

# **EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

Wednesday 6 May 2009

Session 3

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## **EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE** **13<sup>th</sup> 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:**

Murdo Fraser (Mid Scotland and Fife) (Con)

### **THE FOLLOWING GAVE EVIDENCE:**

Mervyn Benford (National Association for Small Schools)  
Lynn Henni (Scottish Government Schools Directorate)  
Professor Neil Kay  
Colin Reeves (Scottish Government Schools Directorate)

### **CLERK TO THE COMMITTEE**

Eugene Windsor

### **SENIOR ASSISTANT CLERK**

Nick Hawthorne

### **ASSISTANT CLERK**

Emma Berry

### **LOCATION**

Committee Room 5



## Scottish Parliament

### Education, Lifelong Learning and Culture Committee

*Wednesday 6 May 2009*

[THE CONVENER *opened the meeting at 10:03*]

### **Schools (Consultation) (Scotland) Bill: Stage 1**

**The Convener (Karen Whitefield):** I open the 13<sup>th</sup> meeting in 2009 of the Education, Lifelong Learning and Culture Committee. Mobile phones and BlackBerrys should be switched off for the duration of the meeting.

I am pleased to welcome Murdo Fraser to the meeting. As many of you will know, he has a long-standing interest in the subject that the committee will consider under agenda item 1, under which we begin stage 1 scrutiny of the Schools (Consultation) (Scotland) Bill. I am also pleased to welcome the Scottish Government bill team. Colin Reeves is deputy director of the schools division, Lynn Henni is the bill team leader and educational options team leader within the schools division, and Johanna Irvine is a principal legal officer in the Scottish Government's legal directorate.

Lynn Henni will make a short introductory statement before we move to questions.

**Lynn Henni (Scottish Government Schools Directorate):** Thank you very much for the opportunity to give evidence today on the Schools (Consultation) (Scotland) Bill.

The Government came to power with a clear commitment to create a legislative presumption against closure of rural schools and to tighten the process for all school closures. That commitment has been given effect through the widespread consultation that has led to the proposals that are set out in the bill. In the consultation paper "Safeguarding our rural schools and improving school consultation procedures—proposals for changes to legislation", we proposed that a decision to close a rural school should be made only as a last resort, in order to reflect the special vulnerability of rural communities and schools. To achieve that, the consultation paper set out specific factors that authorities must consider before proposing to close a rural school. The paper also set out a new robust consultation process that would apply to all consultations on, for example, school closures, the establishment of new schools, the relocation of schools and changes to admission arrangements.

The consultation, which the Government conducted last year, involved formal consultation from 1 May to 19 September, 10 public meetings that were held around the country, two sets of workshops—eight of which involved pupils and 24 of which involved parents—and on-going engagement with key stakeholders, including the Association of Directors of Education in Scotland, the Convention of Scottish Local Authorities and the Scottish rural schools network.

Of the three main sets of provisions in the bill, the largest sets out the framework for all school consultations. The provisions introduce new requirements on councils, including increasing the minimum consultation period to six weeks of term time, extending the list of statutory consultees, providing an educational benefits statement to explain what the council sees as the benefits of its proposals, a new mechanism to address allegations of inaccuracy in proposal papers, bringing Her Majesty's Inspectorate of Education into every consultation, and a three-week period between the publication of the council's report at the end of the consultation and the taking of the final decision. The bill seeks to build on existing good practice and to create a robust framework to bring all consultations up to the standards of the best.

In the second set of provisions, the bill sets out the specific factors that councils must take into account before proposing closure of a rural school, which alternatives to closure, the impact on the community and the impact of new travel arrangements. Together, those combine to create an implicit presumption against closure of rural schools.

Finally, the bill provides a new call-in power for ministers. Consultation responses included a range of views on how to change the current arrangements, whereby certain cases are automatically referred on the grounds of occupancy and distance, but there was no consensus. The responses were polarised between referring all cases to ministers and not involving ministers at all, with a range of options in between. Reconciling those contradictory views was not easy, so we spent a lot of time—particularly in the public meetings—trying to get to the root of what parents want. Their concerns were mainly twofold: they want to be able to challenge the information that is put out by councils, and they want councils to carry out genuine and meaningful consultations. As the bill addresses the concerns about possible inaccuracies in consultations, ministers concluded that the ability to call in decisions that involved serious flaws in the consultation process would provide a balanced check. Ministers decided to limit the call-in power to closure decisions because of the much greater impact of those decisions.

I hope that I have set out the main elements of the bill and what it is designed to achieve. We will do our best to answer questions.

**The Convener:** I thank Ms Henni for keeping her opening statement short so that we can ask lots of questions. I remind everyone that today is an opportunity to ask questions about the bill—any questions about policy intent should be put to the minister, who will give evidence at the end of the process.

Let me start off by asking about the educational benefits statement. What is the purpose of such a statement? What difference will it make?

**Lynn Henni:** The purpose of the educational benefits statement is to provide councils with an opportunity to set out their case from an education perspective. The requirement to include an educational benefits statements in every consultation shows that the Government regards the education aspect of the process as a high priority. The statement will allow councils to give their views on the educational benefits of their proposals. It will be for councils to make that case, which will then be included in proposal papers that will go out for consultation.

**The Convener:** It has been suggested in some of the responses to the Government's consultation that there will be a need for consistency, particularly on what information is included in the educational benefits statement, so that parents and communities have a clear understanding of what local authorities are attempting to do. Do you have a view on that? Does the Government intend to produce policy guidance on that to ensure that there is clarity and consistency on the minimum information that would be required in an educational benefits statement?

**Lynn Henni:** When we launched the consultation, we explored whether there should be guidance. We started from the point of view that it was not appropriate to have a checklist approach because we would inevitably miss some things out of the list and it might also lead to local authorities just ticking off the items on it. However, we picked up from the consultation responses that some kind of guidance would be welcomed. We are certainly considering guidance on educational benefits statements.

**The Convener:** Would that be statutory guidance?

**Lynn Henni:** Yes, it would.

**The Convener:** There were also some suggestions that educational benefits statements should cover matters such as the condition of buildings—that might be a material factor, although it would not always be one—and a cost benefit analysis of the proposals. What is the

Government's view on including such matters in the statements?

**Lynn Henni:** The bill has been drafted so that, when a council consults, it would not only produce the educational benefits statement but provide the wider information in the proposal paper. There would be scope to include in that paper evidence or information that supported the council's case. The condition of buildings might be included in an educational benefits statement, depending on the circumstances, but there is certainly scope for all such factors to be covered in the proposal paper. Educational benefits statements would focus on what a council believes the educational benefits of its proposals would be, but we accept that the other factors would also be important in the process and should be included in the wider proposal paper.

**The Convener:** Closing schools is never easy for local authorities, so I hope that the motivation behind the bill is to make the process transparent and accessible for the people who are affected by such changes. Section 6 is clear on the requirement for consultation and that a consultation should last six weeks. Why did the Government decide on a six-week timescale when Scottish Government consultations normally last 12 weeks?

**Lynn Henni:** That is partly because of the recognition that consultations by councils cover much smaller areas than consultations by the Government, which take place throughout the whole of Scotland. The current timescale is a minimum of four weeks. That does not have to be in term time, so it could be four weeks including a holiday.

We also need to balance the timescale against the fact that prolonging a process simply increases the uncertainty for the parents, pupils and council. In the end, we felt that six weeks struck a good balance between not prolonging concerns and uncertainty and extending the current minimum of four weeks—the bill will increase that timescale by 50 per cent. Other parts of the process will be slightly longer under the bill. For instance, a council will have to allow three weeks between publication of a consultation report and taking a decision.

**Colin Reeves (Scottish Government Schools Directorate):** We discussed at great length with the Scottish rural schools network the proposal to extend the consultation period to six weeks. There would be a six-week formal consultation period, which is an extension, and then there would be an additional six weeks before a decision was taken. In its formal response, the network said that it regarded the six weeks between the end of the consultation and the council's decision as beneficial.

10:15

**Ken Macintosh (Eastwood) (Lab):** Some of the educational benefits will be covered in the statutory guidance that you have referred to, and you say that other issues will be covered in the proposal paper. Will the proposal paper have the same statutory status as the guidance?

**Lynn Henni:** The proposal paper is a requirement within the bill, and the educational benefits statement is part of the proposal paper. Section 4 of the bill sets out what has to be included in the proposal paper—details of the proposal, a proposed date for implementation, the educational benefits statement, and any other evidence or information in support of the council's proposals. Those are all required by the bill.

**Ken Macintosh:** I beg your pardon: what I should have asked was whether statutory guidance would be published on the proposal paper, in the same way as guidance will be published on the educational benefits statement.

**Lynn Henni:** We received the clear message that people want guidance on the educational benefits statement, and ministers clearly understand the need for that. However, I do not think that we have taken a firm view on guidance on the proposal paper.

**Colin Reeves:** No. Early in our thinking on the structure of the bill, we considered the possibility of issuing statutory guidance on specific sections. In the end, it was decided—sensibly—to have a catch-all provision in section 19, which allows for statutory guidance to be issued in respect of any earlier part of the bill.

**Ken Macintosh:** So, ministers have the power to issue guidance.

The educational benefits statement in section 3 is quite explicit, and quite praiseworthy. You suggested earlier that you wanted to avoid a list of check points, but should transport costs be covered in the proposal paper, and should a cost-benefit analysis be specifically spelled out in the proposal paper? The convener has already mentioned the condition of buildings, and I believe that you think that that should be in the proposal paper. Finally, I did not particularly agree with the point, but the Scottish Parent Teacher Council felt that the broader social experience of pupils should also be included in the educational benefits.

Those were four issues that may be covered. I wonder whether the Government will be more explicit and say that they should be covered.

**Colin Reeves:** It needs to be made clear that the list of sorts of consultation that the bill applies to is large. Some issues are technical, and some are broad, such as a school closure. Any statutory guidance on the educational benefits statement in

section 3 of the bill, or on the proposal paper in section 4, would not be prescriptive but would set out a menu of good practice that would be appropriate to the particular circumstances and type of consultation.

**Ken Macintosh:** The educational benefits will have to be spelled out by the local authority in its statement. Will any counter-argument, or counter-proposals, be made? Will the local authority put the arguments for and against?

