EDUCATION COMMITTEE

Wednesday 17 May 2006

Session 2

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EDUCATION COMMITTEE
12th Meeting 2006, Session 2

CONVENER

*Iain Smith (North East Fife) (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

Richard Baker (North East Scotland) (Lab)
Rosie Kane (Glasgow) (SSP)
Mr Jamie McGrigor (Highlands and Islands) (Con)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)
Mr Andrew Welsh (Angus) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Sue Grant (Family Law Association)
Pat Howell (Glasgow City Council)
Kirstie Maclean (City of Edinburgh Council)
Margaret Anne McLean (Glasgow City Council)
Morag Wise QC (Faculty of Advocates)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Mark Roberts

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 4

Scottish Parliament

Education Committee

Wednesday 17 May 2006

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

The Convener (Iain Smith): Good morning, colleagues, and welcome to the Education Committee's 12th meeting in 2006. We have two items on the agenda today. In a moment, we will start our second oral evidence session on the Adoption and Children (Scotland) Bill, which will be followed by consideration of an update on the child protection reform programme. However, before we start, Fiona Hyslop has a question.

Fiona Hyslop (Lothians) (SNP): Audit Scotland has recently produced its report on the McCrone agreement, although the report by Her Majesty's Inspectorate of Education is yet to be published. As the committee has a long-standing interest in reviewing the operation and implementation of the agreement, can we arrange a time to consider the educational issues that emerge from the Audit Scotland report and from the HMIE report, when it is published?

The Convener: It has always been our intention to do that. I confirm that, when the HMIE report comes out, I intend to bring both reports to the committee for consideration. Under a parliamentary protocol, we cannot deal with an Audit Scotland report until the Parliament's Audit Committee has completed its deliberations on it. We are partly tied to the Audit Committee's timetable, but my intention is for the committee to consider both reports, once the HMIE report is published.

Adoption and Children (Scotland) Bill: Stage 1

10:06

The Convener: Agenda item 1 concerns the Adoption and Children (Scotland) Bill.

Lord James Douglas-Hamilton (Lothians) (Con): I declare an interest, as a non-practising member of the Faculty of Advocates.

The Convener: We will hear evidence from two panels of witnesses. The first panel is made up of Sue Grant, from the Family Law Association, and Morag Wise, from the Faculty of Advocates. We have received a written submission from the Faculty of Advocates. I ask the witnesses to make any opening comments on the bill before we ask questions.

Sue Grant (Family Law Association): The Family Law Association has not had an opportunity to meet to discuss the bill, so I am afraid that any views that I express today are really mine. I am a solicitor in private practice and an active adoption practitioner. I am the legal adviser to the Scottish Adoption Association and have been on the panel of curators in Edinburgh for 20 years. I have read the submission of the family law sub-committee of the Law Society of Scotland and that of the Faculty of Advocates. I am happy to answer questions that arise from either of them.

Morag Wise QC (Faculty of Advocates): I was called to the bar in 1993 and have been involved in aspects of adoption work throughout my time at the bar, during which I have practised almost exclusively in the area of family law. I have represented parents who oppose freeing for adoption and adoption applications as well as private petitioners in petitions for adoption and, occasionally, local authorities. I was involved in the written response of the Faculty of Advocates. We did not comment on many aspects of the bill because, in essence, they were outwith our area of expertise or remit. I am happy to answer any questions that the committee may have on the matters on which we saw fit to respond.

Ms Rosemary Byrne (South of Scotland) (SSP): I want to ask about permanence orders. Page 3 of the submission from the Faculty of Advocates states:

"we note that the welfare of the child is always at the forefront of the mind of those concerned".

However, you say that section 33(3)

"renders it sufficient that a permanence order is in place, and makes no provision for changes in the child's circumstances since the making of the order."

Will you elaborate on that point?

Morag Wise: I am sorry—I have our response to the bill, but I cannot find the passage to which you referred.

Ms Byrne: It is on page 3, in the part about section 33. The comment is in the final paragraph. Sorry about that.

Morag Wise: Not at all—the fault is mine. Our concerns about section 33 are partly about drafting. The section is headed "Parental etc consent" but we think that it should be headed "Conditions for adoption orders" because, in essence, that is what it is about. Your question was about our comments on section 33(2)(b)(ii) and the concern in our submission that the

"proposed s.33(3) renders it sufficient that a permanence order is in place, and makes no provision for changes in the child's circumstances since the making of the order."

Ms Byrne: Yes.

Morag Wise: The Faculty of Advocates welcomes the proposed abolition of the system of local authorities applying for freeing for adoption orders and the proposed new system of permanence orders. However, it seems to us that permanence orders might be granted at an early stage in a child's life and might be restricted to the minimum provision of taking away permanently from the parent the right to determine the child's residence and transferring it to the local authority.

A lot of time might elapse between the granting of the permanence order and an application for adoption. Under the bill, it will be sufficient for a permanence order to be in place, but that might mean that there is insufficient scrutiny of what has happened in the child's life since the permanence order was made but before the application for adoption. That is our concern about section 33(2)(b)(ii).

Ms Byrne: Will you elaborate on how the system will be improved by the granting of permanence orders?

Morag Wise: There is a perception, which we share, that the current system, which requires local authorities to apply for parental rights and responsibilities orders or freeing for adoption orders, creates difficulties in cases in which the natural parents have something to offer the child but are unable to have the child living with them.

Leaving parental rights and responsibilities orders aside for the moment, one of the acute issues with freeing for adoption orders is the question of on-going contact—direct or indirect, but usually direct—with the natural parent. As members of the committee may be aware, in granting a freeing for adoption order, the courts have no power to impose a condition of on-going contact with the natural parent, who usually opposes the application. In principle, the proposed permanence order gives much more flexibility. It will allow the local authority to apply to take responsibilities away from a parent who, for whatever reason, is unable to have a child living with them and to nurture the welfare of the child, but who may have other things to offer.

There are drafting difficulties with section 84. You might not want me to go into those in detail today, but in the faculty's view it is important to understand the difference between a permanence order and a freeing for adoption order. Under a permanence order, the natural parent will retain all parental rights and responsibilities other than those that are specifically taken from them. There are drafting issues related to that, which we might come to later.

The main benefit of permanence orders is their flexibility. They allow—or they ought to allow, subject to proper drafting—the natural parent to retain everything other than the rights that are specifically taken away. At the more extreme level, of course, a permanence order is tantamount to a freeing for adoption order because, other than the mandatory condition that can be imposed, there are other aspects that can go much further than just taking away the right to reside.

Parental rights and responsibilities orders take from the parent their parental rights and responsibilities and transfer them to the local authority. Our understanding of the proposed permanence orders is that they need not do that, although they might in many cases. It is possible for two people or organisations to hold and exercise parental rights and responsibilities at the same time, so there will be cases in which, quite properly, a natural parent will retain and even exercise some parental rights and responsibilities in situations in which the local authority also has parental rights and responsibilities—contact with the child always springs to mind, but there are other relevant parental rights and responsibilities—which is not possible under the current regime. The lack of flexibility in the current regime has led to difficulties in practice and to protracted litigation, which could be reduced, if not avoided.

10:15

Ms Byrne: That is helpful. Does Sue Grant want to add anything?

Sue Grant: I agree with everything that Morag Wise has said. My experience of freeings in the past few years has been almost universally negative. The average freeing takes around 18 months. I tend to deal with prospective adopters somewhere in the middle or at the end of the process. They are very much sidelined in freeing proceedings, have no control over how long they

take and have no input except as witnesses at the final hearing. The parties tend to become polarised and, if there is any possibility of post-adoptive contact, the opportunity for meaningful discussion is often lost during the protracted litigation process. In the meantime, the child is left in a kind of limbo.

Permanence orders are a positive development, particularly as they will enable children to know that various aspects that relate to their day-to-day lives—in particular, contact—will be resolved in one process. At the moment, contact is often left to the side in freeing proceedings and has to be revisited at the adoption process, by which time parties can be polarised and the child is somewhere in the middle.

Ms Byrne: I ask Morag Wise to touch on her concerns about the drafting of the section on permanence orders.

Morag Wise: Section 84, which is at the beginning of part 2 of the bill, sets out the provisions for the making of permanence orders. The bill does not seem to set out the grounds on which the local authority can apply for a permanence order; it simply says in section 84(1) that,

"on the application of an adoption agency,"

the appropriate court

"may … make a permanence order".

The ground on which the local authority makes the order is important, particularly because it will signal to the parent, who may or may not oppose the application, what ground it is founded on. The adoption policy review group recommended grounds for permanence orders. Those were that there was no one able or willing to exercise parental rights and responsibilities in respect of residence or that residence with any of the people who had parental rights and responsibilities was likely to be seriously detrimental to the child's health or development. It seems to us that it would be appropriate for the provision that introduces permanence orders to set out that those—or any other grounds that are thought appropriate—are the grounds on which the local authority can make an application.

A few moments ago, in answer to your questions, I indicated how important it was that parental rights and responsibilities could be exercised by more than one person or authority at the same time. The way in which sections 84(3) and 84(4) are drafted does not make that clear. The bill ought to spell out which orders will deprive a parent of parental rights and responsibilities and which could sit together with retained parental rights and responsibilities on the part of the parents.

The Faculty of Advocates has not commented in any detail on the issue, but we can do so at a later stage on request. There are a number of very technical drafting points that, if called on, we can help with or at least comment on.

It is important to set out whether the parent is being deprived of specific rights or whether other rights can sit side by side with the rights of the parent. The minimum mandatory provision takes away from the natural parent—as it will be in most cases—the right to have the child or children residing with them. Of course, the intention of that is to deprive the natural parent of that particular parental right and responsibility. That should be clarified in the legislation.

Ms Byrne: Thank you—that has been helpful. I think that we would appreciate some further paperwork from you on these issues.

