

# **EDUCATION, CULTURE AND SPORT COMMITTEE**

Tuesday 4 December 2001  
(*Afternoon*)

Session 1

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## EDUCATION, CULTURE AND SPORT COMMITTEE

### 32<sup>nd</sup> Meeting 2001, Session 1

#### CONVENER

\*Karen Gillon (Clydesdale) (Lab)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)  
\*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)  
\*Mr Frank McAveety (Glasgow Shettleston) (Lab)  
\*Irene McGugan (North-East Scotland) (SNP)  
Mr Brian Monteith (Mid Scotland and Fife) (Con)  
\*Michael Russell (South of Scotland) (SNP)

\*attended

#### WITNESSES

Ian Smith (Local Government Ombudsman)  
Nicol Stephen (Deputy Minister for Education and Young People)  
Gill Stewart (Scottish Executive Education Department)  
Peter Willman (Scottish Executive Education Department)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Judith Evans

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

The Hub



## Scottish Parliament

### Education, Culture and Sport Committee

*Tuesday 4 December 2001*

*(Afternoon)*

[THE OLDEST MEMBER OF THE COMMITTEE *opened the meeting at 14:02*]

**Ian Jenkins (Oldest Member of the Committee):** Welcome to the 32<sup>nd</sup> meeting this year of the Education, Culture and Sport Committee. It may surprise members that the person in the chair does not look like Karen Gillon. I do not feel like Karen Gillon either. In the absence of the convener and in the non-existence of a deputy convener, I am playing the Winnie Ewing role as the oldest member. I am privileged to open this meeting.

### Temporary Convener

**Ian Jenkins:** I call for nominations for a temporary convener until Karen Gillon arrives.

**Michael Russell (South of Scotland) (SNP):** I am happy to nominate Frank McAveety.

**Jackie Baillie (Dumbarton) (Lab):** I second that nomination.

**Ian Jenkins:** As there are no other nominations, I am delighted to welcome Frank McAveety to this elevated post. I am tempted to say more but I will not.

*Mr Frank McAveety was chosen as temporary convener.*

**The Temporary Convener (Mr Frank McAveety):** I feel as though this is my Andy Warhol 15 minutes of fame.

As we are in public session, I ask everyone who has a mobile phone or pager to turn them off.

I welcome a new member to the committee—Jackie Baillie. Before we ask Jackie to declare any interests, members may want to comment on the fact that I am in this temporary position because the former deputy convener is no longer here.

**Michael Russell:** I am very sorry that Cathy Peattie is no longer a member of the committee. With her permission, and having spoken to other committee members, I raised the issue in the chamber on Thursday afternoon and was informed that it is for the political parties to decide on the membership of committees. I am happy to

welcome Jackie Baillie because I like her and I think that she will be a good contributor to the committee, but Cathy Peattie was a distinguished committee member—her knowledge of traditional arts and music was invaluable in our cultural work, as was her strong social conscience and her devotion to ensuring that opportunities in education in particular are made as widely available and taken up as often as possible. I will certainly miss her, and I think that the committee will miss her presence and her contributions. I deeply regret that her party has decided not to nominate her and I hope that, at some stage, she will rejoin us. This is not to diminish my welcome to Jackie Baillie, but I feel a sense of great regret that Cathy Peattie is not here.

**The Temporary Convener:** I think that everyone would agree that Cathy has been a sterling worker for the committee, of which she has been a member since its first meeting. Like Mike Russell, I feel that we should put on record our appreciation of her work and hope that, in future, she can still contribute to the committee's work through consultation. Thank you for your words, Mike.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** I endorse that and I hope that Cathy will feel that she can still attend the committee to see the conclusions of some of the reports that she has been involved in.

**Michael Russell:** That is an important point. Cathy was the reporter on traditional music issues. It will be a great pity to lose her expertise. Although she is no longer a member of the committee, arrangements could perhaps be made for her to continue that work and bring her report to the committee.

**The Temporary Convener:** That issue could be explored; I feel that Cathy might want us to do that.

### Interests

**The Temporary Convener:** As I said, Jackie Baillie is a new member of the committee and I invite her to declare any interests.

**Jackie Baillie:** I have nothing formal to declare, but in light of the committee's interest in the Borders—specifically the education department of Scottish Borders Council—I should say that my partner is a full-time trade union official with the GMB and represents some of the employees who are affected by the inquiry.

**The Temporary Convener:** Thank you, Jackie. It is important that we register that fact.

## Items in Private

**The Temporary Convener:** Do members agree to take items 5 and 6 in private? Item 6 is the Scottish Borders inquiry and item 5 is a continuation of item 4, which is the children's commissioner inquiry.

**Members** *indicated agreement.*

## Children's Commissioner Inquiry

**The Temporary Convener:** We move on to the public session of our children's commissioner inquiry. We will take evidence from Mr Ian Smith, who is the local government ombudsman, and Nicol Stephen, who is the Deputy Minister for Education and Young People. Scottish Executive officials Gill Stewart and Peter Willman will also be in attendance.

I thank Mr Smith for coming along this afternoon. Our examination of this issue has been going on for a while. We want to get as wide a view as possible and a key issue that has arisen concerns the way in which the children's commissioner will relate to other agencies, organisations and individuals such as you.

**Jackie Baillie:** I want to explore with Mr Smith the principles behind the idea of a children's commissioner. I feel that people in the office of a children's commissioner should have a distinct role that should not overlap with your work. Do you foresee them having a role in local authority service provision or do you foresee them acting as a clearing house and passing case work on to you? The commissioner's role is about a culture of rights, whereas you are more firmly focused on what happens in the administration of public services.

**Ian Smith (Local Government Ombudsman):** The role of the ombudsman in Scotland will change. In the past, the role was defined as being to do with service failure and maladministration. However, because of what is happening with the European Court of Justice and because the European convention on human rights is enshrined in United Kingdom law and has a big influence on this Parliament, I suspect that people will begin to consider issues much more in terms of rights. The rights of young people have to be considered in that context.

