EDUCATION COMMITTEE

Wednesday 20 April 2005

Session 2

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CONTENTS

Wednesday 20 April 2005

EDUCATION COMMITTEE
7th Meeting 2005, Session 2

CONVENER

*Robert Brown (Glasgow) (LD)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING GAVE EVIDENCE:

Louise Donnelly (Scottish Executive Legal and Parliamentary Services)
John Harris (Central Registered Body in Scotland)
Robin McKendrick (Scottish Executive Education Department)
Andrew Mott (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Education Committee

Wednesday 20 April 2005

[THE CONVENER *opened the meeting at 10:05*]

Item in Private

The Convener (Robert Brown): Good morning. I welcome people to this meeting of the Education Committee. We are in public session, so I ask people to ensure that their mobile phones and pagers are turned off. I will lead by example, as mine is not yet off.

Item 1 is to consider whether to take item 9, on the appointment of an adviser for the early years inquiry, in private. I suggest that we take the item in private. Is that agreed?

Members *indicated agreement*.

Pupil Motivation Inquiry

10:05

The Convener: Item 2 is a report of the visit that committee members made in March to the smart young people project. We do not have to do much more than note it so that it becomes part of the *Official Report* of proceedings. It is not a matter for discussion today. Is that agreed?

Members *indicated agreement*.

Lord James Douglas-Hamilton (Lothians) (Con): Can the clerks be congratulated on the excellence of their work? There were many items to pick up and they have taken enormous trouble to cover everything.

The Convener: We can agree with that as well.

Members *indicated agreement*.

Subordinate Legislation

Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005 (SSI 2005/155)

10:06

The Convener: Item 3, on subordinate legislation, is a little more complicated than item 2. We must consider the regulations under the negative procedure. As members will see, the purpose of the regulations is to set out the qualifications, training and experience required for employment on the additional support needs tribunals.

The committee has received a report from the Subordinate Legislation Committee that raises some technical questions. A panoply of people from the Scottish Executive are at the committee to tell us about the regulations. I welcome Robin McKendrick, who is the new team leader of the additional support for learning group and Andrew Mott, the policy officer for the group. Louise Donnelly, who we have met before, is the solicitor to the Executive on the matter.

I ask Robin McKendrick to give us the background to the regulations.

Robin McKendrick (Scottish Executive Education Department): Thank you for giving us the opportunity to speak to the committee.

As many members will know, when the Education (Additional Support for Learning) (Scotland) Act 2004 is commenced it will establish a new framework for supporting the education of all children and young people who require extra help for their learning. Within that context, children with additional support needs that arise from enduring, complex or multiple factors may have a co-ordinated support plan, which will focus on supporting the child to achieve learning outcomes and assist co-ordination of services from a range of providers.

An additional support needs tribunal will be established to hear appeals that relate to co-ordinated support plans. Parents or young persons themselves can refer any specified decision, failure or information relative to a CSP to the additional support needs tribunal for Scotland for determination by the tribunal. It should also be noted that refusal of a placing request can also be subject, where there is a reference to a CSP, to the tribunal.

On tribunal appointments, the 2004 act requires Scottish ministers to appoint a president, a panel of individuals who may act as conveners and a panel of individuals who may act as members of the tribunals other than a convener. The president and the panels of individuals who may act as conveners or as members need to have the qualifications, training and experience that Scottish ministers specify by regulation.

That brings us to the nub of the issue that the Subordinate Legislation Committee has raised. The regulations specify

"the qualifications, training and experience prescribed for appointment as President",

which are that that person needs to have been legally qualified in Scotland, England and Wales or Northern Ireland for at least seven years.

The regulations also specify

"the qualifications, training and experience prescribed for appointment to the panel of individuals each of whom may act as the convener of an Additional Support Needs Tribunal for Scotland",

which are also that those individuals should have been legally qualified in Scotland, England and Wales or Northern Ireland for at least seven years.

In relation to ordinary membership of the tribunal, the regulations specify that

"the qualifications, training and experience prescribed for appointment to the panel of individuals, each of whom may act as a member of an Additional Support Needs Tribunal for Scotland, are knowledge and experience of children or young persons with additional support needs within the meaning of the Act."

The policy intention is that individuals who are eligible to be appointed to the panel of members cannot also be eligible for appointment to the panel of conveners. The provision meets the undertakings that the minister and deputy minister gave about the family-friendly, child-focused ethos of the tribunal. The appointment of members who are not legal experts will help to achieve that ethos.

A person who is appointed to the panel of members must have

"knowledge and experience of children".

The provision was helpfully clarified as a result of the consultation exercise. The draft regulations had specified that members must have experience of "working with children" and we hope that the revised wording will encourage more parents to come forward to be members of the tribunal.

The regulations were published in draft for public consultation from 11 October to 31 December 2004. I outlined one change that was made to the regulations; other, minor changes were made to clarify the provisions. The Scottish Committee of the Council on Tribunals was consulted and is content with the regulations, which is important.

The instrument has no financial effects on the Scottish Executive, local government or any business in Scotland.

The Convener: I should mention that Lord James Douglas-Hamilton and I are lawyers—of different kinds—of more than seven years' standing, although I do not think that either of us intends to apply for membership of the tribunal in the immediate future. However, we should declare the matter in case there are considerations of interest. Does that declaration cover your situation, Lord James?

Lord James Douglas-Hamilton: Yes. I am a non-practising Queen's counsel.

The Convener: I want to ask, first, about the timescale. How urgent is it that the process for which the regulations provide should go ahead, given that we might take a certain view on the Subordinate Legislation Committee's report? Secondly, will the witnesses give us a little more guidance about the technical definition of "members"? I understand that there are three categories, but paragraph (4)(2)(b) of schedule 1 to the Education (Additional Support for Learning) (Scotland) Act 2004 refers to "two other members", which implies that the word "members" incorporates the conveners and the president.

Robin McKendrick: We hoped to put the regulations in place so that we could advertise for the president and conveners and, after making appointments to the first two categories, tribunal members. Our objective is for everything to be up and running by later in the year, so that the 2004 act can be commenced by autumn 2005. I hope that that answers your first point.

The Convener: Yes, thank you.

Robin McKendrick: On your second point, the phrase, "two other members" refers to members who are selected from the panel that is referred to in paragraph 3(1)(b) of schedule 1 to the 2004 act. Paragraph 4(2)(a)(ii) of schedule 1 provides for

"one member selected by the President from the panel referred to in paragraph 3(1)(a)".

Members are therefore the people who are appointed under paragraphs 4(2)(a)(ii) and 4(2)(b).

Paragraph 1 of schedule 1 states:

"'Tribunal member' means a member of a panel",

and defines a "panel" as

"a panel referred to in paragraph 3(1)".

Paragraph 3(1) refers to two categories of panel:

"(a) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as the convener of a Tribunal, and

(b) a panel of individuals having such qualifications, training and experience as may be prescribed in regulations each of whom may act as a member of a Tribunal other than the convener."

So when the president constitutes a tribunal, it must have one individual acting as convener. The president is allowed to serve as convener under paragraph 2(2) of schedule 1, which states:

"The President may serve as the convener of a Tribunal."

The president has to decide whether to serve as convener himself, or select one member from the panel of those who are qualified to serve as conveners under paragraph 3(1)(a) of schedule 1—that is, those people who have seven years' experience and so on. Two members will also be selected from the panel set up under paragraph 3(1)(b), whose members must have experience and knowledge of children with additional support needs. There will therefore be two of the tribunal—they will be equal members—parents, teachers, ex-teachers and so on. I hope that that clarifies our intentions.

10:15

The Convener: Although it is a little complex, and seems to be a bit circular, at the end of the day you are saying that there are different tranches. I am inclined to agree with that, but I do not know what other members think. Do members have questions?

Mr Kenneth Macintosh (Eastwood) (Lab): Not on the same point.

The Convener: Just ask your question.

Mr Macintosh: The model separates the president and conveners from lay members. Do you find that in other tribunals?

Louise Donnelly (Scottish Executive Legal and Parliamentary Services): It is fairly common to have legally qualified conveners of tribunals. You might be aware that employment tribunals must have members with experience of being employers and employees. In this case, having set conveners' qualifications, experience and training, we look for the other expertise that is required on the tribunal. There are examples of other tribunals that consider the background, experience, information and knowledge that will be required to ensure the proper consideration of cases.

Mr Macintosh: Employment tribunals are an interesting example, because they have a balance of interests. In this case, it is a balance of expertise, rather than interests. I am slightly worried that lawyers will dominate the lay members or that lay members will dominate the lawyers, particularly because the roles seem to be mutually exclusive. Can you verify that? From what you say, they are mutually exclusive, because a lawyer with seven years' experience cannot be a lay member of a panel, even if they

just happen to be a member of the public who has experience of the issues. Can you also confirm that having knowledge of additional support needs would not be a bar to a lawyer being a convener? I am sure that it would not, but I just want to check. In other words, if you happen to qualify to be a member because you have experience of additional support needs, but you are also a lawyer with seven years' experience, you could be a convener.

Louise Donnelly: The reason behind the disqualification is so that lawyers do not dominate tribunals. If you are qualified to be appointed as a convener—that is, you have at least seven years' legal experience—you will not be one of the lay members of the tribunal.

Robin McKendrick: As Louise Donnelly said, tribunals cannot be dominated by lawyers. The lawyer would be the convener, and there would be two wing members. On your other point, if a lawyer had seven years' experience and also had experience and knowledge of children with additional support needs, that would be fine. There would be no problem with that.

Mr Macintosh: To go back to my original point, are there any other examples of panels where the convener or president is a lawyer and lay members represent other interests?

Louise Donnelly: That is fairly common, for example with social security appeal tribunals and child support tribunals, which I am sure will have changed their name now. The legal qualification tends to attach to the convener of the particular tribunal. Then, the intention would be to bring in other members with particular knowledge and expertise.

