The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 15 January 2013

Session 4

Tuesday 15 January 2013

CONTENTS

EDUCATION AND CULTURE COMMITTEE

1st Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Clare Adamson (Central Scotland) (SNP)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Neil Bibby (West Scotland) (Lab)
*Joan McAlpine (South Scotland) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Col Baird (Scottish Government)
Michael Cross (Scottish Government)
Gavin Gray (Scottish Government)
Ailsa Heine (Scottish Government)
Danielle Hennessy (Scottish Government)
Hugh McNaughtan (Children's Panel Chairmen's Group)
Bernadette Monaghan (Children's Hearings Scotland)
Barbara Reid (Children's Hearings Training Unit)
Malcolm Schaffer (Scottish Children's Reporter Administration)
Tracey Slaven (Scottish Government)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 1

Scottish Parliament

Education and Culture Committee

Tuesday 15 January 2013

[The Convener *opened the meeting at 10:03*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): I welcome members to the first formal meeting of the Education and Culture Committee in 2013. Although this is our first formal meeting, I point out that committee members have already undertaken three informal visits as part of our forthcoming inquiry.

I remind members and people in the gallery to ensure that all electronic devices are switched off at all times because they interfere with the sound system. As a slight change, I welcome to the meeting Oliver Crowe, who has won a Young Scot award and is attending this morning as part of his prize. I hope that you have an enjoyable day at the Parliament, Oliver.

The first item is consideration of whether to take in private item 5. Are members agreed?

Members *indicated agreement.*

Post-16 Education (Scotland) Bill: Stage 1

10:04

The Convener: Agenda item 2 is our first oral evidence on the Post-16 Education (Scotland) Bill, which was introduced last November. I welcome Michael Cross, Col Baird, Gavin Gray, Ailsa Heine, Danielle Hennessy and Tracey Slaven, who are all officials with the Scottish Government. Our purpose is to get a factual update on what the bill will mean in practice. The committee will, of course, separately take evidence from the Cabinet Secretary for Education and Lifelong Learning at a later meeting. I invite the officials to make a brief opening statement.

Michael Cross (Scottish Government): Thank you very much indeed for inviting us today to discuss the bill. I make it clear that my responsibilities include the college regionalisation project, and I also have general oversight of the bill.

I know that members are familiar with the bill's content, and I want to explore its detail in discussion, so I will not take up much time with this statement. However, I thought that it would be helpful, to inform discussion, to set out in no more than five minutes the context in which the bill sits and to give a brief overview of its six key areas.

The first key area is college regionalisation, which clearly forms the most substantial part of the bill. It is, self-evidently, a central element of our wider college reform programme, which is well under way. The bill is not needed to deliver college mergers or the significant efficiency savings that the Scottish Further and Higher Education Funding Council expects institutions to realise, but it will establish a new approach to college governance in supporting the new regional structures and reflecting the different approaches that colleges are taking in the regions.

The bill will also deliver ministers' ambition for greater diversity in college and regional boards, which will help them to achieve their aims and build links across their communities. The proposed new arrangements for boards' constitutions and appointments will improve public accountability by clarifying what is expected of college boards and their members. It will do so in the context of the existing arrangements for clear accountability for funding and the new regional outcome agreements.

For example, the new provisions for removal of college board members set out clearly the matters for which board members will be held responsible. In doing so, the provisions respond directly to the

views that were expressed in Professor Russel Griggs's independent "Report of the Review of Further Education Governance in Scotland", which was published last January. Professor Griggs noted in the report that one reason why the current governance model is not working as it might is the lack of clarity available to boards.

The second area is higher education governance. The bill will be a significant step in implementing Professor von Prondzynski's recommendations—specifically, by supporting the adoption of the new code of governance, which the HE sector is developing. The provision is based on striking the right balance between recognising the responsible autonomy of the independent institutions in the HE sector and the need to ensure that there is in place appropriate assurance that is consistent with substantial public investment.

The third area is the new provision on widening access to higher education, for which there is broad consensus on the need for further progress. The bill supports an approach that has been adopted in recent years and which is based on developing individual access agreements with institutions, and it provides that ministers—when, in turn, they provide funds to the Scottish funding council—can require the SFC to consider institutions' delivery against widening access agreements that they have concluded.

Fourthly, the bill will introduce a new power to ensure that the SFC can proactively review the structure and provision of fundable further and higher education. The SFC already has a duty to exercise its functions for the purpose of securing coherent provision, but the bill provides a more explicit mechanism to conduct a review of the overall delivery landscape. That will give the SFC a clearer remit to use the evidence that it has available to it to ensure that the structures that we fund operate as effectively as possible.

The new power will not change our sustained relationships with institutions on matters of autonomy or academic freedom and it will not give ministers new powers to dictate what universities or colleges teach, or to force institutions to merge. However, provided that it secures ministers' consent, it would give the Scottish funding council a clearer mandate to discuss with institutions evidence of, for example, unnecessary duplication that is to the detriment of learners and wider public investment.

The penultimate area is the provisions on tuition fees, in respect of which the committee is well versed in the arguments that apply and aware that a voluntary agreement is already in place. The bill simply aims to give ministers powers to set an upper limit by order and, when providing funding to the Scottish Funding Council, to impose conditions that ensure that institutions adhere to that upper limit.

The final area is data sharing. The bill provides for ministerial powers to develop secondary legislation that will specify the bodies that will be required to share data with Skills Development Scotland and set out the information that needs to be shared. The background is that, for some years, Skills Development Scotland has operated a database that allows staff to target their activity at young people at risk. The bill's provisions would allow more consistency in information sharing, which will better enable SDS staff to identify those who are in need of help, and allow it to offer the right intervention to help those young people to re-engage in learning.

I hope that that is a helpful overview that sets the context for our discussion of the bill's provisions. We are, of course, happy to take any questions. I have with me the colleagues who are working on the detail of each of the policy areas that I have described, and our legal advisor. The appropriate experts will pick up members' questions, so I will make it clear who does what because that might help the committee. Tracey Slaven leads on higher education; Danielle Hennessy and Col Baird are the policy experts on college governance; Gavin Gray is the bill team leader, with responsibility for general matters relating to the bill; and, of course, Ailsa Heine is our legal officer. We are now in your hands, convener.

The Convener: Thank you very much. That was an extremely helpful opening statement. I will take the bill section by section—although not necessarily in the order that they are in in the bill. We will begin with university governance. I ask members to indicate when they wish to come in, but we will keep questions to one section at a time before we move on.

Liz Smith (Mid Scotland and Fife) (Con): What are the definitions of governance and management in relation to the university sector?

Tracey Slaven (Scottish Government): The focus when we were working on that area of the bill was on governance and strategic management. We have no interest in telling universities how to organise their academic management or how they run the university body. The phraseology in the bill refers to governance and management. Discussion with the sector has indicated that the focus on strategic management may have some unintended consequences and that that has gone slightly wider than we anticipated. We are therefore happy to talk with the sector about the detail of that as we get to stage 2.

Liz Smith: The policy memorandum says:

"Ministers expect that the SFC will have regard to ensuring that such governance conditions are applied appropriately for different types of institution."

Is it your expectation that that will be to do with governance or might it, because of the wider possible definitions that you have described, also affect management?

Tracey Slaven: Our interest is absolutely in governance. However, that flips into some strategic management issues, such as when the secretary of a chair of court has management responsibilities. We want to define clearly their governance and management responsibilities in the code. We are interested in that strategic level of management, but have no further interest.

Liz Smith: I would like clarification. Universities have been putting together—as requested by the Cabinet Secretary for Education and Lifelong Learning—a code of governance, to which I hope they will all sign up. Is it your understanding that that code will be agreed with the university sector and that the existing United Kingdom code will no longer apply when the bill is passed?

Tracey Slaven: Yes. It is intended—as is clear in the policy memorandum—that the document in which we will seek to provide best practice in governance will be the Scottish code of good governance. That will be the specific reference point for Scottish institutions.

Liz Smith: Does the code, as it is being drawn up, refer to "management"?

Tracey Slaven: The code is at an early drafting stage. I do not expect it to be running into detail on management of organisations.

Liz Smith: You said that, if management was to be discussed, it would be at strategic level. Will you give us examples of how that might happen?

10:15

Tracey Slaven: The best example would be the secretary to the university court who is responsible to the court for its operation, but who also has management responsibility within the institution. Clarity about potential conflict between the university-secretary role and the managerial role would come at strategic level.

Liz Smith: Is that it?

Tracey Slaven: The provision is about strategic issues of that kind, and nothing more detailed than that.

Liz Smith: Do you mean that there is no more detail at present?

Tracey Slaven: No. I mean that our interest does not extend beyond strategic issues of that kind.

The Convener: You said that the code of governance is at an early stage of development. Does that mean that you do not expect it to develop into areas other than the narrowly focused ones that we are discussing?

Tracey Slaven: I do not expect it to develop into other areas. The code's development is being led by a working group under Lord Smith, which has been put in place by the chairs of court. The conversations that pre-empted the group's establishment were very much focused on governance, and the group is focusing on how to implement the HE governance review, in addition to aligning with the elements of the UK code that it is sensible to take forward.

To clarify the timing, we expect that Lord Smith will submit his draft report to the chairs group around the end of March, so it will be available as we move into stage 2 of the bill.

The Convener: I am sorry—I did not catch that last bit. Did you say that a draft of the code will be available before stage 2?

Tracey Slaven: That is my understanding of the timetable to which Lord Smith is working.

The Convener: I will move on to a slightly different question on the same matter. If, once the code has laid down the principles of good governance and management, an institution fails to comply with it, what sanctions would be appropriate?

Tracey Slaven: We need to be clear that such matters would be part of an holistic assessment of the institution's performance by the Scottish funding council. The assessment would concern the institution's future funding and would be about ensuring that it represents good value for public investment. Adherence to the code would be one of a number of elements that the funding council would review in making that assessment.

Other elements will include compliance with consolidation limits for filling funded places. The agreements on widening access fall into the same category.

The Convener: Are you saying that if, for example, a higher education institution complied with the widening access agreements and all other matters but completely failed to comply with the code of good governance, there could be no sanctions?

Tracey Slaven: That would depend very much on the assessment. If there was a complete failure to operate to any standards of good governance, action would obviously need to be taken. If it was a matter of the institution failing to comply with, for instance, an element of the code of good governance because that university's particular circumstances meant that there was a strong

justification for why a different approach had been taken, that might justify taking no action in the immediate future, provided that there was a commitment to move forward.

The Convener: I can understand why, if there were sound justifications for a different approach, you would not take action. That is perfectly reasonable. However, if an institution said that it did not agree with the code and simply did not wish to comply with it but the rest of its operations were perfectly satisfactory, would sanctions be taken or not?

Tracey Slaven: In those circumstances, the funding council might well decide to impact on the future funding of that institution.

The Convener: When you say that the funding council could

"impact on the future funding",

do you mean that its money could be reduced?

Tracey Slaven: Yes.

The Convener: Right. I just wanted to be clear about that.

Do other members have questions on university governance?

Neil Findlay (Lothian) (Lab): I have a question—just to make sure that I have got this right. We are referring to a management code that we cannot see, but are being asked to scrutinise it.

Tracey Slaven: That is correct. The draft code is under development. A process of strong and detailed consultation is under way with all higher education institutions throughout the country and their staff and students. As I said, the draft should be ready to go from Lord Smith to the chairs of court group at the end of March, so the initial documentation will be available as we go into stage 2. The timing of that development is the reason why the bill as currently drafted refers to generalities, although our intention is made clear in the policy memorandum.

Neil Findlay: This is a general question that is not for anyone in particular. Is it unusual that we are being asked to scrutinise proposed legislation that is, in effect, incomplete?

The Convener: Does any member of the panel have a view on that?

Ailsa Heine (Scottish Government): I would not say that the bill is "incomplete". The provision gives ministers power to impose conditions in relation to governance or management,

"which appear to ... constitute good practice".

If, for some reason, the code does not appear to ministers to constitute good practice—for example, if it is not developed fully or if ministers decide that another standard can be used—it need not be used to set the conditions. Therefore, I would not say that the bill is "incomplete", because it simply gives ministers the power to impose conditions and to set a standard that they consider to be appropriate. As Tracey Slaven said, the current intention is that the code of good governance will be used, but ministers' intentions may change if that code does not come to fruition, or for some other reason.

