# EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 14 January 2009

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

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## EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE
**1st Meeting 2009, 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:**

Dr Ted Jefferies (Argyll and Bute Council)
Bryan Kirkaldy (Association of Directors of Education in Scotland)
Cameron Munro (Glasgow City Council)
Martin Vallely (City of Edinburgh Council)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**SENIOR ASSISTANT CLERK**

Nick Hawthorne

**LOCATION**

Committee Room 2

# Scottish Parliament

## Education, Lifelong Learning and Culture Committee

*Wednesday 14 January 2009*

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

## Decision on Taking Business in Private

**The Convener (Karen Whitefield):** Good morning. Welcome to this meeting of the Education, Lifelong Learning and Culture Committee. As this is our first meeting of the new year, I wish everyone a happy new year. I hope that you enjoyed the festive break and have returned to the Parliament refreshed and ready to continue our consideration of education and culture matters.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 4 in private?

**Members** *indicated agreement*.

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

10:01

**The Convener:** The substantive item on our agenda is continued consideration of the Education (Additional Support for Learning) (Scotland) Bill. This morning, we have been joined by representatives of the Association of Directors of Education in Scotland and our local authorities. I am pleased to welcome Dr Ted Jeffries, principal psychologist at Argyll and Bute Council; Martin Vallely, service manager for professional services at the City of Edinburgh Council; Cameron Munro, senior solicitor for education at Glasgow City Council; and Bryan Kirkaldy, a representative of ADES. Thank you for providing written submissions to the committee in advance of the meeting.

We will move straight to questions. My first question is about the main policy thrust of the bill, which is to give parents of children with additional support needs the right to make placing requests. The majority of respondents to the consultation welcomed that new right. Although the majority of local authorities also welcomed it, some—especially our largest authorities—have raised concerns and expressed differing opinions on how it should operate. How do you see the right working?

**Cameron Munro (Glasgow City Council):** Good morning. I speak only for Glasgow City Council. It is unusual for me, as a lawyer, to be representing the council at the committee but, unfortunately, Margaret Doran was at the last minute unable to attend. Glasgow City Council will support whatever legislative change is made—that is not an issue—but we are concerned that any change should be in a child's best interests. We would like the committee at least to consider the fact that there is already provision for a parent to make a request to have their child placed in another school in another authority area.

As my submission makes clear, the matter was considered by the inner house of the Court of Session. The important point is that any request should be made to the residential authority, which knows and has an on-going relationship with the child in question; that is the central tenet of Glasgow City Council's approach. If the authority chooses to agree to the request, it places the child in the new school.

There is a distinction between a placement, during which time the council retains full responsibility for the child—as was envisaged under the Education (Additional Support for

Learning) (Scotland) Act 2004—and the granting of a placing request. The purpose of that distinction is to ensure that the best needs of the child are met. The important point is that if a request is refused and the parent is unhappy—I accept that it is not a request within the terms of the act that affords a right of appeal to the appeal committee; the committee may think that the act is limited in that regard—the failure to adhere to the request gives the parent the right of redress. They can go to mediation—as they can on any matter—or, more important, they can go to dispute resolution. It is the residential authority that has to justify and explain itself.

As we outlined in our submission, we are asking the committee to consider the risk factor that is involved. For example, a parent could say that they want their child to go to a school in Aberdeen, even though all other support, from social work, other council departments and the health board, is based in the west of Scotland.

That is why we want to highlight that there is provision under the 2004 act to encourage the approach that I have outlined. It is somewhat disappointing that it has not been enhanced or highlighted enough for parents or considered enough by local authorities.

If the committee is not minded to consider that view and feels, as the Government does, that it wants to afford parents the right to deal directly with an authority that is not their residential authority—which is the distinction between the 2004 act and the bill—my council asks that safeguards be built into the bill to strengthen the process. Such safeguards should be similar to those for placing requests to independent schools. As the committee is aware, such requests are made to the residential authority and the independent school is not party to any appeal hearing. The principle is that the residential authority is responsible for ensuring that it does the best for the children in its area. I am sure that members will ask us to expand on those concerns later in the meeting.

Glasgow City Council does not wish to usurp the law: if the law changes, we will comply with it. However, we are asking the committee to consider that there is existing provision on this, which could be enhanced. If you decide not to go down that road, we ask for safeguards to be written into the bill. Our proposal is predicated on two principles: ensuring the welfare of children; and upholding the rights of parents. The current placing request legislation seeks to fulfil a policy commitment that was made back in 1981 to introduce rights for parents. It was perfectly correct and in order for that to be done. My council's position is that that legislation is not fit for 2009, as it does not afford authorities the opportunity to discuss the broad needs of the child.

There is also the issue, which I am sure that we will move on to discuss, of the recovery of moneys from authorities and the confusion that that can cause. Again, the system is neither clear enough nor robust enough to withstand what may well be increased pressures between authorities. I am sure that my colleagues will expand on the matter.

**Dr Ted Jeffries (Argyll and Bute Council):** I support what Cameron Munro said on the principle that, by and large, the responsibility for a child's education rests with the residential authority. Other panel members may focus on the financial aspects of the proposal, but my concern is about who is best placed to judge what is in the child's best interests and who makes provision for all local children. The answer is the local authority.

In our submission, Argyll and Bute Council supported the proposition that Cameron Munro outlined, which is that applications for specialised provision in another local authority area should be treated as equivalent to applications to special independent schools. The first test is whether there is a place available in the school to which the parent wants to send their child. That test having been met, it is legitimate for the residential local authority to have a view on whether the child's needs in the round can be better met by its own provision. That is a reasonable position for local authorities to take.

It would be hard to argue that parents should not have the right to make placing requests to schools in other areas. They should have that right, and I do not think that any council is arguing that they should not. The issue is the process. In our submission, we proposed treating such a request as equivalent to an application to an independent or independently funded school. A parent would make the placing request to their home local authority, which would apply the same legal test that applies in the case of an application to an independent special school. The crucial test for the authority would be whether it could make the same or better provision within its own system. There would be other tests, but if the authority could make the same or better provision, it would have a reason to refuse the placing request. If the parent did not agree with the refusal, the matter could be taken to independent arbitration or—our preference—to the additional support needs tribunal. There would be a system for arbitration.

Our key reason for taking such a view is not the financial implications but the implications for the local system. If parents opt out, even in relatively small numbers, there is an impact on the system that the local authority is running. I will give a concrete example. Learning support bases in secondary schools provide for children who have a

range of additional support needs. If two or three parents apply for a place across the water or up the road, the learning centre in the mainstream school will become depopulated. The next parent who comes along will not see a well-functioning, well-operating, integrated system and therefore might be inclined to seek specialised provision, which always seems to be a neater solution to the problem of providing for a child's additional support needs.

There is then a drift away from the inclusive system. We are proud to have such a system, which enables the needs of the vast majority of children to be met in local schools and by local resources. Our major concern is therefore that allowing parents an unfettered entitlement to seek placements in special schools in other local authority areas—it is realistic to say that that is what parents will seek—would have an impact on our authority's capacity to provide services.

I will give another example. These days, there are relatively few children with sensory impairments. Such children need to be supported by specialist teachers. If even two or three children go to specialist provision elsewhere, local provision is reduced and we cannot run specialist services as readily. The option of sending a child to specialist provision therefore appears more attractive to parents than keeping their child in the local community to be supported by an expert teacher.

Although the principle that parents should have the right to apply to any school in Scotland seems to be a no-brainer, it has hidden implications for our ability to run a system in which we can support children. We are keen to draw those implications to the committee's attention and to support Glasgow City Council's call for the role of the home authority to be given serious consideration.

**The Convener:** Should not the needs of the child, rather than the needs of the local authority, be paramount? A local authority might well aspire to deliver a service, but finding the best fit for the child should be paramount. In making legislation, we must be mindful of that.

10:15

**Dr Jeffries:** I could hardly disagree with what you said and I genuinely do not disagree with it. Argyll and Bute Council does not use children as a means to forge policy—I hope that most local authorities do not do that.

Children's needs come first. Looking in the round at the picture of provision in our authority and in the area within reasonable travelling distance, we are genuinely convinced that if there is a better fit for a child's needs in another authority, that child should be placed there. We would certainly want to continue to do that. After all, it makes a great deal of sense for a small local authority such as Argyll and Bute not to invest in buildings and infrastructure but, where children need such facilities, to use those that are available in contiguous local authority areas or from independent providers. The guiding principle, as I say, is that the child's needs come first.

Local authorities perhaps feel that they always make the right decisions. Of course, that might not always be the case but, under the existing safeguards for parents and children, others can review our decisions and conclude whether they were made in the child's best interests.

It always seems neater and simpler to find a special solution to a child's needs, and sometimes it can prove more complicated to support a child in a mainstream school. There will always be a tension and a balance to be struck in that respect, but we should not use children to develop an inclusive policy. We should develop the policy and support first, and then bring the children into the system.

**Martin Vallely (City of Edinburgh Council):** The City of Edinburgh Council's concerns are very similar to those expressed by colleagues from other authorities. Although we support parents' ability to make placing requests, the bill's provisions contain a number of hidden problems. For a start, the bill focuses exclusively on the parent's rights and does not take into account the authority's wider duties and responsibilities not only to the child in question but to other children in its area. As has been pointed out, fundamental legal safeguards already exist; for example, the authority has a legal duty to ensure that its provision is adequate and efficient and that it makes appropriate provision for each and every child with an additional support need. Moreover, under existing legislation, we are obliged to promote the presumption of mainstreaming and to ensure that we co-ordinate support for children with significant needs who require the support of different services provided by or outwith the education authority.