The Convener: Is that because if mistakes are made in procedural issues the tribunals will be subject to challenge, so it is felt desirable to have legal guidance in the chair? Is that broadly the reason for that requirement?

Louise Donnelly: The reasoning also concerns a structured approach to consideration of the matters that are being presented to the tribunal, because these are almost self-contained. The tribunal members consider each case on its own merits and its members are equal. There is no arrangement for a convener to have the ability to overrule the decision of the tribunal or to have an additional weight. However, while the members are equal, their qualifications, training and experience will represent, as a package, a desirable background and level of experience to enable them to take good decisions.

The Convener: So, in summary, the president and the conveners will be legally qualified. They can have experience of children with additional support needs—and it would probably be a good thing if they did. The other members of the tribunal are not legally qualified and cannot be, at least not at that level. They are required to have some knowledge of children with additional support needs, but not necessarily a specialist, professional knowledge.

Lord James Douglas-Hamilton: Is it correct that the tribunal comprises only three members and that the president or convener will be legally qualified? Therefore, at least a third of the membership will be legally qualified.

Robin McKendrick: Yes.

Lord James Douglas-Hamilton: My question relates to qualifications. The witnesses stated that the president must be qualified under the law of England, Wales and Northern Ireland. Although I am not absolutely familiar with the up-to-date position, in the past Scottish lawyers could not practise in England and English lawyers could not practise in Scotland, and very few were qualified to practise under both jurisdictions. Do the witnesses mean that the president must have passed all his or her exams under both jurisdictions?

Louise Donnelly: No, they must do so in one or the other jurisdiction. Regulations 2 and 3 are drafted in a manner that is fairly common when one is looking for a legally qualified convener of a tribunal but is not restricting the position only to those who are qualified in Scots law. That goes back to the point that these are not judicial appointments as such; they are appointments to tribunals where the legal qualification assists in the decision-making process for the whole tribunal, but it is not specific to English or Scots law.

Lord James Douglas-Hamilton: Therefore, the point is that the qualification must be well recognised by both jurisdictions.

Louise Donnelly: Yes, and one of the three members must have such a qualification.

Lord James Douglas-Hamilton: I am not a practising lawyer. However, with regard to this apparent discrimination against lawyers, if a lawyer, for example, found that he was in the wrong profession and joined the teaching profession and became a head teacher, or became a social worker, or retired, would he still be excluded? My reading of this is that such lawyers would be excluded. Is that what is intended?

Louise Donnelly: If they satisfied the seven years' qualification requirement, they would not be excluded from appointment to the role of convener. There is no requirement in the regulations for the lawyers in question to be currently practising.

Lord James Douglas-Hamilton: I am asking whether, if somebody who has the seven years' qualification changes their profession and makes a considerable contribution, perhaps as a social worker or teacher, they would be automatically excluded. Is that what the Executive and the Minister for Education and Young People deliberately intend?

The Convener: May I supplement that question? The regulations say:

"standing as an advocate or solicitor admitted in Scotland".

Does that not mean that you are currently practising—that you have professional indemnity insurance and your tick-boxes are up to date on all that?

Louise Donnelly: It is not my understanding that it works in that way. The regulations could have been drafted in such a way that a person would need to have those things at the time of appointment.

The point is similar to one that Mr Macintosh made earlier about whether someone would be disqualified from appointment to the role of convener if they had knowledge and experience of children with additional support needs. The answer is, of course, no. In the case of a head teacher or a social worker who happened to have established a seven-year legal qualification and then went on and had a second career and established considerable expertise, although it would be for the recruitment and appointment process to decide, I imagine that that would give them a fairly strong reason for appointment to the post. However, they would also have to have the qualifications, experience and training that are required by the regulations. The disqualification attaches purely to the two wingers—the two other members.

Lord James Douglas-Hamilton: I have in mind the case of a father of a child who has additional support needs, who has an enormous amount of knowledge relating to that child. I wonder whether the terms of the regulations may be a little more exclusive than they are intended to be. A person could be excluded who had changed his profession or who had retired very young and was able to make a considerable contribution, and I am not sure that that is the intention.

The Convener: They would still be eligible for appointment as president or convener, would they not?

Lord James Douglas-Hamilton: Yes, but the person might be qualified to make a very good contribution as a panel member.

Mr Macintosh: I suggest that the word "current" is missing. The phrase "currently practising" could be added. Much as I hate to discriminate against lawyers, I cannot think of many lawyers who would give up their practice to become social workers and then apply to join the panel. Therefore, although I take the general point that is being made, I suspect that it will not be a hurdle in practice.

The Convener: The issue might arise in other cases, for which some clarification might be in hand. The phrase

"advocate or solicitor admitted in Scotland"

has overtones of current practise. I would have thought that a solicitor is not a solicitor if they are not qualified to practise in Scotland, although I may be wrong about that. We could perhaps get clarification of that after the meeting; I do not think that it reflects the point at issue today.

Louise Donnelly: This is a fairly standard formula for prescribing the qualifications. It would have been open to the ministers to go on and prescribe either specific training for such members of the panel or for other members or necessary experience. It would have been open to them to consider whether something further was required at that point. Something that has worked well for a huge range of tribunals has been used as the basis of the provision here.

Lord James Douglas-Hamilton: Can you get back to us on that point?

Louise Donnelly: In what respect? Are you concerned about the possibility that someone who has—

Lord James Douglas-Hamilton: If the purpose is to get the very best persons for the jobs, does the way in which the instrument is drafted produce a result that may not have been intended? You do not seem to have given a conclusive answer to that question.

Mr Macintosh: I am not sure that I agree.

The Convener: The position is reasonably clear, although there is perhaps a frisson of uncertainty on the question whether it is necessary to insert the phrase "currently practising". It would perhaps be helpful to have a more chapter-and-verse definition, although that does not affect the point at issue for us today. We could debate whether that would be the right way to do it—we will all have views about that—but there does not seem to be any unclarity about the matter, apart from on the issue that Ken Macintosh has raised. Could we perhaps have clarification on the narrow point about "currently practising", just so that we are clear about that?

10:30

Mr Adam Ingram (South of Scotland) (SNP): I have a couple of points. First, I admit to being a member of the Subordinate Legislation

Committee. That committee's legal adviser indicated the possibility of defective drafting and doubts about whether the regulations were intra vires. You have explained to us that that is not the case, but I would like confirmation of that.

The second point is more practical. As you are aware, a new tribunal system is being set up under the Mental Health (Care and Treatment) (Scotland) Act 2003. Because of the difficulties in recruiting for those tribunals, among other reasons, the act's implementation has been put back for six months or so. How easily will you be able to recruit tribunal members?

Robin McKendrick: On your second point, we have already had inquiries about the posts of president, conveners and members. I am not saying that we will be swamped by applications, but we have good grounds to believe that there will be keen interest in all the tribunal posts. Andrew Mott has been dealing with some of the inquiries.

Andrew Mott (Scottish Executive Education Department): The closest tribunal in existence is the special educational needs and disability tribunal in England and Wales, which is often heavily oversubscribed when it advertises for members. We see no reason why the tribunals here should be different. There is quite a strong draw on legally qualified conveners—as you say, the mental health tribunal draws on people in that category—but we will be appointing only about six conveners and 12 members to cover Scotland, which is not a huge number.

Dr Elaine Murray (Dumfries) (Lab): I agree with your interpretation of the Subordinate Legislation Committee's concerns. Your explanation has enlightened us on those concerns. However, as membership of the tribunals has been extended to people with legal qualifications from England, Wales and Northern Ireland, it is clear that specific knowledge of Scots law is not a required qualification for the post of president or convener. Why has qualification been restricted to knowledge of United Kingdom law? Could the pool not have been widened slightly, by including knowledge of European law or by including people from other EU countries? It is legal training that is felt to be important, rather than specific knowledge of Scots law.

Robin McKendrick: Ensuring that legally qualified individuals from England, Wales and Northern Ireland can stand as president or convener is very much in keeping with the normal procedure. The specification that we developed for the posts of tribunal president and conveners will ensure that, as well as having the legal qualification, training and experience, applicants have an interest in Scottish educational matters as a whole, and specifically a knowledge of the 2004 act and the code that will accompany it. That will not be put in regulations, but it will be part of the criteria that will be developed to sift applicants for president, conveners and members. It will be on the basis of those criteria that we will invite the minister to make a decision about the appropriate individuals to be appointed as president, conveners or members.

Louise Donnelly: I have now been able to look at the Courts and Legal Services Act 1990, which is the basis for the English and Welsh legal qualification. Section 71(5) confirms:

"Any reference in any enactment, measure or statutory instrument"—

in this case, we are talking about a statutory instrument—

"to a person having such a qualification of a particular number of years' length shall be construed as a reference to a person who … for the time being has that qualification and … has had it for a period (which need not be continuous) of at least that number of years."

I think that that answers Lord James Douglas-Hamilton's point. In order for someone to be eligible for appointment, their qualification would need to be current.

The Convener: They would have to be on the roll of the Law Society of Scotland or the Faculty of Advocates.

Louise Donnelly: Yes.

The Convener: I though that that might be the case. Thank you for that helpful clarification.

Louise Donnelly: I hope that that means that we have answered the question.

The Convener: Yes. That has answered Lord James Douglas-Hamilton's point. The section that you cited has consequential effects on who is entitled to stand for the member's panel. If a person does not have the legal qualification, they are eligible for appointment to the panel of members.

Louise Donnelly: Yes. They would not be disqualified under regulation 5.

The Convener: Your clarification means that you do not need to write to us about the matter. It is reasonably straightforward.

The European issue that Elaine Murray raised is worthy of further consideration. Lurking beneath the point that she raised is the issue of restraint of trade. Perhaps we should consider that, but on another day.

