the committee wanted the inspectorate to be involved, as it could provide a lot of useful expert advice on the matter.

The Convener: That is my vague recollection; I knew that the issue had been raised, but I could not recall the answer.

I suppose that the proper approach would be to ask Rhona Brankin to consider how she might take the matter forward—she could have discussions with Fiona Hyslop and others and then report back to the committee. Perhaps we should also take up Ken Macintosh's suggestion to ask the minister to make a statement on the need for councils to take a joined-up approach.

Mr Macintosh: We will have to mull over the suggestions, but we could write to other committees and ask for their views. Perhaps we should also write to the minister—I do not know whether we should do that before or after Rhona Brankin reports back to the committee—to say that we are looking for something more concrete from him. We could thank him for his letter, but indicate that we expect him to take the matter further.

The Convener: The minister takes a close note of our deliberations and I am sure that he will take up the matter. We could certainly write to him—that would not be difficult—and to the other committees, as you suggest.

Rhona Brankin: Just for clarification, when should I report back to the committee?

The Convener: We can leave you to decide that at your convenience. The logical approach would probably be for you to talk to the clerk or to me about the timescale.

Rhona Brankin: Okay, that is fine.

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

10:15

The Convener: Item 4 on the agenda is the continuation of our stage 1 consideration of the Education (Additional Support for Learning) (Scotland) Bill, which will take place in public, as we decided.

A letter has just been circulated to the committee from a number of groups, including the Equity Group. The letter emphasises the views that have already been put forward and suggests a number of detailed amendments to the bill. Of course, we are not dealing with amendments today and we cannot easily take on board the detail of what is suggested—or even read the letter, given that we have received it at such short notice. However, we are conscious of those witnesses' general views on the bill, as we are of other witnesses' views, and members will no doubt take those views on board in their deliberations.

Members have a copy of our draft stage 1 report, which reflects the discussion that took place at our meeting last week and, of course, much of the evidence. I must say that I think that the report is extremely good. It takes up a lot of the issues in a sophisticated way and I thank the officials who are responsible for it—I am not sure who actually drafted it. The report forms the basis of our deliberations this morning.

Mr Macintosh: Would it be possible to allow members to take a few minutes in which to read the two letters? We have received a letter from the Executive as well as one from the All for One/One for All group.

The Convener: I thought that members had received a copy of the Executive's letter earlier.

Mr Macintosh: Martin Verity told me about the letter this morning, but I have not had a chance to digest it.

The Convener: Okay. I am happy to suspend the meeting for five minutes to allow people to read the letters and to get a cup of tea if they want one.

10:17

Meeting suspended.

10:29

On resuming—

The Convener: We return to item 4, which is the Education (Additional Support for Learning) (Scotland) Bill. I hope that members have had a chance to read the two letters before them. The primary matter for us to consider is the draft report. We had a general discussion last week, so I am not sure that we have to explore further the general issues except in so far as they relate to the detail of the report. Unless anyone disagrees, I propose to go through the report section by section.

Ms Wendy Alexander (Paisley North) (Lab): Peter Peacock's letter is hugely helpful and deals explicitly with some of the issues that we dealt with last week. I wonder whether we could take five minutes now to discuss the issues that he raises. That would expedite our page-by-page consideration of the report.

The Convener: I am happy with that.

10:30

Ms Alexander: It is slightly frustrating that civil service letters never include headings.

The letter is helpful in dealing with four issues that we asked about. One of those issues was the eligibility criteria for co-ordinated support plans. There is absolute clarity about that and we might want to take a view on it—the response is helpful. The letter is also clear about the code of practice. The Executive says that it amended the draft bill to include an indication of what the code would cover. Obviously, there would also need to be consultation. That seems to strike the right balance. We asked about the relationship between personal learning plans, individualised educational programmes and co-ordinated support plans and the letter is helpful in that regard. The letter gives a helpful clarification of the code of practice, and lastly it is helpful with regard to funding.

When I first read the letter I thought, "This is hugely helpful. We want to give visibility to the total amount of resource that is being committed." That is true not least because it is important that parents of children without a CSP and organisations with a special interest in the area have access to information on the total resource that is being committed. I wondered initially whether we should at least incorporate some of that detail into our report.

There is another fundamental issue, although I am not absolutely sure of the position. Halfway through the final paragraph of the letter, Peter Peacock says:

> "A major strength of the Bill is the explicit duty on education authorities to provide for all children and young people with additional support needs … regardless of whether they have a CSP or not."

That is the clarification that we sought and it answers Ken Macintosh's point about how we deal with the misperception that there will be a loss of rights. Given that the bill places that explicit duty on education authorities, the question arises whether the financial memorandum is too thin. It does not cover the moneys that are being devoted to those areas and it does not yet have the details that Peter Peacock has still to announce about how much money he is going to use specifically to support administration and implementation.

The Executive's letter is hugely helpful. It answers a lot of what we asked. For clarification purposes, we might want to import some of it into our report. We might need to spend a minute or two thinking about how we give the funding visibility and whether we want to consider the scope of the financial memorandum in the light of that helpful clarification.

The Convener: The point about the financial memorandum is already in our draft report.

Fiona Hyslop: It is helpful to have the letter. It might have helped a large part of our evidence taking if we had had it earlier.

We know where the Minister for Education and Young People stands on the CSP and what we say in the report will be about whether he is right. On IEPs and PLPs, one of our big concerns is how much experience we have with the PLPs, but we can understand the philosophy behind the minister's approach. On the code of practice, we have heard the minister's opinion and we must decide whether we want the code to be dealt with by means of an affirmative instrument. Those choices will be made during the drafting of our report.

On the finances, there are basically two aspects. One is the disagreement or misunderstanding with the Convention of Scottish Local Authorities, which we will not be able to resolve until we meet next week—we will have to park that issue at one side. There is a fundamental point about whether it is implicit in the bill that authorities will have to provide for children who do not have CSPs. The general purpose is, quite explicitly, to provide additional support for children, which includes those without CSPs. The information that has been provided on that should be part of the financial memorandum. That would be extremely helpful and would ensure that people knew what resources were being allocated.

The Convener: Can I ask a silly question? Is it possible for us to amend the financial memorandum? I am not certain about the procedure for that.

Martin Verity (Clerk): It is not our financial memorandum.

Fiona Hyslop: The end of the letter says:

"You will appreciate also that I have yet to announce the additional funds I intend to provide to support implementation of this Bill. I shall do this shortly."

That is our concern. The only additional moneys in the financial memorandum as it stands are for the administration of CSPs. If the minister expects to announce resources, they should be part of the financial memorandum. The bill cannot progress to stage 2 unless the financial memorandum is approved, which usually happens at the same time as the stage 1 report.

There is an opportunity for us to say that we think that the memorandum should be revised. There is time for the Executive to introduce a revised memorandum before the stage 1 debate, which is scheduled for the end of January. What we recommend should be reflected in a revised memorandum; most explicitly, however, we should refer to the sentences that I have just quoted.

The Convener: I ask the clerk for guidance on whether there is a procedure for revising the financial memorandum. I have not come across that before, but it may be quite normal.

Martin Verity: I am not really sure, to be honest. The financial memorandum is the Executive's, but I do not see why the committee cannot ask the Executive to amend it.

Dr Murray: It has been helpful to get some clarification, in particular that the final intention is that all pupils should have a personal learning plan. There was some confusion in the past about whether somebody who had a CSP would also have an IEP and a PLP.

On the financial memorandum, there may be a technical issue. I do not know what should be in the financial memorandum. Large sums of money support the bill, but they also support previous education legislation and they will support a number of other Executive initiatives. If all that information was included in the financial memorandum for this bill, and possibly in the financial memorandums for other bills, there would be the possibility of a degree of double counting, about which the Executive has been criticised previously. The Executive has probably taken a narrow definition of what has to be in the financial memorandum in terms of the cost of implementation. The issue is how much we can disaggregate the larger figures that are in support of this financial memorandum, and the number of other Executive initiatives.

The Convener: The trouble is that we are not starting with a clean sheet. There is provision in place. The bill will have implications for all that, but in itself will the substantive provision make a difference?

Ms Byrne: It is useful to have a rundown of the other areas where money is spent. My concern, however, which I have raised previously, is that much of that ring-fenced education funding often has no proper strategy around it. Considering the weaknesses in the financial memorandum, and the areas that we are not yet clear about, and given that it is two weeks before we debate the bill in the chamber, will we get clarification within that timescale that will satisfy us that the bill will have the resources to let it run properly? I do not think so. We should stop and take another look at the matter, and we should delay the bill until we have clarification. I feel a bit happier about what the minister has said about the code of practice, so why are we rushing the financial aspect, when it is crucial? Will we get any answers in two weeks?

The Convener: I am not entirely convinced that all the funding that is mentioned is ring fenced.

Ms Byrne: A lot of it is, though. The problem with much of this kind of funding is that it comes into schools and has to be spent very quickly. There is no long-term strategy around it and much of it is wasted. I say that from experience. That kind of thing should be discussed and examined in much more detail than it has been. Perhaps that is a matter for another time, but the financial memorandum is current, and we are not clear enough about that at the moment to go forward.

Mr Macintosh: I have quite some sympathy with what Rosemary Byrne said about the way that the money is going into schools, but there are two issues, and we are slightly rehearsing what is in the draft report. The minister's letter is welcome, as is the information on funding, but when it comes to the bill, we can take only the narrow view, in the sense that there is a wider issue about the resources that go into additional support for learning, which the bill does not address or even move forward on. The financial memorandum talks about the way in which we organise and approach additional support for learning and it even has implications for how we divide up the cake, but we can take only the narrow approach on it. There is a separate argument to be had as part of the budget scrutiny—or now—about trying to increase resources generally.

One aspect of the bill with which I am not entirely happy is the fact that it might increase demand. I am unsure about that. When the minister gave evidence in December, he was clear that, even if the estimates are out quite wildly, he is confident that the figures will not be of a magnitude that will mean that his department will have any trouble making up the difference.

Fiona Hyslop: What about tribunals?

Mr Macintosh: Tribunals are a different issue, but I think that the minister said that, as far as implementation is concerned, if the costs of the tribunals or the numbers of children with CSPs were out by a factor of as much as 50 per cent, he would be able to cope, although he would not want that situation.

It is difficult to estimate how much the bill will increase demand, but there is every chance that, if we give people new rights and put new duties on local authorities, people will use those rights and demand new services. That is a difficult factor. What the costs will be is a stab in the dark.

The Convener: That is a difficult issue. We could end up with spurious accuracy—I think that that phrase was used earlier—without shedding much light on the matter. A lot of bills are like that. The Homelessness etc (Scotland) Act 2003, which we considered in the previous parliamentary session, had issues of the same sort. There might be opportunities for monitoring, which we might want to consider later and which might meet some of Rosemary Byrne's and others' concerns. The picture is developing, and we can keep a handle on it even once the bill has been passed. The situation will not change overnight, because it will no doubt take a couple of years to bring the bill into force.

Rhona Brankin: It is difficult to get precise figures, but I was reassured by the minister's approach, which Ken Macintosh outlined, and the wide range of services that he included and said that the Executive would fund. My understanding is that there is an absolute commitment to funding those services, and we are responsible for holding the Executive to account on that commitment.

Lord James Douglas-Hamilton: The minister's letter says, on page 2:

> "As you know the PLP, which we propose ultimately for all children, is still in development stage".

As the minister makes it clear that the PLP is proposed for all children, there is a case for its being in place in all Scotland before the bill is implemented. The minister says that the code of practice will be in place

> "prior to commencement of the legislation"

and the same argument can be advanced for personal learning plans: only when they are in place will we have a realistic view of the numbers. What Ken Macintosh said about the demand probably being greater than anticipated was absolutely true. I am anxious to keep friction with parents to an absolute minimum and to avoid it wherever possible. However, the quicker that the bill is implemented, the greater the friction will be and that should be avoided.

The Convener: The issue is surely the IEP rather than the PLP, because the PLP is not particularly linked to additional support needs.

Lord James Douglas-Hamilton: There will inevitably be children on the borderline. If every child has a PLP, with additional support needs being covered by an IEP and the most severe learning difficulties by a CSP, we will not have an accurate picture of the precise numbers until all three systems are in place.

Dr Murray: I am not sure that I agree with that, because the intention of the CSP is to ensure the co-ordination of services when other agencies are involved. The CSP has a particular role and is not dependent on the development of the PLP.

As we said last week, the concern for parents is what happens. If a child has additional support needs but does not have a CSP and the parents do not feel that adequate resources are being devoted to their child's additional support needs, what do they do and what power do they have to address that? Parents need reassurance on that, and how we address that issue is important. The minister refers in his letter to

"the explicit duty on education authorities",

but the issue is what parents should do if that duty is not being fulfilled. If we can make recommendations that reassure parents on that, the fact that PLPs are not in the bill will not be material.

10:45

The Convener: We have had a fair thrash at all that, and perhaps we should move to the draft report, unless members are desperate to say anything in particular.

Fiona Hyslop: I think that everything has been covered.

The Convener: I think that everybody would agree that the letter is helpful, although it does not totally clear up the definitional issues—but we will come to that in a second.

The introduction to the report is relatively straightforward. As there are no issues on that, we move to "Background and Consultation", which covers paragraphs 3 to 8.

Fiona Hyslop: I have two minor points to make. I want to ensure that we have quoted the Education, Culture and Sport Committee correctly. Under paragraph 5, the committee is quoted as saying that the record of needs

"could be revised or replaced".

We need to be tight on that.

The Convener: That is what it says.

Fiona Hyslop: I know. I am saying that we must respect that.

It might be helpful, under paragraphs 7 and 8, to make the point that the Executive published a revised version of the bill and took longer to consult parents because of its recognition of parents' concerns. The convener might recall that I asked Jack McConnell at the Hub whether the Executive would delay the bill because of parents' concerns. He said, "Yes, we will." He said that the Executive had intended to launch the bill in May, but that it was delaying its introduction because the minister—who would be Peter Peacock—wanted to take more time over the summer to consult parents. It would be fair to include that.

