The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 7 May 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
14th 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:

Tam Baillie (Scotland's Commissioner for Children and Young People)
Professor Russel Griggs
Jenny Marra (North East Scotland) (Lab)
Andy Miller (Scottish Consortium for Learning Disability)
Robin Parker (National Union of Students Scotland)
Simon Pepper (Steering Group on Scottish Code for Good Higher Education)
Liz Ray (Who Cares? Scotland)
Mary Senior (University and College Union Scotland)
Lord Smith of Kelvin (Steering Group on Scottish Code for Good Higher Education)
Professor Ferdinand von Prondzynski

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Education and Culture Committee

Tuesday 7 May 2013

[The Convener *opened the meeting at 10:00*]

Taking Children into Care Inquiry

The Convener (Stewart Maxwell): Good morning. I welcome members to the 14th meeting in 2013 of the Education and Culture Committee, and remind them to ensure that all electronic devices are switched off at all times, please, as they interfere with the sound system.

Agenda item 1 is an oral evidence session in our inquiry into decision making on whether to take children into care. This morning, we will focus on the theme of ensuring that all voices are heard in the decision-making process.

We undertook a series of visits and meetings prior to taking oral evidence. As members will remember, we met a group of young people who had been in care, as well as parents, foster parents and parents with learning disabilities. Those visits and oral evidence sessions will inform our report, and the evidence sessions will, of course, help us in forming our questions to this morning's panel.

I welcome to the committee Tam Baillie, Scotland's Commissioner for Children and Young People; Liz Ray, the national learning and development lead at Who Cares? Scotland; and Andy Miller, business and partnerships manager at the Scottish Consortium for Learning Disability. Good morning to you all.

Before I ask for questions from the rest of the committee, I want to ask about a specific issue that has come up in written evidence. People First (Scotland) stated:

"International research shows that about two out of every five children born to parents with learning disabilities are permanently removed from their care".

Other groups stated that, too. Is that level of removal of children appropriate? In general, what are panel members' views on how professionals treat parents with learning disabilities with regard to their children?

Andy Miller (Scottish Consortium for Learning Disability): Good morning. The Scottish Consortium for Learning Disability works closely with People First (Scotland) on supporting parents with learning difficulties, and we certainly agree with what it quoted for the rate of removal for children whose parents have learning difficulties. However, the research in the area is not that robust. The figure comes largely from England, where pretty thorough research was carried out, but there has been nothing like that research in Scotland. However, there is no reason to think that the levels are significantly different here. The figure is four out of 10 or even higher—others estimate five or even six out of 10.

The Scottish Consortium for Learning Disability's view is that the figure is too high. I do not know about the figures for vulnerable children of parents with addiction problems or mental health difficulties, for example—those figures might be equally high—but the figure in question certainly feels high. On its own, it is quite bald, but it should be considered alongside the experiences of parents with learning difficulties, who find it really difficult to get the right support to parent, or even any support at all. There is a strong feeling that, with better support for parents, the number would drop significantly. We certainly hold that view.

The Convener: Do you have any comments on this area, Liz Ray?

Liz Ray (Who Cares? Scotland): We do very little work with children with disabilities, but our experience tends to be that looked-after children with disabilities are generally looked after from an education rather than a care perspective. To be honest, our experience in the area is fairly limited.

Tam Baillie (Scotland's Commissioner for Children and Young People): Less than 2 per cent of our children are looked after at any one time, so the figures for that group are significantly higher. However, the definition of learning difficulties is very wide, so when looking at what the figure means, there needs to be a bit more scrutiny; we should not just use the blanket definition.

It has to be said that we do not provide sufficient support to parents who are in vulnerable situations, including parents with learning disabilities. I had the pleasure of working alongside People First (Scotland), hosting a round-table discussion to explore some of the underlying issues. There is a general issue of support to parents in Scotland—we might get the chance to talk about that—and there is the specific issue of parents with learning disabilities.

I cannot say what would be an acceptable percentage because of what I said about the definition, but we can and should do more to support parents with learning disabilities to rear their children.

