EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 10 December 2008

Session 3

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EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
30th Meeting 2008, Session 3

CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

DEPUTY CONVENER

Kenneth Gibson (Cunninghame North) (SNP)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
*Aileen Campbell (South of Scotland) (SNP)
*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)
*Bill Kidd (Glasgow) (SNP)
Hugh O'Donnell (Central Scotland) (LD)
Cathy Peattie (Falkirk East) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Alex Neil (Central Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Jessica M Burns (Additional Support Needs Tribunals for Scotland)
Joe Di Paola (Teacher Employment Working Group)
Lesley Maguire (Additional Support Needs Tribunals for Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Nick Hawthorne

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Education, Lifelong Learning and Culture Committee

Wednesday 10 December 2008

[THE CONVENER *opened the meeting at 10:00*]

Education (Additional Support for Learning) (Scotland) Bill: Stage 1

The Convener (Karen Whitefield): Good morning. I open the 30th meeting in 2008 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting.

We have received apologies from Kenny Gibson, who is unable to attend the meeting. He has been replaced by Bill Kidd, whom I am pleased to welcome. Alex Neil is visiting the committee for the first agenda item. I understand that Margaret Smith and Liz Smith are running late; they hope to join us shortly.

The first agenda item is to take evidence on the Education (Additional Support for Learning) (Scotland) Bill at stage 1. I am pleased to welcome Jessica Burns, who is president of the Additional Support Needs Tribunals for Scotland, and Lesley Maguire, who is the secretary of that organisation. I thank them for joining us. I understand that Ms Burns wishes to make an opening statement.

Jessica M Burns (Additional Support Needs Tribunals for Scotland): I thought that it would be helpful to make some introductory comments to explain a little bit about the Additional Support Needs Tribunals for Scotland. We operate very much at the severe end of additional support needs, and it may be helpful for members to understand what our respective roles are in the organisation's work.

Lesley Maguire has been the secretary of the Additional Support Needs Tribunals for Scotland since 2007. Prior to that, she was the deputy secretary. She has been present in the organisation since its inception in 2005. She heads up a very small, modest secretariat team, which consists of her, two case officers, an office manager and an administrative assistant.

I am appointed for 50 days a year on a seconded basis—my main appointment is as a regional tribunal judge in social security tribunals. At the Additional Support Needs Tribunals for Scotland, I head up a team of nine conveners, who are the legally qualified chairmen of the tribunals, and 22 members, who are appointed on the basis of their knowledge of additional support needs—they have backgrounds in education, health and social work. In my role, I have so far produced three annual reports for Scottish ministers on the operation of the tribunals.

I have read all the written evidence that the committee has received, in which there seems to be a misperception that the tribunals are more active than they actually are. Since April 2008, we have received only 28 references. In the previous reporting year—2007-08—there were only 76 references, which resulted in only 18 oral hearings. That means that only around a quarter of the references that were received in that year proceeded to a hearing. I highlight that, because the figures indicate that the tribunal process is successful in resolving disputes without cases needing to go to oral hearings. Many cases are withdrawn or dismissed as a result of parties coming together, focusing on the dispute and reaching an amicable outcome. In addition, in virtually all cases that are to proceed to a hearing, a telephone case conference will be held around two weeks before the date of the hearing, which results in many more cases being settled—one could say with the convener's intervention, pointing out to the parties their legal obligations.

We appreciate that some of the written evidence that the committee has received sought to address substantive legal issues, such as the definition of the word "significant" in the context of meeting the co-ordinated support plan threshold. The correction of the judicial interpretation of fact is to be considered in determining the need for additional support, to enable a more holistic approach to be taken to a child's overall day-to-day care rather than just their education, and the role of other agencies in informing the need for a co-ordinated support plan has been clarified.

We have tried to confine our evidence to aspects that are directly related to the tribunals' function and how the procedures might be changed to render the process more user friendly and fit for purpose and more able to deliver the policy intention of the Education (Additional Support for Learning) (Scotland) Act 2004. We are happy to answer questions on all issues.

The Convener: Thank you for your helpful comments. I am sure that members will seek your views on a number of matters.

Ken Macintosh (Eastwood) (Lab): I thank the witnesses for attending the meeting.

You have suggested that it might help to resolve some of the complexity in the choices that parents and local authorities face as they go through the system if all placing request appeals that related to

special schools were reserved to the tribunal. Would that be the only option for parents? Would you deal only with references involving special schools? Would you deal with appeals involving mainstream schools?

Jessica M Burns: All the placing request appeals that we have received have related to special schools, because the children who come within the ambit of the tribunal are those who have or are likely to have a co-ordinated support plan. As you probably know, the number of such children is very small. There are fewer than 2,000 such children in Scotland, according to most recent reports.

I am sure that you are aware that the complexity of the routes of redress and remedy for parents has been criticised. To make the system as clear as possible we propose a clear route, whereby if the school that is sought is a special school the issue will go before a body that is composed of members who have expertise in dealing with such issues, such as the tribunal.

We have heard anecdotal reports from education appeal committees that committee members have felt disempowered when they have dealt with issues that relate to specialist areas. Our proposed approach would perhaps not only give parents a direct route but relieve education appeal committees, which deal only occasionally with specialist appeals.

Ken Macintosh: Your suggestion might receive support.

The number of CSPs and applications for CSPs is far smaller than was envisaged. Will that always be the case, or will the predicted number of CSPs be reached, which would mean a several-fold increase on the current number?

Jessica M Burns: I think that the number of CSPs will continue to be modest. You might be aware that a reason for the great disparity in the number of CSPs in different local authorities seems to be to do with how additional support is delivered to children in schools. If additional support from other agencies is employed by the school through the education system—in-house speech and language therapists, for example—it is argued that there is no need for co-ordination and therefore no need for a CSP, even though professionals from areas other than education are assisting the child.

It is ironic that few children in special schools end up with a CSP, which is the opposite of what we might expect. We would expect almost all children in special schools to be supported by services other than education.

A number of headteachers of special schools have told me that they have no experience of putting together co-ordinated support plans because they already employ social workers or provide the whole range of therapies in their schools. I think that there will always be a disparity in the number of such plans; they are more likely to be used by the smaller authorities, which have to contract for and buy in provision in mainstream schools.

I accept, therefore, that the number of placing requests is linked not to whether the children in question have co-ordinated support plans but to whether the parents are arguing that their children's needs really warrant a special school education.

Ken Macintosh: You have half addressed my next question, which was an expansion of my original question. All the cases that you have highlighted so far relate to special schools; however, quite a few appeals involving mainstream schools might also be unsuccessful. Do you expect those cases to come before your tribunal?

Jessica M Burns: Only if co-ordinated support plans are involved.

Ken Macintosh: So this is not just about special schools. Are you saying that, although you have not yet dealt with such cases, you expect parents who have applied unsuccessfully for a place at a mainstream school to continue to have the option to take their case to the tribunal?

Jessica M Burns: Only if their child meets the current criteria for a co-ordinated support plan.

Ken Macintosh: As you have pointed out, many children who go to special schools—indeed, many of those who apply unsuccessfully and then have their appeals turned down—do not have, and have never even been considered for, a co-ordinated support plan. As a result, even though they have additional support needs, they do not meet the current criteria for appealing to the tribunal. Should that group also have those rights of appeal?

Jessica M Burns: We have not recommended that in our submission. I have to say that we are hampered in that respect by a lack of real data and information on the groups that might be involved or the issues that might be raised.

The low take-up of mediation and the low number of appeals might suggest that parents are broadly satisfied with the situation; on the other hand, the figures might suggest that parents are quite intimidated by the complexity of the various remedies and the arena for challenging decisions about their children's education. The question is whether giving every child with additional support needs in a mainstream school the right of appeal to the tribunal on every related issue is a proportionate response; I feel that it is

disproportionate. After all, the process of appealing, with all the evidence gathering and so on that is required, is actually a very big step for parents to take, and I would hope that the authorities in Scotland might be more amenable to taking active mediation measures to resolve issues.

Ken Macintosh: The committee will no doubt consider the other issues in the round, but I simply wanted to pin down that specific point. I will stop there, because other members will return to some of these matters later.

Claire Baker (Mid Scotland and Fife) (Lab): Jessica Burns referred to parents' ability to challenge decisions. Stakeholders at a round-table evidence session that we held expressed caution about proposals in the bill giving the tribunal the ability to review its own decisions. At last week's meeting, however, the bill team argued that the practice was quite common. What are your views on the proposal? How would it work? Do you know of any other tribunals that have a similar mechanism?

10:15

Jessica M Burns: Since 1999, what I call my primary jurisdiction, or my salaried jurisdiction, which is social security, has had the right to review its own decisions. In situations in which there is a palpable error in law, or a matter that has been overlooked, the social security tribunal will go back and address the point. In one or two cases involving additional support needs, the tribunal has clearly erred in application. At the moment, the only remedy for a parent or an authority that seeks to have such a decision overturned is to go to the Court of Session. That is a disproportionate approach, given that the tribunal is supposed to be family friendly and enabling.

I am not arguing that we should try to head off every appeal that might go to the Court of Session, because it is clearly important for the interpretation of the legislation, and helpful for the tribunal, to have guidance on legal issues that are unclear, and most of the decisions have been helpful to us. However, one or two issues have been problematic. For instance, if a tribunal decision is not clear enough for the education authority to implement it, it will need to be clarified. A good example of that involves amendments to the terms of the co-ordinated support plan. In the case that I have in mind, the tribunal directed the education authority to go away and amend the plan in the light of evidence that had been heard by the tribunal, but the directions were not sufficiently specific to address the issues that the parent had raised—as you can imagine, the plan document can be quite complicated. There was no way that the tribunal could get back into that decision at that point, however. If it had the power to review such decisions, it could have done so quite speedily, probably without the need for a further oral hearing. In the case that I am discussing, the parent, who was unrepresented, probably would not have qualified for legal aid if they had taken the case to the Court of Session.

Giving the tribunal the right to review its own decisions would make the process more user friendly and responsive. Having read the submissions to the committee and the responses to the consultation, I know that there is a fear that that might be a retrograde step. However, most tribunals—including our sister tribunal in England and Wales, the special educational needs and disability tribunal—have the power to review their own decisions. Such reviews are rare, but when they happen, they offer a cheap, speedy, user-friendly response.

