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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 24 November 2010

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

31st Meeting 2010, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Alasdair Allan (Western Isles) (SNP)
*Claire Baker (Mid Scotland and Fife) (Lab)
*Ken Macintosh (Eastwood) (Lab)
*Christina McKelvie (Central Scotland) (SNP)
*Elizabeth Smith (Mid Scotland and Fife) (Con)
*Margaret Smith (Edinburgh West) (LD)

COMMITTEE SUBSTITUTES

Ted Brocklebank (Mid Scotland and Fife) (Con)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)
Dave Thompson (Highlands and Islands) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Tam Baillie (Scotland's Commissioner for Children and Young People)
Hugh O'Donnell (Central Scotland) (LD)

CLERK TO THE COMMITTEE

Eugene Windsor

LOCATION

Committee Room 4

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 24 November 2010

[The Convener *opened the meeting at 10:00*]

Autism (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I open the 31st meeting of the Education, Lifelong Learning and Culture Committee in 2010. I remind all those present that mobile phones, BlackBerrys and other electronic devices should be switched off for the duration of this morning's committee deliberations.

The first item on the agenda is our final evidence session on the Autism (Scotland) Bill. I am pleased to welcome Hugh O'Donnell, the member in charge of the bill, and Doreen Nisbet, his parliamentary aide. Mr O'Donnell, would you like to make an opening statement to the committee before we ask questions?

Hugh O'Donnell (Central Scotland) (LD): Thank you, convener. I thank the committee for giving me the opportunity to present evidence on the bill. My connection with autism predates my involvement with the Parliament in any capacity. Many of you will know that I worked in the Parliament in another capacity before being elected.

My concerns around autism and autism services are founded on first-hand experience as a support worker in the voluntary sector working with adults with autism, of the difficulties and challenges that they all too frequently faced—notwithstanding the legislative framework that existed at that time—in accessing appropriate services, and of the challenge that was presented by mainstreaming those services for people with autism.

My view of the inadequacy and patchwork nature of autism services was reaffirmed when I came to work at the Parliament in 1999. Casework for my previous employer indicated that that was not a unique perception, but that the same issues were being experienced throughout Scotland in a variety of ways. Consequently, I watched with interest the developments that took place in England and Wales. I felt that people with autism in Scotland deserved no less an opportunity to access services that are appropriate to their needs. Having followed the parliamentary procedure and conducted a consultation, I produced the bill.

The Convener: Thank you, Mr O'Donnell. I am sure that the committee will have a number of questions for you. You have advised us of your long-standing interest in autism. Why do you believe that a strategy that is underpinned by legislation is appropriate for dealing with autism when the Scottish Government has many strategies to which it is committed and that it is currently implementing, but which do not have a statutory footing? Why is autism different?

Hugh O'Donnell: Your point about the Government's strategies is well made. When I had a brief look in 1999, I was able to track down about 20 different documents that had the word "strategy" on either their front cover or their front page. The committee will be aware of the recently published carers strategy. During the parliamentary debate on that, I pointed out that although the rhetoric and the recommendations are fine and worth while, implementation is the major challenge. Experience shows that we have revisited the carers strategy three or four times; yet, conversations and meetings that I have had with those who represent carers have revealed that there is still inadequate performance in terms of delivery. The problem is implementation.

Prior to today's meeting, you will have heard from people who are more expert in autism than I am that it is a fairly unique developmental condition—I will not rehash the clinical definitions. Over the past 15 or 16 years, the general trend has been towards person-centred services, but autism falls between too many stools and therefore misses out on a number of services that are picked up in other pieces of legislation. I feel that in order to address the issue, we need central leadership so, as you are no doubt aware, the bill's main focus is on placing the duty and responsibility of leadership on Scottish ministers. All too often, strategies fall down in their implementation. A legislative framework that puts a duty primarily on ministers might focus minds much more than strategies that are produced—for want of a better expression—by focus groups.

The Convener: What is your response to the Equality and Human Rights Commission's view that your bill could dilute the Government's work to end discrimination for all people with disabilities? Its written evidence to the committee suggests that if we single out people on the autistic spectrum we will exclude and discriminate against others who have disabilities.

Hugh O'Donnell: My view is that the bill is equality legislation. From the consultation responses that I have received and, to an extent, from previous witnesses' oral evidence to the committee, it is clear that people with autism are currently disadvantaged and—not deliberately, I hasten to add—discriminated against. This bill will, if enacted, provide an opportunity to equalise things. Other pieces of equality legislation such as the Disability Discrimination Act 1995 highlighted and picked out particular sectors of our society for protection because it was perceived that they were not being treated fairly. I see no difference between that approach and the approach that I am taking in this bill, which is equalising rather than discriminatory.

The Convener: Do you accept the concern that has been expressed not just by the EHRC but by a number of individuals, including the Minister for Public Health and Sport, that if your bill were to receive parliamentary support and to be enacted it would create a legislative framework for an autism strategy that does not exist for any other strategy and that, as a result, Government would be more minded to comply with it at the risk of excluding others?

Hugh O'Donnell: I see the argument. However, I reiterate that this is an equalising bill that seeks to address the levels of institutional and indirect discrimination that are faced by people with autism in accessing mainstream or person-centred services. In any case, I believe that every Government strategy should be supported and backed by a legislative framework. I do not see why that should not be the case.

The Convener: I think that such an approach might be rather costly. Is that a costed commitment from the Liberal Democrats?

Hugh O'Donnell: It is simply an observation, convener.

The Convener: Perhaps we should not go there.

Elizabeth Smith (Mid Scotland and Fife) (Con): You have been very clear to the convener about the need for legislation. However, some people have suggested that, given the length of time that the legislative process will take, we could be getting on with putting in place a proper strategy that would be more effective than what is in place at the moment. Do you accept that there might be a slight conflict of interests in that respect? If a strategy were to be developed now without the legislative process and then this legislative framework were to be brought in, would it be difficult to tie the two together?

Hugh O'Donnell: I have no doubt about that. Let me first deal with the recommendations that the Government has put on the table; they are recommendations, rather than a strategy. Some cynics—I am not one of them—might suggest that the autism reference group, which had been abandoned in 2008, was not resurrected until after my proposal, notwithstanding the fact that a number of organisations had been in communication with the Government during 2008 and subsequently to ask for reinstatement of the reference group. That seems to indicate that there is an awareness in the Government that there were shortcomings in relation to that.

I am aware that my proposals are built into a legislative framework and will rightly require a higher level of scrutiny, but I also recognise that it is better to be right than it is to be fast. My general concern is that I have consulted in as wide a way as I can, having received in the order of 144 responses from individuals and organisations. You will have seen the analysis: the vast majority were supportive.

The Government invited me to be part of the writing group for its recommendations. With due respect to all of the expertise that sits on the autism reference group, the document, with a series of recommendations, was completed prior to the conclusion of the consultation. To me, that is putting the cart before the horse: if the Government is going to have an inclusive strategy, it has to consult all the stakeholders before reaching conclusions.

In direct response to your question, I recognise that the legislative process requires greater time. My answer to that is, again, that it is better to have this level of scrutiny and an accurate and effective piece of work than it is to get in fast with something about which, as I understand it, a number of organisations have already expressed concerns.

Elizabeth Smith: Do you feel that legislation is needed to enforce a more level playing field? Can you be specific about what legislation could deliver that a good strategy could not do on its own?