Mr Macintosh: I have a note rather than a question about whether the regulations will come before us for amendment in the years to come. At the time that the tribunals were established, part of our discussion centred on the expectation that

they would deal with cases under the Disability Discrimination Act 1995, as is the case with the SENDIST tribunals in England and Wales. Since that discussion, Scottish ministers have debated with their Westminster colleagues and decided that the tribunals will not initially accept disability discrimination cases. However, ministers are minded that the tribunals will do so after they have been established for a while and have demonstrated the effectiveness of their operation.

At that point—which I am aware is a couple of years away—implications may arise in terms of amending slightly the qualifications of those who sit on the tribunals. Given that we are talking about additional support needs tribunals, their lay membership is framed in terms of additional support needs. Obviously, if the remit of the cases that tribunals hear is widened to include disability discrimination cases as they affect schools, the qualifications issue may need to be revisited.

The Convener: If that were to arise, we would consider it at that time. We do not need to consider it today.

We need to decide whether we are satisfied with the regulations or whether we continue to have qualms, of our own or about the Subordinate Legislation Committee report. My reading of the regulations leads me to say that the Subordinate Legislation Committee is probably wrong in this instance, although the issue is quite tricky. I do not, however, think that we should take it further.

Our consideration of the instrument is being made under the negative procedure. Unless the committee has any strong objections, it should agree that it does not want to make any recommendation in its report to the Parliament. If members are dissatisfied with the responses that we have heard today, that may be noted in our report. Any member can lodge a motion with the chamber clerks to annul the regulations, which would have the effect of requiring a special meeting of the committee before Friday 6 May to debate the motion.

I sense that the committee feels that there is no such desire to recommend annulment or to register any objection to the terms of the regulations. Is that agreed?

Members *indicated agreement*.

The Convener: In that case, we will note the regulations. I thank the Executive officials for their attendance this morning. The debate was slightly more complex and interesting than we anticipated.

Child Protection

10:39

The Convener: Item 4 is on child protection, an issue with which we are familiar. Paper ED/S2/05/7/3 contains an update on the Scottish Executive child protection reform programme. One of the issues that came out of our report was the need for a standardised statement of the key facts. As we are aware from Glasgow City Council and others, such statements were not always made, but I do not think that the update report deals with that crucial aspect. Without an aide-mémoire or reference point in the documentation, things are more likely to slip through the net. We should perhaps make that point specifically to the minister following the meeting, as well as other observations members might make.

Fiona Hyslop (Lothians) (SNP): One of our main concerns was about the integrated assessment framework and the computer systems and information-sharing that would be needed as a result. In particular, Wendy Alexander pursued the issue of the work done by Professor Norma Baldwin.

I refer members to paragraphs 22, 23 and 24 on page 6 of the update. We were already concerned in our committee report by the delay in implementation of integrated, shared computer systems. Paragraph 23 refers to the proposals from Norma Baldwin's integrated framework working group and states:

> "given the role of the IAF as one of a number of support structures for systems of wider services for all children in need, and therefore links with the proposals on the relationship between the Hearings System and wider services for children to be addressed in Phase 2 of the Hearings review, full consultation on the proposed IAF will issue after that consultation has issued."

That is very serious. As part of a constituency issue, I have, with members from other parties, been looking into the City of Edinburgh Council's problems in developing a computer system to share information. Post Caleb Ness, the council is keen to progress that matter. I have arranged a separate meeting with the minister about that.

I understand the implication in paragraph 23 that children's services and the hearings system review are connected, but it is worrying that the review is being used as a reason to postpone even further the integrated assessment framework.

The Convener: Do we have any indication of when phase 2 will issue?

Ms Wendy Alexander (Paisley North) (Lab): No. The frustrating thing is that we are not told that in the update. Paragraph 20 just says:

"Proposals are currently being finalised and consultation on Phase 2 will begin shortly."

When I read that, I reached the same conclusion as Fiona Hyslop. There is not even a timetable for phase 2 of the children's hearings system review on which the further review is contingent.

The Convener: Do the clerks have any information about that? We should take up the matter again.

Martin Verity (Clerk): If members require information, we can write to the Executive and seek a response.

Ms Alexander: The Executive has taken a view on the matter, but I agree with Fiona Hyslop. It does not seem to me that a consultation on how one has an integrated information technology reporting framework is necessarily contingent on a review of the policy role of the children's hearings system; I fail to see that connection. However, the Executive has reached that view, so we should certainly write and ask for clarification.

We should also write to Professor Baldwin and ask whether she is satisfied that any progress on the matter has to await a policy consultation on the future of children's panels. After asking her to lead in the area, we should seek her view on how we progress matters as speedily as possible and what the earliest possible date is for having an integrated IT system in place.

The slightly depressing point is that, four years on from the Dumfries case, we have not even reached the consultation stage. I presume that that means that we are talking about a decade before the integrated assessment framework system is up and running. Therefore, I want to seek Professor Baldwin's views on the maximum speed with which what was a recommendation in "It's everyone's job to make sure I'm alright" can be actioned, as opposed to consulted on.

The Convener: A similar issue arises in paragraph 11—the timescale for considering child death and significant incident reviews does not seem to have progressed far, either. That proposal has been hanging about since the earlier report was made. It does not seem to be that complicated to set up a group, but action is only now being taken.

Dr Murray: Like Fiona Hyslop and Wendy Alexander, I am concerned about the integrated assessment framework. We have the rather cheery statement that, because nothing is happening nationally, local authorities are going their own way and doing well. The danger is that local authorities will become frustrated because, although they are making progress, systems will not necessarily be compatible. We could be missing the opportunity to have a nationally compatible system.

Mr Macintosh: I assume that, although Disclosure Scotland is discussed in the document, we will raise issues relating to it under the next agenda item. Paragraph 11 concerns the handling of child death and significant incident reviews.

The Convener: The document states:

"A chair has been identified and most of the membership confirmed."

That is good, but why has it happened so late?

10:45

Mr Macintosh: I agree that we need to query what is happening. The table at the back of the document—on page 12—contains an abbreviated list of the aims of the child death and significant incident reviews. It states that the programme will

"Develop proposals for future arrangements that"

meet those aims. One of the aims that I thought was missing was to move away from a blame culture and to find a different way of reviewing child deaths.

The Convener: You are referring to paragraph 11, on child death and significant incident reviews.

Mr Macintosh: Yes.

The Convener: That is important, but not much progress has been made on the issue.

Mr Macintosh: Exactly. My concerns relate both to the timetable and to one of the hopes of the review—to move away from the current system, which is quite damaging to social workers and other people.

The Convener: It is also complicated, because of the successive reviews that take place.

Mr Macintosh: Paragraph 3 on page 2 of the document concerns the letters of assurance. Ministers have issued a response to those letters. I believe that the answer to my question is on page 12, under the heading "Ministerial letter of assurance".

The document refers to

"Provision of feedback by PAs in each individual area".

It says that that has happened and that

"Ministers have also indicated their intention to request a similar exercise".

I am unsure about the effectiveness of that action at the moment. I would like to get a feel for whether it has worked. Clearly, the intention is to ensure that those at the top of the tree ensure that everyone below them engages in the joined-up working that we are discussing. However, I would

like to get an idea of whether the letters of assurance have achieved their objectives.

The Convener: The issue may be how they are monitored and inspected. I am not sure whether there is a method of getting the information that you seek. It is all very well having assurances, but the issue is whether things are happening and checks have been made, regardless of what assurances have been given.

Mr Macintosh: That is the issue. It is all very well getting letters of assurance, but what has been the result of that exercise? Has it resulted in chief executives of organisations, such as chief constables, taking more direct responsibility? Has it focused their attention?

The Convener: You want to get a flavour of the outcome. Are most authorities complying? Are there difficulties with particular authorities?

Mr Macintosh: I imagine that we will be told that all the authorities have signed letters of assurance. However, that is not all that we want to know. We want to know whether the letters have focused their attention and been effective in improving our child protection framework.

Dr Murray: On page 12, the table tells us what has been happening. I am not sure what "LOA 2" is—presumably it is an Executive abbreviation for something. However, the document seems to indicate that authorities are supposed to complete a template that indicates how they are complying with the ministerial letter of assurance. All the indications are that that is happening at the moment. Perhaps we could have more information on the issue.

The Convener: The Executive has said that a similar exercise will be conducted, probably in the autumn.

Dr Murray: There will then be evaluation and feedback for next year. However, it might be useful for us to know what the thinking is concerning the template for completion and what questions are being put to chief officers.

Ms Rosemary Byrne (South of Scotland) (SSP): On paragraphs 13 and 14, which relate to multidisciplinary inspections, I notice that draft reports are being produced on the two pilots. Will the committee get an opportunity to examine those draft reports and, if necessary, to bring in witnesses to discuss them? Given that the inspections will start in the summer, it is clear that these matters will be fast-tracked. We should scrutinise this key area and it will be important to have a look at the draft reports.

The Convener: Do other members agree to that suggestion? I realise that we do not want to be overwhelmed with technical documents, but a report on the pilots might be available.

Members *indicated agreement*.

Ms Alexander: I want to raise two issues, the first of which is that the child protection reform work programme reflects what the Executive wants to do, not what "It's everyone's job to make sure I'm alright" recommends. For example, members will recall that we had some anxieties about IT issues. I realise that IT is a tough subject and that people do not want to take it on, but we had a long discussion with the Executive about whether it was going to implement recommendation 15 in the report—the Executive said, "Oh, yes, we're going to do that." However, IT does not feature in the work programme at all.

Indeed, I wonder whether the committee is really interested in receiving this kind of internal work programme document. Perhaps we would be more interested in seeing what progress has been made on four-year-old recommendations that were unanimously endorsed at the time. I think that asking the Executive to update us on its progress in implementing the recommendations in "It's everyone's job to make sure I'm alright" would ensure that we did not lose sight of some of the tougher parts of the agenda. Perhaps we can raise the matter in writing.