We also have a lifelong responsibility to many children with additional support needs. The authority's responsibility to children with disabilities starts when the disability is identified, which could be in the first weeks of life, and another concern relates to the fact that, under the current arrangements, the authority is responsible not only for the child throughout their life but for their transition into adult services. For people with complex disabilities, that process needs to be carefully planned over time. We are concerned that the bill might cut across that continuity and the authority's accountability to that child and lead to a situation in which two authorities might be

responsible for a child who has been placed in another education authority as a result of an out-of-authority placing request. The first authority might be responsible for the child's education, while the other might be responsible for every other aspect of the child's needs, including forward planning for their future provision.

Alongside that potential break in accountability for the management of a child's needs, we are concerned that, by dividing up responsibilities in this way, the bill might break the relationship between the authority in which the child is resident and the elected members in the authority.

We are also concerned that the bill could introduce perverse incentives. There could be a tendency under the arrangements for an authority that borders one that has well-developed provision to say, "If parents want to go to the neighbouring authority, that is well and good, as we will not have to take responsibility for paying for that provision or co-ordinating the child's education." In that case, the host authority would be faced with a financial burden. Section 23 makes provision for the host authority to seek to recover the costs, but there is no obligation on the home authority to pay those costs. We believe that that situation operates against the fundamental responsibility of each authority either to ensure that adequate and efficient provision is available in its area or to be responsible for securing and financing that provision through other means, whether through an independent school or by securing access to provision that is available in another local authority area.

The current provisions enable placements to be made in neighbouring authorities. Around 45 children from other authorities are being supported in special schools in Edinburgh, and those arrangements operate satisfactorily. We would like to build on that while retaining the integrity of the process and the accountability of the home authority.

**Bryan Kirkaldy (Association of Directors of Education in Scotland):** As I am representing the Association of Directors of Education in Scotland, and most of what I say echoes what others have just said, I will keep my contribution brief.

We have welcomed the quality of the consultation, and we think that the Government has taken due account of the feedback that has been given so far. We have been pleased with the thoughtfulness of its response. We are broadly sympathetic to the intentions of the amendments to the 2004 act that are proposed in the bill.

On the issue of placing requests, we think that the principle that the residential authority is the authority that is responsible for a child's education is important. We all work to make provision according to the best interests of the child, but it is important that residential authorities are responsible and accountable for the provision that they make. For the past 20 years, we have been meeting the challenge of the presumption of mainstreaming by building capacity for inclusion in all our schools. However, we have also been working hard to develop the capacity for inclusion across our authorities. Our efforts have been quite successful, and the majority of parents and children who are involved in additional support needs provision in local authorities are satisfied with the provision that they get. It is important to say that because, sometimes, when we discuss these matters in a legislative context, there is a tendency to focus on dissatisfaction with the system.

As Martin Vallely said, a perverse incentive could be presented to local authorities if there is an untrammelled placing request option. If it were possible for parents to choose to go to another local authority for provision, there would be a perverse incentive for local authorities not to build their capacity to make effective provision for children with additional support needs. That needs to be taken into account, because I am sure that the last thing that the Scottish Government would want to do would be to introduce such a perverse incentive, which would be against the principle of the presumption in favour of mainstreaming, and would not be in the best interests of children with additional support needs.

The safeguard of the test of whether the residential authority can make provision locally is important. We can readily understand the wish of parents of children with additional support needs to have the same rights to make placing requests as other parents, but we believe that there is a need for a test to show whether effective provision can be made locally for that young person.

A second matter involves the cost implications, which ADES responded to in relation to the financial memorandum. One implication arises from placing requests across authority boundaries. If there is an uneven pattern of such placing requests, there will be an uneven cost distribution, which will not be reflected in the base funding that those authorities receive from the Government, so there will be a financial imbalance. Because the per capita costs of pupils with additional support needs are high, those placing requests are not equivalent to ordinary placing requests, for which one can assume a trade-off between youngsters moving across local authority borders.

The second implication arises from the usage of independent provision. We have seen a progressive increase in the number of requests for independent provision. Since the 2004 act came into effect, we have predicted that the independent

sector might be stimulated to develop further provision to cater for the population of youngsters with additional support needs, and we think that that has cost implications for local authorities as well. Although it might not be a direct consequence of the amendments to the 2004 act that the bill will make, a strengthening of parental rights to make placing request appeals, and the publicity that will be associated with that, is likely further to stimulate a trend that is already under way for parents to seek to make placing requests to independent schools.

**The Convener:** Your contributions have highlighted a number of areas that members of the committee will want to pursue with you, so I will not ask about issues to do with funding, appeals or the responsibilities of residential authorities. However, I have a specific question for City of Edinburgh Council about the proposal that it made in writing to the committee, as it highlights why there might be a need for the legislation.

The suggestion is that it would be appropriate for children who have "significant" additional support needs to qualify for the right to make out-of-area placement requests. How will the City of Edinburgh Council define what "significant" means? How can we ensure that children in the council's area have exactly the same rights as children in every other local authority area in Scotland? Is it not right that the legislation should be applied equally and consistently across Scotland? I suggest that it is not good enough to say simply that there was a Court of Session ruling on the matter. We need to enshrine the right in legislation to ensure that there is some clarity.

10:30

**Martin Vallely:** My understanding of the Court of Session's opinion is that it questioned whether there was a right for the parents of any child with additional support needs to make a placement request. In considering the proposals in the bill and the Court of Session's opinion, we have suggested that we need to look differentially at various levels of additional support needs.

The definition in the 2004 act is broad and could include a large proportion of children in the population at some point in their school career. However, for most of those children, the additional support needs can be met in a mainstream school. When someone in one local authority area makes a request to another authority, the provision that is generally made in the neighbouring authority may be different from that in the home authority. Therefore, a child who has an additional support need in the home authority may not have one in the host authority, because of the different provision. Alternatively, the reverse could apply: a child may not have an additional support need in Edinburgh, but they may have one in another authority because the level of provision that is generally made in that authority is different from that in Edinburgh.

That issue is not within the control of the local authorities—it is to do with the definition of additional support needs in the legislation. We consider that, in general, when additional support needs can be met within mainstream schools, in so far as there are support structures in the schools, any placing request should be treated no differently from other placing requests. In any case, we cannot predict in advance whether a child has additional support needs. That can be established only in relation to a request to a particular authority. However, there are children who have significant additional support needs. As I said, we often know about those children from their early stages of life. We believe that, because continuity of responsibility is very important and in the best interests of those children, different provisions should apply in those circumstances. When there are significant additional support needs, different provisions should apply.

You rightly ask how we decide whether a child has significant additional support needs. We must do that with reference to the definition in the 2004 act and the code of practice, which provides guidance on that. The code states that if a child has a need for high levels of adult support in the course of the school day, they have significant additional support needs. All authorities would refer to the 2004 act and the code of practice in establishing whether a child has significant additional support needs, as we do already.

**The Convener:** You do that already, but my understanding is that, compared with other local authorities in Scotland, the City of Edinburgh Council has very few children who have co-ordinated support plans. I genuinely do not want to single out Edinburgh for a hard time, but the fact that a very small number of children in Edinburgh have co-ordinated support plans suggests to me that there is an issue about interpretation. The City of Edinburgh Council's interpretation seems to be different from that in other authorities in Scotland that have similar challenges to meet.

**Martin Vallely:** Each authority must consider its own circumstances. In the City of Edinburgh, we have a relatively large sector of special schools and special classes. When children's needs are accommodated in that provision, we are acknowledging that they have significant additional support needs. There is a distinction to be made. It is irrefutable that those children have additional support needs that require significant support from the education authority, but that is only part of the test for a co-ordinated support plan; another part is that the child should require significant additional

support from a different agency. Because of the nature of the provision that we have in Edinburgh, there is less requirement for significant additional support from other agencies.

We reviewed the cases of 1,000 children who have records of needs—which includes the vast majority of children who are in special schools—and found that only six were referred to the tribunal. Only six parents, therefore, have appealed the authority's decision to refuse a record of need—and in five of those six cases the tribunal agreed with the authority. That suggests that there has been a very low level of appeal and that even when those cases have gone to appeal the tribunal has agreed that the authority was correct in its interpretation of the legislation.

I advise caution in interpreting the significance of the number of co-ordinated support plans with respect to the extent to which the authority acknowledges its responsibility to provide for children who require significant support in light of their additional support needs.

**Bryan Kirkaldy:** I will make a brief comment in support of what Martin Vallely said. In a local authority context, we consider the population of children with additional support needs to be something like 20 or 25 per cent of the school population—a large number. We believe that we should be held to account for our effectiveness in working with that population in terms of the outcomes that we achieve, which are principally defined in terms of the children's life chances, which are often measured in terms of attainment and achievement and of future destinations, and their and their families' satisfaction with the provision that we make while they are with us. We are keen, and pleased, to be held accountable for those outcomes, and we think that as leaders and managers in local authorities it is important that we are clear with all our staff and stakeholders about what the valued outcomes are and how we will hold everybody accountable for them.

There is a risk in using the rate of CSPs—which are essentially record-keeping devices—as a measure of effectiveness. It is misleading and we counsel strongly against it, just as we counselled against the use of the rate of records of needs as a measure of effectiveness. We want to work within the spirit of the concordat, which is about considering valued outcomes.

**The Convener:** I was not suggesting that we use co-ordinated support plans as a means of evaluating the legislation, but it strikes me as odd that when the legislation was originally introduced the then Government's officials suggested that there would be far more co-ordinated support plans in place than is currently the case. Why did they get it so wrong?

**Bryan Kirkaldy:** I am not sure about that estimate. I was involved in the special educational needs advisory group that framed what became the Education (Additional Support for Learning) (Scotland) Act 2004, and I was present at all of its meetings. We always said—and it was always clear—that there should be, and would be, fewer CSPs than records of needs and that they should never be used as any kind of league table measure. We understand that that sometimes changes in the popular usage of the legislation, but it was always clear from my point of view.