Hugh O'Donnell: I hesitate to say that the force of law focuses the mind considerably, but it does. I believe that legislation is necessary. Like all committee members, I have watched as the strategies that have been produced by not just this Government, but by previous Governments, have been revisited and—not to put it too bluntly—sidestepped by those who are responsible for their implementation. What we need centrally is leadership, and we need it to be focused in a legislative framework. There are too many variables and options if things are not built on a legislative framework, and the danger is that we are reduced to making decisions by focus group. The legislative framework in the bill will provide a focus for ministers and officials, and it will provide focus and leadership that we do not currently have on Government recommendations for the people who are responsible for implementation, in a much more specific way than a general strategy without legislative support would. I recognise that in many ways they will be devolved areas of responsibility.

Elizabeth Smith: Thank you for that answer. It is helpful, and I can understand your perspective.

I will return to what the convener asked. If we have legislation on the autism strategy, what will happen to the other strategies that do not have legislation? The concept of a level playing field would disappear for people with other conditions.

10:15

Hugh O'Donnell: My response to that is hypothetical to an extent, until we see what happens with the proposal. As I said to the convener—and without getting into party politics, which would only get me into trouble—I am strongly of the view that the rhetoric and the commitments that are made in relation to strategies that do not have legislative support, but which are drawn up with the best of intentions, are all too often diluted when it comes to implementation. We all have experience of that, either as elected members or, as in my case, through having previously worked in the Parliament. We have all seen the dilution of such strategies. Sometimes I understand the reasons for it, but that does not mean that those reasons are necessarily right.

It would be for the Government of the day, of whatever composition, to revisit the strategies, should my proposal proceed to its conclusion and be enacted, and the Government is already doing that in the light of concerns among people who have been affected by strategies' not being implemented. That can involve carers or people working in other areas where strategies of one shape or another have been announced. With due respect, announcing such things is relatively easy and relatively inexpensive, but the key point is about their delivery. There needs to be a step change—otherwise, strategies just become political tools for calming down the discontents who are lobbying on any given issue.

Alasdair Allan (Western Isles) (SNP): I do not think that anyone would dispute the size of the issue that the bill seeks to deal with, but I am not completely clear about what, in concrete terms, you think legislation underpinning a strategy would actually provide for families that a strategy without legislation would not provide. Can you give me some concrete examples, in the everyday life of a family with someone with autism, of situations that would be different were there to be legislation in place?

Hugh O'Donnell: I have been very clear about the box in which I have defined my proposal. Experienced in a limited way as I might be in this area, it is not for me to define the contents of the strategy that could emerge. I am sure that, with some tweaking, and following consultation of a variety of stakeholders, some of the proposals among the Government's recommendations might be of benefit.

I will pick from my casework one example of engagement with autism organisations and parents of children with autism; this came across my radar just two days ago. Because I do not have permission from the individual, I will avoid using names that might identify them. The case is that of a young child, below secondary school level, who has been diagnosed with autism.

The child is at a unit that provides additional support needs as part of a mainstream school, although the unit is separate from the school. The child has a co-ordinated support plan. Without prior consultation, without reference to that support plan and without reference to the parent, the local authority in question changed the supplier of the transport and the driver that the child uses. You will be aware that one of the issues with autism is, in many instances, the need for consistency, routine and engagement—for things that do not spring any surprises. The consequence of that change—which was not consulted on or discussed, as far as I understand—was that the child panicked on seeing a different vehicle and a different driver, and was subsequently absent from school for a period, until relationships were re-established.

Such things have a major impact on the education of children and their wider family because the parents need to deal with the child care and child support issues while the child is not at school. There is a domino effect. That was a small thing, but it need not have occurred if, within a legislative framework, the strategic proposals at national level required consultation prior to such changes. There was a consequential cost to the service provider—the contracted commercial company—and to the child's parents and family, which could have been overcome through a national framework that obliged the local authorities "to have regard" to elements. I am sure that we will come to that. In another local authority, people will sit down, say that they will change the provider of a particular service, and will introduce the new service provider to the family, child or young person. That eases things. There is a lack of consistency because there is no national framework to which those who provide services are obliged to stick.

I hope that that is an appropriate illustration.

Alasdair Allan: Yes, but which bits of legislation are currently failing?

Hugh O'Donnell: There is currently no specific legislation that relates to autism. A number of pieces of legislation across the spectrum of legislative provision, such as Education (Additional

Support for Learning) (Scotland) Acts 2004 and 2009, should pick up such issues, but the problem is that there is nothing to stop any local authority or service provider saying, “We didn’t need to do that.”

It is a bit like carers’ rights to assessment: there is a right to assessment, but there are no rights that relate to the consequences of that assessment, simply because such rights were not built into the legislation. People will comply with the various bits of legislation that are currently in place, but there is no consultation once there is a step outside of them.

Services are changed. I have a piece of casework from a local authority. In that case, service-level hours and service providers for the adults were changed without consultation. If we have a national framework and a strategy that says what should be done and that service providers, whether they are public bodies or voluntary sector bodies, must have appropriate regard to them, that would give a stronger national picture, as opposed to the postcode-lottery approach that tends to be taken.

Alasdair Allan: I do not mean to put you on the spot with respect to your comments in response to a previous question, but I will. You suggested that strategies that are not underpinned by legislation are in some way defective. What were you thinking about? Were you thinking about the dementia strategy or our strategies relating to people with various other disabilities? I am not putting words in your mouth, but I think that you said that it would be better if all the strategies were underpinned by legislation. How many bills do you envisage?

Hugh O’Donnell: My concern is that, unintentionally, loopholes are left that people can get through. Let us consider the disability legislation as an example. To some extent, the example is anecdotal; it is based on conversations that I have had with people. I can think of one local authority that has a three-year waiting list for an opportunity to access independent living funds.

Alasdair Allan: Are you suggesting that you would like a bill to underpin every strategy that the Government has?

Hugh O’Donnell: I could make a reasonable case for that.

Alasdair Allan: Could you find parliamentary time for it?

Hugh O’Donnell: That is an entirely different question, and it is the Government’s responsibility rather than that of a back bencher. I am saying that having a legislative framework and giving a strategy force of law focuses the mind and affects how people approach implementing that strategy. That is my intention with the bill. It is about focusing the mind and minimising the loopholes that allow public and other organisations to find ways of not doing things in the most effective way and to the best of their ability.

It is not for me, as a back bencher, to suggest that that should be done in every situation, but I know, anecdotally at least, of instances in which organisations used the lack of legal enforcement as a way of circumventing, for whatever reason, the good intentions behind many of the strategies that we have. We have all seen that, if we are honest. That is as much as I am saying.

Claire Baker (Mid Scotland and Fife) (Lab): The question is whether the bill brings in additional legislation to address gaps or whether it tries to make existing legislation work effectively. In the example that you gave of a child and their co-ordinated support plan, the issue should have been resolved through the co-ordinated support plan and existing services. If that is not working properly, the question is whether the bill will make it work any better than it does. Last week, in light of evidence that it took, the committee felt that, although there is a range of legislation to support children in school up to the age of 18, there are issues with adult services and transition. We felt that those issues need to be addressed. The question is whether the bill is the right way to do it. Are there gaps in the current legislation that need to be filled, or is the bill about making that legislation work more effectively?

Hugh O’Donnell: It is probably a combination of both, to be honest. Working from memory, I think that about 7,500 children in Scotland’s schools are recognised as having autism and there are about 44,000 who need support. It is difficult for me to make an assessment of the needs of all those children and how they are being met because they are variable and even gathering the statistics is a major challenge.