Neil Findlay: I will ask the question in a different way. Would it be helpful if members had seen, or were to see, the code of good governance?

Ailsa Heine: As I said, at the moment, the policy intention is that the code will be used but, under the bill, it is not the only standard that ministers could use. So, from a policy point of view—

The Convener: I am sorry to interrupt, but I want to ask the question in a slightly different way. What is Parliament's role in relation to the code?

Ailsa Heine: At the moment, Parliament has no role in terms of looking at the code.

The Convener: There is no role for Parliament; the matter is entirely for ministers to decide.

Ailsa Heine: Yes. Under the bill, it is for ministers to determine what they consider to be the standards of good practice.

Liz Smith: I am sorry to persist, but I want to clarify the relationship between the UK code, Lord Smith's changes that you expect in March, and the Scottish code. I ask again: will the Scottish code stand on its own and is it about governance and management?

Tracey Slaven: The Scottish code will stand on its own. I anticipate that it will include elements that are in the current UK code and which our Scottish institutions have comprehensively agreed as being best practice. The code will also address further steps forward in governance best practice that were identified in the HE governance review. The focus of the code will be governance.

Liz Smith: What specific issues would you like guidance on in relation to the UK code before the Scottish code is finalised?

Tracey Slaven: I am not looking for guidance on any elements of the UK code; I simply expect the Scottish code to carry forward parts of the UK code that are not areas of debate in the Scottish HE governance review.

Liz Smith: So, why cannot we progress more quickly?

Tracey Slaven: The issue with the Scottish code relates to the development of the facets that

were identified in the governance review. In the absence of the code or in the event of any delay in that respect, ministers will be able to adopt the United Kingdom code as the standard of best practice until the new Scottish code is ready.

The Convener: I have a final question on university governance. The policy memorandum states that

"governance conditions"

should be

"applied appropriately for different types of institution."

What do you mean by "applied appropriately"?

Tracey Slaven: The Scottish HE sector has 19 higher education institutions that vary hugely in scale, and the flexibility that you have highlighted will serve to reflect those differences in scale and the organisations' missions. Best practice in governance with regard to membership of a court, for example, might differ slightly between, say, Glasgow School of Art and the University of Edinburgh, so the code will have to be flexible to deal with the scale and nature of bodies. We want to ensure that flexibility is built into the code instead of having a kind of "comply or explain" approach in many different areas.

The Convener: Thank you very much.

Clare Adamson has questions about section 3, on widening access to higher education.

Clare Adamson (Central Scotland) (SNP): Good morning. Some HEIs have indicated that they will use the Scottish index of multiple deprivation to determine criteria for widening access. What other information might be taken into account in identifying people who might be from disadvantaged backgrounds but who do not necessarily fall into that specific category?

Secondly, on funding, although the policy memorandum states that

"Improving participation among the most disadvantaged is not about displacing more able students",

the financial memorandum says that

"There would be no new or additional budget required for widening access activity as a result of the Bill."

Given those statements, how will displacement be avoided?

Tracey Slaven: I will answer the questions on widening access.

The bill talks about widening access in relation to socioeconomic characteristics. In the widening access agreements that have been developed voluntarily between the institutions and the funding council, the focus has been on the lowest 20 per cent and the lowest 40 per cent in the index of multiple deprivation. However, the issue is not simply about the number of individuals in those categories, but about ensuring equality of access across the range of subject areas. In other words, if the participation rates by those groups were found to be lower in particular subject areas, that might well be identified in an individual institution's widening access agreement.

There is also the potential for individual institutions to focus on particular geographies. A good example is the provision that is being developed by the University of Glasgow and the University of the West of Scotland on the Crichton site in Dumfries in order to recognise the combination of low socioeconomic and geographic participation rates. It is not simply a case of saying, "Well, because you fall into this or that category, you'll get some kind of advantage."

We are absolutely clear that the approach is not about displacing students of higher ability. Instead, we are trying to create a level playing field to ensure that students' ability can be fully recognised. We are not seeking simply to adjust individual institutions' entrance qualifications; this is a much more complex and sophisticated full-system approach.

We recognise that schools and parents have to be supported to help raise aspiration, motivation and qualifications, but it is also for the universities to look at more sophisticated ways of assessing ability, rather than just doing so through individual exam results. The top-up scheme at the University of Glasgow requires students to demonstrate capacity and ability before they are given an offer that would in any way deviate from the standard offer that the university would make.

10:30

George Adam (Paisley) (SNP): I have a question on the same subject. In Paisley, in my constituency, UWS has a large demographic of people from various backgrounds—the 19 institutions that you mentioned are not all the same. The media tends to go just for St Andrews and mentions it all the time as an example, but the UWS's situation is that, because it has a broad spectrum, retention is the problem. The issue is not just of getting people into higher education but of retaining them because the challenges those people face remain throughout their time at university. Are we doing anything on that?

Tracey Slaven: The widening access agreement will cover that scope. It is not simply about a target for the number of individuals from a category; it is about making sure that we increasingly focus on the outcomes for those individuals. Therefore, the focus in the widening access agreement for the UWS may well—and probably should—relate to retention levels and

making sure that the individuals are best suited to the courses that they are on. In other areas, the issue will be about changing the number of individuals at the access level. In some other instances, it may be about focusing on articulation: making sure that the right arrangements are in place for students who choose a vocational route and need access in third year.

George Adam: When you answered one of Clare Adamson's questions, you spoke about a more accessible way of assessment. One of the things that the public always complain about—again, this is media led—is the idea that people with fewer academic qualifications will get preference over others. How would a more accessible way of assessment work? Would it be part of the universities' agreements?

Tracey Slaven: It absolutely will be part of the individual widening access agreements. Glasgow has its top-up scheme and the University of Edinburgh is moving to develop bursaries to encourage students from other areas and lower-income households to consider Edinburgh as an option. A number of institutions are establishing summer schools to take in students who perhaps have not had experience of higher education, in order to make institutions appear accessible and to support those students in demonstrating their capability and capacity. That work will be very much part of individual institution plans to address individual access issues, rather than there being a one-size-fits-all solution.

Liz Smith: I have a very simple question. Can you direct us to the parts of the bill that you feel can provide additional benefits on which the universities are not already undertaking work without legislation?

Tracey Slaven: The statutory basis for widening access agreements will take us a significant step further. The progress on widening access has been relatively slow—we have had something like a 1 per cent improvement over the past nine years. The discussion about widening access on a statutory basis has made substantial progress in the past 12 months as we have discussed it with the sector, and that underlines the need to provide a statutory basis for the widening access agreements—to get the step change that we are looking for.

Neil Bibby (West Scotland) (Lab): I want to follow up on Clare Adamson's question. Without new moneys for universities for widening access activity, how will you increase the number of students from disadvantaged backgrounds and not displace any other students?

Tracey Slaven: Access to university has been and will continue to be competitive. We are trying to level the playing field so that it is based on equal access with regard to academic ability. That is slightly different from access based simply on higher and advanced higher results, as under the current circumstances. This is about putting competition on a more level playing field.

On there being no additional money for widening access, we are operating within the spending review settlement. However, we took the opportunity before Christmas to use the funding council's flexibility within the budget settlement to identify agreements with individual institutions about increasing places that could be specifically allocated for widening access, and to support articulation of students into year 3.

Neil Bibby: I refer to George Adam's point about retention. I take it that there will be no additional moneys to provide additional financial support to students from disadvantaged backgrounds.

Tracey Slaven: The changes to the student support package that were announced on 22 August last year are designed to help support students from disadvantaged backgrounds by meeting the £7,000 minimum income guarantee through a combination of student loans and bursaries. The package also provides support for middle-income families by providing an increase in the non-income-assessed student loan of up to £4,500 per student per annum. There is no requirement on a student to take that, but the flexibility exists if they need to draw on those resources.

Neil Bibby: But apart from that, there are no plans for additional finances to help students in the bill.

Tracey Slaven: Not in the bill—no. Those announcements were made last summer.

Liam McArthur (Orkney Islands) (LD): My question is on a similar theme. You rightly pointed out that different institutions are taking different approaches—which is sensible—but you also talked about levelling the playing field. For the financial reasons that you have articulated, it is difficult to see how there will not be a displacement effect.

The levelling of the playing field presumably means that there will be a more sophisticated interpretation of qualifications and wider capabilities and aptitudes, but it leads me—and, I think, many people—to assume that, given the competition for places, some people who are accessing courses on the basis of the way in which the system works at present will not be able to secure places under the provisions in the bill. Is that a fair assessment?

Tracey Slaven: As I said, access to university is competitive. What we are trying to do is to place

that competition on the fairest possible basis. Some potential students who hope to get access to university will not do so, but we are trying to put competition on the fairest possible basis and look properly at the ability to learn and contribute.

Liam McArthur: There is a trade-off, in a sense, between fairness and an element of displacement.

Tracey Slaven: Yes.

The Convener: I have a couple of questions. First, will you explain to the committee the relationship between the future widening access agreements, which will be statutory, and the outcome agreements, which are non-statutory? How will they work together?

Tracey Slaven: The issue is primarily about efficiency and good relationships between the funding council and the individual institutions. The outcome agreements will focus on a number of strategic issues that are likely to change and develop over time. The current focus is on knowledge exchange and some issues around coherence.

The widening access agreement will sit within that and will have a statutory basis. It will be a separate section of the outcome agreement, and it will operate in parallel with the development of the outcome agreement, simply because it would not be sensible for the funding council to have multiple conversations separately about the different issues.

The statutory footing for widening access reflects the importance of making progress on the issue and the longevity with which it will need to be addressed by the sector.

The Convener: In effect, widening access agreements will be a subset of outcome agreements.

Tracey Slaven: No—the widening access agreement will be a widening access agreement. The conversation will sit within the outcome agreement and they will be published together, but to describe widening access agreements as a subset suggests a prioritisation that is certainly not implied by the policy.

The Convener: Let me move on to the slightly different issue of consequences, which I asked about earlier. If a higher education institution does not comply with its widening access agreement or in some way fails to reach its target, what will be the consequences?

Under section 3 of the bill, new section 9B(2) of the Further and Higher Education (Scotland) Act 2005 will provide that:

"The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify."

Therefore, if ministers impose a widening access agreement as a condition, the higher education institution must comply with it. Given that statutory underpinning, what will be the consequences of an institution failing to meet its widening access agreement targets?

Tracey Slaven: The consequences would be in terms of the institution's future funding from the Scottish funding council. However, I would not expect to see significant failures against the widening access agreements because, although ministers will specify the existence of such agreements and the general form that they should take, each widening access agreement will be developed between the institution and the funding council. The institution should clearly express its intent on both the targets that it intends to reach and the actions and behaviours that it will demonstrate in achieving them, so there should be clarity on how the widening access targets will be reached as well as what the targets are.

Liam McArthur: I have a follow-up question. Is there not a risk that the system of penalties may make it more difficult for individual institutions to achieve the targets in their widening access agreement? We all assume that achieving those sorts of objectives is likely to take up more rather than less resource, so the risk is that we could end up in a downward spiral in which institutions are punished for not meeting their targets and therefore have fewer resources to meet their targets in future.

Tracey Slaven: We are operating on the basis that we would not want to see penalties imposed, and the process includes both a carrot and a stick, if you like.

As I described earlier, additional places are being provided within the current financial settlement and some of those are for widening access, so additional headroom is being created for individual institutions that have expressed difficulty about taking things forward. We are trying to be balanced in our approach, but we very much want to see progress. We think that the institutions are committed to widening access, and the statutory approach provides a strong basis for that going forward.

Liam McArthur: With the statutory basis having been put in place, it would be difficult to ignore examples of where the targets are not met, so we could be locked into a process whereby institutions that are struggling to make their targets end up in a downward spiral in which they have fewer resources to meet the requirements that are imposed on them.

Tracey Slaven: We are very clear that we are not designing a system that is intended to make institutions fail. The institutions will be directly involved—in fact, they will lead the process in setting their targets—and they can bid for the additional places that will be provided to help support them in doing that. The application of penalties will be a last resort where the process has not worked.