**The Convener:** Dr Jefferies, do you have something to add on that point?

**Dr Jefferies:** Yes. I will illustrate that point. When we started out on this process, we did practice CSPs for a few children. I picked a few who it seemed obvious would have CSPs and we drew up drafts for them. In the case of the highest tariff child—the child who had the most extensive needs—the person who was going to write the CSP told me that the child would not have a CSP because there was no significant involvement by any other agency. The child was on an annual review from occupational therapy, speech and language therapy, and physiotherapy, but there was no more involvement than that by other agencies.

The factor that has militated against a large number of CSPs is the nature of the involvement of other agencies, which often does not meet even quite loose aims. We do not set a high bar for the involvement of another agency to be considered significant, partly because of our rural nature. Even then, the fact that the involvement of other agencies is crucial to the establishment of educational objectives has meant that most children who we would consider as definitely having complex needs are not assessed for a CSP. The reason for that has always been that the involvement of other agencies has not been at a level that would require a CSP to be opened.

**Cameron Munro:** The convener has touched on a central point. Obviously, you have your ear to the ground on these matters. Those of us who travel around the country realise that there is widespread confusion about what is meant by the term significant. How does it apply in one authority, never mind across agencies? It is unfortunate that although that is a pressing matter, it is one that the bill avoids. There is nothing in the bill to address the fact that there is a degree of confusion. The solution is certainly not to phrase it differently or to expand on it in the code of practice, as Scottish Government officials suggested to the committee. If it were not for the fact that you are seeking to allow tribunals to review their decisions, not to go to the Court of Session, such a suggestion would carry the sign,

"Go directly to the Court of Session." Many education officials and parents are extremely concerned about this—and, as a lawyer, I would chip in—but it is not addressed by the bill.

I should make it clear that neither I nor my colleagues deal day-to-day with these issues. While the range of agencies that might be involved with a child provide an immense amount of support, we should bear it in mind that the issue in a CSP is support for an educational objective. A range of issues may be being helped, but it is only once there are those objectives that support needs to be considered. That might explain why some of the matters are not directed as the committee would hope.

**Ken Macintosh (Eastwood) (Lab):** When the original act went through, it was recognised that far fewer children would get a CSP than had had a record of needs, but the number is far less—by a factor of 10, I think—than was estimated. It is not just that the estimate is way out, but that there is wide variation throughout the country. While some authorities do not have a large number of CSPs, they have significantly more than Edinburgh, for example—I am not picking on Edinburgh, but we are sitting here in the city. Why is there such a huge variation? Does it cause you concern? Should it cause the committee concern? Even if CSP rates are not league tables, they suggest that children are treated differently in different parts of the country even though the same legislation is being applied.

**Bryan Kirkaldy:** There are reasons to look into that. I suggest that we should be clear about the outcomes that the Government and local authorities wish to be accountable for in relation to children with additional support needs. I would much prefer effort to be put into how we systematically monitor the rate of satisfaction and dissatisfaction that is expressed by parents about the provision for their children. It would be interesting and healthy to publish data on those things and hold local authorities accountable for them. I am talking not only about rates of reference to the tribunal, but about more detailed measures of parental satisfaction. We should also be held accountable in detail for the life chances that we create for youngsters with additional support needs.

10:45

The reasons for differences in CSP rates are complex and varied. As Cameron Munro said, one reason is that there are ambiguities in the definition of eligibility in the legislation. Another reason is that demographic differences, particularly the landscape of specialised support services, have an impact. A key test or criterion for a CSP is whether a person requires sustained other agency involvement. Where that is already embedded in a system, there is no requirement for a device to achieve it.

I counsel the committee to focus on more robust and reliable measures of effectiveness than CSP rates, although I agree that it is interesting to consider the basis for the variations. I should say that ADES predicted the current rate.

**Cameron Munro:** Mr Macintosh makes a valid point. I think that my colleagues here would take on board the fact that considering the CSP rate is part of the authority's general self-evaluation. It would be a concern if we found that children with CSPs were simply likely to have had records of needs—as opposed to coming under a wider definition of additional support needs—and that children with social, emotional and familial difficulties and environmental problems, or children who are looked after and accommodated, were not being represented. There is a serious requirement to monitor at the local authority level and take account of the more inclusive definition of additional support needs and ensure that not only a narrow band of children get CSPs. I share the view that we need to consider the broader range of need.

**Kenneth Gibson (Cunninghame North) (SNP):** I strongly support the comments that the convener and Mr Macintosh have made. A number of organisations have expressed concern to the committee, particularly in the informal discussions, that, taking into account demography, rurality, urbanisation and social class, the difference in CSP rates may result from whether local authorities are following the letter or the spirit of the law. There is a strong view that that is why there are quite substantial differences in how local authorities appear to be implementing the current legislation.

I want to talk about appeals on out-of-area placing requests. As you know, the bill proposes that appeals on placing requests should go to the tribunal where a CSP is an issue. I want to talk about Edinburgh first, but I would also like others to comment. Mr Vallely, under the heading "Changes to rights to appeal", you say in paragraph 22 of your very detailed submission:

> "The City of Edinburgh Council is concerned that the proposals to extend provision for appeals to transfer between the Education Authority Appeal Committee/Sheriff Court and the Tribunal will lead to confusion and less effective administration."

What are the advantages and disadvantages of the tribunal hearing all appeals relating to placing requests to special schools? Your colleagues can comment on the matter subsequently. Can panel members make suggestions on simplifying the appeals system?

**Martin Vallely:** I will speak about my concern on behalf of the City of Edinburgh Council.

I think that the circumstances for appeals on placing requests for individual children with additional support needs have been taken into account in the bill. In the vast majority of cases in which a CSP is involved, the likelihood is that we are talking about a special school. I do not envisage there being significant difficulties in such circumstances in making the appeal to the tribunal.

My concern is about when the local authority deals in parallel with a number of placing requests for popular, oversubscribed mainstream schools. In general, when parents make placing requests, there will be special pleading in every case. In a number of cases the request may be supported by a requirement for additional support needs, but the local authority must consider not only each individual request but the whole picture. If it makes an exception for one child, it must reconsider the case for every other child, to ensure fairness.

My concern is about when there are multiple requests for a particular school—we experience that; it is not hypothetical—and some parents make a request for a CSP. Generally, the level of need of children who require a CSP would be evident before the placing request was made, so the case would go straight to the tribunal, but if the issue of a CSP was raised in the course of considering multiple appeals for the same school, it could lead to the appeal committee considering all the cases initially, then the CSP case would go off to the tribunal. Meanwhile, the appeal committee would continue to consider the bulk of the cases. The tribunal might then say that the CSP request did not qualify and send the case back to the appeal committee. Although decisions on the other children may already have progressed, the CSP case would come back in and delay the process. Alternatively, the tribunal could proceed with considering the placing request with respect to the CSP, but there would not be a CSP at that point, so one would have to be written, leading to further delays in the process. The tribunal would then have to consider the placing request with regard to the content of the CSP. If the tribunal said that the child should be placed in the school, what would the local authority do with respect to the other requests that had been refused for that school?

To my mind, the process has not been thought through properly, because it could lead to confusion, delays, legal wrangling and parents feeling that the system is unfair. The parents of children with additional support needs but no CSP request could feel that preferential treatment had been given to a child with a CSP request.

There are circumstances in which parents want a particular school for their child for a reason that is nothing to do with the child's additional support needs. Any of us might say that we prefer one school to another or feel that one school is more convenient for our family, our work or whatever. A case in which additional support needs were not material to the essence of the request could go to the tribunal. I feel that the process has not been thought through properly and that it must be reconsidered.

**Kenneth Gibson:** I am keen, given what you said, to hear your suggestions for how we might simplify the process. In paragraph 25 of your submission you say:

"some parents may seek to gain advantage over others by 'contriving' to meet the grounds that 'a CSP is involved or being considered' whilst the matter is still in process."

Is there evidence that that is happening at the moment?

**Martin Vallely:** It could not happen at the moment because there are currently no such grounds, so there would be no advantage to be gained. I was suggesting that if such a provision were introduced some parents might think that there would be advantage to be gained and that in the fog of the process they might achieve what they hoped for.

**Kenneth Gibson:** Is there evidence that parents are jockeying for position under the current arrangements or that they would do so if the proposed changes were made?

**Martin Vallely:** There is a lot of evidence that parents make the best case possible to try to secure their preferred outcome for their child. There is a lot of evidence that parents are creative in the process, to the extent that—I will not go into detail.

**Kenneth Gibson:** All parents try to do the best for their children. You are almost suggesting that parents might try to undermine or cheat the system. Is that what you think?

**Martin Vallely:** Those are unfortunate terms to describe how parents might seek to use to best advantage whatever avenues are available to them. A potential consequence of parents' doing that could be a ping-pong process, which might ultimately mean that consideration of other requests, which had been made to the same school at the same time, was disrupted or undermined by the duality in the system.

**Kenneth Gibson:** How can we take account of your concerns and improve the bill? How can we make the process more workable?

**Martin Vallely:** In my submission, I suggested that if we are to take account of the circumstances

that we are discussing we need to reconsider the law on placing requests in general, so that we can ensure that there is equality of treatment for all parents.

**Kenneth Gibson:** I read your proposal for a wider review of the legislation, which is in paragraph 27 of your submission, but what can we do in the context of the bill?