On paragraph 30, which concerns

"Children of problem drug users",

the committee has run up against the recommendations in "Hidden Harm: Responding to the needs of children of problem drug users", which was published in 2003. The Executive's response, which was issued in October 2004, came out after we had discussed the matter at length. It has now decided that there will be a series of seminars and that it will come up with an action plan in due course. That means that we will probably reach the action plan stage two years after the publication of the initial report.

Nevertheless, people who work in the area have told me that a number of "Hidden Harm" recommendations are not being taken forward. When we write to the Executive, we should ask it to itemise the recommendations in "Hidden Harm" that, in light of its formal response, are not being implemented. That would be useful for the committee. Given that the Executive made a formal response in October, it should be able to say at this stage which of the recommendations it is willing to move forward on and which it is not. I will not go into detail now, but the professional community is somewhat distressed by the fact that the Executive is not progressing certain recommendations.

The Convener: It might also be helpful to ask for an indication of the broad timescale for the action plan and whether any interim measures could be introduced quickly that might make a

difference. We all agree that the issue of drug misusing parents is central to many matters that the authorities have to cope with and it would be quite helpful to find out whether things can move forward before the bureaucracy is put in place. After all, the subject will involve a lot of administration, which people will need to get right. I understand that there is a need to speed on, but there are still many issues to deal with.

I have a minor point about paragraph 39, on the central registered body in Scotland. We might take up the matter later on, but I am not entirely clear about the nature of the on-going work that is mentioned. We should seek some clarification on that point, because I thought that we had managed to get through all those issues.

We are reasonably clear about what needs to be taken forward. Following the meeting, I will write what will be not so much a letter as a dossier to the Executive and we will await the response to our questions. On Wendy Alexander's point about the action plan and whether the recommendations are being taken forward or sidelined, it strikes me that the Scottish Parliament information centre might be able to do some work on our behalf, perhaps after we have had a response from the Executive and can see where we are going.

Disclosures

10:55

The Convener: Agenda item 5 is the linked issue of disclosures. There is a SPICe paper on the issues, which we requested in November, and information from the Scottish Executive, which we requested at the meeting in February.

We will take oral evidence from John Harris of the central registered body in Scotland. Not all the issues relate directly to the central registered body. Do members want to comment on the paperwork more generally before we hear from John Harris?

The background is that the committee asked SPICe to do some research. SPICe produced a questionnaire to which there has been a sparse and not particularly representative response. That is an issue.

Mr Macintosh: I have a comment. I wondered whether it would be better to make it after we had discussed the issues with John Harris, but I will just kick off.

I welcome the chance to review the subject and I welcome the work that SPICe has done, although the response is disappointing. The work takes us forward and gives us a little bit more to go on. A number of issues are perhaps bedding down or are being worked out—the situation is very much on-going.

The conclusions in the SPICe paper are very interesting and I could not help but agree with them. The last page before the appendix states:

"A number of areas that required further clarification in general were outlined.

- Clarification of activities that those who did not have a Disclosure could perform.

- Whether volunteers can be started with total supervision before a Disclosure Certificate has arrived.

The second last point states:

"• Other voluntary organisations seem to be operating in a culture of fear".

Perhaps "anxiety" would be the appropriate word rather than "fear", but that is an interesting point about the potentially adverse impact of the legislation. I am not saying that there will necessarily be an adverse impact.

Some interesting contributions were made in the other papers that are attached. It is clear that the Executive is working out guidance with several bodies. The submission from the Scottish Parent Teacher Council is helpful. It is clear that the Convention of Scottish Local Authorities is working on similar guidance. All the issues are being

worked out, but it is obvious that many people find the current environment a confusing one in which to operate. The law is clear and I think that we are all supportive of its intention, but we want to ensure that its impact is not to put volunteers off. We want people to be able to interpret the law proportionately. I was not sure when the paper from the Boys Brigade dated from, as there is no date on it.

The Convener: I think that it dates from some time ago; I have seen it before.

Mr Macintosh: I thought that we had seen the paper before. That is reassuring, because I think that the situation has moved on since that paper was produced.

I do not want to pre-empt the evidence session, but I am encouraged that quite a lot of things are happening. It is confusing that COSLA, the Executive and the SPTC are producing guidance. Perhaps that is necessary, given that disclosure affects many organisations in different sectors and given that there are lots of separate issues, but there is clearly some confusion. We should come back to the issue in about six months to see whether things have bedded down. I am not convinced that volunteers are being put off. There is a lot of anxiety, but it seems that volunteers are still coming forward, so we do not have to worry unnecessarily about that issue.

Dr Murray: It is disappointing that only six organisations responded; I cannot find a list of the organisations that were contacted. Does the fact that so many other organisations did not respond mean that things are bedding down? If there was an awful lot of anxiety out there, I expect that the organisations would have taken the opportunity to tell us about it. I wonder whether the apathy is indicative of the fact that, as Ken Macintosh suggested, things are bedding down.

On future reports, the insurance industry's position is still an issue. The evidence from the minister states that there have been meetings with the insurance industry. Perhaps we could ask for feedback from those meetings to see how discussions are progressing.

11:00

The Convener: It is important to remember that, as ministers and officials have stressed from time to time, the guidance cannot go against the law; the Protection of Children (Scotland) Act 2003 that we passed is the starting point. That has certainly caused the Executive difficulty in relation to supervision.

I was slightly concerned about paragraph 9 of the Executive update, which relates to COSLA. It is encouraging that COSLA is playing a role, because we were not altogether sure that it would do so. The update states that the guidance

"advises local authorities … not to take on an auditing role of organisations child protection policies"—

which is fine—

"unless they fully understand the implications of, and have good policy reasons for, doing so",

which takes away the meaning of the whole thing. I am concerned that within that statement lies the "let's err on the safe side" attitude, which has been the problem all along. I do not think that it is the role of local authorities to check up on the bodies that hire their halls and so on. If something comes to their notice, that is fair enough, but we do not want the process to be heavily bureaucratic.

I was struck by the amount of money that goes to the central registered body, which is set out in paragraph 13 of the update. I am bound to say that, although I do not know the figures off the top of my head, the cost of implementing the arrangements and supporting the bodies must be substantial and run into a number of millions of pounds. That might provide value for money, but we must keep at the back of our minds the question whether, given all the bureaucracy, the arrangements are achieving what we want them to achieve.

Fiona Hyslop: The point about volunteers is well made in the limited responses that we received and in the October research. It is not necessarily the case that volunteers have problems in volunteering; the potential difficulty is the administrative bureaucracy. It might be helpful for us to pick up in our on-going assessment a number of themes that are emerging. Bureaucracy is one such theme; we have also identified the supervision issue.

The points that SPICe made at the end of its paper about clarification of risk assessment and liability, which Ken Macintosh mentioned, are important. We keep returning to the question what is the risk. A number of organisations build risk assessment into their general recruitment policy. General recruitment policy should address risk and liability. Disclosure is additional; it will not solve everything. We should try to develop that point, because we must not lose sight of the agenda that most threats to children come not from their membership of or participation in organisations, but from domestic experience. That relates to a previous discussion that we had. We should maintain a focus and ask SPICe to help us identify continuing themes to guide us when we are monitoring development.

The Convener: To be fair, the Executive and a number of major youth organisations have said repeatedly that there is a need to have good

arrangements in place—most of those organisations appear to do so.

Mr Macintosh: The disclosure checks have an impact on areas of local government other than the one that is under discussion. In particular, they have an impact on the direct payment initiative, under which a person can chose their own carer. However, in many cases vulnerable adults are choosing the carer and local authorities are vetting the appointments and waiting for guidance on the procedure. That is being pursued by the Health Department, rather than the Education Department, in a parallel operation; although it is not being covered by our committee, the situation is very similar.

The Convener: The administration of the Protection of Children (Scotland) Act 2003 will have to be reviewed more generally at some point, but it is clear that we will require experience of its operation before we can say anything about it.

I welcome John Harris, who is the director of the central registered body in Scotland. I had not entirely appreciated that you are linked to Volunteer Development Scotland; that is probably just ignorance on my part. We would appreciate a bit of guidance and background from you on the role and function of the central registered body in Scotland as a preliminary to a few questions from the committee.

John Harris (Central Registered Body in Scotland): Thank you, on behalf of my colleagues and myself, for the invitation to speak to the committee. I am grateful to have the opportunity to provide information to the committee. Before I give you a brief background, it is important that we acknowledge that child abuse is an evil that has existed for a very long time and is prevalent in all cultures. Scotland is not alone in having to face the problem.

The challenge that is faced by society in general and by the legal system in particular is to achieve a principled approach that is designed to meet the need to prevent harm or the risk of harm while not eroding the capacity of people to participate and engage in activities that benefit children. It is important to restate that objective. The Executive set up the central registered body in 2002 under the auspices of Volunteer Development Scotland; the body is therefore a customer of Disclosure Scotland and not part of it as such. The central registered body is described in the code of practice as an umbrella body, but it happens to be the umbrella body for organisations from the volunteer-engaging sector that want to access the disclosure scheme. The advantage to them of doing so is that there is no cost to them, because the fee that would normally be levied for each individual disclosure is not applied to them but is met directly by the Scottish Executive. We have a role in ensuring that the invoicing and costing of that exercise are accurate.

In a thumbnail, our role is to undertake the enrolment and registration of organisations, their lead signatories and any additional signatories that they have, and to undertake the processing of disclosure applications that are sent to us. However, that is only one aspect of what we do. We provide a range of additional support, advice, guidance and training to organisations in the volunteer-engaging sector to enable them to get into the scheme. That is a time-consuming and difficult exercise. Although bodies do not complain about the principle behind the need to undertake that activity and to ensure that volunteers do not have inappropriate backgrounds, there have been times when organisations have not been in a position to come alongside the expectations because of a variety of issues, not the least of which are size, capacity and competence. The volunteer-engaging sector is huge, but the number of organisations that are recognised by the Scottish Council of Voluntary Organisations is also quite large. In theory, 32,000 of those organisations could be involved. There are probably as many again that are not recognised organisations, in the sense that SCVO would recognise them. Those organisations—the very small as well as the quite large—are affected equally by the legislation and the implications that it has for them.

