EDUCATION COMMITTEE

Wednesday 25 May 2005

Session 2

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EDUCATION COMMITTEE
9th 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 Kenneth Macintosh (Eastwood) (Lab)
*Mr Frank McAveety (Glasgow Shettleston) (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:

Mike Gibson (Scottish Executive Education Department)
Euan Robson (Deputy Minister for Education and Young People)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 4

Scottish Parliament

Education Committee

Wednesday 25 May 2005

[THE CONVENER *opened the meeting at 11:06*]

Early Years Inquiry

The Convener (Robert Brown): I open this meeting of the Education Committee. I am sorry for the slightly late start, but we had a pre-meeting briefing. We are now in public session, so I ask people to ensure that they have turned off their mobile phones and pagers.

Item 1 on the agenda is the early years inquiry. We will consider a summary of written evidence, plan the approach to the inquiry and agree witness sessions. We have before us an approach paper and a summary of evidence, which provide helpful background information. We must decide how we approach the inquiry. Are there any comments on the summary of evidence, the themes or the bits and pieces that we want to take forward? Both papers are very helpful and focus the somewhat tricky issues well. I have no questions about the papers, which provide a good basis on which to take the inquiry forward.

As there are no comments on the papers in general, we will look specifically at the approach paper. The paper focuses on meetings and witnesses. If, particularly in the light of our informal session with the adviser, members want to suggest anything that is missed out in the paper, they can have informal input later.

The approach paper at least gives us a framework for where we might want to go. We must strike the usual balance between visits, meetings and participation sessions, which have become a feature of our inquiries and have proved to be very useful. Are there any observations on witnesses or on our general approach?

Fiona Hyslop (Lothians) (SNP): One of the most challenging issues will be to get the perspectives of parents. As we all know, every parent is different. One of the biggest challenges will be to work out how to get input from parents and how to do so objectively.

The visits will also be important. Although I can understand the groupings of witnesses, it is essential that our work is theme led rather than organisation led. We must organise our questioning of witnesses properly. If our discussions are theme led, the implications for child development are among the strongest themes that I would like to be addressed throughout the inquiry. That will be the most challenging thing to achieve.

The Convener: That is a valid point. There is always a tendency to have the usual suspects, which means that the flavour can sometimes be taken out. We must get the balance right between the debates and disputes among the people who are affected and the formulaic evidence from unions, professional bodies and so on.

Ms Wendy Alexander (Paisley North) (Lab): I agree with Fiona Hyslop. The approach paper is excellent in respect of the ground that we will attempt to cover. My only suggestion is that the clerks should perhaps sit with Kathy Sylva and think about how we structure the inquiry to enable us to reach a conclusion. The content is exactly what we want to cover, but the inquiry might benefit from the adoption of a slightly more thematic approach.

The Convener: I echo that. During our informal session, a comment was made about the way in which the House of Commons group dealt with the issue and conducted the visits that it made. I sometimes think that we could do a little bit more in preparation for visits so as to get more out of them. Most of us are laypeople and do not know the technical background of what goes on in schools, projects and nurseries, so it would probably be helpful to have a bit of guidance on the kind of things that we should be looking for, so that we can get sense and flavour out of our visits.

It is suggested that we should look at international experience, which is something that we have talked about doing on and off in the past. It is suggested that there might be some value in a visit to one of the Scandinavian countries. Do members have any thoughts about that? Sweden and Finland have been suggested. There are different styles of provision there and they might have good things to offer. In advance of such a visit, we might get more detailed information about what is happening in those countries and the basis for that activity. I am told that Finland has much to offer in a number of different ways, getting away from the standard Swedish one-to-18 approach. Would members be happy for that possibility to be developed to see whether we could get value out of such a visit? Is that of interest to members?

Fiona Hyslop: I suggest that we seek the advice of our specialist adviser on where it might be most appropriate to visit. It is a question of the themes that we want to address. I know that arrangements need to be made in advance, but it might be easier to reflect on our themes first, because where we go should be led by our evidence and by what we are trying to achieve as opposed to being decided by what appears at face value to be the most interesting place to visit.

The Convener: We have done some initial soundings through Professor Kathy Sylva, our adviser, and I think that there are different things to be got in Sweden and Finland. We might want to develop that a little bit and see what the ins and outs of a trip would be.

Fiona Hyslop: We have a big enough committee to split up and visit both.

The Convener: That might be a possibility.

Lord James Douglas-Hamilton (Lothians) (Con): Might it be possible to do both?

The Convener: It might be feasible. Perhaps we should explore that a little bit further. We are not going to make a decision today, but we can make some background inquiries into what the advantages of a visit might be and we can then develop a proposition.

Beyond that, we are asked today to agree the broad approach that is set out in the paper. We have talked about an international visit. There is also an opportunity to establish a focus group. The details of that proposal will be delegated to me to progress along with the clerks and the adviser. Would that be all right?

Members *indicated agreement*.

The Convener: If there are no other observations on the two documents before we move on, I shall leave members with an open invitation to come back with suggestions for other witnesses.

Ms Rosemary Byrne (South of Scotland) (SSP): In the light of what Kathy Sylva has been saying today about qualifications, I feel that it is important for us to take a look at the review that is demanded by the Unison petition, which has been going round for some time. That is key to where the discussions are now leading us.

The Convener: Which review?

Ms Byrne: The Unison petition, which has been going round the Parliament for some time now, calls for a national inquiry into early years education. I think that we will hear something about that later, but we have a meeting planned and I just want to point out that, in the light of what we are hearing, it is important that the issue is examined in great detail.

The Convener: To some extent, that will emerge from the evidence that we get about what provision exists at the moment and where there are areas that need further investigation. It is perhaps an issue for our conclusion at the end of the inquiry, and we should keep it in mind as we go through. Obviously, the quality and training of the workforce are already emerging as an important issue.

Ms Byrne: Definitely.

Fiona Hyslop: We have been promised the early years review for some time. We can ask the minister about it under the next item, but my understanding is that it will be available in early summer, so it should be out before we have heard all our evidence. We need to keep track of when the early years review is about to report.

The Convener: That is worth while. We can inquire into that.

Fiona Hyslop: If our witness sessions happen post-summer, they will inform where we take this.

The Convener: The clerks are usually in close touch with Executive officials on such matters. We will be guided by the information as it develops.

Additional Support for Learning (Code of Practice)

11:15

The Convener: The major item of business today is consideration of the Scottish Executive's draft code of practice on additional support for learning, entitled "supporting children's learning". By way of background, the draft code was laid before Parliament on 12 May, under section 27 of the Education (Additional Support for Learning) (Scotland) Act 2004. Members will recall that under section 27, the Scottish ministers are required to take account of any comments that are expressed by the Parliament on the draft code within 40 days of the draft being laid—that is, by Monday 20 June.

We will hear from the Deputy Minister for Education and Young People, Euan Robson, and from Mike Gibson, who is his official. We will seek to identify issues to put in a report, which will be considered in draft at our meeting on 8 June and published thereafter. The committee will be aware that there has already been a fair bit of input from organisations and individuals with an interest, for which we are grateful, because it has helped the committee enormously. The main purpose of today's item is to take evidence from the minister, whom I am pleased to welcome, along with Mike Gibson. To guide them, members have a copy of the draft code and a number of the representations. I invite the minister to address the committee.

The Deputy Minister for Education and Young People (Euan Robson): Thank you for the opportunity to discuss the draft code. I will say a few words to inform the committee on three issues: how the code fits with the Education (Additional Support for Learning) (Scotland) Act 2004 and associated regulations; how the draft code was developed; and what the next steps are in implementing the act.

As you mentioned, the act requires ministers to publish the code of practice to give education authorities and appropriate agencies guidance on how they carry out what is required of them under the act. By its nature, the code is primarily a working document that is aimed at professionals and practitioners who have duties under the act. We hope that the guidance that the code sets out is clear, but we recognise that many parents will have an interest in what the code says. We hope that they will find the code reasonably accessible, but we are working with Enquire, the national information and advice service on additional support needs, to produce a shorter, more user-friendly guide that can be used by parents and young people, or indeed professionals and practitioners.