There is a clear distinction between what I and my colleagues in my office do—which is about service failure—and what someone who represents the broader rights of children should do. It is interesting to note that, in the history of my office, only one complaint has come directly from a young person. That has something to do with previous ombudsmen's style of presentation and the way in which people look at local authority services.

Looking to the future, I can say that it is realistic to encourage complaints to come from young people. Last week, we had a conference in

Edinburgh with local authority people about local authority complaints procedures. One of the contributions came from someone from a London borough who presented evidence showing that a greater number of complaints by children gave other excluded groups greater access to the ombudsman.

One thing that has been on my mind for a while is the fact that we do not get to all the people who have a problem with service failure. Increasing awareness of rights among young people may be a way of ensuring that more people address more general problems in service failure. Representing, campaigning and providing information and research are all things that a commissioner can do well in the Scottish system. We would not say that we have exclusive rights on service failure, but we reckon that that is where our greatest skills lie. Those skills will be taken forward into the new ombudsman service.

**Jackie Baillie:** By your own admission, only one case has been directly brought by a child. Do you think that the children's commissioner's role should be to facilitate more children to come forward? You talked about a variety of different roles, including influencing and campaigning, which could be seen as distinct from your role. Is there a gap in the market that could be met by a children's commissioner or is everything covered by the variety of institutions that exist out there?

**Ian Smith:** If my office was not going to be abolished, I would probably encourage more complaints from young people by taking away barriers to communication. At the moment, we use a form that is not necessarily all that accessible. By using different means of contact, we could encourage a broader range of complaints, including those from young people.

We should start to think more about the European convention on human rights. Article 6 covers equality of arms, as the lawyers would put it. For young people, equality of arms is about advocacy. I cannot think of a better way of taking forward advocacy than by providing a focus for the rights of young people through something like a children's commissioner.

It will still be necessary to draw on the experience of others. I do not see the new situation as one of isolated silos. There should be a way in which the experience of my office is shared through our business plan and annual report. The children's commissioner could also look at our experience of dealing with complaints. It would be desirable to have some way of assisting young people to complain or of representing their rights more effectively.

**Jackie Baillie:** I want to be clear about your precise powers in relation to investigations. Could

you talk me through that process?

**Ian Smith:** The powers are much more limited than people believe. Some believe that the ombudsman has far-reaching powers, but our powers relate to failures in the administrative process. Where people have alternative remedies, particularly through the courts and tribunals, clear exclusions apply. That will continue to be the case with the more sensitive issues to do with children.

For the life of me, I cannot understand why a young person using a leisure facility and who has, for want of a better expression, hassle has not thought fit to express themselves through a complaint. There is room for the new ombudsman in areas of simple service delivery and service failure. There would also have been room for us if the present arrangement had been retained.

A broad range of people are involved with young people's rights and responsibilities. We have to find a place for them all. If there is to be a children's commissioner, we need to establish good working protocols at the beginning of the process so that there are clear understandings. I have already established an effective working protocol with the Disability Rights Commission. I see parallels with that, as the Disability Rights Commission would get bogged down if it had to go into the detail of service failure. When a person makes a complaint about aids and adaptations to their home, if I find a problem in procedure and practice, I can look towards informal resolution of that complaint or I can make a formal inquiry. The results of both can be shared with the Disability Rights Commission.

**Michael Russell:** It is nice to see you here. You have extensive experience of these matters, as I know from when we met before.

I want to press you on your last point. Your submission says that, in the past 25 years, there have been many complaints from parents, guardians and other carers about the provision of services for children and young people. Obviously, you are involved in cases relating to education and social work. From your experience, can you tell me as precisely as possible what areas you imagine a children's commissioner would be involved in and what difference such a commissioner would make to your office? What would be the most effective role of the commissioner?

14:15

**Ian Smith:** That is a difficult question. The main areas of representation by parents on behalf of children tend to be those over which I have jurisdiction. Matters of education policy, philosophy and the curriculum are not for me. However, I am responsible for issues to do with

administration by the education authority, such as records of needs and psychological services—services that are ancillary to the mainstream education process but are important to the life of the young person. There would be limited involvement in social care. In Scotland, there are fairly sophisticated arrangements in terms of legal rights through the courts and issues for children with special needs are dealt with through the children's hearings system.

There would be fairly limited opportunities for the commissioner, but those opportunities would give young people a greater understanding of what they could do. In simple terms, my current remit and any future remit for an ombudsman would cover not discretionary decision making by statutory bodies but form and process. The most fundamental area of involvement would be ensuring that children understood everything that was being done for and to them. There is an important issue about clarity for young people.

Historically, in Scotland, the ombudsman has not considered decision-making processes. I do not think that that situation will endure much longer. There is a strong desire in Scotland to ensure that the decision-making processes adopted by public agencies are subject to scrutiny and are seen as part of the administrative process.

**Michael Russell:** During the evidence that we have been hearing, I have been trying to get down to some hard examples. You have suggested that a children's commissioner would advocate the broad issues of process and policy in relation to children throughout Scotland. Can we build on that? If the commissioner's role were that, rather than one of rectifying problems—something that others have advocated, although that is not without difficulty—would there need to be changes at a higher level? In other words, there might need to be changes in the Scottish Executive to create a mechanism to allow the issues that the commissioner identifies to be acted on across the whole policy portfolio.

**Ian Smith:** I will answer your question with two points. First, I see the new ombudsman service as an opportunity to improve communication and information about complaining in general. Within that there is potential to draw on the voluntary sector and give it a stronger role in providing the mainstream population with an understanding of rights, obligations and the way in which things work. There is a parallel for a children's commissioner to be involved in information giving.

My second point relates to something that is not really within my jurisdiction. We are all aware that, if issues are contained within narrow silos, there must be some mechanism for crossover. There has to be a way for people to share information. If a children's commissioner comes into what is

already a busy playing field, a way has to be worked out for that commissioner to relate to the Executive and committees of the Parliament and, across the way, to other people who are involved in dealing with advice, complaints and information.