**Martin Vallely:** I suggested that if my fundamental argument about mainstream schooling is not accepted as a sufficient ground for not progressing the proposals in the bill, some test or caveat will need to be introduced with respect to circumstances in which parents seek to initiate a CSP process. There would be a need to establish that a recent and significant change in circumstances justified such an approach, so that parents could not say, "There is a long-standing problem, which has not been raised before." For argument's sake, let us suppose that a child had had a serious illness or accident that had had a long-term effect on them or that there were significant changes in the family or social circumstances, which justified consideration of a CSP. If the bill progresses, it should be amended to include safeguards that make it clear that we envisage that the CSP process would arise mid-process only in exceptional circumstances.

11:00

**Kenneth Gibson:** Do other members of the panel wish to comment?

**Dr Jefferies:** I am keen to do so. My comments are based on our submission to the earlier consultation. Our perspective is that there are already two placing request routes. There is the one for independent special schools, for which the test is whether a child has additional support needs. The residential authority can deal with such placing requests in various ways. I think that that right is being extended to apply to the schools of another education authority, so the equivalent safeguards should apply—there should be a distinct process.

I could not do so now, but I think that an amendment to the bill could be drafted whereby placing requests that were made on the basis of a child's additional support needs would go through system B, whereas the majority of placing requests go through system A, which is the standard system that applies to all children. I have not plucked that out of the air—such a distinction is already made when parents apply for a place for their child at an independent special school.

We are talking about applications that are made on a similar basis—when a parent says that they want their child to go to school X because his additional support needs will be better met there, as distinct from when a parent says that they want their child to go to school X because it would suit their family better and because they like that school more, which is a perfectly legitimate view for a parent to have. As we said in our submission, the important consequence of that—although the City of Edinburgh Council might differ with us slightly on this—is that such requests should go to the tribunal for arbitration.

We have faced such a situation in a small number of cases; matters have bounced between the tribunal, the local authority education appeal committee and, ultimately, the sheriff court. I will not go into specific cases, but the result has been really unacceptable delays, with people bouncing around the system.

I can think of one case that has been in the system for two years. That is not acceptable in a child's school educational life; decisions need to be made more expeditiously than that. We might have a different perspective from the City of Edinburgh Council in that respect because we do not face the issue that it faces, but there is a distinction to be drawn between cases in which a parent makes a placing request because their child has additional support needs and cases in which they simply want their child to go to a different school. That distinction is already made in law. I do not imagine that our proposal would resolve everything, but it is one way of looking at the problem.

**Cameron Munro:** I will add to what Ted Jefferies and the deputy convener have said. If I may, I will slip into the role of lawyer, which is my day job, as there are several points to which I would like to alert the committee. I defend my council against challenges that go to the education appeal committee or the tribunal, and the first thing to say is that the number of such cases is incredibly small, even in a large authority such as Glasgow City Council.

I also have an observation that has been put to me by elected members on the education appeal committee. It should be borne in mind that that committee—which, in addition to elected members, comprises parents or laypeople—has a statutory role in relation to ASL. Members on that committee are concerned that they do not have enough advice on or experience and knowledge of some of the additional support needs that are referred to in the cases they deal with. I do not want to adopt too anecdotal an approach, but after hearing a case in which a parent said that they wanted their child to go to a particular school that had a good reputation because the child had a visual impairment called nystagmus, a councillor told me that they were extremely concerned about whether they were entitled to make a decision on

the case because they knew nothing about such issues.

I am tempted to say that it might be necessary to consider stating in section 1 of the bill that any placing request for a child with additional support needs should go to the tribunal on the ground that two members of the tribunal have experience of additional support needs. One option might be for all matters of that nature to go to the tribunal, as we are getting slightly hung up on the idea that the tribunal should deal only with CSP cases.

The second option would be to allow the education appeal committee to refer cases to the tribunal if it felt that they involved matters of complexity. I am concerned about that for two reasons. The first is the obvious concern about delay. The other concern relates to the advantage of going to the sheriff court, which is that parents can apply for legal aid. There is an issue with that route because we end up with a more litigious view, but—evidence is anecdotal rather than empirical—as a lawyer I am concerned that there is an inequality of arms in appeal committee hearings that does not do justice to the needs of the child or the rights and duties of the parent. The matter may be best dealt with elsewhere.

**Martin Vallely:** I realise that I did not answer the second part of the question, which Cameron Munro touched on. I appreciate the argument that referral to the tribunal may have advantages in placing requests for special schools, but there is a distinction to be made between those requests and requests for mainstream schools. In the latter case, as I outlined earlier, we can have multiple requests for any given school. Additional support needs will often be quoted in those circumstances, but those are the additional support needs that 20 to 25 per cent of the school population have. The vast majority of those needs can be met within mainstream schools even though they fulfil the definition of additional support needs.

With special schools, we are talking about significant additional support needs, and there is a case for considering those through a different route. I will make one qualification to that: from the feedback that I hear, the tribunal experience to date has not been positive for parents or professionals. I believe that the City of Edinburgh Council has had more referrals to the tribunal than any other authority—19 in total, although not all have gone to hearings. The tribunal has upheld more or less the same number of our decisions on placing requests as it has refused, but three out of six have gone to the Court of Session. To be blunt, I observe that, in some instances, the ground for those decisions going to the Court of Session has been the quality of the tribunal's decision making.

If we are to extend the tribunal's remit, we need to improve its efficiency and people's experience of it and cut the amount of time that it takes, which is sometimes six or seven days. We also need improvements over time in the tribunal's ability to reach sound judgments, so the proposed provisions on review are welcome. I do not want to be too critical of Additional Support Needs Tribunals for Scotland because, as a new body, it is moving into new territory, but it needs the opportunity to step back and say, "Whoa! We made a mistake," provided that that does not go on indefinitely—there would need to be time limits on the review.

With those caveats, I would say that there is merit in considering whether placing requests for children who require significant additional support—in particular, the support of a special school—should go to the tribunal.

**The Convener:** I am conscious that we still have a number of matters to go through. I do not want to curtail the witnesses' contributions but I note that Mr Kirkaldy and Dr Jefferies both have something to add and I ask them to make points that have not already been made. If the witnesses keep their answers as concise and to the point as possible, committee members will, I hope, ensure that their questions are equally concise and to the point.

**Bryan Kirkaldy:** I will be brief. Mr Gibson's question has opened up an area where there is not full consensus among the local authority representatives. That is probably helpful to the committee as it may help us to move forward.

I come from an authority that has not had any references heard by an ASN tribunal since the introduction of the 2004 act, so I am at the inexperienced end of the continuum, but I am pleased to be there because I regard that as an indicator of our success in Fife in achieving parental satisfaction. The feedback that ADES receives about the quality of the tribunals has varied, but on balance we see an advantage in the expertise and experience that the tribunal can bring to bear, given the legal context in which these cases have to be heard and the complex personal issues that are sometimes involved. On balance, the ADES view is that tribunals have a more effective role to play.

I take Martin Vallely's point about how we define the appropriate population to be heard by a tribunal. If it is not pupils with a CSP, who is it? It will be an arbitrary decision in the end, because I do not think that it can be the 25 per cent of pupils in the school system who have additional support needs. That is a conundrum.

**Dr Jefferies:** Given that Argyll and Bute Council is a very small local authority, the fact that we are second in the league table of references to the tribunal is perhaps more surprising than the City of

Edinburgh Council's position. Local circumstances have led to that situation—I will not go into why, but under the previous system we had almost no appeals to the Scottish ministers so I am clear that it is a creature of the 2004 act. It means, though, that I have quite a lot of experience of tribunals.

As Martin Vallely said, the experience is mixed, but I am not necessarily surprised by that—it is what you would expect with a new body. We have also had experience in the sheriff court—when we were unlucky with the sheriff that we got—of having to start from scratch and explain what a school is and what additional support needs are. It is important that we act in the best interests of children, and an expert body seems to be the way to achieve that.

I do not know whether the issue can be addressed by the bill, but our authority's view is that the criterion of having a CSP being the route of access to the tribunal is wrong and not a measure of the complexity of a child's needs. There are other ways in which we could approach the matter, but I do not have a simple answer to that question.

**Claire Baker (Mid Scotland and Fife) (Lab):** I will ask questions about home authority responsibility, although the witnesses have touched on the matter and raised concerns about the financial implications and the impact that it would have on education in their own authorities.

The written submissions from the City of Edinburgh Council and Glasgow City Council refer to the difficulty of co-ordinating education services with social work services and health services in the authority. Independent Special Education Advice (Scotland) highlighted in its evidence that the proposal would create a two-tier system in respect of which authority would have responsibility if there were a placing request. We have identified the concerns about the responsibility being shifted to the host authority. Are there any positives as a result of the proposal in the bill? Would there be any advantages in responsibility being shifted, or is the proposal fairly problematic?

**Martin Vallely:** The superficial advantage is that it makes the situation neat and tidy. It looks as if the same principle applies to children with additional support needs as applies to any other child, but the difficulties that the proposal creates are far more significant than any nominal advantage that is gained.

11:15

**Cameron Munro:** I share that view. As I started by saying, the 2004 act set out to support children through their residential authority—I cannot stress that enough. My concern is that the proposed amendment to section 1 of the 2004 act will not simply change the portion that relates to placing requests but make a wholesale change to different parts of that act, such as how we define additional support needs and do mediation. Even that does not go far enough. We must bear it in mind that section 23(5) of the act says that if we, Glasgow City Council, have any powers—not just in education services but in anything—that we think can help a child, we must use them. That is a powerful indicator that the act is as close as we can be to getting it right for every child, although it is not that type of act.

Ultimately, our concern is that, if a child receives support from one part of the council and the health board in their residential area but is schooled in another area, co-ordination difficulties will arise. More important, what if a child's change in circumstances concerns the break-up of a marriage, the end of a tenancy or another problem that means that they are decanted? A range of relevant matters might be in the remit and gift of only the residential authority while the responsibility for the child's school education rests elsewhere. The bill does not get to the nub of that confusion. An analogy might be drawn with knocking down a lump in a carpet. It seems straightforward, but—perhaps I just lack the ability to lay carpets—as they say in Glasgow, you always need a flair for it. Somebody will explain that joke to Martin Vallely later, because it does not work with Edinburgh headteachers.