About 18 months ago, we asked all the local authorities how many of the young people who were entitled to have a transition plan had one. There are, according to the Scottish Government’s website, about 7,500 young people with recognised autism, but only 105 children with any kind of additional support need have a transition plan. There are clearly more than 105 kids going into the transition period. A number of local authorities did not respond at all and some of the responses were pretty vague. That addresses your point about existing legislation. You are absolutely right that it needs to work more effectively.

I can find no figures for how such things are being dealt with for those with autism, so there are clearly challenges with implementation. However, if we had a legislative framework that highlighted the autistic spectrum, it would have a wider benefit for the implementation of the existing legislation. It is a two-pronged approach.

10:30

In an ideal world, I would like to see those who are diagnosed with autism having a person-centred life plan that at each stage in their life helps them through the transitions that are difficult enough for any young person who has support needs but are made particularly difficult by the nature of autism. That is why I am keen on having an overall strategy for autism. By and large, most local authorities try hard under the legislation for additional support for learning—I can think of a number of specific units and facilities in the education system—but, as we move out of the education system, we begin to see the process breaking down. For example, there is the transitions issue to which you referred.

I am concerned that the current legislation is not being implemented properly or effectively. Even when it is being implemented for people who have learning disabilities, young people who have autism, who might or might not have a learning disability, are falling through the cracks. The needs that they have that are specific to a particular type of condition are not being met by the general legislative framework. I do not know whether that answers your question.

Claire Baker: Yes but, as you have recognised, there is legislation that covers children and young people and they are entitled to transition plans, so they should be receiving them under the current legislation. You seem to be saying that the solution is to introduce further legislation to ensure compliance with existing legislation, but local authorities should be complying with existing legislation. I wonder whether further legislation is the right or most effective way of ensuring that current legislation is being implemented.

Hugh O’Donnell: I understand the point, and it is well made. However, part of the problem is about the distinct nature of autism. It does not sit within mental health, for which we have a good legislative framework, or within the learning disability sector. All too often, it is a bolt-on. An assumption is often made—perhaps with the best of intentions but without recognising the nature of the condition—that if we do something for the learning disability or mental health sectors, it will automatically benefit those with autism. That is clearly not the case. It is estimated that there are 38,000 young adults and adults out there who are getting no services because they have fallen through the cracks in the current legislative framework because of the way in which it is set up.

Ken Macintosh (Eastwood) (Lab): One of the arguments that some of our witnesses have made, including the Scottish Society for Autism, is that the bill is designed to help to enforce or implement a strategy, so the strategy should be put in place first so that we can know more detail. What do you make of that argument?

Hugh O’Donnell: The first thing that we need to do properly—and I have tried to do it with the bill—is consult all the stakeholders. The autism reference group, which was resurrected relatively recently, does not contain any member with autism representing people who have autism; it has no member representing people with autism because it just has organisations. There is one parent, and the rest of the representatives are clinical specialists. I think that proper and wide consultation is needed in order to arrive at a strategy. The Government’s recommendations were drafted before the consultation that it is now engaged in. As I said at the outset, that is the wrong way round. I believe firmly that it is for the Government to put a strategy together. It is not the intention of my proposal to make that strategy. I do not have the expertise to do that. I was concerned that there is no strategy in place; most of the respondents to my consultation were convinced that there is no strategy in place.

A number of people have expressed concerns about these being recommendations from the Government. Were the Government minded to engage with all the stakeholders and not just with those in the autism reference group, which it reconvened, there are proposals in the recommendations that could sit quite comfortably within my legislative proposal. It is not impossible for the two to be blended, but it needs to be done in the right way. I am afraid that producing the strategy and then consulting without having drawn the evidence is, to my mind, the wrong way forward.

Ken Macintosh: One worry that people have about the lack of detail about the strategy in advance of the legislation is that there will be costs associated with any strategy. Do you have any idea of what the costs will be—either the potential costs or the potential savings?

Hugh O’Donnell: On savings, I think that you have already received evidence from Robert Moffat, of the National Autistic Society, and Mr Somerville, of the Scottish Society for Autism, indicating that the cost of providing inappropriate services is something like £23 billion in the UK. I cannot say, because we do not have accurate numbers—it is all extrapolations—what the cost to the economy is of providing inadequate services. However, I will take a very good run at it and suggest that providing inadequate or inappropriate services is more expensive than it would be to do it properly.

It is not necessarily about spending more money; it is about spending the money that we have smarter and making services fit, mainstreaming the needs of people with autism and modifying services. For example, the autism card scheme might, in the event of a behavioural incident in public, prevent a person with autism from engaging with the criminal justice system or with inappropriate mental health services, which obviously would have consequential costs. It is a cliché, but it is about working smarter.

The committee took evidence in private session from people with autism who spoke for themselves. My experience of them is that they are not looking for extra services and extra money to be thrown at them by any stretch of the imagination; they are looking for appropriate services and money to be used to help them to live as productive a life as they can. There are some areas where small investments—for example, in the case of employment, a buddy system or job-coach system—will pay huge benefits in economic independence and socially by enabling people to feel that they are living as part of society rather than perhaps being in their room in front of the television.

The cost benefit analysis is quite difficult to do because we do not have the data to do it completely. However, I am convinced that, although there will be some costs, they do not necessarily have to be as big as people would have you believe. People need to start thinking outside the box about how they deliver services and how appropriate the services are for the needs of the individual rather than delivering services on a block basis and saying, “This is the disability sector and they will get this service, whether they like it or not.” Working smarter can be more cost effective.

Kenneth Gibson (Cunninghame North) (SNP): Good morning. The issue of the national strategy underpins a lot of what we have discussed this morning. To follow on from Ken Macintosh’s questions, you said earlier that

> “it is not for me to define the contents of the given strategy”

and expanded on that a wee bit. Is that not one of the reasons why the Scottish Society for Autism, for example, believes that the bill should not progress in its current form at this time?

Hugh O’Donnell: It is for the SSA’s representatives to say why the organisation’s chief executive said what he did but, in fact, he also said that there is a desperate need for legislation and that he recognises that people with autism are currently being disadvantaged. Those of us who have a long-standing interest in autism know that the politics of the sector presents challenges in getting people to come together. As I said previously, one member of the reference group is supportive of the bill.

I think that we need to be clear that the strategy has to be consulted on as widely as possible. I have done what I can, as a back bencher, and have produced about 140 responses. I know from conversation that some of the individuals and organisations that responded have expressed concerns about the Government’s proposals as they stand. As I said in response to a question from Claire Baker, it would be quite possible, with tweaking, to bring the Government’s strategy, proposals and recommendations within the legislative framework that I propose and to meet the needs of all parties concerned. Does that answer your question? If not—

Kenneth Gibson: I do not know whether it does, to be honest, but I want to move on.

Your bill has obviously raised a significant number of expectations among people who suffer from autism and their families and carers. Clearly, you want to deliver a bill that will make a significant difference to the lives of people who suffer from autistic spectrum disorder and their families. Do you believe that expectations are being raised too high or do you think that, if the bill is implemented, it can make such a significant difference?

Hugh O’Donnell: For more than 10 years, those with autism and those supporting people with autism have been waiting—I have to say relatively patiently—for something that makes a difference to their lives. They have watched developments begin to take shape in other parts of the United Kingdom and have told me that what has happened there is progress. I would like to think that if a strategy that emerges from my bill is sufficiently inclusive and has the force of law, it will meet some of, although perhaps not all, people’s expectations. Very rarely, in my limited experience, are everyone’s expectations met by every piece of legislation that this or any other Parliament puts through. There will be shortcomings—there always are—which is why, as with the Education (Additional Support for Learning) (Scotland) Act 2004, we need to revisit legislation. We need to ensure that it is providing maximum benefit to the maximum number of people.