Morag Wise: We can undertake to provide that as the bill progresses.

Mr Adam Ingram (South of Scotland) (SNP): We will hear from the City of Edinburgh Council a little later this morning. It has indicated that it has a number of children who have been freed for adoption, under a freeing order, but who have little prospect of being adopted. The council is suggesting that it would be very much easier for all concerned if some sort of transitional arrangements were put in place whereby freeing orders would be converted into permanence orders for children caught in the current system. Would you care to comment?

Sue Grant: On balance, that would probably be helpful if, as we hope they will, permanence orders give children the certainty that they require about who is responsible for what and where their future lies. It would be desirable for children who are currently freed to have the opportunity to have their cases considered under permanence orders.

Mr Ingram: There appears to be nothing in the bill that would allow that.

Sue Grant: No, there is not.

Morag Wise: That would have to be carefully worked through. For children who are subject to a freeing for adoption order granted under the current legislation, decisions will have been made that applied the test in that legislation. As I have said, that test includes the inability to make any order for direct contact—which is one of the major issues. I am not sure how a current freeing order could be transposed into a permanence order, but one clearly has great sympathy with the children who are caught in the current system. I suppose that it might be possible to provide for an exception to the circumstances in which a local authority can apply for a permanence order, notwithstanding the fact that a freeing order is in

place. However, I agree that that would require a specific provision in the bill; otherwise, I do not see how the children could fall within the proposed new system.

Fiona Hyslop: The City of Edinburgh Council also says that it is concerned by statements from the Government that it is rare for a birth parent to contest a freeing for adoption order. In the council's experience, that is not true. What is your view on that, because it will have implications for legal aid bills in future and for the financial memorandum? Will the numbers who contest a permanence order be different from the numbers who contest a freeing order?

Morag Wise: That is an interesting and difficult question. I do not have the statistics, so all I can do, as an independent practitioner who liaises regularly with other independent family law practitioners at the bar and with solicitors, is to give an impression of what happens at the moment.

I agree with the council's statement that it is not rare for the birth parents to oppose a freeing for adoption order. Many of the contested cases that my colleagues and I have been involved in relate principally to the difficulty that arises from the fact that there can be no enforceable order for on-going direct contact between the birth parent and the child or children once that order has been granted. Many of the cases that are litigated centre on that issue alone.

That ought to be resolved under the system of permanence orders. Tensions can arise when a freeing for adoption application is made in a case involving a birth parent who, while recognising that they are not able to care for the child any longer, wishes to have direct contact with the child. In cases where that contact is seen as being in the best interests of the child, it is hoped that that tension can be dealt with under the permanence order system and that there will not be the same number of protracted litigations. A local authority will be able to say that, in appropriate cases and in the interests of the child, the birth parent will retain a right to contact the child and the local authority will not oppose their doing so.

Fiona Hyslop: I want to explore the relationship between the court and the children's hearings system. Obviously, we are expecting changes to the children's hearings system and a new law, but we do not have that now. Do you have a view on whether there is sufficient integration between the adoption process and the children's hearings process, as presented in this legislation, or will there be some contention? The City of Edinburgh Council has told us that the children's hearings system should have no role in adoption.

Sue Grant: It is difficult for me to answer that question as I do not have any input from the Family Law Association on that aspect. I know that there is a tension between the courts and the children's hearings system and that different parties have different views.

There have been problems with children being caught up in the hearings system, with decisions being made that prolong the period of uncertainty for children before they move through the legal process towards being freed for adoption. I am unable to say whether the bill addresses that tension.

Fiona Hyslop: Are you saying that the children's hearings part of the process in relation to contact must be resolved before the permanence or adoption part can be dealt with?

Sue Grant: Yes.

Fiona Hyslop: The two elements could be separated completely or they could run at the same time, as sort of a tandem process.

Sue Grant: I would have thought that it would be possible to run them in tandem. I know that, once the child is subject to a permanence order, that can play a part in the children's hearings system, but I do not know the answer to the problem.

Fiona Hyslop: The children's hearings system is based on the welfare of the child. Putting step-parent adoptions aside, cases could involve some kind of criminal behaviour on the part of the youngster, which has nothing to do with the powers of adoption, although it is a related issue.

Is it your view that, for a child who is under 16, the children's hearings system still has a relevant role and cannot be removed from the process?

Sue Grant: I think that the children's hearings system should have a role in relation to criminal behaviour on the part of children, for example, regardless of whether the children are subject to permanence orders. It should probably play a lesser role in relation to planning for permanency, partly because of the difficulties that arise from having differently constituted panels making different decisions and giving different messages to children.

Fiona Hyslop: If, as the result of a children's hearing, a child who is in the adoption or permanency process is subject to a supervision requirement, which body should take precedence, from a legal perspective and from the child's perspective?

Sue Grant: It might be preferable to make the child subject to the permanence order procedure and to take them out of the children's hearings system at that stage.

Fiona Hyslop: Does the Faculty of Advocates see any procedural or legal difficulties with making

a child subject to both the children's hearings system and the proposed new system?

10:30

Morag Wise: The faculty has not responded on that matter, but I feel that a difficulty might arise if the children's hearings system attempts to make a decision that conflicts with the terms of a permanence order. That cannot be right. In such a case, the permanence order ought to take precedence. However, the children's hearings system might continue to have a role in certain examples that you have already highlighted, such as cases in which a child has been involved in criminal behaviour.

There will not be many cases in which a supervision requirement ought not to come to an end automatically because a permanence order has been granted. After all, the minimum mandatory condition imposed in such an order is a permanent removal of the parent's right to have the child residing with them. However, that child might have reached only a relatively early stage in a long-term planning process. Because the child might not yet have embarked on what will ultimately become an adoption, the natural parent might well retain several parental rights and responsibilities.

Although the children's hearings system could retain a role in managing a child's life, I agree with Sue Grant that the issue is difficult and will have to be worked through in much more detail in the legislation.

Fiona Hyslop: It would be helpful if you could reflect further on that matter. After all, we are at the very start of this process.

Mr Kenneth Macintosh (Eastwood) (Lab): I wonder whether Morag Wise can explain why the concept of leave to apply for a variation has not been established in Scottish courts and why she is concerned about its use in the bill.

Morag Wise: We have a number of concerns about leave to apply, which we see as an English legal concept that the Scottish Parliament might or might not decide to adopt in passing the bill. For example, after a permanence order has been granted, an applicant—usually a natural parent—might decide that in the light of a material change of circumstances, they are justified in seeking something that they did not have before or that has been taken away from them, by varying contact and so on. If that application is wholly without merit, I think that the parent will have to face hurdles such as a refusal of legal aid in applying to the court. If the applicant does not require public funding to make an application that is wholly without merit, the court can follow recognised procedures—no doubt subordinate legislation will introduce others—to determine fairly early on whether such cases are without merit. Sheriffs and judges do so day in, day out. Indeed, there is much better case management in the courts not just in family law but in all legal areas.

However, we are concerned about using the courts as a gatekeeper to refuse all applications, because that will increase unnecessarily the number of stages in litigation. To decide whether a party should be given leave to apply for a variation, the decision maker—the sheriff or lord ordinary—will have to consider an application's merits. If he or she decides that the party should be granted such leave, they will have to re-examine the merits of an application when the party submits it. That might raise questions of public funding such as whether legal aid will be available at that stage and whether, in that light, it would be better to have a one-stage process for potential applications.

If a piece of legislation provides that, in particular circumstances and on a particular test, a party is entitled to come to court and seek to vary a previous order of court or to ask that a new order be made, each case will then be decided on its merits in the usual way. We have concerns that a system of leave adds an additional tier of litigation that, at the moment, is almost unprecedented in Scots law and is unnecessary.

Mr Macintosh: That is helpful.

Fiona Hyslop: We have got the message.

Mr Macintosh: Yes, that was very clear. To extend that further, the British Association for Adoption and Fostering has suggested that birth parents should seek leave of the court before seeking an order under section 11 of the Children (Scotland) Act 1995. The BAAF suggests that, whether or not we agree with the process, we should at least be consistent. Currently, under section 100, that is not the process. Do you have any comments on that?

Morag Wise: I agree with the BAAF. The Faculty of Advocates has concerns about any system of leave that might apply. I have indicated what they are, but I note that section 100—which relates to parties who want to seek post-adoption-order contact—is not consistent with the provisions in sections 89 and 91, which require a party to seek leave to apply post-permanence order. Whatever the legislation ultimately says about whether there is a requirement for leave to apply, I agree whole-heartedly with the BAAF that it ought to be consistently applied.

Mr Macintosh: Does Sue Grant have any comments on that matter?

Sue Grant: I agree that the bill should be consistent. I welcome section 100 because the

situation at the moment is that many agreements on contact are made at the point of adoption but are not incorporated into an adoption order by way of condition simply because to do so is unwieldy and inflexible and opens up the possibility of variation by future litigation. What tends to happen is that statements of intent are entered into between doctors and birth parents. From a lawyer's perspective, there is the uncomfortable knowledge that a statement of intent is unenforceable under the current legal set-up, which means that if adopters decide after a month that they are no longer interested in the agreement, they can rip it up and the birth parent is deprived of a remedy. Section 100 is very much welcomed.

Unlike Morag Wise, I would prefer a provision that would require a birth parent to seek leave before seeking a section 11 order. I can envisage agreements that have been reached at the point of adoption not being incorporated into a condition, but instead being incorporated into a statement of intent that is then reneged on by adopters. Obviously, a birth parent will have a desire and a right to say, "This is what was agreed. This is best for the child. I would like an order that I can enforce."

From my 20 years of practice, I cannot think of many situations in which a birth parent has come along post-adoption to assert a right of contact where contact had not already been in place. My instinct is that many such applications will be rooted in the desire to see the child rather than in the birth parent's desire to do what is best for the child.