The child protection reform programme reflects a conscious endeavour to shift the boundary walls of protection for children out into the community as far as possible and to obtain recognition from parents and carers of their obligations. In a sense, we have moved from a reactive form of child protection towards what might be described as proactive child protection by encouraging all organisations to engage sensibly in the programme. That is a significant shift for many organisations, not least for the small, ad hoc organisations that are active in a small area and have only a small number of clients. That is where the complications of the scheme are the most obvious. The support, help and guidance that we give are designed to enable those groups to get to the point at which they can access the scheme.

I can give you some obvious examples of that. A small organisation that is operating in local authority premises, often on limited resources, will not necessarily have the infrastructure or perhaps even the necessary skills or staff to be able to deal with some of the issues that arise from the simple but necessary requirement to ensure that the information that they hold remains confidential. The disclosure form contains sensitive personal information and, therefore, it is essential that that information be kept confidential at all stages of its processing, from the point at which the applicant

first signs the form to the point at which the organisation receives from us and Disclosure Scotland the disclosure certificate that might contain information about the individual. It is particularly important for those organisations to have the support to enable them to meet the requirements that are imposed on them.

It is the view of some organisations that insufficient allowance is made for what happens in real life in small organisations. I can fully understand that position. Some have asserted that they would like someone to undertake that activity for them and have asked us to do it. The consequence of the scheme that came into effect on 29 April 2002 was that responsibility and accountability for discretionary decision making and the handling of quite confidential personal and sensitive information were transferred to a large number of organisations that, until then, had not had to undertake that kind of activity or had, from time to time, been able to access support from local authorities, which used to carry out those checks on their behalf.

The Convener: I would like to ask about the need for the central registered body in Scotland. At first glance, one might suppose that its role would be played by Disclosure Scotland. Why has it been set up as a separate body? Is it because you act as advocates for the voluntary groups in their dealings with Disclosure Scotland?

John Harris: You might recall that the legislative framework for the area that we are discussing, which was set out in the Police Act 1997, was being enacted when Lord Cullen's report on the Dunblane shooting was published. As a result of the judicial inquiry relating to the activities of Thomas Hamilton, Lord Cullen suggested a number of systems, among which was a national accreditation system for clubs and voluntary groups that are attended by children and young people. The main purpose of the system was to ensure that adequate checks would be made on the suitability of leaders. I am not entirely familiar with what happened in the intervening years between 1997 and 2001, but my understanding is that representations were made on behalf of volunteer-engaging organisations to ensure that those organisations had a method through which they could obtain free access to the checking system.

It was decided that a central body would need to undertake that work and it was recognised—rightly—that, in addition to its primary work, that body would have to address the needs, requirements and special issues of volunteer-engaging organisations. As part of our mandate, we were given responsibility for providing assistance, which included the role of alerting organisations to wider child protection issues and encouraging greater familiarity with legislative obligations, such as those under the Rehabilitation of Offenders Act 1974 and the Human Rights Act 1998. We were also charged with encouraging organisations to implement in-house systems that would provide a clear audit trail and enable them to know that the process of obtaining disclosures was sound. There was a variety of reasons for the way in which we were created; our task was not only to deal with disclosures.

11:15

Lord James Douglas-Hamilton: I imagine that, because your roles are so different, you would rule out the prospect of a merger with Disclosure Scotland; that is probably not even a possibility, as it would not be practicable.

John Harris: Disclosure Scotland is a public-private partnership between the Scottish Executive and the private sector partner, which is British Telecommunications plc. I am sure that colleagues at Disclosure Scotland would not welcome my saying this, but its role is to be the author and the provider of the criminal history information and to produce it quickly and accurately. I see our role as being far wider and more broadly based—we must foster the development of an understanding of the need to have sound systems of protection.

We are always at pains to point out that the disclosure scheme should not be considered to be the be-all and end-all of the process. The need to protect the vulnerable must be built into the bedrock of organisations' approach to protection. That is not just about having a child protection policy, but about having a child protection policy that, rather than being just words on paper, is a living instrument that does not gather dust on a shelf.

Mr Macintosh: I want to get a better picture. How many of the applications for disclosure go through the CRBS rather than other organisations? How many applications go through local authorities and how many go through other intermediary bodies? In how many cases are direct approaches made?

John Harris: It is very difficult to answer that, because I do not know the overall composition of Disclosure Scotland's activities. At the moment, we undertake disclosure applications for about 3,500 organisations. I suspect that we are a significant customer of Disclosure Scotland.

Mr Macintosh: Does that figure represent a cumulative total for the past few years?

John Harris: Yes. It is correct as of this week. Since 29 April 2002, more and more organisations have gradually enrolled as they have been assisted to use the scheme. Of course, since the

passing of the Protection of Children (Scotland) Act 2003, what used to be a non-mandatory scheme has become mandatory for organisations in which volunteers or paid staff are working for children and young people.

Mr Macintosh: Can you give us a rough idea of the sorts of organisations that use the CRBS?

John Harris: We probably act on behalf of three main constituencies. First, we act for the large United Kingdom organisations that are virtually incorporated companies in their own right, such as Marie Curie Cancer Care or the Women's Royal Voluntary Service. Many such organisations are based in England or Wales but have large bodies of volunteers who work in Scotland, so they use us to organise disclosure checking for their staff in Scotland. Secondly, we act for the larger Scotland-based organisations, which are well known to members of the committee. The third group, which is by and large the most numerous, consists of very small groups such as pre-school playgroups, nurseries and a variety of small organisations that work with children, with children and adults or just with adults. There is a broad mix of such organisations, which request an average of about 12 disclosures per annum.

Mr Macintosh: The issue arose—although things have moved on—partly because of the delays in the system. Disclosure Scotland has dramatically improved its procedures, but I note from the Executive's update on child protection work that although the time taken by Disclosure Scotland to turn round an application is between 2.5 and 5.5 days,

"the time between the applicant signing the application form and receipt at Disclosure Scotland has taken between 26.5 and 41.5 days".

That represents a huge delay.

John Harris: The delay issue is interesting. Delays happen at various stages in the process. We keep a close eye on the time that it takes our enrolled organisations to forward forms to us. We conducted an analysis of the situation in the six months to the end of March and found that on average it was taking 40 days from the day on which the applicant signed the disclosure application for us to receive the form. One disclosure application—this was some time ago, I am pleased to say—took between 180 and 190 days to get to us after being signed by the applicant. That is a gross example.

Mr Macintosh: Where are the forms during that time?

John Harris: Reference has been made to the scale of the process and the involvement of local authorities. I do not think that many people had a comprehensive understanding of the extent to which volunteers are actively engaged with children, young people and vulnerable adults. The voluntary sector is huge and makes a substantial contribution to work with children and young people, but people perceived the voluntary sector as the one that they recognised through, for example, the representative bodies, and perhaps did not have on their radar screens a clear sight of the number of smaller groups that actively and substantially contribute to young people and vulnerable adults in the community but are not necessarily part of a recognised affiliation or networking body. We deal with disclosure applications from all those groups. The scheme is generic and does not distinguish between a small group that is run by a group of parents and a large organisation such as the Scout Association.

Mr Macintosh: I appreciate that, but I do not understand where the delay occurs. When somebody gets an application form, the next thing that they do is send it to the central registered body—

John Harris: No, not always. One reason why organisations have had to take considerable time in putting procedures in place is that some organisations have governance arrangements that require them to feed their application forms through a central headquarters. An example that illustrates the point is the Church of Scotland. Application forms from the church's network of organisations that are distributed throughout the country must go through the church's child protection unit in Edinburgh before they come to us. Another example is the Scout Association, which routes its application forms through its headquarters in England before it sends them to us. There are all sorts of reasons why delays might occur. In a sense, the smaller groups are probably the most efficient because they are keen to get the form to us as soon as possible and we have encouraged them to do that.

Mr Macintosh: How quickly does the CRBS turn round the applications?

John Harris: At the moment, we are dealing with disclosure applications that we received on 17 March.

Mr Macintosh: So that is about one month.

Fiona Hyslop: When will those applications be finished?

John Harris: That is unpredictable. The length of time that an application takes to be processed depends on the checks that need to be carried out by Disclosure Scotland. However, our aim is to have a process whereby we can return the form to the organisation within three weeks of receiving it.

Let me deal with the question of delays—

The Convener: I want to clarify what you said. Will the aim be to have the form processed by

Disclosure Scotland and returned to the organisation within three weeks?

John Harris: Yes. That is what we will aim for.

The Convener: Does the process take about four weeks at the moment?

John Harris: Yes. At the moment, delays happen because of a combination of a variety of circumstances. Around one quarter of the forms that we receive are defective in some way. Each form—we received circa 51,000 in the year to 31 March 2005—must be individually invigilated to ensure that it can be forwarded to Disclosure Scotland. Defective forms, such as those that have been wrongly filled in by the applicant or those that omit information that is required, tend to be picked up by the two-stage checking process that we engage in to ensure that we send only accurate forms to Disclosure Scotland. Only a limited number of forms are returned to us by Disclosure Scotland due to inaccuracy that has not been picked up by our quality-control checks. However, we need to return any defective forms to the organisations for correction because, for obvious reasons, we cannot amend the content of forms. That can build in a delay before we can send the form to Disclosure Scotland.

The forms must be checked manually, which is a very labour-intensive process. I have no idea whether the committee has been advised on our staffing levels—I was conscious of the convener's comments about resourcing—but we currently have 16 members of staff who are engaged in checking forms.