The Convener: I have a final question on widening access. You mentioned that we are not designing a system that will cause institutions to fail on widening access, but can you explain further—I know that you have mentioned this briefly already—how exactly the agreements are negotiated? I presume that the higher education institutions contribute to the process. Can you lay out what that process is?

Tracey Slaven: For the process of developing the widening access agreements and the outcome agreements that they sit alongside, a lead within the Scottish funding council has responsibility for the relationship with the institution to ensure that the funding council understands the context and the broader strategic objectives of the institution.

There will be a team at the individual institution who have responsibility for the outcome and widening access agreements and who will draft the agreement. The writing of the agreement is undertaken by the institutions and signed off by the university court. The process is very much designed to support the universities in moving towards improving and widening access.

The Convener: Thank you. We move on to talk about college regionalisation within the bill. The first question is from Colin Beattie.

10:45

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am really looking for a bit of clarification. As I understand it, the regional strategic bodies will take charge of the funding from SFC for the colleges for which they are responsible. How is that going to work? Will the colleges make bids to the regional strategic body for funding? If so, does the regional strategic body receive support from the SFC? How will that work?

Danielle Hennessy (Scottish Government): At the outset, the hierarchy of funding will be as it is at the moment. The Scottish Government will apportion funding to the Scottish funding council and give policy direction in relation to that. The funding council will then distribute that funding to the regional strategic body.

A regional strategic body has a planning function, and the colleges that are assigned to the body must have regard to its plan. The distribution of funding will therefore come through the discharge of that planning function. It will not be a bidding process.

Colin Beattie: So the colleges will make their bid for funding through the regional strategic body, which gets funded and then disburses that money.

Danielle Hennessy: There is no bidding process. In establishing its plan for the region, the regional strategic body must take account of how the funding has to be apportioned across the colleges in that region.

Colin Beattie: Therefore, there will be a discussion between the regional strategic body and individual colleges: they will put their heads together and hopefully come up with what they need and what they will get, and then they will apply to the SFC. Is that right?

Danielle Hennessy: There is no bidding process between the regional strategic body and the Scottish funding council. The Scottish funding council will apportion funding to the regional strategic body based on its overall financial settlement and policy direction from the Scottish Government.

Colin Beattie: So the SFC funds the regional strategic body on the basis of what it perceives to be the need of the colleges and then the colleges, together with the regional strategic body, will decide how to cut that cake. Tell me if I am off on the wrong track here.

Michael Cross: The Scottish funding council, in line with its settlement for the college sector, makes funding available across the country. In the areas that have a regional strategic body, it will make its funding available to that body. The regional strategic body will have agreed a delivery plan that reflects the outcome agreement with its constituent colleges, if I can put it that way. Those colleges will take their funding from the regional strategic body.

Colin Beattie: I want to ask another question but, before I do, I seek more clarification. What is the difference between an incorporated and unincorporated college?

Col Baird (Scottish Government): An incorporated college has a board of management under the Further and Higher Education (Scotland) Act 1992, but a non-incorporated college does not.

Colin Beattie: My understanding is that the regional strategic bodies will have a role in making certain appointments to the boards. For which appointments to the boards will it be responsible?

Danielle Hennessy: Only regional boards will have those appointment powers. They will appoint the boards of the colleges that are assigned to them.

Col Baird: The regional strategic bodies will be able to make appointments to the boards of incorporated colleges. The appointments they make will effectively be the chair and all the ordinary members of the college board, such as the members who are not the staff member or the student member.

Colin Beattie: They cannot appoint the staff member or the student member.

Col Baird: That is correct.

Colin Beattie: But they will be able to appoint everyone else.

Col Baird: Yes.

Colin Beattie: Is a process for that being put in place?

Col Baird: The intention is that the ministers will issue guidance to the regional strategic body on the experience and background of the sort of people whom it should appoint and on the process for that appointment. Professor Griggs's review recommended that public appointments be open and transparent, and the intention is that the guidance will outline that such a process should be adopted. In other words, it would be a competitive process, in general.

Colin Beattie: The appointment would be advertised; it would not just be arbitrary.

Col Baird: That is correct.

Liam McArthur: I want to follow up on a couple of those points; I also have a couple of separate questions.

In his opening remarks, Michael Cross referred to the role that the SFC would have in removing unnecessary duplication, which I presume it would exercise across a region. There is something that I am struggling to understand. If a regional strategic body takes a view on the provision in that region, I presume that it will have already gone through the process of determining what provision is necessary and what provision is less necessary. Therefore, the funding council will, I presume, have less of a role in such decisions than it has had up until now. Is that right?

Michael Cross: You are absolutely right. In my opening remarks, I think that I was trying to make clear how the funding council might take a role in relation to the proposed duty on a strategic review of provision, as opposed to the exercise of dispersing funding to regions as part of the annual allocation of funding.

Liam McArthur: That is helpful.

In terms of the University of the Highlands and Islands—

The Convener: Are you moving on to a different subject? A couple of members have questions on the previous topic.

Liam McArthur: That is fine.

The Convener: We will come back to you.

Liz Smith: I have a question for Ms Hennessy. There is no bidding process—I understand that. Could you be very specific about the criteria that will be used to accord funding to the colleges within the regional set-up?

Danielle Hennessy: Nothing is proposed in the bill to specify any such criteria. The establishment of such criteria would be a policy and operational matter as the bill came into force.

Liz Smith: How does that affect accountability when it comes to the regional board?

Danielle Hennessy: In what respect?

Liz Smith: If the regional board is accountable for the decision on how to spend public money on the different colleges in its region, can you tell us a bit about how that accountability will be measured?

Danielle Hennessy: The accountability hierarchy is as it is now, as I think that I said earlier. The funding flows from Government to the funding council and then to a regional college if it is a single-college region or, if it is a region with multiple colleges, to a regional strategic body and then on to the colleges to which it has been assigned. The accountability flows up and down in that way. Through the funding council, it flows back to Parliament.

Liz Smith: There is no legislative accountability of the individual colleges in a region. Is that correct?

Danielle Hennessy: The accountability operates within the hierarchy that I have described.

Liz Smith: So there is no public accountability of those colleges in the context of the bill.

Danielle Hennessy: I suggest that the public accountability comes through the boards' accountability. As you may have noted, the bill proposes an extension of the grounds for removal of board members. In doing so, it makes clear what is expected of them as regards the proper running of colleges. The greater clarity on the expectations of the role board members provides improved public accountability.

Liz Smith: Will the members of the regional board include people who are accountable in terms of their own colleges?

Danielle Hennessy: I am not quite clear—

Liz Smith: Will some members of the regional board be assigned by individual colleges in the region?

Danielle Hennessy: There is no such specification of the board membership.

Liz Smith: So there is no public accountability in the bill in that regard.

Danielle Hennessy: Not in the terms that you suggest.

Michael Cross: The bill does not provide for—again, forgive me for using this term—constituent colleges to assign members of their boards or others to the regional board.

Neil Findlay: Would the staff and student appointments go through the public appointments system to be endorsed by the minister?

Col Baird: No, there would be no need for ministerial endorsement of those appointments. The student member in, say, a regional college would be entirely a matter for the student association and, like the provisions just now, the staff members will be elected by staff in the college—that will not change.

Neil Findlay: That is for election to the regional board.

Col Baird: It is the same for the regional board. There would be only a slight difference in student numbers if there were more colleges than places, but generally it will be students nominated by the student association or staff members elected by staff.

Neil Findlay: So there is no provision in the bill for us to stipulate that there will be elections for those posts.

Col Baird: There would be elections for staff members in the new set-up as there is in the current process.

Neil Findlay: Is that stipulated?

Col Baird: Yes.

Neil Findlay: That is fine.

Liam McArthur: I will follow on from that theme and perhaps go back to the one that I was going to raise previously.

On the powers of removal, Danielle Hennessy said that the bill provides more clarity on the terms under which removal can happen. To what extent is the bill extending ministerial powers to remove either chairs or members of the incorporated colleges or regional boards?

Danielle Hennessy: The bill proposes an extension of the grounds for removal of board members. It proposes extending existing mismanagement grounds to grounds that, if you like, pertain more to a failure in outcome. An example of that would be failure to deliver education of an appropriate standard.

Liam McArthur: Are you comfortable that failure is fairly tightly defined and that we will not end up with a failure to see eye to eye with the minister being a reason for either a chair or a board member being removed?

Danielle Hennessy: The criteria are absolutely specified in the bill and are additional to the existing mismanagement grounds.

Liam McArthur: I appreciate that a distinction is made for the Highlands and Islands. I welcome that approach and, indeed, the undertakings that the cabinet secretary has given in relation to non-incorporated colleges, a number of which are to be found in the Highlands and Islands.

I am aware, though, that there are concerns about having a regional strategic body in the Highlands and Islands, as it appears to create a level of duplication that might have a knock-on impact on the funding that finds its way down to the constituent colleges in the region. Can you explain the rationale for the make-up in the Highlands and Islands?

Col Baird: Unlike the other regions in which there will be more than one college, the Highlands and Islands will have the University of the Highlands and Islands—a higher education institution—as the regional strategic body. For comparison, Glasgow will have a new legal entity in the form of the Glasgow regional board.

The reason for the difference in the Highlands and Islands is that UHI already exists. Colleges in the region deliver higher education as an academic partner of UHI, and ministers felt that, given the institution's existence, there is an opportunity to enable it to be a more truly tertiary institution by giving it—in effect, although there are some differences—the regional board functions that the Glasgow regional board will have.

Liam McArthur: Does a separate regional strategic body need to be established? Is it not simply possible to recognise, as you say, that UHI currently exists and therefore to deal with it as the strategic body and the filter through which the funding goes?

Col Baird: That is what the bill does: it designates UHI as a regional strategic body; it does not create in UHI a separate entity called a regional strategic body. It is a designation of UHI, which means that we can confer specific duties on UHI in its capacity as a regional strategic body.

11:00

Liam McArthur: So, from your perspective, UHI should not require any additional resource or to spend time on doing things that it currently does in a different way, in order to satisfy the provisions of the bill?

Col Baird: The UHI as an institution will certainly have additional duties because it will expect to distribute FE funding for the first time, but there is certainly no new infrastructure. The UHI as an institution will look at its own internal structure to accommodate the new duties.

Liam McArthur: That suggests that there may be a problem. At a time when resources are limited in both the FE and HE sectors, some of the resources will be held at the centre in order to meet the requirements of the bill, which will mean that there is less for the constituent colleges within the UHI region to spend on FE or HE provision.

Col Baird: That is a general point about the establishment of any regional body in a multicollege region.

Liam McArthur: With respect, whatever our positions on college regionalisation, we would all accept that there are savings to be made through that process. The glaring exception to that would appear to be the UHI, where there is a structure in place and the risk is that, far from creating savings that can be reinvested in course provision, whatever that may be, the resources that are available will be deployed more on performing the central function than is the case at the moment, whether at Orkney College, North Highland College or wherever.

Michael Cross: Yes, that risk exists. However, we would want to mitigate it as far as possible by working with the UHI to develop the leanest and least bureaucratic arrangement that we could manage for the new role that it assumes as a regional strategic body.

Neil Bibby: You mentioned reducing duplication of courses. Will regional boards be expected to rationalise courses? If so, how will the impact on local colleges be assessed? For example, currently they might be providing X number of courses at a local college and the regionalisation and rationalisation of colleges might mean that those courses will not be provided any more. Will there be an assessment of what is currently provided and what will be provided under a regional structure?

Michael Cross: The role of the regional strategic body is to conclude a regional outcome agreement with the Scottish funding council. We expect it to do that in wider consultation with regional partners including the constituent colleges. Part of its efforts in developing a regional outcome agreement may include some sort of rationalisation where that is in the interest of the learners. However, it is not an effort that the regional strategic team will make in isolation; they will undertake the planning exercise with a range of partners, many of whom will have their own contribution to make to the regional post-16 learning offer.

Neil Bibby: If a student in Clydebank, for example, currently studies a course at their local college, what assessment will be carried out of the transport and travel costs if that course is no longer provided in Clydebank but is provided in Greenock? What assessment will be carried out of the likelihood of that student travelling to Greenock? In removing duplication from a local college, what assessments will be made?