The code has to cover issues such as the circumstances and factors that give rise to children and young people having additional support, how those needs are identified, and the nature of the provision that is made to meet those needs. As you will have seen, the code provides guidance on those and other issues, and highlights the central feature of the act, which is that it places a general duty on education authorities to provide school education to the benefit of all children who require additional support for their learning. The code reinforces the act's focus on the provision that is required by children as individuals.

In addition to the code, the act is supported by a series of orders and sets of regulations—10 in all—that are all subject to the negative procedure. I know that officials met the committee on 20 April to discuss the regulations for the appointment of the tribunal president and other appointments. We have now laid a further four sets of regulations, including those on co-ordinated support plans, which I understand officials will discuss with the committee on 1 June. You will receive shortly an order on naming further appropriate agencies and draft regulations on dispute resolution. We have also recently gone out to consultation on a further three sets of regulations and rules. Those draft regulations on placing requests, on tribunal rules and procedures and on transitional arrangements for children and young people who have a record of needs will come to the committee in due course, probably in September.

However, this morning, we are focusing on the code. When we began to develop the code of practice, we had several messages in mind. We were well aware of the importance that committee members placed on it, and the committee's close scrutiny of the bill highlighted quite a number of areas that the code would need to address, particularly guidance on factors that give rise to additional support needs, application of criteria for preparing a co-ordinated support plan and links between planning processes.

In developing the code, we received help and support from a wide range of people and interests. For example, we received input from a multi-agency advisory group that included parental and professional interests; the services of a multi-agency team of development officers who were on secondment from education, health and social work; and support from a range of stakeholders across the area of additional support needs. At this point, I record my thanks and the thanks of other ministers to all the parties that participated.

The code is the product of the wisdom of a number of people, including parents and practitioners. The advisory group suggested that,

in drawing up the code and supporting material, we should take account of some key principles such as aiming to develop the code of practice jointly with stakeholders; seeking to build on existing good practice and developing arrangements that would fit the needs of families and service providers; and developing materials on a multi-professional basis and in user-friendly formats.

As soon as the Education (Additional Support for Learning) (Scotland) Act 2004 received royal assent on 7 May last year, we held as a first step a series of five regional seminars, which were attended by about 250 parents and professionals, to discuss what they wanted the code to cover. Their suggestions helped our development officers to produce a first draft of the code of practice, which was discussed and revised by our advisory group last September. Those discussions led to the version of the code that I launched at the meeting of local implementation officers from local authorities and health agencies on 25 November.

Members will recall that the consultation on the initial draft code ran until the end of February and will have seen the report on the consultation exercise that I sent to them last week. However, I want briefly to highlight the extensive nature of the consultation that has helped to inform the draft code.

With Children in Scotland, we held 14 consultation events across Scotland from Orkney to Dumfries. The events were very well received; indeed, almost three quarters of those who attended rated them as excellent or very satisfactory. More important, we received many suggestions for improving and strengthening the draft code, which were reinforced by the 436 written responses that we received and by very helpful feedback from an extensive range of meetings that were attended by development and policy officers.

At stage 3 of the passage of the Education (Additional Support for Learning) (Scotland) Bill, I indicated that the code would offer clear guidance to education authorities and other agencies with the aim of promoting good practice throughout Scotland. I believe that the code offers such guidance. We have tried to provide a degree of direction on what authorities and agencies must do to meet their requirements under the act. As a result, the code and its associated regulations set out specific timetables for preparing a co-ordinated support plan, responding to parents' requests, dealing with references to dispute resolution arrangements and so on. At the same time, we have allowed for a degree of flexibility, as decisions on what is best for every child or young person can be decided only in the light of individual circumstances. The code also contains some examples of good practice.

Although we need to ensure that the code of practice provides direction and guidance, we should also ensure that it is not drawn so tightly that it inhibits the development of good practice. Importantly, such an approach will allow for any future policy developments, such as emerging work on a unified approach to children's services, that will have implications for how professionals from local authorities and other agencies work together.

Members will also know about our work on the integrated assessment framework. In that respect, we believe that the code will develop over a number of years.

I hope that my comments demonstrate that the draft code has been shaped by the views of a wide range of interests. We hope to publish its final version in late August when schools return after the summer break. The multi-agency training materials that we are developing will be available at the same time. We are well on track with arrangements for setting up the additional support needs tribunal and expect that to be in place in November.

We know from information provided by implementation officers throughout Scotland that an awful lot of good work is going on locally in preparation for the implementation of the act. I quite understand that clear advance notice of the commencement date for the act will be helpful to all those engaged in planning for the move to the new legislative framework. Therefore, I am happy to announce that, subject to consideration of Parliament's views on the draft code and clearance of associated regulations and continued progress on the tribunal, the act will commence on 14 November.

I hope that that brief introduction was helpful to the committee. I look forward to hearing your views on the draft code and trying to answer any questions that you have.

The Convener: Thanks for that. It is probably appropriate for the committee to express its thanks for the extensive consultation that has taken place, which is very much in line with what we hoped for when the bill was going through. It has reflected a number of the representations that we had. I invite Lord James Douglas-Hamilton to ask the first question, because he has had an exchange of correspondence with the minister. The minister's reply to the points that Lord James made has been circulated this morning.

Lord James Douglas-Hamilton: I thank the minister very much for his reply to my letter, which if I understand it correctly—and I believe I do—contains a large number of concessions and

improvements to the code, which are extremely welcome. I will not say too much about it, because I do not wish the minister to have any second thoughts. I am extremely grateful and I think the concessions and improvements will be enormously helpful. On point 6, in certain cases—I am thinking of asylum seekers or ethnic minorities—it might be helpful for people to give oral evidence. The minister states in his letter:

"We can strengthen the Code at this point (page 90, paragraph 25) to indicate that the adjudicator may wish to meet with the parties involved if he/she is concerned that one party, or both parties, has been disadvantaged by the way the case has been presented … We shall monitor the operation of these arrangements".

I would be most grateful if the minister could do that and I wonder whether he would like to say anything about his response in general, which has been circulated to committee members.

Euan Robson: I thank Lord James Douglas-Hamilton for sending us the important points in his letter. We were able to address a number of them, as he has kindly acknowledged. I would use the word "improvements" rather than "concessions", because we are happy to make any improvement to the code from whatever source. Some of the points that Lord James made were immensely relevant and we have taken them on board, as you will see from my letter, the detail of which I do not intend to go into.

I turn to the issue of oral evidence, or the discussion between the adjudicator and parties who might want to meet him. We said originally that we thought that adjudication should be a paper exercise. However, the clear point was made that there might be circumstances in which, for a variety of reasons, some of which Lord James mentioned, it might not be easy or even possible for people to reply to the adjudicator or present their case in written form. We felt that it was appropriate to amend the code to make it clear that if the adjudicator had concerns about the ability of one or more parties to communicate with him, it should be possible for him to exercise discretion and meet people face to face, although that should not be normal, standard procedure. That is a perfectly sensible way to proceed and perfectly sensible guidance to give to the adjudicator and we are happy to include it. I hope that Lord James feels that the way in which we have managed his point is sensible.

On Lord James's idea that I might withdraw what I have said in the letter, I can tell him that we will stand by it and he need not worry. I hope that he feels that, on the important point about oral evidence, we have come up with a sensible solution.

My final comment is that if in the light of experience we need to come back to the matter in the months ahead, we will be happy to do that. As I said in my introduction, we see the code very much as something that can develop over time. The act allows for a revised code to come back to the committee and the Parliament for consideration in the future.

11:30

Lord James Douglas-Hamilton: I thank the minister very much for his generous response.

The Convener: I have a small query on point 9 in Lord James Douglas-Hamilton's letter, which is about the validation of requests to the external independent adjudicator. The reply states:

"The validation of the request referred to here falls to Scottish Ministers."

Minister, I assume that you and Peter Peacock will not personally validate the requests. Can you give us more guidance about what will happen?