The Convener: Ministers should be given credit for that; we should note the sensible attitude that ministers took. Are you suggesting that we should include a reference to that?

Fiona Hyslop: We should recognise what the Executive did. The bill was introduced on 28 October 2003 and yet, as is noted in paragraph 5, the draft bill was published on 17 January 2003. Something happened when the new Executive came in and we should recognise that. It is background information rather than detail, but it should be included.

The Convener: We agree to add a reference to that. Members have no further points on that section.

"Evidence Taken by the Committee" covers paragraphs 9 to 14. There should be a reference at the beginning of this section to the fact that we took some prelegislative evidence. Perhaps we should detail that evidence, given that it was part of our programme.

Mr Macintosh: We could include the fact that we had a helpful briefing from the Executive.

The Convener: Yes.

"Issues Considered by the Committee" covers paragraphs 15 and 16. We may not want to get into the detail of this section just now, but I have a slight issue on the third bullet point, which talks about

"replacing the Record of Need (RoN) process with a new Co-ordinated Support Plan (CSP)"

In a sense, that is not a straight replacement but a sideways move. That is a nuance, but perhaps it should be reflected in the wording. Some children are going out of the system on one side—although they had records of needs, they will not get a CSP. Others are coming into the system from the other side—although they did not have a record of needs, they will get a CSP. The CSP is not a straight replacement for the record of needs. The whole ASL and CSP picture replaces the record of needs situation.

Mr Macintosh: Perhaps we should say something along the lines of "abolishing the record of needs and introducing a new system."

The Convener: Yes; we need a slightly different wording. Perhaps the clerks could look at that.

"General Views on the Bill" covers paragraphs 17 to 31. As this is a lengthy section, perhaps we might take it in smaller chunks. Do members have any general observations to make?

Fiona Hyslop: I think that this is the appropriate place for me to make my point. From last week's discussion, I think that three main areas probably need to be emphasised; they are all covered in the report, but I wonder whether they are given enough emphasis. The first of those areas is the desirability for a single system. We acknowledged that a more pragmatic view is being taken of that issue. Some committee members and witnesses have said that we want to achieve a single system. The issue is whether the PLP, IEP and CSP will produce that, or whether something more fundamental will be required.

The Convener: Much of that focuses on the paperwork.

Fiona Hyslop: Yes, but it also concerns the approach and whether it is possible to move that on quickly.

The second area is the shift in the balance of power to parents to rebalance the partnership. Concern has been expressed about that at the committee—Elaine Murray addressed that point last week. It needs to be made clear up front that one of our general views is that we need to rebalance the power relationship, particularly if it is meant to be a partnership and we are to address the issues of trust, which we recognise.

Thirdly, it is not necessarily the question who supplies the service that should be central, but the support needs of children. That point, which was raised last week, might be more controversial for members.

All those areas are touched on in the report, but it might be helpful to emphasise them early on, in the section about our general view of the bill.

In the third line of paragraph 17, we say that the bill

"introduced much needed revision of the current provision of support for children with special educational needs."

I think that we recognise that the bill revises the provision of the administration of support, which is a more specific point.

The Convener: The bill does slightly more than that, because it widens the duty.

Fiona Hyslop: I want to concentrate on the three main themes. That is a practical point on the first of those themes.

The Convener: There is a point in what Fiona Hyslop has said, but not in the way in which she has put it.

Mr Macintosh: The first of the three points has come out in the report.

I do not think that the second point, which is a good one, has come out strongly enough. That was the point about rebalancing the relationship between parents and other partners in the provision of support for children with additional support needs; it was also about trying to re-establish trust and a positive relationship. I think that the Executive memorandum talks about reducing confrontation; that is certainly part of the policy. Perhaps we should flag that up by adding a paragraph at this point in our report. I am not sure how to do that.

The Convener: The point about reducing confrontation is very important and it needs to be flagged up. We might be able to strengthen the wording in that direction.

Mr Macintosh: I am just not sure where we should add such points.

I did not understand the third point.

Fiona Hyslop: The bill's proposals, particularly those on the CSP, are supply led. The definition of a CSP means that an integral part of consideration of who will get a CSP is who provides the service; health or social work provision is necessary. Of all the points, that is probably the most controversial. The "Rights of the child" section of the report might be the most appropriate point at which to ask whether we have been strong enough on that. We might be able to redress the balance by including something about the needs of the child. The CSP, which is a central part of the bill, is defined by consideration of whether a child requires health or social work involvement.

The Convener: The trouble with your general statement of the point is that it relates to the definition of the CSP, which is based on the key point that, as the minister put it, where things break down is where co-ordinated support fails.

Fiona Hyslop: We as a committee have to decide whether we agree that the CSP is the most important aspect of the bill or whether we want there to be greater emphasis on the needs of the child, which are implicit throughout the rest of the bill. We are talking about our general views on the bill at this stage.

Rhona Brankin: I think that we need to be explicit—just as the bill should be explicit—in saying that the bill is intended to meet the needs of children and young people and their families. That intention should underpin the bill and I think that it does.

I have a difficulty with paragraph 31; in a sense, my difficulty touches on what Fiona Hyslop said although I disagree with her. I do not agree with the statement:

"the Committee is concerned that the legislation does not fully eliminate the existing three tier system of provision."

The trouble is that we all seem to be talking about different things. We all have concerns about integrating the PLP, the IEP and the CSP, but that is a case of paperwork and bureaucracy. I welcome what Peter Peacock has said about youngsters who have CSPs not requiring IEPs. In a sense, therefore, we are moving towards a more integrated system. Our report should say that we welcome that, but that we recommend that a single system would be the most inclusive way, which could also, almost as a by-product, help to reduce bureaucracy.

In a sense, the three-tier system has been linked to the evidence that we heard from some people that a system that contains PLPs, CSPs and IEPs is not inclusive and will not move us forward. I am of the view that we do not currently live in a world without barriers to learning, so it is necessary to have a system that has built-in additional support. I accept the need for the legislation and a system whereby parents and pupils will have additional support. We do not live in an ideal world in which we can say that all pupils should be treated the same because, sadly, that world does not exist. We should take that sentence out.

The Convener: Are there not two points there? We are not actually eliminating an existing three-tier system; that is not correct. There is quite a lot of stuff about the need within a more inclusive framework to concentrate on the children who have had particular difficulties and whose needs have had to be focused by the system. If focus is lost, those children will also lose the resources that go along with it.

Rhona Brankin: Yes. My point is that the new system is more inclusive. The definition of additional support needs is wider and it covers youngsters who were not included previously.

Ms Byrne: I would like paragraph 31 to be altered to reflect the fact that not the whole committee is in favour of going down the road of a two-tier system. I talked about that last week and I point it out again.

I know that Rhona Brankin has said that the ideal would be to move to a single-tier system, but I feel very strongly that such a system, which covers every child, would be more appropriate. There should be no adversarial approach at all, because every child would have the right to access appropriate resources and an appropriate education for them as an individual. There should be one format for planning and co-ordinating where necessary.

I went into the subject during last week's meeting. I would like paragraph 31 to reflect the fact that there is a view that we should at least aim for a single-tier system and that some members of the committee would have preferred that.

The Convener: Are you suggesting that there should be no tribunals and appeals mechanisms?

Ms Byrne: No. I am saying that the legislation should be there for every child equally.

The Convener: Okay. We will come back to that.

Lord James Douglas-Hamilton: I have two reservations about the final sentence. First, current rights are not diminished and the needs of the most vulnerable in the community will continue to receive top priority. I raised my second reservation when I said that personal learning plans should be in place before the bill is implemented. I might not have the support of the majority but, on the basis of social inclusion, I think that all children should have a CSP or IEP or PLP. Some of the many children who are on the borderline are left out of the system and that is unfair to them. The system should be properly in place before the bill is implemented.

The Convener: There is clearly an issue about what will happen under the bill to people who have records of needs at present, but we will come to that later. However, I am not sure that you are factually correct that the PLP must be linked in—I am not convinced about that. PLPs are an on-going development with many resource implications—the IEP is the key point for the bill.

Lord James Douglas-Hamilton: My contention is that the letter from the minister suggests that he does not know who is in and who is not in for CSPs. Therefore, it is probable that he does not know who is in and who is not in for IEPs. If a large number of children do not have a PLP or any other document, we simply will not know what their needs are and whether they should come into the system. On the basis of social inclusion, every child throughout the education system should be properly catered for.

11:00

Dr Murray: As I understand it, one of the general principles of the bill is to provide for all children who have additional support needs. The minister's letter mentions

"the explicit duty on education authorities to provide for all children and young people with additional support needs, for whose school education they are responsible for, regardless of whether they have a CSP or not."

Like others, we are in danger of getting too hung up on the CSP, which addresses a specific need, and not recognising that the bill places a duty on education authorities to provide for all children with additional support needs.

The Convener: While we are discussing the point, I suggest that we put up front in paragraph 17 or thereabouts a specific reference to the general duty in section 2, which would help to clarify some of the issues.

Ms Alexander: I suggest an amendment to the phraseology in paragraph 31 that might bring all members on board. In paragraph 31, we should leave out the first sentence and start the paragraph with: "The committee accepts the minister's point that it is the Executive's intention to meet the duty imposed by the 2000 act to ensure that children receive the education they require."

The Convener: Sorry, I do not quite follow you.

Ms Alexander: I suggest that we take out the stuff about the three-tier system and put in the following: "We welcome the steps to inclusion within the bill but recognise that the success of the new system will depend critically on the integration and quality of the relationships between the CSP, the IEP and the PLP, while supporting all children within an inclusive framework." We should continue with: "The committee recognises that the Executive has taken a pragmatic position to create a system that balances the needs of all children, while co-ordinating support for those with complex and multiple factors."

My suggestion could potentially bring all members on board by acknowledging that some people fear that the bill could lead to a three-tier system, but that the minister wants to ensure that all children receive the provision that they require. We could then state that, while we welcome the steps towards inclusion, the success of the measures will depend critically on the integration of the IEP and the PLP and the quality of relationships that exist. In advance of the system being set up, we cannot judge whether the outcome will be a three-tier system, albeit a better-quality one, or—as is the bill's intention—a single framework that provides inclusively for all children while recognising that not all children's needs are the same.

My proposal is an attempt to bring all committee members on board. We do not dispute the intention of the bill, but some members have anxieties about what will happen when the bill is implemented. I was trying to capture that point. I will submit my proposal in written form.

The Convener: I have two points. I draw to members' attention the fact that a unanimous view on the bill has advantages and gives us power, although I would not deny any member the right to press a different view. Perhaps you will give the clerk a detailed written suggestion, Wendy, but it seems to me that you are suggesting that we need a timescale objective for the bill, rather than saying that its implementation is going to happen now. You are saying that the Executive has taken the aspiration on board and that this is where the Executive wants to head, but that that cannot be done overnight.

Ms Alexander: What I am really saying is that, until the bill is implemented, we cannot judge whether it will succeed in its ambition, which is to create an inclusive system. The committee is considering a caveat that says explicitly that we want an inclusive system. Whether that is achieved by the bill will depend on the quality of relationships and the integration of the three elements. Obviously, some people are sceptical about whether the bill will meet its objectives, and some are more optimistic. I do not think that the committee needs to take a view on what will happen in practice. We will know that only post hoc.

Ms Byrne: Wendy is trying to get us a bit further along the road, for which I thank her. However, we can have an inclusive system only if everyone has the same access to it and if there is equality in it. I do not think that we should tie ourselves in knots about PLPs and IEPs because IEPs will be there in the interim until the development of PLPs, and things will eventually be broadened to cover more children. However, the system will not be inclusive when we have CSPs and IEPs/PLPs. I said all this last week and I do not want to go back over the same argument, but people will be chasing resources by asking for a CSP and we will have an adversarial situation in which people will go through tribunals and so on. There is absolutely no need for a two-tier system. With good practice, we can plan, and co-ordinate the planning, within an IEP system for all children. That happens at present.

I would like something further to be put into the paragraph. The main aim should be to have one inclusive system for all young people, with one format for planning. The system should cater for the needs of each individual child because, remember, education in the 21st century really is about the individual pupil. I can see why James Douglas-Hamilton is so concerned that children may be left out of the loop in the planning process. That process will not be inclusive. We should be aiming for every child to have a plan, but we are pushing a two-tier system at the moment with CSPs and IEPs/PLPs. We have to be aware of the fact that we will simply be rewriting the record of needs. I said all that last week and I cannot say more.

The Convener: We get the point. My difficulty with that approach is that it would be fine if infinite resources were readily available right across the country. It is not so easy otherwise.

Rhona Brankin: What Rosemary Bryne says does not represent the majority view from the evidence that we received. A few organisations took that view, but the vast majority accepted that the bill was a step forward and would lead to a more inclusive system. Our report must represent that. Many parents would be appalled if the committee reflected the view that children with additional support needs were not going to have additional resources and time at their disposal.

Ms Byrne: I did not say that.

Rhona Brankin: Some children face more barriers than others. As a parent of a daughter with special educational needs, I very much welcomed the reassurance that the barriers that she faced in her education were being specifically addressed and that there was a requirement to remove them. Not all children are the same.

The Convener: To some extent, what we put in will depend on what we say about the detail in later sections. The issue is as much how the bill ends up as how it is at the moment.

Would it be sensible for Wendy Alexander to provide her wording to the clerks so that the section can be redrafted in light of the other comments that have been made, and perhaps for us to examine the general point about the approach to the bill at next week's meeting, when we are looking at the final version? Is that a workable suggestion?

Members *indicated agreement.*

The Convener: We will then be able—for example, with regard to Lord James Douglas-Hamilton's point on the link between records of needs and the new system—to see what we are proposing on the rest of it and to take an overall view, which I hope will be balanced against what we decide on the rest of it. Is that helpful?

Members *indicated agreement.*

The Convener: I seek comments on the definition of additional support needs, which is addressed in paragraphs 32 to 40 and which, I suspect, will raise some of the same issues.