Michael Cross: We expect regional boards to take that sort of matter into account as they develop a regional outcome agreement and any rationalisation that is implied in that regional outcome agreement. This is about enhancing the effort for learners, and additional travel costs, for example, would naturally be a matter that we would expect the regional board to take into account.

Clare Adamson: My question follows on from Liam McArthur's questions about UHI. Does this mean that there will be a different relationship between the UHI board and ministers than exists in other regional set-ups or will the ministers have the same powers of removal in respect of UHI as they will have in respect of regional bodies? Might we have staff and student representatives at a regional strategic level in some but not all areas because in other areas they will be on the college boards?

Col Baird: Ministers will certainly not have the same relationship with UHI as a regional strategic body as they would have with, say, Glasgow regional board. For example, they have no power of appointment or removal in respect of UHI.

As you have said, the bill also makes provision for regional boards to include staff and student representatives. However, it makes no mention of the constitutional make-up of any board with regard to UHI; that would be a matter for the articles of association of UHI, which, after all, is a company limited by guarantee.

The Convener: Does that not in effect make staff and student representation in the Highlands and Islands region less than in other areas?

Col Baird: Not necessarily. A working group report made recommendations on what a UHI FE committee might look like in order to discharge its role as a regional strategic body. The proposals are different from those in the bill, but they certainly covered staff and student membership.

Neil Findlay: Coming back to the powers of ministers and the like, I remind witnesses of the recent tiff between the cabinet secretary and the chair of Stow College, during which the cabinet secretary lamented the fact that he did not have the power to remove the chair. Will these changes give him such powers in the future?

Danielle Hennessy: The bill proposes that the grounds for removing board members be extended as I outlined previously. In addition to the existing grounds of mismanagement, grounds will include, for example, the failure to deliver education to an appropriate standard.

As the case that you have cited or indeed any such case relates to a board member's personal conduct as a figure in public life, not to an individual discharging his or her functions for the board's effective running, the matter is the responsibility of the Commission for Ethical Standards in Public Life. Nothing in the proposals alters the current position in that kind of case.

Neil Findlay: So at all levels the issue is the personal conduct of a board member, who would have to be referred to the Commission for Ethical Standards in Public Life or whatever it is called these days, which would decide on the sanction.

Danielle Hennessy: Exactly.

Neil Findlay: And could a person be referred to that organisation by anyone—the cabinet secretary, for example?

Danielle Hennessy: I think that that will be the case.

The Convener: I suggest that if you are not absolutely sure, you should provide us with clarification after the meeting to ensure that we are absolutely right on that point.

Neil Bibby: I want to ask about the different approaches to changes in higher and in further education. Earlier, witnesses talked about respecting the autonomy and independence of higher education institutions whereas, with further education, the Government is setting up regional strategic boards that will have a direct effect on colleges' strategy, courses and funding. Why has it chosen to take different approaches to further and higher education?

Michael Cross: I suggest that the fundamental rationale is that different levels of public investment are involved. The Government has a deep stake in the outcomes that it expects from the further education sector, as it typically contributes something in the order of 75 per cent of colleges' income. Through the regionalisation programme, we are trying to create a more coherent approach to securing outcomes throughout Scotland for that significant level of public investment.

The position is different for universities. Perhaps Tracey Slaven would like to say something about that.

Tracey Slaven: The position with the universities is somewhat different from that with colleges. As Michael Cross indicated, the Scottish Government provides colleges with a substantially greater proportion of funding than it does universities. The amount varies across the sector, but the majority of funding for the research-intensive institutions may come from non-Government sources.

Also, with our further education colleges, we are focusing on ensuring that there is a match between local and regional need and local and regional delivery. Although our universities provide local academic provision, they are much more heavily focused on provision at the national and, indeed, international level.

A difference in mission, as well as a difference in funding, drives the differences in approach.

Neil Bibby: There may be a case for regular reform in further and higher education. Why have you chosen to make the changes to further education through legislation but make the changes to higher education through agreement? Why can you not make the changes that you wish in further education through agreement like you are doing in higher education?

Michael Cross: It simply reflects the different changes to which we are giving effect in further education. In essence, we are changing the map of how further education is delivered in Scotland, and that requires a different approach to the one that we are taking with the universities. For example, we are introducing a series of changes to governance of the sort that Danielle Hennessy has described. The introduction of regional strategic boards is a case in point.

Danielle Hennessy: The substantial part of the regionalisation provisions in the bill pertains to the creation of regional strategic bodies, as they are new entities.

Liam McArthur: On who will be judged responsible for mismanagement, will a distinction be made between the chair of the board and individual board members? Do you envisage situations in which the whole board would be accountable for a failure and, therefore, would need to be removed or will the assumption be that the chair will take ultimate responsibility for the board's performance and, therefore, would go and save the heads of the rest of his or her colleagues on the board?

Col Baird: The provisions are built around the existing ones in the 1992 act. That act includes a

provision that enables ministers to remove a member, or any member, of a board.

If there was a failing, a judgment would be made about whether it could be attributed to a single member or, perhaps, a sub-group of members. For example, it may be that the failing could be attributed to the actions of a specific committee and that the members of that committee would be removed.

The flexibility to identify one, any or all of the board members is a feature of the existing statute.

The Convener: Mergers are clearly separate from what will happen under the bill. They are a different issue, although they are happening at roughly the same time. If you set up a regional strategic body that covers an area that currently has multiple colleges and those colleges merge at a future date, what will happen to that body?

Col Baird: If all three colleges in Glasgow, for example, were to merge into one, provisions in the bill would enable us to abolish the Glasgow regional board and transfer its assets to what would then be the Glasgow college.

11:15

The Convener: We will move on to the review of fundable further and higher education, which is dealt with in section 14.

Liam McArthur: Section 14 talks about the Scottish funding council ensuring that education is provided in "a coherent manner". What is meant by "a coherent manner"? How is that arrived at?

Michael Cross: I suggest that it is arrived at by taking account of the matters that are set out in proposed new section 14A(2) of the Further and Higher Education (Scotland) Act 2005. Those are matters such as

"the number of post-16 education bodies ... the number of regional strategic bodies ... the types of programmes of learning"

and

"The efficiency or effectiveness of the arrangements for the funding".

There is also the issue of whether coherent fundable further education or higher education can be improved by "increasing collaboration".

Liam McArthur: Is there a risk that, in driving towards coherence, some of the issues that Neil Bibby raised earlier about the demand for provision in an area that duplicates provision elsewhere in the region could result in a number of college applicants not pursuing courses simply because of the distance to a college? Are there safeguards in the bill to deal with that?

Michael Cross: The issue of duplication is centre stage, but it is about unnecessary duplication when the provision in question can be delivered more effectively, in the interests of the learner for example, in one location rather than two.

Liam McArthur: The bill also talks about the Scottish ministers setting preconditions for the funding council in conducting a review. Can you shed any light on what the preconditions are likely to be?

Michael Cross: I think that they would draw on the matters that are outlined in proposed new section 14A(2). However, that would, I think, necessarily be addressed on a case-by-case basis. As the provision is framed, the funding council will make a proposal for a review to the Scottish ministers, who will then consider that. The review cannot happen without the consent of the Scottish ministers. At that point, the ministers will take stock of the funding council's proposal and suggest an additional condition that will apply to its work.

The Convener: Given the time, I want to move on quickly to data sharing, which is in section 15.

Joan McAlpine (South Scotland) (SNP): The bill gives ministers the power to make secondary legislation to force relevant bodies to share information with Skills Development Scotland about 16 to 24-year-olds who are going through the system. What are the current gaps that make that measure necessary?

Gavin Gray (Scottish Government): A framework has been set. As you know, SDS already operates a system of data sharing and information gathering. A national reference group has been set up to support data sharing, on which local authorities, colleges and other providers are represented. The need is not to get specific organisations that are not providing data to do so; rather, it is to achieve consistency of the data that is provided, so that all organisations give the same information in the same way. It is felt that a legislative structure will help to ensure consistency in that and, ultimately, in how organisations deal with learners so that, regardless of where a learner is, they will be picked up by SDS in the same way.

Joan McAlpine: Does that mean that some colleges do not have the desirable information, or consistent information, on the young people they teach?

Gavin Gray: I am not sure that it would be undesirable but, because a clear framework is lacking, some of the information that has been given to SDS has been patchy and variable. Setting it out in legislation will ensure consistency.

Joan McAlpine: We hear a lot about compliance and compatibility issues. Do we know whether the different bodies have compatible IT systems in order to share information?

Gavin Gray: I do not know the answer to that. SDS's operational leads would be more aware of what the IT issues are. As I say, there is a national reference group on data sharing, so the SDS and other Scottish Government officials meet all the providers regularly to ensure that agreements are in place. A number of individual agreements are in place between SDS and colleges and local authorities. A lot of work has been done and some of the costs that are highlighted in the financial memorandum are about making the final tweaks to that. The framework is largely there—the issue is about high-level consistency in what we are looking for.

Joan McAlpine: Will data sharing apply to private training providers or, indeed, learning providers outside Scotland should young people choose to learn outside Scotland?

Gavin Gray: It could apply to private providers—that would have to be specified in the secondary legislation. The legislation will set out which organisations are compelled to be involved in data sharing, so there is scope for private providers to be included. I am not clear on the position on institutions outside the UK.

Tracey Slaven: I can provide a little bit of assistance on that. Normally, the predominance of students studying outside Scotland is in the HE sector. The Student Awards Agency for Scotland will be involved in the process and will have the information about students who receive HE support outside Scotland, so they will be picked up.

Neil Findlay: Did I pick you up right that the purpose is not to increase the amount of information that SDS has but to improve the consistency of the information that it provides? Is that correct?

Gavin Gray: No. The purpose is for SDS to get more consistent information from other organisations. If organisations are not giving the right amount of information, they might have to increase the amount of information that they give. This is not about the information that SDS gives; rather, it is about the information that SDS receives from other institutions.

Neil Findlay: I assume that some organisations work with paper files and others with electronic files—who knows what they work with. How will that work? SDS gave the committee an example: if it gives a specific session to a school year, assembly or a class, that is marked in the young person's record as an intervention by SDS, perhaps as nothing more than a tick in their school profile. Would it go back and tick each individual SDS record? How else would it work?

Gavin Gray: To be honest, I do not feel comfortable talking about SDS's operational issues and how it would do that. It might be better to speak to SDS when it gives evidence to the committee, rather than my second-guessing how that might or might not operate.

The Convener: I thank the witnesses for attending; the session has been extremely helpful. There are clearly a number of areas on which we had further questions and others areas in the bill that we have not touched upon, so we will write to you to follow up some of the questions. I hope that we get a response reasonably quickly in order to cover some issues that we have not reached.

11:23

Meeting suspended.

11:28

On resuming—

Taking Children into Care Inquiry

The Convener: Agenda item 3 is our inquiry into decision making on whether to take children into care. The committee has just completed its last fact-finding visit in connection with the inquiry—that was yesterday, in Perth. Throughout our visits and in the written evidence that we have received thus far, a number of concerns have been expressed to us about the children's hearings system. The purpose of today's session is to put those concerns to representatives of the hearings system and allow them to respond.

I welcome to the committee Bernadette Monaghan, national convener and chief executive of Children's Hearings Scotland; Hugh McNaughtan, deputy chair of the children's panel chairmen's group; Barbara Reid, children's hearings training officer; and Malcolm Schaffer, head of policy at the Scottish Children's Reporter Administration. Good morning to you all.

As I said, concerns have been expressed to us by a number of organisations and individuals, both in the written evidence that we have received and in the visits that we have made. We want to run through those concerns with you this morning, if that is all right. We will start by asking about the consistency of decision making by panels, which is an issue that has come up several times. Clare Adamson will begin the questions on that subject.

11:30

Clare Adamson: Good morning. In the course of the visits that we have undertaken, concerns have been raised about the consistency of decision making across Scotland. Obviously, budgetary pressures and capacity play a role in that, as does the demographic of the local area. What are your views on that? Is there room for improvement? Do we have an opportunity to look at the consistency of decision making across the country? Specifically, the National Society for the Prevention of Cruelty to Children raised a concern about different thresholds being applied by panel members and professionals in respect of cumulative neglect and emotional abuse.