The important point is that the degree of co-ordination is a concern. When a child's circumstances change, what responsibility will the old residential authority have to exchange information once responsibility rests elsewhere? That needs to be addressed.

**Claire Baker:** Is leaving the responsibility with the residential authority the only way to address that issue? Could we promote better working relationships? You talked about co-ordination—I appreciate that the issue is not just financial. Could co-ordination difficulties be solved by improved working relationships and more joint working between authorities?

**Cameron Munro:** You are absolutely right—other legislation requires local authorities to exchange and share information. That point is important, but what is involved must be specified clearly in detail. I agree that authorities must be prepared to engage with other authorities in a child's best interests, but the bill does not provide the detail of that. If we take out the money considerations, the fact is that the Parliament is trying to change completely an act that concerns the residential authority. We should be cautious and examine the detail before we do that.

Co-ordination is important and will be significant for high-tariff children, but a key feature of the 2004 act is the importance of transition planning, which the other witnesses deal with more often. That is a key theme in the act and was an element of the policy. The Parliament legislated to set timescales for changing a child's school education and to require an exchange of information, to which Claire Baker referred.

The difficulty with granting a placing request is that it almost usurps such transition planning to ensure that a child's needs are met. The placing-request legislation is restrictive, unlike that for the children's hearings system, in which the child's welfare is paramount and a decision must be based on a statutory ground of refusal and must be appropriate in all the circumstances. Under the pacing-request legislation, if a child leaves Glasgow and goes elsewhere, the potential host authority does not have the information that the phrase "in all the circumstances" covers on which to base a decision. My council's concern is that planning for change, which is a central element of the 2004 act, is at risk of being usurped. If the bill dealt with that, Parliament would have to address that concern to its satisfaction.

**Aileen Campbell (South of Scotland) (SNP):** Good morning. I will move on to mediation, dispute resolution and, in particular, awareness of parents' rights. We have received evidence from ISEA (Scotland), which notes that about 75 per cent of parents are unaware that they can request mediation, and that 80 per cent have no or poor information on their right to request dispute resolution. I am interested to know what each local authority does to ensure that the parents to whom they cater are aware of their rights to access dispute resolution or mediation.

**Martin Vallely:** We have put information in every school, carried out briefing sessions for staff in our establishment and in the national health service, and offered workshops for parents. We also have a website and a parent information and support service. When there is any question of a child needing a CSP, or when any such matter is brought to our attention at the local authority headquarters, we would include in the correspondence specific information about mediation and dispute resolution. In cases that have been referred to the tribunal, we have explicitly offered parents mediation, which has been taken up in only a minority of cases.

It is clear that there are questions around mediation, but in our experience parents prefer something more informal. I know that mediation is supposed to be informal, but they prefer something that is yet more informal. We have funded a parents organisation to provide advice and information as well as advocacy to parents, and we find that parents make more ready use of that more informal service than they do of the mediation that is provided under the 2004 act. That tells us something about what parents feel comfortable with.

**Dr Jefferies:** We are in a similar situation. We have published information in print and on our website, and any correspondence on CSPs in particular contains information about parents' rights to all forms of dispute resolution. Schools have information in their handbooks and in the school itself, but it is difficult to highlight that information for all parents and to say, "Please get into dispute with us and use this system to do so." That is not a line that we readily promote to parents.

The issue is about targeting and supporting parents when they raise concerns. Our schools vary in size from about 1,400 pupils to around 3 pupils, but we hope that parents' first port of call is always the school and the teachers who are working with the child, and that their concern does not escalate up the system. We have provided training—certainly for senior staff—in all our schools on managing disputes and dispute resolution.

ISEA's point may be valid in the sense that we do not have big posters in all our schools that say, "You can access dispute resolution about additional support needs by using this service." However, I am not sure, to be honest, that we really want that to be the flavour in our schools. It is about making the information available when it is relevant, and that means relying on the local authority to do so.

**Bryan Kirkaldy:** Our stated aim is to maximise satisfaction and minimise dispute. If a parent has to go to dispute resolution, that indicates a failure on our part to achieve satisfaction; that is the principle to which we work. We avoid the tendency of some of the lobby groups to use more of an adversarial approach, as such an approach is not in the best interests of children and their families.

However, we make clear to families that they have rights to pursue, including in the areas of appeals and disputes. We also make the routes of mediation clear, if families wish to seek mediation. We prefer mediation to take place at the lowest possible level and at the earliest possible point in the process—ideally, in the school that the family is dealing with.

**Cameron Munro:** I observe tension more than I deal with it. However, as I see it, part of the tension lies in the fact that schools in the modern era often try to partner parents and to engage with them. Engagement is all about establishing informal and trusting links. Many parents feel vulnerable when coming to a school; they are not

especially comfortable, and the human element of engagement can be very important. As committee members will be only too aware, parents are not a homogeneous group, and it is difficult to take a one-size-fits-all approach. I will be candid—perhaps to the annoyance of my colleagues—and say that we often get caught up in a fudgey, gooey, marshmallowy discussion with parents that does not get to the nub of the issue. As Dr Jefferies pointed out, it can be difficult in the middle of all that to say, "Oh, by the way, you've got a right, and here's the formal letter to go with it." There can be tension between the informality—which schools usually do very well—and the formality.

Dispute resolution is the underused resource in the 2004 act. It is one of the most significant changes in the law: for the first time, a parent who is asking for support has a statutory means of saying, "I think my child's got support needs that aren't being met, and I don't like the name you're giving it—'a specific learning difficulty'—because I think it's called dyslexia." Such rights did not have a legal basis before.

Notwithstanding the points that my colleagues have made about the need for informal mechanisms, that is a very significant change in the law, and it is seriously underused. If there is one element that should be developed further, it is the opportunity to enhance that kind of discussion in order to find resolutions to problems. That idea could be built into a mechanism that—as my colleagues have suggested—is about trying to partner parents and engage positively with them.

**Aileen Campbell:** I accept the point that everyone is making about not wanting to go down that route and trying instead to solve problems before they reach that stage. However, we have heard evidence from Govan Law Centre that dispute resolution is not triggered when a local authority fails to provide support; it is triggered only when the ground for seeking dispute resolution is a contested decision. The onus is on the parents to say that they want to seek dispute resolution. Is it a problem if parents do not know that that avenue is open to them?

**Cameron Munro:** As you suggest, there is no obligation on people to point out to families all the rights that they have. The assumption is that families will find out their rights by themselves.

**Aileen Campbell:** We have also heard about problems faced by parents who are Gypsy Travellers or are in the Army and who travel across different local authority areas, and by parents who are on a low income. Such parents may not know all their rights and may not be able to access them. Do you try to target those particular groups?

**Martin Vallely:** That is certainly a priority for the Special Needs Information Point, which is a parents organisation that provides advice, support and advocacy services for parents in the City of Edinburgh Council area. SNIP has taken steps to make its services available to families who might not otherwise have ready access to support. It is a continuing challenge for the organisation, and for all of us, to ensure that we keep avenues open so that people feel that there are services that they can use. We accept that the onus is on us to take responsibility for ensuring equity of access to support when there are difficulties.

11:30

**Dr Jefferies:** We have a parent support officer, who is commissioned by the council but is not a council employee, who works with parents who are experiencing difficulty with getting into the system.

We recognise that parents, particularly in the early stages of their contact with the system, can sometimes find it bewildering. Dealing with their child's issues and with the system can be tough for parents, so we are keen to support them.

There is a general awareness that there is a need to respond differently to people such as Gypsy Travellers, who might be there one week but not the next, and who might have cultural traditions that have a bearing on their children's school education. However, that is about a level of awareness rather than about specifically commissioning someone in the council to deal with Gypsy Travellers. As Cameron Munro said, there is an awareness that one size does not fit all in this area. We have to tailor our responses to individual needs.

**Bryan Kirkaldy:** The point about low-income families is a big issue for us all, especially given the correlation between additional support needs and poverty. Many families in that category have a real struggle to access information, including written information, that is relevant to the legislation, let alone understand the rights and processes that are implied in what is a very complex bureaucracy. There are massive issues for us to deal with there.

One of the arguments that we want to lead nationally—it is not for the bill—is that we should move to simplified arrangements to meet additional support needs. If any serious analysis was done of access by families on low incomes or living in poverty to the rights that the bill will bring, we would find it very uneven indeed.

**Cameron Munro:** The other aspect to mediation and dispute resolution that is of concern to my council is the position of looked-after and accommodated children, the notion of the

corporate parent and the degree to which the council is almost mediating with itself. We need to address that in a way that affords people some independence of view and support. I appreciate that the Parliament is looking at the regulations on looked-after children, but the matter is of concern to my council.

**Christina McKelvie (Central Scotland) (SNP):** I want to turn the witnesses' minds to tribunal rules and procedures. The bill contains two new grounds for referral to the tribunal, about which different local authorities have expressed different opinions. What is your view on those two new proposals? Do you know the ones that I am talking about?

**Cameron Munro:** Yes—they are in section 6.

**Christina McKelvie:** That is correct.

Notwithstanding some of the things that have been said about CSPs, such as whether they should be in place and whether they should be used as a measure of success, one of the proposals involves the timescales that are afforded to local authorities to put a CSP in place. Is it appropriate to refer a case to the tribunal because the authority has missed the deadline? I would like to hear your views on that.