The Convener: Thank you very much for that. I accept what you have all said on the issue, but if the figures are correct and the rate is two out of five, is that appropriate? It is a very difficult area to

discuss, but when parents have particular difficulties—whatever they happen to be, although here we are talking about learning disabilities—it is almost inevitable that their children are more likely to be removed and put into care, because, in effect, the child's rights to proper care and a proper upbringing are our priority. If the figure is two out of five, is that surprising? Is it not appropriate that we remove those children if there are problems in their household because of particular disabilities?

Andy Miller: Certainly, what is most important is the wellbeing of the children in those families. The rights of the parents have to be secondary to that.

I would say strongly though that those rights should not be held against each other. Often meeting parents' rights to active support would actually promote the wellbeing of the child. Setting the rights of the children against the rights of the parents is a false dichotomy—we should be looking at the rights of the family.

In circumstances in which the children's wellbeing is seriously compromised, of course removal must be considered, but the point at which that is reached is just a snapshot of the family. There is always a build-up to such a point, which might be weeks or years long. In all situations, whether those involving parents with learning difficulties or some other kind of vulnerability, it is good and important to look and see what kind of support a family needs. Is it available, who from and for how long? What will help? How do we avoid the state taking over from the parents and build up parents' capacity to be more effective on their own? When do we pull out the support? All those questions are really important. If we get the answers right, we will see the numbers coming down.

The Convener: Is it your view that some professionals, in effect, use the fact that parents have a learning disability as a short-hand reason to remove children?

Andy Miller: There is a bit of evidence of that. Some professionals see someone with a learning disability and assume incompetence. Indeed, written evidence and reports have on occasion cited that as the reason for removal. Officially, however, that cannot be the case any more; there need to be other reasons for removal beyond simply having a learning disability.

The Convener: I would hope that our views on this particular issue have changed. Have you seen any evidence of such a change?

Andy Miller: There is some really good evidence of good support that is being given to parents with learning difficulties across the country. Some organisations, including national ones, are getting better at this; for example, Aberlour Child Care Trust is doing some really good work in Dundee, Aberdeen and other places and other very good examples include the social work team in South Ayrshire.

However, the situation is patchy. One of the main difficulties is the culture of short-term interventions in children and families social work departments. Traditionally, they have found that such interventions work best; indeed, there is now more of a financial imperative simply to go in, fix the problem or make the situation good enough and then withdraw. However, for many parents with learning difficulties, such an approach is not effective and does not work. As a result, when social work puts in what they consider to be an effective form of support and finds that it is not effective, it simply compounds any attitude in the department that the parents just are not up to the job.

In adult learning disability services, there is an acceptance that long-term support is needed and many adults with learning disabilities in Scotland get lifelong support as the norm. As a result, there is a culture clash between children and families social work and adult learning disability services.

The Convener: Thank you very much. We might very well come back to this subject throughout the morning, but George Adam has a few questions of his own.

George Adam (Paisley) (SNP): Good morning. I want to ask about the hearings system and whether we are listening to the views of young people and vulnerable adults. At a previous meeting, Malcolm Schaffer of the Scottish Children's Reporter Administration said:

> "the system could do a lot better on involving young people and vulnerable adults."—[*Official Report*, *Education and Culture Committee*, 15 January 2013; c 1773.]

Given the new emphasis on training for those involved in children's hearings in Scotland and the developments in children's advocacy, is enough being done to ensure that young people and vulnerable adults in the system are getting a voice?

Liz Ray: No. For children and their families, the process of attending a hearing is fraught with difficulty. There can be up to 10 or 12 people in a room and, even though the child in question might have been given the opportunity to have their say, they might find it very difficult to speak honestly if they feel under pressure or intimidated. Quite often, parents themselves are so intimidated by the procedures that they do not contribute effectively; often they are aggressive, angry or upset, as a result of which they are perceived in a particular way by panel members, which can affect decision making.

Although on the surface the structures seem to allow everyone to have a voice, I think that participation is different from being allowed to speak. To participate effectively and to be able to say what you have to, you have to feel safe, that you are being listened to and that you are being respected, but families are so stressed by the children's hearings process that they do not feel that they are being considered, respected or listened to.