Claire Baker: Govan Law Centre raised concerns about whether local authorities would have an advantage in a tribunal situation and noted that that might have an adverse effect on the way in which a review would be carried out. However, one of my colleagues will pick up on the adversarial nature of tribunals later.

Alex Neil (Central Scotland) (SNP): One reason why the bill has become necessary is a result of certain decisions that were made in sheriff courts and other courts—they were made there either because the previous legislation had not yet become active or because, for one reason or another, the cases did not go down the tribunal route, even though the legislation had become active. Clearly, one of the purposes of the bill is to remove from the process much of the legalism and deal with as much as possible through the tribunal.

In many cases that have gone to the sheriff court, a decision was made on a point of law rather than being based on the needs of the child. Should the tribunal have the power to consider such cases? For example, I am dealing with a case involving an extremely deaf child. There was a dispute between the parents and the local authority about whether the child could go to a specialist school south of the border. The council refused to pay for that and the case ended up in the sheriff court, where, on a point of law, the sheriff had to find in favour of the council. However, he said that, had he had any option in law, he would have found in favour of the parents. That child still has six years to go in secondary school. I would like the legislation to enable such cases to be referred to the tribunal so that it can consider them in terms of the needs of the child. Would you be happy to have such a power?

Jessica M Burns: The tribunal is governed by the same law that applies to the education authority, the sheriff and the Court of Session. The

case that you mentioned is probably of the sort in which the child did not have a co-ordinated support plan and the issue of the placing request went to an education appeal committee, from which it was appealed on to the sheriff. The issue of such cases going to the tribunal is just the point that I was making to Mr Macintosh. I do not know the judgment in that case, but if you wanted the legislation to be more child-centred in relation to placing requests, it would probably require an amendment to give recognition to special conditions and to make additional support needs issues more parent friendly.

As I tried to say in my introduction, there has been some criticism that cases in the tribunal have taken longer than had been anticipated. Most of our appeals are cleared within a day, but there have been a number of complex cases that have gone on for three, four, five, or even nine, days. Those cases are exceptional. Cases in the sheriff court take a similar length of time. However, our advantage is that we tend to be more responsive. We put cases down for a continuous hearing rather than putting them down for two days and then continuing them. We are clearing cases a lot more quickly.

Alex Neil: The other issue is that when parents go to a tribunal, they do not incur huge legal costs. If they go to a sheriff court, they incur their own legal costs. Further, in the case that I mentioned, the local authority threatened to recover its costs from the parents. It did not actually recover them, but the result was a gagging order on the parents. The situation was weighted against the parents. Part of the purpose of the bill is to try to redress the balance.

You mentioned the low number of references to the tribunal. I was encouraged to hear about the percentage that ends up in mediation rather than in a full hearing. It shows that the process is working. Why is the number of references relatively low? My view is that parents often do not know about their right to take an issue to the tribunal, but what do you think?

Jessica M Burns: The issue is access to justice. The legislation is complex and emotionally charged. Parents who have a child with additional support needs feel vulnerable, and the idea of going into a formal process over the child's rights is quite intimidating, even when we try to make the process user friendly. I commented in my annual report that letters in which education authorities issue decisions are not always clear about the routes of redress, so parents are not being informed at the right time. Some letters simply refer to leaflets that have been sent previously, which is not a helpful way of trying to steer a parent towards the correct remedy. My colleague Lesley Maguire met Enable this week and might want to comment on parents' access to justice.

Lesley Maguire (Additional Support Needs Tribunals for Scotland): The meeting was actually with an official from the National Autistic Society Scotland. She told me that the society is set up in a way that empowers parents to represent themselves, rather than operating in a framework in which the society steps in, takes over the case and presents it for the parents. She said that over the past year, she has been approached by more than 20 parents who had a legitimate claim to go to a tribunal. However, none of those parents could be convinced that they were able enough to present their own case, even with the training and support that the NAS offered. They all found it far too overwhelming.

A lot of that goes back to the issues that Jessica Burns raised—the situation is incredibly emotionally charged for a parent. We often find that when a parent presents their own case at a tribunal, it overwhelms them, and it is up to the tribunal convener to use their skills to help the parent get their point across.

Alex Neil: Is there anything that we can do in the bill to try to ease that problem and facilitate a system that meets the parents' needs? Assistance from an advocacy service is a possibility, but, from your experience, are there ways in which we can make it easier for parents to access the tribunal—and make the process easier for them once they get to the tribunal? Is it a resource issue?

Lesley Maguire: The resource issue is being addressed by the Scottish Government to an extent. There is more training for advocacy groups, but that will take time to feed through. Word of mouth is a big thing: one parent telling another parent that going to the tribunal is not as bad as they think it is going to be is more valuable than almost anything else.

Jessica M Burns: If I may correct something that Alex Neil said, when I indicated that a large number of cases settle before the hearing, I did not mean that that is due to the mediation process under the legislation. The cases are settled because there has been a case conference and there is a convener-directed settlement or agreement. The tribunal is not informed about whether parties have engaged in mediation prior to the hearing.

I asked the Scottish Mediation Network whether we could have information about the mediation process, but it indicated that it regarded the process as so utterly confidential that the information cannot be given to us. Therefore, I cannot say how many cases have been to mediation before they come to the tribunal, and whether that mediation has failed.

Aileen Campbell (South of Scotland) (SNP): Alex Neil has asked questions about the adversarial nature of the process, and I would like to talk about that a bit more. We have heard anecdotal evidence that local authorities that are armed with teams of lawyers have been pitted against a parent who might not have the same legal back-up. Do you know how many times local authorities have been represented against a parent who has not been represented?

Jessica M Burns: From the latest ASNTS annual report, I see that, in the last reporting year, 17 parents out of 76 had no representation at all. That is quite a modest number. Compared with the figures for the special educational needs and disability tribunal, in which more than half the appellants are unrepresented, a very small number—less than a quarter of the total—are unrepresented in Scotland.

The parents have mostly been represented by Independent Special Education Advice (Scotland), which represented parents in 51 cases last year. There was legal representation, including by Govan Law Centre, in seven cases. Most of the parents whose cases have gone to hearing at tribunal have had representation.

10:30

I also have statistics for the representation of education authorities at tribunals. They are always represented, but almost half of representatives come from education—authorities do not always go to their legal departments to instruct representation. However, in 10 cases, an authority instructed not only its in-house legal team but counsel. Authorities tend to do that in cases that relate to placing requests. The cost to an authority of a placing request can be £200,000 or more a year, so it is a significant part of its budget. If it takes the decision that a child's placing request is not appropriate, it will want to defend that decision. In some cases, authorities have felt it necessary not just to instruct their own in-house solicitors but to use counsel to represent the case.

It is in those cases, which are few but significant, that representative organisations such as ISEA, which is experienced in additional support needs but not legally qualified, feel at a disadvantage. I can understand why, and I mentioned this point in my submission and annual report. The disadvantage is not so much in how the evidence comes out, as I have tried hard to create a culture in which all the witnesses are regarded as witnesses to assist the tribunal rather than for one side pitted against another. However, if parties are arguing complex legal points, non-legally qualified representatives are at a disadvantage in making a submission to the tribunal.

I have suggested that the tribunal should have the power, in limited circumstances, to indicate that legal representation for the parent is appropriate, particularly when a case involves issues of statutory interpretation. Of the cases that we have dealt with, there have been two or three that could have come into that category and in which a parent should perhaps have had legal representation.

Aileen Campbell: Did you say that there were 17 cases without representation?

Jessica M Burns: There were 17 cases in which the parents brought a reference and were not represented, but most of those did not proceed to an oral hearing. In fact, there were only two oral hearings in which the parents represented themselves last year. In 17 cases, parents brought a reference, but most of those settled in another way and only two proceeded to a hearing.

Aileen Campbell: I understand. You said that the environment was often not an enabling one. How could it be changed so that it is less confrontational from the outset?

Jessica M Burns: We have probably gone as far as we can in creating an enabling atmosphere for the tribunal hearings. We try to use premises where parents have their own rooms. We provide lunch and sandwiches, and we have breaks during the hearings so that parents can have a coffee. They can bring supporters with them. We liaise closely with them about the times of hearings so that they can get home to collect children or attend to child care arrangements. We also have an active secretariat, which does its utmost to support parents and tell them about the process. We have produced a DVD, and we have information on our website to tell parents what to expect at a hearing. Our members do a lot of the questioning, which they conduct in as supportive a way as possible.

In general, we have done well on delivering an enabling environment, but the reality is that parents must confront education authorities that they regard as being in a position of power over them and with which they have been in dispute. In many cases that come to a hearing, it is clear that there is a history, but we do not always hear the full history of the difficulties that a parent has had with the school or education authority. We can address only the issue that is within the tribunal's jurisdiction, which sometimes makes the environment quite emotionally charged. Sometimes a resolution is achieved that enables both parties to walk away from the hearing with dignity, but sometimes the parent who is unsuccessful has a sense of grievance and feels more disempowered. Lesley Maguire might comment on that from the case officer's perspective.

Lesley Maguire: The parent deals with only one official throughout the lifetime of the reference. The case officer is in constant touch with the parent about arrangements and is with the parent on the day of the hearing. We hold hearings as close as possible to the parent's home, so that the parent does not have to travel far. We travel to them, to maximise the time that they can spend at the hearing before they must go home to the kids. The case officers are well trained—I do not think that there is cause for concern on that front.

Aileen Campbell: When the bill team gave evidence to us last week, it suggested that the tribunal president could issue practice directions, to prevent parties from directly questioning each other and to make it clear that the focus is on the convener, who questions and gathers information from both parties. Do you agree with the suggestion?

Jessica M Burns: I have issued practice directions to that effect. I have issued a number of practice directions, which are listed in my annual reports. The directions have not always been applied, because parties who come to a hearing with counsel or a solicitor have sometimes insisted on their right to examine, cross-examine and re-examine the appellant or other party, which is not a helpful approach.