I cannot comment on how high people’s expectations might be. I would like to think that the bill is a small step forward in addressing some shortcomings and that it will provide legislative focus for those who have responsibility for the leadership and implementation that seem to be lacking.

10:45

Kenneth Gibson: If the bill does not prescribe what a national strategy should include, how can the committee be reassured that it will ultimately deliver for the people it needs to deliver for?

Hugh O'Donnell: As I said at the outset, it was never my intention to prescribe the contents of a strategy. That is for the wider autism community—carers, people with autism and the various organisations—to engage with. Indeed, people across the whole range of clinical and social settings should contribute to the make-up of a strategy. I think that, even with my limited experience of autism and the challenges that I face it would be highly inappropriate and in fact arrogant for me, as a back bencher, to propose what a strategy should contain. This bill was never intended to be prescriptive in that way.

Kenneth Gibson: I understand that, but the question is whether the cart is going before the horse. Should, as the SSA has suggested, the strategy come first and then be underpinned by legislation? As you know, the NAS takes the opposite view, and we are trying to work out the best way forward for this legislation to deliver the outcomes that all of us around the table want.

Hugh O'Donnell: I recognise that and, as I have said, there have been and continue to be political—with a small p—differences within the autism community. It is the nature of the subject that there are different perspectives on it. The Scottish Society for Autism probably has as much expertise as the NAS, but I believe that there is considerable variation in the expertise of the chief executives of those organisations. I cannot resist the temptation to point out that, for a variety of reasons, the chief executive of the SSA was at first appointed by the Government and with regard to history, expertise, the range of people that it supports and the composition of its membership—its constituency, if you like—the NAS has a much wider footprint.

There are internal politics in the sector. We have all received representations on the bill, the Government's recommendations and various other autism issues. Mr Somerville's final conclusion that there is a need for legislation is the right one, but it is for Parliament, based on the evidence that has been received and the committee's recommendations, to decide whether my cart or the Government's cart is before the horse. If we do not deal with this issue through legislation now, someone, perhaps not me, will be sitting here having this discussion with Parliament in 10 years' time. It has taken us 10 years to reach this stage and regardless of what anyone thinks of my bill, absolutely nothing would have happened on this issue had it not been introduced.

Claire Baker: Kenneth Gibson mentioned the autism strategy in England and Wales. I know that it is only a short time since that was implemented, but do you have any evidence that it is making a difference to services?

Hugh O'Donnell: At the moment, all the evidence is anecdotal. It is probably just over a year since it was fully implemented and the statistics that are coming back are very low, so I would hesitate to give you a positive or negative view of the outcome. What happened changed slightly from the original proposal. Contrary to some suggestions that you might have heard, I did not simply try to import the English model here. It was deliberately not done in that way.

The indications are that England and Wales are seeing some differences in how the various local authorities deal with things. The strategy has given them focus, and I believe that the legislative framework in the bill would create a focus in Scotland. Although the "have regard to" provision in my bill—I will introduce that to the discussion—could be harder, it gives focus because there are potential legal implications if authorities do not have regard to guidance

I do not know about Wales, but the indication in England is that there is a step change. Perhaps this time next year we will have more statistics on how things are progressing, but that is genuinely all that I can say at this stage.

Christina McKelvie (Central Scotland) (SNP): Good morning.

Hugh O'Donnell: Good morning.

Christina McKelvie: My question follows on well from your answer to Claire Baker, because I am going to ask you about the duty to have regard to guidance. The "have regard to" provision in section 3 would mean that local authorities could not ignore the guidance that ministers issued, but it does not mean that local authorities and health boards would need to comply. We have heard concerns about that in evidence and I have followed a line of questioning on it. Do you believe that the statutory interpretation of "have regard to" is enough? Would it bind local authorities and NHS bodies to the guidance that is issued by ministers?

Hugh O'Donnell: You will have seen the information in the Scottish Parliament information centre briefing on the statutory interpretation of a duty to "have regard to" something. It states:

> "Phrases in any statute are interpreted according to the rules of statutory interpretation which have been developed by the courts. The courts have previously found that the nature of the duty imposed on a person who must "have regard to" something is that they must take it into account when exercising their functions under the particular statute

> in question. However, the words impose no duty of obedience such that the person has to comply.”

However, it raises the opportunity for a judicial review. That is the difference. A relevant case is quoted in the SPICe briefing, which I am happy to leave for the committee to peruse.

Without imposing on local authorities the potential for huge costs for the provision of services, the “have regard to” provision in the bill will be sufficient to focus the minds of local authorities because of the potential—not being a legal person, I qualify what I am saying by stressing that it is only potential—for the judicial review of decisions.

Christina McKelvie: Is that enough? We have experience of local authorities going all the way with placing requests. Do you—

Hugh O’Donnell: If we as an institution want to devolve decision making as close to the people who are affected by it as possible, doing anything more stringent than what is in the bill would take away from the flexibility that local authorities rightly have. However, the bill provides enough of a shot across the bows, shall we say, of those who would for whatever reasons—probably mostly economic—seek not to apply a strategy, by saying that that would have consequences. The bill is as hard as a back bencher’s bill can be, without overcentralising decision making, which I am fundamentally against, given that I am a Liberal.

I do not know whether that answers your question. Without having a big stick and saying, “You will do this or you will go to jail,” the provisions are as close as I can get in a back bencher’s bill to ensuring that as much of a strategy as possible is delivered by those who are responsible for delivering it.

Christina McKelvie: We all strive to achieve consensus so that we can move forward on an issue and do what a strategy says. Would having a

> “duty to have regard to guidance”

ensure any consistency throughout Scotland?

Hugh O’Donnell: Let us pass the bill and see.

Margaret Smith (Edinburgh West) (LD): I apologise for being slightly late.

I will focus on costs. Your financial memorandum says:

> “Costs on local authorities will be limited to responding to the consultation to inform the preparation of the national autism strategy.”

It is possibly not surprising that the Convention of Scottish Local Authorities and others—local authorities, health bodies and the Government—take a different view and say that, if the bill was passed, it would lead to increased costs. How will the bill make a meaningful difference to the lives of people with autism and their families and improve access to services if it does not cost anything?

Hugh O’Donnell: I was specific when I proposed the bill and I return to what I have said. The costs that are associated with the strategy are for those who put together the strategy to decide. The costs will depend on the strategy’s content and extent. I would love to have a crystal ball such as the one that COSLA has. It appears to have thought only about spending more money rather than working smarter.

COSLA’s position differs from that of Glasgow City Council, Scottish Borders Council and several other organisations, which have supported the need for a legislative framework for a strategy. The committee heard evidence from Robert Moffat and in private from young people with autism that they do not expect a raft of new services or more expenditure; they expect—with justification—appropriate services. People who assume that the cost must increase assume that the only way of meeting the requirements of any act is to throw money at it.

11:00

I cannot quantify the cost in answer to your question, but it is presumptuous to say that there will be a huge additional cost. Huge additional thinking about how to provide and deliver appropriate services may be required, but that does not necessarily equate to huge additional cost. It depends entirely on the nature of any strategy that is produced as a result of my proposal and the extent to which it focuses on specific services, but that is a matter for the wider consultation that must take place on the strategy.

There are a lot of organisations and people out there who use innovative thinking. There are probably more of them now, given the current economic climate, than there were three, four or five years ago when money was less of a problem.

The people who have responsibility for delivering any strategy ain’t going to have a bottomless pit of money. They will have to think differently, and perhaps it is that prospect that frightens them. It is easier to say, “This is going to cost a fortune”, than it is to say, “Maybe we need to think differently about how we deliver services and meet the expectations and rights of these people”.