**Bryan Kirkaldy:** The ADES view is that it is reasonable that local authorities should be held to account for the timescales that are applied. However, the legislation applies only to the council and not to the partner agencies that contribute to the council's meeting the timescale. For example, if Fife Council is opening a CSP for a youngster, it will often depend on national health service speech and language therapists and perhaps colleagues in other agencies to make that commitment happen. Therefore, there is a dislocation of power and responsibility. If a local authority is accountable for achieving an outcome that is dependent on the NHS, there is a dislocation that will be difficult to manage. The solution is to apply the duty equally to the NHS and other agencies.

**Dr Jefferies:** In our submission, we said that we agree that the issue of timescales is a matter for the tribunal. Instead of holding oral hearings into missed deadlines, having a written process is an eminently sensible route to take. Missing an agreed timescale is a matter of fact, and a written process allows authorities to give reasons such as those that Bryan Kirkaldy outlined. The matter would need to be documented, but if another agency has caused the hold-up for an authority, that is therefore the reason for the delay, and the tribunal will note that.

It may be difficult to engage with a parent, although not necessarily because the parent is being unhelpful. For example, a parent may be unable to make meetings or may be available only at certain times, and that may draw out the process. Again, all that can be explained. However, I agree that, if we fail to meet timescales we should be held to account for that.

**Cameron Munro:** I agree.

**Martin Vallely:** I agree, too.

**Christina McKelvie:** That was short.

Obviously, panel members agree that the proposals should be put in place. However, in their responses to the Government consultation, some local authorities said that the proposals were inappropriate. What is the best way in which to ensure that local authorities implement the decisions of the tribunal on issues such as timescales?

**Martin Vallely:** The issue that Bryan Kirkaldy outlined is critical to the question. When we reviewed records of need, we found the timescales demanding when several cases were being considered simultaneously. Delays can also arise when further discussions need to be held with parents who have made assessment requests and there are difficulties in contacting them. The key to all of this is to ensure that it is made clear that other agencies are accountable for meeting the requirements in the bill.

**Christina McKelvie:** The bill addresses the situation in which a council fails to apply a CSP. Obviously, for some authorities, that is a bone of contention. If a council fails to apply a CSP that results from a tribunal decision, what is the best way in which to proceed?

**Martin Vallely:** I can refer only to the situation in which the timescale for a placing request is not met and the placing request is deemed to have been refused, which can be appealed. The measure seems the most straightforward way in which to deal with the circumstances in which the timescale for a CSP is not met.

**Christina McKelvie:** Is the tribunal the place to deal with such issues, or should local authorities deal with them?

**Martin Vallely:** The best solution would be for local authorities to deal with them. That said, provision also has to be made to ensure that parents can appeal and that authorities are held to account when they have failed to meet statutory requirements.

**Dr Jefferies:** Any procedure has to have a system of accountability. I understand that, in the past, a parent could appeal against an authority's decision under section 70 of the Education (Scotland) Act 1980—which is not a realistic procedure—or they could appeal to Scottish ministers on certain matters. Although the system

will make life harder for local authorities, it is better to put in place a system that has clear accountability and a clear appeal process that is simple for parents to use.

I can speak only on behalf of my authority, but if we are subject to a tribunal decision, we treat it extremely seriously. We do not set aside the matter or say, "We are not happy with that." We accept a tribunal decision as the equivalent of a court decision that must be implemented. It is not optional, whatever our view of it; it is something that we must do.

**Christina McKelvie:** I am glad to hear that.

**Bryan Kirkaldy:** In general, all local authorities would consider a tribunal decision to be binding. The general principle is that, ideally, local authorities should resolve matters internally and minimise the rate at which the tribunal procedure is invoked.

**Ken Macintosh:** We have already addressed the issue of how adversarial the process is and how that could be mitigated through mediation, dispute resolution and front-loading the system. Do the witnesses have any suggestions about how the tribunal itself could be made less adversarial?

**Cameron Munro**: The policy aim was to make tribunals parent friendly. However, the road to hell is paved with good intentions, and it was unlikely that that aim would be achieved. Perhaps the focus should have been on getting the most effective return for children. We appear to want a process that should not be adversarial and should not involve lawyers and other people. However, that almost takes us back to a quasi paper exercise for dispute-resolution, in which one party is not encouraged to ask the other party anything and there is no cross-examination. We do not want to make the process into something like that, because that would inevitably bring people such as me into the process. My concern as a lawyer is that there would be no equality of arms in that process.

I have been involved in tribunal matters in which my colleague Mr Nisbet appeared for the other side, so there was parity. However, my concern is that the tribunal rules and procedures are simply not clear enough to allow us to say, for example, whether the onus is on the local authority. If I defend an exclusion appeal in Glasgow sheriff court, the burden of proof rests with Glasgow City Council and the standard of proof is that of the balance of probability. I am not clear where there is any burden on anything in a tribunal; it is simply a case of giving out information and allowing somebody else to question us.

I will let others come in on the back of that, but my view is that, rather than simply having a set of rules, there is a serious need to look more carefully at what the tribunal's procedures should be.

**Dr Jefferies:** My direct experience is that the tribunal is less adversarial if it is well framed and clearly organised to be that way. A great deal comes down to the person who convenes the tribunal being explicit about what will happen. The issue has become less important to me as somebody who has been to two or three tribunals. However, it is important for a parent to know what will happen and how the decision will be reached, and that they will get the opportunity to speak as freely as possible.

I do not think that the tribunal will ever be an informal arena. I cannot imagine how being faced with a panel of people can be informal. However, it is important that effort is made to give the parents the opportunity to give the fullest information that they can. The best tribunals undoubtedly offer parents the space to give their information. Whatever I personally think about the parents' information, they have the opportunity to give it.

The important aspect is how the tribunal is run. Perhaps Cameron Munro is right that there are legal elements to that. However, I think that it is very much about the additional support needs tribunals evolving and recognising that they are perhaps a bit different from other tribunals. The exemplar is usually employment tribunals, which have been running for a long time. However, an ASN tribunal has a different flavour because it is about children and young people. The issue is how the tribunal is framed: it should be explicit and clear, and the sequence should be explained to parents as it goes along. Parents should not just be given a piece of paper at the start. The tribunals can be done well.

11:45

**Ken Macintosh:** Before Mr Kirkaldy and Mr Vallely respond, I will outline two suggestions that have been put to us. The first is that we increase support for advocacy services for parents, and the second, which was made by the president of the Additional Support Needs Tribunals for Scotland, is that limited legal aid be made available to parents, at the tribunal's discretion—not generally, but for specific points of law. I do not know whether Dr Jefferies wants to come back in, but perhaps, based on their experience, Mr Kirkaldy and Mr Vallely can comment on how to reduce the confrontation that appears to take place.

**Martin Vallely:** We must recognise that the legislation is complex. Given that the inner house of the Court of Session has had to produce lengthy opinions on the interpretation of the 2004 act, we must acknowledge that the beast is not one that readily lends itself to informality. I can see

merit in suggestions about the availability of legal aid, advocacy and so on, but I wonder whether that approach would put in the investment at the wrong end, because all that it would enable is a better rammy.

Perhaps the tribunal needs more expert legal support so that it can better equip and prepare itself to deal with the complexity of the legislation that relates to the individual cases before it. In my experience, the better tribunal hearings are those in which the convener is clear about what the points of law are, about what has been taken from the evidence that has been submitted in advance and about what information and opinion it would be helpful to have from the parents and the local authority. That suggests that the best outcome would be achieved by considering the front end of the process and asking how we can ensure that the tribunal is well informed and well prepared so that it can get the best value over the shortest period of time. By contrast, the worst tribunal hearings are those that have everything thrown at them, and thrown at them again, and which go on for six or seven days. I hope that such hearings can be avoided.

**Bryan Kirkaldy:** I am not sure that I can offer any comment on the specific suggestions that Ken Macintosh mentioned—I do not feel competent to do so.

It is early days in respect of our experience with the tribunals, which deal with a relatively small number of cases. In the wider context that I mentioned earlier, the cases that they deal with involve a tiny fraction of the population of families that have children with additional support needs. We are talking about disputes that have been impossible to resolve by other means and which therefore require to go to the highest point of resolution. That is the tribunal, which turns on legal matters, so the tribunal hearing is bound to be formal. There is no escaping that conclusion, and the intention to make the tribunals family friendly was probably misguided, given what was going to be possible.

I reiterate the importance of building up all that we do below the tip of the dispute pyramid to ensure that families are satisfied with the provision that we make and thereby minimise the use of the formal mechanisms, because they cannot be family friendly and do not always achieve the best outcome for the youngster. That applies even to the process that the family and the youngster have to go through to get to the tribunal.

**Ken Macintosh:** I will return, if I may, convener, to the issue of home authority and host authority responsibility. We have touched on costs. Mr Kirkaldy mentions, in his submission on behalf of Fife Council, that the financial memorandum perhaps underestimates the cost to some authorities. Do you think that it is right for the costs to be met by the host authority rather than by the home authority? Does the mechanism for resolving any dispute between home authority and host authority need to be improved?

**Bryan Kirkaldy:** As the bill is framed, there is ambiguity about where responsibility for the costs would lie. My preference, and that of Fife Council and ADES, is for the costs to be met by the residential authority and for it to be responsible for brokering the placing request; otherwise, there is a risk of a perverse incentive being introduced and of there being a dislocation between responsibility and power. If that does not happen, a set of problems will be generated that will require work across local authorities to manage the consequences of the dislocation.

On the financial memorandum, I made a specific point on behalf of Fife Council and ADES about placing requests to the independent sector, the rate of which has been growing slowly in the years since the introduction of the legislation. That trend has cost implications—they are not massive, but for a local authority the size of Fife Council, there can be two or three placing requests a year involving independent school fees, the cost of which can range from £200,000 down to £50,000. Such schools have a wide range of fee scales. We can therefore put some figures on that trend. I have not done systematic work for other local authorities on that question, but ADES, the Convention of Scottish Local Authorities and the Scottish Government should collectively pay attention to it.