I can only issue practice directions. However, tribunals are increasingly confident about setting out exactly how they want evidence to be taken and asking witnesses the bulk of the questions. An exception to that approach is that, as part of our enabling role, when a parent is represented, we always allow the representative to question the parent first, because in general they have done some preparation. The tribunal normally picks up on other issues when it questions the parent later. The parent is always given the opportunity to have their evidence taken last, so that they have the benefit of being able to take on board everything that they have heard from witnesses.

I do not know what more I can say about our attempts to provide an enabling environment. I have tried to promote such a culture in the tribunal.

Margaret Smith (Edinburgh West) (LD): I apologise for my late arrival.

You have suggested that on a limited number of occasions parents should be able to access legal representation. How would that work in practice? Would it be for a member of the tribunal to unlock the door to that avenue? Secondly, there are some cases in which there are points of law. What access would the convener of the tribunal have to legal advice? If the tribunal convener listened to a Queen's Counsel making points of law and the parents could not match that with their own legal representation, could the tribunal decide to take independent legal advice and take a bit more time over the case?

Jessica M Burns: I do not think that we could do that, because the tribunal is acting in a judicial capacity in making its decisions. Hopefully, I have been able to support the tribunal legally through intensive training.

I have taken counsel's opinion on two issues relating to the operation of the tribunal, but both were procedural, or preliminary, issues. We have a very small budget for taking counsel's opinion, but it would not be normal practice. In fact, it would be quite improper. There is no procedural way for the tribunal to say, "We've taken counsel's opinion and this is what he says," because we have to listen to arguments from both parties.

It is in the nature of the proceedings for the tribunal to be issued with the papers in advance and for the convener who has been identified to chair any hearing to manage the case almost from the outset. For example, a preliminary legal issue could be dealt with in a case conference call preliminary debate or in a short oral hearing. That means that when we come to take evidence, the parent will not have to sit through legal arguments feeling that the tribunal is not interested in their child and that it wants only to talk about dates and legal technicalities. That is one way in which we have addressed the issue.

The legislation has produced some challenges and it is not as clear as it could be. Cases that have been demanding for the tribunal and have gone up to the Court of Session have been subject to quite a degree of argument in the outer house. More recently, one went straight to the inner house for argument. I do not think that we can do anything else to support conveners legally. I am happy that the conveners who have been appointed have good legal qualifications. Some also sit in other jurisdictions in a judicial capacity.

Claire Baker: I want to pick up on your evidence about the number of cases. You said that, last year, there were 10 cases where the local authority brought along a legal team because they were about placing requests, which involve a significant cost to the council. That seems to be a significant area in which councils consider bringing in legal teams. The bill seeks to extend the right of appeal for placing requests. Will that lead to more councils taking such an approach? In your experience of the 10 cases that you mentioned, are certain councils that have specialist skills or expertise carrying the burden?

Jessica M Burns: As I say in my annual report, the incidence of references varies widely among authorities. Edinburgh figured largely; it made 24 references last year, which was a third of the

overall number and therefore a high proportion. I do not think that that necessarily indicates bad practice on the part of the City of Edinburgh Council. It probably has more to do with the fact that Edinburgh has the largest choice of different schools—and, possibly, that the parents in the city are very articulate and are prepared to take cases to a reference. Authorities—and the authority in Edinburgh, in particular—have begun to feel that a large number of successful placing requests will take a lot of money out of their education budget, and one can understand their motivation in seeking to protect their budgets.

10:45

Ken Macintosh: Aileen Campbell and Margaret Smith have already asked about the proposal to give the tribunal the power to appoint legal representation for parents in a very limited number of cases. Have you established any criteria that might be applied in that respect? How much would the proposal cost? Was the suggestion made to the Government when it was drawing up the bill or are you proposing it now?

Jessica M Burns: I have been asked about this on two or three occasions, and I have to say that I am pleased not to be the one responsible for the final decision on what is a very vexed question.

Simply making legal aid available for such cases would be a retrograde step that I think would undermine the tribunal's ethos. After all, most authorities still do not instruct legal representation. They might, however, instruct the education department to attend and, indeed, as they gain in confidence, more and more of those people will do so.

It should be up to the tribunal to certify cases as being complex enough to warrant the appointment of legal representation to parents. It has been suggested that the authority should have to indicate whether it will instruct counsel and that, in such cases, the parent should be able to access legal representation. An overriding objective in the rules is that the tribunal should try to ensure equality of arms; that said, however enabling we might be, we do not have the power to appoint legal representatives to the parent.

Under the current legal aid parameters, many middle-income families who will nevertheless find it very difficult to afford representation will not qualify for such support. The tribunal has a notional budget of £5,000 for legal advice and, in cases involving complex issues, it might decide to pay for representation to argue a particular legal point at a hearing because, otherwise, the parent might be disadvantaged. I do not know whether £5,000 will cover that for the year; I think that £10,000, which represents a very small part of the budget, might. Moreover, if legal representation were to be assigned to the parent early on, certain issues could be resolved more speedily and at less cost.

Ken Macintosh: So, you have not actually made that suggestion formally to Government.

Jessica M Burns: I have made the suggestion to the division in question, but I am not sure where it has gone.

Ken Macintosh: That is okay.

One of the key things that we are trying to establish is whether a system that was clearly not supposed to be adversarial is turning out to be so and what we can do about that. It is quite clear that you do not want the system to be adversarial.

I want to check a few figures. I am not sure whether it is helpful to think of cases as being won or lost but, in the two cases that have gone to oral hearings in which the parents have not had representation, did they win or lose? In how many cases in which parents were supported by an advocate such as ISEA did the parents win? In how many cases in which local authorities were represented by QCs or solicitors did they win?

Jessica M Burns: I will put that to the ASNTS secretary, as she is more experienced at the number crunching than I am.

Ken Macintosh: You might not be able to answer that question today.

Jessica M Burns: Do you want us to give you a written answer? The figures in our annual report go only up to April, so we could provide you in writing with figures that are more up to date.

Ken Macintosh: It is not so much about up-to-date figures. I would like to get to the bottom of whether having representation offers an unfair advantage. It is quite clear that the tribunal supports a non-adversarial approach but, although you are trying to impose that approach, I wonder whether it is built into the system that those who appoint solicitors and QCs win their cases.

Jessica M Burns: We will give you a written response to that question, but I can state categorically that education authorities have not been successful in all the cases in which they have been represented by counsel. Having counsel does not invariably lead to the authority resisting the appeal.

Ken Macintosh: I have a final question on your suggestion that you should deal with all cases that involve placing requests to special schools. Am I right to think that the cases that go straight to the sheriff court instead of going through the tribunal are more adversarial?

Jessica M Burns: In a sense, those cases have had two hearings, because those that are heard by the sheriff have already been heard at an education appeal committee. It has, therefore, already become a two-stage process for the parent, whereas if the case came straight to the tribunal following the education authority's decision, it would involve just one step. There is always the prospect that an appeal will go to the Court of Session, but in most cases that does not happen.

Ken Macintosh: The advantage of your solution is that the parents would bypass the education appeal committee. Are you suggesting that their right to go to the sheriff court should be taken away?

Jessica M Burns: Yes. Under the legislation, there is no appeal from the tribunal to the sheriff court. The case goes straight to the Court of Session.

Ken Macintosh: But parents currently have a choice, in that they can go to the tribunal or to the sheriff. Is that correct?

Jessica M Burns: No—they do not have a choice. They have to come to us if there is a co-ordinated support plan, and when they reach a certain stage in that plan. If there is not such a plan in place, the case goes to an education appeal committee.

Ken Macintosh: I am getting confused.

Jessica M Burns: The case does not come to us at all if it goes to the education appeal committee, unless—this is quite complicated—a reference is started on a co-ordinated support plan while there is an on-going appeal to an education appeal committee. There is then a remit from the committee to ASNTS.

The complexity arises from the fact that if the tribunal finds that the criteria for a co-ordinated support plan are not met, it has to remit the placing request back to the education appeal committee. The bill tries to address that by suggesting that if the case is remitted to the tribunal, the tribunal should have the option of taking that placing request to a conclusion, even though the criteria for a co-ordinated support plan have not been met. However, the bill does not say that the tribunal must take the request to a conclusion, so there would still have to be some debate between the parties about whether there is a strong argument for passing it back to the education appeal committee. Whatever happens, the net result for the parent is an unacceptable delay. Even a few weeks' delay can mean a whole term of a child's education, which can be critical.

On the issue of time awareness, if there is a straight appeal to one body that can hear it quickly and deal with it efficiently, the service is bound to be better and clearer for users.

Ken Macintosh: I would like you to clarify one point, because I want to be sure that I am not confused about it. Are you suggesting that there will be no change to the criteria, and that the cases that do not involve a CSP will still go to the EAC and then on to the sheriff?

Jessica M Burns: I am talking about cases that do not involve a special school or additional support needs and which involve a co-ordinated support plan.

Ken Macintosh: At the moment, a CSP has to be involved for a case to come to you.

Jessica M Burns: Either a CSP has been issued or the parent is saying that they think that their child needs a co-ordinated support plan.

One of the consultation responses indicated that there was the potential for parents to raise the spectre of a co-ordinated support plan, even if they could not nearly meet the criteria, simply in order to get their placing request heard by an additional support needs tribunal. I am saying that you would reduce that possibility if you grouped together all the cases that related to special schools. That would limit the number of cases that education authorities might worry were going to come to the tribunal.

Ken Macintosh: I thought that, in response to an earlier question, you said that all of the cases involving placement requests for a special school for a child who has special additional needs would come to you. Is that correct? You said—

Jessica M Burns: Not at the moment.

Ken Macintosh: Not at the moment, but would that be the case under your proposal?

Jessica M Burns: Yes. Under the bill—

Ken Macintosh: So, sorry, but—

Jessica M Burns: Under the bill, that would not be the case, but it would be the case if the proposal that we are suggesting were to be accepted.

Ken Macintosh: I totally misunderstood your earlier answer. You are saying that, under your amendment, the cases of all children with additional support needs who put in a request for a placement in a special school would come to the tribunal.

Jessica M Burns: Yes.

Ken Macintosh: And that the cases of those with special needs—whether or not they have a CSP—who put in a request to go to a mainstream school would not come to you, but would instead be dealt with by EACs and sheriff courts.