I am not convinced that it is necessary to throw around huge amounts of money, but I am convinced that people need to sit down and think long and hard about how they may have to deliver services differently. If we go back 30-odd years, for example, we would still have people with learning disabilities and autism locked up in huge institutions such as Kirklands hospital. It was thinking outside the box that allowed us to develop the model that we have grown into. It is now time for a step change, and for us again to think outside the box in a way that does not have to involve spending big bucks.

Margaret Smith: In relation to cost, I will return to a wider issue that colleagues have already touched on. COSLA has told us that there is a fear that the focus on people with ASD under the legislation would mean that money would be directed away from support services for people with other conditions to the benefit of those with ASD. What is your response to that?

Hugh O’Donnell: COSLA’s response on that seems to indicate that it is acknowledging that people with autism are discriminated against already. As I said in my opening remarks, this is an equalising proposal. It aims to ensure that there is a level playing field for those with a very specific condition that all too often falls between the cracks of learning disability legislation and mental health legislation.

It is about spending the money smarter; it should not divert resources. All too often we talk about resources as being just money; I recognise that there is always a bottom line, but resources go beyond money. We may have to adjust service delivery—perhaps we can no longer provide day centres that may suit people with learning disabilities but not those with autism. However, adjusting services does not necessarily mean depriving any sector.

What concerns me at present is that we deprive one sector because those people do not fit nicely into the square hole that has been designated for service provision for those with learning disabilities or mental health problems. There will be an adjustment, but that is equalising rather than discriminatory.

The Convener: That concludes the committee’s questions to you today, Mr O’Donnell. Thank you for your attendance. I ask you and Ms Nisbet to stay with us while we move on to the next agenda item, which is very brief. I will then suspend the meeting.

Decision on Taking Business in Private

11:04

The Convener: Our next agenda item is a decision on taking a future item in private. The committee has now concluded its oral evidence sessions on the Autism (Scotland) Bill and will consider its draft report at its meeting on 8 December. Are members content to consider the report in private at that meeting and at future meetings?

Members *indicated agreement.*

11:05

Meeting suspended.

11:17

On resuming—

Scotland's Commissioner for Children and Young People

The Convener: I reconvene this meeting of the Education, Lifelong Learning and Culture Committee. The third item on our agenda is evidence from Scotland's Commissioner for Children and Young People on his annual report for 2009-10 and the draft strategic plan for 2011 to 2015. I am pleased to welcome Tam Baillie to the committee. Mr Baillie, we look forward to asking you questions, but you might first want to set the scene for us by telling us what you have been up to in the past year.

Tam Baillie (Scotland's Commissioner for Children and Young People): Thank you. I will explain the documents that I have sent to the committee. The annual report takes us up to the end of March. We are now in November, so I want to fill the gap between March and November in the evidence that I give. This is also the first time that I have made public the strategic plan, which is about to go out to consultation. I am grateful for your time in your very busy schedule. I am enormously busy myself, but it is important to me, in publishing the annual report, to offer the committee the opportunity to ask questions.

Right at the beginning, I set the objective of having common ownership of the work that we do to make sure that my overarching duties of protecting and safeguarding children's rights are not just about me, but about everybody throughout society. I hope that that will become apparent in the approach that we have taken, especially towards the roll-out of "A Right Blether", which is probably the most dominant aspect of the work of the office right now.

In the annual report, I set out four strategic aims that we have been working under. Those aims have been refined and we have included objectives and areas on which I propose to work. There is always a balance to be struck between being specific enough so that people know what you are doing and having sufficient flexibility to be able to be responsive to changing circumstances.

We are flying just now, in terms of trying to cope with the demand that has arisen out of people's response to "A Right Blether". I am happy to respond to questions. I am sure that I will be able to make the points that I want to make.

The Convener: I am sure that there will be a number of questions about your work, but I will start with a controversial question that deals with something that was highlighted in your annual report.

The review of bodies that are supported by the Scottish Parliamentary Corporate Body was referred to. At the time of the review, there were suggestions that we did not need a children's commissioner, and that the role should be merged with another post. I have my own personal views on that, and those arguments were not successful in any case. However, what difference has there been as a result of the retention of your role? What difference do you believe that you have made?

Tam Baillie: I am quite comfortable with Parliament questioning the existence of a role. I do not think that we need to revisit the issue over and over again, but I am reassured by the conclusions that Parliament came to the last time it considered the issue. Through my dealings with the SPCB and parliamentarians, I know how much they value and treasure the independence of the office, and I do as well. I have found people to be immensely respectful in that regard.

On the point about making a difference, I would say that I am in the middle of the biggest thing that I have been involved in so far. The starting point for "A Right Blether" was to ensure that as many people as possible—as many children and young people as possible—know about the United Nations Convention on the Rights of the Child and Scotland's Commissioner for Children and Young People. Together, those two things will help us to achieve a better and more informed approach to how we treat our children and young people.

We have produced and sent to schools 3,700 resource packs containing DVDs and materials that are suitable for curriculum for excellence, and information about how to contact the commissioner's office. We put the packs together before the end of last year and have been distributing them throughout this year.

We have been clear about getting to children and young people through the professionals who work with them. We have hosted seven receptions across the country, which resulted in around 1,200 people signing up to be part of "A Right Blether". I visited every director of education in Scotland. I was quite clear that I wanted to be out and about, which meant that I went to the far-flung councils in the Western Isles, Orkney and Shetland, as well as every other council.

We are generating an interest in assisting children and young people to take part in a vote on my priorities. The vote is about the areas on which I should be working in order to improve the lives of children and young people in Scotland. I will come back to the subject of the vote in a minute.

I was clear that I wanted to ensure that the process was not just about areas that were in need of improvement, so we asked children and young people to identify the things that are already going well in their lives—things that bring a sparkle to their eye and get them out of bed in the morning, which we have called right brilliant things. We also asked people to sign up for parties to commemorate the 21st anniversary of UNCRC, which took place last weekend.

All of that is what we have called "A Right Blether", and the response to it has been absolutely phenomenal. We have received more than 1,000 responses to the right brilliant thing element of the campaign, and just under 150 parties are taking place across the country.

My ambition was to have 50,000 votes to assist me with my priorities. To do that, we canvassed the views of as many children and young people as we could. We engaged with the Scottish Youth Parliament and the Children's Parliament, which, between them, brought together almost 23,000 views. At the same time, I am touring the country to speak to schools. This second tour is quite separate from the tour of the directors of education. I am visiting 100 different venues and speaking to in excess of 10,000 children and young people. That is a conservative figure that does not include those whom we contacted through glow, of which I have made extensive use.

Those 23,000 views helped us to put together a voting slip. I have one with me and will take you through it. We asked the children and young people to identify things on which I should work in their home, where they learn—their schools and youth clubs—in their communities and in Scotland. From those 23,000 children and young people and the 10,000-plus with whom I engaged, we have identified three options in each area.

The ambition was to get more than 51,000 votes, because that is the figure for the biggest consultation that has ever been undertaken, which related to the ban on smoking in public places. In the build-up to the vote, which will take place this month, we printed 65,000 voting slips. Within the first week, we had to print another 65,000, and we have now printed a further 20,000, so 150,000 voting cards have been distributed. I do not expect for a minute to receive 150,000 back, but even if we get half of them back, we will easily have topped the biggest consultation that has been held in Scotland.