**Lynn Henni:** The educational benefits statement is where the local authority will say, "These are our proposals and this is our educational justification for them." The local authority may have more than one proposal; I believe that the current practice is to discuss a range of options. However, the statement is the local authority's educational justification.

**Colin Reeves:** The educational benefits statement must include

"an explanation of how the authority intends to minimise or avoid any adverse effects that may arise from the proposal".

There is therefore an obligation on the local authority to identify the pros and cons. It is also required to set out the evidence behind its beliefs on the benefits.

I suppose that the counter-arguments would be made during the consultation period, and would be reflected in the consultation report.

**Lynn Henni:** I am sure that we will come on to a discussion of HMIE, but its role will be to consider the educational aspects of the council's proposal, and the educational benefits statement will clearly be a significant part of the proposal. There will be an objective, professional assessment by HMIE of the educational aspects of the proposal paper, the educational benefits statement, and any other evidence.

**Ken Macintosh:** I note the involvement of HMIE, which is important. Later in the meeting, we will hear from two experts, who will certainly argue the educational benefits of retaining small rural schools. Would you expect the arguments that we are about to hear to be reflected in educational benefits statements when authorities propose closure of rural schools?

**Lynn Henni:** That will depend on each case. The proposal paper is about all schools. In some cases, those arguments might be used; in other cases, they might not. It will be for the council to consider its proposal and the case that it is dealing with, and to argue accordingly.

**Ken Macintosh:** This question might be related to corrections, which we are coming to later. If a council proposes a case and lists a number of

what it claims are educational benefits but does not mention the educational advantages of a small rural school, would you be able to correct that as a result of the bill?

**Colin Reeves:** I suppose so. If an allegation were made that there is something incorrect in the proposal, that would trigger the provisions in section 5. When an authority is constructing its educational benefits statement, I suspect that statutory guidance would say that the proposal needs to be set in the context of an authority's statutory duties—for instance, in the Standards in Scotland's Schools etc Act 2000—to raise standards and improve the quality of education for the children in a particular school or the children who would be affected by the proposal. The obligation on the authority is to state clearly what the benefits of the proposal will be for the children who would be affected.

**Ken Macintosh:** One of the other contentious issues is the broader argument that could be made for closing a rural school, which is that it will save money—money that would be better spent on all the pupils in the wider area. The benefit of the greater good is a common argument that is used to close schools. Clearly, however, there is a lot of debate about whether the figures that are used to justify those arguments hold up. Would those figures be included in an educational benefit paper or proposal paper? Would they be published? Would there be an analysis not just of the transport costs but of the revenue received by a council from the Government in relation to a rural school?

**Lynn Henni:** If a council proposes a closure on financial grounds, one would expect that it would provide the data to back that up. If it did not do so, that would suggest that the issue could be challenged further down the line. A council cannot propose to spread money around without providing some evidence for its argument.

**Ken Macintosh:** The Scottish rural schools network suggested that there is currently a financial incentive to maintain small rural schools, which is the additional funding that schools with fewer than 70 children on their roll receive. I believe that that matter is currently under review by the Government. Are you able to say on the record whether that incentive will remain?

**Lynn Henni:** Not at this stage, no. The Government is reviewing the funding mechanism. We do not know any more than that at the moment. The work is ongoing, and something will come out about that in due course but, unfortunately, not at the right time for the bill.

**Ken Macintosh:** Would you expect that sort of calculation to be included in any proposal paper or

educational benefit paper that accompanies a proposal to close a rural school?

**Lynn Henni:** If the council saw it as part of its justification, I would expect it to include such information.

**Ken Macintosh:** It could not be part of a justification. Clearly, closing a small school would lose the authority that additional revenue, so it would be a counter-argument. However, would you expect that calculation to be made clear to the parents and the wider community?

**Lynn Henni:** If the council is going to present a financial picture, one would expect it to present the whole financial picture. If loss of money was significant, I would expect that to be part of what was published.

**The Convener:** Section 7 of the bill places a requirement on local authorities to hold a public meeting and it also requires them to advise HMIE in advance of when and where such a public meeting will happen. Why is there a requirement to advise HMIE of the public meeting in advance when the inspectorate's involvement in the process will be at the end when the local authority has completed its consultation and reports to it? Why is the obligation not to require local authorities to advise HMIE that the public meeting took place, rather than to advise it in advance?

**Lynn Henni:** HMIE will provide an assessment of the educational aspects of the council's proposal, but it can also identify any emerging educational issues and assess them in its report. It will get from the council a copy of the written responses or, if there is a vast number of them, a summary of them and the oral evidence. I suspect that quite a few HMIE people might decide to go to public meetings and hear for themselves, because any educational aspects that were raised would form part of their assessment. We have not required HMIE to attend, but if it wants to attend and hear at first hand, it can; otherwise it will get from the council later on a summary of the representations that have been made.

**The Convener:** Could that create a potential difficulty for HMIE? There is no requirement for it to attend and some of the decisions will, inevitably, be controversial, so those who argue against the proposals might feel that it was important for HMIE to have been present to hear those arguments. If, on occasion, HMIE is not present but has participated in other public meetings in another or the same local authority area, people might think that that was a ground for appeal.

**Colin Reeves:** We have tried very hard to ensure that the provisions and procedures that we put in place in the bill do not trip the process up. One of the considerations for not requiring HMIE to be at a public meeting was that if something

should happen on the evening of the public meeting that prevented HMIE from being there—if the representative's car broke down or something of that nature—the meeting would have to be cancelled. I believe that the committee is planning to take evidence from HMIE. We discussed some of the practicalities with it—for example, there is a requirement for a public meeting in respect of all consultations, but some will be far more controversial than others and attendance is left to HMIE's judgment. Your point is well made, convener, and perhaps it will be covered in guidance. We wanted to ensure that the whole process would not come to a halt simply because HMIE was planning to be at the meeting, but could not attend for one reason or another.

**The Convener:** I appreciate that argument; perhaps we need to pursue it with HMIE. If we want to ensure that we get the legislation right, there is a potential pitfall if HMIE is not represented at a public meeting. We need a clear system—it is either required or not required to be there. Perhaps the grey area will lead to confusion.

**Colin Reeves:** In order to try to cover that point, HMIE get a summary of what happened at the public meeting and all the consultation responses right at the end of the consultation process.

10:30

**Elizabeth Smith (Mid Scotland and Fife) (Con):** Will the bill team clarify HMIE's new responsibilities under the bill?

**Lynn Henni:** HMIE would produce an assessment of the educational aspects of a council's proposals, including any that emerged through the written or oral consultation responses. At the end of the consultation period, it would submit a report—an objective assessment of the educational aspects, not advice or recommendations—to the council. The council would include that in its final consultation report at the end of the process, so it would be part of what was submitted to the council when it reached its final decision.

**Elizabeth Smith:** Would that include the latest formal inspection report for the school?

**Lynn Henni:** That would be a matter for HMIE's professional judgment. In some cases, it may refer back to that report; in others, it may not. Some inspection reports may be much more recent than others or much more relevant than others, depending on the type of consultation.

**Elizabeth Smith:** So you do not envisage it being a statutory obligation on HMIE to include its latest inspection report when it presents its objective report on the educational aspects.

**Lynn Henni:** Ministers have not proposed that. HMIE's school inspection reports are widely available. They are published, so they are in the public domain.

**Elizabeth Smith:** Will you outline the timescale that you anticipate for HMIE's involvement? You have just mentioned the possibility that it would have to attend a public meeting.

**Lynn Henni:** Section 8(5) of the bill says:

"HMIE must submit the report to the education authority—

- (a) not later than 3 weeks after the authority has complied with subsection (1),"

which is about HMIE receiving the information from the council. The council would send HMIE a copy of the proposal paper at the start and then send the written responses—or a summary of them—and a summary of the oral representations and any other relevant documentation. Once the council has sent that, HMIE would have three weeks to produce a report. Obviously, HMIE could be involved informally a lot earlier—it could get the proposal paper a lot earlier and could visit the school and meet the parent council, for example—but it would have three weeks to produce a report after the council had sent it the final bits of documentation.

**Elizabeth Smith:** In her previous question, the convener identified possible concern about HMIE being involved in some public meetings but not others. Does the bill team anticipate that HMIE would take up the opportunity to attend public meetings?

**Lynn Henni:** Generally, yes. As we discussed earlier, some issues are much more contentious than others—a closure is clearly much more contentious than a small change to the boundary of a catchment area—so, in some instances, HMIE may make a judgment not to attend the public meetings. I suppose that it is also possible that, in some instances, it may not be able to attend, although our expectation is that it would generally plan to attend.

**Elizabeth Smith:** HMIE has a huge and important input into educational objectives and it is good to hear that the Government regards those objectives as paramount in the situations that the bill covers. Can you foresee a circumstance in which HMIE's being unable to attend a public meeting, although it had done so in many other parts of Scotland, might present some difficulties with the public's understanding of the issue or give rise to concern that some key stakeholders had not been involved?

**Lynn Henni:** If HMIE attended a meeting, it would do so as an observer: it would be there to take stock of what was being proposed. It would

not sit with the council on the platform—if the meeting was being conducted in that way. I do not envisage its role at public meetings as being about assisting the public understanding of the situation.

**Elizabeth Smith:** Do you accept that some members of the public might consider HMIE's role to be to assist public understanding?

**Lynn Henni:** I suppose that they might, but they would be going along to the public meeting to hear the council respond to their concerns. The meeting should be an engagement between the council that has made proposals and advanced its justification for them and the individuals or community who would be affected. They should go along and be able to quiz the council on the reasons for, and thinking behind, its statements and proposals. That should be the purpose of the meeting.

**Elizabeth Smith:** I detect a slight irony in that context. Educational provision has been strongly identified as the main principle behind the bill, and HMIE's input might considerably enhance understanding of that, but I am nervous about HMIE's ability to make a full contribution in all circumstances. I think that the convener expressed concern about that in her questions. Of course, it is for Government ministers to respond to those concerns.

**Kenneth Gibson (Cunninghame North) (SNP):** The bill will require education authorities to give notice "to the relevant consultees" of a proposal to make changes in the school estate. As the witnesses know, that often happens through the pupil post, whereby letters are issued for children to take home to their parents. Some consultees are concerned that such an approach might cause distress to pupils, lead to delays in notification and undermine the importance of the consultation that must take place. Do you propose to introduce a more robust way of notifying parents and other interested parties?