Jessica M Burns: Yes, except where children in a mainstream school also have a co-ordinated support plan—

Ken Macintosh: Yes, the CSPs would remain. However, we would have two tracks, in a sense. On one track, there would be children with additional support needs who want to go to a special school, who would get their cases dealt with by you; and, on the other track, there would be children who wish to go to a mainstream school, who would have their appeal dealt with separately.

Jessica M Burns: The track that leads to us is justified on the basis that the children with co-ordinated support plans or who go to a special school have the highest degree of special needs and their cases deserve to be heard by a tribunal whose members have particular expertise in relevant therapies and the education of children with additional support needs.

The Convener: Before I ask Margaret Smith to ask what I hope will be a brief follow-up question—I think that we have had a good stab at the issue of the adversarial nature of tribunals—I want to remind members that they should not cut off witnesses' responses. Members will be given an opportunity to ask supplementary questions. I also remind the visitors to the committee that they should not just jump in because they want something clarified. All remarks should be made through the convener.

Margaret Smith: Ms Burns, you said that the justification for your proposal—I am not saying that I agree or disagree with it—is that the children who have CSPs are the children with the greatest need. However, a concern has been raised that the number of children with CSPs and the number of children with additional support needs and special needs do not marry up, because there are children who fail to get access to a CSP even though they should have one. In a perfect world, the system that you propose would work, but how does it work against a background of concerns about the number of CSPs that are being denied to people?

11:00

Jessica M Burns: I repeat that, if a special school is involved, even though most children in special schools in Scotland do not have CSPs the children are clearly at the extreme end of need. However, on the question whether there should be more co-ordinated support plans, we should remember that a CSP does not reflect the degree of disability. It reflects the degree of complexity in involving agencies other than education agencies in delivering education.

In reality, a lot of work is now done to enable teachers, schools and parents to administer and try different therapies, rather than constantly bringing in professionals. For instance, many children have short speech and language therapy sessions with professionals and then teachers and teaching support assistants are enabled to use the strategies. That is often why the figures for CSPs show a patchy picture compared with the number of people that one would expect to have a co-ordinated support plan.

Christina McKelvie (Central Scotland) (SNP): I want to move on to the new ground of missed deadlines. The bill proposes two new grounds for taking a case to a tribunal, the first being when a local authority fails to say whether it will comply with a request to establish whether a CSP is required, and the second being when a local authority fails to prepare a CSP in the required timescale. We heard a lot during the round-table meeting with stakeholders about timescales and missed deadlines. Do you believe that bringing cases to tribunal would be an effective way of dealing with that problem?

Jessica M Burns: It is a question of proportionality. It is disappointing when education authorities do not meet timescales, but we have to ask what benefit there is to a parent in bringing a case to tribunal on that ground. It would highlight that the legislation was not being complied with, but there would be no compensation. We sometimes have the sense that authorities wait until the last minute to concede that they have no defence to a reference and are just buying time. Even if a tribunal decides that the authority has not met the timescale and should carry out an assessment or issue a co-ordinated support plan, we have no teeth to ensure that that is done within the timescale. We do not have any way of monitoring compliance with the directions that are given by tribunals.

As I have said previously, bringing a case to tribunal would be a way of ensuring that authorities could at least be named—perhaps "shamed" is too strong a word. Their deficiencies in delivering under the legislation could, at least, be highlighted in my annual report if we were aware of how many cases were involved.

It is clear that lots of authorities do not manage to meet timescales, but we have to ask whether that is because the timescales are unreasonable, because authorities do not have the resources or because they are not prioritising the cases. I am sure that, at tribunal, we see only a tiny fraction of the cases in which timescales are not met.

Christina McKelvie: Would the prospect of such cases being brought to tribunal be enough to ensure awareness among local authorities of the responsibility to act within a timescale?

Jessica M Burns: I hope so, but I am not sure that the evidence from cases bears that out.

Lesley Maguire: There have been a great many dismissals. Typically, after a parent has submitted a reference about timescales not being met, the authority will just wait and then, as the hearing approaches, it will admit that it cannot oppose the matter and that the parent is correct. At that point, there is not a great deal that we can do. As Jessica Burns indicated, we do not have the teeth to pursue such matters.

Christina McKelvie: Some of our evidence suggests that local authorities would be better placed to deal with such issues through their normal complaints procedures. Do you agree?

Jessica M Burns: Parents complain by bringing references to the tribunal about timescales not being adhered to, but complaints are not always responded to appropriately. You might imagine that, if a reference is passed to the tribunal, the authority will immediately start the assessment process or issue a co-ordinated support plan: it is clear, however, that that does not always happen. The committee will hear evidence from other groups—I think that representative organisations would be better placed to comment on such cases.

Christina McKelvie: That is helpful. We have been speaking about two new grounds for reference. Do you envisage any changes, in particular in terms of increases or decreases in your case work? Are there any other issues that might impact on your team?

Lesley Maguire: I have given the matter some thought and I do not think that there will be a huge difference in the number of references with which we deal. The expedited process for timescales is to be welcomed. It can only bring about quicker decisions for parents who are waiting for finalised co-ordinated support plans for their children. I am pretty certain that it will work.

On the other grounds for reference, I do not think that there will be a huge difference arising out of cases in which an authority does not answer when a parent makes a request for a child to be assessed. The process could give parents a bit more clout, so authorities might get quicker at answering. In that sense, the proposals are to be welcomed, although I do not think that they will translate into references to us.

Christina McKelvie: You are pretty confident that you will be able to handle the two new aspects in the bill.

Lesley Maguire: I think so.

Margaret Smith: I want to continue in the same vein. You propose that you should be given a power to state when a placement will start. We have heard evidence from the bill team that there are all sorts of complicated reasons why that would be difficult to achieve. Councils will need to deal with certain issues in order to put things in place before a placement can be granted. You have suggested that you are able to provide for that. Is that because most of the evidence that has been presented to you gives you an understanding of how long the arrangements to set up a placement should take?

Jessica M Burns: That proposal sits very well with the power to review. When parents come to a tribunal, what they want most of all is some certainty about the outcome. There can be an issue if a place at a school is, in effect, promised. Parents might anticipate that the placement will start next term, next half-term or even the next week, but they will be left disappointed if the education authority tells them that it will not be able to arrange the placement for four months or whatever. At the moment, it is not really open to us even to discuss that issue, but it brings better closure if the matter can be raised at a hearing.

The tribunal has the power to review, so if the authority—if it has been unsuccessful in opposing the placing request, and if it is directed—is able to explain the reasons why the placement could not be granted, it can ask the tribunal to amend its decision in order to defer the placing request commencement for two months, for example. If the parties agree to that arrangement, there is no reason why the matter should not come back to the tribunal. Parents will get the idea that, if they get a decision from the tribunal, there is some force behind it.

Margaret Smith: Ms Maguire said earlier that the other parents are best advert to parents for going to the tribunal and not being put off. There is a sense that it is all very well that the tribunal has acted fairly and has come to a decision that a parent is fairly happy with but that, ultimately, the tribunal lacks teeth. Is that the sort of story that goes around among parents? Such stories might put other parents off going to the tribunal because they will think, “At the end of the day, the council will do what the council wants to do”.

Jessica M Burns: That could be an aspect, although everything that I have heard on that subject is anecdotal. Parents will phone up after tribunal decisions are issued to say that the tribunal said that something was going to happen in relation to the co-ordinated support plan or the placing request, but it has not happened. We have to tell those parents that we have no powers to monitor decisions or to give directions. There are provisions for directions from Scottish ministers in section 70 of the Education (Scotland) Act 1980, but there is quite a backlog of those. It can be a slow and dispiriting process for parents.

Margaret Smith: You have pre-empted one of my next questions. The bill team referred to section 70. The committee would find it useful to have your thoughts on how effective section 70 is as an alternative, and how difficult it is for parents to go down that route because it involves the Court of Session and, according to you, there is a backlog. Can you tell us a bit more about the volume of section 70 directions? Is there a suitable alternative to what you are suggesting, which is a sort of power of review and the power to state when a placement might start?

Jessica M Burns: We do not get information about section 70s because we do not have any way of collecting or collating it. Once the tribunal has made its decision, there is no post-hearing activity. Lesley Maguire may get telephone calls from parents about that.

Lesley Maguire: It is a fairly regular occurrence for a parent to call in and say that a tribunal decision has not been implemented: one current case probably highlights the issue. A parent came to tribunal with a placing request that had been refused by the authority. The tribunal upheld the parent's reference and granted the placing request. The parent and the tribunal were under the impression that the request would be put in place almost immediately, but the school is holding back. This happened before the autumn term. The authority has told the child that it will place them but that the very earliest it is able to do that is in the summer term next year. That is unacceptable—a big chunk of that child's education will have been lost.

Margaret Smith: Absolutely. I am very concerned by that unacceptable state of affairs. It is part of what we need to change.

You said that the power to review and monitor would be useful, and I have a great deal of sympathy with that. What resources—such as personnel and, ultimately, funding—might be required to do that effectively?

Jessica M Burns: We could do it within our present funding.

Margaret Smith: That is the right answer—it is the answer that we want to hear.

On section 70s, we will probably have to take the issue up again with the Government in order to get some idea of the numbers that we are talking about.

Finally, let us say that the amendment is passed and you have the power to review. If you think that you have the people and the experience to do it, such a power would probably be very much welcomed by parents throughout Scotland. Ultimately, would you have to have available to you a sanction to make councils do what they have said they will do? Once you had carried out the review and the monitoring, you might find out that the council was not acting as it should, on the basis of what you decided earlier. What could be put in place to make councils more likely to act in the right way in response to a second decision, when they had not acted on the first decision?

11:15

Jessica M Burns: There would have to be a reporting order. The tribunal would have to make a section 70 referral direct to the minister on the ground of failure to implement a judicial decision. That would act as a fast track. I could comment annually on the number of authorities that were simply not fulfilling their obligations under the legislation. Such recording can act as a behaviour modifier for authorities—it would, at least, be an embarrassment to them.