Lord James Douglas-Hamilton: Paragraph 40 states:

> "it is vital that the Code of Practice provides sufficient clarity for the people who have to work within the system."

There is a case for the code of practice being approved by the Education Committee or the Parliament under the affirmative procedure.

The Convener: That is proposed later. We will come to your point when we reach that section.

Rhona Brankin: I do not agree with the second sentence in paragraph 40, which begins:

> "Overall, the Committee welcomes the broadening of the definition of additional support needs",

but goes on to state:

> "However, it notes that the definition is complex and was potentially confusing for those working in the system."

Does paragraph 40 deal with the and/or provisions?

The Convener: It is not just the and/or provisions, as we received a lot of evidence from various points of view—from the COSLA end and the parent end—that people did not know what the implications would be.

Rhona Brankin: I think that the definition of additional support needs is much simpler, which I welcome. It should make it much easier to decide which youngsters have additional support needs.

The Convener: You are right. I was thinking about CSPs.

Mr Macintosh: Should we make the point that although the definition is clearer, it will still require the interpretation of professionals, teachers or families? In other words, it will still need to be decided where a child falls on the spectrum of needs, in terms of a CSP or an IEP, which is why the code of practice is vital. The report could state, "The committee welcomes the broadening of the definition, however it notes that the definition will still require interpretation by professionals", or something to that effect.

My second point is on paragraph 34. It should be in bold, because it contains a recommendation.

The Convener: Yes, it should. As we go through the draft report we should confirm the committee recommendations, so that we have a clear decision for the clerks.

Mr Macintosh: The paragraph addresses the concern, but we have not come up with a positive recommendation. That is probably asking too much.

The Convener: It is up to the Executive to do that. I made the recommendation in paragraph 34 at the beginning. Does anyone have a problem with it? It was tactical, to a degree.

Dr Murray: It would be reasonably straightforward to make an amendment that said, "to fully benefit from school education", or, "to achieve their potential in school education." That would be a relatively minor amendment.

The Convener: Is that agreed?

Members *indicated agreement.*

Rhona Brankin: On paragraph 40, we need to welcome the new definition of additional support needs as being inclusive and helping to clarify what in the past has led to confusion. Of course, we still recognise some of the difficulties around the definition of a CSP.

The Convener: This may echo some of the points in the last section, but is it fair to say that that is the central duty in the bill? It would be helpful to stress that again.

Mr Macintosh: That helps us to move away from the pejorative interpretation of special educational needs. I was going to talk about new rights, but that is a different point as it does not come under this section. There would be a danger if we were to replace the legislation in 20 years' time but, at the moment, the definition is more inclusive—

The Convener: It moves forward.

Mr Macintosh: It is more inclusive than exclusive.

Dr Murray: That is an important point. Because of the discussions about who gets a CSP and who does not get one, the focus has not been on the new duties. If we restated that at this point in the report, that would help to focus attention on the matter. I am with Rhona Brankin on this. I am not sure that I like the second sentence about the definition being complex. I do not think that the definitions are all that complex. However, there has been difficulty with people's interpretation of them. That might need to be made more explicit.

11:15

The Convener: Some of the definitions are spread across a number of sections and are in various forms. I agree that the definition of additional support needs is not particularly complicated. Is that the view of the committee?

Rhona Brankin: The definition is a welcome clarification—or simplification.

The Convener: Is that the view of the committee?

Members *indicated agreement.*

The Convener: We had written and oral evidence that indicated that provision is very variable in the area of English as an additional language. It has not always been dealt with correctly, and the potential of bilingualism as an asset has not been recognised. There has been a call for national standards to be developed in the area. Might it be relevant to say that the committee supports the call made by the Scottish Association for the Teaching of English as an Additional Language for national standards to be developed for the teaching of English as an additional language?

Rhona Brankin: In which paragraph would you add that?

The Convener: It would come at the end of paragraph 38.

Mr Macintosh: I have forgotten who spoke about this, but the evidence on the positive steps that have been made was quite good. Less impressive was the interpretation of how the bill would affect—

The Convener: I accept that entirely, but the central point was that there were no national standards in that area. That featured in written correspondence from various people with an interest.

Mr Macintosh: Perhaps we could just flag up that view, rather than endorse it explicitly. That point was put to us during a half-hour or one-hour evidence session. We could flag up the fact that the committee was rather worried by the matter. It would not be the committee's wish to reverse two decades of advancement.

The Convener: We could put in something like "The Executive might consider whether there is a need for national standards in the area of English as an additional language." Is that a valid suggestion?

Lord James Douglas-Hamilton: Yes.

Ms Byrne: The witness was trying to say that, in many cases, bilingual children who come into the system without much English to start with might be labelled as needing learning support in the sense that they are poor at the work that they are doing, rather than in the sense that they do not have a grasp of the English language. People have worked for years to diminish that perception. It would be good if we could try to counteract that perception. The convener's suggestion might help.

The Convener: Sheila Roberts made another point, which was that people can have a superficial knowledge of English on which they can get by socially although they might not be able to pick up more elaborate ideas, such as mathematical concepts, that they might pick up better in their home language, if that is the right way to put it—I am sure that that is the wrong way to put it, but members know what I am getting at.

Rhona Brankin: I fundamentally disagree with Sheila Roberts, who, as it is put in the draft report, "was concerned that these children should not be identified as having additional support needs."

I absolutely agree with what Rosemary Byrne has said about those children being identified out of ignorance as having—

Mr Macintosh: Slow learning?

Rhona Brankin: That is right: people do not understand what those children's needs are. However, they very much come under the broad definition of children who require additional support.

The Convener: Yes, they do.

Rhona Brankin: Those children face significant barriers. There is an issue here about training. The wider definition of additional support needs has to be addressed by training the practitioners. I fundamentally disagreed with Sheila Roberts when she said that that area should not be included in the definition.

The Convener: That is right. There are two points: training and national standards.

Dr Murray: My point is similar to the point that was made by Rhona Brankin. I disagree with the use in paragraph 38 of the quotation from Sheila Roberts. We should concentrate on what could be done to improve support for bilingual people. She equates bilingualism with learning difficulties and says that

"Increasing numbers of bilingual pupils will be inappropriately placed in low achieving groups"

as a result of the bill, but there is no evidence for that.

Ms Byrne: Well, past practice—

Dr Murray: That may be past practice, but that does not mean that—

Ms Byrne: No, but I must say that that attitude is still out there. The point that Sheila Roberts made is relevant if we can word it so that—

The Convener: Should we say that the committee does not accept that point but that we will bring the other parts in? It is fair to say that that is what she said, whether it is right or wrong.

Ms Byrne: Can we say that we recognise her concerns but that we want to move forward?

The Convener: Yes. Have we dealt with that point? I do not want to make a meal of it.

Lord James Douglas-Hamilton: I suggest that it would be helpful to include a paragraph after paragraph 38 about children who have to move by virtue of their way of life, such as the children of travelling people and services personnel. When people in the services are moved from country to country, it is obviously disruptive for their children, who have to move from one school course to another and to fit in at different stages. There is a particular case about the children of travelling people and a paragraph on that would—

The Convener: What would be the point of that? Are you drawing attention to the need to have provision for them?

Lord James Douglas-Hamilton: Children who move a great deal by virtue of their way of life have additional needs because their education is disrupted constantly.

Rhona Brankin: We sought reassurance from the minister on those points and we got that reassurance. It might be worth while to state that we understand that these—

The Convener: Is that agreed?

Members *indicated agreement*.

The Convener: Let us move on to the next section—paragraphs 41 to 54—on co-ordinated support plans and integrated working.

Lord James Douglas-Hamilton: I have difficulty with the first sentence and particularly with the word "additional". There are different rights—take the child who cannot talk, the child who cannot see, the child who cannot hear, the child who cannot walk unaided, or the child who has cerebral palsy. Those children have severe learning difficulties and I am wholly opposed to anything that infers a diminution of priority or funding for the most vulnerable people in the community. For example, a child with dyspraxia should receive top priority because their needs are particular and considerable. To say that

"the system is not designed to elevate a group or give children with CSPs additional rights"

implies that the most vulnerable children in the community will not receive the top priority that they have received up to now.

The Convener: I think that you are referring to paragraph 54, not to paragraph 41.

Lord James Douglas-Hamilton: Yes.

The Convener: I am not sure that I disagree with the sentence to which you refer.

Rhona Brankin: I do not disagree with that sentence. Although I agree with what Lord James Douglas-Hamilton says, I do not think that what the minister said means that any youngster's needs will be met any less. For example, a youngster may have complex needs and barriers to learning but no need for inter-agency working. It is important to reassure parents that the question is not whether their child has a CSP. Parents have the right to have their child's needs met.

Lord James Douglas-Hamilton: The first sentence of paragraph 54 ought to be reworded so that it is clear that the most vulnerable children in the community will not be disadvantaged.

Ms Byrne: It is a way of trying to beef up and improve the situation, but we could meet all children's needs without a two-tier system.

The Convener: With respect, Rosemary, let us not have that argument any further. Do you have a particular point to make?

Ms Byrne: The issue is so relevant because we keep on having to pick up on it and look at ways to clarify it. We are trying to make a good job out of a bad premise.

The Convener: I am sorry to cut you short but we are not going to have a discussion about that again. We can come back to that when we discuss the general principles of the bill. We know your views on the subject, but we have to deal with the detail of the co-ordinated support plan now.

Mr Ingram: I refer members to paragraph 54, which says:

> "However, the Committee strongly recommends that parents are given clear assurances that appropriate service provision will be made for all children".

How are we going to do that? What are we going to recommend to the Executive?

On the whole, this section is good. I would like members to reflect on the minister's explanation of the reasoning behind establishing a CSP, which was that, if the system was going to break down at all, it would be in relation to the co-ordination of many services. However, quite a lot of witnesses, particularly those from the Scottish Dyslexia Association and the National Autistic Society, said that the problem lies with gaining access to the system in the first place because of difficulties in the identification of the fundamental problem that the child is facing. There seems to be a reluctance in the system to commit resources. We have heard evidence to the effect that a lot of head teachers do not want to acknowledge the fact that there are such problems as dyslexia because they have resource implications for their schools. How can we square that particular circle? How do we give parents clear assurances that appropriate service provision will be made available for their children?

The Convener: Do you have any suggestions?

Mr Ingram: I thought that that was the area that we should focus on.

The Convener: There are three issues involved in that. The first is whether the minister is right to focus on the co-ordination issue; the second is whether co-ordination is defined correctly; and the third relates to the issues that are raised for people who might not qualify for a CSP if that definition is right.

Mr Macintosh: On that last point, paragraphs 61 to 65 specifically deal with the abolition of the record of needs and the views of the committee on the transition. We have all flagged up the fact that the perceived loss of rights is important. We will come back to that point.

The point that Adam Ingram raised is addressed, to some extent, by the minister's letter, which says that there is a "spectrum of need" in relation to autism and dyslexia. He is trying to get away from the medical deficit model, which is why he is using complexity as the key definition. That also moves away from resources. That is why, by default, I have come around to thinking that the minister's definition is the best, although it is not perfect. As Rosemary Byrne says, in an ideal world, we would not have a definition but would have a seamless system. However, we do not have an ideal world. We have a difficult world with difficult decisions to make. We have to ask whether this system is an improvement from the point of view of the professionals and the families. We should not pretend that families who have children with dyslexia or autism will not continue to have battles to have their children's condition recognised. The bill will move matters forward, but it will not resolve all the problems because there will still be battles. A case came to me just this week—

11:30

The Convener: Does Adam Ingram want to come back on that?

Mr Macintosh: The words that Adam Ingram highlighted from the middle of paragraph 54 are helpful. We will come back to that issue.

Mr Ingram: Paragraph 47 refers to further clarifying the definition of eligibility for a CSP in the code of practice. However, I wonder whether something should be included in the bill as opposed to the code of practice.

The Convener: The question is what.

Dr Murray: On Lord James's point, we all wish to ensure that the most vulnerable are protected. Perhaps we need to add that to paragraph 54. However, we also need to say that the system is not designed to give those with CSPs additional rights over and above those who have additional support needs. It is important that we say that for those who are not eligible for CSPs.

I do not like the wording in paragraph 52, where it says that the committee

> "is sympathetic to the points made by witnesses that there is a danger that children with complex needs such as autism will not be eligible for a CSP."

The danger is not that they might not be eligible, but that their needs might not be met and that they would not have adequate recourse. The issue is not that they might not have a CSP but whether their needs are being met.

The Convener: I believe that that point was met with nods from around the table.

Ms Byrne: We should pursue Adam Ingram's point about identification, because it is crucial.

The Convener: We are coming to the issue of identification under another heading.

Ms Byrne: Yes, but I agree with Adam Ingram's point that there must be more assurance about the issue of identification for CSPs. We must keep identification in mind because it is an important aspect for parents and is often a problem.

The Convener: Not to beat about the bush on the matter, I believe that identification is central. I have two points. Paragraph 48 states Children in Scotland's view that the decision on a CSP must not be based on from where the support is provided but whether co-ordinated support is needed. Capability Scotland said that the definition did not recognise the extent of co-ordination and referred to the example of co-ordination within education authorities. I raise that point partly because of the issue about whether an education department or a health department should provides therapists of one sort or another. To some extent it would be accidental whether a CSP resulted from such co-ordination. There is a definition issue there. We discussed that matter with the minister and others but perhaps it needs further discussion.

Dr Murray: Is the point not about which department provides the service but whether the service is supplied in connection with education duties?

The Convener: Yes, but can you argue, for example, that speech therapy is not supplied as part of educational provision?

Ms Byrne: Occasionally, speech and language therapists are attached to education departments, but health boards mainly provide them.

The Convener: What I am trying to say is that I believe that we have not fully teased out a definition.

Fiona Hyslop: I apologise for leaving the meeting. I had to work elsewhere for 30 minutes.