**Michael Russell:** I have a couple of final points. Given your answers and what you described as a crowded situation, is there any other body or individual who could undertake the role of children's commissioner without creating a new role? Is the implication that some existing bodies will have to shed parts of their roles to create space for a children's commissioner?

**Ian Smith:** I am not qualified to comment on the existing services that give advice to children and young people; I know only about the statutory services of which I have had experience, the limits of my present jurisdiction and the thinking of existing ombudsman services about including people in a future complaints system. I am not close enough to the world of children and their representatives to be able to give you a solid answer on any deficiencies.

**Irene McGugan (North-East Scotland) (SNP):** I would like to ask about your powers and the powers that might be given to a commissioner. Given your extensive experience of dealing with complaints in the local authority sector, would it be useful for a children's commissioner to be able to impose legal sanctions on local authorities to ensure that they deliver improved services to children and young people? If so, what kind of legal powers or sanctions would be needed?

**Ian Smith:** That is an interesting question. The United Kingdom tradition has been that anyone in such a scrutiny and inspection role should work through recommendation rather than power of enforcement. I would be uncomfortable with anyone being given powers of enforcement, because, in our system, it is only right that powers of enforcement lie with the courts.

In my experience and that of my predecessors in the ombudsman's office, recommendation, influence and determination are better than confrontation. The evidence for that is in the practice of the Scottish local government ombudsman over the past 25 years. When the office was first established, everything was done as an investigation, which was labour intensive and did not always produce the best results.

In the past few years, there has been a strong emphasis on discussing honestly with a complainant or client what the process can achieve. There are attempts at mediation, conciliation and resolution of the dispute at the beginning of the process, if possible, as justice delayed is justice denied. Formal investigation is kept as a long stop.



I do not believe that the value of a children's commissioner would be increased if they had the power of sanction, unless that power was a last resort. I would be uncomfortable with it, as would the ombudsman service. The power to enforce is not appropriate for a position that is also about sharing best practice, raising awareness and working with the grain of people. Confrontation is a tool that should be employed only in a limited way.

**Irene McGugan:** To press you on that, do you feel that your powers and those that would belong to the commissioner are effective enough to deliver improvement?

**Ian Smith:** Yes. I can give you an example, although it is not about children, but about a recent local authority case that went to formal investigation. When we were taking evidence about the case from the local authority, I gave it the opportunity to reflect on what had happened. The authority came up with a solution to the problem that was beyond the capacity of my office to imagine. In other words, it is best to go back to the people who know what they are talking about, get them to identify that there has been a problem and ask them to find a solution. In the case in point, they brought in an element of advocacy for the complainant. That would never have occurred to my colleagues or me. I strongly believe that the people who are under my jurisdiction could probably put things right themselves and should always be given that opportunity. Of course, if the matter becomes polarised, we have to think of a different way forward.

**Irene McGugan:** The committee will have to grapple with the problem of reserved and devolved issues. Would it be important for the children's commissioner to have a remit on issues that are reserved to Westminster? If so, which issues would be involved and why?

**Ian Smith:** I do not have expertise on children's matters; I do not know what the cross-border issues might be.

We are grappling with cross-border issues in relation to the creation of the new unified ombudsman service. We are considering how the protocols would work between the Parliamentary Commissioner for Administration in the UK and the new Scottish ombudsman. It is probably a case of identifying that problems could arise, but not necessarily rushing into solving them. We must establish a commonsense protocol at the beginning so that we share concerns about issues.

My office has developed an approach like that with the Mental Welfare Commission for Scotland. The jurisdictions are separate, but simple arrangements such as an annual meeting with a mental health commissioner and communication with the chairman and secretary about common

issues can ensure that we are sticking to things that we are good at and sharing information where there is a potential crossover.

**The Temporary Convener:** Some people argue that the field could become crowded. What benefits would the establishment of a children's commissioner have for young people in Scotland?

**Ian Smith:** That question would probably best be answered by people who have extensive experience of working with young people. I can speak from former local government experience. If you manage to give a focus to young people's concerns within a local authority, you get a different perspective on life from the one that usually comes through the official channels.

The added value of a children's commissioner would probably lie in representation and knowledge; in addition, as I said in reply to a question at the very beginning, it must be seen in the context of rights and children's rights. There is probably a place for that, but we must recognise that dealing with service failure should be a matter for everybody, irrespective of age, ethnicity and social class—that is the strong pitch that I would make in closing. The system should be as inclusive as possible. For example, it would weaken the position of a unified ombudsman service if a children's commissioner were given too much power to deal with complaints about services for children. I make a strong representation for children to be encouraged to work with the new ombudsman service.

I would like to leave one last thought with the committee. In the London borough experience, it was fascinating to see that when young people were given more information, there was an effect on their parents and grandparents, in terms of complaining. In a multi-ethnic situation, such as the London boroughs, the results were dramatic. I do not think that anyone should underestimate the benefits of giving children a clearer understanding of how to complain, and the benefits can spill over to their parents and other family members.

**The Temporary Convener:** Thank you for your time.

I will now hand over to the convener.

**The Convener (Karen Gillon):** Peter Willman and Gill Stewart from the Scottish Executive are our next witnesses. Do you want to make any opening remarks?

**Gill Stewart (Scottish Executive Education Department):** I did not make a written submission, as you invited us to come and give evidence. If the committee would find it helpful, I will say a little about the part of the Executive that we come from and what we cover, to provide context.

I head up the children and young people's group

in the education department. The group was set up in June 1999, just after the elections to the Scottish Parliament and the creation of the new Executive. The thinking behind the group was that the Executive was committed to integrating policy, funding and service delivery for children, especially vulnerable children and young people. A mechanism was wanted to drive that commitment across the Executive, and the children and young people's group was set up with that aim in mind.

The children and young people's group sits alongside the schools group in the education department and covers a wide range of services to children, most of which are targeted. We cover early-years services such as surestart Scotland, child care, pre-school and out-of-school care. We also cover social work services for children and families, such as services for looked-after children, adoption, fostering, child protection, policy and legislation relating to children's hearings, and youth services.