Hugh McNaughtan (Children's Panel Chairmen's Group): Speaking both as someone who sits on hearings and from a national perspective, I think that there will always be differences across authorities, even when we have a national body, because hearings make decisions on the day in the best interests of the child who is in front of them. I do not think that budgetary constraints are necessarily a big problem for decision making, although they affect how social work departments then deal with the hearing's decision.

We hope that many of those issues will be dealt with under the new Children's Hearings (Scotland) Act 2011, because the hearing's convener will be in a better position to hold the authority to account if the hearing's decisions are not followed up. On the whole, if on the first time that a family comes to a hearing the panel members on the day think that the best thing for the child is to be taken into care, the panel will make that decision no matter what recommendations are made by social work or what representations are made by the solicitors around the table. Panel members are very aware that, in the main, solicitors tend to represent their clients—the parents—rather than the best interests of the young child. With the new act, we should get more solicitors looking first at the act before they look at the European convention on human rights, which is what solicitors representing parents have tended to do.

As with a lot of things, the system is not perfect but, as the 2011 act is implemented and we go into this new world, I think that it will be a lot easier to get feedback on such matters and for the convener to deal with them in each authority area.

Clare Adamson: When we visited Who Cares? Scotland, the care leavers whom we spoke to expressed the concern that they personally found the whole set-up of the panel very intimidating, and they therefore believed that the parents' views were given much more credence by the hearing than those of the young person's advocate or the young person if they were asked to speak at the hearing. They found the physical set-up very intimidating. Do you have any thoughts on that?

Bernadette Monaghan (Children's Hearings Scotland): First, let me say that my role as national convener of Children's Hearings Scotland and the new public body CHS are in a shadow period, so we will not officially own any of the children's panels' functions until 24 June this year. What I can say is that we aspire and hope to ensure that in future there is greater consistency of decision making, with sound evidence and reasons for decision making as well as feedback to panel members.

As national convener, I am required to include young people and to take their views on board in the design and delivery of panel member training. A lot of research reports have been done on that—indeed, a modern apprentice working for the SCRA has pulled together all those findings on young people's experiences of hearings—so a lot of valuable information is available on young people's views and experiences. As a panel member myself, I think that panel members always feel that we put young people at ease and

that we are good at engaging and communicating, but actually we are not as good as we think we are.

There is a lot of rich information that we will use in the design and delivery of future training through the national curriculum for panel members. There are simple, commonsense things, such as teaching panel members about body language and about speaking first to the young person, rather than to all the adults in the room. When panel members are faced with a room full of professionals and, increasingly, more and more lawyers, we will need them to be strong in chairing and managing hearings to ensure that the young person's voice is heard.

Panel members will have a duty to check that the young person is aware of advocacy support and the services that are around. Malcolm Schaffer can perhaps say more about the general work that is being undertaken to make sure that the child's voice is at the centre. For example, in the new national standards that we have developed for the children's panel, standard number one is:

"Children and young people are at the centre of everything".

There is an opportunity in future training to take on board what we know from research. We have been doing some work with Who Cares? Scotland on how we can involve young people not just in training, but in the life of children's hearings in Scotland, at different levels and in a meaningful way.

Malcolm Schaffer (Scottish Children's Reporter Administration): I will develop that further. I entirely agree that the system could do a lot better on involving young people and vulnerable adults. A participation group was established in the SCRA that uses the modern apprentices we have appointed, who are young people who have been or are in care and who help us to look at procedures, buildings and room design to help us improve the quality of communication. Can we produce better ways of encouraging young people to be involved in the hearings process? Should we have pre-hearing visits, for instance, so that young people know the sort of place that they are coming to? Can we improve leaflets or electronic communications to make them more appropriate for young people?

To be blunt, for a few years we have been very complacent about the system for involving young people. We can up our act, and we need to.

I would also like to tackle cumulative neglect and emotional abuse, which is the other area that Clare Adamson mentioned. There is enough research material out there to suggest that that area is a major challenge, possibly not just for our system, but for systems elsewhere, and certainly not just for panel members.

It is sometimes much easier to intervene when there is a specific instance of physical abuse, as opposed to a continuous pattern of emotional neglect, although emotional neglect may have huge significance for and cause huge damage to a child. We need to look at how we ensure that the information that is presented to the decision maker—be it the panel, the reporter or the court—is of the highest quality and can clearly mark out the sort of behaviour exemplified, the impact on the child and what the research tells us about the cumulative effect that that behaviour can have on the child's future health or development. We also need to work on training for all parties, not just panel members, to make sure that we understand the long-term impact of emotional abuse on a child. The area unquestionably needs to be worked on, not specifically by panel members but across the board.

The Convener: We have written evidence from Dumfries and Galloway Council about the weight given to different opinions by panel members. It said:

"It is perceived that Children's Panels tend to value the views of other professionals and of 'so called' experts above the holistic assessments of social workers."

What is your response to that concern?

Hugh McNaughtan: That is what the children's hearing is for: to hear what social workers and whatever other experts are put forward have to say, and to consider whatever information we get. Based on that information, we make decisions that are in the best interests of the child. If that is not necessarily what social workers think is in the best interests of the child, so be it.

The Convener: I am sorry, but perhaps you did not hear me. The specific allegation—if I can put it that strongly—is that

"Panels tend to value the views of other professionals and of 'so called' experts above the ... assessments of social workers".

Malcolm Schaffer: The committee might have had access to our recent research on children on supervision for five or more years—if you do not have a copy we can ensure that you get one. In that research, we examined the correlation between social work recommendations and children's hearings decisions and found that 94 per cent of hearings actually followed social work recommendations.

The Convener: So you disagree with the evidence that has been submitted.

Malcolm Schaffer: I disagree with its basis. I am sure that it is based on individual experiences but having looked at the patterns in the system we

have found no evidence to suggest that what has been alleged is happening.

The Convener: Thank you. That is helpful.

Neil Bibby: Do you believe that the inception of area support teams will help the consistency of decision making? How will the situation be monitored, and how will you seek to ensure consistency in and across teams?

Bernadette Monaghan: There are various aspects to that question. At the moment, there are not only 32 local authority children's panels but 30 children's panel advisory committees, which will be replaced by the new area support teams. I think that the new terminology is important, because consistent support for panel members is critical.

Although the new area support teams will largely continue the children's panel advisory committee functions, they will work in a very different way. As a support team, they will be accountable for and work to the national standards that we have developed and which will be reviewed before the go live date in June. Those standards will also be underpinned by a set of practice and procedure manuals. Approaches to observing panel members in practice, making recommendations about appointments and reappointments, dealing with complaints, paying expenses and so on will be standardised; after all, it is fair to say that at the moment the processes and procedures across the country are inconsistent. In this day and age in the children's panel, such a situation is not acceptable. Although they might be volunteers, panel members are professionals and are members of a tribunal with extensive decision-making powers. The management of local hearings will come through the area support teams, each of which will have an area convener and depute whose role will be to work with me, to be the local point of communication and to work with the SCRA on picking up on trends and so on.

We have had a lot of discussion with the SCRA about available data—management information, if you like—that we can feed to area support teams through the area convener, for example to point out that high volumes of hearings are being continued in a particular area and to find out why a lot of children do not seem to be appearing. There will be much more of a two-way flow of information, more monitoring of trends and more linking in with locality reporters. The expectation is that the area convener will report back to me, the panel, the area support team and CHS. At the moment, with the children's panel advisory committees and the 32 local authority children's panels, it is very difficult to use the SCRA's information and data properly and effectively and to feed all that back. In that respect, having one national panel, national standards and 22 area support teams supporting panel members in a very different way will be critical.

There will still be a need for what I would call local ad hoc training to deal with any issues that might arise or to provide training and clarity on the demarcation between the panel member role and that of the reporter, and we have to be able to respond to such situations. However, each area support team will have a learning and development co-ordinator who will link very closely with the future provider or providers of the national curriculum. We are aiming for a much more consistent approach and better use of the existing data to feed back to panel members through the area support teams and, indeed, to hold the teams to account for what is happening locally. We also expect that the area convener will have conversations on our behalf not just with the reporters but with social work and all the different agencies.

With regard to Malcolm Schaffer's point about research and information, I note that we do not make an awful lot of use of research that we should make use of. In relation to developing the feedback loop, I feed back to panel members about not just trends and referrals but, ultimately, the implications of their decisions. We need to understand exactly what the components of an effective supervision requirement are. We are working closely with the criminal justice social work development centre to try to unpick those components and to ensure that panel members have that information as part of future training.

11:45

Malcolm Schaffer and I are also involved in the Edinburgh study of youth transitions and crime. We were recently made aware of an important finding that one predictor of future involvement in the justice system and offending is school exclusion. There is a wealth of data and information that we are not feeding back routinely to panel members or embedding in panel member training, or, indeed, using to influence policy direction. The creation of an accountable national body for panel members, which involves me and area support teams, offers real opportunities to move forward on that.

I hope that I have answered your questions.

Neil Bibby: That was very comprehensive, thank you.

Barbara Reid (Children's Hearings Training Unit): On the point about consistency, children are unique, the problems that they bring to a hearing are unique, and what their families can offer and what resources can be offered are also unique. Therefore, consistency does not mean that one size will fit all. There will always be discrepancies.

We need to set realistic expectations, including in relation to children's expectations about what hearings are about. Hearings are a quasi-judicial forum, so they will not always be as comfortable as other options, although I take Malcolm Schaffer's point that we could do a lot better. However, decision making is based on that child at that hearing on that day, not on what we did the last time that we had such a case. There will not be complete consistency, but there should be consistency in the processes that go into making the decision.

Hugh McNaughtan: I agree with that. I made a similar point earlier. The point is that children are different and we will not get the same decision on a family in the south of the country as we will on a similar family in the north. The decision will be made on the day, and it will be about that child. I agree with what Bernadette Monaghan and Barbara Reid said—there should be consistency in the process, but the consistency of what a child gets as regards their best interests at that time will depend.

Neil Bibby: Is there a need for us to do more nationally to articulate what we believe is acceptable behaviour and what we as a society think should be acceptable treatment of children? If education or social work professionals who work with children day in, day out are perhaps not there yet, how can we expect lay members of children's hearing panels to be there? Do we need greater emphasis on multidisciplinary training to achieve that consistency?

Barbara Reid: Multidisciplinary training would certainly help. There are areas where, particularly with new initiatives, panel members may be ahead of other agencies, or other agencies may be ahead of them. There is a need to look at not just a national curriculum for panel members but where that fits into the work that social workers and others are doing.

We can do a lot to ensure that there is a curriculum that everybody is aware of and, as Bernadette Monaghan said, to ensure that we are sharing and using research. Another asset of the new Children's Hearings (Scotland) Act 2011 is that it affords children the right to access advocacy services.

One of the biggest failures in the hearings system has been that despite the fact that children have the right to bring someone to a hearing with them, 40 years on, children still do not do that. If we could empower children to bring someone to a hearing to advocate for them—to talk for them—that would be one of the best things that we could achieve for children.

Parents are articulate and get solicitors and other people to come, but the child is left in a room in which the adults are all arguing and there is no one to support them. Advocacy for children that is universally available—advocacy that is available to any child who wants it—would be a huge step forward in protecting children.

Liam McArthur: The next point is about the move away from the advisory panels to the area support teams. As the legislation was being developed, there were concerns about how that would operate in an island context. What is the current situation and how is the training done? Any travel off-island is a significant financial cost as well as a time cost for those who are involved, so it needs sensitive management. Could you explain very briefly what is being done about that?

Bernadette Monaghan: About islands arrangements?

Liam McArthur: Yes.

Bernadette Monaghan: There was a lot of mythology at the outset about what might happen with area support teams. The act is very clear that I have to obtain consent from the local authorities to create area support teams. I went round the country and spoke to a large range of stakeholders, not least of whom were panel members, panel chairs, children's panel advisory committee members, social workers, local authorities and so on. In the islands, there was a fear that they might be joined up into one area support team.