Euan Robson: We will not validate requests personally. I am sure that there will be a resource in the Education Department for the proper professional scrutiny of the requests. Advice will be given to ministers in the usual way on the nature of the requests and on whether they should be validated. It is not intended that Peter Peacock or me, or our successors, will validate the requests personally.

The Convener: The process sounds slightly bureaucratic. Is that not the sort of matter that you would get the adjudicator or his office to deal with?

Euan Robson: No. The process will not necessarily be particularly bureaucratic. We can ensure that the advice from officials is turned round rapidly. If this is a matter that in the light of experience we need to think about again, we will do so. We will see what happens in practice and bear in mind the point that you make. No one wants to have a particularly bureaucratic procedure. We want a fast and effective procedure.

The Convener: Do any other members have comments on Lord James Douglas-Hamilton's letter and the points that arise from it?

Mr Kenneth Macintosh (Eastwood) (Lab): I refer in particular to the first three points in Lord James Douglas-Hamilton's letter and the minister's response. I believe that the three points echo points that are raised in the National Autistic Society Scotland's submission to the committee. I do not know whether that is among the committee papers for today as it was a late submission.

Fiona Hyslop: It is.

The Convener: It has been circulated.

Mr Macintosh: So we got it in time.

On the first point, on transitional planning, Lord James Douglas-Hamilton's letter and the minister's reply refer to paragraph 8 of chapter 3 of the draft code, but the National Autistic Society and Graeme King, who also made a submission, were more concerned about paragraph 15 of chapter 5. The sentence that has caused concern states:

"Most children and young people with additional support needs will not require appropriate agencies to be approached for information."

The concern is that that can be interpreted in a narrow way to mean that only those with a co-ordinated support plan will benefit from transitional planning. That is clearly not the minister's intention. Is it possible to amend that paragraph?

Euan Robson: We will amend that paragraph because we do not want to give a misleading impression. We will take that point on board. Forgive me, but I do not have the precise wording. We will have to consider that. The general idea is to take out the negative in the sentence and turn it into a sentence that is more positive. I hope that that is helpful.

Mr Macintosh: That is very helpful. Thank you very much.

Point 2 in Lord James Douglas-Hamilton's letter deals with another concern that has been raised by the National Autistic Society. The society is concerned about whether parents or children can access multiple assessments. The position seems clear. The minister stated:

"there is nothing to preclude the parent from requesting a range of multidisciplinary assessments."—[*Official Report*, 1 April 2004; c 7358]

Perhaps the issue is the use of the term "multidisciplinary assessments". In his response to Lord James, the minister mentions that the code states that

"a range of assessments is required".

I do not think that there is any difference of opinion about the right of parents or children to request a multidisciplinary approach. However, perhaps the issue could be clarified, because parents are reading the either/ors as alternatives rather than as additional.

Euan Robson: Your point about the either/ors is well made. We will try to ensure that there is no confusion by making appropriate amendments. Paragraph 33 on page 29 states:

"The request can be for an educational, psychological or medical assessment or examination or any other assessment or examination which the parents wish for."

That includes any combination of those types of assessment. That should, I hope, ensure that there is no confusion between the ors, as it were, or misunderstanding that, somehow, "or" excludes the previous types of assessment. We will need to double-check that form of words and the subsequent references to it, but I think that that should cover the point.

Mr Macintosh: I think that it does, minister. I have written in my notes that we should add a "for example".

Euan Robson: Yes. Essentially, we are agreed. We will check the precise form of words.

Mr Macintosh: Point 3 in Lord James's letter is the final point from the National Autistic Society and is about home education. After reading your letter, I think that you have addressed that point. The National Autistic Society says that although there are many home education programmes that may be of benefit to children on the autistic spectrum, it is difficult for many parents and professionals to assess how effective the programmes are. It is an evolving process. In England, local education authorities have a duty to assess those programmes—they have to make a professional judgment about how good and useful the programmes are.

The Department for Education and Skills publication "Autistic Spectrum Disorders: Good Practice Guidelines" suggests that LEAs should be

"willing to consider provision of home-based programmes for children and name them on statements"

of special educational needs. I am pretty sure that that is what you say in your letter, but I wanted to put in context the request from the National Autistic Society.

Euan Robson: Yes, I think that we are saying what you have just rather eloquently summarised. I will take that specific point away and look at it in the light of the point that Lord James Douglas-Hamilton made. If we need to address it differently in any way, shape or form, we will do that and come back to the committee on it. The gist of what you have said is what I am trying to say in point 3 of my letter. However, we need to ensure that we have covered the matter sufficiently; therefore, we will look at it in more detail.

Ms Byrne: I am delighted that you have added the words in paragraph 33 of chapter 3 that clarify the assessment situation as far as requests are concerned, but I still have some concern about parents' ability to know what kind of assessment they should ask for. I am slightly unhappy that advocacy is not mentioned, as I had hoped that that would help to smooth that through. Do you have any comments on that?

Euan Robson: It is important that parents know what assessment to ask for. In the guidance for parents that I mentioned earlier, we can incorporate an appropriate series of signposts for

parents. The draft code is primarily a document for practitioners; therefore, we felt that there was a need for a shortened version with specific signposts for parents. We can pick up the point that you mention in the guidance for parents, and I am happy to take that on board. It is correct to say that parents should have a clear view of what they can ask for. Page 100 of the draft code talks about publishing information. On that page, paragraph 28 states:

"Education authorities must also include information on practice for … how parents or young people can make requests for assessment"

and

"the types of support available."

That will help, and we can also put it in the guidance for parents.

Members may recall that we circulated a leaflet about the 2004 act to parents in what is called the schoolbag drop. I envisage a similar leaflet being produced in relation to the code, which we might be able to distribute in that way. We are working on that. If the committee wanted to see a draft version of that leaflet, I am sure that we could send one.

The Convener: The guidance talks about education authorities providing information, as opposed to Executive pamphlets. I presume that, if your pamphlet is good enough, education authorities can use it as the main gist of what they send out to people.

Euan Robson: Yes, there would be no exclusions on the use of the leaflet; however, I would hope that education authorities would be prepared to make information available in other forms and not simply rely on our leaflet.

Ms Byrne: Will there be advice about where parents can seek advice on the right type of assessment? If someone does not have that knowledge, where are they going to get information? Someone may think that their child has a difficulty but may not be able to pinpoint it, and they cannot ask for the right assessment unless they have some form of advocacy or support to lead them into asking for the right type of assessment.

Euan Robson: I give an assurance that the guide will talk not only about the types of assessment but about how to determine those and where to go for them. It will not be exhaustive—if it was, it would be very long. We must keep it within certain bounds to make it readable. Nevertheless, we will take that point on board as best we can.

The Convener: I presume that there would be discussion between the school, or whoever, and the parents that would lead to a mutual understanding of what was required. Is not that the intention?

Euan Robson: Yes, indeed. We would look to ensure that schools had the information readily available to inform staff and parents. I presume that the code will be available in schools as well.

Mr Adam Ingram (South of Scotland) (SNP): I am concerned about point 4 in Lord James Douglas-Hamilton's letter, which is about the significant additional support criterion for co-ordinated support plans. Although there does not appear to be an explicit statement in the code that a child's needs must be assessed independently of an agency's current ability to support the need, the minister's reply to Lord James refers to the part of the code that states:

"Decisions about what are appropriate educational objectives for a child or young person should be taken independently of the additional support required to achieve these, and should be informed by the assessment information available."

I presume that that assessment information will come from a lot of the other appropriate agencies that the child's parents have to deal with. However, you will be aware that there is a suspicion among parents that that assessment information is provided in terms of what is available rather than what should, ideally, be available.

That suspicion is compounded by paragraphs 17 and 18 on page 49. Philip Kunzlik's evidence highlighted the fact that there appears to be a downgrading of the role of health services—especially therapy services—in determining what significant additional support needs are. If therapy is not a significant requirement for a CSP, far fewer children will be eligible for it. In that case, will there not be an incentive to providers to downgrade the support needs of children to avoid having to prepare a CSP? That is the nub of the concerns that parents have in this area.