The Convener: Your written evidence to the committee highlights your concerns about looked-after and accommodated children. The Education (Additional Support for Learning) (Scotland) Act 2004 places a loose requirement on local authorities to make arrangements that they consider to be appropriate in identifying the needs of looked-after and accommodated children. You say that there should be an amendment to the bill to address that. Why is such an amendment necessary? Is your call based on your experience? What do you think the amendment would do? How would it help to support looked-after and accommodated children?

Jessica M Burns: The new part of the additional support needs legislation tries to address wider needs—beyond the standard disability model—for children who have social, emotional and behavioural problems. It is well documented that accommodated and looked-after children are very likely to come within that category and to have low educational attainment in school. If the legislation is not made more effective in addressing those needs, it will have failed to achieve one of its primary objectives.

With that in mind, I feel that the assessment of children who come into that category should be addressed more proactively. As members will be aware, such children each have a key worker, but there is a conflict between social work and education in that a number of authorities now have children's services departments, so everything is dealt with in the same department. They are unlikely to take a proactive approach without an external third party coming in to ask whether they can evidence the fact that the child has had its educational needs addressed properly. There ought to be a mechanism in legislation to do that. I appreciate that the issue was not raised in the consultation, but I know that it was highlighted by

Her Majesty's Inspectorate of Education. There has been a notable absence of references involving children in that category and we have had none who are under any sort of supervision order or with any sort of criminal justice contact, although we know that many such children must need that sort of attention.

The Convener: I suppose that the cases you deal with by their very nature often involve parents who are determined not to give up, because they have their children's interests at heart and want to resolve the issue. It is unfortunate that looked-after and accommodated children do not have a champion who will pursue such matters on their behalf. We must ensure that the legislation protects such children and ensures that they have a champion, as other children do. Would an amendment such as you propose ensure that there was such protection and that the tribunal could take decisions about CSPs for looked-after and accommodated children, if necessary?

Jessica M Burns: It is almost inevitable that a review of children in that category would lead to a rise in CSPs. I am sure that people who work with looked-after and accommodated children who have additional support needs do not have their antennae up about what should be in a CSP. Holistic consideration of such children's needs is required. A review would at least help to raise the profile of, and support, such children. I am not sure that it would lead to many more appeals to the tribunal. This is the Cinderella area of the 2004 act's operation—so many reports have concurred with that perspective that I thought it appropriate to mention the issue, even if it is not included in the bill.

Criticisms have been made about the multiplicity of plans. I do not want to say that every child should have a CSP. The getting it right for every child—GIRFEC—initiative involves different plans and supervision orders. I am not saying that plans are the answer for all looked-after and accommodated children, but a review would provide focus and an independent assessment of the children who are least likely to have someone to advocate on their behalf.

The Convener: Your suggestion is welcome and the committee will consider it.

Bill Kidd (Glasgow) (SNP): The 2004 act applies to young people up to the age of 18. ISEA and Children in Scotland said that they would like it to be extended to young people older than 18 who are still at school. Ms Burns has proposed that the tribunal's jurisdiction should be extended to people who are receiving education at school or through school-college partnership arrangements. Exclusion appeals are currently heard by the EAC and the sheriff. You have proposed that the tribunal should have a remit to deal with exclusions that are a result of ASN issues.

By making those proposals, are you implying that the tribunal's remit should be extended to include cases in which there is no CSP issue? Would your proposed approach to exclusion appeals require the same complicated provisions for transfer between the EAC and the tribunal as there are in relation to placing requests? Would an increase in workload result from the proposed extensions to the tribunal's remit? The limited administrative resources for Ms Maguire's caseload have been mentioned, so would you be able to deal with the additional workload?

Jessica M Burns: You have asked several questions. I will deal with extending the jurisdiction to include all school-age children or young people who are in analogous education.

The increase in the number of cases would be very modest. We highlighted that because we are aware that many parents are fairly content with what is happening within the school, but then suddenly realise that their child having a co-ordinated support plan would passport them to, or make them a priority for, transitional resources. By the time the parents realise that, the child is approaching the age of 18, so when the case comes before the tribunal, it will have lost jurisdiction to address that point. Surely all children at school should have equal access to the tribunal, where transitions are a large part of the code of practice that underpins the legislation.

Perhaps Lesley Maguire will talk about children in non-school education.

Lesley Maguire: I am aware of the fact that lots of young people in the school-college partnerships who are disaffected and are not engaging properly in school must have additional support needs. The concept of extending what we mean by school education to include those children would help to address where we fall down at transition.

When they come to the end of their school education and might be transferring to a proper college course, it would be so much better if the college was engaged because they have enjoyed their time in the school-college partnership. When a child moves from school into college, there is often a lack of information for that child, and the transition can be very difficult. If the child was involved at the stage at which the school-college partnership was being delivered while they were still in school education, the later transition would, I am sure, work far better.

Jessica M Burns: I will go on to deal with exclusions—a subject that is often linked to school-college partnerships. We included the issue while being aware that it was not raised in the consultation, which probably forces any

consideration of an amendment quite far out. However, we felt that it would be appropriate to sow the seeds of the matter. We know that England and Wales are considering whether to extend to exclusions the jurisdictions of their equivalent tribunals because research shows that many children who are excluded from school have additional support needs and behavioural issues that are regarded as discipline issues rather than as manifestations of conditions on the autistic spectrum or attention-deficit hyperactivity disorder, for example.

I thought that it would be useful to use the consultation as a vehicle to flag up the fact that exclusions are a rather hidden aspect of additional support needs. I have found it to be extremely difficult to get any statistical information on exclusions and how they are dealt with, how many are successful, and how many appeals are heard by education appeal committees. The lack of information causes me concern, but if the reason for a child's exclusion is to do with additional support needs, and we are talking about keeping children within the education system to give them as much support as possible, we cannot ignore the significance of exclusions.

Bill Kidd: That makes perfect sense to me.

Do you believe that the resources that are available at the moment will be enough to give the necessary support? I know that you said that the numbers will be limited, but there will be some increase.

Jessica M Burns: There will be an increase and, to be honest, because of the lack of information about the numbers of appeals on exclusions that have gone to education appeal committees during the past two statistical years, I am afraid that I cannot answer that question.

Elizabeth Smith (Mid Scotland and Fife) (Con): In many of your responses you mentioned the importance of allowing parents to be more articulate in presenting their cases, which is absolutely right. It is encouraging to hear you talk about that because it means that the appeal process will be much better.

However, we must also ensure that the relevant information is available to all parties concerned. The bill proposes to extend that provision. What are your views on greater sharing of information and on involving, for example, health workers or social services workers in the process to ensure that those who help you make decisions have the information that they need?

11:30

Jessica M Burns: The question of how we get different agencies to speak to each other so that we have a full picture of what is happening is very topical. The tribunal is a bit concerned about that; in fact, the power for tribunals to convene other parties is on my wish list for secondary legislation.

It has not happened before, but with a number of cases this year, health agencies and health workers have expressed concern about not being involved in the tribunal process or not being aware of what was happening until the decision was issued. Such issues are dealt with by the education authority alone and tribunals have in good faith based their decisions on reports that were produced by health workers but which have been filtered through the education authority. Those health workers have felt that such material has been out of date or has not properly reflected their practice, and the tribunal has been denied access to those views.

As a result of that, the power for tribunals to call witnesses is also on the wish list that I mentioned earlier. At the moment, only parties in the case can call witnesses. If the tribunal has, for example, commissioned a specialist report, it can call the writer of that report to come and speak to it; however, they are not classed as witnesses. It would be helpful if all those who might have significant input in supporting the child could have their views heard by the tribunal, even if that meant providing an updated written statement. At least people would not be completely unsighted of the fact that a case was going to the tribunal for a decision, and would not have cause to be unhappy with us in that respect. At the moment, we simply have no power to ask for this or that report or to call a particular witness.

Elizabeth Smith: That is very encouraging. As some stakeholders told us in our round-table discussion, however, the other side of the coin is the huge variation in authorities' abilities to cope with such information sharing. Although some are first class in how they bring together education, health, social work, planning and other departments, in other authorities departments just do not speak to each other. Even if we change the law, how confident are you that its application will improve in local authorities? After all, that will be key in delivering better services.

Jessica M Burns: This might be anecdotal, but I understand that a lot of work has been carried out on engaging health boards. A project on that is on-going. That approach seems to have worked well: I find it ironic that communication between education authorities and health boards seems to be more positive than communication between education and social work departments in the same authority. I suspect that that reflects the fact that social work departments have many statutory obligations that need to be prioritised and that sometimes it is more difficult to put pressure on

colleagues in the same organisation than to ask for support from external organisations such as health boards. However, I acknowledge the point about ensuring that the process is joined up.

The Convener: That concludes the committee's questions. I thank the witnesses for their attendance this morning, for their written submission and for their willingness to engage with us. You have given a commitment to respond in writing to some of Mr Macintosh's questions. That information will be helpful, so we look forward to receiving it when you have had an opportunity to put it together.

I suspend the meeting for five minutes.

11:35

Meeting suspended.

11:40

On resuming—

Teacher Employment Working Group Report

The Convener: I reconvene the committee. We now turn to the second item on our agenda, which is consideration of the report of the teacher employment working group.

I welcome Joe Di Paola, who is head of the employers organisation at the Convention of Scottish Local Authorities and chair of the teacher employment working group. I thank him for joining us today and for his written submission. I understand that he does not want to make an opening statement, so we will move straight to questions.

Bill Kidd: I want to ask about information gathering and how it can be used at local authority level. The working group's first recommendation is that there should be

"greater reconciliation between local workforce decision making and the national workforce planning process",

although it recognises that the medium-term nature of planning will be challenging. For example, advice given in December for university intake will be used for targets published in February, with students taking their places in October on a four-year course. How much can be known about local authority employment requirements over such timescales, and to what degree can local authority employment plans realistically feed into the teacher workforce planning process?

Do you want me to break that question down?

Joe Di Paola (Teacher Employment Working Group): No, I think that I got most of it.