We should be aware that provisions are going through at Westminster that would move some education therapists into being governed by health bodies. For example, I believe that educational psychologists are being discussed from that stance as part of a wider review of health service professionals. Therefore, there is a danger in defining because it would not be clear whether a professional would be regarded as part of the education service or of the health service. I believe that COSLA's evidence was that it would consider, for example, speech therapists as part of the education service, irrespective of whether they were brought in from a health department.

The Convener: That is partly my point. How a service is defined would affect whether a child is eligible for a CSP, which is an important point.

Rhona Brankin: The minister's evidence was clear: the provision of certain services is part of the problem—services such as speech therapy, physiotherapy and—

The Convener: I am sorry, but what are those services a part of?

Rhona Brankin: I mean the services that are currently provided by the health service.

Education authorities might buy in those services, but they are provided by the health service. The problem lies in ensuring that such services are provided. The definition is useful, because it relates to where many of the problems exist.

The Convener: I do not challenge that aspect of the definition, but my concern is about whether the definition is sufficiently precise to avoid accidental results that depend on where a therapist or psychologist comes from.

Mr Macintosh: Confusion remains about the interpretation of co-ordination of services, so perhaps that is another matter for the code of practice. When I first saw Children in Scotland's suggestion, I thought that it was a step forward, but it probably leaves the same set of interpretation decisions to be made.

I expect the code of practice to make several suggestions. I expect it to say explicitly that speech therapy and physiotherapy are by definition additional services that would require co-ordination alongside teaching, although some authorities, such as my local authority, might be moving towards buying everything in.

The Convener: I have difficulty with the concept that a provision that can lead to legal rights, such as the right to go to a tribunal, should not be defined in the bill in a way that the tribunal can get a handle on. It is unsatisfactory to put such a matter in the code of practice. Perhaps we will seek clarification on that, even if we are not unanimous about the solution to that problem. Could we seek clarification?

Mr Macintosh: Perhaps we need legal advice, rather than political or policy-based interpretation.

The Convener: Could we have guidance from the Scottish Parliament information centre?

Martin Verity: The Parliament has a directorate of legal services, which can advise us on the point.

The Convener: Having clarity would help. The clerks have picked up the point about what is included and whether that matches the definition.

Lord James Douglas-Hamilton: Section 23 says that the code of practice may, not should, make provision as to many details. That is an enabling power.

The Convener: That comment is helpful and relevant.

Dr Murray: I will return to what Ken Macintosh said. It is important that although it is clear from the bill that a CSP should be in pursuance of educational objectives, if, for example, a young person who required the involvement of social services was in Dumfries and Galloway, where the council's social services are part of the same department as the education service, there would be no argument about whether they were eligible for a CSP, irrespective of the council's departmental organisation. However, concerns have been expressed, and the code of practice should make such matters clear.

The Convener: Do members have any other issues to raise? I will return to the recommendations in a second.

Mr Macintosh: Did we agree to Elaine Murray's point about paragraph 52?

The Convener: We agreed to reword that paragraph. Elaine Murray phrased it well and members nodded.

Only paragraph 54 contains a recommendation. I sense that the committee did not accept Lord James Douglas-Hamilton's caveats—particularly that to the first sentence of paragraph 54.

Dr Murray: It might be worth putting in a phrase about taking resources away from the most vulnerable.

Lord James Douglas-Hamilton: The committee's view was that the issue should be presented positively and that people who have severe learning difficulties should be properly looked after. Positive wording can be achieved; my point is just that the first sentence has an undesirable implication.

The Convener: That is right. That sentence sets the focus. Adam Ingram asked whether the middle of the paragraph should be firmed up. I am not averse to returning to that if members want to think about it for next week.

Mr Macintosh: So with Lord James Douglas-Hamilton's amendment, the paragraph will say something like, "The committee believes that"—

Lord James Douglas-Hamilton: The clerks are brilliant at sorting out the wording to the committee's satisfaction.

Mr Macintosh: I would like to clarify what I think we are saying. The committee is saying that it believes that the bill will ensure that the most vulnerable—I am not sure whether we want to use that word, but we want a word with that meaning.

Ms Byrne: The phrase "children with the most significant barriers" could be used.

Mr Macintosh: That is right. We should say that the committee welcomes the fact that the children who face the most significant barriers will be given the support they need, but the committee also welcomes the assurances that the system is not designed to give children with CSPs additional rights.

Lord James Douglas-Hamilton: We should say that the committee supports the policy that the most vulnerable children should receive priority support. There may be a debate as to whether, under the bill, such children will receive such support.

Mr Macintosh: There are two different points. The main point that you are making is that children with additional needs have barriers in their way. The bill is designed to give them help in surmounting those barriers.

Lord James Douglas-Hamilton: There is no problem about that.

Mr Macintosh: However, the second point is that—

Lord James Douglas-Hamilton: With respect, Ken, I have no doubt about the clerks' ability to sort out a suitable form of words to your satisfaction and that of everyone else.

The Convener: We will come back with a final view on that issue next week.

I have a slight qualm as to whether it is factually correct to say that the bill will give children with CSPs "additional" rights compared with any other group of young people. The reality is that they will receive additional rights, as they will have the right to go to the tribunal.

Rhona Brankin: It needs rewording.

Mr Macintosh: They have different rights rather than additional rights.

The Convener: They will have additional rights. I think that there are no two ways about that.

Rhona Brankin: The issue is that people must be reassured that young people's additional support needs will be met. The bill's intention is that, whether or not young people have a CSP, their needs will be met and the barriers that they face will be dealt with. People need reassuring. The worry for many parents is that they will have what they perceive to be reduced rights.

The Convener: Okay. We will obviously need to return to the final version of that recommendation. If we are done with that section, let us move on to the next.

Ms Byrne: I want to make just one point. Basically, the CSP is supposed to co-ordinate things. Consideration needs to be given to ensuring that all children have the same rights, whether or not they have a CSP. We need to talk about that again. I know that we will come to the tribunal system later in the paper, but there just seems to be such a contradiction there.

The Convener: That is the general point. I appreciate that you want to keep making it, but it does not particularly advance our work for you to do so.

Ms Byrne: I have to keep reminding people. The CSP is supposed to co-ordinate the agencies that are involved with the young person.

Rhona Brankin: It will do more than that.

Ms Byrne: If we are saying that the CSP will do more than that, what other rights will children with a CSP have that children without a CSP will not have? There is the right to go to the tribunal and so on—

The Convener: I seriously think that we should leave that issue until we come to those sections in the report. If there are hangover points, we can return to them and to that general point next week.

Let us move on to the next section. Integrated working and joint responsibility is dealt with in paragraphs 55 to 60.

I have a small point about paragraph 55, which talks about the duty on other agencies to help the education authority when their support is required to identify and address the need for additional support. The paragraph might be clearer if it said that such agencies must help education authorities identify and support the needs for additional support and their duties under CSPs. That is the context. It is a slight, technical issue.

My other point is about paragraph 60, which makes the recommendation. In addition to the recommendation for further powers of ministerial intervention, I wonder whether we need a specific reference to the body, such as HMIE, that would stimulate that further action.

Mr Macintosh: Perhaps the issue is not so much the need for stronger powers as for clarity as to how those powers would operate.

The Convener: I think so. That is what I was struggling towards.

Lord James Douglas-Hamilton: It would be helpful if the sense could be added that there should be enough procedures in place to ensure that agencies must deliver.

Mr Macintosh: The issue is about the process that would be followed if a health authority did not follow through in spite of a tribunal direction. I do not doubt that the minister would have powers—as he said—to enforce such decisions if necessary.

I am sure that we would not wish to enforce decisions, and that we would wish first to persuade the health authority and to point out the obligation on it, but how that will work in practice is a little vague. I would like to know what will happen next if, as it is bound to happen, an authority outwith the education authority does not do as it is obliged to do under the tribunal direction. What kicks in at that stage?

11:45

The Convener: I rather doubt whether there is an issue to do with judicial review by an individual in that connection. It is the local authority that has the right to pursue that duty, is it not? I wonder whether there are issues about timescales, documents and directions by the local authority that would have to be dealt with by the code of practice, which is one of the areas in which powers are given.

Rhona Brankin: The specific point about timescales and reports is addressed in the bill. It gives the timescales by which other agencies are expected to report, does it not?

The Convener: I did not think that that point was addressed. One or two of the people who have commented on the bill in writing have made the point that there should be timescales in some instances.

Rhona Brankin: I think that that is one of the most important aspects of the bill. One of the areas that I have most concerns about is how we ensure the kind of health services that youngsters need are delivered. As a committee, we must reflect on the fact that we need reassurance that that can be done. We have not, as yet, had an explanation of how it will work in practice.

The Convener: There would be general agreement on that in the committee, but I do not know whether we can go much further in the stage 1 report than simply flag up the issue and demand that the minister give us a bit more detail.

Rhona Brankin: I am happy with the wording. It is vital that we say that, because there are still outstanding concerns in this area.

Ms Byrne: We might want to push particularly on the areas of shortage. There are already waiting lists for speech and language therapists.

The Convener: That comes later, under training resources.

Ms Byrne: Yes, but it is also relevant to our concerns about this section. We must point out that we have those concerns because we know there are shortages, although that is not the only reason. We want to improve the system to give access. I would also like to clarify whether a child who receives speech and language therapy only, and for whom that is the only need, would have a co-ordinated support plan.

Rhona Brankin: If they had complex needs—

Ms Byrne: If their only need is for speech and language therapy.

The Convener: It depends on how complicated it is.

Ms Byrne: That shows how difficult it can be to decide where we are heading. Some children will receive speech and language therapy because they have some debility in their speech. That may not impede other aspects of their learning, but there will still be a requirement for speech and language therapy. Does that mean that, if they do not have any other needs, they might not get a CSP?

The Convener: That is probably right in that situation.

Ms Byrne: We have to consider those areas as they arise. The code of practice will really have to clarify all those aspects. At present, there are lots of young people who should be getting speech and language therapy who do not get it.

The Convener: Is not the point that, even short of co-ordinated support plans, co-ordination will be needed in some of the less significant cases? The code of practice should deal with that, and I am sure that it will.

Ms Byrne: We should be pointing those things up.

Rhona Brankin: I made a point about concern about outside agencies, but perhaps we should widen it. We heard evidence that pointed to concerns about what happens when youngsters leave school and the importance of on-going post-school provision.

The Convener: That is also in a later section.

Rhona Brankin: Does not that come under integrated working and joint responsibility?

The Convener: It sort of does, but I think it fits more readily with the issue of 16-year-olds.

Rhona Brankin: I do not mind. I just wondered whether we should try to link in that suggestion when we make that particular point.

The Convener: We are talking about a different issue. We are talking not about agencies co-operating at school level, but about the time of transition.

Rhona Brankin: Well, that is when co-operation takes place. In that case, I am happy to leave the report as it is.

Mr Ingram: Perhaps we should beef up the education authority's lead role so that it has more clout or leverage. Is it absolutely essential that section 19(3) is in the bill? After all, it appears to contain certain get-out clauses.

The Convener: I feel that you are criticising not section 19(3) as a whole, but section 19(3)(a) and (b).

Mr Ingram: Aye. Legally, does that section have to be in the bill? We could suggest that, if it were removed, other agencies could appeal to the minister if they think that the education authority is being unreasonable. Such an approach could short-circuit any tendency to delay or remove the prospect of a dispute.

The Convener: We could do that in different ways. I cannot think how section 19(3)(a), which refers to a request that is "incompatible with" an agency's

"own statutory or other duties",

would come into play. However, section 19(3)(b) struck me as being a bit too easy. Perhaps it might be better to strengthen the phrase "unduly prejudices" to something like "makes a major difference". I think that Adam Ingram is proposing a slightly different mechanism by which the minister would arbitrate in some way. Obviously, that is a possibility.

Fiona Hyslop: Can we capture that in the stage 1 report and recommend that there should be amendments to ensure that that is the case?

The Convener: Is that the general view?

Rhona Brankin: I am not sure that I necessarily agree with that.

Mr Ingram: I am not necessarily singling out this provision, but we must consider ways of taking some of the friction out the system.

The Convener: Is it fair to say that the committee expects the other agencies usually to comply with the education authority's requirements and that we would appreciate clarification from the minister about how that would work in practice?

Fiona Hyslop: We could also ask whether the bill could be strengthened to ensure that that is the case.

The Convener: Yes. We could find out whether it would be appropriate to strengthen the provisions in that regard.

Ms Byrne: Could we also seek some clarification about section 19(5)?

The Convener: I think that the point is the same.

Fiona Hyslop: That subsection refers to the education authority.

Rhona Brankin: The difficulty is that this is an education bill, but we need some reassurance that the Executive is considering imaginative and creative ways of ensuring—

The Convener: Capability Scotland made the same point about the need for co-ordination outwith education authorities and other agencies and within education authorities. Even within the education sector, there are times when someone else has to provide something you want but it is not done right.

Rhona Brankin: Co-ordination does not begin only when a CSP is implemented. After all, youngsters with IEPs also require co-ordination. Indeed, co-ordinating provision within a school, never mind outwith a school, is a huge job. We need a co-ordinated approach across the board.

The Convener: We have stressed that point down the line. I think that the recommendation needs to be rephrased in light of our discussion. Martin, can you do that?

Martin Verity: Yes, we can.

The Convener: We will try to take on board some of the suggestions that have been made.

The next section is the record of needs, which takes in paragraphs 61 to 65 and a recommendation. Do members have any observations?

Ms Byrne: If we are going to go along this particular route, we should go a bit further than what the minister has suggested and recommend an interim co-running of the records of those children who will not get a CSP.

The record continues until the parent decides that they do not want it or until the child has finished going through the system. We risk opening things up to loads of tribunals and all the rest of it. There will be great unrest. We should have a phased approach. I welcome what has been said here, but we could take it further.

Lord James Douglas-Hamilton: Paragraph 65 says that

"the Minister should engage more closely with the those affected by the Bill".

It would be helpful to specify what that means in practice. Does it mean, for example, having forums with parents?