11:45

Euan Robson: That is not our intention. We would take a contrary view to the construction that Adam Ingram places on the situation. We do not seek to downgrade the importance of therapy services in any way. I hope that that gives him some reassurance.

As I think that we have indicated already, we will consider redrafting paragraph 18 on page 49 to cover the points that have been raised. As the matter is quiet technical, I ask Dr Gibson to say a few words.

Mike Gibson (Scottish Executive Education Department): Paragraphs 15 to 18 on page 49 deal with significant additional support. That is not defined in the 2004 act, so we have to give some

context to it. Some people have commented that paragraph 18 is not particularly clear and we are committed to redrafting it to make it clearer. People have said that the statement in paragraph 16 that

"Judgments about significance have to be made taking account of the frequency, nature and intensity of the support"

is a clear way of saying what we should be saying about significance. Paragraph 18 does not reflect well enough the points that have been made and we will redraft it. We will make it clear that the driver for determining what a child needs is to do with what the child needs to learn and what resources they require, not what resources are available.

Euan Robson: One overall point is important. Members will recall that Her Majesty's Inspectorate of Education will be inspecting against the duties in the 2004 act. If unforeseen problems develop, HMIE will begin to identify them as practice rolls out. That has been a particularly important feature of the act. I expect that considerable information will come back from HMIE as the situation develops.

Within the body of the code, there are provisions for mediation and dispute resolution that I hope will deal with individual circumstances. Generally, however, I hope that any improvements would come from suggestions from HMIE.

The Convener: It is fair to say that one of the fairly important themes that came out of the evidence early on was to do with varying practice across local authorities under the preceding scheme. Might you consider deleting paragraph 18 altogether? It adds nothing to the framework, and paragraphs 16 and 17 carry a more satisfactory flavour.

Euan Robson: I am happy to consider that. We will either substantially reword paragraph 18 or delete it.

The Convener: Doing so would help to avoid giving the impression that local authorities can vary substantially in the way in which they approach the situation.

Mr Ingram: Thank you for being so helpful, minister. I await the redrafting of the paragraph with interest.

As you said, the introduction to the code mentions the integrated assessment framework. Is it not essential that that be in place to ensure that the effective learning support strategies that the act seeks to encourage will be effective? It is surely vital that the processes for early identification and assessment be in place for the 2004 act's reforms to work. If they were in place, many of the suspicions and concerns that parents have could be swept away. What is the position on the integrated assessment framework?

Euan Robson: We are not far off introducing draft guidance on the integrated assessment framework. You are right to say that it will have implications for the way in which all professionals in children's services work together. We do not want to inhibit discussion on the draft guidance, but the point that you make about its proximity to the act's implementation is important. I cannot assure you that everything will be implemented simultaneously but, given the necessity to consult on and implement the draft guidance, the intention is to introduce it as soon as we can.

Before we leave this topic, I will make one more small point. I said that we want some flexibility, and I do not want to stifle initiative. Therefore, we will have to reconsider paragraph 18 of chapter 4 of the draft code in the context of ensuring that we encourage and share any good practice that develops so that we do not overemphasise uniformity. I am sure that Adam Ingram appreciates that point.

The Convener: That is helpful.

Mr Macintosh: Minister, I ask you to expand on the last sentence of paragraph 6 in chapter 3, which is on page 22. My concern is that the draft code is slightly confusing on the relationship between the host authority and the responsible authority. That comes up a couple of times and there are a couple of clear statements—paragraph 6 is one of the first—that spell out the duties of the authority for the area in which the child is educated. That has a number of implications. In our system, funding does not follow the child but is based on the school census. East Renfrewshire has an extremely large number of placing requests and, purely on the ground of fairness, it is important that funding issues do not put barriers or obstacles in the way of children who wish to access schools that might be of benefit to them. It is purely about being fair and not unbalancing the funding levels that have governed good practice on additional support in East Renfrewshire so far.

Under the record of needs system, it is clear that the home authority has responsibility for funding the education of a child who has a record of needs. I could be wrong about why that is, but I believe that it is because the psychologist who opens the record of needs is based in the home authority. Under the 2004 act and the draft code, the host authority will have responsibility for opening the CSP and providing additional support in general. I want to be clear about the funding implications of that: will the obligation to fund provision for additional support still be on the home authority—the authority where the child is resident—as I hope it will be from what I read in paragraph 6?

Euan Robson: Yes, although it is slightly complicated. You have put your finger on a particularly important point that we need to expand to a degree. Perhaps we could usefully quote a section from the 1980 act and set it out in a box. We need to be clear that the home education authority has a general responsibility. I do not think that anything that we have done in the legislation, the code or the regulations upsets the existing arrangements. I appreciate the sensitivities that authorities such as East Renfrewshire have. Not least from what you have told me about the good practice in East Renfrewshire, I know that it attracts a number of placements. Clearly, if the present arrangements were to be altered in any significant way, that could have a significant impact on East Renfrewshire. As I say, however, we have done nothing that would alter the current arrangements, which are well understood. If we need to clarify the position, we can do so by expanding paragraph 6 on page 22 and including a section from the 1980 act. Mike Gibson has had experience of working in detail on this area and has dealt with some of the discussions between education authorities in situations in which there have been issues of contention.

Mike Gibson: In paragraph 6 on page 22 and elsewhere in the code, we have tried to indicate that, when a child moves from a home authority to a host authority, the host authority is responsible for the education of the child and for drawing up a co-ordinated support plan and so on. In making that provision, however, the host authority can call on the home authority to make a financial contribution. That is covered by section 23(2) of the 1980 act.

We have discussed the situation with the Convention of Scottish Local Authorities and we think that people are relatively content with it.

Mr Macintosh: I welcome that reassurance and the intention that has been expressed. However, some slight doubt about the position remains. If an authority asked for a contribution from the home authority and did not receive it, the matter would go to the Executive for resolution. That is fine but, unfortunately, that often does not happen properly in practice. You look doubtful, minister, but I know of examples of situations that have not been resolved until a lot of time and effort has been spent going through a lot of bureaucratic difficulties. What is needed is clarification from the outset. We want to avoid having to refer cases to the Executive for resolution. We want the situation to be absolutely clear.

I do not think that there should be any barriers to children accessing additional support. However, this issue is about fairness. An authority such as East Renfrewshire, which is a relatively small one with an extremely good record on additional support for learning, can be disproportionately affected if neighbouring authorities do not play fair. Rather than just calling on the Executive if the need should arise, I would rather that it be spelled out that the home authority is either obliged or expected to provide funding for the child.

Euan Robson: I am happy to say that ministers expect that contributions would come from the home authority. You are quite correct to say that there is a process whereby any dispute would ultimately be dealt with by Scottish ministers. I would hope that we would not be overly bureaucratic in our approach to such matters, although, obviously, we would have to take advice from both the authorities involved in the dispute.

I am happy to consider the matter further and look at how we can make our intentions clear, as I have tried to do this morning. We will respond to the committee on that particular point.

I understand the point that you make about East Renfrewshire. If it is any consolation, I have a similar situation with my local authority. We must be clear about what we expect, and I hope that I have made ministers' expectations clear this morning.

12:00

The Convener: We must be careful not to try to redraft the code as we sit here. However, the minister has given us a useful assurance, which will avoid our having to introduce some sort of mediation between local authorities when children move between them.

Ms Byrne: I was recently approached by a parent who was not aware of the 2004 act's provisions regarding placement requests. She did not get an assessment that she requested for her son for about two years. Eventually, she discovered that the local authority in whose area she lived had some responsibility. We have to clarify the situation for parents, as that delay caused problems with exams and so on, and it should not have happened.

Euan Robson: That is a particularly unfortunate example. It is not possible for ministers to comment on specific examples but, as an illustration, that is the sort of thing that we want to see an end to. I hope that the code and the guide for parents will help to prevent such situations from arising. They may still occur—I sincerely hope that they do not—and we may need to take further measures in the future.