One of the consistent fears that were expressed around the country was that if an additional layer of structure was created in some areas, a substructure would be needed in each local area or community. The concern is that an additional layer of structure will not deliver better results but will put more of a burden on people by requiring from them a greater time commitment, especially when they are unpaid; it will cost more and it will be counterproductive because it will not deliver efficiencies, if that is what is expected. I listened to that concern and took it on board, and all my proposals were made on the basis of extensive dialogue and consultation. I came up with what I thought was realistic and workable.

The other very real fear that people expressed concerned the local identity of the panel. That is critical. People around Scotland, regardless of whether they are part of a national panel, have signed up to serve the children and young people in their communities. They want to get the best outcomes and give the best quality of service that they can as a panel member. It is very important that we do not lose that. I have listened to that point and taken it on board for the whole country.

We have to see how the new area support teams bed in. We have to get people who have been in the system for years working together in a

different way. That does not mean the joining-up of panel members and panel chairs, and CPAC members and chairs doing what they have always done. It is about getting the best support for panel members locally. For me, the structures are not critical. What is critical is that we have the opportunity to ensure that people are signed up to working to the same national standards across the country, through one national children's panel, while recognising that it can be the children's panel wherever, and while preserving the local identity.

Clare Adamson: When we were on the visits, the issue of panel members changing between hearings came up. That was expressed as a concern by care leavers as well as by some parents whom we spoke to, who had learning disabilities. They found it very intimidating to see different panel members at different hearings. Can that issue be addressed, and can it be addressed without increasing timescales in the process?

Hugh McNaughtan: The issue of continuity has been around for a long while. We have to avoid panel members taking ownership of a panel, although continuity can be useful when a case has to be continued or the hearing has to deal with very complicated issues. The simplest way that I can put it is that I have tried, in various local authorities, to say that A, B, and C are on one hearing, C, D and E are on the next, and E, F and G are on the next. In that way, those who are involved in the hearing are not faced with three completely new panel members.

That is the safest way of doing it, because it is a bad idea for panel members to take ownership of a hearing or of a child; they can become too knowledgeable. We are looking at that issue, and it is not that hard to take care of it. A lot of work needs to be done by the SCRA once the rotas have been produced, and the reporter has to say that they need, for example, one of these three panel members on a certain panel. With the data systems that we have, that is not impossible and I do not think that Children's Hearings Scotland is against it. We might not need to do it for every hearing, but that might be the easiest way of doing it. That is for the future, but it is being looked at.

Bernadette Monaghan: For the future, we are looking at how legal advice could be provided to panel members. At the end of the day, they make the decision. For example, if panel members have the option to adjourn a difficult hearing so that they can write and ask for legal advice or an opinion, the expectation might be that, in that situation, there should be continuity on the next panel. That is still being worked out in terms of procedural rules and how advice to hearings might be offered.

Panel members must be the independent decision makers in the tribunal. Having a national panel provides options for people to cross boundaries. At present, that happens informally where, for instance, there is a shortage of male panel members in small communities in which panel members might be known. There is flexibility and there is scope for panel members to cross boundaries. It is not expected that they will do so but, where we need panel members to help out in other areas or in specific circumstances, we will be able to call on that assistance through the national panel. Likewise, at present, if panel members resign from one area, they have to reapply and retrain in another area, but those barriers will be removed with the national panel.

The rota must be set objectively, unless there are specific instances in which it is written in the rules that there should be continuity from one hearing to another.

The Convener: We move on to pressure from parents. You have touched on that issue, and it was raised consistently in written evidence and in our visits. In effect, the complaint that we have received is that panels can be unduly swayed by parents' presentations at hearings. We heard that from young people who have been through the system and from professionals. I will read another bit of written evidence, this time from Unison. It states:

"our members regularly report that they believe these decisions"

by hearings and courts

"are often taken with first regard to the rights of parents as opposed to the paramountcy of the welfare of the child."

Will you comment on that submission from Unison?

Barbara Reid: The only thing that I would say is that the research that has been done suggests that that is not true. If panel members are following recommendations from social workers, they must be following advice that has come from an assessment that had the child at the centre. SCRA research shows that the situation that you describe is not the case.

The Convener: That is not necessarily so. We received more than one comment that panel members and other professionals are swayed unduly by parents. Obviously, all the issues have to be taken into account, but we have been told that undue influence is being brought to bear by the parents, rather than the child. That applies not just to panel members, but to some of the professionals.

Barbara Reid: Part of the issue might be that, particularly in certain parts of the country, because of the number of families that come to hearings or who are party to the whole process, with legal advice, the rights of parents are being pushed

slightly further up the agenda than the rights of the child. That applies to all agencies. That might be one element.

Malcolm Schaffer: That issue can be a danger in some hearings, particularly with a young vulnerable parent whose child is perhaps so young that they are not even at the hearing. There can be a sort of transference and forgetting of who the hearing is about, so that panel members might almost think that the young vulnerable parent is the subject of the proceedings. That is a danger for all of us in decision making. We need to be clear and keep the focus on the child as the centre of decision making.

Hugh McNaughtan: Many panels will have a young person of 18 sitting in front of them whose child is now subject to supervision or a hearing and who themselves was in the system not many years ago. As Malcolm Schaffer said, if the child is not there, an issue might well arise. However, I do not think that that happens as often as the written evidence to the committee suggests. As Malcolm Schaffer said, we should look at that issue. I hope that, with consistent training through the national body, panel members will be clearer on such issues and will ensure that they remember that they are dealing with the parent and not the young person who is the subject of the hearing.

The Convener: I accept what you are saying, but one point that was raised by the young people to whom we spoke and by others was that panels tend to have a kind of one-more-chance attitude towards parents. In effect, they think, "You're trying, so we'll give you one more chance." However, that one more chance is just one of the many one more chances that they receive. The young people felt—as I said, others said this, too—that every time they came to a hearing, their parents were given one more chance to carry on neglecting and abusing them.

12:00

Hugh McNaughtan: I do not think that that comes only from panel members. If you looked into individual cases, you would probably find that social work was also doing that.

The Convener: Absolutely. I am not for a minute suggesting that it is just panel members, but as you are representing them, I am asking you the question.

Hugh McNaughtan: We might well be working with information that we got from a social worker who said, "We expected the parents to do A, B and C. They have actually done only A and B, but with proper supervision we can probably let them go home and try again."

It will happen. Again, it is a question of having consistent training so that panel members are more aware. Perhaps we are sometimes not as aware as we should be.

Malcolm Schaffer: A general area of improvement arises from your question. We need to ensure that the meaning of home supervision is tighter—that people are clear about what is expected of them, that there are specific timescales within which improvements are expected and that there is clarity about the next steps if that does not happen. I sometimes wonder whether, when people leave the hearing room, they are as clear as they should be about what the supervision order means and what should happen. Can we make more use of conditions in supervision requirements? Can we make more effective use of timescales within which work must be done?

Clearly, when we make a decision, we can make it only on the basis of the child, and we can make conditions only on the child. There is no compulsory hold over the parent. However, we can still include in the reasons for making a home supervision exactly what is expected of the parent in co-operating with the home supervision requirement and what the next steps are. Cases that involve treatment for substance or alcohol abuse might be classic examples of where we look for significant improvement in a particular area within a particular timeframe, but sometimes it drifts.

Bernadette Monaghan: I have three points. The first is on training. In the future, we need to have panel members who can chair hearings and be pretty robust—not keep the solicitors and lawyers in check, but help them to perform to their best standard within the ethos of the children's hearings system. Malcolm Schaffer and I have been involved in some work with the Scottish Legal Aid Board, which has looked at our national standards, and we will be involved in some awareness raising for solicitors. However, in the case of panel members, the person who chairs the hearing will need to keep the focus on the young person and ensure that they feel that they have had the best possible quality of service. We will be doing a children and families survey, building on the work that the SCRA has been doing, so we will be looking to get views and feedback from service users—the customers, if you like—about panel member practice, which we will feed back into panel member training.

My second point is about cases coming back for review. If I think back to my experience as a panel member, which was a good number of years ago, we were sometimes taken aback by the length of time that it took for cases to come back to a hearing when circumstances had changed. It

would be helpful to ensure that panel members can say that they want a case to come back within a certain timescale and that they can say what they expect in order to ensure that there is an understanding of what will happen in the supervision.

My third point links to the feedback loop. In putting in place the mechanism for the implementation of compulsory supervision orders, the first thing that I have been doing is some work with the president of the Association of Directors of Social Work and the head of its children and families standing committee to get agreement between us—between me and the ADSW—on exactly what we mean by implementation of a compulsory supervision order. We have a draft form of words that we will be working on, and both organisations will be able to sign up to the wording as the basis for going forward. That will mean that social work should expect that panels will produce sound, evidenced reasons for a decision, and those reasons should form the basis of the care plan and the work that will then go on with the young person. We will sort out what we mean by giving effect within certain timescales.

There are opportunities through work that has already started to really nail down the processes and have much more dialogue between the panel community, the SCRA and social work, recognising that we are working to the same ends but that we have different functions within the overall system.

The Convener: You talked about the requirement for chairs to be robust. How robust are panel members, particularly chairs, in challenging statements by both parents and professionals in a hearing?

I ask that question because an ex-panel member reported to me an incident of a social worker saying that Mrs X had been very good, had not had a drink in the past month and had made real improvements in her problem with addiction; the mother concerned had given exactly the same story. However, at the end of the hearing the chair said, “You must have been extremely anxious coming here today—coming before a panel is a very anxiety-ridden event. Were you not tempted to have a wee drink?” The mother said, “Oh, yeah, I had a drink afore I came here this morning.” A couple of further questions showed that her behaviour had not changed one iota. She described all her drinking that had taken place over the past month, which completely contradicted what she had said previously and what the social worker had said.

I wonder how realistic it is to expect chairs and panel members to do robust questioning and cross-questioning of parents and professionals. I would expect them to do it, but do you?

Hugh McNaughtan: Yes, clearly. As an authority chair in one of the biggest authorities, I expect panel members to ask such questions. However, I cannot honestly say that that happens all the time, either in my authority or in authorities across Scotland.

Again, it is about the consistency of training. Perhaps it goes back to what we said about the hearings system and panel members making pretty good decisions—it is about what they back them up with. That is all part of not being scared to ask the questions so that the panel can say in its reasons, for example, that although so-and-so said that something was the case, it emerged clearly in the discussion that mum was still topping up her drugs or whatever. However, as I said, the process will not be perfect.

Bernadette Monaghan: To pick up on Hugh McNaughtan’s point, I would expect panel members to ask certain questions. However, not everyone is confident in doing that, so there is a training issue in that regard. Any panel member who does not ask the questions that they know they need to ask is doing a real disservice to the young person and their family. It might be easier to skirt round the issues, but part of the training on engaging—it was part of my training—is not about being nice to people, but about the need to ask certain questions in a way that does not destroy the people at the other end of the table. That is difficult, but it is a real skill that panel members learn, which can translate into aspects of their working life and other activities.

As I said, there is a training issue. We can train panel members in the future on the law and on procedure, but there needs to be a wider context about how they conduct a hearing. We will have opportunities to get more feedback from children and young people about how they felt their hearing was and whether it was, in fact, their hearing. Part of that will be about the panel chair being strong and robust, and standing up, where necessary, to lawyers and professionals. For example, a lawyer might say that a child did not witness a particular incident of domestic abuse, but a panel member’s point of view is very much that the child or young person will grow up in a house in which domestic abuse takes place. There is therefore a different way of coming at matters, which we need to understand.

Panel members need to keep focused on what their role is and on the fact that, ultimately, they are there to get a better outcome for the child or young person. I hope that we can build that into our training and ensure that we are giving that message to panel members and giving them the skills to ask the questions that they might not otherwise have the confidence to ask.

The Convener: Is that what is happening, Barbara?

Barbara Reid: That is what is happening currently with panel members. They are trained and equipped to go out and do the job, then they go into the hearing situation, which is an additional learning experience. However, I have been a trainer since 1996 and in all that time I have had only two issues of a panel member needing training in something. As a one-time panel member who trains panel members, I do not believe that in that length of time only two panel members have needed additional training. My one hope is that, with area support teams having to meet national standards and be accountable for the state of their hearings, they will look at how many appeals there have been and whether that means that there is a deficiency in panel member decision making. No one actually looks at that.