The response has been enormous and heartening. Sometimes the office has resembled an episode of "The Apprentice", as we have been learning different skills that we did not expect to need when we came into the job. However, there is a rumbling sense of engagement with professionals, children and young people that makes me feel hopeful about and affirms our approach, which is to touch as many professionals, children and young people in Scotland as possible.

That is the main difference. Three youngsters at a school wrote to me because the children were worried about closure and disparaging remarks had been made about the school. When I turned up in the playground yesterday, they pointed at me and said, "That is Tam Baillie." I was slightly disconcerted, but that is exactly what we are looking for. It is important not that children should know me, but that they should know about the role.

The Convener: When is the final deadline for submissions to the vote?

Tam Baillie: A right big blether will take place. Ministers have helped by saying that they want to be part of promoting it, because they want to hear the results. We are planning a right big blether in February, which we think will be a two-day affair.

We are looking to spend one day on good practice, because amazing things are happening that we could not have controlled for. Early on, a group of peer educators got hold of the resource materials and, off their own bat, went into six primary schools to deliver some of the workshops—we have called them workshops, rather than lesson plans. They also had plans to go into six secondary schools. That activity had nothing to do with us, but there are many such examples.

One of the most heartening things is that, by saying that I would be responsive to invites to local authorities, I have found that a lot of really excellent consultation is taking place at local level. It is easy to graft on to that and be part of it. That will be part of the feedback.

A right big blether will take place early in February. One day will be about profiling good practice and the second day will try to generate discussion between children and young people and politicians. I also intend to go back to local authorities to deliver the results.

11:30

The Convener: I see that Mr Allan wants to speak, and I will let him in when I finish my line of questioning and after Elizabeth Smith, who has already indicated a desire to ask a question.

"A Right Blether" will lead to the right big blether in February, but how do you envisage the process continuing and what do you see the outcomes leading to?

Tam Baillie: I have given a commitment to include the main results in the strategic plan. My message to children and young people all along has been, "I trust your judgment and I want you to help guide what we should be working on." On the home, the three options are a caring and loving environment in the home, a safe and secure environment, or a place where there is privacy. Each of those has different implications for the work that we will do. I cannot predict what will come out of the process, but I trust the judgment of children and young people to help direct the work.

That is not the whole story. We know that there are vulnerable groups of children and young people and we have another consultation exercise that will help to identify the children and young people on whom we need to focus the most attention—the vulnerable youngsters who suffer the most serious breaches of their rights. So not all the work will be directed by children and young people, but they will be able to see the results of "A Right Blether" and whatever comes out of the strategic plan.

Elizabeth Smith: I want to pursue that a little. You have produced the strategic plan for 2011 to 2015, yet you want to take the results from your big blether and use them in the strategic plan. Will the document be rewritten?

Tam Baillie: There is enough flexibility to be able to direct the operational plans underneath the strategic plan. There are strategic aims, objectives and certain actions that we have detailed and on which we are consulting. There will be a yearly operational plan, which is where we will incorporate the results of "A Right Blether". Because it is such a significant undertaking, the timing of complying with the requirement to lay the strategic plan and taking account of what comes through from "A Right Blether" has been difficult.

Elizabeth Smith: Four years is a fairly long period and it is a considerable strategy. What evidence did you put into the strategy document?

Tam Baillie: There are four strategic aims. The fourth aim is about ensuring that we have an efficient office that is fit for purpose, but the other three are on raising awareness and understanding of the UNCRC, the participation and engagement of children and young people, and protecting and safeguarding rights. I characterise that through the prism of vulnerable groups. Those are all set out in the Commissioner for Children and Young People (Scotland) Act 2003, so they are all duties that I would have to fulfil in any case.

Elizabeth Smith: I accept that—that is fair. Are you saying that, if children come back with slightly different results from what you pursue in the strategy document, you will change it?

Tam Baillie: If the results are radically different, I will amend the document. However, I know what questions are on the voting card and the things that children and young people have said. I am comfortable that, whatever results come from the process, they can fit the strategic plan as it is now. The strategic plan is going out to all relevant professional groups to find out whether it has the right balance. I am confident that, whatever comes from the process, we can incorporate it within the structure of the plan. That was what I was getting at when I talked earlier about being flexible enough.

Elizabeth Smith: So other groups are contributing.

Tam Baillie: Yes. The committee is the first group that has seen the strategic plan. That is the way that I want to engage with Parliament, as I did previously when I gave evidence—this committee was the first one that I made any public statements to. Next week, the plan will go out to councils, health boards and relevant voluntary sector organisations. That is a fairly wide distribution of the plan, so that we can try to take account of views. I am sure that the plan will change in some shape or form.

We are doing those two exercises, but the one involving children and young people is more than just a consultation, because it achieves objectives on raising awareness and understanding and on participation and engagement with children and young people. It will not identify our vulnerable groups, because it takes a population approach, but we have plenty space beyond that to consider what the issues really are for some of our more vulnerable groups. In the strategic plan, I have already identified some of those groups, such as children who need protection, children who experience discrimination and children with disabilities. We know that those children are already disadvantaged and that we need to consider how better to safeguard and protect their rights.

Elizabeth Smith: I accept all that you say about that—it is important—but I am slightly concerned that we will go through another strategic plan process having just gone through one already.

Tam Baillie: No. The deadline will be the end of January. I have a quick turnaround before I put the final strategic plan to the Parliament. My responsibility is to lay that before 31 March. I admit that we are working close to the wire, but that is because we want to take account of what comes out of our large consultation as well as to consult the professional bodies.

Elizabeth Smith: Remind me what the date of the two-day right big blether is.

Tam Baillie: It is in early February. I cannot say for definite, because we are looking at two out of three dates, but it will be within the first two weeks of February.

The next part of the process is for us to receive the results. Tally sheets will come from the 500 voting centres that have been set up throughout the country and which are being administered by schools, youth clubs and residential care groups—the list is comprehensive. We are relying on them to get the tallies to us so that we can bring them together into one final, national result.

We will cut the results in two key ways. There will be an overall national result, but because we have carried out the vote in local areas we will have a platform for going back to local authorities to tell each of them what the children in their area said in participating in the vote.

A lot of good engagement and participation is happening at a local level, so there are already areas in which local authorities regularly meet groups of children and young people. That can provide a platform to enable us to tell them what we found in their areas. That is not the case throughout the country, but as soon as I talked to the senior people in each local authority area they said that they wanted to use the vote to generate dialogue between children, young people and them.

I will not be able to do it with the same intensity as I have done recently, but we will have a vehicle and platform for going back and telling local authorities what came up in their areas.

Alasdair Allan: Your organisation has been busy and proactive in a welcome way. I have seen the work that you have done on "A Right Blether" in my part of the country, which does not actually seem that far flung, as you put it, if you live there.

Tam Baillie: It was difficult getting there. I was cancelled because of the ash.

Alasdair Allan: I know.

I will ask about the other side of your work, which concerns inquiries. It surprised me a bit that you had only 154 inquiries in the year. Is that because you do not consider it to be a primary part of your function? Do you envisage it growing in future?

Tam Baillie: The inquiries service is responsive and is not widely advertised. Most frequently, inquiries are at one of two extremes. At one extreme, people are looking for more information about the office's work, which is quite easy. At the other, the inquiries are most often from parents who are absolutely at the end of their tether. They have tried and tried, and in desperation they are contacting all and sundry. The commissioner's office is one of those points of contact.

The figure fluctuates: 154 is in the report, but it has been up as high as 300-plus. The figure of 154 is rather false. I am confident that it will be higher next year—I know that. We now get lots and lots of inquiries from children and young people. When I visit schools, the question-and-answer session is never long enough to satisfy the children and young people. When we have glow meets, there is never enough time to answer children and young people's questions, so we have asked them to give their questions to the office.