It is important for COSLA to have a role in all this. Ministers may have expectations, but COSLA must be involved. It would be good if COSLA could reach agreement on how a number of these

issues are to be taken forward. It might be helpful for us to discuss that with the relevant COSLA officials or with councils so that we can set our expectations in context and ask COSLA to use its good offices with authorities.

The Convener: I take it from your undertaking that the code will be amended to reflect the payment position. Subject to the detail of that, that seems to be a fine way of dealing with that matter.

I took Lord James Douglas-Hamilton's letter and the point that I knew was coming from Ken Macintosh as separate substantive issues. It may be logical to go through the code chapter by chapter hereafter. What do members feel about that? Is that a convenient way to do it? There are not many other points to raise.

Mr Macintosh: I would rather that we just raised individual points that have been raised in evidence and submissions.

The Convener: I am in the committee's hands. We will address further points more generally.

Fiona Hyslop: One of the fundamental debates during the scrutiny of the bill was about children who will not be eligible for a CSP. Fifty per cent of children who would otherwise have had a record of needs will not have a CSP. The insertion of new section 2A into the bill was very welcome, as was the Executive's response; however, that message is not reflected in the draft code of practice. In the draft code, there are three paragraphs concerning personal learning planning and individualised educational programmes on page 38, whereas there are screeds on co-ordinated support plans. If the message is to go out to practitioners, in particular, it is important that we beef up the code of practice in relation to personal learning planning and individualised educational programmes.

The act is to commence in November, and a large number of children who otherwise would have had a record of needs will have to have their additional support for learning needs met through PLPs and IEPs. Yet the Association of Head Teachers in Scotland tells us that it is saying to staff that, unless they are resourced properly, they will not be able to carry out personal learning planning properly and should refuse to go down that route. That is very serious. First, there will be the operational impact of what happens in November. Secondly, an awful lot could be done to improve the references to personal learning planning in the draft code. If the Executive is genuinely convinced that that is the correct route for 50 per cent of the children who would otherwise have had a record of needs, the signal and content of the code of practice will generally have to be improved.

Euan Robson: I am slightly disappointed by that contribution, given that we went a considerable distance to assess the situation and insert section 2A into the bill, which was widely welcomed. We set great store by the duty that we introduced, which is particularly important. We appreciate that not everything will be done correctly on day one, but we see the process as a developmental one, given that it involves a major change. As far as possible, we will get everything in place before 14 November. However, as I said, the announcement of that date has some qualifications. We may have to consider the date afresh in the light of the committee's deliberations on the code and the regulations.

If the committee feels that there are other ways in which we can meet our objectives on personal learning plans, I am happy to consider them. Paragraph 58 on page 35 is a significant advance that helps to emphasise the point that we have tried to make. If members wish to contribute further, either through the committee's report or individually, we will consider all the contributions, as we did before the meeting. Peter Peacock and I have tried to say that we place great importance on the issue. If we can strengthen the code in any way we will consider doing so. Particular suggestions continue to be welcome and not only in relation to page 38 and paragraph 70—if members wish to strengthen paragraph 58 on page 35, we would be happy to consider that, too.

Fiona Hyslop: Paragraph 70 on page 38 states:

"Further information about personal learning planning can be obtained from the Assessment is for Learning website".

If there is good practice about how additional support needs can be met by personal learning planning, the place for it to be provided is the code of practice. We should remember that 50 per cent of the children who would have had a record of needs will not have a CSP, but will instead be dealt with through personal learning planning. Therefore, that system should be given equal weight and merit. The issue is the status of those who have additional support for learning needs, rather than those who will have a CSP, although we are also revisiting that issue.

Educational psychologists are absolutely fundamental to much of the provision that we are talking about. We received a submission from the secretary of the Association of Scottish Principal Educational Psychologists that raises

"major concerns regarding recent amendments to the Code of Practice such as the strengthened linkage of the Co-ordinated Support Plan to resources".

That raises some of the difficulties that we were concerned about during the passage of the bill. It might be helpful to rectify that problem.

Euan Robson: I will try to be helpful. We will actively reconsider paragraph 70 and if we can

strengthen it, fine. Where the draft code refers to the website, perhaps we could expand that a little and give an indication of what it contains. It might be helpful to incorporate a box, better signposting or a summary.

Fiona Hyslop: It would be helpful if you included more information on individualised educational programmes. I suspect that more children will be covered by them, but they are the great unknown for most of us.

Euan Robson: Again, I am happy to try to improve the draft code in that respect.

I must confess that, like Fiona Hyslop, I am not a psychologist. Dr Gibson might want to add something on the submission that was sent by the psychologists.

Mike Gibson: The committee received two submissions from psychologists—one from ASPEP and one from Alan Haughey—both of which raised the issue about the extent to which CSPs will be linked to resources. That issue was also raised in relation to the record of needs. We have tried to deal with it in the code and the act by setting out the general principle that our approach should be based on the child's needs. We have said that the starting point for the co-ordinated support plan is to determine what we can expect the child to learn. We should then consider what resources are required to deliver that.

Throughout the code, we have tried to convey the philosophy that the system should be child centred and should not be driven by resources. That is why the paragraph to which the minister referred—paragraph 58 on page 35—stresses

"that the education authority must make adequate and efficient provision"

for every child with additional support needs. The paragraph further emphasises the point by saying:

"Conversely, the authority could be held to be in breach of a duty"

with regard to an individual child. That does not apply under the 1980 act. It is a powerful provision to protect children.

The Convener: Paragraph 53 on page 58 refers to the linkage between the different plans. It makes the helpful point that learning objectives in the IEP do not have to be included in the co-ordinated support plan. However, should there be a requirement for the CSP to refer to the fact that the child also has an IEP? I am not suggesting that the CSP should list the detail of the IEP, but should it at least mention specifically the IEP's existence?

Euan Robson: We can consider the suggestion, as there might be some advantage in it.

The Convener: The proposal is in line with the objective of cutting bureaucracy.

Euan Robson: We all share the view that cutting bureaucracy would be helpful.

Ms Byrne: I am worried about the level of bureaucracy here already. I am an advocate of IEPs. I know that there is an argument about whether we should have personal learning planning, but would it not be much more sensible to incorporate into personal learning planning IEPs for those children who need them, rather than having separate plans? That point was made before the bill was enacted.

I do not think that we have learned anything from all the discussion that has taken place. We are getting into a mire of having too many plans and confusing too many people. I understood that, if a child has a CSP, they should not need an IEP. Given what Robert Brown has just said, I am not sure that everyone shares that understanding. We have not yet agreed in principle with teachers that PLPs will be introduced, but we are putting them into the melting pot. I am expressing concerns about the level of bureaucracy and the misunderstandings that people may have about all the different plans that will exist.

Euan Robson: We will try to address those issues in the guide that I mentioned earlier. The intention is not to have an overly bureaucratic system—that would be self-defeating. As I said before, if in the light of practical experience we need to make further changes in years to come, that will be entirely possible. We will develop the system in the light of experience.

One difficulty of writing a code of practice for something that is not yet happening is that we have to consider all sorts of options and possibilities. There is a danger that we will try to cover too much, because we are starting afresh. The code of practice relates to a situation of which we do not yet have operational experience. We will consider what members have said about this section of the code and re-examine it. It will be helpful if, in the report that it is to produce, the committee would highlight the points that members have made, so that we can respond to them specifically.

The Convener: We must be careful that we do not go too far beyond the range of the guidance that we are considering. The questions that we are discussing are related, but I do not think that they can all be answered in the code.

Dr Elaine Murray (Dumfries) (Lab): I want to consider some of the issues that Skill Scotland raised in its submission. During consideration of the bill, anxieties were expressed about transition, especially for people leaving school and going on to further and higher education. The initial comments of Skill Scotland have to some extent been addressed in the draft code of practice.

However, I question whether the draft code places sufficient emphasis on the necessity for early planning, as there still seems to be quite a lot of reference to the 12-month and six-month periods. I wonder whether sufficient evidence has been gathered on whether earlier planning is better. Is planning even earlier than 12 months before the transition desirable?