The Convener: Do those 16 members of staff only check forms?

John Harris: The same people enrol organisations, check lead and additional signatories and provide advice, guidance and support to organisations. We also receive an average of 150 telephone inquiries about the disclosure process each working day.

The Convener: According to our information, the central registered body has 22 staff in all.

John Harris: That is correct.

The Convener: For the avoidance of doubt, I want to clarify what is involved in processing an application form from, for example, a scout group. After the application form is completed locally, it is sent to the Scout Association's central office, which sends the form to the central registered body, which sends it to Disclosure Scotland, which must then return the form to the central registered body, which returns it to the central office, which returns it to the local scout group.

11:30

John Harris: That organisation just provides an illustration. It may have one of the longer chains. As far as we could, we did not insist on an approach that various organisations should adopt—they elected their approaches. All that we need to fulfil our responsibilities is a clear point of contact with them, because in addition, we have an obligation under the Police Act 1997 to ensure that all the organisations for which we act comply with the ministerial code of practice.

Fiona Hyslop: My question is about the scale of what you are dealing with and about your resources. You made the point that the number of volunteers who work with children has probably been underestimated. The research that we have been given shows that 48 per cent of adult volunteers in Scotland are directly involved in helping children. That research also says that 1.76 million adults volunteer, which means that about 800,000 adult volunteers work with children. With 22 people, how will your organisation deal with the retrospective checks that will be required for those 800,000 adults and the Police Act 1997's requirement for you to ensure compliance with the code of practice?

John Harris: Quite simply, we will not. We are staffed to deal with the volume of activity that would exist if the impact of the Protection of Children (Scotland) Act 2003 were disregarded. Independent evaluation of our statistics shows that the number of disclosure applications that are received is growing at a median rate of 1,000 each month. If 10,000 applications were received in a hypothetical year, by the end of subsequent years, the figures would be about 20,000, 30,000 and 40,000.

Without the impact of the 2003 act, the steady and continuous trend of requests is upwards. However, the act raises a range of issues, because it changes the complexion of what was a non-mandatory scheme into a mandatory scheme for organisations that deal with children and young people who are under 18.

We do not stop there, because the proposed vulnerable adults bill may well contain similar provisions to protect adults. That could produce a substantial increase in the volume of applications for disclosures. In a sense, we have a moveable feast. We can talk about the position now, but that may well change in short course.

The Convener: Have you discussed the implications of the situation with the Executive? Retrospective checks have not started yet.

John Harris: The checks have not started. Naturally, we have had discussions with the Executive for many months. The Executive asked us to submit a further bid for short-term funding

until further thought can be given to the position overall. That bid has been submitted and we await the outcome of the Executive's deliberations about it.

Fiona Hyslop: Once we know when retrospective checks are to start and what the timeframe and volumes will be, how long will you need to gear up for retrospective checks? Have you estimated the number of staff whom you will eventually need to deal with retrospective checks?

John Harris: I will deal with the non-retrospective element first. We know for a fact that recruiting, appointing and training appropriate staff for the activity inevitably takes at least two to three months. Even if we appointed someone today, it would probably be June or July before that individual could operate. That applies whether or not retrospective checks are in place. There is a lead time that has to be taken into account.

The other important consideration for us is the infrastructural support that goes with having people, and we have reached the limits of our accommodation. When we started, in financial year 2001-02, there were five processing staff and three other staff. The facilities that we had at that stage were suitable for that number of people, but we have now well exceeded those limits. To take account of the demand that we think might occur as a result of the current legislation, without retrospection, will require us to consider a number of issues concerning the infrastructural support that we require.

Fiona Hyslop: What are the implications of retrospection?

John Harris: The implications of retrospection could be substantial, as we could be talking about up to 250,000 disclosure applications a year.

The Convener: That is nearly five times as many as 51,000. Is 51,000 an annual figure?

John Harris: Yes.

The Convener: So, that is nearly five times as many applications as are received at present.

John Harris: Let us be clear about the retrospection issue. The increase in applications could be construed as a one-off hit, after which point the normal rate should reach a plateau. However, in that initial phase, with the introduction of retrospection, a substantial number of additional staff could be required.

The Convener: And the plateau will then be higher than it is at the moment.

John Harris: We expect that the plateau will be at about 140,000, 150,000 or 160,000 applications. That is what we are currently advised without taking account of what may happen as a result of the protection of vulnerable adults scheme or—the other thing that we have to keep in mind—any further recommendations that emerge from the activities of the Bichard committee.

Fiona Hyslop: There are concerns about very small organisations, which you have talked about. Other organisations are trying to build disclosure checks into their corporate planning, knowing that they are coming, to ensure that there is a phased introduction. To what extent have you been able to facilitate that idea of organisations having those checks done in a phased way, as they know that the checks will soon be necessary, if they can get voluntary agreement from their members of staff? Is that a reasonable way of trying to manage the process?

John Harris: The Protection of Children (Scotland) Act 2003 has obvious implications for paid members of staff in relation to reporting to ministers any activity that, in the view of the organisation, harms a child or places a child at risk of harm. There are even a number of employment law issues for organisations in relation to that.

It takes time for the organisations to engage with their volunteers and to explain the implications of the changed circumstances and what will be required of them following the introduction of the disqualified from working with children list. We have tried to raise awareness among groups to help them to prepare in that way. However, we have reached only as many organisations as have approached us. Awareness-raising seminars are being arranged throughout the country, through a consortium of which we are a member, and when we send out information about registration to groups, we try to raise awareness of the issues with them. We will continue to do that to the best of our ability.

Dr Murray: I am interested in the issue that Ken Macintosh raised about the delays in getting disclosure applications to Disclosure Scotland. Is there any evidence that organisations are becoming more experienced in what is required and that, over time, the large organisations may be able to check their own applicants' disclosure forms because they have gained experience in the system?

John Harris: Yes and no. One would hope that, particularly in organisations with a managerial structure—a controlling mind, in a sense—and an understanding of the issues, a critical mass of information will ultimately develop that will enable them to do what you describe. However, those large organisations are a small proportion of the total number of groups that the legislation potentially affects.

One of the most important factors is the churn rate of office-bearers and volunteers in

organisations. Early years or pre-fives groups, which are almost invariably supported by mothers of young children, provide an excellent example. Management groups or management committees are formed—or coerced together, shall we say—by mothers who come together to work or to provide the facility for young children. Of course, the parent or carer will follow the child and in some cases, management committees may form several times a year. I have been told that it is not unusual in that sector for a management committee to be formed, dissolved, reformed and then dissolved twice or three times because of the nature of the activity. In such circumstances, it is less likely that groups will ever obtain the critical mass of information that will enable them to do the kind of things that you ask about, because knowledge will disappear and dissipate when people move on.

Dr Murray: In that case, the learning process will be difficult for the majority of organisations with which you deal. Do other sources of support need to be put in place, particularly as the 2003 act comes into force? Is there a role for better guidance for local authorities to be able to support people, for example?

John Harris: Creating a structure that recognises the importance of what volunteers do and how often they are involved in voluntary work must be considered. That means that there should be a co-ordinated response that makes use of volunteer centres, councils for voluntary service and the wider network of bodies that exists. However, there is a group of organisations that will always remain unrecognised or unaffiliated and support must also be given to them, which will be the most difficult task to achieve.

It is important to do things in a co-ordinated, consistent and clear fashion. If consistent and clear information is not imparted, creating confusion and alarm will always be a danger. A network needs to be in place. Currently, a number of trusted partners work to provide assistance to help organisations to get into the scheme and a number of trusted training partners provide local awareness training for groups in their locality. We need to reinforce such things and to build on those connections. Of course, volunteer centres and councils for voluntary service need support and resources to enable them to undertake their activities.

The Convener: I have a couple of additional questions. Are there any registration fees or costs for bodies that come to you for assistance?

John Harris: Disclosure and registration costs are zero. Any costs that occur are for specific one-off training and are charged so that we can cover our costs, but the cost of the disclosure process for organisations that are enrolled with us is zero.

The Convener: My second question relates to the extra administration costs for voluntary bodies, to cover training and the extra bureaucracy that goes with it. You may not be able to answer the question now, but have you been able to assess the extent of those additional costs or the needs of organisations in that regard?

11:45

John Harris: Various organisations have asserted various costs at varying levels up to several tens of thousands of pounds. We have no way of knowing whether that is the case or not. At various times over the past three years, we have suggested to the Executive and to Disclosure Scotland that we need to enable organisations to reduce those costs by introducing a variety of different methods other than the paper-based form for getting into the scheme.

We have made two specific recommendations, the first of which is to use the Post Office for the registration of lead signatories and organisations and of additional signatories. Eventually, the Post Office could also be used for obtaining checks on the credentials of volunteers.

The Convener: Could you elaborate slightly? How would that happen?

John Harris: At the moment, lead signatories and organisations have to come to us or to one of our trusted partners to be registered. We have worked with the Post Office for the past 18 months to develop a scheme that can be put into place relatively quickly to enable organisations' lead signatories and organisations themselves to get into the scheme at around 120 to 130 post offices throughout the country.

The Convener: So there would be certification of some sort by the post officer.

John Harris: Yes. If you are familiar with the process of obtaining a photographic driver's licence or a passport over the counter, you will understand how it will work if you want your credentials checked. That is exactly what would happen, and that would obviously have a profound foreshortening effect. We would like to extend that to additional signatories and indeed to volunteers who submit Disclosure Scotland applications for credential checks.

The Convener: Has the Executive approved that yet, or is it a project that has yet to be approved?

John Harris: It has yet to be approved. Of course, we would also need the consent of Disclosure Scotland, which would have to be satisfied that the approach adopted and the checks that were being conducted were satisfactory.