14:30

Some of those services, such as pre-school and youth services, are universal, but the bulk of the rest of the services are targeted. Peter Willman works with the part of the group that deals with children and families, and issues including the policy work on the commissioner that we undertook before the topic was remitted to the committee.

The work of the children and young people's group is essentially cross-cutting. Our group does not deliver any of the services with which it is concerned. Most of the delivery is external; it is done by local authorities, health boards, and voluntary organisations. As a result, we spend a great deal of time and effort working with external delivery agents and with other parts of the Executive that have a key role in services for children, for example health, social justice, justice and housing.

**Irene McGugan:** Although we do not have a written submission from you, we have a memorandum that was written in May 2000. The committee feels that that memorandum took a fairly negative tone about the proposal for a children's commissioner. Could you set the scene for us by telling us whether that is still the view of your group? Has there been any shift in attitude in the intervening 15 months?

**Gill Stewart:** The intention was that the memorandum should have a studiously neutral tone, so I am sorry if it came across as negative. We were trying to do a bit of policy analysis that set out the kind of considerations that we thought the committee would wish to address. Those considerations were about the scope and remit of

a possible commissioner, what value that person might add, and the kind of questions that the creation of such an office would raise in existing structures and organisations.

Since the memorandum was produced, there has been some parliamentary discussion and debate of the topic, most recently when Mr McConnell was the Minister for Education, Europe and External Affairs. He indicated that he was sympathetic to the idea of having a children's commissioner. However, the Executive wanted to be clear about the remit and the relationship between the role of a commissioner and other organisations and to be sure that the creation of a new body would add value and plug a gap. That is probably still the Executive's position. You will be able to ask Mr Stephen about that.

**Jackie Baillie:** I noted your comment about targeted services. As you know, I do not think that those services are as targeted as they could be. However, we will leave that point for another day.

You talked a lot about delivery being external and I acknowledge that that is a problem across the Executive. What sort of monitoring and evaluation systems do you have in place? What statistics do you produce that allow you to measure the efficacy of the spend and the efficiency of service delivery?

**Gill Stewart:** Do you mean across the piece?

**Jackie Baillie:** I mean specifically in your division.

**Gill Stewart:** The main mechanism is the planning process by which local authorities and their partners produce plans for children's services and the information that we are given about those plans. Increasingly, we are working to develop more specific outcome measures. In the past, plans tended to focus on inputs such as the amount of money that was being provided or the number of staff who were available. Our own planning and policy formulation is also guilty of that.

The Executive and its partners are now trying to focus on the outcomes that we secure for our investment and activity. We tried to make that shift in the recent guidance that we issued on integrated children's services plans. The guidance sets out some key management information, which local authorities and their partners will need, about children; it also tries to capture some possible outcome measures. I do not pretend that the territory is easy. We have acknowledged that we are making a first cut at the issue. We need to refine the outcome measures and make them more focused and meaningful. We hope that our work with local authorities on local outcome pilots will help us to do that. Some of that work will be about education, some will be about children's

services, and some will be about both. It is all part of a process.

In monitoring how the Executive performs and how it ensures that its policies reflect children's best interests, we produced the child strategy statement. The statement was a tool for the Executive and we published it to help external service delivery agents. Peter Willman has done an initial analysis of the Executive's activity since that document was produced.

**Peter Willman (Scottish Executive Education Department):** In the child strategy statement, which was issued in September 2000, we said that we would review annually how things were going on, so we did an exercise back in October. Our overall conclusion is that there has been a lot of activity in children's services. As Gill Stewart said, that activity has taken place not just in our group but across the Executive. We do not attribute that to the strategy statement, but more to the efforts of colleagues.

That said, questions probably arise about how well integrated some of that work has been and what more we can be doing. The recent report by the action team on better integrated children's services flagged up some possible deficiencies and we will be addressing that issue.

**Jackie Baillie:** Part of the thinking behind the child strategy statement was to impact on your colleagues across the Executive and how they progress their work. That feeds into the broader issue of mainstreaming. You are charged with the co-ordination and integration of service provision. How do you achieve effective mainstreaming, given that it does not stop with the child strategy statement but has to go deeper? You mentioned health and social justice, but what about the interface between children's issues and areas such as justice and enterprise? Who is charged with that responsibility?

**Gill Stewart:** We work with almost all the departments in the Executive on different aspects of the agenda. We certainly work with the justice department on youth justice issues and matrimonial and child law. There is an interface with the enterprise and lifelong learning department on the transition from school to work, and in relation to vulnerable children and young people. A particular example, where the outcomes are not good, is looked-after children. We also work with the enterprise and lifelong learning department on child care policy. Part of the thinking behind child care policy is not just to give children good-quality early care, but to help their parents back to work, which is the simplest and probably the most durable way of tackling child poverty.

I have mentioned the more frequent links, but

we reach out to almost all the departments, including the environment and rural affairs department, where there are specific service-delivery issues relating to rurality. We know that the Deputy Minister for Education and Young People is sensitive to rural issues. Our work reaches all part of the Executive.

**Jackie Baillie:** Are those links formalised? Are there formal arrangements by which people meet, or are steps taken more in reaction to a ministerial desire to do something in a particular area? Does the work mesh into the Executive's priorities?

**Gill Stewart:** In some respects, links are formal; sometimes, they are ad hoc. One of the action team's recommendations was that the Executive needed to walk the walk better with regard to integration. We were perceived as not being joined up enough. In response to that, and to the action team's other recommendations, which were directed specifically at the Executive, it was decided to set up a ministerial group to take forward the whole agenda. It has now been decided that that group will be chaired by the First Minister and will include several ministers. In fact, most of the Cabinet will be on the group. The group will provide a powerful tool for ensuring that different parts of the Executive work together, and will allow us to think about new ways to work and make things better.

**Michael Russell:** If, as has been argued, the roles of a children's commissioner are

"to:-

- Improve law, policy and practice affecting children and young people;
- Explicitly address the unique concerns of children and young people, looking at issues from their perspective;
- Act as an impartial advocate of children's rights;
- Ensure that the UN Convention is implemented and monitored on a long term, systematic basis;
- Help to facilitate closer co-operation between central government, local government and statutory, private and voluntary sectors with regard to Children's issues;
- Ensure that children and young people have adequate redress when their rights have been breached",

how will that change your work?