Tam Baillie: Appearing before a hearing is stressful because it is a tribunal that can make life-changing decisions. I do not think that you can take that out of consideration of the issue. I am pleased that the committee wants to home in on the child's views and that people are paying much more attention to how we elicit the views of children and young people and take them into account in decision making. Regardless of that, however, we must acknowledge that the process is stressful.

I know that certain practices have developed. For example, I have seen evidence of committee chairs speaking in private to the child in question. I am a public figure, but I have things that I do not want people to know about me. In fact, you MSPs are public figures and my guess is that you have things that you do not want people to know about you. Think of those things that are private to you and whether, if the convener cleared the room, for instance, you would share your private secrets with him. I am not asking you to do that.

10:15

The Convener: We will not be doing it, Mr Baillie.

Tam Baillie: I understand that, but that is the kind of expectation that we are placing on children, which means that it is quite tricky to get to what a child actually thinks and feels, taking out all the other pressures that are acting on them.

I spend my life trying to tell people to listen harder to children and young people and I spend a lot of time trying to figure out the best ways of getting the views of children and young people, so I am very pleased about the efforts that are being made in the hearings system, but I also do not take the issue lightly. The circumstances are quite difficult and we should do everything that we can to try to get the child's or young person's trust, ensure that we are alongside them and ensure that they have confidence not only to say what they feel and genuinely think but that what they say will be taken account of. You will have heard that there are many times when children do not feel that that is the case.

Liz Smith (Mid Scotland and Fife) (Con): I will continue on that theme because it is difficult and important. Mr Miller said that there was a false dichotomy between parents and children and that really we should think about the family. I entirely agree with him about that, but it is quite difficult to drill down into that. When we have spoken to groups, they have told us, just as Mr Baillie has said, that they do not feel listened to.

Are there circumstances in which it is better to hear privately from the child without the parent or parents being there and in which it is better to hear from the parents when the child is not there? We must balance the rights of both. That is probably one of our biggest difficulties. I ask Mr Miller to expand a little bit on that.

Andy Miller: I probably do not have a balanced or rounded view on the question because more of my work is with parents with learning difficulties than with children with learning difficulties who are going through the children's hearings system. However, I recognise that, often, the views of the parents are not the same as those of the child, so whatever works in enabling us to listen well and properly to both sides is good.

Liz Smith: In a situation that involves learning difficulties, do you generally find it easier to elicit the information that is required to help the child and the family if they are spoken to separately?

Andy Miller: To be honest, I do not have much experience of the parents or the child with learning difficulties being spoken to separately. As my two colleagues have said, there are many practical difficulties. The practical realities of the children's hearings system make it really difficult to get to the nub of what people want to say and what is important to them.

A specific issue that has not been mentioned is the timescales of hearings and the fact that much of the written information that is considered is inaccessible to parents and children with learning disabilities.

Liz Smith: You raise an interesting point. Obviously, the 2010 child protection guidance has made things a little bit better. What else do the witnesses feel we have to do, aside from administrative changes to do with timescales and paperwork, to ensure that we get better information from families in the children's hearings system?

Tam Baillie: We are in a process of change with the reform of the hearings system, and it has been a very long process. I am tempted to let it bed down. I hear good things about people's inclinations and approaches when it comes to listening to children and young people, but I have already set out how tricky an area that is.

If there is one thing that could benefit us all, it is more consistent assessment. That would help to

give the hearing the confidence to make difficult decisions. You have heard evidence about inconsistencies around assessment. We are much better informed about attachment theory and how it impacts on children's development. We must keep plugging away to ensure that we provide the hearings with best-informed, evidence-based recommendations, which will hopefully give them more confidence in making difficult permanent decisions for children and young people.

Listening to children and young people is part of that, but a very high percentage of the children who are coming into care are under two years of age, and those are the children whom we are most concerned about. We cannot get a view from a child that age. An assessment is made about the attachment and the circumstances that could best nurture the child. The issue lies in the systems that we put around the hearings system, of which assessments are a key one. You have heard plenty of evidence about whether assessments are well informed or evidence based, or indeed consistent.