I suppose that I am saying that I envisage many such later applications being unmeritorious. If there was a requirement to seek leave, there would, in effect, be what exists in the criminal system, which is a sift. Applications could be knocked on the head at that stage, if that was what was required. On the other hand, such a requirement may bring parties together sooner and the sheriff may have the opportunity to head off protracted litigation and to say, "If this is what was agreed, this is what should happen", or to say, "This is without merit. I'm not going to have this hanging over the adopter's head for the next six months while we wait for legal aid and so forth," and to deal with it then.

Mr Macintosh: The leave to apply system is obviously a sift. If it were not written into the legal process, which could become a longer two-stage process, could any body other than the court—perhaps the adoption agency or the local authority—apply that sift?

Sue Grant: The sift would have to be applied by the court. I am aware of situations from the past year or two in which birth parents have attempted to obtain contact through an adopted child's siblings to whom the guillotine effect of the adoption order does not apply, and who currently retain the right to seek contact under section 11 of the Children (Scotland) Act 1995. In those cases, the sibling applied for contact, the sheriffs refused to warrant the writ and effectively applied a sift at that stage. That situation would have to continue; I cannot imagine that anyone else could make what is ultimately a judicial decision.

Mr Macintosh: Is it right that you are saying what Morag Wise said a minute ago, which was that we do not need to include in the bill the term "leave to apply" because courts already decide at an early stage whether an application has merit?

Sue Grant: It would be helpful to give guidance to the court because, although different sheriffs take different views, there has to be consistency. One sheriff might warrant a writ while another might not; some feel that they are not entitled to not warrant a writ, and others feel that they are perfectly entitled to do so. It would be helpful to enshrine the process in legislation.

Mr Ingram: The bill seems to shift the balance between the rights of the child and those of the natural parents. I have difficulties in tracking those changes. For example, section 100 will allow the natural parents to seek a section 11 order for contact with their children, whereas the current law prevents it once an adoption order has been granted. That seems to tip the balance in favour of the natural parent, as does the flexibility that is built into the permanence order, which allows natural parents to seek a variation of the permanence order. We received evidence from Glasgow City Council that the change that will allow section 11 orders to be made after an adoption

"Seems a wrong move to make ... and will leave the way open for some of the most destructive birth families to continue with actions which will threaten the stability of the adoptive placement."

Will you comment on the generality of that shift, as well as on that specific point?

Sue Grant: The right that is enshrined in section 100 is necessary for the reason that I gave before, which is that agreements are sometimes breached. The adoption policy review group hoped that it would be made clear in guidance, and perhaps even in the bill, that post-adoptive contact would take place only in exceptional circumstances, which is the test that is applied by the courts at the moment. Obviously, it is paramount that such contact has to be for the benefit of the child. It is to be hoped that the court will continue to apply that test under section 100. There is no reason to think that the court will not do so unless guidance says otherwise.

Mr Ingram: What about the apparent shift of the balance towards birth parents?

Sue Grant: I do not read section 100 as shifting the balance—it will still be up to birth parents to establish that contact would be in the best interests of the child. The section will not make things any easier for them than they are at present; it simply embodies a safeguard for them when on-going contact is stopped for whatever reason.

10:45

Mr Ingram: How do you respond to Glasgow City Council's contention that unnecessary actions and continued disruption will naturally follow if we allow birth parents to apply for contact under section 11 of the Children (Scotland) Act 1995?

Sue Grant: That is obviously a concern. The last thing we want is for adopters to be plagued by applications to the court because of all the uncertainty that applications cause. That brings us back to the question whether to incorporate a provision for leave to appeal, which would at least give the court the opportunity to knock applications on the head at an early stage.

Morag Wise: It might be perceived that there is a slight shift in the balance of the rights of the natural parent, the child and, in certain provisions, the local authority or the adopters—which is what section 100 concerns. Such a shift might have been thought to be necessary because of the rule under the 1995 act, whereby in cases in which a child has been the subject of a freeing for adoption order, or an adoption order without conditions, the parent is excluded absolutely from making any future application for contact. Given that one is dealing with the lives of children, that is thought to be such a hard and fast rule that flexibility and room for movement on contact are necessary.

I agree with Sue Grant that it does not seem that section 100 will open the floodgates for a host of applications from parents whose parental rights were taken from them after due process, where a child is happy, content and settled with his or her adoptive parents. Rather, it will mitigate the harsh consequences of the existing absolute rule and provide a mechanism for a natural parent, who might have a perfectly meritorious claim based on the wishes of their child, to see that child. I am not concerned about the provision of such a mechanism.

The procedural rules that are set out in the secondary legislation that will follow the bill will be important. One easy way to proceed would be to have an early procedural hearing to assess the merits of the post-adoption or post-permanence-order application. Such a hearing would not require witnesses or a proof; it would just be a procedural hearing to consider the case. That might be thought to provide a satisfactory middle ground between a two-tier system whereby leave to apply is sought and then an application is made, and the situation—which would cause concern—whereby all natural parents would be able to litigate on whether they should see their children post-adoption. The perceived slight shift in balance need not alter significantly the status quo for children.

Mr Ingram: Thank you. That was very helpful.

Mr Macintosh: The City of Edinburgh Council made the same point that Glasgow City Council made about its worry that many families would push for revocation. We have heard evidence that adoption has changed over the years. I believe that children who are adopted tend to be older now—they tend not to be babies—and they still tend to have some contact with or get information about their birth parents.

Are we worried about contact orders? Is the situation becoming worse? Are more and more families pushing for more and more contact orders? Does the problem reflect the split between babies being adopted early on, as happened previously, and older children being adopted, which is the case now, or is it an entirely separate issue? You can answer only from your anecdotal experience of cases. I am trying to work out whether there is a difference between the types of adoption cases that come up or whether this is an issue across the board.

Sue Grant: It is very difficult to generalise. In every adoption in which I am involved, there is a pattern of setting up indirect contact, which is an exchange of information between the adoptive family and the birth family. That is usually done through one of the agencies and a social work department and takes the form of a newsletter from the adopters to the birth family. Occasionally, there is communication the other way, which is carefully screened. Sometimes there is an exchange of photographs. In my experience, that is more or less the norm in every adoption—certainly in adoptions where the birth family maintains an interest: many do so, even if they do not see the children. That is a positive step that has a great deal to do with letting the child know where he or she came from and that he or she has a birth family.

The cases in which I am instructed tend to be contested cases in which contact is the biggest issue. It is difficult to say whether the situation has changed over the past 10 years. Birth families are more aware of the existence of open adoption and they know of other families who continue to see their children even after they have been adopted.

Mr Macintosh: Is there no obvious trend?

Sue Grant: To be perfectly honest, I do not think that there is such a trend.

Lord James Douglas-Hamilton: My first question is about the criminal offences that the bill introduces. Why do you feel that it was necessary—if it was—to introduce those offences, rather than to maintain the civil remedies that are currently available under the Children (Scotland) Act 1995? Perhaps we should pursue the matter with the minister. Are the terms of the bill too severe? Might it reduce flexibility that would be in the best interests of the child?

Morag Wise: The Faculty of Advocates questioned the need for several statutory criminal offences to be introduced. It seems to us that adoption of children is essentially a matter to be dealt with under civil law. In some cases, remedies are necessary; for example, if a natural parent unlawfully removes a child from the carers, whether they are adoptive parents or foster carers. However, section 26 of the bill provides a remedy for return of the child, if the child is

"removed in breach of certain provisions".

In a sense, that is a civil remedy to ensure that the child is delivered back.

The common law and the 1995 act provide remedies of interdict to prevent parents who threaten to take a child from a place where they have been put for their safety or welfare from doing so. Even under the civil process, if a parent breaches or does not comply with the conditions of an interdict, they may be subjected to breach of interdict proceedings, which are quasi-criminal and can carry criminal sanctions. It seemed to us that that was sufficient in the context of legislation that is designed to promote and safeguard the interests of children and—to return to a previous question—that tries to strike a balance. There are competing interests to be balanced between parents, children and local authorities, regardless of whether the balance has shifted. The measure seems to be unnecessary and may have unintended consequences, such as the imprisonment of parents who act rashly or fecklessly during the very process that is designed to find out what is best for their natural child. We have considerable concerns about the measure.

Lord James Douglas-Hamilton: If, for example, the minister had in mind kidnapping cases—I am not certain that he did—can those be dealt with otherwise than under the bill?

Morag Wise: Existing criminal law provides various ways in which to deal with people who snatch or kidnap children with criminal intent. The creation of more statutory criminal offences in the context of adoption law will not add anything to the existing criminal law.

Lord James Douglas-Hamilton: You have commented on the need to tidy up the bill and you have said that its drafting is "unnecessarily convoluted and repetitious." Will you give us the benefit of your great experience and compile a short list of the matters on which improvements should be made? You need not go to disproportionate effort, but a short and effective list might be extremely helpful.

Morag Wise: We would be glad to assist with that. Our written response is a general one, but if it would help to have a tabulated document that lists the section numbers with brief comments, the Faculty of Advocates would be happy to provide that.

The Convener: That would be extremely helpful when we come to stage 2, so there is no great rush.

Morag Wise: We can do that.

Mr Frank McAveety (Glasgow Shettleston) (Lab): Do you foresee legal difficulties with permitting unmarried couples to adopt?

Sue Grant: No.

Mr McAveety: I thought that that might be the answer. Is the definition of an unmarried couple in section 31(3), as people who are

"living together … in an enduring family relationship",

legally workable? You have expressed concerns about that phraseology. Will you amplify those concerns?

Morag Wise: The Faculty of Advocates commented on the use of the expression "enduring family relationship". As members will know, the expression "living together as if husband and wife" is used in social security legislation and has become a test that is familiar to all of us. The word "enduring" suggests that the key component is time rather than quality. We wonder whether the use of the word "stable" might be more appropriate, if we want to add to the general expression "living together as if husband and wife".