The second point is more fundamental. The final sentence says that

"local authorities continue to operate the Records of Needs system until such a time as the legislation is fully implemented."

That gives rise to the question whether all those with records of needs should have CSPs until they are through the system, or through a five-year period of phasing in. I may be in a minority, but I would like to say that to avoid friction with parents—and great distress—there is a strong case for saying they should.

The Convener: We heard evidence that some local authorities were allegedly stopping doing records of needs. That would obviously not be right and not in accordance with the law. Lord James is making a fundamental point about how we tackle the transition.

Mr Macintosh: Lord James made this point earlier and it was flagged up at our very first meeting back in the summer. I am not sure whether the bill will fail them, but it will certainly do a disservice to many people if they have a record of needs and will not qualify for a CSP and feel aggrieved. The first and obvious solution was to have, as Lord James suggests, some sort of transition arrangement with schemes being run in parallel. We have also heard arguments against that. Lord James speaks about five years, but they could run for 13 years because a person can have a record of needs long before they go to school. That would not be a desirable state of affairs.

If we accept that schemes should run in parallel, we are accepting that the record of needs gives parents and children rights that they will not have under the new system. I do not think that we do accept that. Under the new system, all children with additional support needs will have the rights that children who have a record of needs have. What they will not have is a document laid out in statute. Do we want to repeat the mistakes of the previous record of needs system? Will we turn the record of needs into a vehicle for driving resources and focusing attention on children? We do not want that to happen. We do not want the CSP to repeat those mistakes. We want to extend the best practice for children with a record of needs to all children with additional support needs.

I accept that, in practice, it will be difficult to run two systems in parallel. I also worry that we are undermining everything in the bill by running two systems in parallel. There is a major problem. We need some mechanism that specifically addresses the anxiety, concern and fear of parents who have battled for a record of needs—not all will have had to battle, but some of them will—that we are taking something away from them. That would not be fair and it is not necessary. There must be some way round this.

The Convener: Short of running it for the whole school period, you could run it for an extra year or until the end of that stage of schooling or something, if you were so minded. I am not necessarily saying that that is the right way, but you could do that. That would be one way.

Fiona Hyslop: I understand the logic of what Ken Macintosh is saying. The good faith and good will part of this bill would lead me to support that, but we have to consider realpolitik and experience. That brings us back to the issue of trust. The bill must ensure that there is trust and our report must reflect that. Paragraph 65 says:

> "The Committee welcomes the Minister's reassurances and believes that they should go some way to alleviating parents' concerns."

Although the minister made those reassurances in good faith, I frankly do not think that they will alleviate parents' concerns and it would be wrong if we were to say in our report that they will.

Similarly, paragraph 64 says that the minister contacted local authorities

> "to make it clear that nothing in the Government's intentions would remove any of those services from those children."

Services should not be removed from children, but the minister cannot guarantee that they will not be removed. We must move the matter forward so that we can reassure parents.

12:00

If the bill works well, parents whose children have a record of needs will want to move to the new system, but we must provide some kind of transition for those children.

I am quite attracted by the convener's suggestion about running the record of needs system until a child finishes a certain stage at school, because entering primary school and moving on to secondary school are key challenges for children. At those stages, records of needs seem to help to ensure that support is maintained. We need some kind of transitional arrangement, notwithstanding Ken Macintosh's point that such an arrangement will not be necessary if the new system works properly. It would be wrong of us not to recognise the real concerns of parents, despite the good faith that has been expressed about meeting children's needs.

Dr Murray: I would rather approach the problem from a different direction. To transfer everyone with a record of needs to the CSP system would cause major problems, as CSPs would be prepared for people who would not otherwise have been entitled to them and a precedent would be set. The whole system might begin to founder.

I agree with Ken Macintosh; to run two systems in parallel would reinforce the notion that the statutory document was the important thing, rather than the duty that was placed on the education authority to meet the additional support needs of children. Those parents whose children will not get a CSP will be reassured if the mechanisms by which additional support is achieved are beefed up. To continue to open records of needs for some people might undermine the bill's intention. After all, there are big differences between local authorities and someone might receive a record of needs in one local authority who would not receive one in a different local authority.

The Convener: We must hang on to the central point, which is that if the bill's formulation of local authorities' wider duties works, people's fears will prove not to have been justified. Over time, people will be reassured by the fact that the system is working. No doubt there will be hiccups, as is always the case in such matters.

Rhona Brankin: Perhaps we should ask for legal advice. In an ideal world, it would not be desirable to run two systems, but I do not think that it would be legally feasible, either.

The Convener: To do what?

Rhona Brankin: To run two systems in parallel for an interim period.

The Convener: I do not think there is any doubt but that it would be legally feasible. For example, under housing legislation, people retained their secure tenancy status after the law changed. Indeed, different systems ran in parallel for years. That might not be desirable, but it is certainly legally possible.

Rhona Brankin: That is not the evidence that we heard.

The Convener: If I have understood correctly, that evidence related to a slightly different point, which was that people who have records of needs cannot be given an automatic right of appeal to the tribunal under the criteria that will apply to CSPs. I am not saying that a mechanism could not be devised to allow tribunals—perhaps for a temporary period—to opine on matters that are currently within the remit of the record of needs system. As I have said privately, I am certainly attracted by the idea of widening the jurisdiction of the tribunal, either when the system starts or over time, partly in order to deal with that issue, because people are more concerned about enforcement and rights than the bit of paper and schools' practice. It is a complicated area.

Lord James Douglas-Hamilton: I am reconciled to the reality that we will not reach a unanimous view on the matter.

In his letter, the minister says:

"I have been asked many times about 'who is in and who is not'",

but he cannot provide an answer to that question. I am greatly influenced by that. We believe that in the region of several thousand children will be affected. The reality is that parents regard the record of needs as a legal document that they can rely on in court, so thousands of parents will believe that certain rights are being withdrawn from their children, to their potential disadvantage.

The transitional provisions need not be for 13 years. In evidence, one witness—who might have been from Unison; I cannot remember—suggested five years. There will be a clear difference of opinion in the committee and it would be wrong to pretend that that difference does not exist.

The Convener: I am not sure whether you are right. Committee members have concerns about the issue, but the question is, what is the mechanism for tackling it?

Lord James Douglas-Hamilton: From the point of view of administrative convenience, it is difficult to run two systems simultaneously, but it is not impossible—it has been done before.

Mr Macintosh: I do not think that there is any disagreement in the committee. The problem was one of the first problems that we identified and we are still wrestling with it. We have come much further in the past few months, but all of us can see the particular need. Those of us who have dealt with cases involving a record of needs or additional support needs in general have experience of how stressful, difficult, disturbing and damaging it is to families to battle for a record of needs and of the value that they put on such a record. Would we do a disservice to the whole bill by suggesting the route that Lord James Douglas-Hamilton suggests? Perhaps there could be a transitional arrangement—I am not 100 per cent sure about that—but I worry that everything that we stand for would be undermined. I hoped that there would be another way of doing things.

Paragraph 65 of the draft report states that the committee

"believes that the Minister should engage more closely with the those affected by the Bill to further reassure them".

The solution lies in talking to the parents and families whom we are discussing and asking them what we could give them and what they value about the record of needs that we could somehow transfer.

The Convener: Is that not reasonably clear? They value the bit of paper and the appeal mechanism—not just the provision, but the other things that are given by it, as we have always pointed out.

I want to clarify matters. The first general question is, are the reassurances adequate, given the perception that we have heard much evidence about, or must there be something beyond what there currently is? Secondly, what would be the mechanism for providing that? Is there a consensus—I am not sure whether there is—that we need to have more than ministerial reassurances and more than simply closer engagement with the people who are affected? Should a mechanism be provided? Is there disagreement about that?

Rhona Brankin: The committee should ask the Executive to consider whether there are other ways of reassuring parents. We have taken evidence and have asked a specific question about parallel systems. I do not suppose that anybody has the *Official Report* of what has been said, but we did ask a specific question.

The Convener: The minister was against the suggestion that was made. There is no compelling reason why such things could not be done, although I am not saying that they should be.

Rhona Brankin: I cannot remember what was said. It would be useful to see the *Official Report*.

Lord James Douglas-Hamilton: I think that I asked the question and that the minister replied that he would prefer not to have two systems running in parallel, as the convener recollects. If I remember correctly, the minister also said that he would consider the committee's recommendations and representations.

Rhona Brankin: It would be useful if we could see what he said.

Mr Macintosh: We are at a crucial point and the issue is difficult, but I am sure that we can capture what we are trying to achieve without necessarily reaching a conclusion one way or the other. Perhaps that is beyond us. I wonder whether we could go back to the parents or families whom we are discussing. The submissions that we have received have been based on the idea that the record of needs could be preserved in some way or transferred over to CSPs, although one could argue about the number of CSPs that would be involved. We could start from the assumption that a CSP is not the same as a record of needs and that CSPs will include only half of the families who currently have a record of needs. We could ask families what we could do to give guarantees. The minister has already done many things, which we should welcome, and he is clear about his intentions. However, he has not got there yet because there is so much mistrust, which we keep talking about. Rather than try to achieve the aim through bland expressions of good will, it would be better to ask for a practical way forward.

The Convener: Do you mean that we should go back to the groups such as Dyslexia in Scotland, the autistic societies and so on?

Mr Macintosh: Exactly. We should also go back to Lorraine Dilworth and many of the other people who have practical experience of using the current system.

The Convener: That does not take us away from flagging up a transitional theme in the report and saying that we are looking for something further to be done about that. If the idea meets with the agreement of the committee, we could mention that we will make those further inquiries in the meantime.

Rhona Brankin: We must flag up concern about transition and state that the children and families who currently have a record of needs have got to be the top priority. We must be explicit about that.

The Convener: Yes. I will again refer to housing. I remember that when we changed the right to buy, one of the important underlying propositions was that people who had existing rights should not lose those rights. Rightly or wrongly, the Executive has taken that approach on a number of issues. People have rights now and whatever the future system is, those rights will not be taken away. That is a helpful approach to the issue.

Dr Murray: Surely the whole point of the bill is that nobody should lose rights that they currently have. There should not be a perception that people are losing rights. The issue is what they can do to ensure that those rights are fulfilled.

The Convener: People may not be losing services, but they are clearly losing rights. They are losing the right to have a determination of a record of needs issue at a higher level.

Dr Murray: Perhaps that is the issue that needs to be examined, so that we can see what needs to be done to reassure people and give them the opportunity to appeal when they feel that their rights are not being fulfilled. That is where the issue is; it is not so much—

Ms Byrne: One example of that is that under the record of needs there is a right to regular reviews.

The Convener: There is a mechanism under the existing legislation under which records of needs go higher up—they go to appeal committees and after that they go to the Secretary of State for Scotland—or the Scottish ministers in the current context. I suppose that that jurisdiction could be transferred to the tribunal as a practical method of fulfilling that right. Again, we would need legal advice on the possibilities of such a measure.

Mr Macintosh: Perhaps we could take some sort of interim position. We could state explicitly that, although we welcome the minister's attempts to meet and reassure parents, we recognise that he has not so far succeeded in reassuring them and that, as there is a difficulty and mistrust, a great deal of effort will be required to address the situation. It may be that we require some sort of transitional arrangement, but we are looking to the Executive and to others to use the current period to address the situation. Even if we can get that grain of an idea here, there is still the whole period before the bill comes into force in which to address the matter. There is quite a base of comfort, as it were, but we should state in the stage 1 report that we are not convinced that the minister has got it right yet, although he is trying; that we are looking for further efforts to be made; and that, in the meantime, we will also look at whether it is necessary to put in place transitional arrangements.

The Convener: Right. Let us see whether we can keep the nub of that. Does that approach meet the needs of the committee? Can we unite round that or do members have qualms about it? We are not saying that the precise mechanism is X, Y or Z. We are saying that there is an issue to be dealt with. We acknowledge that we are not sure of the precise mechanism that should be used and that we want the minister to examine the matter further and we will consider it further, but we recognise the perception that has to be tackled. Does that meet the needs of the committee?

Fiona Hyslop: Yes, although I think that we may want to make some suggestions as to what could be considered, without saying that it is what we necessarily think should happen. That would give a flavour of what could happen.

The Convener: We have made a number of suggestions during the meeting. Perhaps those can be drawn together by the clerks and put in the report.

Fiona Hyslop: The danger is that the draft report confuses some of the different time frames in which we need to have reassurances and guarantees. Paragraph 63 deals with the here and now. There are, basically, three periods in which there are problems. As of now, we are concerned that the minister's guarantees may not be being met.

The Convener: I think that we have all accepted that that is the area of paragraph 63.

Fiona Hyslop: Paragraph 64 talks about the new system. Our commentary talks about the new system, but the quote—

The Convener: Can we separate out the recommendations, so that one attaches itself to paragraph 63, on the current position, and another is on the more important, longer-term issue?

12:15

Fiona Hyslop: Right, but the quote and the evidence that we had from the minister refer to his current letter to chief executives, saying that, while the bill is being considered, they must ensure that people's support needs continue to be met.

The Convener: No. I do not think that that is what he said. He said that, after the bill comes into effect, people will continue to have their existing rights. That is the longer-term position.

Fiona Hyslop: My understanding is that the letter that has been written—I have seen the letter that has gone to chief executives—is about the current system rather than the new system. If the minister is now saying that he has written a separate letter, that is fine. We have to separate out the existing situation before we get the legislation; the transition period, when we get the legislation; and the future situation.

The Convener: We could perhaps get hold of a copy of the letter to the local authorities before next week, to clarify that. When the minister spoke to us, he was talking about the guarantee that provision will continue to exist after the bill comes into effect.

Fiona Hyslop: So, we can put a recommendation in paragraph 63 that we need to have reassurances about the period before the new legislation comes into force.

The Convener: Yes.

Fiona Hyslop: Fine. Then there is the transition issue, on which we are agreed. The question then is whether, after the bill is implemented and we have gone beyond the transition period, we are happy.

The Convener: Yes.