**Lynn Henni:** We picked up the messages that you mention and we understand people's concern. The bill will require councils to advertise publication of the proposal paper and consultation report. Detail about methods of delivery would probably best be covered in guidance.

**Kenneth Gibson:** There are often complaints that advertisements are not picked up by parents, so information is passed on by word of mouth, which is not helpful. Would it be helpful to provide specific details of how notification should take place, not just in guidance but in the bill?

**Lynn Henni:** We could certainly consider doing that, but we are talking about a level of detail that might be better in guidance, which can be changed as circumstances change. If such detail was in the bill, we would have to go back to the

primary legislation if we wanted to make changes further down the line. However, I take the point that the issue must be addressed appropriately.

**Kenneth Gibson:** There is concern that the bill contains no explicit presumption against closure of rural schools. I noted what you said about the issue in your introductory remarks. Why is the phrase "presumption against closure" not in the bill, as many people expected it to be?

**Lynn Henni:** It would be problematic to include in the bill such a phrase on a matter as wide reaching as a school closure, which is impacted on by other statutory obligations. If we said in law that there was a presumption against closing rural schools, the opportunities for misinterpretation and different interpretations of the phrase would be such that the courts would ultimately be invoked on a number of occasions. Therefore, ministers thought that that might not be the best way of dealing with the matter.

In effect, such a presumption is implicit in the bill. By making the decision one of last resort and by setting out the factors that must be considered, such as alternatives to closure and the impact on the community, we are de facto creating a presumption.

**Kenneth Gibson:** Is it a matter of semantics? Do you want to have, in effect, a presumption against closure by requiring councils to consider viable alternatives, effects on the community, travel arrangements and so on, while not specifically setting out such a presumption in the bill?

**Lynn Henni:** What is set down in the bill will enable councils to understand clearly what they have to do and people to understand what is expected of councils. If we used the wording to which you referred in legislation, it would be much harder for councils to understand how to implement the legislation and for other people to know whether a council had done so. We have attempted to set out very clearly the vital matters that must be considered before a council considers closing a rural school. Councils must consider and work their way through the viable alternatives, the impact on the community and its use of the buildings, and how changes in travel patterns would affect people. At the end of the process it will be clear what councils had to consider and there will be a clear picture. Ministers' view is that that is implicitly a presumption.

**Kenneth Gibson:** The EIS states in its written evidence:

"it is invidious, to say the least, that from a statutory point of view the local authority may be required to treat the closure of two schools within its area in two different ways."

It is referring to the fact that urban and rural school closures may be treated differently. There are also concerns about the way in which the Scottish Government defines urban and rural schools. How would you address that point?

**Lynn Henni:** The bill recognises that local schools are often the focal point of community activity. That is true of all communities, but the loss of schools has a much greater impact, proportionately, in rural areas. It also has an impact in urban areas, but rural communities are often more fragile and have fewer alternative community resources on which to fall back. The school is often the only community asset.

**Kenneth Gibson:** I understand your view, but many parents in parts of Glasgow would probably dispute what you have said, given the somewhat cack-handed developments in the Glasgow school closure programme that have taken place in recent weeks. People in some of the more deprived areas of Glasgow where closures are taking place would not consider that they have any real local assets other than their schools. Do you not think that the definition should not be so tightly drawn?

**Colin Reeves:** One reason for the decision to distinguish between the three categories of rural area in the Government's classification and other categories was that there is a real step-change difference between closing a school in a rural area and closing a school elsewhere in Scotland. If you close a school in a rural area, the chances are that education will no longer be delivered in that area, which, by definition, is smaller than a remote small town. The other side of that coin is that children from the community will have to go some distance—in rural areas, usually several miles—for their education. That is the distinction.

Of the other categories in the classification, the most remote is very remote small towns. Let us take the example of a very remote small town with a declining population that has three primary schools. If it is proposed to close one of those schools, it will still be possible to deliver primary education to primary school children in the town. That is the overriding rationale for the distinction between the three rural categories and all other categories.

**Kenneth Gibson:** There are a number of rural schools in my constituency, so I am sympathetic to that view. However, I wanted to set out the opposing argument, as many people in urban areas have a strong sense of community around a specific school. The fact that there is another school 2 or 3 miles away does not mean that they do not have the same view of their school and might not suffer similar consequences from a closure.

**Claire Baker (Mid Scotland and Fife) (Lab):** I have some questions about the corrections process and the introduction of a mechanism to address inaccuracies. In previous school closure processes, families and communities have questioned the accuracy of some of the figures that local authorities have used. Some authorities argue that there is a need to distinguish between opinion and fact in the consultation process. Colin Reeves said that the purpose of the corrections mechanism is to deal with factual inaccuracies. Can you describe in detail how the mechanism will work?

I am concerned about who will judge such inaccuracies. The judge of whether something is inaccurate is the very authority that is being questioned about it. How effectively can such issues be resolved under the process?

10:45

**Lynn Henni:** A degree of transparency is built into the bill. If a parent turns to their council and alleges that there is an inaccuracy in a proposal paper, the council must respond in a transparent way. It might conclude that the allegation is incorrect and that there is no inaccuracy; it might conclude that there is an inaccuracy, which perhaps requires an amendment to be issued; or it might conclude that there is a serious inaccuracy, that the whole paper needs to be redone and reissued and that the clock needs to be restarted. Whichever route it took would have to be highlighted in the consultation report at the end of the process.

**Colin Reeves:** We thought about the issue long and hard, and we discussed it with the Scottish rural schools network—it was one of its main concerns. We discussed the idea that, if there is an allegation of inaccuracy, perhaps someone could adjudicate on it at some stage. However, we considered that that would require a complex mechanism and that we could end up with one party or the other—the one that was not found to be in favour, as it were—simply putting the adjudication aside and carrying on. In our discussion, we thought about the oxygen of publicity, and we considered that the allegation, the nature of the argument that was put to the council, the council's answer or material in its defence, or its concession of the point, should all go into the consultation paper.

That would mean that instead of the people who have to decide on the matter being told, for instance, that they must simply consider the adjudication, they will have all the material in front of them. In our discussion, we all realised that that was the best approach. The council must take the final decision. If the consultation report contains all the allegations and all the council's responses,

together with any other material, the council will have everything in front of it.

**Claire Baker:** So whatever the outcome of the council's decision, all that material will be available in the final consultation report.

**Colin Reeves:** Even if the council refutes an allegation or does not propose to take any action, all the material will be there, so that, at the end of the day, the council can see it all. The consultation report will be a public document, so all the people who have made allegations will also see all the material.

**Claire Baker:** I have a question about the timescale. At what point in the process can a complaint be lodged? Lynn Henni said that, if a complaint was upheld, the process would be stopped—the clock would be stopped, and the process would start again. Is that right?

**Lynn Henni:** Let us suppose that somebody claims that there has been an inaccuracy, such as an error in some figures. The council will judge, first of all, whether there has been an error and, if there has been, how serious it is. If the error fundamentally undermines the whole argument that the council has advanced in its proposal paper, there would be an expectation that it would withdraw the paper and rewrite it to reflect the necessary changes. It might not even rewrite it—in theory, it could call a complete halt. If the error undermines a key part of its argument, the council could take the paper back, rewrite it and reissue it, and then restart the consultation. That would be a judgment for the local authority to make. If it felt that it was a lesser issue that did not have a huge impact on its case or on the facts and figures, that might simply require an amendment to be made—not necessarily the reissuing of the whole paper.

Relevant to that, and to the previous point, is the fact that the ministerial call-in process is there right at the end. If there are any concerns that allegations have not been picked up or judged as people feel they should have been judged, that opportunity is there at the end. If somebody makes an allegation that something is inaccurate, and the council says that, although it is indeed inaccurate, the matter is not significant, but the person involved thinks that it is, there would be an opportunity, at the end of the process in a closure case, to raise that with ministers as part of the call-in process. There is an extra safety net at the end.

**Aileen Campbell (South of Scotland) (SNP):** In relation to Claire Baker's point, are you talking about the three weeks at the end, once an authority has published its consultation report?

**Lynn Henni:** There are several sets of three weeks.

**Aileen Campbell:** I am interested to know why the period of three weeks was chosen, because what the timescale should be has been debated. In an answer to Karen Whitefield, I think that Colin Reeves said that six weeks would have to elapse after an authority had published its consultation report. I am referring to section 11.

**Lynn Henni:** It is probably most helpful if I explain the stages of the process. There is a six-week period from when a proposal paper is published until the end of consultation on it. It will take a bit of time to get everything together for HMIE. HMIE receives everything from the council and then has three weeks to produce a report to the council, which has—no doubt—started to prepare its consultation report before receiving the HMIE report, as the consultation report also deals with other matters, such as a summary of responses. The council then produces and publishes its final report, which will include the HMIE report. Three weeks after that, the council can make its final decision. That time allows people to see the council's report and to continue to have contact with elected members, who will make the decision.

For six weeks from when a council decides on closure, it will not be able to implement its decision. In the first three weeks of that period, people will be able to write to ministers if they have concerns about how the process was undertaken. In the second three weeks, ministers will be able to consider what has been presented to them. If, after the first three weeks, nobody has expressed concerns and ministers have no reason to believe that there are concerns about the process, the bill allows ministers to tell the council earlier than six weeks after the decision was made—for example, three and a half weeks after—that the situation is fine and that they will not call in the decision. However, if ministers receive evidence from people, they will need time to consider that. There will be a six-week period, lasting from when a council makes a decision to when it can implement that decision. In the case of proposed closures, that is the period during which ministers will be able to consider any evidence that suggests that the decision should be called in.

**Aileen Campbell:** Why was the period of three weeks chosen for section 11? I understand that the original proposal was that the period should be 28 days, and that some had suggested 14 days instead.

**Lynn Henni:** We engaged quite a lot with stakeholders—with the Scottish rural schools network and with local authorities, which will have to undertake the work. We were conscious that we had to consider the whole package of time and that we should not create a monstrous process that would increase uncertainty for pupils, parents,

staff and authorities, so we balanced the number of weeks here and there. In discussion with stakeholders, three weeks was the number on which we agreed.