Beyond that, one might query whether we should add at all to that phrase. If we did not, a couple who live in a cohabiting relationship but who have not been through a marriage ceremony could put themselves forward as prospective adopters. They would be assessed thoroughly and would have to go through a process, as happens with married couples at present, in which all aspects of their lives, including the stability and enduring nature of their relationship would be discussed and assessed. We are slightly unclear about why it is necessary to use the term "enduring family relationship" in the bill and, if it is to be used, whether an interpretation of that expression should be given.

Mr McAveety: So the relationship is defined as an endurance test.

We have had a fair amount of correspondence, and further correspondence may emerge, from faith-based organisations and individuals who are concerned about adoption by same-sex couples. Within the present legal framework, gay or lesbian individuals can adopt singly, but the bill will widen that provision. Do you regard that as a legal difficulty? If so, how can we overcome it?

11:00

Sue Grant: I do not regard it as a legal difficulty. At the moment, the situation is rather artificial because one party adopts and the other seeks a section 11 order. I have been involved in several cases where that has happened and there was no difference between the two parents' commitment to the child. It is just that the legal framework is difficult at the moment and difficult decisions have to be made about who is going to adopt and who is going to seek a section 11 order. The fact that both parties will be able to adopt is a positive step. In my experience, people would have done that in the past if they could, so the bill simply sorts out a situation that already exists.

Mr McAveety: Would you say that, by addressing that issue, we can also assist the transition for the children?

Sue Grant: Yes.

Fiona Hyslop: One third of adoptions are by step-parents. Do you regard the absence of step-parent agreements as an omission from the bill or is there a legal problem with such agreements? They would be different from full adoption, which involves changing the birth certificate and so on.

Morag Wise: The Faculty of Advocates commented on that in its submission on the Family Law (Scotland) Bill. We have some concerns about step-parent agreements because of the legal difficulties that arise in the tripartite relationship between the mother, father and stepfather or the father, mother and stepmother. That said, I am aware that many stepfamilies are concerned that they are inadequately provided for in legislation and there is a move towards seeking legal recognition of step-family agreements. We do not have anything to say about that at policy level, but there are legal issues about stepfamily agreements.

Fiona Hyslop: If there were no tripartite relationship—for example, if the mother has been widowed—would not that remove the difficulties about step-parent agreements that you mentioned in your submission on the Family Law (Scotland) Bill?

Morag Wise: Yes, but one would have to think about whether to have separate provisions for cases in which one natural parent is not alive and cases in which there is a living natural parent who is not within the stepfamily arrangement.

Fiona Hyslop: Sue, do you have any comments on step-parent agreements?

Sue Grant: I am simply aware that the BAAF is very much in favour of them. I am not involved in many adoptions by step-parents and I am not aware of many situations in which the guillotine effect of an adoption cuts out a step-parent, although I am sure that that happens, so it would be helpful to have a way to avoid that. However, I take the Faculty of Advocates' point about the legal difficulties.

Mr Macintosh: I return to the Faculty of Advocates' point about the advantages of civil deterrents over criminal deterrents. It believes that we should not make the process overly criminal. In its submission, the City of Edinburgh Council said:

> "We would like to see a greater deterrent for breaches of the Bill than are currently suggested—we understand that instances of trafficking are increasing and we are concerned that more children may be brought into the country illegally for the purposes of adoption".

Will you clarify what you said in response to Lord James's question? Clearly, there are laws against trafficking and kidnapping.

I imagine—the committee and the Executive will obviously need to take a decision on this—that those laws would apply against traffickers rather than against the parents. Is that right? In other words, the new penalty that will be introduced under the bill would penalise the parents—whether that is desirable is a different matter—but the criminal penalties against trafficking would not necessarily apply to parents.

Morag Wise: The bill contains a number of provisions—starting at section 20—that are directed at parents who remove children from the care and possession of prospective adopters. In so far as such actions are done with criminal intent, the criminal law would apply and the accused party could be prosecuted. It seems to us that, as the criminal law might be inadequate or might not fit the purpose, those provisions perhaps need to be reconsidered. In a bill that is designed to promote the welfare of children and to provide for matters relating to their adoption and long-term care, it seems inappropriate to provide a number of new statutory criminal offences.

The Convener: In terms of drafting, it would be helpful to the committee if the Faculty of Advocates could highlight where the bill creates unnecessary criminal offences. I do not mean to give the Faculty too much work to do—such changes are the job of Parliament and the Executive—but we are always happy to have the assistance of others.

Last but not least, sections 9 and 10 provide for the matters that are to be taken into account by the courts and adoption agencies in considering

whether a child should be put forward for adoption. Are the right grounds specified? Does the bill include grounds that should not be included or does it omit grounds that should be included? In particular, are the grounds for dispensing with parental consent, which are taken largely from the English legislation, too wide? Do they provide sufficient protection in relation to article 8 of the European convention on human rights?

Morag Wise: The tests that are set out in section 9, which details the factors to which the court or adoption agency must have regard, are to some extent an amalgam of provisions that exist in English and Scots law; for example, it is now well recognised that, following the United Nations Convention on the Rights of the Child, the requirement to ascertain the child's wishes and views that is set out in the Children (Scotland) Act 1995 must be included in legislation of this sort. We whole-heartedly agree with that provision. The need to safeguard and promote the welfare of the child throughout the child's life is also recognised already. We are already familiar with most of the provisions in section 9 and we agree that they should be included in the considerations that apply to the exercise of powers.

On the test in section 32—

The Convener: It is in section 33.

Morag Wise: Sorry, I meant section 33. We have suggested that section 33 might be headed "Conditions for Adoption Orders".

I believe that I am right in thinking that the question is directed at section 33(2)(b)(ii), which provides a very general ground for dispensing with a parent's consent. Section 33(2)(b)(ii) provides that parental consent may be dispensed with if

"the welfare of the child requires the consent to be dispensed with",

as opposed to if the parent withholds consent unreasonably.

If the bill is enacted, the Scottish courts will need to look at that test because it is a change from the previous one. Although the Faculty of Advocates as a body has not commented on the matter, it seems to me that, in legislation in which we are directed to view the welfare of the child as the paramount consideration and in which all decisions are to be child-centred, the provision—although it is wide—encompasses what appears to be the policy and spirit of the bill. Difficulties might arise if the provision is not applied and interpreted consistently by the courts. That is always a concern when a piece of legislation is widely drafted. However, the provision seems to me to be consistent with the general policy of the bill and with the requirement that the welfare of the child be at the centre.

Sue Grant: I agree with Morag Wise.

The Convener: Have the Faculty of Advocates and the Family Law Association considered whether the provision is compliant with ECHR in relation to the rights of the birth parents?

Morag Wise: The rights that might be of concern that immediately spring to mind are the right under article 6 to a fair hearing before an independent and impartial tribunal and the right under article 8 to family life. We have not as a body commented on the issue, but it may be of assistance to state that the bill seems to me to contain nothing that will detract from or diminish the rights of parties in a way that is not already possible under existing legislation. The unsuccessful human rights challenge that was made to the freeing for adoption system could not be made under the bill because that challenge related particularly to the inability to have provision for contact. Therefore, the bill does not seem to me to throw up any immediate human rights difficulties. However, again, the human rights committee of the Faculty of Advocates might want to consider the matter in more detail.

Sue Grant: I have nothing to add to that.

The Convener: On that rather rare occasion of two lawyers agreeing with each other, we will conclude this evidence session. I thank Morag Wise and Sue Grant for their helpful evidence. Obviously, any additional points that they might want to make as the bill progresses will be gratefully received.

We will have a short suspension while the witnesses change over.

11:12

Meeting suspended.

11:15

On resuming—

The Convener: Our second panel this morning represents local authorities. Kirstie Maclean is from the children and families department of the City of Edinburgh Council; Margaret Anne McLean is principal officer of adopting and fostering at Glasgow City Council; and Pat Howell is the senior officer in baby adoption at Glasgow City Council. Thank you all for coming this morning. We have received your written submissions, but you may make some brief opening remarks before I open the meeting up to questions.

Kirstie Maclean (City of Edinburgh Council): The City of Edinburgh Council welcomes the bill and largely supports the provisions within it. The Adoption (Scotland) Act 1978 has lasted for almost 30 years but it has become quite creaky in

its ability to relate to the present situation of children and families. A new approach is warranted. We hope that the bill, when enacted, will be able to last for 30 years and that it will reflect current and, as far as we can foresee them, future needs.

We particularly welcome the fact that the bill reflects the changes in family life that have taken place during the past 30 years. We believe that the widening of the range of people who can apply for adoption is appropriate. It gives us the opportunity to recruit more widely, while recognising that everyone who applies will go through a thorough assessment process. The bill provides not a right to adopt but a right to apply to adopt, and that is important.

However, we have a quibble with whether some of what is said in the memorandum to the bill sufficiently reflects the situation of children who require adoption. In our experience, it is now rare to place for adoption healthy babies who have been given up willingly by a parent. Most of the children whom we place are from families where there is drug or alcohol misuse or a combination of both. Considerable numbers of babies have been born addicted to drugs or with foetal alcohol syndrome, or have been subjected to abuse and neglect. Those children will need to be supported right through childhood and into adulthood; their adopters will also need to be supported. We think that the financial provisions in the bill seriously underestimate the costs of that process.

We have another specific regret about the bill. Although it is an adoption bill, it incorporates some proposals for fostering and may have missed an opportunity to take on board some of the other aspects of fostering—we are particularly thinking of relatives who care for looked-after children. Recommendations were made about that in the Social Work Inspection Agency report on the Western Isles and the bill could have been an opportunity to take those on board. We also believe that the legislation on private fostering is out of date and, again, the bill could have been an opportunity to deal with that.