Liz Smith: From what you hear from all your contacts, is it your understanding that things are improving?

Tam Baillie: I certainly hear an awful lot more talk about listening to the views of children and young people and about the value that is placed on their views. There are many things that we can do. One is the advocacy provision in the Children's Hearings (Scotland) Act 2011, but I would sound a note of caution on that. In my experience, the best advocates for children and young people are those whom they trust, and that does not necessarily mean a third party. A balance must be struck. That is twice that I have mentioned the need for children to trust the people they relate to and deal with, and that will not always be an independent advocate. There are enough people around the table, and members will know how intimidating it is to have lots of people around a table—we as panel members do, anyway.

The Convener: I will push a little further on that point. You said that there was a need for caution and that it is important to give the system a chance to bed down. Is it too early to be certain about the impact of the changes?

Tam Baillie: They have not even come in yet.

The Convener: I appreciate that. What about the views inside the community and among professionals?

Tam Baillie: We have taken a very long time to get to where we are now. I welcome the committee's focus on the critical issue of how decisions are taken about children. I am interested in how you will have an impact, or what impact you expect to have, on the processes as a result of whatever report you publish.

As I said, I am particularly encouraged on the issue of listening to children and young people. We could do a lot more to familiarise children with the process and to get alongside them, and those are the kinds of things that people are looking into. That includes the forms that they have to fill in and the way in which their views are given. I have given you an idea of some of the limitations, however. Even if the room is cleared and things are done in private, would you expect a child to speak about the things that have been most traumatising and hurtful?

The Convener: It has been a long time and a somewhat difficult experience to get to where we are in relation to the 2011 act and so on. I was wondering about the views of those involved, who had some heightened concerns. Have things settled down?

Tam Baillie: The committee has already been told that the hearings system has a long way to go to ensure that it gets the views of children and young people effectively. That is partly because it is tricky and partly because we are on a journey. We have a long way to go in Scotland before we can say that we regularly and routinely elicit, take on board and value the views of children and young people. Some of the most encouraging noises are coming through the children's hearings system, however.

Colin Beattie (Midlothian North and Musselburgh) (SNP): The evidence that we have taken so far has referred to a lack of consistency in councils' approach. That ranges from councils being too quick to remove children to councils using the rule of optimism and always being inclined to give a family one more chance. In general, with regard to parents with learning disabilities and so forth, where does the balance lie?

Andy Miller: I am sorry to be so slow in answering—I am trying to get my head round the question because quite a lot of factors are involved. It is not just a question of being soft as opposed to hard on families; there is no consistency in the support that is given to families in which there is parental learning disability. I mentioned some areas of good practice in certain organisations and geographical locations, but there is no consistent good practice throughout the country.

I do not know whether there is consistency on the speed of starting child protection or removal procedures, or anything like that, as I am involved in the part of the process that takes place before those things happen. I agree with Tam Baillie about the need for consistent assessments.

There are some examples of good assessment tools in relation to parental learning disability being used in good ways, but there is no consistency. All the component parts are available, and there are good assessment tools and training for working with parents with learning disabilities, but there is no consistency.

At the meeting to which Tam Baillie referred, which he co-chaired with People First (Scotland) a couple of weeks ago, that question was considered. The idea of a supported parenting model was broached, and everyone in the room agreed that it was a good model not just for families in which there is parental learning disability but for families who are experiencing a range of vulnerable circumstances. That approach is based on a number of key principles, but basically it puts families at the centre and provides support that builds the capacity of parents to support their children better. If that model was adopted consistently across the country, you would find the results that you are seeking.

Colin Beattie: To extend the question slightly, have the professionals who are involved in making those decisions at present been given the skills to do so? In other words, have they been given the support to allow them to reach a fair judgment on such matters?

Andy Miller: No, I know that they have not. For example, a lot of children and families social workers are totally unaware of the Scottish good practice guidelines on supporting parents with learning difficulties that were produced in 2009. Some are aware of them but say that they do not use them in practice. Many say that they have had no training in using the assessment tools that we are talking about. A lot of social workers do not have the tools that they need.