**Aileen Campbell:** Do you envisage that stakeholders such as parents will use that time to make further representations?

**Lynn Henni:** Yes—in those three weeks, representations would be to the council.

**Aileen Campbell:** The onus will be on the council to ensure that people know that the consultation report has been published.

**Lynn Henni:** The council will have to advertise the publication of its report.

**Aileen Campbell:** I have a question that relates to an issue that Kenny Gibson raised. Will guidance give advice on how councils should approach the content of letters that are sent by pupil post? I am concerned because I have been approached by parents who were distressed by a letter that was neither clear nor transparent and which seemed to float ideas about mergers or closures. Has thought been given to ensuring that councils are explicit and clear about their proposals?

**Lynn Henni:** In the bill, we have tried to be clear about what a proposal should contain, but I recognise that that is not the same thing as a letter. We have tried to spell out in as much detail as possible what a council needs to put in a proposal. We are considering guidance on how letters might be delivered.

**Aileen Campbell:** I do not want you to be too prescriptive, of course.

**Lynn Henni:** We must achieve a balance.

**Colin Reeves:** When we craft the guidance, we will look at a selection of best practice in the various local authorities and endeavour to emphasise best practice in the various aspects on which guidance is issued. Obviously, it is eminently sensible to issue guidance that steers people away from poor practice.

**Aileen Campbell:** I thought that the point was worth raising, given my experience in the area that I represent.

**Margaret Smith (Edinburgh West) (LD):** Reference has been made to the changes to the ministerial call-in process. Some of the written submissions that we have received have highlighted a lack of clarity about the grounds for call-in. I am sure that people will expect something that is procedurally wrong to be called in, but I am more interested in finding out how much the legislation will cover the policy, rather than the process of closure.

**Colin Reeves:** Ministers have made it very clear that even under the current arrangements they cannot retake a council's decision. After all, they can never know all the details that the council has been privy to in reaching its conclusion. At the moment, when referrals are made for ministers' consent in the various categories, ministers principally look at the procedures that have been followed in reaching the final decision. The definition of the call-in categories focuses on the consultation procedures, as set out in the bill, and the decision-making processes. Indeed, as the bill makes clear, ministers will issue a call-in if there is a failure to comply with requirements under the legislation in significant measure, or a failure

"to take proper account of a material consideration relevant to its decision".

As a result, the bill still focuses on process.

That said, I suppose that a failure

"to take proper account of a material consideration"

might cover a situation in which the council's consultation report fails to refer to or ignores a large body of opinion in the consultation responses. The council needs to explain in its final consultation report how the various elements in the consultation responses have been considered and its conclusions reached.

**Margaret Smith:** So if a closure that is opposed by 200 people goes ahead anyway it is enough for the council to explain why, after consideration, it has set aside those people's arguments. According to you, that is also the sort of thing that ministers will look at.

You referred to corrections and the possibility of erroneous information being used. It has been alleged that in my own council the use of erroneous information has been quite central to certain decisions that have been taken. Some bits of information—for example, the number of children in a school—are simply a matter of fact, but a lot of information is actually quite subjective and tips over into interpretation of policy. Would ministers look at purely factual matters or would they also consider certain much more subjective issues?

**Colin Reeves:** In cases in which allegations are based more on opinion than on fact, with people saying, "This is what we think," and council officials saying in the consultation report, "We think differently," it can become next to impossible to adjudicate between two sets of opinions. As a result, both sets of opinions will be clearly laid out before councillors.

The bill seeks to put in place a consultation process that is open, transparent and robust. If the procedures are followed, the consultation process will be genuine. That is the object of the exercise.

If allegations were made during the three-week period after a closure decision, the ministers' job would be to consider the nature of the allegations.

11:00

**Margaret Smith:** If a large body of people was opposed to a decision, ministers would look for evidence that the consultation had been properly conducted and that concerns had been addressed. They would not be seeking to rerun the process.

**Colin Reeves:** In legislation, it is impossible to get right down to specifics. However, if ministers felt that the council had failed to take proper account of a material consideration that was relevant to the council's decision, the bill leaves them room to consider any such allegations. *[Interruption.]*

**Margaret Smith:** We have heard about different points in the timetable, but there does not appear to be any timescale for ministers once a case has been called in. Why is that, and what would be a likely timescale?

**Lynn Henni:** We do not expect many cases to be called in. However, if a case were called in, it would be because ministers had concluded that the process was seriously flawed. There would then be a lot of investigation with the council and others.

In the current referral system, simple cases can sometimes be dealt with quite quickly, but things can take a lot longer in more complicated cases. An existing remedy for councils is to avoid getting into that situation in the first place. However, because we do not expect many cases to be called in, and because, if a case were called in, things could be complex if there were claim and counter-claim between the council and the community, we have not set a time limit.

**Christina McKelvie (Central Scotland) (SNP):** Sorry, convener. I spilled my glass of water a moment ago. I did not mean to make a splash.

I want to ask about transitional issues. In its submission, the City of Edinburgh Council has raised some specific concerns. When the bill is enacted, what will happen to on-going consultations?

**Lynn Henni:** In considering the different options for transition, our starting point was to ensure that any disruption to councils would be minimised. We wanted to avoid there being a period during which councils were unable to carry out any consultations whatsoever. The transitional arrangements are therefore designed to allow councils to carry on when the bill reaches stage 3 and then goes on to commencement.

If the bill is passed at stage 3, which might take place in November, councils can then start consulting on the basis of what is in the bill; in other words, they can start to follow the new processes. Commencement would not be until a few months later, perhaps in April. If a council thought that its consultation would straddle commencement, it would still have plenty time to start consulting under the new system. Because so much detail will be in the bill after stage 3—subject to whatever changes Parliament might have made—councils will know the requirements.

In summary, once we get to November, and assuming that the bill is passed, people can start to consult under the new process. Any decision that is taken after commencement in April will have to reflect the new process—following commencement, a decision can be taken only after consultation has taken place under the new process. Councils will have had a number of months to prepare for that. Prior to the passage of the bill, they will have had time to see what is coming. Once the bill is passed, people can start immediately to use the new requirements.

**Christina McKelvie:** So, it is anticipated that it will take five to six months for people to start to use the new procedures.

**Lynn Henni:** Yes—it may even be four.

**Christina McKelvie:** Will that have an impact on decision making? Will it lead to delays?

**Lynn Henni:** As I said, we have tried to come up with a transition that minimises the scope for delays. The only difficulty that I foresee is if a council starts to consult under the old mechanism and the consultation drags on longer than expected. When the new process comes into effect on 1 April, that council would not be able to take a decision. In theory, as the City of Edinburgh Council noted in evidence, the process would have to be re-started. That said, quite a long lead-in period is involved, and councils have had plenty of notice of the change. We did that deliberately to try to ensure that councils have the capacity to start working on the new system.

**Colin Reeves:** We looked at a lot of options and discussed them with representatives of the Association of Directors of Education in Scotland and COSLA. Some of the options that we considered were complicated—indeed, some were completely unworkable. However, all the options that we discussed were designed to give councils good notice of the changes that were coming into play and how on-going consultations or those that commenced close to implementation would be affected.

The provisions in the bill are the result of a lot of discussion and a good measure of agreement on the system being workable. Councils have been

able to see in advance what is proposed. Broadly speaking, the new system has been well accepted by COSLA and ADES.

**Christina McKelvie:** I read that in the ADES submission.

Four months or longer is an unusual length of time for a council to take on a school consultation. However, if that were to happen, has the Government made provision in the bill to support the council in reaching a speedier decision?

**Lynn Henni:** No. If a council found that a consultation was becoming extended, it could switch horses—that is not quite the right metaphor—half way through the process. The council could stop the earlier consultation and re-start the consultation process without waiting for commencement. A council can anticipate that it will not meet the deadline.

**The Convener:** Liz Smith has a question on the finances.

**Elizabeth Smith:** It was answered earlier.

**Ken Macintosh:** The committee has received a substantial number of proposals on the subject of Gaelic-medium education. Does the Government have a formal response to those?

**Lynn Henni:** It is fair to say that the proposals were not raised in our consultation last year. Our first sight of them was in the published responses to the committee's call for evidence. The Government is considering those responses. Ministers will discuss them, but we have not had much time thus far fully to consider what has been suggested. The short answer is no.

**Ken Macintosh:** Will there be another legislative opportunity to give parents the right to Gaelic-medium education for their children, where regional demand exists? Are other bills in the pipeline?

**Lynn Henni:** I am not sure that we can anticipate what other legislation might be coming forward.

**Colin Reeves:** I do not know.

**Ken Macintosh:** But no bill on Gaelic-medium education is under preparation at the moment.

**Colin Reeves:** Not to our knowledge.

**Ken Macintosh:** If the committee was minded to support an amendment in that respect, would that give the Government a problem?

**The Convener:** That is a question of policy.

**Ken Macintosh:** I have just realised that.

**Lynn Henni:** Thank you, convener.

**Ken Macintosh:** I was just thinking aloud. At least the officials now have a clue—they can tell the Cabinet Secretary for Education and Lifelong Learning about it.

**Colin Reeves:** We will let her know.

**The Convener:** I am sure that, in preparation for her attendance at committee, the cabinet secretary will read with interest the *Official Report* of today's meeting.

That concludes our questions. Thank you for your attendance.

11:10

*Meeting suspended.*

11:19

*On resuming—*

**The Convener:** I reconvene the meeting and welcome our second panel for the committee's continued stage 1 scrutiny of the Schools (Consultation) (Scotland) Bill. We have been joined by Professor Neil Kay and Mervyn Benford, who is the information officer for the National Association for Small Schools. I understand that Professor Kay is keen to make a short opening statement.

**Professor Neil Kay:** Thank you. It is a privilege to have the opportunity to contribute.

My involvement started in 2000, when my school was threatened with closure. In 2001, we prepared a petition to Parliament on the six schools in Argyll and Bute that were threatened. For many of us, the reform process started when Cathy Peattie MSP made a report to the then Education, Culture and Sport Committee that supported our case against the council. Since then, there have been many developments. The petition that I wrote—PE342—remained open for three and a half years, but many of the points in it have been superseded by the work of others, particularly the Scottish rural schools network.