**Ken Macintosh:** Perhaps the representatives of other local authorities will comment, beginning with Mr Vallely. We discussed the issue at the stakeholders' event, and some parent bodies felt that cost implications influenced local government decisions—that was parents' suspicion or anxiety. What do you think of the way in which the bill deals with the home and host responsibility for costs and the mechanism for resolving any disputes?

**Martin Vallely:** There are some difficulties with the bill's proposals. An authority should be responsible for the residents in its area whether the provision is secured through another authority or through an independent school. That position supports best value, good governance and good management in relation to the continuity and coherence of provision for children. The arguments are massively in favour of responsibility being retained with the home authority.

On the question of how costs influence decisions, the legislation makes it clear that the first consideration should be not the costs but the needs of the child, and that adequate provision should be ensured. Equally, though, the local

authority has a responsibility to ensure adequate and efficient provision for its area and, in evaluating efficiency, cost is only one part of the equation. The local authority is also under a duty to secure best value. The legislation says that nothing in it should lead a local authority to have unreasonable costs. In that philosophical context, therefore, cost is a factor. However, provision for the individual child should be driven not by cost, but by need. Indeed, it is not legal to refuse a placement request on the ground of cost.

Cost is only one part of a four-part test with regard to independent schools. It becomes a factor only when a cost benefit analysis is done and an authority is secure in the knowledge that any additional costs cannot be justified on the ground of additional benefits; only then is an authority entitled to refuse a request on that ground. The law is clear on that, but the bill includes proposals that will make that less clear. We addressed those aspects of the bill in our submission.

**Dr Jefferies:** I do not want to prolong the discussion, but as the bill stands, I agree that a slightly unclear situation has been made even less clear. Under section 23 of the Education (Scotland) Act 1980, the operating principle for authorities is that, whether the child is placed in another authority's school by means of a placing request or by the authority, we mutually recover the costs involved. My authority does that in terms of placements with neighbouring authorities. Not only does the residential authority retain responsibility for the child, but the system works successfully; it is not difficult to administer.

We can debate who is responsible for what. As the bill stands, I suspect that more such debates will take place; people will say, "We don't think this is our responsibility" or "We don't accept those costs." Such situations will multiply and that is not a welcome position for any of us.

I turn to the point about costs driving provision. As guardians of the public purse, local authorities must be able to justify their expenditure. In this context, the first point of assessment is always the child's needs. Thereafter, we have to justify whether the expenditure is reasonable. It is fair to say that advocacy organisations look at children solely as individuals, whereas local authorities have to make provision for the range of children that they encounter. The inescapable fact of life is that authorities have to make such judgments. Cost is never not an issue.

**Cameron Munro:** Given my council's position, Mr Macintosh will expect me to have a view on the subject. I will declare my interest if he declares his.

As Mr Macintosh knows only too well, the conundrum is how to square two extremes. On the one hand, the authority that receives a child says, "Why should we be out of pocket for making provision for a child who does not live in our area?" On the other hand, the residential authority says, "Hang on a minute. Under the law as it stands, authority X can run up a range of provisions for a child who lives in our area, but we are not party to the discussion, involved in any assessment or consulted on any matter." The matter is of particular concern to my council.

The question is whether the mechanism is sound enough to enable mediation. As we said in our submission and as I outlined in my opening statement, we believe that that is not the case. The situation is unclear. Section 23 of the 1980 act makes reference to an authority recovering

"from that other authority such contributions in respect of such provision as may be agreed by the authorities concerned",

but how do we define "provision"? If my authority has to employ an extra 1.5 full-time equivalent educational psychologists, can it recover the costs of doing that? Do costs have to be directly related to the support that is made available for a child under a plan or by other means? As part of a broad consultation on the bill, we need to look seriously at the meaning of section 23. Authorities will have a view on that.

Another situation with which Mr Macintosh is familiar is that of the child who moves from one authority to another on a placing request, but whose additional support needs are not known at the point at which they make the move. Last week and this week, the authorities that my colleagues on the panel represent will have enrolled into primary 1 classes children who start school at this later stage, some of whom will be found to have additional support needs. Does that alter the issue in any way? That is another conundrum.

Glasgow City Council is concerned that we may run up bills without any consultation having been undertaken or agreement put in place—in other words, without our participation. The first thing that the committee should do is to reconsider section 23. The 1980 act provides that if a child is schooled in another authority area, they are deemed to belong to that authority. More creative consideration of that might be needed. I have given my council's view.

12:00

**Elizabeth Smith (Mid Scotland and Fife) (Con):** In two previous evidence sessions, it has been put to us that one great difficulty is hearing the child's view. Do you have suggestions for improving that in the placing request process and particularly at tribunals?

**Cameron Munro:** The tribunal affords the child the right to express a view to it. You touch on a point with which I would sympathise and empathise in my day job. A child who is 12 or older can instruct a solicitor, appeal an exclusion independently and obtain an order from the sheriff court that says that they have been discriminated against, but they cannot say, "I need a CSP," or, "I've got additional support needs that have to be addressed." More important, they cannot have their views on those matters heard.

An important point is that section 12 of the 2004 act compels an authority not just to have regard to a child's views—the Children (Scotland) Act 1995 and section 2(2) of the Standards in Scotland's Schools etc Act 2000 required that—but to "seek and take account" of views. That threshold is much higher. The caveat is that section 12 applies to children to whom an authority deems that it applies, so some authorities might apply it only to children who have CSPs. My view, which Margaret Doran shares, is that the provision should apply universally—children's views must be considered and sought as part of the process.

I am concerned that the placing request legislation does not permit the child's view to be considered. A child of 14 might regard having a co-ordinated support plan as socially unacceptable in his peer group, whether or not his mother wants him to have one. We now face that balance, which you have raised before, between the rights of parents—which were all that was considered in the past—and the rights of the child. We must unravel that. The child's view is where the law now rests. As has been said, advocacy on behalf of children and views on that should be actively encouraged.

**Dr Jefferies:** A serious onus is on local authorities to find out children's views. That is an emerging skill in Scottish education in personal learning planning and involving children in directing their education.

On contentious matters such as placing requests, a serious concern is that adopting a view that is not the same as that of their parents is difficult for children. It is tough for a young person to say, "My mum wants this, but I don't want it to happen," and to be held to account for that. Some young people say privately to a trusted teacher, "It's really my mum that wants this to happen," but putting a child in that position in a tribunal or even in a small group is a tough ask. Continued effort is needed on that.

Rather than people who are brought in to take young people's views, the people who get closest to those views are often those who know the children, such as trusted teachers or assistants in schools. How we commission such people to obtain a child's view fairly and equitably is the challenge. A child should be allowed to express a view not in a formal setting, but in an informal setting, and that should be translated in a way that can be relayed. We have not cracked that challenge.

**Martin Vallely:** I agree that the matter is complex, but the bill does not address it—the bill body-swerves it. Does the bill even see that as an issue? The question requires to be examined in depth in its own right. Our view is that the lack of provisions on that is a shortcoming in the 2004 act and the bill. In this age, we cannot turn a blind eye to that.

**Bryan Kirkaldy:** We know that children are able to express their views when they are in the company of people whom they know and trust—people with whom they are familiar and with whom they are used to being listened to and respected. It is almost always the case that the children's parents can provide a mouthpiece for them.

For us, the difficult cases arise when the child's views, or what might be considered as the child's best interests, are different from the parents' views. We have to be especially vigilant in such cases, making special arrangements to ensure that those children have access to trusted and familiar adults who will listen to them and help them to rehearse and practise what they will have to say for themselves. I am talking about our staff.

In a formal tribunal-type hearing, it is difficult to imagine a youngster being able to express their views clearly—although sometimes they can, especially if they have been able to practise beforehand. In other cases, they are dependent on adults to be their spokespersons.

**Margaret Smith (Edinburgh West) (LD):** Good afternoon, gentlemen. Before I ask a question, I would like to pick up on that last point. Within the children's hearings system, allowance is made for young people to express an opinion, and I have been at hearings at which the young person has taken a very different view from their parents. I agree that the issue is difficult; we should try to turn our attention towards improving the situation.

I have a wide-ranging question for the panel, one that I think will bring our questions to a conclusion. We have heard evidence and received written submissions from a number of organisations, and a number of proposals for amendments to the bill have been put to us. Indeed, you have made some proposals today. We have also heard about areas that have not been considered but which people feel should be considered.

I will try to give you a flavour of some of the proposals: the 2004 act should cover everyone in school education, even if they are over 18; failure to comply with duties on transition should be a

ground for appeal to the tribunal; the tribunal should be able to state when a placing request should start; looked-after children, young carers and children with mental health issues should be assessed on whether they need a CSP; and the word "significant" requires further definition. The latter two points were touched on earlier.

Mr Vallely of City of Edinburgh Council—in a slightly different setting from where we normally meet each other—has said that the council believes that it is premature to consider extensive revisions to the 2004 act. However, much of the evidence that we have heard—formally, informally and anecdotally—suggests that a groundswell of opinion exists that it actually is time to consider revisions to the act.

What do the witnesses think about the proposals that I described? Do you think that it is too soon to revise the act? Those are small questions to finish things off.

**The Convener:** And you get only one stab at them.

**Bryan Kirkaldy:** That was a series of questions. I will attempt to answer some of them.

The cycle of legislative reform in this area is relatively rapid. In recent times, the cycle has been around 20 years, although as we become more alert, with a devolved Government and improved communication, the cycle might go faster. However, given that the current legislation was enacted in 2004 and was implemented in full only two or three years later, it seems relatively early to amend it, particularly given the consequences of root-and-branch amendment.