Pat Howell (Glasgow City Council): We endorse everything that Kirstie Maclean has said. We welcome the bill because it is true that the 1978 act needs to be modernised and the bill is going to do that.

We welcome the fact that the bill reflects social change and different kinds of families and will therefore widen the pool of adopters. We welcome the provision to take freeing for adoption out of the equation, because our experience is that freeing has not been successful in general. In Glasgow, we have made little use of it.

We also welcome the fact that the bill will give a higher profile to post-adoption support, which is important, given the complexities of the children whom we place for adoption. That reflects the City of Edinburgh Council's experience of the children who are placed. Perhaps no legislation can adjust the dissonance between the children whom we place and many of the people who still want to adopt children, who want as few complexities as possible. That is a huge issue for us in placing children.

Overall, we welcome the bill. We are concerned that the financial provisions are perhaps not robust enough to reflect the needs of the children whom we place for adoption. We need more support to be put in place.

Margaret Anne McLean (Glasgow City Council): We appreciate that the bill will move things forward and we have made many positive comments. We aim to place more children for adoption. In Glasgow, we feel that there is room to achieve that. We must address the points that have been made about support and the challenges that that involves. We welcome the opportunity to give evidence and to talk through how the bill will help us to achieve our aims.

The Convener: I will expand on those helpful opening remarks by looking ahead. Last week, the Parliament debated hidden harm from drugs. Based on your experience, do you expect more children to need adoption or permanence orders in the future? If so, will the bill help you to deal with that, or will it make no significant difference?

Margaret Anne McLean: We in Glasgow are examining closely the level of support that is given to parents in the community to care for their children as safely as possible. Our authority places a lot of focus on that.

We want to facilitate security for children who require to be permanently away from parents who cannot parent them. In Glasgow, 800 children are in foster care. Many of those children tell us that their situation feels fairly insecure. In our recent best-value review, they told us that they want more security in their lives. If they cannot have that with parents, we need to create it through legislation and action.

Given the number that I just cited, I hope that more children will not be put into foster care. We want to be more efficient in relation to throughput, so that if children can be adopted, they are moved on. If we can assist parents in looking after children at home, we need to address that as a council.

Pat Howell: We have just produced statistics on referrals to my part of the service, which covers nought to two-year-olds. We run a consortium that involves 10 of the authorities that were part of Strathclyde Regional Council, but the bulk of the children who are referred come from Glasgow City

Council's area. In the past year, 60 referrals have been made, whereas 50 referrals were made in the previous year. We cannot say whether that is a longer-term trend. We usually get about 50 referrals per year, but the sense is that more very young children and babies are coming in through our duty system. That is probably reflected in the number of children who are being referred to me for permanence orders.

The Convener: I presume that that increase is related to mothers who have drug or alcohol problems.

Pat Howell: Absolutely.

Margaret Anne McLean: I chair the baby adoption panel and almost invariably every baby—that is, a child up to the age of two—has been the subject of neonatal abstinence syndrome as a consequence of parental drug misuse. They are more difficult to place, and take longer to place, than we would like. Those are the challenges that are in front of us. We need a system that places such children as easily as possible.

Kirstie Maclean: I concur with my colleagues' comments. I do not have figures for Edinburgh, but our experience is that more and more quite young babies seem to be coming into care, both because they have been born addicted to methadone, heroin or some other type of drug and because their parents live such chaotic lives that they are incapable of caring for a child. Those are very distressed babies as they have been subjected to the effect of huge amounts of drugs going into their mother's body. We do not yet have sufficient medical evidence of the long-term effects, but our experience of such children is that they often have long-term problems, such as learning difficulties and attention deficit disorders. It is not something that they get over readily. It is hard to make an absolute prediction, but we cannot see the situation getting better and it seems likely that it will get worse.

Ms Byrne: I want to follow up on how to provide care for children when their mother is, through drugs or alcohol, unable to care for them. There is nothing about relatives in the bill, but the extended family is another option. I think that Pat Howell or Kirstie Maclean mentioned the issue. It is important that members of the extended family—in most cases, the grandparents would be involved—get the support that they require to ensure that they can be part of the child protection process within the family unit: both support from all the agencies and financial support. Should that be reflected in the bill, or is it a separate issue?

Kirstie Maclean: I mentioned the relatives of looked-after children. Five years ago, 18 looked-after children were placed with relatives; now, more than 200 children are placed with relatives. That is a massive change. We are aware that we do not give enough financial or emotional support to those relatives. They often need help with contact issues because they might be trying to protect the children from their own son or daughter. Those are difficult family situations.

The bill provides a potential opportunity to strengthen the support that is provided for kinship placements, but we know that that will be costly.

Margaret Anne McLean: Hundreds of children in Glasgow are placed with relatives. Attention must be given to the situation and it would be helpful if that could be done through the bill; if not, it should be dealt with elsewhere.

It would be helpful if what should be done to support relatives was made clearer and standardised. With regard to the babies who come to the baby adoption panel, avenues such as care within the family have been considered very carefully prior to their being looked after and accommodated. I am confident that no babies who could be looked after by relatives come before the panel. Social workers make every effort to examine those options at every previous stage and it is never an issue at the panel.

Pat Howell: Grandparents can care for only so many children. They might be able to care for one or two, but perhaps not for three or more. That crops up regularly in relation to the younger children whom we are placing.

11:30

Fiona Hyslop: I would like to explore the ways in which the bill could be strengthened to help that group of children. Is the issue to do with financial support, such as the fostering allowance, or is it to do with using permanence orders to ensure that grandparents have stronger relationships with their grandchildren? Alternatively, is the issue to do with private fostering, which Kirstie Maclean talked about, because there might not be an appropriate carer?

Kirstie Maclean: At the moment, most relatives who care for grandchildren, nieces or nephews and people who care for the children of friends or neighbours do not receive fostering allowances. They receive smaller allowances that are usually based on benefits. Whether they receive sufficient financial support is arguable. Many of them say that they do not and I have a lot of sympathy for that position. I also think that the support and advice that they receive in relation to caring for the child are often insufficient.

Fiona Hyslop: We need to determine what needs a policy resolution and what needs a legislative resolution. If you think that the bill should promote the legal rights of kinship carers or contain any other provisions, we need to know.

Kirstie Maclean: At this point, I cannot go into that level of detail. However, we could come back to the committee with something in writing.

Mr Ingram: The bill places new duties on local authorities to provide post-adoption services. Kirstie Maclean suggested that such services could be handicapped by the lack of financial provision. Would you confirm that that is the fundamental problem in relation to developing services along the lines that the bill envisages, rather than the capability of local authorities to deliver those services?

Kirstie Maclean: In Edinburgh, we hope that the bill will mean that more children benefit from adoption or permanence orders. The numbers could well increase, but the complexity of the cases could also increase. It is envisaged not that the nature of support would change but that more people would receive it. However, I think that the nature of that support needs to change. In particular, many adopters are looking for more than financial support. They want therapeutic support for the children who have been placed with them. If that is not available through the national health service, they want to be able to buy it in from the private sector. That is quite understandable and I have some sympathy for that position. However, that is not likely to be cheap, as therapy can take a long time, particularly if the children have been sexually or physically abused. It is right that that support should be provided, but the amount of money that has been mentioned—£73,000 for each local authority—does not seem likely to be anywhere near enough to meet needs.

Mr Ingram: I take it that Glasgow City Council concurs with that view.

Pat Howell: Yes. My comments on adoption allowances will probably reflect experience elsewhere. We have struggled with adoption allowances because there seem to be contradictions in the system, in that allowances are awarded for the child but are means tested, which means that many of our families do not get any benefit from them. Also, if an allowance is to be granted retrospectively, it is necessary to have said when the case went to the panel that an allowance might be needed in future. It would help us if we did not have to consider that, because there are cases that we would take back to the panel and say, "This family definitely needs an adoption allowance."

With practically every child whom we place, we could say that there is a potential for an adoption allowance to be needed. As Kirstie Maclean said, we do not have the medical experience to say definitely where such children are heading but, when children come back later, we see their developing problems when they get to school age. We do not necessarily see the need immediately when we place them, but later on.

Mr Ingram: Do you have any formal resource-sharing relationship with the NHS boards? Do you have a partnership approach or has the matter been entirely in your domain in the past?

Pat Howell: We can always go back to our medical advisers for help, which has always been made available to us.

Margaret Anne McLean: On children's health, Glasgow City Council has a strong partnership with the health service. However, we are in a consortium with nine other authorities, so children are very likely to be placed outwith Glasgow. The issue is also to do with post-adoption support, how long it goes on for, who provides it and the services that are available. We often get positive services from outwith Glasgow. I am not detracting from that, but the picture is quite complex because it does not concern one's own authority alone.

Mr Ingram: In its evidence, the City of Edinburgh Council seemed to suggest that there should be a national adoption overview. Glasgow City Council obviously works with the authorities that were part of the former Strathclyde Regional Council. Is that the kind of model that Kirstie Maclean would like to be established Scotland-wide?

Kirstie Maclean: There are variations in the amount of collaborative working; we are probably not as good at it in the east as the authorities in the west are. However, it is important that that way of working is recognised. We are not suggesting that there should be one national adoption service, but it would be helpful if there could be encouragement or a duty to collaborate, because some authorities—particularly small ones—place very small numbers of children for adoption each year and the adopters are not necessarily recruited from within the local authority area. Indeed, we wish to place some children quite a long way from where they came from because of safety issues.

It is important that local authorities work closely together and that we share resources and knowledge. For instance, it is to be hoped that, if we are unable to recruit enough adopters in Edinburgh, other authorities that have been more successful in recruitment or which have fewer children who need adoption will be able to share their resources with us. Some of that collaboration is already in place, but any encouragement that could be given to it would be helpful.

Mr Ingram: Would you like some sort of duty to co-operate with other local authorities to be included in the bill?

Kirstie Maclean: That would be helpful.