The second proposal that we have made in the past three years is to use information technology. In particular, we would like to take advantage of the opportunity to use electronic completion of application forms over the internet, with all the safety and security protocols that would be required for that. There would then be less likelihood of those data being invalid, because they could be checked as the applicant was filling in the form at their own personal computer. That would enable us to get that form printed up, supplied to the applicant and countersigned. Thereafter, on receiving the completed form back from the organisation, we would be able to transfer the data, rather than the paper document, to be checked. In our view, that would improve the efficiency of the scheme. Naturally enough, both proposals have resource implications.

The Convener: That was the other question that I was going to ask—about the means of making the process work more smoothly and cutting the bureaucracy attached to it. That is welcome.

A lot of issues have come out of that interesting evidence. Do other members have any points to raise?

Mr Macintosh: Could I clarify that point about costs? There are no costs for anybody applying through CRBS or Disclosure Scotland, but am I right in thinking that other bodies do charge?

John Harris: Yes, there are other bodies that act as umbrella organisations and which charge.

Mr Macintosh: Local authorities do that. Are there any others?

John Harris: There are a number of private organisations that do that.

Mr Macintosh: The charges vary. Am I right in thinking that Disclosure Scotland itself does not charge?

John Harris: It makes only the basic charge for the disclosure certificate, which is £13.60 at the moment.

Mr Macintosh: If people go through CRBS, you cover that cost, do you not?

John Harris: Yes.

Mr Macintosh: So there is an incentive for people to go through CRBS, because you pay the £13 cost. If they go through another body, they do not have that incentive.

John Harris: No.

The Convener: Thank you very much indeed, Mr Harris. We are grateful for your useful input, which has added immeasurably to our knowledge of how the process works.

Would members of the committee like to add to the letter that we are sending to the minister on other matters the issue of efficiency measures that Mr Harris has mentioned? I think that it would be well worth getting some background information on that as well. The whole thing has the potential to be a bureaucratic nightmare in many respects, and anything that we can do to push the issue on would be helpful.

Mr Macintosh: I agree, but I would also like to find out from Disclosure Scotland, or possibly from the minister, what proportion of applications is going through CRBS compared to other routes. There are obviously capacity problems with CRBS, but if most applications are not going through CRBS, we need to know where they are going and what the issues are.

The Convener: We can do that. What we are writing is becoming a dossier rather than a letter, and it is important that we make progress on the issue.

11:50

Meeting suspended.

11:59

On resuming—

School Transport

The Convener: Agenda item 6 is on school transport, an issue that, as members will recall, we have considered a number of times before. We have a paper from the clerks, together with responses from local authorities and the large document by the Scottish Consumer Council, "A Review of School Transport Contracts in Scotland". The question is what further work we want to do on the matter, with ministers or with others.

Dr Murray: My understanding is that there is no statutory requirement on local authorities to provide school transport. That came as a surprise when we first considered the matter and discussed it with the Executive. There is a statutory duty on parents, unless their children live more than a certain distance from the school. There is also a statutory duty on local authorities to provide education for everyone. The common understanding is that there is a statutory requirement on local authorities to provide school transport, but the issue is not as simple as that.

The Convener: Paragraph 4 of the clerk's paper states:

"Local authorities commented on the statutory requirement that they should make arrangements to provide free transport or transport facilities for children who live outwith the statutory walking distance from school."

However, that is not your understanding of what was said.

Dr Murray: No. That is what local authorities think that they have to do, although the effect is the same; I am just nit-picking a little. The other thing that struck me when I read "A Review of School Transport Contracts in Scotland" is that pupil behaviour on school transport is often a problem. Obviously, that is connected with safety. One of the recommendations in the report is:

"National and local strategies relating to positive pupil behaviour should also embrace behaviour on school transport."

The problem is that bus drivers are often left to enforce the behaviour policy, which can be difficult.

The Convener: Yes—that can be an issue. There is a good comment in the letter from Barnardo's on the need to consult children. It states:

"They knew the dangerous places. They knew where they and their friends wanted to play".

That is a fairly obvious issue, which is sometimes breached rather than honoured, as it were.

Fiona Hyslop: I am pleased that we have received the responses. It is clear that things have moved on since the legislation on school transport was passed. Experience across the country varies, but there are common themes. I am interested in the response from Aberdeenshire Council, which was mentioned in one of the petitions on school transport that were referred to us. The issue was the criteria relating to walking distances—because of severe financial constraints, the council had cut its provision. The other petition came from West Lothian; it is interesting that in that area provision of free transport is more enhanced. The two local authorities that were mentioned in the petitions are going in opposite directions, with one increasing its mileage and one decreasing it. However, there is still a problem.

One of the things that we can usefully do is to engage with the Minister for Education and Young People on the matter. The issue is not about the guidance being reviewed; I think that there are difficulties with the statutes. We have not had a response from the Scottish Executive Environment and Rural Affairs Department yet and we should remember that Rhona Brankin was keen on pursuing the matter as well. There is a question about what we are doing to encourage joined-up thinking. In Edinburgh, we have just been through the referendum on the congestion charging scheme, the aim of which was to reduce traffic to the levels that occur during the summer holidays, when there is no school run. Obviously, placing requests also have implications, because they lead to more traffic movement.

There are also issues about local authorities managing their own budgets and the constraints that they face, but cutting across that is the issue of universalism. Originally, concerns about the provision of school transport related to distance and cost, but now the drivers for school transport policy—and that means legislation—should be safety, the environment and health. If we go back to first principles and try to engage with the minister, we can perhaps come up with provisions that will guide not only legislation but the budget provision of local authorities.

Councils have different concerns; Angus Council says that it is "bemused" by the apportionment of funding for school transport. There are also cross-cutting issues about rural schools, rural school closures and repopulation in certain areas, which we are trying to encourage. The school transport agenda has moved on so far that it might be helpful to go back to basics.

The Convener: Can someone remind me whether people who place their children at a

greater distance are entitled to transport if they are over the two-mile limit?

Fiona Hyslop: No.

I go back to additional support for learning and the papers from organisations that are involved with children with special needs. The committee expressed concern that, if there was movement on the transport issue, there had to be support for children with special needs. In our consideration of the Gaelic (Scotland) Bill, we found that the experience in Glasgow was different from that in Edinburgh. If we as a committee want to encourage people to take up Gaelic-medium education and we agree to a bill that states that all local authorities will be expected to provide access to Gaelic education in their own area or elsewhere—we might debate that matter tomorrow—we must accept that that will raise transportation issues. Perhaps we have to identify the core issues that should be driving school transport policy and see whether they match. If they do not, we will have to tell the minister that it is time for a reappraisal.

The Convener: You have listed many, if not most, of the matters that we want to address. The issue is what we do. The committee has touched on school transport issues on and off for a while, but we might wish to hold a formal inquiry and produce a report—we can consider that when we examine the forward work programme for the autumn. We could do something that is joined-up and innovative. In the short term, we might wish to ask for ministerial comments on the broader issues.

Mr Macintosh: I agree with much of what Fiona Hyslop said, although I take a slightly more positive view. It is clear from submissions that recent investment in school transport is making a difference. Clearly, there are disparities in the country, some of which are unfair and some of which just reflect local priorities. There is no central solution.

Fiona Hyslop is right to mention the importance of other criteria—health and safety and the environment in particular—and not just basic statutory distances. Many families of pupils in rural schools would not object to walking long distances to school, whereas many families in urban environments would object to walking short distances to school, mainly because in urban areas traffic is busy, which makes it dangerous. In urban areas, a bus service or some other safe route to school is needed. In rural environments, there are fewer cars on the road and people may be used to walking many miles to school, even if there are no pavements.

It does not bother me that Aberdeenshire and West Lothian are going in different directions, because ultimately that is a local decision. We should be cautious about thinking that we can come up with one solution. However, I am conscious of the fact that the funding formulas should be fair. I agree that we need to examine the funding for people who go to Gaelic schools or who require additional support for learning, but the issues are tricky. It is not a question of giving absolute rights in each case. For example, do all children who have been the subject of a placing request have an absolute right?

The Convener: That applies to specialist schools of other kinds.

Mr Macintosh: Exactly. There are a number of issues. All I am saying is that there is no clear solution. The money that was spent recently to enable local authorities to look into the issues has produced dividends and has made a difference in certain areas.

Lord James Douglas-Hamilton: Paragraph 23 of the paper refers to the School Transport Bill, which was going through the House of Commons. It might be useful to gain information on that, because it could assist us. Apparently, in England and Wales, private schemes would have been introduced initially. The Secretary of State for Education and Skills will know the reasons behind the bill and will know the experience of the pilot schemes. She will be able to describe the problems in Wales as well as in England; she will be able to say how great the pressure was for the bill and whether it has any relevance for us.

The Convener: We can only scratch the surface of some of the more complex issues, but other issues—such as transport to rural schools, which we discussed initially—are narrower. Do committee members feel that we need a more detailed examination of the issues? Should we do more research, or should we limit ourselves to writing to the minister about certain aspects?

Fiona Hyslop: This is a fairly major piece of work, which is outstanding from the work of the Education, Culture and Sport Committee in the previous session of Parliament. I would like this work to run alongside our other work.

There is clearly disparity between legislation and practice. If anything, local authority practice always seems to be ahead of statute. Some innovative things are taking place—although I dare not mention Ken Macintosh's walking bus.

The Convener: It has dominated the affairs of this committee.

Fiona Hyslop: There are a lot of good policies, but there is a mismatch between legislation and practice. We have a great opportunity for joined-up thinking—even if it is just to tidy up some of the legislation or just to provide some more policy

guidance on the funding formulas that Ken Macintosh mentioned.

The Convener: Information from officials demonstrated a silo mentality—people were not aware of, or involved in, wider issues.

Dr Murray: In many ways, local authorities have long been ahead of the legislative position. For example, Strathclyde Regional Council had a one-mile service for primary schools and a two-mile service for secondary schools throughout the region. However, after local government reorganisation, some authorities felt that they could not afford to continue that level of service. In some areas, services reduced after reorganisation, but there is a long history in local authorities of trying to provide more than is required in statute.