ADES's position is that the bill's proposals are more complex and bureaucratic than they need to be. We are interested in taking a simpler, user-friendly, family-friendly and comprehensive approach to additional support needs in the context of inclusive education. I refer to my earlier suggestions about the evaluative indicators and the valued outcomes for which we would want to be held accountable for all children. That is to do with the life chances that we create for them and the satisfaction that they and their families feel with the provision that we make while they are with us—that applies particularly to this most vulnerable population.

We would be interested in discussing more radical reform of the existing legislation, but it would have to be carefully considered. I strongly advocate simplifying the legislation rather than making it more complex.

**Martin Vallely:** The City of Edinburgh Council's submission that it is premature to consider a wholesale revision of the 2004 act rests on two factors. One is that the 2004 act was put in place as part of a suite of initiatives to modernise education in Scotland. In particular, it was designed to complement the introduction of the curriculum for excellence, but it was also designed with at least some reference to the getting it right for every child programme.

The changes that we are talking about are fundamental in terms of the culture of our schools and services, and the substance of what school education constitutes. Change in a complex setting like education takes time. It is relatively easy to change laws—although I am sure that that is demanding in its own way—but it is much more difficult to change attitudes, beliefs and behaviours. We see the impact of the 2004 act permeating day-to-day practice in schools, with many children benefiting and practices improving, but it takes time to secure that. It is interesting that, although issues that have been raised in the consultation on the bill may be important in their own right, they are relatively minor and technical in terms of the substance of the 2004 act. There is a danger that we will distract ourselves by dealing with those rather than dealing with the sea change that should be our focus in the circumstances.

The proposal to extend the 2004 act involves all sorts of issues that need to be considered, for example extending to cover over-18s legislation that is focused on children and young people. That involves fundamental issues about human rights that have all sorts of ramifications, which I am sure Cameron Munro can highlight. Such a change should not be done on the run.

I would think that the mental health issues that have been highlighted are already accommodated in the 2004 act. Cameron Munro highlighted earlier the clarity of the definition of "significant". We have been given guidance by the courts that must be properly interpreted in giving operational guidance to local authorities and information to parents. I am sure that more could be done in that respect.

If an appetite exists for wider change, I suggest that we need to take a wider view. In practice, many disputes that have been referred to the tribunal involve interfaces between health service and social work service responsibilities, and circumstances in which parents find maintaining a child at home extremely difficult so they look for a residential school to resolve the situation. In some circumstances, parents who are anxious to secure a level or type of therapy provision use the 2004 act and the education authority indirectly to secure that end. If an appetite exists to change the legislation more broadly, we should address all agencies and ensure that there is a balanced approach to responsibility and accountability in relation to the future direction of children's services.

12:15

**Dr Jefferies:** Overturning completely the 2004 act, which has operated for a relatively short time, would be premature, although there is a big caveat: the act focuses everybody's attention on CSPs, placing requests and disputes, which contradicts its stated intention of taking a broader view of additional support needs so that, rather than focus on children, we focus on who we need to support and on what we need to do as local authorities to improve children's education. A range of children, not only one group, have special needs or co-ordinated support plan needs. Some elements of the act have undermined the original intention.

We need to keep the 2004 act under close review. I subscribe to the view that the direction of travel should be towards a simpler, clearer and more parent-friendly, teacher-friendly and everybody-friendly system. Disputes will always arise—some parents will feel that their child should have something that the local authority feels is unnecessary—but that should not be built up into something that dominates the system. Achieving a simpler system should be the direction of travel.

Legislation—not on all subjects, but on this one—often works best when it codifies existing good practice rather than leads practice. It often works best when it identifies good practice—the gold standard of operation—and helps everybody to aspire to it. Expecting the 2004 act suddenly to transform support for children with additional support needs was a false hope. It could have consolidated existing systems, but I am not convinced that it did that tremendously successfully. The system at its best should be married better with the legislation. That is not a job for next week or for six months' time—it is for the longer term.

I hope that the committee will finish its impressive consultation on the bill with the clear understanding that it ain't all fixed and that legislation on additional support needs must be kept under review. I suspect that members will not find an easy resolution to the placing request issue, for example. Whatever happens will have unintended consequences, which will need to be revisited over time, so a review system should be in place. Argyll and Bute Council has no appetite for restarting everything, but we feel that the system needs to be kept under review.

**Cameron Munro:** I like Ted Jefferies's idea of everybody being friendly and happy. I thought that he was going to pass round the hat after a while—that was the touchy-feely approach at its best. That is the psychologist in him.

We must start by recognising where we are. More than 30 years ago, when I started as a teacher, there was a big sign outside the school that said, "No parents beyond this point." If you got past that, there was a guard dog, a tripwire and then the janny, who had been on a customer care course. His opening line was, "What do you want?"

If we make education extremely important—which is not a bad thing to do—it is inevitable that we will make parents slightly more anxious and authorities slightly more edgy about being accountable. We should be aware that parents' focus is on the individual child. Parent X is not concerned that Glasgow City Council is doing a tremendous amount of work on children with autism; their cry is, "What is the council doing for my child?" That is the starting point.

We also need to recognise that, over the years, we have developed separate systems of law for children's welfare and children's education, which involve different procedures and practices; indeed, they almost have different moralities. The 2004 act was not about getting it right for every child. I am cautious about our moving towards wholesale change until we are clear about where we are going with the current model, so that we can ensure that we are moving forward together.

The bill proposes extremely limited amendments. Many of the proposals that Margaret Smith referred to do not touch on the practical issues that are of concern to people. I would be concerned if the Government's solution were to shift all the issues that have been mentioned into a code of practice. That would be disastrous, as it would clarify nothing and would simply add more confusion. We would end up in a Lewis Carroll scenario, whereby people would argue that the word "significant" meant what they said it meant. Why do we not just change the law and make it clearer?

We should bear in mind the fact that the principle of section 1 of the 2004 act is that children who have additional support needs will get support in order to benefit from school education. However, I am conscious that there is a broader issue. The Parliament legislated for Careers Scotland and the further education colleges to be among the appropriate agencies. There is an issue about transition, which is analogous to the situation of the child who, for want of a better expression, comes out of care into the adult world. There is a danger that they will fall through the gaps. We know that that is where the problem lies. I am not convinced that it is easy to address that by changing the education element of the system. I certainly have no difficulty with the issue of looked-after and accommodated children, which is extremely important. As you would

expect, my view is that matters to do with significant additional support should be legislated for.

We must stick by the tried and tested approach. Five years ago, Glasgow City Council had almost 3,000 children who had a record of needs. They have been migrated into a system in which fewer than 400 children have a co-ordinated support plan. We have managed to do that with the minimum of legal challenge because, as the residential authority, we have built up and put in place a set of procedures for dealing with a complex range of children and difficult parents that places on us responsibility for trying to solve the problem in house. I am concerned that there is a danger that unless we build in safeguards, the apparent no-brainer—as Ted Jefferies put it—of allowing parents to make a placing request to any school in Scotland will not allow us to consider a range of problems that will arise from that.

**The Convener:** That concludes the committee's questions. I thank the witnesses very much for their attendance and for their detailed answers. They have made a number of points, on which I am sure the committee will reflect as we conclude our stage 1 consideration of the bill. I suspend the meeting for five minutes to allow the witnesses to leave.

12:24

*Meeting suspended.*

12:31

*On resuming—*

# Subordinate Legislation

## Edinburgh Napier University Order of Council 2008 (SSI 2008/388)

**The Convener:** The third item on our agenda is consideration of subordinate legislation: the Edinburgh Napier University Order of Council 2008 (SSI 2008/388). Do members wish to comment on the order?

**Claire Baker:** Concerns have been raised with me about the level of consultation that was carried out. We have some information on that in the Executive note, which says that there was

"comprehensive consultation on the proposed name change".

However, some groups—particularly staff groups, though not particularly Napier University staff—are concerned about whether the name change will impact on other universities and about the extent of the consultation with other colleges and universities. Do we have any further information on that?

**The Convener:** We do not and, unfortunately, we do not have anyone here who is in a position to answer the question. We could write to the Government to seek assurances, but I point out that we have to make a decision on the order today, because we have to report to the Parliament by 19 January, so we are unable to wait for a response. However, we could write to the Government on the issues that have been raised and seek assurances that Napier University consulted fully, as the Executive note outlines.

**Claire Baker:** I have no wish to delay today's decision, but it would be helpful if we had some assurances about the level of consultation or some clarification about the extent to which a university has to consult other universities on a name change. Is it recognised that a name change might have an impact on other institutions?

**Elizabeth Smith:** Has that concern come about because "Edinburgh" is in the university's proposed new title or is it more specific than that?

**Claire Baker:** I suspect that it is partly because "Edinburgh" is in the proposed new title. The University and College Union contacted me because it was not aware of the name change.

**Elizabeth Smith:** Is it concerned about the name specifically or just the process?

**Claire Baker:** I think that it would be happy if it could have assurances about the process and the consultation.

**Elizabeth Smith:** So it is not about the name.

**Claire Baker:** No, I do not think that it wished to raise that issue formally.

**The Convener:** Would it be helpful to write to the Cabinet Secretary for Education and Lifelong Learning for some detail about the issues that have to be consulted on when an institution wishes to change its name and the requirements that are placed on such an institution?

**Members** *indicated agreement*.

**The Convener:** We will move on to our consideration of the order. Does the committee agree to make no recommendations on the order?

**Members** *indicated agreement*.

**The Convener:** The Parliament will be notified. That brings the public part of the meeting to a close. Our next meeting will be on 21 January.

12:35

*Meeting continued in private until 12:38.*

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