Rhona Brankin: We need to say that we welcome the minister's reassurances but that we recognise that there are still some parents who have concerns. I am in touch with some parents groups and have spoken to other parents groups that are extremely happy with the bill. I do not think that we are at a stage at which we can make concrete suggestions. We just do not know—

The Convener: Well, we are not doing that. What we are doing is recording one or two thoughts that have been put forward against the background of the question, "What's the way of doing it?"

Rhona Brankin: I do not know whether we have had enough discussion to warrant that. The minister should look again at transition. It is important to state that those young people who currently have records of needs should be the top priority. There must be a clear transition phase and those pupils who currently have records of needs must be top priority. We should be explicit about that.

The Convener: I think that that is what we have agreed. It is the formula that we have been talking about. Are you happy with that, James?

Lord James Douglas-Hamilton: Yes. The form of words in the draft report does not preclude our lodging amendments at a later stage.

The Convener: No, absolutely not. It precludes neither what we do at stages 2 and 3 nor the phraseology that we use when we come back to approve the report next week.

We have taken quite a bit of time over that section, but it is an important section and it was worth spending time on it. The next section deals with the number of co-ordinated support plans and includes paragraphs 66 to 69.

Fiona Hyslop: I recommend that we defer consideration of this section until we get the correspondence from yesterday's meeting with COSLA.

The Convener: Yes. I have no personal observations on it as it stands.

The next section deals with individualised educational programmes and personal learning plans and includes paragraphs 70 to 76. There are probably one or two points on which members will have observations to make.

Dr Murray: Are we able to make reference to the letter that we have subsequently received from the minister, which clarifies the relationship between PLPs, IEPs and CSPs?

The Convener: Yes, I think that we can. Although the minister's letter will be part of the evidence, one suggestion was that we should attach it as an appendix to the report. That would be quite useful. Among other things, it would save our having to put in the financial stuff in detail, as it is all laid out in the letter.

Lord James Douglas-Hamilton: It would be helpful if we could ask whether the minister could give us a timetable for the bill's implementation.

The Convener: The minister said that in his evidence, did he not?

Lord James Douglas-Hamilton: To some extent.

The Convener: It might be worth making a reference to it in the report.

Lord James Douglas-Hamilton: I do not think that he gave a specific timescale.

Mr Macintosh: He did not give one for PLPs.

Lord James Douglas-Hamilton: I think that we are entitled to ask whether he can give a more specific timescale.

The Convener: Perhaps it was a throwaway line but it might be helpful for the report to record the minister's statement about how long it will take for the code of practice to be discussed and for the proposed legislation to come into force, because he said something specific about that.

Rhona Brankin: We have to be explicit that the committee feels that a single system is more inclusive. We welcome what the minister has said about that, but it is important that any further development of PLPs, IEPs and CSPs should be done in an integrated way. The parts of the Executive that are considering PLPs are different from those that are considering CSPs.

The Convener: That is crucial.

Mr Ingram: I do not know that the minister's description of PLPs and IEPs as a "light touch working tool" is particularly helpful. There might be a perception among parents that the IEP is the Mini to the CSP's Rolls-Royce, as it were. I do not know whether the Rolls-Royce is driven by a bald, ugly man or not.

The Convener: You have a hitherto unsuspected flair for graphic language.

Mr Ingram: One of the major concerns that parents have is that the CSP is the desired mechanism that they have to get in order to have a passport to services.

The Convener: Is the central point there not the desire expressed by the minister to have a system that is as free from bureaucracy and red tape as we can make it and that has as light a touch as possible?

Mr Ingram: Is it robust enough to deliver on the demands for additional support needs?

The Convener: I noticed a couple of good comments in the evidence. Professor Sheila Riddell said:

> "It is not realistic to have IEPs for every child in school"—[*Official Report*, *Education Committee*, 10 September 2003; c 89.],

and small groups need detailed planning, but some need more planning than others within the curriculum. I thought that that was quite a helpful comment.

Another helpful comment came from Stirling Council, whose written submission stated:

> "Our view is that children's additional support needs should be addressed in the most effective, least intrusive way possible … within the child's own classroom, without defining the difficulties as exceptional or special."

The implication is that that should be done where possible.

Those two comments encapsulate what we are trying to say, which is that there should be as little bureaucracy as possible, that it should happen as automatically as it can within the grain of the system, and that it should involve as little intrusion on the child as possible. That might sound as if it runs contrary to having a detailed statement but there is a balance of tension between those two statements.

Fiona Hyslop: Obviously paragraph 76 will change in light of the letter that we received from the minister. I am not sure whether it is appropriate to include this in the bill, but somehow we want to call on the Executive to provide a clear explanation of how IEPs and PLPs will ensure that the proper support services are provided for those children with additional support needs who are not eligible for a CSP. We want a practical explanation of how those tools can and will be used to ensure that support needs are met.

Paragraph 76 as it is currently constructed and the Executive's reply are about how IEPs and PLPs will work in relation to CSPs. It would be nice to have that made clear in the bill, but I do not think that that can be done for PLPs, which do not properly exist yet. Somehow the code of practice should make it quite clear how the Executive expects PLPs and IEPs to provide and support additional support services.

The Convener: We should not lose the idea that there should be a single document if at all possible.

Fiona Hyslop: PLPs and IEPs have as much of a role as CSPs have and we should make sure that that is emphasised throughout the report.

Ms Byrne: When consultation and discussions take place on the code of practice, we should clarify the situation. If we hope to phase in one means of planning, which may be the PLP, we must examine good practice with IEPs and incorporate that into the PLP at some stage. If there are two means of planning, there will be a paper chase and confusion about who gets what.

The Convener: There is a linkage with other plans, such as those for people who are in care.

Rhona Brankin: I want an integrated system, but one that has different stages to meet children's needs. Some children require more complex ways of working in schools to meet their needs. An IEP requires huge amounts of co-ordination. One difficulty with the introduction of PLPs is that teachers are worried that they will mean additional bureaucracy. I welcome the minister's comment that the integrated system recognises the need for a light touch, but we need a system that is strong enough to meet more complex needs.

Fiona Hyslop: Given that the bill concentrates on CSPs but that the evidence leads us to say that IEPs will be important for a great number of children, should our report not push that perspective? Although, for legal reasons, IEPs might not be covered in the bill, that does not undermine their role. There are mechanisms through which the Executive can reinforce that role.

The Convener: I have one small point. We have some evidence that IEPs, which have been seen as a desirable way forward in many respects, are of variable quality—there are good examples but also pretty awful ones. Perhaps in that context we should make the observation that the issue of standards must be tackled.

Rhona Brankin: Absolutely. The code of practice is central.

The Convener: Yes. If members are happy with those comments, we will have a revision of that section of the draft report shortly.

The next section, which is paragraphs 77 to 83, is about the reasonable cost issue. I do not want to spend too much time on this part, although I may be jumping the gun. A number of witnesses have challenged the present phraseology. The issue is whether it provides too much of a get-out clause. The recommendation in paragraph 83 is that the Executive should reconsider the phraseology and consider the Disability Rights Commission's formulation, which is perhaps less of a get-out clause. My only suggestion is that we should use the phrase "alternative definitions such as", because other definitions might do the trick.

Rhona Brankin: In a previous meeting, I said that the DRC made that point, but I cannot remember whether it was the DRC or the gentleman from Sense Scotland. Perhaps the clerks will check that, if they have not already done so.

Lord James Douglas-Hamilton: I ask that the word "urges" in paragraph 83 be changed to "asks".

The Convener: Okay. Are members happy with that section?

Members *indicated agreement*.

The Convener: Assessment, which is an important issue, is covered in paragraphs 84 to 93. A lot of the section is narrational, but I have a couple of comments. We have received a lot of evidence that people are concerned about how the process of identification and assessment will work in practice—the point has also been made to me in private conversations. It is fairly obvious that, in some cases, an issue will arise in the course of education provision, something will be done about it and the situation will then move on. In other instances, issues need to be identified and tackled early, before school provision kicks in. Issues were raised about the cases in which specialist assessment is needed, but it is clear that multidisciplinary assessments are needed in complex cases. The question is about the best way of triggering such assessments.

Looking at the later parts of the section, around paragraphs 90 or 91, I wondered whether we might say that the committee had concerns about how the process of identification and assessment would operate in practice and that our concerns included the need for early identification and assessment of specific conditions, such as the motor impairment conditions that the Craighalbert Centre deals with—I visited the centre this week, which is why it is on my mind—and the need for timely investigation of children with more complex needs.

Philip Kunzlik commented that many children require multidisciplinary assessment. Quite an important issue was that, often, the people doing the assessment were the same people who identified the resources that would have to be provided. There is a conflict of interest in that arrangement, but I am not sure how it could be dealt with, as the education authority clearly has the lead role. However, a number of people have said to me that it is inappropriate to recommend that, for example, children should go to one of the special schools, because of the resource implication for the education authority. That issue has to be recognised.

12:30

Mr Macintosh: I agree with much of what you have said, convener. We might be in danger of overloading the code of practice, but there might be a way in which we could use the code to tackle the issues raised in paragraphs 90 to 93, which deal with the two different points of view involved. Local authorities do not want an open-ended demand; I believe that they suggested to the Executive that an ability to decline a request for an assessment be included in the bill. On the other hand, we all know that one of the most frustrating and difficult tasks facing families is getting a diagnosis. They have to fight hard to get one and it is often the local authority that they are fighting. We have to balance those elements.

I am worried about the ability of local authorities to refuse assessment—I do not think that the bill is clear enough about when they may do that. I know of an on-going case in which the local authority has been quite helpful in supplying one form of assessment but the parents are totally unhappy with it, because they do not feel that it is the right form of assessment for their child. At the same time, however, I feel that the assessment should be set within a policy of staged assessment. I do not think that parents should be able to say, "I want the works immediately." There should be a series of stages.

If local authorities are to be saved the business of compulsory assessments and the unnecessary assessments are to go, they should not be in a position to refuse parents who want an assessment for their child. Parents know when something is wrong with their children and that there has to be a proper diagnosis and identification of the problem.

We could suggest that that goes into the code of practice. Paragraph 93 should say that, within a staged structure, the criteria on which local authorities are allowed to refuse assessment must be extremely restricted and clearly identified. That way, parents will be aware of their rights in that regard.

Rhona Brankin: We should welcome the end of mandatory medical assessments. However, we have to reflect the concerns that some groups have raised. Specifically, it is important to mention the concerns of groups representing youngsters with autistic spectrum disorders. Often, it is wrongly assumed that a youngster who presents as having behavioural difficulties has Asperger's syndrome. It is important that we say that. The code of practice will be vital in that regard, as there will be some hidden barriers that will not be picked up unless a youngster has further assessment. Similarly, youngsters are sometimes wrongly diagnosed as having dyslexia when they actually have another form of visual impairment. We must be explicit in saying that the code of practice has to ensure that, where there might be hidden barriers to learning, wider assessments should be put in place.

The Convener: Yes, that is right.

Ms Byrne: That would also cover those children with a dyslexia problem, which often is not identified.

Mr Ingram: I think that we are all agreed that assessment is the key to accessing services. From the evidence that we have received, I understand that the code of practice will cover the process up to the point where, under the current system, the child is considered for a record of needs. That will include IEPs and that type of thing. It is to be hoped that the code of practice will institute best practice across the country—that would be a positive step. However, we need reassurance that assessment beyond that point will be attached to the child's action plan in the IEP or CSP, because assessment does not come automatically.

The Convener: Are you talking about reviewing the assessment from time to time?

Mr Ingram: Yes. The action plan should be reviewed on an on-going basis. Among the considerations should be the requirement for assessment over time, because, as we all know, assessments are not available automatically. We need reassurance that that will be built into the process.

The Convener: That is an issue for the code of practice. I would be reluctant for the bill to get too formulaic about that. The issue is how the system operates in practice, which requires a light touch.

Mr Ingram: If we take away compulsory assessment and put the onus on parents to call for an assessment, people might fall between two stools. It is important that the assessment process is built in.

The Convener: The ability to request an assessment is an extra right for parents, rather than the normal arrangement, as I read it. Best practice will be for the authorities to pick up issues as routinely as possible. However, if they miss things, parents will have the right to challenge the set-up and trigger an assessment.

Mr Ingram: But, as we know, not all parents are as informed as they could be.

The Convener: That is why I am saying that the code of practice is important.

Fiona Hyslop: There are two aspects. Adam Ingram dealt with the first well, which is that we must ensure that we cover those children whose parents do not demand an assessment. I support everything that he said on that.

The second aspect relates to parents exercising the new right. We welcome the right of parents to request assessment, because that is a good thing. However, the other side of that is the concern expressed by witnesses about the ability of authorities to refuse a request for assessment. There is supposed to be a partnership. To reinforce trust, can we have a mechanism in the bill to push the balance more towards parents? There is no point in having a new right to request assessment if all the power lies with the local authority to refuse that request. What mechanisms are there for parents to appeal against a refusal for an assessment? Is there anything that can give them strength? Do we need to strengthen that aspect of the bill?

The Convener: There is also not much guidance on valid reasons for refusal. That might be dealt with in the code.

Fiona Hyslop: We do not need to be specific about what we should do—that is for stage 2—but we should make it clear that we are concerned about the balance in the bill. More reassurance needs to be given, whether that is done in the bill or elsewhere. There is no point in having a new right if it is then—

The Convener: I seek guidance from other members on that point.

Rhona Brankin: I disagree with Fiona Hyslop. The right is new and I welcome it. It is not possible to say that the system is not balanced. In a sense, that is something that we will be able to see only when the legislation is in place. Someone might raise the issue as a concern, but we have had no evidence of what will happen. As I said, the legislation is not in place yet.

Fiona Hyslop: I have a point about paragraph 92. We know that witnesses were worried about the authority's right to refuse a request for assessment. We have to agree whether those concerns are well founded and, if so, whether something has to be done. We can otherwise make a note that people are worried. We have to acknowledge the concerns that have been expressed. With good faith and good will, assessment will not be an issue. However, we know that, until now, it has been an issue in practice.