The question reflects the complexity of the issues that we have to deal with. A number of factors affect the ability to plan the teacher workforce, not least the number of students going through the system. Given the fact that, for planning, a bachelor of education qualification will have a six-year time lag and a one-year certificate will have an 18-month to two-year time lag, it is difficult to ensure that the teacher workforce at any given time reflects the needs of the local authorities that are delivering education services to children in Scotland. The primary aim must be that the numbers match, which is one reason for the interest in and concern about the issue.

I am open about the fact that concern has been expressed about teacher numbers and employment—it is why the Cabinet Secretary for Education and Lifelong Learning established our group. We were keen to examine whether the

process was still fit for purpose, and we had to take into account not just the number of students coming through the teacher education institutions but the number of teachers leaving the profession in any one year, which is another set of estimates and assumptions that require to be made. The basic assumption is that approximately 6,000 teachers leave the profession in any given year, but that that number will be affected by several issues, not least the current economic situation, which will affect teachers' intentions about the end of their teaching careers.

We must balance students coming into the system, teachers leaving the system and all the factors in-between, such as what an authority needs because of the demography of its area and the number of children who enter its schools. All those factors play into the system.

I am afraid that I have given a long answer, because the question is complex. We began by considering all the evidence that we could gather. Our first request was for Government statisticians to talk to us and explain as best they could to those of us who are lay people how they model statistically the number of teachers who will enter the system year on year. That was our starting point.

11:45

Bill Kidd: How far along that line have COSLA and the Government managed to go? Is projecting how the process might develop over the next six years a possibility?

Joe Di Paola: The period will be six years, which covers two spending reviews. That is another factor that plays into local authorities' ability to determine how many teachers they might need. The six-year time lag of the BEd crosses two spending reviews and all the discussions that require to take place for them. If nothing else but the report and that work are done, the local authority view about the absolute need for the best statistical evidence that we can obtain and for closer working with the Government on the planning that is required on teacher numbers will be refreshed.

The Association of Directors of Education in Scotland is discussing with Government statisticians how it, as the professional body responsible for education, can work more closely with them. I know from experience that a personnel network is attached to ADES. That network and I will engage with the statisticians in the near future.

Margaret Smith: Good morning. Earlier this year, the committee took evidence on probationer teachers, because we were concerned about the proportions of probationers who were in employment and who were in permanent posts. The issue has many facets. In that evidence, a national staffing formula was suggested, which the teacher employment working group discussed and rejected. I understand that one reason for that rejection was that your group felt that the suggestion ran counter to the concordat and to the new relationship between the Government and local authorities.

My view is that the proposal ultimately comes out of the McCrone agreement, which was negotiated and which most key people are more positive about than they were about the situation in Scottish education before the agreement. Is it beyond us to have a national staffing formula that is negotiated by the same component people getting round a table and taking all the factors into account? At its heart, the McCrone agreement could be seen to be an imposition, because it provides a guaranteed probationary year and other features. Such decisions were centralised, but they were taken after negotiation. Could a national staffing formula be achieved with the same format?

Joe Di Paola: One of my other jobs is to be the employers secretary on the Scottish negotiating committee for teachers, so I am one of the guardians of the McCrone agreement, although I was not involved in the negotiations. You are right to say that parts of "A Teaching Profession for the 21st Century" are done at the centre. However, as you know, the McCrone agreement devolved quite a lot of responsibility to local negotiating committees in authorities, on which teacher unions meet their authorities and deal with several important teacher deployment issues locally. It would be difficult to try to introduce a single national formula, given the different sizes, geography, demography and economic circumstances of the 32 unitary authorities in Scotland.

We had an open and robust discussion on a national staffing standard, in particular with teacher trade union colleagues, as you can imagine. Members have read the working group's report, so they will know that that was the only aspect on which the teacher trade unions wanted their dissent to be recorded. Whether or not the report finds favour everywhere, its 12 recommendations were unanimously agreed by all parties in the working group, and the national staffing standard was the only area of dissent. That says something about the report and about how a national staffing standard is less a technical device and more the subject of negotiations between the teacher trade unions and employers, with Government as the third party in the tripartite bargaining machinery. I hope that I have given a flavour of why the group did not think that it was appropriate to go for a national staffing standard.

Margaret Smith: Representatives of the teaching unions and other people have made general comments to us about how a national staffing formula might provide a greater degree of certainty, not just to unions and the workforce but in relation to workforce planning. Staffing is a major component of the education budget and it has been suggested that, without the safeguards that a national formula might provide, local authorities throughout the country, which are under financial pressure, might make short-term decisions. You might not be able to nail down workforce planning if it is at the mercy of short-term financial decision making.

Joe Di Paola: I will give you an example. Dumfries and Galloway Council recently advertised a permanent primary teaching post and received one application. If the council was working to the same national staffing standard as East Renfrewshire Council and Glasgow City Council, it would be looking for a lot more than one primary post and it would not fill the posts. The approach would not work.

A difficulty with imposing a national standard is that it is clear that rural authorities and authorities that are on the periphery of the country—I am not denigrating such authorities—find it incredibly difficult to fill posts. You will know from the report that we think that the preference waiver scheme needs to be altered.

It would be incredibly difficult to adopt a single approach throughout the country, because the country is so diverse. Different areas have diverse needs, as recent experience demonstrates. That is not to say that a single approach will always be ruled out, but it would have to be the subject of serious and difficult negotiation.

Ken Macintosh: What account have you been able to take of the effect of Government policies? There is a new relationship between local government and central Government. In your report you refer to the stages of the modelling process. You found the modelling to be robust and state:

"At this stage any additional teachers needed to implement government policies, having been separately modelled, are added."

Last year, the Government encouraged an extra 300 people into teacher training. Did COSLA approve that decision? If not, was it approved by individual local authorities?

Joe Di Paola: No, that decision was subject to the planning process between the General Teaching Council for Scotland and central Government. If the Government takes a policy decision, it must fund its impact. The Government did that for the extra 300 in teacher training.

Ken Macintosh: Having looked at the modelling process and the workforce planning, are you confident that it was a good decision to have an extra 300 in teacher training, that there was a need for them and that there will be vacancies for them?

Joe Di Paola: That is one of the problems, Mr Macintosh. It is not our job to determine what should happen to those teachers. Central Government took a policy decision, implemented it and provided the funding, which meant that the 300 teachers came into the system. The modelling process did not deal with them separately. They came into the process in the same way as any other student who comes through the teacher education institutions, then goes out into the local authorities. They will have the same ability as any other postgraduate student who has gone through teacher education to state preferences for local authorities, which will need to be matched or met as best as possible in the teacher induction scheme. Frankly, that is how it happens. They will not and cannot be treated differently. If they were treated differently, it could be regarded as discrimination.

Ken Macintosh: Do you or COSLA monitor how many teacher posts exist in local authorities at any one time?

Joe Di Paola: Yes. That information is modelled by local authorities and by central Government. It is currently based on the 2006-07 figure of 54,900, which included 53,000 teachers—the figure that everybody refers to—1,600 centrally funded visiting specialists and the extra 300 to which you referred. Knowing those figures, we and local authorities then monitor the number of teachers leaving the profession, for whatever reason. The starting point in properly identifying teacher numbers is monitoring how many leave the profession. We should know the number of students coming through and know from the probation scheme the number of probationary teachers.

Ken Macintosh: As part of its work, did the teacher employment working group look at the match between the number of teachers coming through and the number of current vacancies?

Joe Di Paola: We tried to examine that aspect carefully. You will understand that the rate of teachers leaving local authorities varies hugely, and that the situation has changed over the past three to four years. There was an assumption, using statistics that were perhaps five or 10 years old, that there would be a bulge in the number of teachers leaving the profession because of baby boomers leaving last year, this year and next year. However, given the recent change in economic circumstances, those assumptions might not be accurate now. Some of the early information that

we have seems to show that teachers are not retiring at 60 but staying on until they are 62 or 63, or stating their intention to stay on until then.

We asked colleagues in a number of authorities to look at predicting retirement numbers, because that is one way of finding out where the gaps are. Certainly, more teachers are staying on after 60. Our information is that authorities would be willing to canvass teachers who are 58-plus about retirement. However, that is about teachers' retirement intentions and, given the age discrimination legislation that is now rightly in place, we cannot ask someone about their retirement intentions in a way that might be construed as applying discriminatory pressure. We must be careful about how we find out about such intentions.

Ken Macintosh: I do not disagree with any of that, and I am sure that your recommendations were agreed unanimously. However, perhaps there is still a gap between the number of teachers coming through the system and the number who get jobs.

What credence do you give the annual GTCS survey? Interestingly, the latest one comes out today. The surveys have shown a clear trend regarding the difficulty that probationers experience in finding employment as they come out of their probationary year.

12:00

Joe Di Paola: The GTCS survey obviously has credibility—it is based on returns from teachers, and the GTCS carries it out. As with all surveys, we must consider the rate of return and judge whether it is high enough to offer a proper statistical model on which assumptions can be based, but we must always have regard to the survey. It is carried out twice a year, and there is a peak in post-probation unemployment, which drops back over the course of the year. As with all surveys, we must be careful about when the snapshot was taken. I am in no way suggesting, however, that the survey is not a real, important signpost that authorities must consider very carefully.

Ken Macintosh: I agree on the point about snapshots, but there have been three snapshots—from today, there will be four—and, if we join them up, they reveal a very worrying trend.

A report that was commissioned by the GTCS and the University of Glasgow suggested that

"The restricted availability of opportunities"

for probationers in finding permanent posts

"impairs the professional development of early career stage teachers".

That seems to be having a serious effect on the teaching profession. Did the teacher employment working group consider that issue?

Joe Di Paola: The group did consider the effect of post-probationary teachers finding difficulty getting employment—which you are right about—and what that might mean for their ability to continue to develop as teachers. Our comments on the matter were not greeted with universal approval. We raised the question of authorities trying to give preference to post-probationary teachers, as opposed to retired teachers, in supply work. We were advised by our legal people that supply work—and even permanent supply pools, which some authorities have introduced—is not age discriminatory when it is provided to develop the skills and abilities of immediate post-probationary teachers. It is not about age; it is about developing the skills of the teachers so that they continue to be fit for purpose.