I have a similar hope with regard to the convener's point about the role of parents at hearings and how children feel about that. If I could wave a magic wand tomorrow, I would stop panel members allowing children to be excused on the ground that the hearing will be difficult for them. The lives that they are living are difficult. The child is often not in the hearing room. As Malcolm Schaffer said, if the child is not in the hearing room, the parent becomes the child and the focus is lost. That is an area in which children are right: they get a decision made about them, to which they have not been party. We are all guilty of feeling that it is easier to talk to an adult than it is to talk to a child. We need to get underneath that. I do not think that that is not dealt with in the training, but it does not form part of the process of looking at the standard that everyone has to achieve.

The Convener: Thank you very much.

Joan McAlpine: In her evidence to us, Anne Black, an independent social worker, suggested that panel members should be trained in attachment, resilience and child development. Attachment, in particular, has been raised repeatedly during the inquiry. Could you say a bit about where panel members are in that regard?

Barbara Reid: We have just completed two different lots of induction training. Attachment, child development and resilience are dealt with on day 1 and that continues all the way through.

We do not expect panel members to be experts in attachment, but they have to understand what it means. They have to understand how brain development affects bonding and attachment, and how that affects the child in later life. They get all that information; it is in the curriculum. If the committee wants to see the materials, we can certainly make them available. We recognise the importance of attachment. How we approach the issue now is different from how we approached it five years ago because of new developments. In fairness, panel members get such training.

One of the big problems with training is ensuring that there is enough of everything. We have to be much more inventive about how we use the time that we ask people to give up for training. Another hope for the future is that a lot of what we do now can be done through, for example, e-learning, which would give us much more time to deal in slightly more depth with some of the newer issues that are coming up. However, attachment is dealt with in the curriculum as it stands.

Hugh McNaughtan: Last year, Bruce Perry was over from America and Sir Harry Burns gave the Kilbrandon lecture. The fact that a large number of panel members went along to those events shows that they are interested in such matters and want to build on their skills. Such opportunities exist and panel members are taking them up.

Bernadette Monaghan: Attachment must be part of the national curriculum in the future. Barbara Reid is right—the issue is the level at which such training is provided and the extent to which panel members need in-depth training. They certainly need awareness raising, at the very least. There will always be a need for the pre-service course, so that panel members understand the law and the procedure. There is also a need for chairing skills, to help with the management of hearings, and continuing professional development, which will cover a range of things, such as the context in which children grow up.

In addition, there is a need to respond to new developments—not just policy developments—as knowledge of early intervention, attachment and so on changes, and to factor that into future training. That will be picked up in the new national curriculum.

Liam McArthur: I want to pick up on legal assistance, which Bernadette Monaghan said was part of the issue with parents applying pressure in the hearings system or with social workers or other professionals. The Scottish Legal Aid Board has raised the issue with us. It says:

> "current legal aid provision does not cover representation by a solicitor at hearings. The current provision for the appointment of a legal representative (in limited, specified circumstances) is less than ideal."

It goes on to say that there are problems with the solicitors who are appointed getting up to speed with cases, different solicitors coming to successive meetings and so on.

Is there a need to address the issue, particularly given that better-off people who find themselves in front of a hearing will have no problem in covering their costs and will therefore have some form of

advantage over those who do not have the means of affording legal representation?

12:15

Malcolm Schaffer: At present, if a parent needs legal representation, it comes through a panel appointed by the local authority. Indeed, I suspect that that is the particular point that SLAB is referring to. The new act presents a good opportunity, because it will make legal aid available through SLAB for representation and ensure that those who need it get it, particularly with regard to the core quality of needing assistance to participate effectively in the hearing.

Liam McArthur: And, picking up the points that have been made about other kinds of pressure on the system, I take it that you are not concerned that that will change the dynamic of hearings in an unhelpful way.

Malcolm Schaffer: I hope that that does not happen. Bernadette Monaghan has already mentioned that SLAB along with other parties is developing a code of conduct to ensure that solicitors who represent parents or children do so within the hearings system's framework; that they are, first, knowledgeable and, secondly, aware of the different type of conduct expected in hearings as opposed to that expected in court; and that, in cases where such an approach is not followed, an appropriate complaints procedure is in place to deal with the situation. We can always talk about the negatives, but I think that this will be a huge positive in cases where parents really cannot represent themselves and need assistance and in ensuring that solicitors represent parents at hearings in an appropriate way. I have seen many good examples of solicitors at hearings who without dominating proceedings have still been able to put forward their clients' views appropriately and to take a note of everything that is being said in the event that something is not proceeded.

Liam McArthur: Barbara Reid mentioned the need for greater consistency in the availability of an advocate for the child, but I am certainly aware of instances in which adults themselves have needed not necessarily a legal representative but an advocate to provide pastoral support, moral support or whatever support is needed. How do you see those two issues sitting alongside each other and how does one judge whether a legal representative or advocate is required?

Malcolm Schaffer: Sometimes people need neither; sometimes all they need is a friend. That is the kind of judgment that needs to be made and the discussion that needs to take place with the party to ensure that they are aware of the available choices. Indeed, they themselves might be able to make an effective choice about the best course of action. That brings me back to the point that we need to communicate more effectively with parties in such situations and discuss the options to ensure that they think about them and are able to go in the right direction.

Liam McArthur: So the options are available—it is just that they are not necessarily as well understood as they might be.

Malcolm Schaffer: The availability of advocacy for children varies quite markedly across the country. Although the new act contains provision in that respect, its implementation will probably be slightly delayed beyond June to ensure that work is carried out to examine the availability of advocacy across the board. You could make the same point about the availability of lawyers who understand childcare law. They, too, are scattered all over the country and in some parts of the country that kind of understanding is not always as deep as one would like it to be. I have no doubt that the issue will be addressed when the new legislation's provisions come into force, because it is important that, no matter where the child or parent might be, opportunities are equal.

Bernadette Monaghan: As Malcolm Schaffer has pointed out, advocacy support will be under the provisions in the new legislation. We have to accept and respect the fact that the job that lawyers do in a hearing is different from that done by the chair or panel members and work together in that respect. SCRA and I have had a real opportunity to shape the code of conduct, which will be finalised before the register opens for solicitors who want to come forward and offer that service in hearings. We have worked quite closely with SLAB on this matter—indeed, I am encouraged by the fact that it has based a lot of its code of conduct on our national standards—and we will have a further opportunity to be involved in some sort of awareness raising or training for solicitors on the hearings system's ethos. So far we have had good productive dialogue on the issue.

Barbara Reid: Yesterday I attended a Legal Services Agency conference in Glasgow, where solicitors were looking at how they will need to adapt to the hearings system. I was very heartened to see that they are a step ahead in anticipating what the code of conduct will mean for them.

Colin Beattie: Both today and in previous evidence, we have heard concerns about the impact of legal representation at panels. Obviously, if such representation affects the outcome for the child or, as seems to be a consideration, is intimidating to panel members, that is a really serious issue going forward. How do we deal with that? You have talked about

providing training for panel members, but will that be enough? You have also talked about having advocates for children, but the children's advocates whom I have met have been very variable in quality and effectiveness. Because there is no standard, virtually anybody can be an advocate for a child so that may not always be the strongest way to go. What is the answer?

Bernadette Monaghan: I think that there is an opportunity for much more consistent support for advocacy going forward, but the advocacy must be based very much on what the young person feels they want and need. I am not sure what stage advocacy service or support is actually at.

We are also moving towards the creation of a national safeguarders panel. That does not fall within my remit, but I think that essentially that is about ensuring that all safeguarders are trained consistently and work to the same national standard. That will come on stream in the future and is being managed by Children 1st.

At the end of the day, the issue comes down to panel members continually understanding what their role in the hearing is and staying focused on that. Part of the local area training will seek constantly to reinforce the message about what the panel member's job is and the fact that the most important person in the room—regardless of whether there is a cast of thousands of professionals—is the young person. We need to keep reinforcing that message and training will be critical.

Colin Beattie: The consistent message coming forward to us is that, in some cases, the needs of the child are not coming first because the parent's rights, if you like, are being argued by the lawyer to the detriment of the child. How do you balance that? The training of panels could take a very long time. How confident will panel members be in dealing with a lawyer who is much more accustomed to an adversarial situation and much more skilled at arguing the points? Panel members are basically ordinary people who are not skilled in that sort of debate.

Hugh McNaughtan: The whole point of the hearing being a tribunal of three people is that, although we may never have all three people who are strong enough to deal with everything, we need just one person on the hearing who is strong enough. We have already heard examples of hearing panel members—not necessarily the chair—saying, "Look, we may have all these people here, but will the solicitors please remember that we are here today to make a decision in the best interests of the child?" The only strength that panel members need to have is the strength to make it clear from the outset that if there are any legal points or anything else, those can be made elsewhere because, on the day, all the hearing is interested in listening to is what the lawyer's client feels or believes. The hearing is not interested in points of law but must make a decision in the best interests of the child. The training may help to keep that focus in mind, but I do not think that that focus will ever go away because we already have great examples of what panel members are doing just now.

Malcolm Schaffer: The new act reinforces the existing provision enabling the hearing to speak to the child on its own, without parents or legal representatives being present. If the child is well equipped and feels confident to share his or her views, that affords an opportunity to the hearing to keep the spotlight continually on the child's views and the child's interests.

The Convener: We will move on to timescales. We have touched on those as we have gone through, but we have some specific questions on them.

Liz Smith: We have had it put to us in visits and in written evidence—I think that it was the evidence from Angus Council and South Ayrshire Council, to be specific—that too many of the court and hearings processes create a significant delay. I think that the last time that you gave evidence, Mr Schaffer, you expressed concern about that too. Is that problem prevalent or is it an issue that only one or two councils flag up?

Malcolm Schaffer: It is a relevant issue and it can come into play in different parts of the system.

First, if the grounds of referral are denied, the case goes on application to court for proof. One of the core issues is having that proof heard as early as possible. Sometimes, when it is contested, it drags on and on. We have proofs that last more than a year. In terms of the life of the child and the protection issues for the child, that is a long time. We are in dialogue with the Scottish Court Service on how we can improve practice on that issue.

A second part of the process that can be clunky is the permanence procedure. We have highlighted that in our research report, with which I know you are familiar. We can make improvements on that, including a basic one of improving the communications between the SCRA and the Scottish Court Service. We need to make as much as possible electronic, as opposed to the rather clunky mail procedures, which can take days and days more than they should, which is significant.

There may be one or two aspects of the 2007 legislation that do not help and might be revisited. A children and young people bill is coming up. That might be an opportunity to consider one or two aspects of how the 2007 legislation works and whether there are aspects of legal process that add no value but just add time.

Liz Smith: Does that refer to some of the more recent legislation on adoption processes?

Malcolm Schaffer: Yes.

Liz Smith: Social Care and Social Work Improvement Scotland asked about that. Was it raising a valid concern?

Malcolm Schaffer: Absolutely.

Neil Bibby: The care inspectorate is uncertain about how the recent legislation will impact on decision-making processes. Do you have any further comment on that?

Malcolm Schaffer: To reinforce what I said already, it is worth re-examining the legislation. I am not sure how much factual evidence we have on it, so I am being slightly impressionistic about it, but there are problems with aspects of the process.

To give an example—this is only my view—I am not sure what value the advice hearing adds other than adding several months of time. At the moment, the hearing has to give advice before the permanence proceedings are launched, but I have never been convinced about how much value that adds, and it often delays the launching of the proceedings by a significant period of time. That is one petty example of an area in which we could consider improvements.

Hugh McNaughtan: The greatest frustration for panel members is to see a child who has been in care practically from the minute that they were born and is getting to five or six but the permanence order is still not through. Panel members sit at advice hearings and ask themselves why they are doing it, because it is clear what the child needs. There is no doubt that there is frustration.

The Convener: I will ask some questions on accessibility. These arose primarily from evidence from the organisation People First (Scotland) and they concern parents with learning disabilities in particular. Those parents reported that they routinely attended children's hearings and were, to be frank, unable to understand what was going on in the process. Either there was a lack of support or support came far too late in the process for it to make any difference, and material was not available in a format that they could easily access and understand. Do you have any comments in response to those concerns?