12:15

Euan Robson: I made the point at stage 2 or stage 3 of the bill that we would like planning to take place earlier rather than later. There should be preparation before the 12-month period. We are considering making changes to the draft code of practice that would be helpful, now that officials have had the opportunity to read what Skill Scotland has said. We will incorporate into paragraph 18, on page 71 of the code of practice, the wording:

"However, in most cases the process will require to be started well in advance of the 12-month period, to be carried out effectively for the benefit of children and young people."

We can possibly improve on that wording. I hope that that addresses the point that Elaine Murray and Skill Scotland have raised.

Dr Murray: I refer you to the second submission that Skill Scotland made to us after the draft code was laid on 12 May. In that submission, Skill Scotland expresses a concern about how further and higher education are treated in chapter 3 of the draft code. In particular, less responsibility for planning is given to higher education institutions. Skill Scotland feels that, although most young disabled people who go on to higher education will not need a great deal of additional support, there could be cases in which additional support and assistance is necessary in the period before attending higher education. The suggestion is that paragraph 15 of chapter 3 be removed, as it would reduce the responsibility of higher education in specific cases when a young person required a greater degree of support during their transition to higher education.

The Convener: I am not sure that that is paragraph 15 under the latest draft of the code—or is it?

Dr Murray: It is. It is in chapter 3.

Euan Robson: As you will appreciate, convener, I am trying to be helpful. However, I am not sure that we should remove paragraph 15 in chapter 3. We agreed that wording with Universities Scotland, which supported the aims of the 2004 act and has confirmed that the paragraph does not conflict with the current practice of the higher education sector in supporting transition from schools.

Dr Murray: Skill Scotland is concerned that the draft code seems to imply that higher education authorities have a responsibility for planning only when a child has a previous relationship with them, whereas further education colleges have a slightly broader responsibility.

Euan Robson: That is because an FE college might perhaps have been involved with the child when they were at school, whereas it is highly unlikely that a university would have had that involvement. I see the point that is being made. I will take that point away and consider it. In almost every circumstance, a higher education institution would not have had contact with a child beforehand. However, if that is causing a problem of interpretation, we will reconsider the wording of the paragraph.

The Convener: It is the forward planning, is it not? It is not so much that the university has had previous contact as that it will have contact when the child finishes school.

Dr Murray: We can make any comments that we have received on that available to you.

Euan Robson: Bearing in mind the committee's report and the observations that have been made today, we might need to go back to Universities Scotland to cover the bases with it again. If there is any misunderstanding about that paragraph, I would prefer to tidy up the wording rather than remove it entirely.

The Convener: Skill Scotland makes the point that, although Careers Scotland is cited, in paragraph 14 on page 70, as an appropriate agency that might be involved, not much else is said about Careers Scotland in terms of its duties. In its submission to the committee of 23 May, the Association of Scottish Colleges states:

"colleges are not currently ready, equipped or resourced to deal with the intensive and expensive assessment duties placed on them by the act."

I can read between the lines of that, to some degree; nevertheless, the point has validity, especially bearing in mind the 14 to 16-year-old linkages. There are resource implications for colleges for which they are perhaps not being specifically funded.

Euan Robson: That point has been made directly to us, and the Enterprise, Transport and Lifelong Learning Department has replied to the chief executive of the Association of Colleges. I can make that correspondence available to the committee. Rather than go through all the issues now, it might save time if I left that with the committee. If you have any observations on the content of the letter and the response to the specific points, we would be happy to look at them in terms of the report.

Your point about Careers Scotland is not something to which I have given any thought. There is a reference to Careers Scotland on page 24, in paragraph 16; however, it is as brief as the one that you highlighted. Perhaps we can expand that.

The Convener: There may or may not be something further to say. I am just saying that that point has been made by Skill Scotland and seems to be valid.

Euan Robson: We can ask Skill Scotland whether it wishes anything further to be included under its name. If the final draft of the code does not have anything further in it, it will be because Skill Scotland has said that it does not want anything further to be included and that we have concluded that that would be sensible.

Mr Ingram: While we are on the subject of appropriate agencies, I would like to ask about the role of voluntary organisations. Why are organisations such as Barnardo's Scotland and Capability Scotland, which provide additional support services to children, not in the frame as appropriate agencies?

Euan Robson: I cannot answer that question directly; perhaps Dr Gibson can.

Mike Gibson: We consulted on that, and mixed views were expressed about voluntary agencies. The overall consensus was that they would see it as a disadvantage if they were pulled into having to make statutory provision although they were voluntary agencies. The other difficulty for us was the fact that there are around 25,000 voluntary agencies that deal with children. How we would decide which agencies should be brought in as appropriate agencies and which should not would be quite problematic for us.

By and large, the voluntary agencies are content with the fact that they are not named as appropriate agencies. If an authority wanted to work with them to help it to meet the additional support needs of certain children, they would rather enter into a contract that would secure their services. Our not naming the voluntary agencies as appropriate agencies is not a downgrading of the role that they play; we all recognise that they are important in the delivery of services. It is just better that they are not named as appropriate agencies for the purposes of the 2004 act, as that gives them more flexibility.

Euan Robson: I apologise. I had forgotten those points.

Mr Macintosh: Both the draft code of practice and the amendments that have been made to the first draft have been welcomed. It is worth stating for the *Official Report* that, as in the movement from the bill to the 2004 act, the Executive's attitude has been commendable. We have also received some very welcome reassurances today.

I raised earlier the specific issue of funding. Underlying that is the question of the definition of responsible and host authorities. As well as raising a general funding concern or anxiety, the draft code raises issues concerning where the definition could cause conflict between authorities, especially regarding mediation.

The box under paragraph 2 on page 83 of the draft code of conduct states:

"Every education authority must make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and—

(a) parents of children belonging to the area of the authority".

Sense Scotland raises a related point on grant-maintained schools. Its submission refers to paragraph 6 on page 44 of the draft code of conduct, but I will come back to that.

On the point about mediation, there is confusion about who is responsible for opening the CSP and who is responsible for settling the dispute. Under the provisions on mediation on page 33, it seems that the home authority is responsible for acting to solve disputes, but the host authority is at the centre of the dispute. Perhaps you are not able to clarify the point, but that concern has been brought to my attention.

Euan Robson: I will make two general points, then Mike Gibson will deal with the more detailed point about host authorities. As I am sure you have noticed, there is a glossary of terms at the back of the draft code of conduct. We can always add to that, but it is, at least, an attempt to define some of the terms, including mediation. You made a point about definitions earlier.

My other general point is that, as I stressed before, the code is for practitioners, many of whom will be familiar with the terms of art. It is perhaps more difficult for the lay reader to fit all the terms together. Having said that, a number of improvements will be made before the final version of the code is published, and you have heard about some of those today; we did not put the word "draft" on the cover for nothing. We want to make a number of general corrections to correct a couple of typos, to make better use of language and to ensure that there is consistent use of terminology. Sense Scotland produced a helpful list of areas in which such corrections would make sense, and we told it that we will make those corrections.

I ask Dr Gibson to address your more specific point.

Mike Gibson: Will you repeat the latter point?

Mr Macintosh: The point about mediation is that the home authority is responsible for trying to resolve disputes but the host authority is the one that has taken out the CSP. Potentially, one education authority will be acting against another. Is that how you wish it to—

Mike Gibson: Sections 15 and 16 of the 2004 act refer to mediation services and dispute resolution being available to the parent of any child

"belonging to the area of the authority".

We will consider the issue and address the specific points that Sense Scotland made.

Mr Macintosh: I will come back to Sense Scotland, because this is not a point that it made. This point came from somewhere else. In many cases, there has been a confrontational attitude between parents or users and the authorities, but that is not the case in all areas. It is certainly not the case in my area. I am slightly concerned that we will introduce a confrontational element and that there will be confusion in responsibilities and duties.

On the other point, I agree with almost everything that Sense Scotland says in its submission. It makes a number of points, all of which are worthy of being followed up. That includes the point that was made earlier about the definition of significant additional support. It also makes a point about responsibility in grant-aided schools.

I would like to clarify one point. I assumed that in nearly all cases children who attended grant-aided schools—what used to be called special schools—had CSPs, but that does not seem to be the case.