Allied to that point, we said that authorities should consider very carefully the possibility of having permanent supply pools. Supply pools present a cost to authorities, which need to pay the teachers while they keep them in those pools. It was recognised that it is a waste if people come through the system and achieve the standard for full registration but are unable to deploy their skills and abilities. In the short term, there are two ways of dealing with that. First, they can be given preference for short-term supply. Secondly, authorities can be told that, although it comes at a cost to them, they should seriously consider having supply pools.

I will say one more thing about supply. I am clear about this and, as a lay person, I went through this point with the statisticians. The percentage that is required to keep schools fully staffed over the course of a school year, based on statistics from the past five or more years, is 8 per cent. In other words, about 8 per cent of the teaching profession, or teachers, need to be working in supply. That could be described as overstocking by 8 per cent to deal with illness, sickness, maternity and retiral. There is a difficulty, because if there is a slowing up in relation to any one factor, it means that the reservoir is filling at one end but nothing is coming out the other end. That remains the central difficulty.

Ken Macintosh: The recommendations to improve the current system will be welcomed. However, the biggest worry is that our fundamental concern is not being addressed: is there a clash between supply and demand? I refer to the supply of teachers rather than to supply teachers. You said in your report:

"there was some concern that the most recent national staffing level assumptions did not match local authority

workforce levels as closely as has been the case before the change in Scottish/local government relationships."

Should we do something about that? Last year, an additional 300 teachers were recruited. If the current probationers are not finding employment, it seems daft to recruit into the profession and then disappoint even more teachers at the end of their probationary year. Is that not a worry for you?

Joe Di Paola: It absolutely is a worry for anyone who is involved in the supply and provision of education services. We recognise that we need to get a better match between the number of teachers coming into the profession and the number of vacancies, because if those people do not have jobs it is a waste of talent, time and effort.

The other factor is that the higher education institutions—I am sure that they would speak for themselves on the subject—that deliver teacher education also have a clear view about their part of the equation. They need to maintain student teacher numbers in their institutions to ensure their viability as institutions and—more important, in some ways—to ensure the viability of the courses that are being taught in respect of primary and some of the secondary subjects in particular. There is pressure to ensure that the higher education institutions are able to continue to deliver qualified teachers in secondary subjects and in the primary sector. There are probably seven or eight different factors in the equation, which makes it difficult to balance. However, I do not disagree with your point.

Ken Macintosh: I am trying to get back to the fundamental point: local authorities might control demand, as it were, but the Government controls supply and has a clear responsibility for recruiting teachers.

Joe Di Paola: Yes, and there has been clear agreement that teacher numbers will remain at the 53,000 level, which to my knowledge remains the agreed level at which teacher numbers will be held in Scotland. Anything that alters that level requires to be dealt with.

Ken Macintosh: But do you not feel that we should find further mechanisms to address what is clearly a problem at the moment between the Government's responsibility for supply and your responsibility for demand?

Joe Di Paola: There was a debate about whether the working group should finish its work and say, "That's it." In answer to your question, it is unrealistic to say that its work is a closed chapter. One of the things that will happen is that more local authority people will be on the on-going teacher planning group, which is an established body. We have to work together more closely, and we are committed to doing that.

I do not rule out at any point in the future someone having another look at what happens, because if the trend continues we need to see whether there is anything else that we can do. At the minute, we have examined the teacher employment pattern based on the fairly narrow remit that we were given. If something else is required, local authorities will not be slow in bringing it forward.

The Convener: You have touched on retirals several times this morning in response to questions. I want to pursue that subject with you. You said that approximately 6,000 teachers retire each year, but it appears that there has been a failure to understand the number of teachers who were likely to retire at this moment in time. Why did the modelling get that so badly wrong and how confident can you be that modelling on future retirals will be any more accurate?

Joe Di Paola: I do not think that the estimates were so badly wrong. One reason why there were clear differences is that the economic situation is such that teachers are staying for longer. If even just 10 per cent indicate that they want to stay for another two or three years, that skews the model markedly.

The question of age discrimination is also relevant. We were light on it, but we have to be careful how such issues are dealt with. Like everybody else, teachers have to be given the proper opportunity to consider at what stage in their career they want to retire. One of our comments was that the winding-down scheme, which is part of the McCrone agreement, must be examined. Everybody seemed to be committed to it, but we have asked the authorities to look at it again to ensure that no unnecessary barriers are put in the place of teachers who want to wind down.

I suppose that my answer is that you are right: not as many teachers are leaving the profession as the model suggested. However, the model is based almost entirely on age profiles—the age at which people enter the profession and their age in this and succeeding years. Other extraneous factors can affect the situation, such as economic circumstances and the winding-down scheme not being to teachers' liking. We should consider the winding-down scheme as it has real benefits, but one difficulty is that the United Kingdom Treasury must consider it too, because it must be fiscally neutral under the pension regulations.

I understand that work is being done on that at a UK level, and once the Treasury has completed it, we can begin to pick it up. If we have a mismatch because the number of teachers leaving the profession is slowing, we need to address that in a way that is sensitive to both individuals and the system.

The Convener: You rightly touched on the fact that the McCrone agreement offered a winding-up scheme—[*Interruption.*] Sorry, a winding-down scheme.

Joe Di Paola: You might have been right the first time. [*Laughter.*]

The Convener: Advantage has not been taken of the scheme as widely as was perhaps expected. You have indicated that there might be numerous reasons for that on top of the issues that the Treasury needs to consider. Are there also funding issues for local authorities in making the scheme not only a right that people can take up but something that authorities can deliver financially and that they want teachers to take advantage of towards the end of their career?

Joe Di Paola: The short answer is yes. Of itself, it is a valuable scheme and more authorities would like to be able to take advantage of it, but we have to examine it to ensure that if there are barriers to authorities either letting teachers use it or getting them to use it, we know about them.

The scheme was a part of the agreement that was always in the background. People knew about it, but I do not think that it has been promoted to the extent that it needs to be. It is part of the agreement, so it will be dealt with as part of the bargaining arrangements in the SNCT. We clearly need to consider it.

The Convener: When I have discussed the issue with my local authority, it has indicated that the scheme presents a resourcing issue. I have written to the minister about it because education officials in North Lanarkshire have suggested that if some flexibility and the necessary resources existed, some teachers would be willing to take retirement at the summer holidays—not midway through a term—as long as they were financially recompensed.

Did you consider that? If you did, what consideration was given to how much that might cost and the resource implications for local authorities of allowing them to proceed in such a way?

12:15

Joe Di Paola: The more general issue of resource allocation was not part of our remit, so we did not consider it.

In advance of coming to the meeting, I again asked a number of colleagues in various authorities about their views on early retirement. If authorities say that they are looking for people to retire, human nature being what it is, teachers in post will wait to find out whether later on in the term or the financial year there will be any enhancement, or additional years. Therefore, the ability to plan five or six months ahead of the end of a school year is quite limited, because people will hang off and wait to see whether there is any spare money and whether anything better comes up towards the end of the year. However, you are right to say that the issue is the ability to finance schemes. The teacher employment working group did not consider overall finance.

The Convener: You did not consider that issue, but is it worthy of further exploration?

Joe Di Paola: I am not entirely sure who would explain things or what would be explained.

The Convener: It is not about explaining; it is about whether COSLA and the Government should discuss the matter and whether further discussions would be worth while.

Joe Di Paola: There will certainly be further discussions about retirement patterns, the winding-down scheme and the possibility of early retirement, but I suppose that the matter that you raise falls within the wider context of funding for education.

The Convener: Finally, your report suggests that further research needs to be done on the factors that influence teachers to retire, and particularly on the effect that the economic downturn might have on retirement decisions. It would be helpful if you told us why that is important and whether concentrating on one factor would allow COSLA and the Government to get a sufficient grasp of the various reasons why teachers choose to retire at any given time. Should research be more wide ranging than concentrating only on the economic downturn?

Joe Di Paola: In considering such important matters as ensuring that we have the correct number of teachers in the system at any one time, we need to base the assumptions that we make on the best information that is available to us. We took the view that it was entirely appropriate to get the best possible information on the number of teachers who are coming into the profession if there is any question about the number who will be leaving it—that is a big factor. That can be done in a number of ways, but the group took the view—which was widely held—that in the first instance there should be proper engagement between the local authorities and the Government so that we get the best information that we can.

The issue is not just teachers leaving the profession; wider work needs to be done on tracking. We said that a cohort of teachers should be tracked all the way through the process so that we can see what happens to them. That would be valuable in addressing your point about what happens to the flow and numbers of teachers. Tracking a cohort through the student and probation systems and finding out what spaces

are available for them would be helpful in correcting what could become a serious mismatch.

Aileen Campbell: Good afternoon. You touched on supply teachers. The working group's report says that the number of teachers being trained to meet demand for supply cover has doubled since 2004. I think that you mentioned a figure of 8 per cent. The report also states that some local authorities use retired teachers to fill supply posts. Why were more teachers trained to allow for supply cover if there was evidence that retired teachers were being used as supply teachers?

Joe Di Paola: The evidence about that practice is anecdotal rather than statistical, although there is no point in saying that it does not happen, because it does, and for a variety of reasons. For example, experienced teachers can slot in easily, which helps the smooth running of schools, so there are attractions in using retired teachers, and clearly that has happened.

Our view is that if there is clear public concern about post-probation teachers not getting employment, authorities should do what I described earlier when I referred to the development of teachers. Notwithstanding any nervousness about possible age discrimination, authorities should say that it would be wrong not to employ teachers who are immediately post probation because they have met the standard and are ready to teach—that is what should happen. That is why we said specifically that there should be a preference for employing post-probation teachers. We were clear about that.

Aileen Campbell: You were clear about that in your recommendations, but questions have been raised about human rights and age discrimination. Does any legislation have a bearing on your recommendation that there should be a preference for post-probation teachers?

Joe Di Paola: Like the Government, we took detailed advice on the matter. Our view is that such a preference does not constitute age discrimination; there is nothing to suggest that a post-probation teacher should be of a particular age or sex. It is about ensuring that the post-probation teacher who has achieved the standard for full registration can teach in schools. There is no reason for not allowing them to do so and every reason for allowing them to give the children in Scotland the benefit of their expertise.