12:30

Malcolm Schaffer: As I said, we have a participation group up and running, because we believe that we could do a lot better—full stop. We have been in touch with the Scottish Consortium for Learning Disability and we are more than willing to consult other groups, such as People First (Scotland), on improving the style of our communications—making them more accessible and more understandable—as well as listening to people, getting better feedback and ensuring that people are properly represented. We accept and will address the concerns that have been voiced, and we hope that we are working on that.

Hugh McNaughtan: From a panel member's perspective, I think that, if parents come in and have any lack of understanding and if the reporter has not already allowed for a legal representative to be there to represent the parents' views, the majority of panel members are much more aware of that than they were a couple of years ago and will not proceed if they feel that a parent has any lack of understanding. In such cases, panel members will have the hearing continued or wait until a legal rep can be found. That is fine in a city centre but is not very good on the islands or somewhere such as that, where the situation could be much more difficult.

The Convener: What you say could be the case, but the representations that we have had from People First (Scotland) and the consortium are very recent. They expressed the concern that, because of a lack of understanding among panel members, a disproportionately high number of the children of the parents concerned are being removed—more than would be the case if panel members understood the parents' situation more. Do you recognise and accept that concern? Does that represent a training need that must be addressed?

Bernadette Monaghan: Like Malcolm Schaffer, I have been in touch with the consortium, and I am aware of the issues. As part of building a national curriculum and on-going training for panel members, we need to work with stakeholders such as the consortium to get such feedback, which must be incorporated into panel member training in the most appropriate and effective way possible. We must take that on board.

If the ultimate aim is to ensure that panel members across Scotland can consistently give the highest-quality service to a young person, a family and a hearing, we need to be open to listening to feedback about the different groups of people who come to hearings and about how we might not be meeting their needs as best we can. The discussions are at an early stage, but I imagine that I will do a lot more work with the consortium and other agencies to listen to their feedback and embed that in feedback to area conveners and area support teams and in panel member training nationally and locally.

Neil Findlay: During our inquiry, the young people whom we have spoken to have expressed the view that they felt that, when they went to a

panel, something was happening to them because of their conduct, behaviour or whatever, which was usually the result of behaviour by parents or other adults. My question might be about the bigger picture: do we need to move to systems of family hearings rather than children's hearings? As has been said, the focus at the moment is on the child having to do something or on something happening to them. Outside the formal criminal justice system, I do not see any way in which something must happen to the parents that is enforceable without going through a court. I hope that I have explained that clearly.

Hugh McNaughtan: Malcolm Schaffer touched on that point. You will not find a panel member in Scotland who has not at some time walked out of a hearing wishing that they could have put conditions on the parents. Sometimes that can be worked round, but at other times it cannot be done. Being able somehow to put conditions on parents would help.

A young boy was quiet at the start of a recent hearing, but he ended up talking quite loudly and making it clear to his mum that, if someone put drugs in front of her, it was up to her whether she took them. He was happy to have contact with his mum, but he wanted us to make up a condition that his mum should attend at least an initial assessment with addiction services before he would entertain seeing her. On the day, the panel managed to find a way round that, but the issue is difficult.

If there was some way of putting conditions on parents, it would not necessarily have to involve family hearings. Although they are children's hearings, the family come into them. Contrary to what some might think, panel members listen to what parents say. However, being able to put a condition on a parent would make a heck of a lot of difference to some outcomes.

Malcolm Schaffer: It is worth remembering that the Antisocial Behaviour etc (Scotland) Act 2004 introduced parenting orders but, since the legislation came into force, they have never been used anywhere in Scotland. There has been an improvement in the services that are offered to develop parenting skills, but not a single order has been used. I cannot explain why that is. It is an interesting issue, but I am not sure that I know what the answer is, other than to say that what is available is not being used.

Bernadette Monaghan: To go back to the antisocial behaviour legislation, there is an issue about whether the fact that parenting orders have not been used indicates success or failure. It might well mean that we are dealing with parents' needs and providing support for them through much more informal processes. We should bear that in mind.

There are different aspects. One is the ability of panels in future to speak to the young person on their own and get a sense of what they feel and want. The object of a hearing is about the outcomes for the young person. Although the family is there, the focus must be on the young person and ensuring that their views are heard.

The recent research on young people leaving care—which links to the impact of our work with young people in compulsory supervision—shows that we are not doing a very good job if we are trying to prevent them from moving into the adult criminal justice system and to help them with issues such as independent living, appropriate accommodation, emotional support and access to learning and employment.

Panel members need to be aware of all that work and understand that, when they make a decision, there is a bigger context. The decision is about the young person, their family and their community, but it is also about the young person eventually moving beyond the panel, the hearing and the system.

Neil Findlay: You have hit on the problem, because the best result for some young people will not be something that happens to them but something that amends the behaviour of the people around them.

I have completely forgotten the other point that I was going to make but, if it comes back to me before the end of the meeting, I will raise it.

The Convener: We will come back to you.

Barbara Reid: One problem is about families being aware of what hearings can do to help before they come to a hearing. It is not only children who feel that something is being done to them; parents who are not coping feel that social work is something that is being done to them, rather than that they have a right to receive help to be a better parent.

We need to change the context in which social work involvement is seen as negative, because it is not and it can be a positive experience. People have a right to that help. We can say what we think people need and that they have a right to demand it of their social worker, and we can tell them to let us know if they do not get it. It is about tipping the scale of what people feel social work is about.

Neil Findlay: I have remembered my other point. I imagine that the reason why local authorities and housing providers decide not to use antisocial behaviour legislation is that they see substance addiction, for example, as a health issue rather than a criminal justice or housing issue or whatever. I have been through this argument before, and I know that a number of

instances in which bodies have not applied antisocial behaviour legislation can be explained in that way.

Clare Adamson: We have heard two comments about being able to speak to young people in private. When we visited care leavers at Who Cares? Scotland, we heard comments that young people, when faced with a panel situation in which they might see a parent or carer for the first time in a considerable while, might be intimidated about saying anything because of the long-term emotional damage that that might do to the relationship or, in certain circumstances, because of fear of what might happen. Can young people request that what they have to say be heard in private?

Malcolm Schaffer: At the moment, anything said in private has to be repeated to parents and anything that is written has to be given to them. During the passage of the recent bill, young people said in evidence that that intimidated them and prevented them from saying or writing anything; as a result, section 178 of the new 2011 act allows a children's hearing to keep private anything that a child has told members in private if its being revealed is likely to cause significant harm to the child.

In theory we support such a provision, but it will be a challenge to implement it in practice because it will be argued that a parent has a right to hear what has been said, particularly if it impacts on the hearing's decision. We need to look at how we can make the provision work, but at least it exists to cover the situation in question.

The Convener: I have a final question before we end this evidence session. You have said an awful lot about the demands that are and will be placed on panel members. Even though these people are lay members, work part-time and are volunteers, we still expect them to be part-social worker, part-lawyer, part-psychologist, part-psychiatrist and part-parent as well as being lots of other things. All the way through the session, we have been saying, "We'll have to give them more training, and they'll have to be better at this and more adept at that." Given the system's voluntary nature, are our expectations of what panel members can do reasonable?

Hugh McNaughtan: As a serving panel member, I can say that when I joined the system—which is some time ago now—the expectation was that we were to attend whatever mandatory training came along. Various things have been done with core training and area meetings in order to deal with the local aspects of the issue and, given the paperwork that had to go out, it is clear that the people who went through the training to transfer from the system under the old act to that under the Children's Hearings (Scotland) Act 1995—and indeed those people who are now transferring to Children's Hearings Scotland—knew fine well what the expectations on them were.

For more than 40 years now, we have for some reason or other been able to find 3,000 people willing to take on the role year on year and do the training. They know what they are signing up to and have taken everything on board.

On an issue that some of you have probably been involved with—I know that Barbara Reid certainly has—I note that one thing that people from other countries cannot work out is how we have managed to get that number of people to serve for that length of time without their being paid. They just say that that would not happen in their country. It must be something to do with the Scottish ethos.

Barbara Reid: If I could ban one word with regard to panel members, it would be "volunteer". They give their time in a voluntary capacity and are not paid for it, but I note that 180 of them have just finished their training and have all signed up to making a commitment to children in a quasi-judicial body. They know that it is not like being a volunteer. They are very well aware of the expectations on them and are equipped to do the job.

We need to make the experience for children as positive as we can by allowing children who come to hearings to feel that they are well supported and are being listened to. We need other professionals to acknowledge that the hearing is not a voluntary thing; instead, it comprises people who have learned tremendous skills, have a tremendous amount of commitment and are there to do the best they can. If we disagree with you, it is not because we are being bloody-minded; it is simply because we take a different view.

Bernadette Monaghan: I agree. As panel members know, I do not use the word "volunteer" when I speak to them. They volunteer to train to be a panel member but when they take on that responsibility they become members of the largest tribunal in Scotland and have extensive decision-making powers. People certainly take the role seriously.

The Minister for Children and Young People, Aileen Campbell, and I sent out a joint letter to approximately 2,400 serving panel members—excluding the trainees, who are about to get a similar letter—inviting them to transfer from the 32 local authority panels to the national children's panel. We had a 95 per cent return rate, with 96 per cent of respondents saying that they would transfer. We therefore have about 103 panel members to chase up to find out whether they are coming across.

Those who decided not to transfer felt that the invitation represented a natural cut-off point; there were family reasons and so on. It is also getting much more difficult to get time off work and a huge area of work, which I will not go into just now, is about convincing employers that they should support the panel by demonstrating that the skills that panel members learn are really good transferable ones that they will benefit from.

12:45

Although panel members are unpaid, they take on a responsibility. I find that, by and large, they have sound values and want to give the best possible service to children and young people. They accept that the training is part of all that and take such a responsibility seriously. As a result of last year's national campaign, there were more than 10,000 expressions of interest from people who wanted to become a panel member, so I think that we have done very well in convincing panel members that they will retain their local identity and serve the children, young people and families in their community.

With the national panel, we have an opportunity not only to create a high-quality and much more consistent service but to raise the profile and promote greater understanding among the public and—not least—among employers of what panel members actually do, they skills they have and the commitment they give. We might in future think about putting in place some sort of kite-mark award for employers who support the panel, but at the moment we do not even know who the employers are and indeed how many panel members are actually employed. That is a whole other piece of work that we have to do.

As I have said, we had a positive response rate to our invitation to move to the national panel. We certainly did not expect to get mass resignations; indeed, there never has been such a reaction in the 40-odd years of the children's hearings system. Panel members have adapted to change, have continued to stay focused, and have sat on hearings and made decisions in the best interests of children. We certainly do not take that for granted, and we did a lot of work to reassure them what a national panel does and does not mean. Nevertheless, the response rate was very positive.

The Convener: I thank the witnesses for coming along this morning and giving very helpful and useful evidence for our inquiry. I want to say that I appreciate their volunteering to attend this morning, even if I get chastised for using inappropriate language.

12:47

Meeting suspended.

12:48

On resuming—

Subordinate Legislation

Children's Hearings (Scotland) Act 2011 (Child Protection Emergency Measures) Regulations 2012 (SSI 2012/334)

Children's Hearings (Scotland) Act 2011 (Rights of Audience of the Principal Reporter) Regulations 2012 (SSI 2012/335)

Children's Hearings (Scotland) Act 2011 (Safeguarders: Further Provision) Regulations 2012 (SSI 2012/336)

Children's Hearings (Scotland) Act 2011 (Appeals against Dismissal by SCRA) Regulations 2012 (SSI 2012/337)

The Convener: The next item is consideration of four negative statutory instruments. No motion to annul has been lodged and the Subordinate Legislation Committee determined that it did not need to draw the Parliament's attention to any of them. If members have no comments, does the committee agree to make no recommendation to the Parliament on the four instruments?

Members *indicated agreement.*

The Convener: As the committee has agreed to hold the next item in private, I close the public part of the meeting.

12:48

Meeting continued in private until 12:59.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78307-140-1

Revised e-format available
ISBN 978-1-78307-154-8

Printed in Scotland by APS Group Scotland