12:30

Euan Robson: Children who attend grant-aided schools do not necessarily have CSPs.

Mr Macintosh: Sense Scotland states:

"if a child attends a grant-aided school … there is no duty, on either the school or authority, to provide a CSP. Children attending grant-aided schools are those likely to be most in need of inter-agency working."

On the other hand,

"if a child attends a school run by a different education authority the host authority has to provide the CSP but monitored by the home authority".

There is an element of confusion about responsibilities and about who is in charge of the CSP.

Mike Gibson: I am a bit confused about the point that Sense Scotland is making. If a child attends a grant-aided school through an authority, then that authority is responsible for placing and for further provision for that child in that grant-aided school. The authority would decide whether the requirements for the preparation of a CSP were fulfilled by the fact that the child had to attend a grant-aided school. We have not said that attendance at a particular school automatically means that a child will get a co-ordinated support plan, because that would undermine the legislation. You may, however, be right. I suppose that the majority of youngsters who are sent to grant-aided schools by education authorities will have co-ordinated support plans. However, some children might be sent to grant-aided schools by English authorities, or by their parents, rather than by a Scottish local authority. Such youngsters would not have co-ordinated support plans. Does that make it clear?

Mr Macintosh: Yes. My argument was based on the assumption that all children who attend grant-aided schools have CSPs. If that is not true—which it clearly is not—the argument does not apply.

Mike Gibson: Our starting point must be the legal position on the requirements for a co-ordinated support plan, from which we can move to address provision. We must not assume that all children who attend grant-aided schools will have CSPs.

Euan Robson: The ethos behind the legislation is to move away from conflict. If there are difficulties between authorities, we will expect those authorities to resolve them. If there is a wider problem, we will look to COSLA to intervene and to ask its member local authorities to operate within the spirit of the legislation and the code. We hope that conflict in the system will be minimal—non-existent, if possible.

Mr Macintosh: Philip Kunzlik makes a point in his submission about paragraph 34 on page 29 of the code, which describes what it may or may not be reasonable for an authority to do. The minister made it clear in evidence that he gave to the committee that there is no get-out clause for local authorities. Instead of that point being made in a negative way, as has been done in the code, it might be helpful if a positive statement were included to the effect that there is no get-out clause for local authorities and that they will be expected to comply with requests for assessment. That is apparent from the rest of the document, but a positive statement may be necessary to balance paragraph 34, which is framed in a rather negative way.

Euan Robson: We have tried to set out the position as clearly as possible, but I am prepared to consider Kenneth Macintosh's suggestion. If the committee proposes specific wording to improve paragraph 34, we will be happy to look at that.

However, I believe that the correct balance has been struck and that we have found the best way of expressing the points that are set out in paragraph 34. There is no definitive way of doing that—the aim is to seek a balance of advantage. Individuals may read the paragraph in different ways. If the committee is able to propose alternative wording—not necessarily today, but in its report—I am prepared to consider that. We have tried to indicate what the objective test of reasonableness should be. Most people would understand that test, which is applied in a number of areas; it is not specific to this area.

The Convener: The central statement is that the education authority must comply. That is the principle.

Mr Macintosh: Indeed. The meaning of the document is not lost on me; I was just concerned about the wording of the paragraph.

Euan Robson: That has reminded me that we say somewhere in the document that it is best not to read one bit of the code in isolation. The code has to be taken as a whole, because its general tenor is important. I appreciate the points that you have made and I am grateful for your observations.

Mr Macintosh: My final point is about the comments from Kenneth Corsar, who is director of the National Deaf Children's Society.

Euan Robson: I can stop you there, because we agree with all his comments and will incorporate all his suggestions, which are good; we are happy to take them on board.

The Convener: I want to cover two or three miscellaneous points. First, paragraph 12 on page 19 refers to children whose first language is not English. The committee's stage 1 report refers to the need for national standards for English as an additional language. Is anything being developed in that regard and could a reference be made to it? The point is not unimportant, albeit it that the area is limited.

Euan Robson: Ministers have commissioned the Scottish EAL co-ordinating committee and the Centre for Education for Racial Equality in Scotland to produce guidance on good practice in educating children with English as an additional language. The guidance is being drawn up in consultation with education authorities and other stakeholders, such as HMIE and Learning and Teaching Scotland, with a view to its being published late this summer. We will publish the guidance separately from the code, because including it in the code—

The Convener: I was not suggesting that; I was suggesting that a reference or footnote be made in the code.

Euan Robson: I am happy to do that.

The Convener: My second point relates to page 21 of the draft code. Philip Kunzlik suggested that it would be a good idea to have a statement that there is a clear duty on local authorities to assess thoroughly a child's needs. He wants that point to be made up front. I do not think that it is made up front at the moment; the code meanders round the houses a little bit. I thought that was a reasonable point for you to consider.

Euan Robson: Agreed.

The Convener: Barnardo's suggested that intensive support could be provided through ASN without the CSP. It might be useful to make the point that people can have intensive assistance in that fashion without necessarily requiring a CSP.

Euan Robson: Again, yes. I am happy to consider that and to work out the detail of the wording.

The Convener: The third point relates to page 43. I do not think that there is a reference to the monitoring of CSPs throughout Scotland, to which the committee referred in its stage 1 report, as opposed to HMIE monitoring.

Euan Robson: We put that in the brief to HMIE. The point is appreciated, but I think that it is covered helpfully in what we said to HMIE.

The Convener: The fourth point is a query about paragraph 10 on page 96, which concerns the refusal of placing requests. It states:

> "an education authority may refuse a request if the specified school is a special school, and for the authority to place a child there would cause it to be in breach of its duty to provide mainstream education."

I did not think that the duty to provide mainstream education was quite as specific as that; that seems to go beyond the current position. I wonder whether you meant what the phrasing suggests. Do you follow my point?

Mike Gibson: Sure. The wee icon at the side of paragraph 10 reads "s15 2000 Act". We can consider the issue again, but the reference is to the presumption of mainstreaming requirement in the Standards in Scotland's Schools etc Act 2000. Authorities are expected to place children in mainstream schools, although there are three exceptions. That is what paragraph 10 is trying to convey.

The Convener: The nuances of the exceptions are the real issue.

Mr Ingram: Chapter 6 deals with support for families and children; paragraph 26 states that authorities can refuse to accept parents' or young people's chosen supporter or advocate and paragraph 27 indicates that a child has no right to an advocate or supporter, even though, as I

understand it, a child over the age of 12 can instruct a solicitor under the Age of Legal Capacity (Scotland) Act 1991. Do those paragraphs not unnecessarily put the balance of power in favour of education authorities—the professional bureaucracy—rather than parents and young people? Ken Macintosh referred to previous experience of conflict. Will you consider the matter?

Euan Robson: I do not believe that that is the case, although I appreciate your point. I repeat that we must read the draft code as a whole and not pick out small parts of it. In the spirit of helpfulness, we will consider the wording, but paragraphs 26 and 27 are qualified in paragraphs 2, 3 and 4 at the start of chapter 6. We have placed considerable emphasis on the views of children and young people throughout the document; I will not go through that just now. I am not persuaded by Adam Ingram's point, but we will consider the issue again to see whether we can be helpful. If, after further deliberation, the committee proposes a change on the issue in its report, we will be happy to consider that.

Mr Ingram: Paragraphs 26 and 27 almost seem to give education authorities a right of veto with regard to supporters and advocates. I am sure that that is not in the spirit of the 2004 act or the rest of the draft code.

Euan Robson: That is not in the spirit of the act, but I do not read those paragraphs in that way.

The Convener: Does not the wording in paragraphs 26 and 27 in fact echo the wording in the 2004 act?

Euan Robson: Yes.

The Convener: Therefore, there is no scope to change the wording in the draft code, regardless of the merits of the argument.

Euan Robson: As you rightly say, it is perfectly clear that, if the wording is in the 2004 act, the code cannot undo that.

The Convener: That is the difficulty. Rightly or wrongly, the 2004 act says that education authorities have that power.