Colin Beattie: Do any others on the panel want to come in?

Tam Baillie: I sense a concern among committee members about parents with learning disabilities and consistency of practice. The reason why there are just views and opinions is partly because we do not have any evidence in that regard. It is worth recommending that the area is looked at in order to get good-quality information.

On disability, I produced a report last year on the consistency of services for children with disabilities. One of the key issues that came up was the different approaches, tools and assessments that were being used throughout the country. I have recently heard anecdotally about concerns that parents of children with disabilities are not receiving appropriate support and the children are ending up in care. That pattern could be extended to other vulnerable groups. I would be interested to look at how consistent we are in our approach to children with disabilities.

10:30

Colin Beattie: I will pick up on a point that you just made. There seems to be an issue about having reliable data to analyse. That is astounding, given that the issue is not new but has been going on for years. One would think that councils and the various other bodies would get the statistics together and try to analyse what is happening and where, and what can be done better, according to good practice. It seems that we are being told that that does not happen.

Tam Baillie: Members may want to highlight that in the committee's conclusions. I grew up with the children's hearings system and I, and many others, admire its approach. However, evidence on that approach is rather thin. We need to ensure that we properly monitor, research and evaluate the outcomes for children who go through the system.

The Convener: Does the lack of consistency that you have talked about refer to a lack of consistency among professionals or among local authority areas?

Tam Baillie: I would say that it is both. We need only look at the regularly produced numbers on looked-after children. There are variations, some of which—but not all—can be accounted for by concentrations of poverty; some councils that have similar socioeconomic circumstances have different rates for children being taken into care and looked after. That begs the question what else is going on.

The direction of travel of getting it right for every child and integrated working is the way forward to more consistent practice and understanding of different approaches, services and professions within the system, in social work, education, the police, housing and health. There are long-standing issues about common approaches and there are some good examples of co-location in which staff have developed shared practices. However, we have a way to go in that.

Joan McAlpine (South Scotland) (SNP): Mr Miller stated clearly that the Scottish Consortium for Learning Disability's good-practice guidance is not being consistently applied. I take it from what you have said that it is not possible to quantify how many authorities use the guidance. Could you hazard a guess and say whether the number is above or below 50 per cent?

Andy Miller: No, I could not. We have not been able to do widespread research on that. A couple of years ago we did a very small-scale snapshot survey on use of the guidelines, and what came

out was that health professionals used them a lot more than social workers. However, the survey was not big enough to highlight inconsistency of use of the guidelines by social workers across the country.

Joan McAlpine: I do not know how familiar the other two panel members are with the guidelines and whether they would be able to say, for example, whether they are in line with GIRFEC. Would there be any reason why social workers would not be using the guidelines?

Andy Miller: The recommendations and the guidelines are very much along the lines of the supported parenting approach that I was talking about a few minutes ago, which is completely in line with GIRFEC in terms of early intervention, better joint working between organisations and so on.

Tam Baillie: The committee will be aware of the status of guidance and the guidelines, especially in an area where there is growing awareness of the need to do better. Again, that might be an aspect that the committee wants to highlight.

Just to pick up on a point that Andy Miller made, the supported parenting model is very much in line with the aspirations of the national parenting strategy, in that it provides principles for providing support to vulnerable families. It is another step along the way to providing better support to families with particular vulnerabilities—for example, supported parenting considers families with parental learning disability. However, I think that the model is applicable across the board.

Joan McAlpine: Is the model that you outlined apparent in the pilot schemes? Do you have specific examples of how that model has helped families?

Andy Miller: Yes. Aberlour Child Care Trust, which I mentioned earlier, has a small supported parenting model in Dundee. South Ayrshire Council, which I also mentioned, has a team within the children with disabilities team. Their work is based on certain principles and follows the theory of supported parenting, although it has a broader approach. It is the kind of work that organisations can do without calling it supported parenting, as it were. I have visited both those places and could see that their models are working and producing really good outcomes for children.