If it is helpful, I will briefly raise two main issues. The first is the question whether the bill is needed. Secondly, as an economist who works in education, I hope that I can contribute something on the issue of resourcing and the educational benefits versus cost benefit analysis. I might also touch on the policy divide, given the importance of where school closure policy starts and ends.

First, in many respects, it could be said that much has been achieved by the current process over the years. It has therefore been argued by some that we do not really need the bill. Many councils that might previously have been regarded as recalcitrant on school closure policy can now

be regarded as moving towards or having achieved best practice. Among councils, there has been a genuine move—much of it created and promoted by parliamentarians here—that has immeasurably improved the situation. In that respect, we might ask whether the bill is really needed.

However, I note that last week's Scottish Parliament information centre briefing on the bill mentions my local council:

"Argyll and Bute argued that the current regulations are sufficient".

In the most recent round of consultation on school closures that Argyll and Bute Council conducted under the present regulations, the council identified six schools—including mine—as candidates for closure. Each of those schools was then encouraged to propose why it should be saved. Basically, the process became a negative beauty contest. Cathy Peattie found that process reprehensible nine years ago, and the Education, Culture and Sport Committee agreed with her. My school—I am still on the parent council—was given not a reprieve but simply a suspension of the closure decision. Argyll and Bute Council has never admitted that it did anything wrong in that process. Essentially, that is why the bill is needed—because Argyll and Bute Council says that it is not needed. *[Laughter.]* I am encouraged that other councils have adopted best practice, which I hope my council will learn from.

Will the bill stop problems that we have encountered in the past? Nothing in the bill will prevent malfunctionings from happening, but the transparency and scrutiny requirements, and the prospect of a call-in as last resort, will make it much more difficult for unfortunate accidents to happen, such as the potential miscarriages that occurred with previous closure proposals. I am encouraged both by the principle and by much of the detail of the bill.

Secondly, on the question of resourcing, two main issues need to be put on the table. The first issue—which I was heavily involved with four or five years ago, and I thought parliamentarians had largely resolved it—is excess capacity. As members will be aware, for many years—certainly up until the past few years—the Accounts Commission promoted spare capacity as an issue that should at least encourage scrutiny of possible closures. However, spare capacity should in no way be a criterion in considering school closure. Briefly, if two schools are virtually identical in terms of numbers and the communities that they serve, but one of them is 50 per cent unoccupied, what is the extra cost of that spare capacity? There will be some costs for heating, lighting and possibly maintenance. Apart from that, the extra cost of that spare capacity will be close to zero. If

we were concerned about spare capacity as a cost, virtually no football ground in Scotland—apart from, possibly, those of Rangers and Celtic—would escape closure.

I had hoped that we had moved on from that. I note that, in recent years, the Accounts Commission has at least been less voluble on the issue of spare capacity. However, I note with alarm that the Scottish Parent Teacher Council's submission states that Edinburgh is spending

"something like £30,000,000 ... on maintaining empty places"

I have examined that statement upside down and inside out, and I have to say that it is nonsense. If such views are entertained, it will be to the disadvantage of genuine debate about school closures. Spare capacity should not be allowed to enter into the debate on school closures, and I am encouraged to see that the Accounts Commission appears to have responded to pressure from parliamentarians to reconsider its emphasis on it.

Mr Macintosh mentioned cost benefit analysis. As an economist, my initial inclination is also to go down that route. The bill is concerned with educational benefits, and it seems skewed in that regard, because there will also be educational costs. However, it mentions that educational disbenefits or costs should be taken into account, which means that it has the elements of a cost benefit analysis, even if it does not put the costs together with the benefits in a form that would come up with a final tally. To an extent, therefore, that is quite encouraging.

The major resource issues that are encountered with school closures do not relate to capacity. I have considered the financial implications of closure proposals one at a time, and the major financial implication is reduced teacher numbers and/or reduced class sizes. I appreciate that that is the point at which we enter into a discussion of policy, which is not what we want to do today, but it is the case that school mergers or closures typically result in bigger classes, fewer teachers or both, and therefore such decisions have educational consequences.

There is a body of knowledge about the effects of class size. While the evidence with regard to older school pupils is uncertain or mixed at best, there is a settled opinion, based on established research, on the implications of class size in the first one to three years of schooling. I hope that when the educational effects of a possible closure are taken into account, consideration is given to that established opinion, which is based on good-quality research. I say that because I notice that the Scottish Parent Teacher Council has been arguing the case for big schools and big classes,

and basically repudiating much established research.

Although it might be difficult or impossible to develop a cost benefit analysis template for school closure, councils should be provided with not only advice on good practice but good evidence on the educational as well as the financial effects of closure. If councils were supported in that way, many of us would be content with the process.

That is all I have to say in the way of opening remarks. I should say, however, that after nine years I am encouraged by the work of the Public Petitions Committee and successive education committees and parliamentarians on these matters.

**The Convener:** I am sure that Argyll and Bute Council has noted just how tenacious and persistent you have been and will read your comments with some interest.

You say that you support the production of educational benefits statements. Why are they fundamental to the process?

11:30

**Professor Kay:** The change from a smaller school to—in all likelihood—a bigger school can have genuine educational benefits, such as the provision of more resources. The SPTC has identified the socialisation advantages that such a change can have, as part of the educational process. However, there are also recognised educational advantages of small schools, on which I am sure Mervyn Benford will elaborate. We note that in small schools there is much more vertical interaction across the years, which can be beneficial, as it allows pupils to take leadership roles in educating—both specifically and more generally—those who are junior to them. The process of moving from a smaller school, which may be close, to a bigger one may have some educational benefits, but schooling in a small school can have tremendous socialisation and educational benefits, as it allows younger pupils to be exposed to and encouraged in more areas. In larger schools, which are more streamed by year, the focus is narrower.

**The Convener:** My next question relates to the educational benefits statements that will be required. Earlier, I asked Government officials whether they believed that there was a need for guidance to make explicit the information that local authorities will be required to provide in those statements. Do you have a view on that?

**Professor Kay:** An important provision of the bill is its requirement on councils to consider alternatives. For example, my school takes advantage of some of the benefits of physical

education provision in a larger school next door. That is an important consideration, if the argument is that merging schools would result in such facilities being made available to the smaller school. The question is, are there ways of achieving educational benefits without closure or merger? There are two points. First, there are educational benefits of smaller schools that can be set against the possible educational benefits of larger schools. Secondly, we need to consider the alternatives. Are there ways in which advantages can be achieved without closure?

**Mervyn Benford (National Association for Small Schools):** Thank you for inviting me to today's meeting; it is a delight to be here. I am giving evidence as the information officer for the National Association for Small Schools. I have worked on the issue of school closure for 10 or 20 years, in one way or another. I come here as the former head of a village school for 15 years, during which I saw three generations of parents and families. I worked as a cluster group co-ordinator for both Oxfordshire and Warwickshire, where I was responsible for helping autonomous, self-governing schools to collaborate in the way in which Neil Kay has described. At its best, that is an extremely effective approach—better than anything that we have yet seen in more closed systems, such as federation.

In England, we are arguing at national level for the small-school model of education. The evidence that small schools are wholesome, effective places for children to learn in is almost irrefutable. We are extending that evidence to our campaign for small schools in cities—the urban village concept that Professor James Wetz of the University of Bristol uses. We believe that that model can address many other issues that are troubling society, such as the role of families. Birmingham City Council is about to spend £400,000 to help families in 50 schools that have classroom discipline problems. Smaller schools do that endemically—it is part of the process. Everyone knows everyone, so the community is involved. We have a model that goes beyond education budgets, because the cost of educational failure impinges on health budgets, social services budgets, police budgets and so on. We are seeking a far more sophisticated analysis of the issues. That is the background to our written submission.

**The Convener:** Earlier this morning, we touched on the issue of consultation. The bill is clear about the timescales. Is six weeks sufficient time to allow local authorities to consult communities formally when they plan to make changes to their schools structure?

**Mervyn Benford:** It seems reasonable, but we remain concerned that the bill should make it clear

that, in line with the statutory duty in the English guidance, adequate and sufficient information should be provided to the people who are consulted, to enable them to give an intelligent response.

We have produced a booklet of some 20 pages that contains more than 200 statements about the economic, social and financial virtues of small schools. How can a parent who has just learned of a proposal to close their child's school get all that information, which we have accumulated over 10 to 15 years by considering all kinds of national and international research? The adequacy of the consultation period is linked with the quality of the information that is supplied.

Let us face it: an educational benefits statement from a local authority that wants to close a school will almost certainly say, "Your children will be better off somewhere else." Such statements will need to be balanced by counterarguments about the educational benefits of the status quo. We therefore hope that an obligation will be placed on councils to provide adequate and sufficient information, so that the people who are consulted can give an intelligent response that is based on the whole picture. For example, it is important that parents know about the performance of not just their small school but all small schools in Scotland. A number of factors would help people to make a considered response, if they had enough information.

When a local authority makes its case, it needs to back up its arguments with evidence. I was involved in the National Assembly for Wales's consultation on school organisation. The consultation document simply listed five supposed disadvantages of small schools, none of which was backed up by evidence. Indeed, there is no such evidence; small schools in Wales are getting as good results as other schools are getting. We often find that closure proposals throughout the United Kingdom provide no evidence for the supposed benefits of closure.

**Ken Macintosh:** The bill goes into detail about educational benefits statements and initial proposals. The witnesses heard the bill team promise that more detail on both matters will be included in statutory guidance. Are you confident that the level of detail will be sufficient to cover all the issues that need to be covered? Will all the counterarguments about costs and benefits, travel costs and educational disadvantages emerge as a result of the bill?

**Professor Kay:** That will be a matter of good will and of the sensitivity of the people who implement the bill to the situation on the ground. When we do a cost benefit analysis, it is difficult to prescribe every eventuality, even for a single school, but we can identify general categories of

potential costs and benefits that should be taken into account. As Mervyn Benford said, there is a body of knowledge about those categories. I hope that Government and councils will acknowledge authoritative conclusions from respected authorities that are based on established research on the merits of small schools versus larger schools, educational performance, class size and so on. If they do so, that will satisfy many concerns about the process. For example, blanket statements have been made to the effect that larger schools are better and smaller schools are inferior—the SPTC has made much of that recently in a different context, and has argued that small schools should be considered for closure because children can get a better education in larger schools. If such bald statements were not accepted and the evidence on the balance of costs and benefits was taken into account, I would be content that the process was fair and just in particular cases.