Aileen Campbell: A table in one of our papers indicates clearly that there are more post-probation teachers in supply posts in primary schools than there are in supply posts in secondary schools. Did you find any reasons for the considerable difference in those numbers?

Joe Di Paola: There are more permanent vacancies in the secondary sector, so it does not have as many supply posts as the primary sector. In fact, one difficulty that we identified is that because teachers must be subject-specific in the secondary sector, it does not require the same number of supply teachers.

Aileen Campbell: Were there geographic and subject differences, or do the numbers just reflect the general trend?

Joe Di Paola: We had to consider people's ability or desire to work in different geographic locations in Scotland and the requirement to fill subject-specific slots in secondary schools in different authorities. Some authorities have not been able to fill particular subjects and require people. I agree that there is a marked difference between supply requirements in the secondary and primary sectors. That is another reason why the preference waiver scheme has been increased for the secondary sector but not for the primary sector. The increase recognises the difference in attracting people to go into specific subjects in specific areas in the secondary sector.

Aileen Campbell: I have a question that is not directly related to the supply issue. You noted that increased media coverage was having an adverse effect on the number of people applying for places. Was that demonstrated by people coming forward to you?

Joe Di Paola: Again, that does not have a statistical basis, but there was a lot of media interest in and reaction to the view that a lot of post-probation teachers were not getting jobs, and people on the working group expressed concern about that. In particular, as you would expect, colleagues from the higher education institutes said, "Why would people want to become teachers if they see in the media that they will not get a job when they finish their training?" There is concern about whether the teaching profession remains attractive to graduates and whether people will want to become teachers.

Aileen Campbell: So it is important to find the right balance between not flagging up concerns and flagging them up so much that it puts people off and creates a vicious spiral.

Joe Di Paola: Exactly.

Elizabeth Smith: I turn to the primary sector. Earlier this year, we took evidence from Frances Jack, who was a newly qualified primary school teacher at Currie primary school in Edinburgh. She gave us a detailed account of the difficulties that new teachers face in finding work after their probationary year. She flagged up the fact that some local authorities are flexible about the jobs for which they allow the pool of people to apply but others are restrictive. Did your working group examine local authorities' different approaches to employment?

Joe Di Paola: We did not specifically consider different employment practices in different authorities. In our work, we focused on the Scottish model.

Elizabeth Smith: Perhaps the matter should be considered. It bears out what you said in your answer to Ken Macintosh, because part of the difficulty is geographical immobility. People are more willing to work in the central belt and the cities, and it is more difficult to get people to go further afield, particularly in the primary sector. If it is true that some local authorities are a bit restrictive—I say that guardedly—in how they operate the pool of labour supply, that might be a considerable barrier to allowing greater flexibility within demand and supply.

Joe Di Paola: I would like to believe that there are no unnecessary restrictions in local authorities, but if that issue has been raised, I would want to ask colleagues who have direct responsibility for education provision, particularly the directors in ADES, whether that is the case.

Elizabeth Smith: Frances Jack told us that some local authorities got a greater choice of candidates because people were allowed to cross local authority borders, which put people further up the list. She had had to wait for specific opportunities in regions. It seems to me that that rule creates rigidity in the labour supply.

Joe Di Paola: In the induction scheme, the individual can choose five authorities and put them in order from one to five. That shows where they want to go, or which geographical areas they favour. If that affects how an authority views a candidate, I do not think that I—or any of us—can do much about that. The individual can choose five authorities, so they have a broad choice.

If she is saying that, because candidates place authorities in order of preference, that gives them a disadvantage in respect of going to one of the authorities on the list, I suppose that that could and should be examined, because it should not give them a disadvantage. A candidate should be able to say, "There are five authorities that I want to go to." If they live in Edinburgh, one assumes that their first preference will be Edinburgh. That should not count against them.

Elizabeth Smith: I turn to the class size policy. When we took evidence from ADES, it was obvious that the policy is being implemented at different rates. In some cases, progress is relatively positive, but in others, frankly, it is not. Some local authorities do not regard the policy as a priority. How has that affected the statistical projections of how many teachers will be required over the next few years?

12:30

Joe Di Paola: My group did not look specifically at the impact of that and I have not seen any statistical modelling that takes it into account.

Elizabeth Smith: Would it be an appropriate thing to include in the model, given that it will have implications for the numbers employed to cover primary 1 to primary 3 in the future?

Joe Di Paola: With all due respect, that is a matter for wider discussion rather than for discussion just in my group.

Elizabeth Smith: Will you suggest which group should discuss the matter?

Joe Di Paola: It should be the subject of discussion between the Government and COSLA at political level.

Elizabeth Smith: But do you accept, as you rightly pointed out, that it is extremely important that we get that right and that there is a greater match between supply and demand, because we are dealing with people's lives and careers? If the Government has made a specific commitment to a policy to reduce class sizes to no more than 18 in P1 to P3, that will have a huge effect on employment prospects. Would it not be sensible and relevant for your group to look at that?

Joe Di Paola: It is an important factor that will affect the modelling of the number of people coming in and out of the profession, and you are absolutely right that it will require to be taken into account by the teacher workforce planning group, which is a standing body—unlike my group, which has finished now.

Elizabeth Smith: Have you recommended that it should take it into account?

Joe Di Paola: The teacher workforce planning group will pick up the issue; it picks up any such issue or policy change.

Elizabeth Smith: But I am right that you have made specific recommendations for things to be considered.

Joe Di Paola: Yes, we have.

Elizabeth Smith: Have you made the suggestion that—

Joe Di Paola: We did not make that recommendation.

Christina McKelvie: Good afternoon. I turn to secondary teachers now that we have spoken about primary teachers. You mentioned earlier that a particular challenge seems to exist in achieving the appropriate distribution of placements across certain subjects and geographical areas and in filling certain posts permanently. It seems that in some local

authorities places are left unfilled and in some places are oversubscribed—it is another question of balance. In your report, you recommended an increase in the preference waiver scheme figure from £6,000 to £8,000. You spoke about that earlier. As it stands, about 8 per cent of graduates take up the £6,000 waiver. What proportion of graduates do you expect to take up the increased waiver of £8,000?

Joe Di Paola: That is a difficult assumption to make. How much more attractive is £8,000 than £6,000? All that I can say is that it is to be hoped that the £8,000 will help teachers who are prepared to move to where it is difficult to fill posts, which is the case particularly in the secondary sector—which explains the differential in the waiver scheme for that sector—to move. However, people's individual circumstances are such that I do not know how we would model the uptake.

Once the recommendations have been accepted and the £8,000 figure has been introduced, we will have to look at the situation over two or three years to see what impact it has made. Only then will we be able to say what difference the £8,000 rather than £6,000 has made. I am not ducking the issue; I genuinely think that we need to wait to see what the impact is. A number of figures were put about inside the group and people wondered whether we should push the figure up higher to see what impact that had. On balance, the view was that adding £2,000—going from £6,000 to £8,000—might have an impact that would be measurable.

Christina McKelvie: You mentioned the impact of the current economic situation on retirement. Will the increase in money go some way towards filling some of the unfilled places?

Joe Di Paola: The increase in what?

Christina McKelvie: The increase in the waiver payment, which, in effect, means extra cash.

Joe Di Paola: The honest answer is that at the moment we simply do not know. I hope that the measure will address the problem because, after all, part of its aim is to achieve better distribution.

Christina McKelvie: How much of a relationship is there between probationer placements and probationers securing a permanent post? For example, someone attracted to teaching in a remote area might have the option of staying there permanently.

Joe Di Paola: Clear evidence from a number of councils that could hardly be described as being in the central belt shows that many post-probationer teachers who are attracted to more remote communities tend to stay in the area because they like the style of life, their work, the size of their school and so on. Of course, the approach is not all altruistic; if the people we attract to fill gaps in the more remote rural authority areas stay there, so much the better. Perhaps we should be saying to post-probationer teachers that such areas are not in the back of beyond and that they might actually find them very pleasant to work in.

Christina McKelvie: There are more options as well.

Joe Di Paola: Well, there can be.

Christina McKelvie: Is there any evidence that retention is better in places that have been filled under the current waiver scheme?

Joe Di Paola: I do not think that there is a lot of statistical evidence on that but anecdotal evidence suggests that people who are attracted to the waiver scheme tend to stay in the area.

Christina McKelvie: How does the number of post-probationers in the waiver scheme compare with the number of post-probationers looking for permanent posts?

Joe Di Paola: It is not a very large percentage. I do not have the exact figure to hand, but I can get it for you.

Christina McKelvie: That is fine. Thank you.

Aileen Campbell: Did you find the increase in the preference waiver payment to be the biggest single factor in attracting post-probationers to more rural and outlying areas?

Joe Di Paola: It is not the biggest single factor, but it is certainly one of the attractions that some of these authorities and places highlight to people. As I said, post-probationers might be attracted by the size of the school, the kind of work that they can do and so on. I do not think that the £8,000 would itself be the primary factor—although perhaps I should call it the main factor, given that we are talking about secondary schools. However, by signing up to the scheme, they are indicating that they are prepared to go anywhere, and the £8,000 might be a way of saying, "That'll help you move."

The Convener: I think that that concludes our questions—

Ken Macintosh: I have one brief question, convener. I thought that we were supposed to come back to supply and distribution at the end.

Mr Di Paola, you said earlier that the mismatch between the number of probationers and the number of jobs could become serious. As you have made clear, this area is complex for a number of reasons, one of which is the new relationship between local government and central Government. If the mismatch is not yet serious, at what point will it become so?

Joe Di Paola: I do not want you to think that we do not think that the situation is serious. If there is any kind of mismatch—if teachers are being trained, but are not getting jobs—that is a serious issue that must be addressed. My group has begun to examine the issue and has made certain recommendations but, as I said earlier, that is not the end of the matter. The situation must continue to be monitored not only by local authorities, who are, after all, teachers' employers, but by central Government, which determines policy. The issue is—and continues to be—serious, and we are trying as best we can to make progress in dealing with it.

The Convener: Have you finished your questions, Mr Macintosh?

Ken Macintosh: Yes, I have. I will keep the rest for the minister.

The Convener: That concludes our questions and today's meeting. I thank Mr Di Paola for his attendance.

Meeting closed at 12:40.

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