Joan McAlpine: How could we apply that approach more widely?

Andy Miller: The national parenting strategy is an ideal place for that to sit. I agree with Tam Baillie that the model is suitable for a wider population and not just families with parental learning disability. It would be very effective to have a supported parenting strategy sitting within the national parenting strategy.

Joan McAlpine: Finally, I want to return to a point that I found interesting at the outset of our discussion. Mr Miller talked about a "culture clash" in social work practice between the models of long-term support for people with learning disabilities and short-term intervention for child protection. How has that culture clash come about and what can we do to overcome it?

Andy Miller: One way to address that would be to have a supported parenting service that bridges adult services and children's services and has a proper focus on the family. I do not know whether that would sit within social work; I have not worked it through. Ineffective working between children and families teams and adult teams is certainly common, and not just because of the question of different cultures, so we need to examine that. A service that specifically straddled the two cultures would be a start.

However, I have no expertise in areas other than learning disability. Liz Ray might have other examples of situations of families with addiction or mental health problems.

Liz Ray: I can see the supported parenting model working well with young care leavers. A number of young care leavers' children are themselves taken into care, often because the care leavers have not developed parenting skills. Children who live at home with their families absorb such skills automatically, but children in care cannot absorb how to parent and so are unable to learn their role as parents.

For young care leavers—the child who was cared for previously—there is a real conflict. They are looked at differently when they are adults and it is their own children who are in care. When social workers look at care leavers, very often they see only the problems that they have experienced in the past, rather than seeing a person with the potential to grow and develop. That often causes problems.

Obviously, the need to protect children will take precedence, but the two needs can go hand in hand—parents can be encouraged to develop and grow and have the opportunity to have their children returned to them at some point. When an adult has learning disabilities, all too often we make decisions based on our knowledge that they had difficulties themselves in the past. In effect, a conflict occurs because we know their care history. It is a question of value judgments.

Tam Baillie: The basic point is that young people leave care far too early. I know that the committee is concentrating on decisions about going into care, but many care leavers go back to homes where there has been little change and

little input. We know the trajectories of many of our young people who leave care and come up in the criminal justice system or in addictions or mental health services. We lack evidence on the overall outcomes for children leaving care; what we have tends to come from small-scale surveys that are carried out at point of destination. We find out, for example, how many young people in Polmont have been in care and how many young people accessing mental health services have been in care. We tend to get short-term information; we do not have an overall picture of the outcomes for youngsters leaving care, and what we have tends to be on the negative side. That is another task for us; we should be much more robust about collecting evidence on young people leaving care and tracking them right the way through.

Young people still leave care aged 16 or 17, whereas young people in the United Kingdom nowadays leave home in their mid-20s. We have to ask ourselves why. I know that the forthcoming bill will contain proposals about a duty to assess and support young people up to the age of 25, but we have to make sure that we also attend to the very early age at which young people leave care. Quite frankly, to leave at 16 or 17 is too early.

Joan McAlpine: That is very helpful. Thank you.

The Convener: I want to clarify a point before I bring in Clare Adamson. Mr Miller said that as far as he is aware, the good practice guidance for supporting parents with learning disabilities is not used consistently across the country; it is used in some places but not in others. Why?

Andy Miller: I do not think that it is because people do not agree with it, although what it says is quite challenging. I have not made the point that there is a practical difficulty with early intervention, simply because there are so many families in crisis.

What I said about the examples of supported parenting working in Dundee and South Ayrshire is not completely true because one of the principles of supported parenting is that it should be available right from the start. I know of no good examples of good supported parenting being available to families that are not in crisis. Very often, services kick in because there are child-protection concerns, which was certainly the case in Dundee. One of the good outcomes was that both the children who were supported are now off the child protection register and are doing better at school and so on—all the indicators are great. However, that service only became available after there was a crisis.