**Ken Macintosh:** Mr Benford, are you happy that the bill will allow educational benefits and disbenefits to be publicised to all concerned during the consultation process?

**Mervyn Benford:** The bill will enable the publicity, but we are concerned about the information that will be provided. There needs to be a balanced presentation of argument and evidence. The process for releasing that information is okay.

**Ken Macintosh:** I am not sure that the SPTC would entirely agree with Professor Kay's interpretation of its comments.

**The Convener:** I am sure that the SPTC will give its view in evidence.

The bill places a duty on local authorities to hold public meetings as part of consultations, and section 7 requires them to notify HMIE of such meetings in advance. As representatives of organisations that have been involved in the process, do you think that that duty goes far enough, or would you prefer the duty to require HMIE to be present at such meetings, even if its representatives are only observers of the process?

**Professor Kay:** It is difficult to require that, because what if the HMIE representatives could not make it? Without trying to second-guess the bill, I wonder whether provision could be made for HMIE to receive transcripts of the process if it was decided not to require its attendance.

I have a small reservation. We have found that HMIE inspectors come from different cultures. If an inspector from an urban background inspects a rural school, it can—and has done in the past—cause cultural problems with interpretation. I would go a bit further than just requiring HMIE to attend public meetings; I would wish the inspector to be

competent and sympathetic to the problems that the school faces, whether it is a rural or urban school.

**Mervyn Benford:** We have no experience of that in England in our work during the past 30 years. However, any facility that would help to improve scrutiny of the process—which is something that we expect HMIE to do—would be beneficial. We have attended many public meetings over the years, and what one sees is fascinating. At the moment, the parents and community say their piece, the pupils sometimes say theirs, the councillors make the case for the authority, the officers make the case for the authority, then everyone goes away and that is all put into the decision-making process. Unless someone takes notes, or parents ask to make tape recordings, there is no process to analyse objectively the events at the meeting. Requiring HMIE to be present at public meetings would therefore be a welcome step.

**Claire Baker:** I would like to hear your views on the proposed method for dealing with corrections and inadequacies. Professor Kay, in your opening statement you said that you hope that presentations will be balanced, and you stressed the importance of information. What is your view of the bill team's comments on the process? Also, will there be any difficulties? How difficult will it be for parents to challenge the information that is provided? How difficult will it be for them to source alternative data when the data are held by the local authority? In your experience, how could such data be challenged?

11:45

**Professor Kay:** When a closure proposal is made and consultation is carried out, there will be quite widespread dissemination of information within the community, so any errors should be picked up quite quickly, unless the information is difficult to second-guess because it is not generally available.

A great deal of benefit would come from preventing the need for corrections. For example, in Argyll and Bute, one statement forecast pupil numbers over the next X years, but it was not a forecast, it was a projection, which is very different. It was also stated that school closure would be triggered when capacity fell to 60 per cent, in line with an Accounts Commission recommendation, but the commission had made no such recommendation. That was an error.

In the future, councils will be much more careful to ensure that information is presented correctly. Indeed, I am sure that many already are being more careful. It is important that councils can deal with corrections. That said, I hope that the bill will

encourage and incentivise councils to ensure that the information is correct in the first place.

**Mervyn Benford:** I concur.

There is a concern that, having been notified of misinformation or an inaccuracy that needs to be corrected, an authority may decide under section 5 to do nothing about it, subject to section 10(3). That area needs to be as tight as possible, because a council may receive a valid correction but not have to do anything about it, except in the final report. That means going further down the line, and could trigger a call-in because of a challenge on the basis of the procedure being flawed. The more that things are done properly at the start, the less likely complaints will be further down the line.

**Claire Baker:** I asked the bill team about the timescale for corrections. Were you satisfied with the explanation of how that will operate?

**Professor Kay:** Yes.

**Claire Baker:** That is helpful.

**Elizabeth Smith:** My question is on public meetings. Obviously, the witnesses have considerable experience of the situation north and south of the border. Public meetings are crucial in bringing together the various stakeholders. What opportunities are there to improve the process, including opening it up to other stakeholders or to people with valuable opinions on, for example, the educational benefits?

**Professor Kay:** Several references are made in the bill to the "affected school". I am interested that the singular is used in the bill, whereas the phrase "affected school(s)" is used elsewhere. People in my region are conscious that the "affected school" is not only the school that is subject to closure but the school or schools to which pupils are to be disbursed. One invidious aspect of past closures in Argyll and Bute was the setting of school against school, often in the same community. The resulting antagonisms and resentment have gone on down the years. The "affected school" is not only the school that is to be closed, but the school or schools to which pupils might go.

In our case, we were lucky to work closely with the other school that our pupils were to go to. The campaign worked effectively in putting forward joint objections to the proposed closure. It would be welcome if the Government recognised that not only schools that are put forward for closure are affected; the schools to which pupils are to be disbursed are also affected by closure proposals.

**Mervyn Benford:** In England, the opposite process has been undertaken. Our statutory guidance leaves to local authorities the decision on the process of holding public meetings; two or three options are set out as acceptable.

Nowadays, some councils are trying to avoid gathering everybody together to hear their comments because of the effect that that has. Instead of consultation meetings, they are holding drop-in sessions in supermarkets. However, such drop-in sessions are not the equivalent of public meetings.

We need to be sure that we are agreed on the definition of "public meeting". I suggest that it is a meeting at which the facts are fully aired to attendees, all of whom can hear what is said. The argument against the holding of public meetings and for drop-in sessions is that shy people will not speak in the former setting. However, there are plenty of other opportunities for shy people to make their views known to proposers. At public meetings, shy people have an opportunity to hear what other people are saying, which can influence their decisions.

I went to a public meeting in a village hall that was organised by what was then Cheshire County Council. However, it was not actually a public meeting: a pair of officers at desks saw one, two or three people at a time. One small group of people asked, if you propose to bus our children to Nantwich—I think it was—why cannot that bus be available to bring Nantwich children to us? If that had been asked publicly, we would all have heard the question and the answer, but it was not; it was asked by two people of two officers. We happened to learn of it later. It is a key principle that a public meeting should be a real public meeting.

**Elizabeth Smith:** You have both said that it is all too easy to make a judgment about one school, based purely on the factors affecting that particular school. Professor Kay suggested that there is a much bigger picture. Mr Benford said that rural schools have an extraordinarily high rate of success, and it is difficult to find evidence to the contrary. How can we bring into the process the fact that people make their judgments not just about one specific school, but set against the criteria of that grouping—namely, remote rural schools?

**Mervyn Benford:** Parents are often told that their children will be better off in a bigger school, despite their current school having a superb Ofsted or Estyn report. The implication of the argument that is put to parents is that their children's school is somehow an exception. Changing that would mean becoming part of the norm, which, we argue, favours the larger organisation. The school would be in a stronger position if people were informed from the start—with the evidence that is now freely available in England, Wales and Scotland—that small schools, as a species, are at the top of national performance. Parents can know that their school is not an exception—that it is doing a very good job.

The guidance in England sets three major criteria throughout. All the steps and proposals for closure, reorganisation or rationalisation should aim at high standards, diversity of provision and choice, and systems that are shaped by parents. Any straightforward proposal to reduce all schools to one form of entry—as was recently proposed in the Isle of Wight—is the antithesis of diversity.

Clear guidance is available. If parents were aware of it, they could argue their case before the public meeting; they could also do much better during the meeting, rather than just speaking about their individual case. By being aware of the guidance, they can get a bigger picture, which we believe is essential. We think that that is fair and proper, and that it is a democratic right.

**Aileen Campbell:** I do not know whether you heard my question to the bill team about the three-week lapse between publication of the council's consultation report and any action being taken. Is three weeks an adequate length of time for that? Do you have any comments about the process? Is there anything that you would like to happen within that time window?

**Professor Kay:** The measures that have been set out seem to offer a fair conclusion with regard to what would balance the interests of both sides, if I can put it that way.

**Mervyn Benford:** The level of provision is very fair. Sometimes, the problem is that there is inadequate time, when school holidays intervene, for parents and others to be informed.

**Aileen Campbell:** Is there anything that you would like to happen so that councils take more action to ensure that all consultees are properly informed about the publication of reports? Do you have any further comments on that?

**Mervyn Benford:** I do not think so.

**Aileen Campbell:** That is fine.

I want to ask about relevant consultees—this point was not raised with the previous panel. You commented briefly on pupil engagement in the process. What type of engagement would you like to have for children? The bill says:

"the consultees are ... the pupils at any affected school (in so far as the education authority considers them to be of a suitable age and maturity)".

What would you like to happen in that regard? In your experience, is there anything that has worked particularly well south of the border?

**Mervyn Benford:** The statutory guidance provides an exhaustive list of people who must be consulted. We applaud that, because all those people are genuinely affected by the proposals. Sadly, sometimes the authority tries to limit a public meeting to parents and governors,

excluding even the local community. All kinds of interest groups, including trade unions and professional associations of teachers, are affected by the proposals, so there is a need for wide consultation. All the groups that must be provided with information on the effects and educational benefits or otherwise of the proposals should be consulted. It should not be for the authority to decide what is good or less good for the pupils of the school or of any other school. Under the English guidance, pupils of any other school that will be affected must be consulted.

**Aileen Campbell:** Do you have experience of children being adequately consulted about what was happening to their school? It is their school, after all.

**Professor Kay:** It is a difficult issue. Children in such situations are likely to know only their own school, but we are asking them to second-guess what it would be like to be in a bigger school. It may depend partly on the state of relations between the schools concerned—sometimes relations between schools are quite competitive. I cannot think of any way to approach the issue other than to leave an open question. Essentially, that is what the bill does—the matter is left to the discretion of the authority. There is no ideal answer. Much depends on how the children and parents handle the situation.

**Kenneth Gibson:** Claire Baker raised the important issue of corrections. When a school closure was proposed in my constituency in 2007, the local authority was predicting the number of primary 1 children in 2018. That shows how ridiculous some of the information that is presented in such cases is, given that the children concerned will not even be born until 2013.