Pat Howell: Working with other authorities has been a positive experience, especially for Glasgow City Council. The consortium continued a service that had been available in Strathclyde for a few years. It was very much about equalising supply and demand, because Glasgow has an almost insatiable demand for families, but by and large those families do not come from Glasgow. There were places where people waited for a long time to adopt children, and the service continues to be offered and to give opportunities to families. That is not the main point, but it has a place. The service has certainly enabled us to find a greater variety and number of placements for children than we would otherwise have had.

Margaret Anne McLean: It also provides children with a better choice, which is important. If the child's needs are paramount, we must have choice and be able to consider different areas. Collaborative working has really helped us to deal with some of the issues that are associated with supporting adoptive parents. We meet regularly and try to address some of those issues. Because the children have more complex needs, the challenge has become greater. That has required people to work together. The work would be much harder if specialists in adoption were doing it in isolation within their authorities.

Mr Macintosh: I have a number of questions on finance. If you have a duty towards a child from Glasgow or Edinburgh, but the adoptive family is outside those cities, who pays the adoption allowance and for any support services? Are those costs borne by Glasgow or Edinburgh or by the host authority?

Kirstie Maclean: The local authority that has placed the child pays the adoption allowance. Who pays for support depends on how distant the child is from the local authority that placed them. If they are a very long distance away, we try to reach an agreement on provision of support either with the local authority where they are placed or with a voluntary or private organisation within that authority. There has to be some flexibility.

Mr Macintosh: So arrangements are made on an ad hoc basis but are paid for mostly by the cities.

Pat Howell: I echo what Kirstie Maclean said. We are clear that if we place a child in North Lanarkshire, for example, we will pay any adoption allowance. That arrangement will continue. However, in the early days the issue of who pays for any subsequent support services was a bit more contentious. The advice to us was that if people wanted a counselling service or to attend a parenting course, that was the responsibility of the local authority in whose area the family lived. The issue was difficult, because we tended to feel that we had a moral responsibility. We were not unwilling to pay, but our advice was that it was the legal responsibility of the other authority to fund such services. It was difficult for other authorities to accept that, because they had not made the placement. The issue has not come up in many cases, but in the few cases in which it has emerged some kind of accommodation has been reached. The other authority has made a contribution and sometimes a contribution from the family has been sought. The issue has been resolved, but no one feels very happy about the situation.

Mr Macintosh: Would a potential duty to co-operate remedy or help that?

Kirstie Maclean: We probably need to be a bit more specific about whose duty it is.

Pat Howell: When we were consulted at earlier stages, there was discussion about whether the responsibility would stay with the placing authority for a certain period—perhaps three years—and then shift. People were quite positive about that, because the position was at least clear. There would be a period during which responsibility for a case would continue to rest with the placing authority, and then it would be handed on. That has not been reflected in the bill.

Mr Macintosh: Last week, Barnardo's suggested that there is anecdotal evidence that, because the support that is available for fostering grants and allowances is greater than the support that is available for adoption allowances, local authorities are using fostering—permanent fostering, as it were—when adoption would be a better route to follow. Is that happening? Does the financial support that is available work against what may be in the best interests of children?

11:45

Margaret Anne McLean: The situation is complex and finances certainly feature. In Glasgow, we have many children who it has been decided will remain in foster placements when the alternative would be an adoptive placement. The placements are with people who cannot afford to change into the adoption allowance scheme.

Our fostering allowances are being reviewed and a new system will be in place on 3 September. The allowances will take full account of the cost of foster care, with an additional fee element. The difference between the fostering allowances and the adoption allowances will therefore be greater.

We have to consider why people want to adopt and why people want to foster. People want to adopt because they feel they have gaps in their family; they may want to enlarge their family or they may have no children at all. People want to

do fostering because they want to look after children; they will often have children of their own. We encourage many of them to regard fostering as a professional job—they care for children on either a temporary or a permanent basis. The leap into adopting is a leap that people may not wish to take. We have to consider that side of the issue as well, and not only the financial side. However, the financial side definitely affects some families who would adopt.

Pat Howell: A case arose recently in which finance was an issue, but that sort of thing is quite rare. The statement from Barnardo's implies that it is a regular occurrence, but I do not think that it is. I endorse what Margaret Anne McLean said. We have to consider people's views of what they are doing for children. When people want to adopt, it has a lot to do with their own needs. Our adopters tend to be infertile couples, although that is not necessarily the case with foster carers who adopt. However, when people consider having a person as part of the family, the decision to make that jump is not about finance.

Mr Macintosh: Exactly. To be fair to Barnardo's, I do not think that it was saying that the situation was commonplace; all it was saying was that there might be financial disincentives.

Kirstie Maclean: Our experience in Edinburgh is that quite a number of our foster carers adopt the children we have placed with them. That has sometimes been because the child has been there a long time. The adoption process is very elongated. Often a strong bond builds up between a foster carer and a foster child, so that the foster home is much the best place for the child to stay.

There is a potential financial disincentive. All our foster carers are paid a fee as well as a maintenance allowance for the child and they would lose that at the point of adoption. Nevertheless, many of them make the application. I do not think that the disincentive is a huge issue. We are paying a fee to people for doing a job of work. Although adoption can be difficult and challenging, I would worry if it were considered a job of work. It is a different relationship.

Mr Macintosh: If we went down the route of having a national allowance for adoptions, would that undermine adoptions? There seem to be different practices. In Edinburgh, you pay an adoption allowance in every case in which the child has been in permanent fostering.

Kirstie Maclean: Not in every case, but in the majority of cases.

Mr Macintosh: Are you undermining that principle? There is a clear difference between fostering and adoption. When finances are involved, it can alter the relationship. Would a national allowance not have an impact on adoption in that sense? Adoption is creating a new family bond. Historically, it has been valued because people are not paid for it. If there was a national allowance, would that not undermine it?

Kirstie Maclean: I doubt it. Adoption allowances have been in place for a number of years, in recognition of the difficulties and demands of some of the children being placed and the fact that too few adopters were coming forward because people felt they could not afford to adopt. The motivation to adopt is not necessarily about starting a family; those who adopt may already have children of their own, or they may be foster carers who have children living with them. Adoption allowances are to ensure that there are no financial barriers to adoption.

Mr Macintosh: The point that I was trying to make is that those allowances are discretionary. There is no automatic right.

Kirstie Maclean: All local authorities have to have an adoption allowance scheme.

Mr Macintosh: I am just trying to work out what the difference would be if there were a national rate and if adoption allowances were made comparable to fostering allowances.

Margaret Anne McLean: By "national rate", do you mean that it would apply to all adoptions?

Mr Macintosh: It would be set nationally.

Margaret Anne McLean: The amount?

Mr Macintosh: Yes. This is what I am trying to clarify. I do not think that it would apply to all adoptions. Would you welcome a rate that was national but which did not apply to all adoptions?

Margaret Anne McLean: It is not necessary for the rate to apply to all adoptions, but a number of cases that we get—

Mr Macintosh: Would you create an expectation that it might do?

Margaret Anne McLean: No.

Kirstie Maclean: We would need to look at the circumstances of every child and of the adopter. However, I suppose that it would mean that there would be fairness and equity throughout Scotland, rather than there being a bit of a lottery.

Mr Macintosh: The committee is conscious that there is a strong argument about creating disincentives. The argument about kinship carers is a clear example. People can be penalised for being in certain relationships.

The City of Edinburgh Council compiled a helpful list of points on the financial memorandum, which you talked about earlier. Many of the costs that you identify exist; for example, you talk about the rising costs because of the changing nature of

adoption. However, how many costs are created by the bill? You said earlier that Edinburgh has a rising number of adoption cases and that the cases are more complicated and require more support, but that would be the case with or without the bill. What does the bill do to create additional costs?

Kirstie Maclean: We hope that the bill will make adoption easier, which means that more children will be placed for adoption. Some of the savings that are identified, for example fewer children going to residential care, are highly unlikely. It is the savings side of the balance that is overoptimistic. The specific additional costs will arise from the right to financial support post-adoption. Once there is awareness of that among adopters, it will create considerable demand.

The bill does not change the nature of the children who are placed for adoption, but it needs to recognise the changing nature of those children and the fact that the service that is needed now and will be needed in future must be provided throughout childhood and in some cases into adulthood. It is about the context of the bill rather than necessarily the bill per se.

Margaret Anne McLean: I agree that the cost of fostering is an issue. We have statements about how much it costs, but I believe that fostering costs more than is stated. Although it is possible for a child to move from residential accommodation into a foster home, the cost of such a foster placement would be higher than the cost of a normal fostering placement because of the additional needs of that child. We currently do post-adoption work and support families; we do the best job we can, but we do it on top of everything else that we do. The bill correctly focuses on providing proper post-adoption services, but it will cost more to achieve that. We have to consider who is going to provide that support, whether it is specialist teams or people from the area teams who have known the child in the past. The local authority will also have to address the requirement to make payments to people who are obtaining that service elsewhere. I recognise what you are saying, but I think that in practice it will be a challenge for local authorities.

Mr Macintosh: We are generally sympathetic to the problem of financing local government to support fostering and adoption, but the bill will also create a new set of rights for post-adoption support, which is not financed effectively.

Margaret Anne McLean: I acknowledge that that is not fully provided for at the moment.

Lord James Douglas-Hamilton: I thank the witnesses for the excellent papers that they have submitted. If there are any specific improvements that they want made to the bill, would they feel able to send in recommendations to the clerk so that we can act on them?

The Convener: The witnesses are all nodding their consent.

Lord James Douglas-Hamilton: I have one question for the witness from City of Edinburgh Council concerning an issue that has already been mentioned—taking a more integrated approach to adoption and fostering and involving other agencies. How can the present situation be improved?