Next year, a separate section in the report will detail the number of inquiries that we get from children and young people. The inquiries service serves a range of purposes. Given that a number of advice services or places where people can go for advice already exist, I do not want to set up a parallel service, but I think that it is appropriate to respond to the inquiries that we get. I do not have the power to investigate individual cases, but we can certainly assist by pointing people in the right direction or, on occasion, making some inquiries on their behalf because of the issues that emerge.

For example, people frequently inquire about custody of children when a marriage has broken up. I think that there is an issue with children being caught in the middle of warring parents. We do not know a lot about the impact that that has on children. Another issue that has come up relates to children with disabilities who have been fostered, whose foster parents are in distress because of what they see as the lack of care planning as those children move from child services into adult services. A worry among 16 and 17-year-olds about what provision will be available when they move to adult services is another theme that comes through.

Our inquiry service is a responsive service. I do not have the resources or the powers to set myself up as an ombudsperson, but we certainly try to respond to all the inquiries that come in.

Christina McKelvie: Good morning, Tam. I see that you have been busy giving evidence and producing briefings on a number of bills and petitions that the Parliament has dealt with in the past year. Given that your main strategic aim is to increase awareness of the UNCRC and the extent to which it is reflected in provisions in law, how much influence do you think that you have had in that regard?

Tam Baillie: There is a balancing act to be maintained. There will always be an aspect of the office that needs to be responsive to the business of the Parliament, because that is where our laws are made and where we can have a significant impact. The key bills this year have been the Children's Hearings (Scotland) Bill, on which the committee has played a central role, and the Criminal Justice and Licensing (Scotland) Bill. My interest is always our most vulnerable children. It is really for you to tell me how influential you think that our briefings are. I have taken the approach of focusing on highly specific areas—the ones that I feel are the most important or are not receiving the attention that they should. Among the areas that I have been working on are the feedback loop, which has received a lot of attention—I am pleased about that—and criminal responsibility, on which we have made some progress, but not nearly enough. I will always ensure that the office has the capacity to respond to that aspect of the work. It is just one of our responsibilities. I must ensure that we identify the bits of legislation that I want to express a view on.

The Public Petitions Committee offers opportunities—which are sometimes unusual—for the expression of views on children's rights, on which there are real issues. For example, there was recently a petition on children being tied to contracts with football clubs. The way in which those are enacted makes it look to me as if children are having their rights to play and to development stifled, so it is appropriate for me to make representation on that. I will track the petition as it goes through the Parliament.

Christina McKelvie: I hope that I speak for everyone when I say that I find your briefings extremely helpful. Generally, they come at just the right time to inform a debate.

For a number of years before I was elected, one of my main focuses was on having the UNCRC enshrined in Scots law. You mentioned a couple of things that you think that you have made progress on. What do you think that you have made concrete progress on?

11:45

Tam Baillie: We have made progress with regard to the Children's Hearings (Scotland) Bill and the Criminal Justice and Licensing (Scotland) Bill. You will see that our work plan discusses how we might incorporate the convention in law or make progress towards its incorporation. It is a four-year work plan, and we are working on the convention's incorporation right now. There are decisions to be made about what is competent at a UK level and what is competent in the Parliament. I expect to produce stuff on that over the next year, and I have already initiated work. That will not be about just me; it will be done in partnership with organisations that have the same interest and keenness to make progress on the convention. So, that is already sitting in the work plan and it will not be influenced by "A Right Blether", for instance. I expect some feedback regarding the consultation with professional groups, but children and young people are not being asked to comment on that.

There are several balances to be maintained when it comes to producing a work plan that means something to everybody who has an interest in it. Incorporation of the convention is sitting there as one of the action points, anyway; I hope that you are reassured on that.

Christina McKelvie: Your office has raised awareness of the UNCRC in the Parliament, and we are pretty well aware of it in the committee.

I note from your report that two sets of rights resource packs have been developed, one for under-11s and one for over-11s. What impact are they having for those age groups, and is that being carried on into adulthood?

Tam Baillie: That was one of the starting points for "A Right Blether". We have distributed 3,700 of those packs, mainly, but not all, to schools—there are just over 2,000 schools in Scotland. We have run out of them. We now have to decide what further resources to distribute through those networks. We have generated a huge database of people with a willingness to engage with children and young people on a rights basis. We know that we can produce the materials, and we know that we have the distribution network to make it happen.

It is really heartening to know that there has been an enormous uptake, but we now need to draw breath and evaluate the impact. I am clear that the materials are being well used—they have been downloaded from our website. We do not have the resources to produce other resource packs along the same lines—that was geared to making things happen through "A Right Blether".

Just the other day, a teacher at a secondary school said that, now that their school has the work packs and the teachers know that they work, they will become part and parcel of what they do next year. The packs are out there, and they are ready to be exploited. We have been doing a lot of work with Learning and Teaching Scotland, which has been extremely helpful with regard to the glow meets, and also in ensuring that the material that we are producing is compliant and in line with what is being looked for under curriculum for excellence.

We are only scratching the surface compared with the potential. It is really heartening that people see the materials that we produce as user friendly, rather than something that they should be wary of. Rights are not a stick that people can get beat up with; they are something that can help to improve their engagement with children and young people.

Recent research has come through from the rights respecting schools initiative about the positive impact on pupils' behaviour in those schools that have engaged with it. That initiative is run by UNICEF, and I often get invited along to give out the prizes and awards. I cannot cope with the demand, in fact.

The whole story about getting rights better embedded in the curriculum does not lie with us, but we have gone a long way towards starting the process. We know that we can use the positive contacts that we have so as to produce other materials. My staff might be nervous about that, but there is a great deal of untapped potential—that is what I am trying to say.

Ken Macintosh: I will ask about the themes that you outline in your introduction to the report, to which you suggest that you will probably return in the work that you do. How will you go about addressing the concerns that you highlight? Will you commission research and reports or comment publicly?

Let us take, for example, the development of early years services. Whether or not it has been successfully implemented, the Scottish Government is still committed to developing an early years strategy that is a continuation of an existing policy, which is great. However, there is evidence to suggest that, in the field of health, because of changes to the way in which our health visitors work, to district nursing and so on, there is now less intervention from the public authorities than there has been in the past. In particular, a gap has been identified between birth and when children attend nursery school, because of the withdrawal of health interventions in that time. Have you picked up on that? If so, how do you intend to address it?

Tam Baillie: I will start with early years services. The last time that I addressed the committee, I told you how easily persuaded I was by the evidence that we need to improve our early years services and the evidence about the emotional, social and cognitive impacts that good early years services can have. That remains the case; in fact, more and more evidence is pointing us in that direction. I hope that there is cross-party agreement on that score.

I have been publicly very supportive of the early years framework that the Government produced, although, in the past month, I have been rather more critical about its implementation. In fact, I produced a light-touch report that looked at how we are doing with the early years framework and how well it is being implemented at a local level. One of the conclusions that I have come to is that a stronger, more assertive lead needs to be taken at the national level. One of the things to come out of that report—maybe I should send it directly to committee members—is that, although there may be champions at a local level, it is not easy, in the current economic circumstances, to allocate additional resources to the development of early years services. My view is that there is a very mixed response at the local level. In some areas, there is increased provision; in some areas, people will do well to hold on to their services; in other areas there will be cutbacks. That flies in the face of our huge ambition to get our early years services on a par with those in some other countries in Europe.