I have a specific question for Mr Benford, whose written submission is excellent. Paragraph 30 of the submission relates to questions that I put to Government officials earlier. You state that the Blair Government

“pledge of an end to wholesale closures through a ‘*presumption against closure*’ has rarely been taken seriously at local authority level”.

You go on to say:

“A ‘*presumption against closure*’ needs enforcement power if it is to be taken seriously.”

You heard from members of the bill team that they do not feel that a presumption against closure should be included in the bill. What is your view on the issue?

**Mervyn Benford:** We welcome the fact that, in an election manifesto some years ago, a party promised for the first time to introduce a presumption against closure. The issue arose earlier, when the distinction between rural and

urban areas was being discussed. In England, small schools—schools of 100 pupils or fewer—tend to represent no more than 10 per cent of the total picture. Ninety per cent of all those who are involved in education are not involved in small schools, so we find that it is hard to make our small voice heard. It is easy for it to be discounted, because 90 per cent of people work in larger institutions.

The presumption against closure in circular 110/98, which brought an end to wholesale closures, was a statement of the worth of that small constituency. We thought that the fact that ministers had made that statement in such a document would force local authorities to start the process with a presumption against closure—in other words, if we were a group discussing the closure of a school, we would first have to consider that there was a presumption against closing it. As Jim Knight, the English Minister of State for Schools and Learners, said in Shropshire last year, that means that the decision to close a school must be a last resort. The wonderful transparency of the proposals that are before the committee suggests that we should know what happens when councillors discuss the issue. In England, we do not know whether they have discussed it or how they came to rate some alternative as the last resort.

12:00

We know what happened in a particular case, when a minister made the final decision on appeal. When the City of Bradford Metropolitan District Council, which covers a major metropolitan area, wanted to reorganise the whole school system and go back to a two-tier system—primary and secondary—from a three-tier system, Estelle Morris kept open one small first school, which was up on the hill and was still rural, as opposed to the rest of Bradford. Although Bradford might well have argued that it had to include the school in a major reorganisation, even that was not a last resort that was sufficient for the minister. It is important that the presumption against closure and the last resort concept should be as high up the priority list as the bill can manage to put them.

**Kenneth Gibson:** How can we do that? The bill team took the view that a presumption against closure does not have to be explicitly included in the bill. Do you agree with the team’s analysis?

**Mervyn Benford:** That is ultimately an issue for the people of Scotland. Do they want the importance of rurality and sustainable rural communities, to which all aspects of educational provision contribute, to be a stated priority in a relevant piece of legislation? I am not sure that I am in the best position to advise people in Scotland on what to do. We have a presumption

against closure in England, and my opinion is that it is valid to have such a presumption made public in that way.

**Margaret Smith:** I represent an Edinburgh constituency that has what I refer to as a rural fringe—colleagues who represent large rural constituencies find that laughable. When it is proposed to close a small school in a village on the edge of a city, there are issues to do with transport and children's ability to take advantage of after-school facilities and so on.

The bill sets out three factors that must be considered in the context of a proposal to close a rural school. Are you happy that the approach will apply only to rural schools, or should such consideration be given to all proposals on school closure? In other words, whenever there is a proposal to close a school, should education authorities be required to consider viable alternatives, the impact on the community and issues to do with transport? I have experience of proposals to close three schools in my constituency, and it would have been appropriate to consider those factors in all three cases, although the schools could not by any stretch of the imagination be regarded as rural.

**Professor Kay:** I speak from experience, because I have lived in inner Edinburgh and in Glasgow. I have complete sympathy with the notion that in suburbs, and particularly in inner cities, the idea and role of community that is attached to a school can be critical.

In rural areas, for reasons of accessibility, cars are often regarded as essential. Issues of poverty can be similar in rural and inner-city areas, and in urban areas transport from one area to a school in another area can be even more difficult for parents. Distance can also be an issue, even if the proposed alternative school is geographically proximate. Many issues that pertain to rural areas impact on urban schools.

I give my personal opinion, which I have held for some time. This question has been a debate among those of us who deal with the rural schools issue: should we regard schools as schools per se rather than in the context of a rural/urban divide? My sympathies tend to be along those lines. Many issues that pertain to rural schools also pertain to urban schools—that is very much my personal opinion.

**Mervyn Benford:** We advise any small school that needs help—the school does not have to be a member of our organisation, according to our constitution. Schools usually need our help because they face closure. We have dealt with several urban schools in such a situation and we are currently dealing with a school in Cleckheaton in Yorkshire, in the Kirklees Council area. We

have had to say that the presumption against closure will not protect the school, which is sad. The extra considerations for rural schools for which the guidance provides do not apply to that school.

We regard that as unfortunate, because we are defending a model of education that we believe and argue should be available to any child. The model of education works in small schools, despite all the alleged disadvantages, such as small peer groups, not enough specialist teachers, old buildings, remoteness and so on. It works because it brings together young children's parents and teachers—two groups of people whom they trust and depend on, and love, almost. They know that both those groups of people are taking them in the same direction.

Small schools get parents and teachers on to the same wavelength very effectively. We now know enough about the outcomes of education to confirm the truth of what research has shown for many years: that up to 50 per cent of outcomes still reflect home background, for better or worse. The climate is changing, certainly in England, towards more consideration being given to the role of parents. Why not promote a model that is already successful in bringing together parents and teachers?

The smallest school model of all has existed in Canada and Australia for the past 50 to 60 years. If there is no school within 40 or 50 miles, some children have to be educated at home for their entire primary education. If there was anything wrong with that, and if small peer groups were disadvantageous, we would have a second-class cadre of citizen in those countries, but that is just not the case.

The evidence on the strength of the parent factor must begin to influence our provision in urban areas. That is why we are joining organisations—Human Scale Education, for example—that argue for small-scale provision in larger schools and for the provision of an urban village concept, whereby small units that are part of a larger organisation could work in a small locality, close to the streets where the children can walk and cycle from.

There are major changes that we could recommend and discuss in another forum about how education could be provided in urban areas in the future. Arguments are emerging in Wales, for example, regarding a complete new provision of services in rural areas. It is a package of services, within which education is just one. That is not for today's debate, but your question is important.

There are sustainable communities in urban areas. I came across an example of a first school in Norwich, which is quite a large city, where 67

per cent of the children were on free school meals and 58 per cent were from one-parent families. When it was proposed to amalgamate the school with the other first school in the area, there were significant issues for the community. The quality of work at the school, and the added value, had been very high. Its children and teachers were a community—there were just 100 pupils and four teachers. The parents and the local shops and so on were all part of the pupils' experience. The same factors apply.

We have been concerned to prevent the destruction of that model in rural areas. That is why the rural factor has needed special protection hitherto.

**Margaret Smith:** I am not sure whether you heard me ask earlier whether the grounds for ministerial call-in had been clearly stated. Do you think that it is correct to focus on whether the process has worked?

**Professor Kay:** In relation to school closures in Argyll and Bute, one of the issues that we considered was the possibility of judicial review. The call-in proposal has similarities to the principles of a judicial review, in that it concentrates on the process rather than on the content of the decision. To my mind, that is both a strength and a weakness. It is easier to identify weaknesses and failures in process. As has been well established in discussions on the policy background to the bill, second-guessing the decisions that are made by the council might be more difficult.

In that respect, I understand the emphasis on process. That approach might prevent bad process happening, although that does not guarantee that good decisions will be made. However, it is difficult to imagine it being possible to guarantee good decisions using any system that is resource light as far as the process itself is concerned.

Will the call-in proposal solve the problem? It will go a long way towards it. In a sense, if it works, it will not be used. Just having the call-in system should encourage councils to move towards good practice. It should be rather like the rule in cricket whereby someone is out if they hit the ball twice; I do not know whether any cricketer has been found out for that in recent years, but if the rule did not exist, the game of cricket would be rather different. It is to be hoped that having the call-in facility will change behaviour and encourage councils to adopt or move towards best practice. In that respect in particular, it is a good thing.

I wonder what would happen if the minister found against a council and forbade the process to go ahead. I suppose that the closest example we have in that context comes from the judicial review

process. A judicial review will not say that a decision was wrong. Rather, it will say that a decision was wrongly formulated and carried out, and that those who carried it out will go back and do things again. That could happen under the bill. A closure will not be prevented from going ahead; rather, a decision will be referred back. In principle, I see nothing to stop the council revisiting matters and doing things properly the second time. In that respect, the proposal may be regarded as a weakness, but it is an unavoidable weakness, which I would not overemphasise at this point.

Trying to identify what would happen after the event is difficult, but my feeling is that if a council is found to have failed, it would be difficult for it to revisit the decision in any reasonably close period of time, not just because of the decision itself, but because of the publicity surrounding it. That feeling is based on what has happened in cases that I have seen.

I am reasonably content with the facility, as much because of what it will prevent from happening as because of any investigation that will result from it.

**Mervyn Benford:** Call-in is certainly an improvement on what we have in England. A school's right to adjudication is constrained—it is not automatic—and the secretary of state is no longer involved. When that change came about, three or four years ago, the right to totally independent scrutiny of a decision was available only in certain situations in certain cases. Therefore, the proposal is important.

The bill outlines the grounds for call-in, which go beyond the question whether correct procedure has been followed. It states that a call-in notice may be issued if

"it appears ... that the education authority may have failed ... to take proper account of a material consideration".

If that stage is reached, people will no doubt complain that certain facts in the case have been ignored, mistreated or abused. It is not just a matter of the procedure perhaps not being followed. That is an important aspect of the bill.

**Margaret Smith:** The stage at which the minister calls in a proposal is the one stage in the process for which there is no timetable. Is that acceptable, given the potential complexities of some decisions?

**Professor Kay:** A finite time period may not be attached to that process because complex decisions may be involved. Things may depend on the circumstances of the case.

**Murdo Fraser (Mid Scotland and Fife) (Con):** At the start of our discussion, Professor Kay talked about the costs of excess capacity. That is a

crucial issue. In my experience of dealing with school closures, local authorities often use the costs of maintaining a small school to justify using the closure process. Professor Kay was forthright in his opinions on the matter, but I want to probe him a little further on it, because it is important.