**Gill Stewart:** In essence, the commissioner's work would add another layer of scrutiny to our activities and offer a way of holding the Executive to account for the way in which it discharges its functions in relation to children and young people.

**Michael Russell:** Do you think that, in this crowded field, to use Ian Smith's image from earlier, there is room for a children's commissioner? If there is, who gets knocked out of the field?

**Gill Stewart:** I do not think that it is part of my

role to advise whether there is a case for a children's commissioner. That was precisely the task that the Executive asked the committee to address.

**Michael Russell:** I asked whether there was room for a commissioner, as I think that the record will show.

**Gill Stewart:** I am not trying to be evasive, but it would depend on the role that was ascribed to the commissioner and the extent to which that role impacted on existing activities and structures. If, for example, the commissioner had an advocacy role, that could have an impact on those voluntary organisations whose *raison d'être* is advocacy for children and young people. If the role extended to investigation of individual cases or to cases that raised matters of general concern, one could imagine a whole range of bodies on which it might impact, including the police, local authorities, children's hearings and the Executive.

**Michael Russell:** One of the difficulties that I have with our establishing a children's commissioner—although I support the idea—is that, when people are asked that question, nobody says that the commissioner will be doing things that they are already doing. Either nothing is being done or we are not focusing clearly enough on the role.

Let me give an example. In the case of looked-after children, you compile statistics relating to children's issues. Could that work be done by the children's commissioner, rather than by you?

**Gill Stewart:** Either way, one would want clarity about who was doing what. It would be important that the children's commissioner was not duplicating activity that was occurring elsewhere. He or she might tell us, for example, that we are producing statistics on X, Y and Z, but that they really need statistics on A, B and C. That would be a matter of negotiation.

It does not seem to me to matter too much who produces the relevant material, as long as somebody does. The commissioner might provide a focal point for determining that we were generating the information that would be required to judge whether we were doing enough for children and young people in Scotland.

**Michael Russell:** As we debate the argument for having a children's commissioner and devise the commissioner's role, we have to be clear about several things: on whose work the commissioner will impinge; whose legal duties and responsibilities will change; and who will not be able to do what they are doing at present if the role of the commissioner is drawn up as envisaged. We need the Scottish Executive to make it clear whom it funds at present to do certain jobs, including jobs in the voluntary sector.

An analysis of that information would be helpful, as it would give clarity about the direction in which we are going. I suggest that we should request such an analysis so that we know where the money is going and whom the children's commissioner might replace.

14:45

**Gill Stewart:** It would be possible to let members know what grants we give to voluntary organisations and for what purpose.

**The Convener:** That would be helpful.

**Michael Russell:** Thank you.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** We have asked this question of other witnesses. Perhaps you would cast your mind back to the Orkney case. If a case such as that reappeared, how would a children's commissioner deal with it?

**Gill Stewart:** I noted that you had asked that question of other witnesses. The question is complicated. There are powers that would allow an inquiry such as the Orkney inquiry to be held. There are also powers, which did not exist at that time, for local inquiries to be conducted if local issues are involved. That happened in the more recent Edinburgh case.

I would ask a different question. Given that local inquiries can now be conducted if local issues are involved, would people want a commissioner to take a role in those inquiries or would they conclude that the statutory powers are satisfactory? Only if that question were to be answered in the negative would people see a need for the role of the commissioner.

**Mr McAveety:** I asked the question because people might think that, had a children's commissioner existed at the time of the Orkney case and given that the case involved children's rights, or allegations surrounding children and families, such a commissioner would have had a locus to intervene. Time has moved on since then and a number of other mechanisms are in place. What would be the value of having a children's commissioner? The question is important. Mike Russell talked about what is already in place. What added value would a children's commissioner bring to the situation post-May 2000?

**Gill Stewart:** Different people will give different answers to those questions. The kind of issues that people bring to us are about raising the profile of children's issues and giving children a voice and a point of easy access if they have troubles or concerns. The question whether a children's commissioner would have a role in inquiries, which are complex and take place in a complex legal

area, is far less clear.

I reiterate that the question is one of added value and whether the arrangements at the time were satisfactory. It is also about whether something was missing that a commissioner would have added. With hindsight, it is difficult to know whether a commissioner would have had a contribution to make in the Orkney inquiry, which was extensive and expensive. Whether the outcome of the inquiry was regarded as entirely satisfactory may be more open to question.

**Ian Jenkins:** When we spoke to the Welsh commissioner, we suggested that the commissioner in Scotland might undertake preliminary inquiries by looking at the grounds and acting almost as a clearing house. The commissioner could say, "These are the issues and this is where the inquiry should go." If the commissioner were to be established in the terms that were outlined by Mike Russell, would you see the commissioner as a burr under the saddle, a partner or a clearing house? What would happen to the present system if something new came along? Somebody asked earlier how the commissioner would affect your work. What would be the relationship between you and the commissioner?

**Gill Stewart:** I hope that the relationship would be open and amicable. It would be important for the commissioner to be independent and to be seen to be independent of the Executive. That would not mean that we could not work closely with him or her to make the role work.

I heard what Ian Smith said about relations with other bodies and what the role of the commissioner might be in relation to something such as an inquiry. It would be important to establish proper protocols between what would be a new office and the people who already operate in the same territory. If you spoke to the Welsh commissioner, he would say the same thing. He tries hard not to duplicate effort, but to signpost the way through for a child or an interest and to point them in the right direction. He will intervene only if he feels that there is not someone else who can deal with the issue. That is a good working principle.

**Ian Jenkins:** Ian Smith spoke about not wanting the powers to enforce decisions. Do you accept that the children's commissioner, if properly constituted, might have a moral authority that stood above the Executive in stature, rather than the power to make judgments that were enforceable in statute? The commissioner would have a recognised role that was independent and based on rights. Judgments or declarations that the commissioner made would have a moral force that the Executive and other authorities would need to respond to in the public eye, even though

the statute might not say that they had to do so.