The same is true in South Ayrshire, and anywhere else that you look. On the face of it, it is expensive to put in supports. On one side you have families with children who are on the child protection register and so on, and on the other you have a mum with learning difficulties who has just come out of hospital with no significant problems yet. To where do we divert resources? They will go to the family in which there are children on the child protection register. If we are serious about supported parenting, we need to take those issues into consideration. That is exactly what GIRFEC and the parenting strategy are saying, but it is really challenging to make it happen in practice, which is one of the reasons why the guidelines have not been used consistently.

Clare Adamson (Central Scotland) (SNP): Good morning. We have already mentioned GIRFEC quite a bit this morning. A lot of the evidence talks about the potential for GIRFEC. A lot of the professionals involved were certainly very interested and hopeful about how cross-disciplinary working between education, health and social services might work. Given that there is such a geographical difference in how current guidelines are applied and in the outcomes for young people, will GIRFEC provide the impetus for change that people hope for?

10:45

Tam Baillie: To answer that I will return to the assessment issue and how children who are vulnerable are identified. The legislation includes proposals for named persons. In my opinion, there are insufficient health visitors—who provide the main universal service for going into our youngest families to identify those who require additional services—to carry out the duties that are required of named persons. They face additional requirements through the reinstatement of the health visitor assessment at 27 to 30 months. The bill will also place an expectation that they will act as named persons.

The profession has suffered over recent years. Indeed, there is a shortage of health visitors and some deal with more than 350 cases. If health visitors are expected to be the cornerstone in terms of picking up, and providing a universal service to, our youngest families, we must take the matter much more seriously than we do at present. That will assist in identifying children who require additional services.

I know that you have heard evidence from child protection committee chairs that our systems are pretty robust for the children whom we identify. However, we are not picking up on the poor attachment between the parent and the child in too many cases, and there are too many children whose outcomes could be improved and for whom later episodes of their coming into care could be averted.

That is only one example relating to that age group. I am encouraged by the developments, but progress will take a number of things, and we must get a move on.

Liz Ray: When multidisciplinary working works well, it works beautifully. However, there are so many instances when it does not work, such as when agencies do not engage as well as they could or there is a lack of information sharing, which could impact on the service that the young people receive. We need consistency across the board to ensure that that works well more frequently.

Neil Bibby (West Scotland) (Lab): I will return to the provision of support to families and children. The witnesses have all mentioned different things. The SCLD referred to the need to have the right support available from the start; Who Cares? has talked about improved family support; and Mr Baillie has talked about the support to families, the Children (Scotland) Act 1995 and the welfare of children. Mr Baillie mentioned the National Society for the Prevention of Cruelty to Children's New Orleans intervention model as an example, but what key practical things should be done to support children being returned to families?

Tam Baillie: Good assessment is core because that allows confident decisions to be made on whether a child will stay in the family environment with the right support, or whether we make permanent arrangements for that child outside the family home.

I am encouraged by the trialling of the New Orleans model. It aims to be robust and the trial will ask whether the model works in a Scottish context. A key element is having different timescales for children and parents. The clock is ticking in relation to children's development.

I have mentioned attachment theory—we know an awful lot more about that because of the research that has been produced over the past 25 years. A decision on whether to leave a child where it is or to take no decision is a decision that will impact on that child's wellbeing. We must ensure that we get the timing and the quality of decision making right. If the model proves that we can have better outcomes for children and young people, then we can scale it up. I am encouraged by the measured approach that is being taken. The core aspects are good assessment and timely intervention on children.

Liz Ray: Before we bring children into care, we should consider the impact of the accommodation process on their attachments with their families, their communities and so on. Children suffer significant loss from being accommodated; very often, the children themselves are identified as being the problem either because they have offended or because issues in the family are associated with them.

When children are removed, work is often carried out with them to address some of their issues, but in many cases the same additional work is not done with the families, which means that the children can be returned to their previous situation and the situation simply perpetuates itself. That issue has to be factored in when we seek to remove children.

Neil Bibby: What might be the resource implications of ensuring that the right support is in place for children?

Liz Ray: There are bound to be significant implications. When children leave care, they often go back to families that they have been away from for a number of years and with whom they do not have the relationships that they previously had. Moreover, they often find that they do not fit into their communities. There will be significant resource implications, but if there is a possibility that the child will return home, those implications must, given their long-term nature, be considered and factored in when children are being accommodated, in order to get the best outcome for the child. You cannot work with a child in isolation: the child is part of a family, so the family itself needs to be addressed. The costs of doing so must be examined and borne.