The Convener: I suggest that we should first write to the minister. The Scottish Consumer Council report makes a lot of recommendations, covering issues such as attendance on buses. It would be worth hearing the minister's response on those issues and on the broader issues that Fiona Hyslop and others have mentioned. We will then be able to consider whether we should do more detailed work. We could do that when we consider our future work programme at our away day during the summer. Do members agree?

Members *indicated agreement*.

The Convener: I might pass round a draft copy of the letter to the minister, to allow members to offer any thoughts about issues that they want to be considered.

Annual Report

12:13

The Convener: Item 7 concerns the annual report. Members have a draft copy—it seems a good report. Do members wish to raise any points about the drafting or the format? An overall report will be published later in the year. It will comprise the individual reports from each committee, together with photographs and other things.

Mr Macintosh: The committee engaged in visits as well as meetings. That might be worth mentioning.

Fiona Hyslop: The report looks a little light, suggesting that we had only 20 meetings here, one in Skye and one in Glasgow. A better flavour would be given if we mentioned the visits.

The Convener: Yes—paragraph 13 might be supplemented by a reference to the visits that the committee made. I had the same thought: the report makes it look as if we have just sat here and not gone out and about in the country, which is not true. We have simply to add that reference, but I should ask members whether they agree to delegate any final drafting to me. Do members agree to that?

Members *indicated agreement*.

The Convener: I did not want to exceed my powers.

Local Government Education Expenditure

12:14

The Convener: Item 8 relates to local government expenditure on education. The report before us follows on from the work that we did with the advisers. It makes a number of suggestions and reports back on the meeting that the clerks and I had with the minister a little while ago. Do members have any observations or points to make on the report?

Dr Murray: I have a question on paragraph 6. Why was it not felt necessary to appoint any new advisers? We are still talking about a fairly complex financial analysis of local government expenditure. I would have thought that this is the time to have budget advisers to help us to analyse the material that is coming in.

Martin Verity: The committee can recruit advisers if it wishes to do so. Colleagues in SPICe and clerking felt that there would be enough capacity between ourselves to report back to the committee on the information that is contained in the paper. We also felt that the advisers had provided a good service to the committee in going through the budgetary complications when they were first appointed. We did not plan to recommend that further advisers should be appointed. However, that is entirely a matter for the committee.

The Convener: The issue is really whether value is added of a suitable kind at this stage—as opposed to before or after—to make doing that a worthwhile procedure. I do not have a strong view on the matter.

Fiona Hyslop: I have some concerns over paragraph 6. Now is the time when we will want to examine the budget lines of education spending by local authorities. The minister has announced that that is an area that he wants to examine and the committee has said previously that it finds it extremely helpful to be able to track how budget lines eventually reach front-line services. You may remember that we had an issue with children's services and child protection. I thought that we had agreed to examine that in conjunction with ministers, but I have not seen any progress. I would have thought that budget advisers would be heavily involved in that work, especially in the discussions with the minister and his officials that the minister has agreed to have. This is, therefore, a strange time not to have that support.

The Convener: The point of the meeting that I had with the minister and officials was to see what could be done in that direction. We now have a formula for the way in which information should come before us for the budget process. There is lots of information hanging about, if I can put it that way, and we need to focus on bits and pieces that we want to take further.

In the lead-up to the budget, the arrangement is that the clerk will write to the head of the policy support unit at the Executive asking for clarity on changes in the budget. One of the issues that we had before was that it was not clear to us when the Executive was adding things to or taking things out of the budget. That is the first point. If we then want to concentrate on a specific topic—which was the line of thought that we had before—we will advise the Executive which topic we want to have a closer look at and it will be able to give us further information on that. It is at that point that our consideration will come to bear on the matter. I hope that I am explaining the process correctly.

Ms Alexander: We need to discuss the minute in appendix 1 at some stage. Paragraph 5 states:

"The Committee might wish to concentrate on one particular topic at each Budget round."

The Finance Committee has made it clear that it is not its job to dig down over the £25 billion of expenditure and we know that we have a huge difficulty because 80 per cent of the spend in education is out there in local authorities. The logic of paragraph 5 is that, if we concentrate on one specific topic of the 20 per cent of the spend that is centrally held, we are probably talking about scrutinising 1 per cent of the budget each year. I do not think that it is fair to offload the other 19 per cent on to the Finance Committee and I do not think that—given that our job is to scrutinise education—we should say, "We do not know anything about the other 80 per cent. We do not look at those data: they belong to someone else and that is their job."

We had a difficult discussion about how we could get a handle on expenditure lines in the budget and, as Fiona Hyslop says, the minister said that he was going to look into the matter. Paragraph 7 of the minute notes

"that information about:

- what local authorities spend the money on and
- what the outcomes are,

all run to different timescales."

We are then given, in annex 2, the addresses of five websites to look up at our leisure.

In the years during which there is no significant change in the 20 per cent owned by the Executive, real scrutiny means thinking about what value we can add—even just in terms of transparency—to the 80 per cent that is not in the Executive's domain. While it is encouraging that the minister is

willing to consider the matter, committees should keep standing budget advisers. How can we possibly scrutinise an area if we do not have financial expertise on tap? The Finance Committee is urging committees to have that capacity on tap.

The challenge is for us to say that considering just 1 per cent of the budget does not meet our aspirations and that we should think about what is possible, proper or appropriate for the 80 per cent. We must find a way of considering that issue over the next year so that we reach a view, by this time next year, about what is or is not possible for the 80 per cent. We could perhaps use the two advisers whom we know and who know us to do that. We should have no preconceptions about what is or is not possible, but at least we would be able to look back at the end of the second parliamentary session and say, "We thought hard about what was feasible around the 80 per cent, at least in terms of transparency."

The Convener: Leaving aside the adviser issue, I do not think that the intention was to concentrate just on the Executive's bit of the education budget. First, the idea was that there would be a general remit for the budget, as usual—there will be no change in that. Secondly, however, because of the complication of where early years money goes and so on, the idea was that we would drill down not just on the Executive's bit, but on the council bit, to find out exactly what is happening in one of the areas and to try to make it manageable. That was the kind of discussion that we had previously; if I recall correctly, it was what we discussed with the minister, too. That is, in a sense, a different issue from that of the adviser, on which there is a reasonably clear view round the table.

Lord James Douglas-Hamilton: I support Wendy Alexander's point about the benefit of having advisers. We had them in the past and they did a reasonable job. On the basis of consistency, that should be continued.

Mr Macintosh: We are invited to agree to focus on early years issues and to seek comment or input from local authorities. I would agree with both those suggestions. I do not know whether this is too much to ask, but I would like to consider spending on additional needs as well.

The Convener: We have done some work on that.

Mr Macintosh: If we ask for that as well, would it broaden our work too much? I would like to find out what happens in different local authorities; I would like to ask each authority how it allocates money to additional needs, about the trends there and about how additional needs spending is broken down.

The Convener: We could certainly carry out an exercise on that—it is within the capacity of SPICe and the clerks to do that and to agree on a questionnaire. We have some information relating to the Education (Additional Support for Learning) (Scotland) Act 2004 about the moneys that are going into ASL at our level, which we have gone into in some depth.

Fiona Hyslop: There is the Audit Scotland report as well, which is very informative.

The Convener: Yes. Absolutely.

Mr Ingram: To return to the question of how well we scrutinise the budget, I believe that the committee has raised its game over the past couple of years. If I recall, our report to the Finance Committee was one of the best of all the subject committees. I would be reluctant to come back from that. On the question of focusing on early years issues, we should be doing that anyway, and digging into the budget, in our inquiry into early years. We will be talking about an adviser for our inquiry later, but it would be helpful if there was some liaison between our existing advisers on the budget as well. I am very much in favour of maintaining the level of scrutiny that we have adopted to date.

The Convener: I will try to summarise the position. First, there is agreement about the emphasis on early years, because it is an area that we will be considering anyway—this work will supplement what we do on early years. Secondly, given the groundwork that we have done, there is agreement that we can usefully do some further work on ASL—we can get some information from local government. Thirdly, the second bullet point in paragraph 9, about comment from local government on the February settlement, is worth pursuing anyway, regardless of any advice that we get in that regard. That would fit into the same context. Fourthly, there is a general view round the table that we should appoint or reappoint an adviser. What are we talking about in practical terms? Do we have to go through the process again to reappoint the existing people?

Martin Verity: I am thinking about the best way of proceeding. The contract has ended, so Parliamentary Bureau approval would be needed regardless of whether the committee wished to reappoint the existing advisers or to consider new ones. The committee has made it clear that it wishes to appoint an adviser. What I am not quite sure about is the drafting of the detail of the paper that will have to go to the bureau; I am not sure whether I would need to bring a paper back to the committee again, which would take some time, or whether there might be a way of delegating authority to clear the detail, so that we can get a paper to the bureau fairly quickly.

The Convener: If members want to take part in that process, we will have to put a draft round by e-mail.

Ms Alexander: I am happy with whichever way you want to expedite the matter, convener. I would add to your summing-up recommendations that, given that this is a quiet year in the Executive's budget, it would be helpful if we could schedule an advice session with the budget advisers in the autumn. We would brief them in advance that we would like a session about how we enhance transparency and scrutiny of the entirety of the spend that falls within the committee's remit. I do not know whether that needs to feature in the paper to the bureau. In fact, what is in the direct hand of the Executive is 10 per cent, not 20 per cent. It would be helpful if the budget advisers could inform us how we can get a perspective on what the other 90 per cent is delivering, so that we at least know that we have considered the issue.

The Convener: There are other sources of information—for example, audit information and average spend figures on this, that and the other.

As there are no other comments on this item, we will move into private session to consider the appointment of an adviser for the early years inquiry.

12:27

Meeting continued in private until 12:45.

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