**Gill Stewart:** That could happen, but it would depend a great deal on the personal authority and credibility of the commissioner and how he or she was seen to discharge his or her functions.

The question about sanctions was interesting. It would raise profound constitutional questions if you were contemplating that. If you get to the point of requiring sanctions, you may almost have lost the battle. This is about changing the way that people think and act and their attitude to children and young people. I do not think that the best way of getting people to do that is to hit them over the head with a blunt instrument. It is about persuading them and demonstrating that new ways of working are better and produce better results. That is the flavour of the way in which the Executive is trying to work and in which the Parliament is working—a consensual and forward-looking way.

**Mr McAveety:** The age at which people are considered to be children varies in the submissions that we have received.

There is also an issue about where the powers would lie in the devolution settlement and on reserved matters. The commissioner would need to deal with aspects of young people's lives that cut across matters that are devolved to the Scottish Parliament and those that are reserved to Westminster, such as employment rights and benefit entitlement. We are asking all those who submit evidence for their views on how such issues should be resolved.

**Gill Stewart:** Our lawyers would certainly tell us that that was tricky territory. If we have a commissioner, it is important that we devise a way of working through it. Depending on the issue, the divide between reserved and devolved matters can be artificial. There are ways of raising issues that relate to reserved matters, although the Parliament and the Executive do not have powers to deal with them. If there are genuine issues that need to be addressed, I hope that we can find a way through.

**Mr McAveety:** Do you have examples of relevant issues?

**Gill Stewart:** You mentioned employment. There are also issues about access to benefit, particularly for children who are leaving care. There are proposals for transferring responsibility for benefit from the Department of Work and Pensions to local authorities, but that has not happened yet. Even then, there might be a debate about the point at which children can access benefit. In addition, the whole area of child care has an interface with reserved matters, such as family tax credit.

We can feed in views to Whitehall about areas in which we think things are working or not working as well as they might be, or are not having the effect that they were perhaps intended to have. The issue is not straightforward, but I hope that we could find a way through, which would not put an artificial constraint on the children's commissioner, if we had one.

**Mr McAveety:** That was a very careful answer—well done.

**The Convener:** There are no further questions. Thank you for your evidence.

**Gill Stewart:** I will send further written information.

**The Convener:** That would be super. Thank you. That is much appreciated.

We move now to take evidence from the Deputy Minister for Education and Young People. I welcome the minister to the committee. Do you have any opening remarks or do you want to proceed straight to questions?

**The Deputy Minister for Education and Young People (Nicol Stephen):** I have no prepared opening remarks, but I am happy to say a couple of introductory sentences.

Members will be aware that the Executive has previously been neutral about the idea of a children's commissioner. Over the past 12 months, Jack McConnell and I have discussed the issue and signalled to Parliament that we would be sympathetic to and supportive of the idea of a commissioner. However, we were conscious that a memorandum had been prepared by the Executive and had been passed to the Education, Culture and Sport Committee, and that the committee was taking the lead on considering the issue.

We wanted the committee's proposals to be developed and did not want to suggest proposals of our own that might end up being slightly different from the committee's or being regarded as unhelpful or even as counter-proposals—which would be the worst situation of all. We were anxious to signal that we are sympathetic to the idea of a children's commissioner, but wanted to allow the committee to develop its proposals.

Initially, we thought that the committee might develop its proposals and then pass the issue back to the Executive. My understanding now is that members might prefer to progress the issue through a committee bill, which we would be supportive of and would discuss with the committee. In fact, members might want to discuss just now how best we could work alongside the committee in progressing a bill of that nature and what resource we could provide to support the committee or to assist the progress of the bill.

We have not tried to shadow the work of the committee and develop our own proposals. We want the committee to create not only the framework proposal for a children's commissioner, but to give us a lot of guidance about the detail. Therefore, although I might have a personal opinion on a few of the questions of detail that members press me on, it is better that the views of the committee are developed first, based on the expert evidence that it has taken, rather than my trying—at this late stage and with no preparatory groundwork by the Executive—to push in a particular direction. I will continue to be sympathetic and will try to avoid steering members towards any one solution, because we genuinely have an open mind on what model of children's commissioner would be best for Scotland.

**The Convener:** Thank you. After last week, I know that you will be aware that we are a difficult committee to steer in any particular direction.

**Nicol Stephen:** That is not how I found you at all.

**The Convener:** We welcome your initial comments. It has been suggested to us that one of the most important functions of a children's commissioner would be to allow children and young people to express views and raise concerns about law and policy in Scotland. Would that assist the Executive?

15:00

**Nicol Stephen:** Yes. It is important to ensure that we consult young people more and the Executive has been trying to do that. The education department has a range of initiatives to ensure that we do more to involve young people in decision making. For example, young people who are still at school are involved in the Scottish Qualifications Authority ministerial review group; Save the Children is being sponsored to produce a children's consultation toolkit; and the Executive is supporting the children's parliament. There is a range of ways in which the views of young people can be included in the policy-making structure. We recognise that we cannot do that alone and that we must rely on working with others to achieve that. The national voluntary organisations are important and, if there were a children's commissioner, they would have a key role to play.

**The Convener:** Should the commissioner have the power to require account to be taken of the views of children and young people?

**Nicol Stephen:** You are asking me to give a clear view on a point of detail. As I said earlier, rather than give a line-by-line response on such points, I would rather allow the committee to come to a view on its own.

**Irene McGugan:** You mentioned the structures and mechanisms that are designed to involve young people. Can you give me one example of a young person's input influencing policy or legislation?

**Nicol Stephen:** The most obvious example that I can think of from my experience relates to the SQA ministerial review group, where the concerns of young people about the delivery of the 2001 exam results were fed in at an early stage and some of the problems that were arising were heard of far earlier than they otherwise would have been. Indeed, in the late part of 2000, young people raised issues with the group. Such concerns had not been heard previously and the Executive and the decision makers in the SQA were unaware of them.