Kirstie Maclean: At the moment, there are consortium arrangements in place in parts of Scotland, but not throughout Scotland. That has been done very much on a voluntary basis and some of those arrangements have worked better than others—those in the west of Scotland have probably been most successful. We feel that the duty to co-operate that features in the Children (Scotland) Act 1995 is useful and that it makes sense to replicate it for adoption. As a local authority, City of Edinburgh Council is resource poor and child rich. We have a higher proportion of our children looked after than many local authorities do, although we do not have more than Glasgow City Council does, and we have similar difficulties to those experienced in Glasgow in recruiting families in Edinburgh, so we place some children further afield.

We would like to see collaboration developed in a number of practical ways. For instance, where another authority is able to provide us with an adoptive family, we would like to be able to pay for that service. At the moment, it is done on a grace-and-favour basis, which is fine in many ways, but it does not motivate local authorities that have more prospective adopters than children to put the work into recruiting those families, because it is work done without any recompense. A national scheme whereby an authority could receive payment if it recruited a family who were used by another authority would be helpful.

12:00

Mr McAveety: My question follows on from Ken Macintosh's question. The City of Edinburgh Council made strong comments in its submission about the savings that the Executive identifies in the financial memorandum. I was interested in the comment that there is anecdotal evidence, which might be borne out by statistical evidence when it is available, that among looked-after and accommodated children

"there has been an increase in younger children i.e. those more likely to be placed for adoption or on permanence orders."

The council goes on to say:

"There are no children or young people currently in residential care in Edinburgh assessed as in need of adoption."

Is that also the case in Glasgow?

Margaret Anne McLean: Yes.

Mr McAveety: If there is no means of generating savings in that regard in our two largest cities, is one of the key assumptions of the financial memorandum untrue?

Kirstie Maclean: Yes.

Margaret Anne McLean: Yes.

Mr McAveety: Why did the Executive pop that into the financial memorandum?

Margaret Anne McLean: I do not know.

Mr McAveety: Be an optimist, not a pessimist.

Pat Howell: Perhaps the assumption reflects an unrealistic view of the children for whom adoption is the right solution, who are overwhelmingly aged nought to two and in the pre-school age group. School-age children can have far more complex needs than people who come forward to adopt children are prepared to take on.

Mr McAveety: Our two largest cities are saying, "We aren't going to make those savings." However, even if there was the potential to make such savings, would the money that was saved find its way to the fostering and adoption services in the way that you would like it to do? The committee heard evidence that there is a massive issue about getting resources into that sector and today's witnesses talked about the matter in relation to what they would like to happen post-adoption.

Margaret Anne McLean: Resources are available post-adoption. In Glasgow, there is a commitment to changing the balance of care that has been talked about. There are ways of doing that through fostering rather than through adoption, but if that happened, the money would have to go into fostering.

Mr McAveety: In your experience, is there any evidence that the experiences of children in a care environment are much more problematic if their carers are unmarried couples or in same-sex relationships?

Margaret Anne McLean: I do not think that there has been much research into the matter, but the research that has been done indicates that children's experiences in such environments are as positive as they would be in any other family placement. We have some experience of successful placements of children in such environments.

Mr McAveety: Are key elements such as the environment, the nature and sustainability of the relationships that are made and the quality of the care equivalent in same-sex couples and married couples?

Kirstie Maclean: Yes. Obviously we have to consider individual circumstances and what people can offer, but I would not want to label any specific group as different. The only slight difference that I would identify relates to single adopters, who usually need a bit more support than do couples.

Mr McAveety: How will the bill benefit children in such circumstances?

Kirstie Maclean: The bill will open up more opportunities for recruitment, because people will not be ruled out as a result of the nature of their relationship. In our recruitment advertising, we will be able to say that we positively welcome applications from different sections of the community. I do not think that huge additional numbers of people will come forward, but there will probably be a few applicants who previously thought that they were excluded from adopting.

Margaret Anne McLean: There are indications that that is correct. We have had more inquiries from same-sex couples recently, which I think is because people are aware of the bill.

Mr McAveety: So you are strongly of the view that the welfare of the child will not be compromised by the extension of the legal provisions.

Margaret Anne McLean: Yes. In placing children, we always consider the match of the child with particular families. That applies to any family and would apply to the families that we are talking about.

Ms Byrne: I seek clarification on the fostering allowance. The City of Edinburgh Council recommends that the Fostering Network rates should be used throughout the country. Will you give a short sketch of the current situation with fostering allowances?

Kirstie Maclean: The allowances vary throughout the country. Several authorities, although I do not know exactly how many, pay the Fostering Network rates, as do several voluntary agencies. For instance, Barnardo's recently adopted those rates. Until recently, Edinburgh's rates were the second worst in the country, although we have increased them through a Scottish Executive grant so that we are just about into the top half. However, we are still well short of the Fostering Network rates. Our concern is that a national figure that is rather low would be a detrimental step, because in authorities that have worked hard to achieve better allowances, the members would wonder why they should pay more than the nationally recommended rate. A nationally recommended rate that is set too low could be a retrograde step.

Ms Byrne: Is it the case that some local authorities find it difficult to recruit more foster carers because of the anomaly that the independent sector pays higher rates, which causes foster carers to move to the independent sector?

Margaret Anne McLean: The independent providers pay a much higher fostering rate than the average, which has been a challenge for authorities that need to recruit high numbers of foster carers. In Glasgow, when the independent providers came in, we initially lost carers and staff to those providers, so there was a loss of expertise and carer resources. Recently, the situation has stabilised and there have been no further losses of carers. However, we had to address the rates that are paid. Glasgow has a fairly high proportion of carers who are paid more than the Fostering Network rates. By September, all carers will be on the FN rates and will also receive a fee. That is a direct result of the fact that we must be competitive.

Kirstie Maclean: We have lost fairly few carers to the independent sector, but we now have more difficulty recruiting, because more organisations fish in the same pool. There are people who can be attracted to fostering but, for most families, it is an alternative to work for at least one partner in the family, so we must pay competitive rates.

Ms Byrne: So you all recommend that the Fostering Network rates should apply nationally.

Kirstie Maclean: Yes, provided that we get the financial help to pay those rates. The FN rates are the acknowledged benchmark. The Convention of Scottish Local Authorities no longer makes a recommendation on that, so there is no other benchmark.

Ms Byrne: Do the other witnesses agree?

Margaret Anne McLean: Yes. The FN rates take into account all the costs of fostering and are therefore fair.

Ms Byrne: I see that Pat Howell is nodding.

Fiona Hyslop: The City of Edinburgh Council makes a strong statement that it continues to

"disagree with the principle of giving Children's Hearings a place in permanence and adoption."

I am interested in whether Glasgow City Council agrees with that, but I first want the City of Edinburgh Council to explain what role in permanence and adoption the hearings system will have if the bill stays the same and what practical problems are envisaged if the children's hearings system has that role.

Kirstie Maclean: This is not my area of expertise, so if you want detailed information, it would probably be helpful if I send it to you after I have asked my colleagues to contribute. The previous witnesses referred to the conflict between the hearings system and the courts in decision making and the fact that the involvement of the hearings system slowed down the placing of children for adoption. Most of the children who are placed for adoption are not at the age of criminal responsibility. We are not suggesting that the children's hearings system should not be involved in considering criminal issues, but the fact that two legal forums are involved can muddy the waters.

Fiona Hyslop: Are you saying that if, in the process of adoption, both juvenile criminal behaviour and welfare issues had to be considered, the welfare issues would be considered by the courts, but the children's hearings system would consider the criminal behaviour?

Kirstie Maclean: A child who had been adopted or who was subject to a permanence order might have to go to a children's hearing because they had committed an offence. That is absolutely appropriate. However, in cases where contact is being considered in two different forums, the waters can get muddied. It appears that, under the bill, that situation will continue.

Pat Howell: I attend children's hearings fairly regularly during the adoption process. It is clear to me that there are huge problems with having decisions remain in the children's panel domain. Once we get into adoption planning, the court should make the decisions; just one body should be making the decisions.

Fiona Hyslop: You deal with the adoption of children aged nought to two in particular. What would the children's hearings system do with them that would interfere with or duplicate what was being done in relation to permanence or adoption orders?

Pat Howell: If children are under supervision, we have to go to the panel to change their place of residence and return for an advice hearing after they have been placed. Sometimes the panels are good. I am not saying that things are difficult universally, but difficulties arise more often than not.

Panel members must be able to make their decisions with an understanding of what permanence and adoption are all about. They consider the sort of cases that we are talking about fairly infrequently, so they are often at sea in the decisions that they make; they sometimes do not make good decisions about contact.

It is in the nature of the hearings system that, try as we might, we often get three different panel members at each hearing, who might have limited experience of the issues involved and who are easily swayed by what happens on the day. On one occasion we might get a decision that contact

will be diminished and on another we might get a decision that contact will be reinstated. We often go to a hearing to get a child into an adoptive placement or to an advice hearing and find that the panel increases the birth parent's contact. We are often left feeling that panel members are swayed by the emotional impact of the presence of a birth parent who is distressed or angry or who is accompanied by a solicitor.

12:15

I do not want to be defensive about local authorities, because someone should scrutinise what we do and should ensure that we do the right things, but there can be volatility in the decisions that are made at children's hearings—sometimes you feel that you have made progress and sometimes you feel that you have gone backwards—which is not in the best interests of the child. Action can be taken later than is necessary. My understanding is that it was not expected that safeguarders would be appointed so far down the line, but they can be appointed when we are trying to move a child or at the advice hearing, even though there has been no change in the material circumstances. I think that, sometimes, that is done as a gesture towards the birth family.

As I say, it is not that we want total control of the process or that we expect our recommendations always to be ratified. However, at times it is hard to follow a theme through in a way that gives you confidence that the decision that has been made is in the best interests of the child. I feel strongly about the issue because we are making hugely important lifelong decisions. It would be good if we had a legal set-up whereby, as far as possible, the same people followed through cases and knew the background. Often, new panel members do not understand what the social work department has done to help a family. However, we are there on the day because all other options have been exhausted and we have reached the end of the line.