The Convener: Would it be fair to say that there is at least a need to have clarification of what are valid reasons for refusal and what are not? That would move the issue forward a little. The secondary question is whether there should be some sort of appeal mechanism. I am not sure whether the dispute resolution procedures were supposed to kick in at this point. That may have been the case, but I am not sure. Shall we seek clarification from the Executive about how it sees the provision operating in practice?

Ms Byrne: I think that we need to do that. I share Fiona Hyslop's concerns. It is great that parents have the right to request an assessment, but if we end up with a situation in which no reasons of substance have to be given for a refusal and there is no recourse for parents after a refusal, the provision will not be such a great improvement.

Rhona Brankin: Let us get clarification on the issue.

Lord James Douglas-Hamilton: The point about an appeal mechanism is important. There will be a number of borderline cases.

The Convener: Yes. That point probably comes under the broader issue of tribunals, which we will look at in a minute. Do members have anything else to say on assessment or identification? Assessment is an important matter, but we may have covered all the issues.

Rhona Brankin: I say to Adam Ingram that the bill states that CSPs must be reviewed annually.

Mr Ingram: I assume that that applies only to co-ordinated support plans; I was also talking about IEPs and about building in an on-going assessment.

Ms Byrne: It would be useful to clarify the right of review for IEPs.

Fiona Hyslop: The bill does not deal with IEPs.

Ms Byrne: That is the problem. How do we ensure that those with additional support needs get access to reviews?

The Convener: I think that a code of practice issue is involved. We should seek clarification on the point.

I make one minor suggestion about paragraph 93. The paragraph makes several recommendations and it might help the clarity of the report if those were split up.

We move on to the next section—

Rhona Brankin: Although this point also applies to the next section, one area that I am keen should be beefed up concerns advocacy. Advocacy must be a major issue in the report. We say:

> "there is a need for parents to be equipped with the necessary skills and support to be able to identify the need for an assessment".

The Convener: Yes, that is a valid point. Let us include a reference to the importance of advocacy in relation to assessments.

The next section is headed "Pupils outwith the education system". I think that the report has encapsulated a good bit of what we have discussed on that issue. Do members agree with the phraseology?

Fiona Hyslop: May I ask a question? I am thinking of a child with cerebral palsy, for example, who is in the public sector education system and needs classroom assistance. If the parents decide to put the child into private education, who pays for the classroom assistant? Does the right of the child to additional support override the fact that they are being educated privately?

The Convener: I was going to raise that point, albeit in a slightly different way. Reference is made in the evidence to the context in which charging should apply. I do not know the answer to the question, but I think that it has to be seen against the background of the power and the duty issue and where the extra support comes from in respect of educational or other provision.

I have never been able to see the logic in saying that, for example, if somebody needs therapy of some sort from the health service, the fact that they attend an independent school or are educated at home should affect their entitlement in one way or the other. If someone opts out in order to get independent education or to receive education at home, it does not follow that they have opted out of the health system.

Fiona Hyslop: The child has not done that; the parent has. The question is the philosophical approach that we adopt to the rights of the child and to how parents decide how to spend their own money.

The Convener: How do we encapsulate that? Should we add something to paragraph 98 about what the intention is? No—that is the wrong way round.

Fiona Hyslop: The issue relates to several sections of the report; it arises in relation to private education, home education and nurseries. We have all agreed that, unless there are public nurseries in every town, which there are not, people are not opting out of the system when they send their children to private nurseries. In rural areas, and for many working parents, the choice is not available. I am not sure that we can come to any conclusions other than the ones that we have already arrived at, but we can categorise the differences. An answer needs to be provided for all the various situations. I am thinking in particular of home education, which may involve a parent being in dispute with the local authority precisely because—

12:45

The Convener: As indeed might independent education.

Fiona Hyslop: The big area is nurse supervision. Clarity on that issue would be extremely helpful.

Rhona Brankin: I thought that we had obtained further clarification from the minister about nursery provision.

Fiona Hyslop: No, we have not. I was looking at the evidence.

Rhona Brankin: So we have not had a response.

Fiona Hyslop: No. I will explain what my understanding is. You know how two hours of nursery provision are given.

Rhona Brankin: Yes.

Fiona Hyslop: If there is a partnership involving a private nursery and the local authority, the nursery gets some kind of payback. It must of course meet the educational standards of the local authority for that provision, but it would be captured by the measures of the bill. If the bill applies to such nurseries, and if all councils are operating a similar system, there should not be a difficulty. However, we are not convinced that they are all operating such a system. Although we have heard an opinion, from COSLA, about how the measures could be interpreted, I do not think that we have heard anything from the minister about that. It would therefore be helpful to list the areas on which we need clarification.

The Convener: That is fair enough. Rhona Brankin is right to say that we have had some clarification from the minister, although I am not sure that it entirely covers the point.

Let us move on, as I am conscious of the time. I would like us to press on and get as far as we can, even if that means running on a little after 1 o'clock. I do not want to leave too much for us to come back to next week.

Paragraphs 99 to 104 are headed "Children". The simple point here is about the extension of the rights of children with capacity to make various requests. The presumption is that that will apply to children over the age of 12. I support that provision and I think that other members do, too. Is there any disagreement on that?

Rhona Brankin: Do those rights include the right to appeal?

The Convener: I think that they include any rights that may be exercised by adults on the children's behalf.

Mr Macintosh: That reinforces the point about advocacy.

The Convener: Yes, I think that it does.

The next section, from paragraphs 105 to 108, is on children under the age of three.

Ms Byrne: Before we move on to that, could we look at paragraph 100? The Equity Group is advocating a rights-based system. I am still concerned about the differences among the various rights of children, depending on whether the children have a CSP or additional support needs. If we are going to go down that road, we need to consider access. That goes back to the questions of assessment and identification. Where do children go if the authority refuses a request? That has a bearing on the matter.

The Convener: That goes back to the general issue, because it applies to parents, too, whether or not the point is valid. We can return to the issue when we consider tribunals. The point that paragraph 100 specifically addresses is capacity. We are saying that children with capacity should have the same rights as their parents to trigger whatever it is that they want. That is the bottom line.

Ms Byrne: I am looking at what the Equity Group said, as is quoted in paragraph—

The Convener: Yes, I know, but that deals with other issues, too, Rosemary, if I may push on.

We come to the heading "Children under 3".

Fiona Hyslop: Paragraph 106 contains a valid and well-made point by Dyslexia Scotland. However, I am not sure that it is relevant to cite it in this part of the report. Dyslexia Scotland is not arguing against having an intervention, but its point is presented as if it is an argument against having treatment. I do not think that the point was made with that intention.

The Convener: Yes. I think that the object is to put in place mechanisms to identify and deal with a child's needs and to enable them to take the fullest possible part in pre-school and school education.

Fiona Hyslop: I suggest that we take out paragraph 106.

The Convener: I agree with that, but I was just saying that there is a more general point on the objective of the exercise. I am not sure that the recommendation in this section quite hits the nail on the head.

Mr Macintosh: As well as saying that we welcome the fact that the Executive has an open mind, we should recommend that the legislation should cover children under the age of three. The recommendation should be firmer. We should tell the Executive that, now that it has an open mind, it should legislate accordingly.

The Convener: When I visited the Craighalbert Centre, it was pointed out to me—as it was to Ken Macintosh and to others who visited—that the children go there to boost their ability to take part in wider society. It seems to me that the issue that the section is trying to highlight concerns children who have issues of that kind.

Mr Macintosh: This is one of the few areas in which there would be a loss of rights. Children between the ages of two and three would lose the right that they currently have. Given that some children are identified at birth as requiring a record of needs, I think that the general duty should apply to all children rather than just to those who are two years of age and older.

Rhona Brankin: I do not entirely agree. For the majority of under-threes with additional support needs, it is the parents who first recognise that something is wrong. That is not always the case, but that is what happens on the whole. At that stage, the health services tend to be engaged with the families. The important thing is that the child's needs are met. The difficulty is that some youngsters under three with additional support needs require input from education services prior to their going to nursery, so that they are, in a sense, prepared for nursery. I am not aware that there is anything in the bill that would impose a duty on health services to ensure that the additional support needs of youngsters under three are met and co-ordinated.

The Convener: The British Association of Teachers of the Deaf suggested a number of helpful amendments that might do that. BATOD's suggestions were along the lines that there should be a duty on the various services to draw such needs to the attention of the education authority and that there should be a duty on the education authority not only to provide additional and appropriate educational support for such children, but to respond to notifications by health boards and other agencies about children with such needs. That may not be the right wording, but it seems to me that something along those lines should do the trick.

Rhona Brankin: Essentially, we need to say that no youngster should be disadvantaged by the change. That is the worry. A tiny minority of kids have a record of needs opened for them at the age of two, but co-ordination is sometimes required for youngsters at that age to prepare them for nursery.

The Convener: I do not agree that the problem is only that some will lose the rights that they have under the record of needs. There is the opportunity to do something slightly better if we get the framework right.

Rhona Brankin: Absolutely.

The Convener: Shall we reconsider the phraseology of the section along the lines that have been suggested? We are clear that there should be a commitment to do something a bit better than the current position, whereby the rights under the bill would kick in when the child is three. We might need to argue about the formulation of that.

The next section is paragraphs 109 to 115. I declare my usual interest by stating my association with Ross Harper solicitors and my membership of the Law Society of Scotland. As it has not been pointed out elsewhere, we should flag up the oddity that legal aid will be available in cases involving placements for ordinary children—

if I may put it that way—but not in cases involving the category of people who will go to the tribunals. I am not sure what the answer to that is, but we should flag up that unfairness. There ought to be some mechanism for resolving it.

Rhona Brankin: That is an anomaly, but I do not know that I would necessarily say that it is an unfairness. The evidence that we received was that having legal representation was not necessarily an advantage.

The Convener: I accept that entirely. I generally share that view about legal representation before the tribunal, but the bill would create an oddity by taking away existing rights of legal representation for placing requests. Perhaps there is a need for some sort of sift, cut-off, qualification or other mechanism that should put children with additional support needs and children without such needs in the same category as far as legal representation for placements is concerned.

Mr Macintosh: Am I right in thinking that we asked the minister this and he said something?

The Convener: He was sympathetic to the suggestion.

Mr Macintosh: I think he said something to the effect that he would look at the matter. It is a tricky issue, however, and I do not know how he will resolve it. I believe that he has been considering it since it was flagged up at a meeting of the cross-party group on autistic spectrum disorder, or perhaps since the summer.

The Convener: At our meeting on 17 December, he said:

> "We are aware of an anomaly that could arise when there is a placing request. For reasons that committee members understand and which I have touched on, it will not be possible to get legal aid to be represented at a tribunal considering a placing request case."

He then went on to talk about legal aid in the other situation.

Mr Macintosh: Did he not say that he is going to resolve the anomaly?

The Convener: I beg your pardon; you are right. He went on to say:

> "I am aware of that issue as it has been pointed out to me pretty forcibly by some parents. I suspect that the numbers involved are very small, but nonetheless there does seem to be a point of principle and we are considering the point to see whether there is anything that we can reasonably do about it. I cannot give a commitment on that matter, but we know that there is an issue and we are considering it."—[*Official Report*, *Education Committee*, 17 December 2003; c 583.]

The minister has an open mind on the matter. I do not think that we can suggest a solution; we do not know what the solution might be. We can, however, suggest the principle that, on placement requests, there should be equality of provision, if that is feasible.

Fiona Hyslop: On paragraph 110, it is obviously a good thing that more children can request a place in a special school. However, paragraph 114 says that, in order to get into the school,

> "They would ... need to demonstrate why the special school was appropriate and the school would also have to indicate a willingness to accept the child."

How will parents of children who do not have a CSP be able to demonstrate why a special school is appropriate? Does not the issue hinge on the right to assessments, which could be refused by the same local authority that could refuse the right to a special school? If the assessment system works well and parents are able to secure an assessment for their child, that will be fine, of course.

The Convener: That point is linked to the legal aid point. I understand that the Dyslexia Institute supplies many parents of children who have dyslexia with a report for an educational psychologist. That is used either to persuade the local authority to change its mind or to deal with other records of needs issues. I imagine that the same situation would apply in relation to the widening of a placement.

Fiona Hyslop: So there is a question about what could be used to demonstrate that the child should be allowed a place in a special school and what support parents will have in—

The Convener: I am sure that it would be possible to get a report; however, that would have cost implications.

Mr Macintosh: We should recognise that, previously, if the child did not have a record of needs, there was no right to request a place at a special school or to request an assessment. Now, however, all children with additional needs have the right to request a place in a special school and the right to request an assessment. That is a huge step forward because those are the issues that come up time and again when we talk to parents. However, it is important that the code of practice should put in place a system that works properly, and that parents and local authorities know how to implement the system fairly.

The Convener: I am anxious to move on. I wonder whether a word has been missed out of paragraph 115, which reads:

> "The Committee notes the concerns raised by local authorities and the Minister's assurances that it would not result in unprecedented demands on the local authority."

Would it be more sensible to say that the committee "accepts" the minister's assurances?

Lord James Douglas-Hamilton: Or “notes”. I think that “notes” is good.

The Convener: “Notes” is not bad, but joining two things together with a single verb is not terribly satisfactory.

The next section, paragraphs 116 to 121, deals with “Mediation, Dispute Resolution and Tribunals”.

Lord James Douglas-Hamilton: In the second sentence of paragraph 121, the importance of firewalls should be mentioned. I think that the minister used the politically incorrect expression, “Chinese walls”.

The Convener: Although that is touched on earlier, it could be rephrased there.

Lord James Douglas-Hamilton: I think that the minister has accepted that principle.

13:00

Rhona Brankin: The paragraphs encapsulate the matter very well. I cannot remember whether we received evidence to that effect, but it is important that there be some way of ensuring that the quality of mediation services is high, so there must be some standards for evaluation of mediation services.

The Convener: In this context, I have concerns about independence, but I do not think that I could go as far as to say that there should never be council mediation services. That is the issue.