We have got the message loud and clear that the five-to-14 curriculum is explained in a way that is not parent-friendly, let alone child-friendly. The need to simplify the explanation to ensure that young people can understand it is at the forefront of my mind in progressing the review.

Many issues have been raised with me by the Scottish youth parliament and in my weekly—almost daily—meetings with schoolchildren throughout Scotland. However, a children's commissioner would provide an independent voice and would push us more formally on some of the issues.

**Irene McGugan:** That is the point that I was asking you to clarify. Do you feel that the current system is effective enough, or do you accept that a commissioner could bring added value?

**Nicol Stephen:** There have been clear improvements. For example, we have had the child strategy statement; the announcement in the past few days of the Cabinet committee on children's issues; and the report and action plan from the action team on integrated services. A reading of that report shows that much more needs to be done and that the current provision in Scotland is far from adequate. I am certain that that is why everyone thinks that the proposal for a children's commissioner is a good one. That said, for the reasons that I have described, the Executive has not worked up in detail its own thoughts about how that should be achieved. The Executive feels that that can be done better by others, particularly in the light of the committee's work on the issue.

**Jackie Baillie:** I want to return to mainstreaming. As you rightly said, we need to do more to mainstream the participative approach that you have outlined; however, we also need to do that in policy work across all departments, not just in relation to children and young people. What role would a commissioner have in relation to you,

as a minister, in learning lessons about policy and practice that could then be brought to the table? Moreover, how would you ensure that those lessons were spread through the Executive as a whole?

**Nicol Stephen:** Do you mean the commissioner's proposed role in relation to the children and young people's group and its cross-cutting responsibilities?

**Jackie Baillie:** And the commissioner's relationship with you as a minister.

**Nicol Stephen:** We have drawn on the precedents of other commissions and commissioners. We already work with the Equal Opportunities Commission, the Commission for Racial Equality, the Disability Rights Commission, the ombudsmen and a range of organisations that have a direct bearing on the responsibilities of the department and the cross-cutting responsibilities of the Executive. We must consider carefully how the children's commissioner would fit into that existing network of commissioners. We must also remember that there has been consultation on the possibility of a human rights commissioner. I would not like to give an answer that focuses solely on the relationship involving the children's commissioner, the children and young's people group and the department.

We must work out how the Executive as a whole operates with the various commissions to ensure that there is a consistent approach. The approach that I have outlined should—where appropriate and where possible—be constructive and co-operative. However, I hesitate to use the word "partnership" because the independence of the commissions and their ability to criticise the Executive in a way that allows the Executive to respond constructively are very important. I hope that there would be an open relationship in which the commissioner's criticisms or suggestions—if he or she had any—would be taken seriously by the Executive, no matter which department was being criticised or was being encouraged to take action.

One of my roles as a minister would be to ensure that the commission is given its appropriate status and that its rulings—or even its advocacy and the vision that it is trying to outline—are taken seriously by the Executive, so that we can move forward on the issues and never be obstructive or unwilling to engage in dialogue.

**Jackie Baillie:** That is a welcome acknowledgement of the fact that the commission needs to be independent and should be critical when that is appropriate.

First, let us return to the relationship between your ministerial team and the commissioner. I am conscious of the fact that the organisations that

you mentioned—the Equal Opportunities Commission, the Disability Rights Commission and the Commission for Racial Equality—have one point of contact with the Executive. As they learn about requirements to change policy and practice, they are able to feed their expertise into one ministerial team, which takes responsibility for spreading it. Would your ministerial team develop that lead responsibility, although the scope would be wider?

Secondly, as you acknowledged, consideration is being given to the establishment of a human rights commission. It is important to identify where the children's commissioner and all the other organisations would sit in the context of a human rights commission. I would be interested to hear your views on that.

**Nicol Stephen:** The answer to the first question is that, yes, I would see the lead responsibility lying with the children and young people's group. That group was set up relatively recently—in June 1999—with the aims of putting a greater focus on children's and young people's issues and ensuring good, joined-up governance through a cross-cutting approach. It seems sensible that the group should take the lead in co-ordinating the Executive's work with the commission. However, that would not exclude the involvement of other departments in a face-to-face relationship with the commission, just as is the case in relation to the Disability Rights Commission. The commissioner will meet officials from all sorts of different departments within the Executive, who are involved in justice, health and social justice. There should be an open-door approach.

My answer to your second question, concerning the relationship between a human rights commissioner and the children's commissioner, is that we should take things one step at a time. We do not yet have a human rights commissioner. If we proceed with a human rights commissioner and a children's commissioner, the relationship will need to be considered. It is even possible—this has been suggested to me, but I do not have a view on it—that the relationship could be more formal and that the children's commissioner could be part of, or have a link to, a human rights commissioner. I take the view that that would be difficult at this stage, as the proposal for a human rights commissioner is being driven by the Executive, whereas the proposal for a children's commissioner is being driven by the committee. Exploring the opportunity for co-operation could be readily achieved, but getting a proposal for an integrated, single human rights and children's commissioner—even if that was a good idea—would be difficult because of the different stages that the proposals have reached.

**Michael Russell:** I am sorry; I was called away

as you began to give evidence, so if you have dealt with this already, forgive me. Will you be dealing with the children's commissioner on behalf of the Executive or will it be the minister to whom you report?

**Nicol Stephen:** As Mike Russell is aware, the lead responsibility for all issues in a department lies with the minister.

**Michael Russell:** You have been to see us twice to discuss the children's commissioner and I believe that you have also answered parliamentary questions on the matter. I am simply asking whether the commissioner will fall within your area of primary responsibility.

15:15

**Nicol Stephen:** We now have a new structure and a new department for education and young people, with a Minister for Education and Young People and a deputy minister. I will not have special or particular responsibility for the children's commissioner. If there were to be a future hearing on the matter in front of the committee, I am sure that Cathy Jamieson would want to attend. Unfortunately, this afternoon she is at a meeting of the Cabinet, at which she is representing the interests of schools, teachers and others who come within her departmental responsibilities.