Fiona Hyslop: Should there be something in legislation to determine the relationship between the children's hearings system and the adoption process?

Pat Howell: That is what I feel is missing. Obviously, the regulations are still to come and I hope that we end up with greater clarity in that regard.

Fiona Hyslop: I am not sure whether we are taking oral evidence from the Scottish Children's Reporter Administration, but we might seek its response to some of the points that have been made today.

Margaret Anne McLean: We heard earlier about the large number of children who are being accommodated. Based on their age, the biggest increase is in young children. Last year, a third of the looked-after children who came into foster care—124 children—were aged nought to two and half were aged nought to four. Most of them had been involved with a children's hearing; few of them had come into foster care through the section 25 route, which involves consent to adoption. The hearings system is extremely pertinent in that area.

As the chair of the adoption panel, I say that it takes too long to place most of the babies and youngsters for adoption. When I ask about that within the panel setting, I find that there are issues with regard to our practice, which we undertake to address. Staff need to have the confidence to make the necessary decisions. However, fairly consistently, social workers from the area teams say that they have struggled to get decisions and plans agreed at children's hearings. That does not happen in every case and, sometimes, we could have got the paperwork done more quickly. However, the children's hearings process features prominently in delays.

Many more than 60 children could have been seen by the adoption panel last year, but the process takes so long that they grow and become ineligible for the panel. Unfortunately, when they get to the over-two stage many of them do not get to an adoption panel because it takes too long. Eventually, they are with their foster parents for so long that it becomes a fait accompli and they are in a permanent fostering arrangement even though it could have been adoption. That is tied up with the children's hearings system and our own practice.

Mr Macintosh: Kirstie, on the first page of your submission you take exception to the policy memorandum's statement that adoption serves the needs of people who wish to adopt as well as the needs of children. Do you think that that statement undermines the child-focused nature of the bill? Is there a suggestion that the bill does not strike the right balance between the rights of children and the rights of adoptive or birth parents?

Kirstie Maclean: We find the statement odd, but it is not particularly reflected in the bill. I hope that adopters' needs are met in some way by children being placed with them because, if their needs are not met, placements are likely to break down. However, we believe that the service must primarily be about meeting children's needs. There are many reasons why people come forward to adopt. Some of them are childless and they are hoping to meet that need, but some of them already have children and some of them are foster carers, as we said. The statement is therefore inaccurate, but it is also unhelpful, because it puts

adopters' needs on an equal footing with children's needs. The primary purpose of adoption must be to meet children's needs.

Mr Macintosh: But, in a practical sense, the statement in the policy memorandum is not reflected in the bill. There is no imbalance in the bill itself.

Kirstie Maclean: I do not see it reflected in the bill. As I said, that makes it rather an odd statement. However, we thought that it was important to state that we are not happy with it. We are also concerned about the statement that adoption is

"first and most importantly the need that some children have to be looked after outside the parental home".

For a considerable number of children who need to be looked after outside the parental home, adoption is not the right thing, but there is a group for whom it is. Again, the wording is quite odd.

The Convener: Finally, I turn to the matters that are to be taken into account by the courts and adoption agencies under sections 9 and 10, and to whether the grounds for dispensing with parental consent in section 33 are too wide. Do you have any comments on those two areas?

Pat Howell: Our comment on that came from our legal section, which thinks that the provisions are too wide. Personally, I do not see them in that way. I interpret the wording as a way, perhaps, of removing the need to blame the birth parent, which seems constructive. I cannot expand on the point because I do not have detailed information from our legal section, but it thinks that some of what is in the existing legislation should be retained.

Margaret Anne McLean: We did not have a debate with our legal services; it provided its response, which mentions the existing legislation. I can understand its response, because daily in court it implements plans for children. It uses the various grounds—such as abandonment or persistent ill-treatment of the child—to make cases and it is obviously concerned about things being done in a more subjective way, with things being interpreted differently between one sheriff and another or one person and another.

The Convener: If the bill is not amended in any way, will there require to be some form of guidance or regulation to define more clearly what is meant by the welfare of the child?

Pat Howell: Yes, definitely.

Kirstie Maclean: Although I am not aware that it has been a difficulty in practice, the danger of having specific grounds is that there might be children who fall outwith them but who would, nevertheless, benefit from adoption and the dispensing with of parental consent. I think that the new ground makes more sense than having a list of specific grounds, but I realise why it might be a difficulty from a solicitor's point of view.

What was the question about sections 9 and 10?

The Convener: It was about the matters that are to be taken into account when children are placed for adoption.

Kirstie Maclean: Those provisions have not changed very much, if at all, from the current legislation.

The Convener: Are you satisfied that they are right? Do they include points that should not be taken into account or are there others that should be included but are not? If you are satisfied that they are fine, just say yes.

Kirstie Maclean: They seem to be fine.

Margaret Anne McLean: They feel familiar. It feels like sections 9 and 10 cover what we do daily. It does not feel as if we need to add anything. They feel comfortable.

Mr Ingram: The extra bit is that the wishes of the child's relatives—not just their parents—are to be taken into account as well, but I presume that you do that as a matter of course anyway.

Pat Howell: Yes.

Kirstie Maclean: Yes. I welcome that inclusion, because grandparents and other close relatives can feel excluded, and it is right that consideration is given to them.

Pat Howell: That provision is also about thinking about what happens when adopted people later in life want to know about their origins and birth families. If we include relatives in the process, we will do a bit of work that will stand us in good stead at that later stage.

The Convener: That concludes the questions to Kirstie Maclean, Pat Howell and Margaret Anne McLean. I thank them very much for coming along and giving evidence. If they wish to make additional points to the committee—particularly on any specific amendments that they wish to be made at stage 2—they should feel free to write to the clerks with them.

Child Protection

12:27

The Convener: Item 2 is the six-monthly update on the child protection reform programme, on which we have a letter and note from the Deputy Minister for Education and Young People. Do members have any comments?

Mr Ingram: Not having had the opportunity to go through the papers in significant detail or to have a follow-up discussion with the minister, I would be loth to let the matter go today for another six months. Could we come back to it?

The Convener: The committee has a fairly tight agenda for the next few meetings, so it is unlikely that we would be able to return to the item much—if it all—before the summer recess. If members want more information from the minister on specific issues, I would rather that we write to him for clarification. If we need to or if the opportunity arises, we could call the minister in after that. I am not suggesting that we just let the matter lie for six months but, by the time we get a slot in which we can consider it, we might be halfway to the next update anyway, so it would be better putting to the minister any specific questions that you have arising from the update.

Fiona Hyslop: The committee's scrutiny of the matter has undoubtedly helped the Government's accountability on delivering the reform programme, so it is important that we give it the necessary time and attention. Having gone through the update, I must say that it raises more questions, as it usually does. In his letter, the minister mentions the implementation of the Bichard recommendations. There is also reference under recommendation 13 to more legislation on agencies' involvement in referrals to children's hearings and compulsory supervision measures. I assume that that recommendation will also have an impact because it refers to the Children (Scotland) Act 1995 and the children's hearings system.

12:30

We need to take stock of what legislation is being introduced and when because the committee is chock-a-block with legislation to consider. We need to know which provisions will appear in which bills and whether there will be separate children's hearings legislation to deal with child protection issues.

The update states that recommendation 12 has been

"Actioned as indicated in previous update."

Unfortunately, it does not say in our papers what that action was. The recommendations were made in 2002 and it is now 2006. In the past few weeks, the First Minister has expressed serious concerns about drug-misusing families and children and we heard about a change in context only today. I have lots of questions on the review update for either the minister or officials. As a result of the experience in Edinburgh and the O'Brien report on the Caleb Ness case, we know that information sharing is critical.

There are more practical funding problems, too. E-care funding is held centrally as opposed to being dispersed, which has implications for the architecture of computer systems. I also want to know what is happening with the proposed single telephone number that has been piloted in Grampian. Will it be rolled out or has the pilot not worked? Will it be a national number? Will it be referred to social work services? We need to keep on top of various matters. I would like to ask those questions of officials, but preferably of the minister.

As I said, we need to take stock of the legislative implications of the update and what has been said recently. I would like the opportunity to have that discussion and to find a way forward. As fewer than half the committee members are present, I am happy to jot down those suggestions, but I do not know whether others have the same concerns.

The Convener: I am not against inviting the minister to answer questions, but we need sufficient time to do it effectively. Until we have sorted out the Adoption and Children (Scotland) Bill, we will not have much time. There might be one slot before the summer, after we have completed the draft report, in which we could fit in a session with the minister, but time is probably too tight to do anything useful before then. That is why I suggest we write to the minister to get an update on matters that you think have not been covered adequately. That might give us information more quickly that we can then follow up with the minister if we feel that his answers are not satisfactory. I will write, "These are questions that committee members want answered," rather than say, "The committee has agreed that we want to ask these questions."

Perhaps you could make a note of the questions that you want to ask and I will write to the minister on behalf of members. Once we get the reply, we can decide whether we need to bring the minister in for an evidence-taking session. I am conscious that we need to keep things moving. Waiting for six weeks—which is probably the minimum period before we can deal with matters—might delay things unnecessarily.

Fiona Hyslop: Okay, that is fine.

The Convener: If members are content with that approach, may I have any questions by Friday, so

that we can draft the letter and have a quick look at it next week? I will ensure that absent members are made aware of that opportunity.

Members *indicated agreement*.

The Convener: That concludes this week's business. Next week, we will continue to take oral evidence on the Adoption and Children (Scotland) Bill. I also hope to consider the draft report on early years education.

Fiona Hyslop: I will be slightly late next week.

The Convener: Noted. I thank members, and I thank our adviser for the helpful briefing note.

Meeting closed at 12:34.

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