Rhona Brankin: That is why I am saying what I am saying about the quality of mediation services. If they are to be of adequately high quality, they must be independent, if they are to fulfil their function.

The Convener: If they are not independent, people will not use them or—if they use them—they will not like the result. That is the bottom line.

Rhona Brankin: There is a quality issue. I suppose that we could say something like, “The committee believes that it is important that mediation services are of the highest quality and that a system is put in place to evaluate them.”

The Convener: I think that we would agree with that.

As there are no other issues under mediation, we will move on to the section of the report on advocacy, which covers paragraphs 122 to 125. I wonder whether the minister should consider including the Executive’s commitment to advocacy, which is mentioned in paragraph 125, in the bill. It is a significant issue. I do not think that there is any doubt about the minister’s personal desire to go in that direction. Does that suggestion have support?

Members *indicated agreement*.

Mr Macintosh: Although we have already made the point that advocacy should also be available for young people, perhaps the point should be remade in paragraph 125, because the way the paragraph reads suggests that only parents need such services.

The Convener: That is a very good point.

Mr Macintosh: I will digress slightly, because I have a point that is more to do with mediation than with advocacy. Although I firmly believe that advocacy should be mentioned specifically in the bill, I quite like the bill’s move away from a legalised approach. Reduced confrontation and mediation are important not just for this bill but for the approach of Government policy generally, and I do not want to undermine that. In other words, reference to advocacy—to empower and support, rather than to increase confrontation—should be included.

The Convener: That is entirely right.

Mr Macintosh: I am not sure that that needs to be stated in the report; I am just putting it on the record.

The Convener: The committee is strongly of that view; many thoughts have been expressed on that subject.

The tribunals section of the report goes from paragraph 126 to paragraph 137. I have two initial comments, which reflect what I have said before. The oddity that we will have an additional support needs tribunal that will deal not with additional support needs but with co-ordinated support plans has been commented on before. That leads one to ask whether widening the tribunal’s jurisdiction would deal with much of the resource problem and whether a CSP entitles someone to certain things that having additional support needs does not. If it was thought that that would lead to a flood of applications, it could be done over time; that would reassure people.

I wonder whether we might consider saying that the committee is concerned that the tribunal’s limited jurisdiction will enhance the credibility of the view that the CSP specifically represents a passport to services, and that the minister might want to consider phased widening of the tribunal’s jurisdiction to deal with some of those issues. I would appreciate hearing members’ views on that. I accept that there are different points of view, but that encapsulates the main theme of the debate on tribunals, which we must decide on one way or the other.

Rhona Brankin: That represents acceptance of the idea that the CSP will be the passport to everything that a child needs. Fundamentally, the proposed system is intended to be a move away from that, so I would strongly oppose that suggestion.

Fiona Hyslop: According to Rhona Brankin’s logic, a CSP must not be the passport to resources, but why is it the only facility for accessing a tribunal? That would defeat the tribunal's purpose.

People would have the right to appeal to a tribunal about a decision to prepare, or not to prepare, a CSP. Would the tribunal consider the decision-making process that led to a refusal to prepare a CSP, or would it assess whether a person should have had a CSP in the first place? Would the tribunal take a legalistic approach or would it consider the decision itself? In the latter case, probably everybody who did not get a CSP would appeal to a tribunal. By definition, that would widen access to a tribunal to everyone.

The Convener: That is my fear, too.

Fiona Hyslop: To return to the issue of trust; to allow wider access to the genuine legal rights that a tribunal would confer would go a long way towards reassuring people about the good faith and good will behind the bill. However, in practice, how wide can that access be? Our concerns about the tribunal’s ability to meet demand were not reflected in the evidence that we heard from witnesses from the tribunal sector. That is the big issue that we must consider.

The Convener: I agree with the proposition that to widen the tribunal’s jurisdiction might encourage more people to appeal in borderline cases — sometimes with justification and sometimes not—about decisions on whether to prepare CSPs. There would be a lot of appeals, regardless of any widening of the jurisdiction.

Mr Macintosh: It is a difficult issue. I start from the point of view that Rhona Brankin espoused, which was that to widen access to cover all children with additional support needs would slightly undermine the logic of the bill.

We must also consider the practical operation of the tribunal. I imagine that the tribunal would deal with a few quite difficult cases, but I have not yet grasped how many cases would go to tribunal, as opposed to being resolved through the dispute resolution process. If, for example, half a dozen cases in each local authority went to tribunal, whereas five or 10 times that number were resolved through local dispute resolution, the tribunal system would not be overwhelmed.

I make a final point against widening access to the tribunal. It is for local authorities to interpret Executive policy and to set local policy on provision and mainstreaming of education for children with special educational needs. The tribunal’s role would be to adjudicate in individual cases, but if they were overused there would be a danger that they might almost have the effect of setting policy by establishing precedent, thereby overruling the democratic accountability of local authorities. That is slightly unsettling—

The Convener: Trying to set national standards in the area—

Mr Macintosh: Could I just finish making my point? We have local democracy: local councils are elected, but the tribunal would not be. There should be an element of control. Either we accept that there are different approaches to additional support needs throughout Scotland, or we do not accept that. There is a difficult balance to be struck and there are arguments on both sides.

I am glad and relieved that, very early on, the Executive agreed that there would be a need for a dispute resolution process that was available to all families. However, the details of that new system have not yet been drawn up. On a straightforwardly practical note, I do not understand why the two systems could not be combined.

The Convener: It seems terribly complicated.

Mr Macintosh: Yes. It might be easier to use the tribunal system. If I could be reassured that the tribunal system would not have all those other effects and would not be overused—or underused—I would not accept that there was a need to invent a brand new system at local authority level. People could use the national tribunal system, which would have the confidence and the trust of parents: the system would certainly get over that hurdle. As long as the system did not usurp the authority of local authorities—

The Convener: There are technical ways of raising or lowering the barrier to some degree. For example, a chairman might sift through cases to identify issues that it would be worth taking to a tribunal. There are ways to regulate the flow of cases.

Dr Murray: As the bill is currently drafted, a tribunal would have a fairly specific purpose, which would be to determine whether or not a child required additional services from external agencies and was therefore entitled to a CSP. In extending the tribunal’s purposes we would be changing their nature. There is a need for reassurance.

There is also a need to have a pathway if dispute resolution does not work. Where do parents go if they are still unhappy with the services that are provided by their education authority, in the way that people can now go to a particular ombudsman? It is difficult, because we would be changing fundamentally what the tribunal would be doing and, therefore, the experience of the people who sit on it. That could have major financial consequences. If the changes were brought in, that would have to be reflected in the financial memorandum and additional resources would have to be made available.

Lord James Douglas-Hamilton: I am sympathetic to widening the jurisdiction of the tribunal. In time it will set out a series of precedents, which will make it easier for people to determine whether they have a case. Should the sections of the bill be reordered so that advocacy would be first, mediation would be second and the tribunal would be third? I remember that at least one of the witnesses thought that the process would mean that the tribunal came before advocacy. That is an unfortunate and misleading impression that is derived from the ordering of the sections of the bill.

The Convener: That would certainly do no harm.

Ms Byrne: We have to make the tribunal system open to all, regardless of whether they have a CSP. People can go to a tribunal to dispute the decision not to grant a CSP and it seems crazy to me that we cannot just take that right through. On local authority tribunals, I would like to see the Executive setting up a system that would be fair and equitable throughout the country.

The Convener: The system is a central system. There will be an additional support needs tribunal for Scotland. We are not talking about local authority tribunals.

Ms Byrne: People mentioned local authorities earlier.

The Convener: That was the dispute resolution stuff, which might be local authority based. We do not know yet.

Ms Byrne: There seems to be too much. I wonder whether it will be terribly confusing for everybody. I am concerned about that.

Rhona Brankin: I recognise that in the first instance, or during the transition period, there might be more people using the tribunal, but I do not envisage that being the case in the longer term. At the moment not many people get to that situation, although they might like to get to it—we are not talking about large numbers. It is fundamental that we do not design a system that is based around the tribunal, because it should be the last resort.

The Convener: We are all conscious of the pros and cons, if I can put it that way, and the paradoxes in the jurisdiction of the tribunal, by which I mean the specific functions that the tribunal would have, which would be different if the jurisdiction were widened. There would be a problem if we opened the floodgates to lots of people and the bureaucracy swallowed up the resources. There are ways of dealing with that. All I am asking is whether we should ask the minister to consider whether widening of the tribunal's jurisdiction, perhaps with some sort of sift to keep trivial cases out, would provide reassurance about some of the things that we have been talking about, and allow the system to be equitable and manageable over time. I am not taking a firm view; I am saying that the issue should be considered further and the minister should respond.

Fiona Hyslop: I am not sure that we all agree. We can start by saying that the status quo is fine, that the jurisdiction of the tribunal should be widened from the start, or that it should be extended as they progress. All those arguments are valid. It depends on balance and on whether there is a majority view. We must capture the fact that an extension could be helpful, notwithstanding Rhona Brankin's point that the tribunal should be a safety net to provide reassurance, and not a central integral part of how the system would operate.

13:15

The Convener: If the tribunal's jurisdiction was widened, that would take away a lot of the criticisms at the beginning. The practical consideration is whether it is workable to widen it or whether that would land us with problems. I am being tentative because we do not have qualitative evidence on the matter.

Dr Murray: Fiona Hyslop is right. We cannot sit on the fence between two very different suggestions, but we can invite ministerial responses, as you suggest.

The Convener: We are not quite at the point of the final decision, as we will have to make decisions on amendments later.

Mr Macintosh: The options are not necessarily mutually exclusive. If the committee has difficulties, one way in which to resolve them might be to make a more open-ended recommendation.

I worry about the issue. Another argument against widening the scope of the tribunal is that it might undermine the principles of the bill and would build in an adversarial system rather than a system that aims for joint resolution. Our hope is that the bill will get us back to a system in which local authorities and parents work in partnership to find the best way forward for children. That could never be achieved in every case, and we would be living in dreamland to think that there will not be fundamental breakdowns and disagreements in certain cases; that is just the way people are. The system must be based not just on goodwill and trust, but on the belief that local authorities will take the best decisions in the interests of parents and children in their area.

Local authorities will have their own independent resolution systems. As Elaine Murray went on to say, beyond that there are individual, complex cases that will require a CSP tribunal. Most disputes will be about diagnosis and identification, or possibly about resources and therapy levels. They will not be hugely complex but will be straightforward. The issue is the fundamental disagreement in cases where the parent believes that the authority has not done enough to diagnose their child or to provide the resources that they want. That is a straightforward disagreement—it is not about the proper co-ordination of services.

The Convener: The problem is about who determines that: Is it the authority, which is not always satisfactory to the parents for obvious reasons, or should there be external resolution? The latter might not satisfy parents either, but at least it would be independent, and would be seen to be so.

Mr Macintosh: We do not know what the dispute resolution procedure will be, but I assume that it will be relatively independent. It will not involve anyone who was involved in making the original decision, but it will still be part of the local authority. Am I right to think that beyond that, there will be recourse to the courts?

The Convener: You are right to a degree. There will be judicial-review-type things.

Lord James Douglas-Hamilton: But not on the merits.

Mr Macintosh: Not on the merits of the case.

Lord James Douglas-Hamilton: No.

The Convener: That is the issue. I do not want to dwell on the matter, although I caused this discussion by starting it off. There seems to be consensus that we should ask the minister to reconsider this area and whether a unified tribunal arrangement, which would incorporate dispute resolution and therefore simplify it, should be considered, albeit with some sort of phasing, or with a higher bar to regulate the numbers. We will make our final decision at stage 2 when we consider amendments. Are we agreed that that should be considered or are we in dispute?

Fiona Hyslop: Some of us might want to go further, but that suggestion is reasonable for the moment.

The Convener: Can we unite around that? It is probably fair to say that Rhona Brankin is the least keen.

Mr Macintosh: Are we saying that we welcome the minister's commitment to dispute resolution, but that when he draws up the process—there is little detail on that at the moment—he should look again at the possibility of extending the tribunal system instead of setting up a separate system?

The Convener: I do not think that the matter is linked in that way. There are two elements: reassurance to those who have records of needs at the moment; and the additional support needs of people who do not get CSPs in the future. We have to join those two bits together in some way or another. We are saying that, as a general proposition on this area of the bill, the application to a tribunal and its jurisdiction might usefully be reconsidered by the minister. The committee believes that consideration should be given to re-examination of the matter to see whether a unified system is appropriate and possible. That is set against the recognised problem that we do not want to open the floodgates to thousands of cases.

Rhona Brankin: I am conscious of the time. Can we finish and come back to the issue next week?

The Convener: We will come back to it anyway.

Fiona Hyslop: It is too important to—

Rhona Brankin: There is another meeting waiting to come in.

Lord James Douglas-Hamilton: We will come back to it anyway.

The Convener: I am inclined to think that we should stop at this point. There are other issues to come, but we have taken the heat out of much of the matter.

Rhona Brankin: We can carry on the discussion on that particular issue next time.

The Convener: Yes. When we come back next time, there will be a redrafted paper. Would it be helpful to show where the changes are, as a tracking mechanism?

Martin Verity: We can do that.

The Convener: That would be helpful. We will consider the remaining issues and any changes, and we will finish the paper. However, the background is that to meet the deadlines for the bill, we will have to finish next week.

Martin Verity: The report has to be agreed next week.

The Convener: It would be helpful if members could send their suggestions on the remaining bit of the paper to Martin Verity. That will help him to redraft the paper.

Lord James Douglas-Hamilton: I can sum up in two sentences the complexity about disability, which could require an amendment to UK legislation. There is also a case for consulting the Equal Opportunities Committee on that point.

The Convener: Could you put that in an e-mail to Martin Verity?

Lord James Douglas-Hamilton: Yes. I will do so straight away.

The Convener: Thank you. It has been a good meeting and I am grateful to everyone who attended—it was a bit lengthy. I close this meeting of the Education Committee.

Meeting closed at 13:21.

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