I will give an example of the size of our ambition in the UK. In 2006-07, according to an Organisation for Economic Co-operation and Development report, the UK allocated 0.5 per cent of its expenditure to early years services, whereas the European recommendation was 1 per cent. Expenditure in the Scandinavian countries, with which we compare ourselves most frequently, was 2 per cent. We must ask ourselves whether we will realise our ambition—to which I give my full backing—for the development of our early years services through the mechanisms that we have just now.

In addition, we must be much more articulate about what a good early years framework implementation would look like at a local level. In that respect, I have highlighted two things. First, we should give consideration to the national picture that we want in terms of parent programmes. No one parent programme will satisfy all communities, but not many parent programmes have the research base behind them. We should have a discussion with and a lead from the centre on that. Secondly, we should develop family learning centres, especially in our most deprived communities, to provide the services from pre-birth right the way through to age 5. We need to develop that kind of approach at a national level to assist people at a local level. I am not for a minute suggesting that it is not about local implementation, but I think that a greater lead needs to be given at the national level about what the implementation should look like. I give credit to the current Government for the priority that it has given to the early years—in fact, even in the budget it set up additional funds to help progress the early years—but we need to be clearer about what it would look like at a local level. So, that is what I am doing on that theme.

Child poverty is quite a tricky theme, because the levers of power are at Westminster, with the Scottish Government and local government. I am absolutely sure, however, that in all the work that I do on vulnerable groups and vulnerable young people the theme of child poverty will figure highly because we know that it has the most pernicious impact on children’s lives. So I will continue to highlight that, more than likely through the impact that it has on those vulnerable groups.

The third theme is an emerging one. When I spoke to you the last time I had only two. I have allowed myself a third: the impact of the economic recession. We cannot miss that, because we know from our previous recession that services to children and young people suffered disproportionately and were hit harder than any other sector. We cannot allow that to happen this time. We have the evidence, and we know that if we cut back on certain services we will pay for it later. I am looking at how we develop models that will help to assess the impact on children and young people, and at how we might pilot those models. That is in the early stages of development.

Ken Macintosh: Can I pick up on that? I will give you two examples of areas in which we might be concerned about the impact of the economic recession. My belief is that the budget that was recently announced hits education extremely hard, not just at a high level but through local authorities' education funding, which we expect to take the brunt of the savings that are to be made. Already there is evidence to suggest that areas such as additional support for learning have taken a disproportionate hit. In other words, because support for learning workers are not statutory appointments, they are the ones who have been laid off. We have many examples of support staff, classroom assistants and additional support workers losing their jobs, despite the fact that we have legislated on ASL. We have the law, the strategy and the policy going in one direction, but the practice going in another.

On nursery education, West Lothian decided recently to replace nursery teachers with nursery nurses. The decision was very clearly made on cost grounds, not educational benefit grounds. Other authorities have acted similarly. The net effect on the nursery profession is that nursery teaching is no longer a career route for teachers coming out of teacher education colleges, so there is quite a long-term impact as well as an immediate impact. How do you see your role in relation to such developments?

Tam Baillie: I have been looking at information and a number of pieces of research in that area. The Government has a responsibility to monitor what happens at a local level, but over and above that I am interested in looking at how much we allocate to children's services. It is very difficult to baseline that, given how our finances operate. Regardless of how smartly we use the money and resources, there is a significance in how much we allocate. We can look at exploring that route.

I am interested in assessing the impact of certain policy decisions that are taken at local and national level. If I am being honest, I am still in the process of trying to see what that would look like in terms of the work plan for next year. However, I feel strongly about the impact of the economic recession and I would not have included it as an overarching theme if I was not prepared to do some exploration of it and try to provide as much information as I can, along with my view of where we might be going, because what happened previously worries me deeply.

We are in danger of drifting into that situation as a result of many small local decisions that go under the radar, either because of their size or because they are not announced at all but are simply described as wee budget adjustments. However, when aggregated, they are a great cause of concern. There is a lot of work to be done in that respect because we do not know what is going on and we need to know before we can think about what can be done. As we know, we are entering some of the most difficult times that we have ever faced.

12:00

Margaret Smith: What partnership working do you do with other organisations or agencies with which you have common cause?

Tam Baillie: I often say that I am one commissioner and 14 staff—actually, as a result of cuts to my budget and my budget submission, I will be losing my most senior member of staff, my chief officer, so the number is going down to 13. We want to change the world and make things better for children and young people, but we cannot do that unless we engage with the thousands and thousands of professionals who work with them. That is my real aim and why the starting point for "A Right Blether" has been engagement with the other partner agencies; after all, they are the people who make a difference at local level. When we get the results for that consultation, I will go back to the local areas because, as I always say, local implementation is the most effective means of improving children's lives.

Sometimes I work in partnership with other organisations; sometimes, I am quite happy for those organisations to take the lead and do the work and I give weight to their campaigns by lending my name to them; and sometimes, we contract organisations to carry out particular work, often a piece of research. I remain open to different forms of engagement with different organisations—it just depends on what suits best. The key point is that we will not make things better for children and young people unless we work in partnership, and I work in partnership with many champions at a local level.

As I have said, we have set up structures and mechanisms to get material out to people, but that has happened only because they are engaged and because what we are doing fits with some of their responsibilities and their dealings with children and young people. I find that really heartening, because it means that we are going with the grain. We are winning hearts and minds—not all of them, but we will get there. We will win over more and more of the hearts and minds of those who want to use the approaches that we are looking at to improve their engagement with children and young people.

Margaret Smith: An important group in that respect is the media. Most if not all of us will at some point be critical of the way in which the media deal with children and young people. Although you in your role and the rest of us in our role will come into contact with young people doing fantastic things, the diet that the media give many people is full of news of children who are not. Do you have good engagement with the media? How has your relationship with the media progressed?

Tam Baillie: I am in the same boat as you are. However, although I might want to be critical about certain sections of the media or would want to pick out or highlight to them particular areas of our work, I would say that by and large our engagement with the media has been really positive. Later this week, for example, “Newsround” will air a story about our visit to Shetland for the “A Right Blether” consultation. Getting that kind of reach and buy-in is really helpful to us and a lot of positive things are coming out of the approach.

Something that is in our work plan and which will be picked up in the new year is a piece of work that I have initiated with a group of similarly minded organisations on the perceptions of children and young people in media reports. For me the issue is not about promoting positive images of children and young people, because a lot of that work is already going on, but about countering a lot of the negative images and perceptions of children and young people. An example that has been highlighted to me is the public reaction to the deaths of Brandon Muir and Baby Peter at their carers’ hands. Everyone was, quite rightly, outraged by those events; no child should suffer, far less die, at their carers’ hands. However, we should contrast that with the reaction to children who commit serious, sometimes dangerous, offences. Most often the children’s behaviour is criticised and we forget that in many instances they are the Baby Peters and Brandon Muirs who were allowed to grow up. However, they have been traumatised by their experiences. One of my ambitions is to achieve a more even approach to children the whole way through childhood and to ensure that people do not forget that we have responsibilities to these children right up to the age of 18.

In thinking about the need to counteract the negative media portrayal of some children and young people, I have been impressed by the way the see me? campaign has managed to shift public opinion. If that can happen with mental health, it can happen with children and young people. The tendency to vilify and demonise our children goes back a long way; indeed, Plato asked “What is to become of our children? They don’t pay attention to their elders and they’re rioting in the streets.” However, we can make in-roads into this problem.

The Convener: That concludes our questions. I thank Tam Baillie for his attendance. I am sure that he will have many opportunities to return and tell us about the progress of his future work.

Meeting closed at 12:07.

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