**Michael Russell:** That is not what her press release said, but never mind.

Let me ask a question about the evidence rather than one about the comings and goings of the Scottish Executive. As one of my colleagues said, there were more goings than comings, but I do not dare reveal which of my colleagues said that.

The Welsh children's commissioner is able to review the effect on children of the exercise of the functions of the National Assembly for Wales. That power can be extended to the functions of the Executive in Wales, through the Assembly. A Scottish commissioner could have that right, too. If we took that power a stage further, the Scottish commissioner could also have the power to make recommendations—binding or otherwise—if the exercise of the Executive's functions was against the interests of children, as protected in law through the UN Convention on the Rights of the Child and elsewhere. Would the Executive look kindly on the Scottish commissioner being able to judge what is done, firmly and on behalf of children, possibly in order to set things right?

**Nicol Stephen:** The powers of the Welsh commissioner make for an interesting comparison. It is fair to say that, because the plan for the Welsh commissioner developed out of the Waterhouse report, the original proposals were quite narrow. Now that the Welsh commissioner is in place, the



powers have ended up being relatively wide.

I would be comfortable with a Scottish commissioner who had wide powers, but we must consider that in further detail. I would be concerned if the powers of the commissioner infringed on the proper role, as defined under the Scotland Act 1998, of either the Parliament and its committees or the Executive. It is quite clear that, as far as devolved matters are concerned, the power to pass appropriate legislation should continue to lie with the Parliament and its committees.

**Michael Russell:** When we took evidence from young people from the children's parliament and the Scottish youth parliament, we got into the question of involving young people in appointing the Scottish children's commissioner. The issue arose with the witnesses from the Scottish youth parliament in particular. I notice from press coverage at the weekend on the children's commissioner and the likely attitude of the Executive that that was specifically mentioned as an initiative that appealed to whoever the sources were who spoke to the press. What is your view on the involvement of young people in helping to make that a worthy appointment? How should that involvement come about?

**Nicol Stephen:** Are you asking about the procedure to appoint the children's commissioner?

**Michael Russell:** Yes.

**Nicol Stephen:** That seems an innovative proposal, but I reiterate the comments that I made in response to Irene McGugan's question about involving young people in the process. There are issues about legal responsibility that would need to be considered by the lawyers, but I have nothing against the principle.

**Ian Jenkins:** I realise that you might be reluctant to commit yourself, but if a children's commissioner were established in Scotland and could not deal with matters such as the Child Support Agency, would the commissioner be hobbled? In other words, what would be the relationship between the commissioner's remit and reserved powers?

**Nicol Stephen:** As Ian Jenkins is aware, we have good relations with the UK Government. If the Education, Culture and Sport Committee took the view that reserved matters should be part of the responsibilities of the commissioner, we would be happy to support the committee in making representations to the UK Government. I could envisage getting a positive response from the UK Government, depending on the particular proposal—[*Interruption.*] I am sorry, but I keep hearing lots of bleeps.

**The Convener:** It is okay.

**Michael Russell:** It is a message from Bute House.

**The Convener:** No, you are not off message minister.

**Nicol Stephen:** I get nervous when I hear bleeping when I am speaking about such issues.

No doubt the Education, Culture and Sport Committee would want to discuss the issue and make its own representations. If we could help with that and facilitate the discussions, we would. We cannot decide on reserved matters as we have responsibility only for devolved matters, so any final decision would be for the UK Government to make, but we would be pleased to assist.

**The Convener:** The minister may be aware that those discussions have already begun. I met the Secretary of State for Scotland a week ago and I know that discussions with the minister's officials are on-going.

**Jackie Baillie:** The experience of the Northern Ireland Human Rights Commission has been of an annual stand-up fight with the Westminster Government about what is required. Do you see us taking that approach or are you talking about sharing information? If something is not in the remit, but is in an area where you would wish to comment on points of policy or practice, comments could be fed in through whatever mechanism was set up, instead of listing matters X, Y and Z that we think are right or wrong. Will dialogue be on-going?

**Nicol Stephen:** I do not see us taking a confrontational approach. I hesitate to tiptoe into discussion in this area, particularly with Mike Russell in the room, but in relation to student finance, for example, we had to face up to many issues relating to reserved matters. We recognised that there were areas in which the UK Government had a different view and that it was not particularly constructive to encourage confrontation.

If there were reserved areas in which the UK Government was interested or willing to give a Scottish commissioner a role, we would support and assist that. However, if the UK Government made it clear that it did not want any powers or responsibilities relating to its functions to pass to the Scottish commissioner, we would still support the need for such a commissioner and for that commissioner to make representations or carry out an advocacy role in relation to devolved issues from time to time. We would continue with the private dialogue that we have at civil servant level with UK Government departments. We would not envisage the commissioner becoming a battering ram against the UK Government or any of its departments.

**Jackie Baillie:** That is why it is important to define the role. The example that you gave, of student fees, is devolved. If the commissioner could comment helpfully on a reserved matter, we must consider to what extent we would accept that, because it is not something for which we could take responsibility.

**Nicol Stephen:** Student finance is not all devolved. Some recommendations touched on reserved matters, so some of those issues arose. As I say, I am not sure that it is a good parallel; other areas are more appropriate to this discussion. For example, we have sought to work closely with the UK Government and the Disability Rights Commission on some of the legislation that has been passed at Westminster, to ensure that the documents that implement the legislation are framed in a way that is sensitive to Scottish needs.

Similarly, I hope that we ensure that legislation on reserved matters that is passed by the UK Government and which applies in Scotland is framed in a way that is clear to all public bodies in Scotland and is also easily understood by children and is implemented appropriately from a young person's or child's perspective. It would be appropriate for a children's commissioner, the Executive and the committee to play a part in ensuring that that is the case.

The fact that I have listed all three bodies brings us back to another important issue. We must sort out the relationship between the Executive, the committee and the children's commissioner. We must be as clear as we can be about the relationships. Such matters are never certain when a new body or new role, such as that of children's commissioner, is established. We must try to be as clear as possible.

**The Convener:** There are no further questions. I thank the minister.

15:27

*Meeting continued in private until 16:12.*

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