Ms Byrne: I, too, have a question about paragraph 26 in chapter 6. I am concerned about the phrase

"unless these wishes are unreasonable",

and would like it to be removed. I am worried about who will decide what constitutes unreasonable.

The Convener: We should be perfectly clear whether that phrase is used in the 2004 act. If it is, the argument is pointless, to be frank.

Fiona Hyslop: No, it is not in the act, but—

Ms Byrne: It is not in the act.

Euan Robson: It is. The act states:

"the education authority must comply with the relevant person's wishes, unless the wishes are unreasonable."

The Convener: Regardless of the rights and wrongs of the measure, we cannot change it in the code. The 2004 act has been passed and that is the Parliament's wish on the matter.

Ms Byrne: That is a concern. Authorities might interpret the wording in whatever way they want. Some education authorities already get concerned when, for example, somebody from Dyslexia Scotland takes copious notes at a meeting.

The Convener: To be clear, the wording is in the 2004 act, although perhaps we could define the term "unreasonable".

Ms Byrne: Can we clarify the term somehow?

Euan Robson: With respect, convener, we have done that in paragraph 32 on page 79.

12:45

Fiona Hyslop: The clarification is there in paragraph 32, but the matter needs to be looked at. That paragraph states:

"An education authority might consider it unreasonable to include a supporter or advocate in discussions, where the supporter or advocate is unable to represent the parent or young person appropriately."

However, that can be read in different ways. The act mentions wishes that are unreasonable so it is right for the code to address that too, but the matter should be more closely scrutinised, with the involvement of those who have specific concerns.

Euan Robson: In effect, we have applied an example with a subjective judgment.

Fiona Hyslop: Yes.

Euan Robson: That is a perfectly reasonable point. We can find a different example. All that we were attempting to do in that paragraph was to give an example of what might be unreasonable. As the convener said, it is clear that we cannot change the act.

The Convener: It might be better to use more negative phraseology, such as "where the supporter's actions are adverse to the interests of the young person."

Euan Robson: We will work on a better example.

Mr Macintosh: May I ask for clarification of a point that was made by Sense Scotland? I do not want to fail to do justice to its submission. It would have helped if I had turned the page.

Fiona Hyslop: That is always useful.

Mr Macintosh: That is the trouble with having printers that produce double-sided copies—one does not turn the page.

Sense Scotland's point is about a case in which a local authority places a child at a grant-aided school. Does the local authority have a power or a duty to comply with a request from the child's parents for an assessment or for a CSP to be opened? If a child is at an independent or grant-aided school through parental choice, the local authority has a power to comply with such requests. However, if the local authority places a child at a grant-aided school, it should surely have a duty to respond to requests. That is not clear in the code. There is an element of confusion.

Euan Robson: If there is confusion, we will clarify the matter. You stated the position as we understand it.

Mr Macintosh: Is not that inconsistent? Is that your interpretation of how it should be?

Mike Gibson: I thought that the code was clear. The duty to comply with requests refers to requests from parents of children for whose education the authority is responsible. If an authority places a child in a grant-aided school, it is responsible for the child and it has a duty to respond to requests. We will examine the point that Sense Scotland makes and consider whether we need to change things, but I thought that it was clear that the authority is responsible for the education of the child.

The Convener: Finally, I do not think that the code of conduct refers to the transition from the record of needs. I appreciate that there are other regulations, but because there are on-going duties in the act—and ministerial assurances from Peter Peacock—about the extension of no less support than before, I wonder whether the code should refer to that transition. Is that a valid point?

Euan Robson: We will need to think about that. We do not want to overcomplicate things, with references in the regulations, the act and the code of conduct. However, in principle, we can probably accommodate that in some way. There is a balance to be struck between absolute accuracy and clarity—I am sure that you will appreciate that.

The Convener: The difference with the record of needs is that it is central to the current documentation, the new documentation and anything to do with timescales. The code of conduct seems to be the obvious place to put some of this stuff.

Euan Robson: On reflection, the draft circular might be the best place. It is in one of the most recent consultation papers. We will reflect on what you say, but perhaps the committee will do the same.

The Convener: At the very least, it should be annexed to the code. Perhaps that is the answer as a physical way forward.

Euan Robson: That is probably the way to do it.

The Convener: We have had a fairly hard session but it has been quite useful; it has also been slightly confused, but we got there in the end.

I thank the minister and Dr Gibson for their input. We are grateful to have had the opportunity to have our say on the matter. I imagine that there are various points that we have not raised, but I think that we have got the gist of most of them.

Is there anything more that members want to give to the clerks by way of guidance? We do not want to state the obvious about things that the minister has said he will deal with. On the other hand, some important points have come out of our discussion and we do not want to lose track of them. The *Official Report* will probably provide the basis for ensuring that. Do members want anything else to be included in the report to the ministers?

Ms Byrne: I would like to put something in writing to the clerks or to the committee on the planning formats—the IEPs, CSPs and PLPs—if that is all right.

The Convener: Yes, that would be good. The clerks particularly encourage members to put such points in writing.

Fiona Hyslop: I suspect that there are things that we have missed, especially in relation to some of the more complex issues to which the Executive may respond. Therefore, we need to do a double check. We should probably reflect on some of the issues surrounding dispute resolution and the explanation of the technical parts of the code rather than say that we need to change X, Y and Z. Once we have read the *Official Report* and identified the areas that we have covered, we may find that there are other aspects that we have not done justice to or which we have omitted.

The Convener: The minister said that he would get back to the committee on one or two points. That is welcome, but for the most part it is a matter of our putting whatever we want in the report on the basis of today's evidence, comments that have been made and anything else that members want to include once they have had a chance to reflect on the discussion. In due course, the minister will either respond directly or address the committee's concerns in the amended code. One way or another, we will get the minister's response at a later point.

Mr Macintosh: When will we produce our report and when will the Executive redraft the code?

The Convener: Monday 20 June is the end of the period of 40 days during which we are able to respond. Is that correct?

Martin Verity (Clerk): Yes. We propose to bring a draft report to the committee on 8 June. Any further points that members want to make will go into the final report.

Mr Macintosh: Can we ask the Executive when it will publish the code?

The Convener: The minister has said that the whole shooting match will be brought into effect in November, but I am not sure when the Executive proposes to finalise the code.

Euan Robson: Provided that the committee does not raise any issues that make us completely rethink the code—I am grateful for the constructive comments that have been made today, to which we will respond and which we will take on board—we hope to finalise the code at the end of August, so that it will be available when schools reassemble. That is our target.

The Convener: There is one observation that one might make in the light of difficulties that we have had on other subject matters, concerning involving people and getting the information out. Is the Executive sure that it can publish the code, with information available and training and so on done, before the act is brought into effect? I appreciate that there will be some graduality, but the administration is often more tricky than it looks. Are you confident that you can do all that and get the schools and everybody else on board in the timescale that you have laid out?

Euan Robson: Yes, we are confident. Something unforeseen may occur, but we are confident that we can do that. We need to do that because it is some time since the act was passed; it received royal assent in May last year. We need to stick to our timetable if we possibly can, although if there are major practical difficulties that we have not foreseen, we will have to address them.

Mr Macintosh: Will we get a chance to comment on the published code? Is there a parliamentary process for dealing with the code once it is finalised at the end of August?

Fiona Hyslop: No. This is it.

Mr Macintosh: That is fine. I just wanted to clarify that.

The Convener: Our report being laid before Parliament is, in effect, the Parliament responding to the draft code. Members could call for a debate if they were so minded, but I do not think that that will be necessary. Other than that, there is no other process involving us—the Executive will simply finalise the code and issue it. Is that correct?

Euan Robson: Yes. Nevertheless, we believe that the code is a living, breathing document and that, in the months and years ahead, amendments will need to be made as good practice becomes apparent. If we want a complete revision or significant amendment of the code, the act enables it to come back to the committee, although perhaps that will not happen in this parliamentary session. We have set out the process to get the code published, but we believe that the document will develop in the months and years ahead.

The Convener: Thank you for that and for your information this morning.

Meeting closed at 12:55.

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