I understand Professor Kay's point about the evidence that we received from the SPTC, which, if I remember correctly, he defined as "nonsense". I will play devil's advocate. I put to him a scenario in which there are two small rural schools with two teachers each. If those schools were merged, only three instead of four teachers might be needed, and not only a salary but the establishment costs of another building would be saved. Do you have the same view of that scenario as you have of the generality?

**Professor Kay:** I totally accept what you say, but the point is the starting point of excess capacity. Excess capacity in the school that is to be closed is not what really matters; what matters is whether there is spare capacity in the school to which the pupils will be moved.

The idea that excess capacity is a waste is a misrepresentation of the economics of closure, to put it bluntly. In closure document after closure document, we see that the real cost savings, as you imply, are to do with not the physical buildings—we have seen the figures on that—but the pupil teacher ratio or the number of teachers and the size of classes. Any financial implications of closure tend to revolve around that aspect. At that point, people can argue about the costs and benefits of closure, but the excess capacity issue is, to a large extent, a red herring. The financial impacts tend to revolve around human, rather than physical, factors.

12:15

**Murdo Fraser:** That is helpful. You referred to the written evidence from the SPTC. Many outsiders would regard the SPTC as an organisation that speaks with authority on education issues. Does it therefore concern you that the evidence from the SPTC might be prayed in aid by local authorities in closure processes?

**Professor Kay:** Yes. I examined the record on that recently. I respect the SPTC's right to promote its views on education matters, but it is not generally recognised that the majority of the SPTC funding is direct funding by councils. People think that it is a parent and teacher council but, in fact, councils directly fund the SPTC to a large extent. You might well wish to take up that matter with the SPTC representative when you interview them. It is therefore not surprising that the SPTC might see its role as promoting the interests of councils. However, that does not insulate the SPTC from

accusations that the points that it makes are not accurate.

**Murdo Fraser:** The SPTC's written submission talks about the social isolation of pupils in small rural schools, which, in its view, is a serious negative feature in the consideration of whether to maintain small schools. What is your view on that, Mr Benford?

**Mervyn Benford:** You said the words "in its view". Many of the arguments in proposals to close small schools are to do with the small peer groups. That is somebody's opinion—no evidence has ever been produced to show that children in small peer groups do less well. The proof of the pudding is in the eating, and we find that small school pupils in mixed age and ability groups, with few specialist teachers, in old buildings and with small peer groups are at the top of national performance figures. I urge you, as we urge anyone in such important forums, to take with a pinch of salt something that is said to be in someone's view and which is not anything other than an assumption. There is nothing in our evidence for which we cannot provide backing. The quality of the argument stems from the original information.

If I may, I will touch on finance. Our written submission refers to a French study of schools that were closed for more or less the same reasons as Murdo Fraser described—there might have been two schools close together, with two teachers in each and, by putting them together, one fewer teacher was needed. The study showed that, after 10 years, the cost of transport to the schools that were kept open was overtaking the costs of having kept the other schools open.

We believe that, in education, we should value highly the school close to home. For 15 years in my headship, I worked with infant children and junior children. It is really important that the school is near them. I remember one summer lunch time, an old lady of 80 popped in the door and said, "I'm Emma Clark, I used to come to the school." She looked round the small thatched classroom and said, "Isn't it small?" I had the same remark from a 15-year-old boy whom I had taught and who came back for a bingo evening in one of the classrooms. He looked in and said, "Cor—innit small?" That tells you that, at one stage, even that little two-teacher school was big to those children.

We underestimate the impression that is made on very small children by the sort of Piccadilly Circus environment that they are sometimes thrust into. We are talking about an educational model. I speak to you as someone who has engaged in inspection issues and debates about quality and so on. It is easy to look simplistically at just numbers—we can make three out of four—but we had evidence from the department last summer

that in England, only 5.4 per cent of all primary teachers work in schools that have 100 pupils or fewer. That is not an enormous sum from which we have to force every possible financial contraction. It is not an enormous sum that is draining away from the urban poor and the disadvantaged. In fact, evidence from America, and from Scotland's data on the performance of schools here, shows that the more disadvantaged a child is, the more small-scale provision benefits them.

**Murdo Fraser:** Given what you have said, and given the evidence that we have heard from the SPTC, does it concern you that we have here an organisation that is regarded as speaking with authority on educational matters, and which purports to speak for parents, but which, in its evidence, is simply making assertions that are not backed up by the facts?

**Professor Kay:** I am very concerned about that. Half of the office bearers of the SPTC are nominated by councils, and a significant number of its directors are nominated by councils. There is nothing wrong with that in principle. However, the impression is given that it represents the interests of parents and teachers, when in fact it seems to be representing the interests of larger schools in urban areas, and councils that might wish to have an argument made for larger schools, larger classes and possibly fewer teachers. That is a legitimate point of view, but it should be made clear that it is one point of view, which is not necessarily consistent with the interests of parents and teachers generally.

**Kenneth Gibson:** The important finding from the French study was that there was no educational gain from reducing the number of schools. I suppose that a lot of children were being driven to school rather than walking, so there are all sorts of other health and social aspects.

Do you have a different perspective on secondary schools as opposed to primary schools? I found it interesting that you talked about a small school being 100 pupils. There are schools in my constituency with 13, 17 and 24 pupils. Aileen Campbell went to a school with 16 pupils. I think that 100 pupils is quite big in a Scottish context, although I had 59 pupils in my primary class.

Obviously, the issue in secondary school is different from the issue in primary school because children go on to take highers, some of which, such as physics, chemistry and foreign languages, are quite specialised. Concerns have been drawn to my attention that sometimes pupils do not have access to the full range of higher subjects, which impacts on their career choice, on whether they go to university and, if they do, on which university they go to and so on. Given your experience,

should the bill approach primary and secondary schools differently, or does it all hold good for both sectors?

**Professor Kay:** One would take much of the emphasis of the bill as reflecting primary education. I cannot see any obvious direct impact on secondary education, although such an impact may well exist. I can appreciate and understand the emphasis on primary. For example, when I think about the involvement of pupils, I think of primary school pupils; obviously, it would be different at secondary school. I see the bill very much as relating to primary schools because that tends to be a contentious area, involving closures.

**Mervyn Benford:** We are finding that we have more secondary school members, and that the debate is being replicated for secondary schools. For example, all of the eight rural academy schools in Cumbria except one, in Appleby, are small secondary schools. They each have around 300 pupils—that is small by most definitions of secondary—and are at the top of national performance. That is also the case with Fairfield community school in Peterchurch, Herefordshire, and another Herefordshire school. In 2007, the Specialist Schools and Academies Trust analysed results from 2,500 specialist schools in England under three different criteria—straightforward academic results; most value added; and another factor that eludes me—and assigned schools into three categories based on achievement against those criteria. Only 25 of those 2,500 specialist schools were in all three categories, and the two Herefordshire schools were among them.

We believe that the issue of school size is rising up everyone's agenda, although that is perhaps more true of the political agenda than it is of the profession's agenda. The debate that took place a few years ago in Elgin, where parents particularly valued the existing small secondary schools, was replicated in Barrow last year, when the mayor of Barrow, who wanted to create a city academy by closing three small secondary schools, lost his seat. Human Scale Education has received £4 million from three major foundations to examine ways of helping large schools to work in small-scale groups, such as mini-schools, mini-groups and subject-based groups. We lobby all parties—we go to see whoever will see us. When we met the Conservatives, they showed us their policy booklet, in which they ask for smaller secondary schools. That might well creep into their manifesto for next year's elections.

We believe that small schools well address the other problems in society that I mentioned. The repair mechanism is always first applied to the secondary stage, because that is where the blood shows. People say that that is where we should make the repair, because that is where the

problems arise, but the repair needs to be made at the start, because that is where the process that leads to the damage, the failure and all the problems that we recognise in education starts. If we could only get children throughout the UK and around the world interested in education at an early age because their parents and their teachers tell them that it is worth while, that would be fantastic. We would take an awful lot of strain and pressure off the later end of the system.

The secondary issue is important. Small-scale schools have the same virtues at secondary level as they do at primary level. The heads of small secondary schools are making the same arguments about those benefits that we have been making in relation to primary schools for 30 years.

**Ken Macintosh:** This is an observation as much as a question. I was surprised by the line of questioning and Professor Kay's answers on the SPTC, in what was an otherwise strong presentation. Indeed, the evidence of both our witnesses has been strong, and their submissions are strong, too. The committee is not used to having witnesses undermine the integrity of other witnesses. I do not particularly want to get into a tit for tat next week, so I would prefer us to concentrate on the arguments rather than undermine the standing of other witnesses. I prefaced my remarks much earlier in the session by saying that I did not find the SPTC's argument particularly convincing. I said that before Professor Kay's recent comments about the SPTC. I wonder whether he might want to rethink those remarks.

**Professor Kay:** I do not need to revisit my remarks, because they were quite clear. It is quite legitimate for the SPTC to make the points that it has made. I think that the point that I made about funding is a legitimate point to make. I have looked at the SPTC's annual reports and, as far as I can make out, my understanding is that the majority of its funding comes from councils. That can be checked. It is certainly the case that a substantial proportion of its funding comes from councils.

The other point that I would make in this context is that, as has been observed, the SPTC makes unsupported assertions, which conflict with observations and research that is validated, secure and robust. It is that aspect that concerns me. The SPTC is a very public body that writes to newspapers and issues press releases. It is a highly effective funded lobbying organisation. In that respect, it is entirely legitimate first that its remarks are scrutinised and secondly that the issue of on whose behalf it speaks is addressed. Therefore, I do not wish to retract anything that I said; indeed, I would defend what I said.

**Mervyn Benford:** I cannot comment on the Scottish context, but I can say that, in January 2008, when there was a major scare about

closures across Wales and England, the major parents organisation in England, the National Confederation of Parent Teacher Associations, which is an independent body, made a statement in support of small schools.

**Ken Macintosh:** I will just add that members of the committee are quite capable of making their minds up on evidence and arguments without having their attention drawn, in quite pejorative terms, to the status of other witnesses.

**The Convener:** I note your comments, Mr Macintosh, as I am sure that other members of the committee will do.

That concludes our questions to the witnesses, whom I thank for their attendance. We will now move into private session to discuss our approach to stage 1 of the bill. I suspend the meeting to allow our witnesses to leave and the gallery to be cleared.

12:30

*Meeting continued in private until 12:51.*

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