Tam Baillie: I was struck by earlier evidence that 90 per cent of children's hearings' decisions follow the social worker's recommendations and I know that a certain amount of emphasis was placed on that claim. When I looked at the figures, I found that of the 1,686 cases that were considered in the SCRA research, 511 hearings had to be continued or there was no clear social work recommendation. In other words, there was no decision in almost a third of the hearings that were looked at. That harks back to my earlier comment about children being left in such situations. In those cases, a decision has, in fact, been taken that will impact on their wellbeing for good or for bad. We have to think through the impacts of our decision-making forums.

We should also consider that issue alongside the percentage of unplanned moves for the children in question. The SCRA study was based on a sample of only 90 children, but a lot has been made of it. If you consider the cases in which no decision was reached alongside the fact that in 56 per cent of the cases—in other words, the majority—the moves were unplanned, and alongside the impact of that on the children in question, one can see where the system is either not quite moving as fast as it could or is moving in unplanned directions that could have detrimental effects on children's wellbeing or future life chances.

Clare Adamson: On the point that a holistic view of the family is not being taken, I have to say that I was very much worried by the evidence from the care leavers from Who Cares? Scotland. They were known to the social work department, and if they offended such behaviour could lead to their being removed from home. They were greatly concerned about the lack of input or support for their younger siblings, and that they would face very similar outcomes. Have any changes been made to the children's hearings system or GIRFEC that might improve the situation?

Liz Ray: Tam Baillie has already mentioned assessment. Usually, the child's situation is assessed individually; in some cases, the removal of a child might be seen to benefit the rest of the family. The issue is actually about individuals in a collective.

One of the things that our young people have struggled with is the fact that they have been removed from home but their siblings remain. They often have great concerns about their siblings' safety because they are aware of things that they have not shared with their social worker or other people.

I do not have a hard and fast answer, but assessment is the way forward. We must ensure that there are robust assessment processes in place, that there is regular review and that people—children, especially—have the opportunity to speak to an independent person about issues or concerns. That is often lacking for children who live at home. Children who are accommodated have access to advocacy, but children who live at home are often hidden; their issues are hidden, too.

Andy Miller: I will add to what Tam Baillie and Liz Ray have said about assessment processes. I do not know how widespread this feeling is, but I heard this from a clinical psychologist who was at a children's hearing and who was involved with a family. Clinical psychologists have extremely robust assessment processes and receive training in assessment.

She was alarmed that, in the case that she was observing, the assessment had been undertaken by a social work assistant who did not seem to have had any training and who did none of the basic recording of information that she would have done. For example, the social work assistant took no notes at the time of assessing the family and produced a report that, to the clinical psychologist, seemed to be sketchy and selective. That is worrying because of the figure that Tam Baillie mentioned—the fact that in 90 per cent of cases decisions are made that go along with the social work assessment. If that is how it is, we must make really sure that the social work reports are based on rock-solid assessments, which does not seem to be the case at the moment.

Neil Findlay (Lothian) (Lab): Mr Baillie, in your written submission you state:

"There is an issue with regard to the number of episodes children experience before a permanent placement is identified."

You mention

"an overly optimistic perspective of some of our most vulnerable families' capacity to change",

but you also raise the issue that

"the supports provided are insufficient to enable change to be effective."

Throughout our inquiry, the message has come across that the support that is provided for parents is patchy at best. Given the thrust of Government policy in its preventative agenda, is there a need for a consistent service to be provided and for additional resource to be put in?

Tam Baillie: That is a tricky area, because we are providing for an increasing number of looked-after children—in fact, the number is at its highest since 1981. We also know that there is increasing concern about the number of children who are living in neglectful circumstances. As I say in my written evidence—I have repeated it today—it is tempting to say that, if the right support is provided, we could prevent children from going into care. If we had proper oversight and monitoring of the circumstances of all our children, that might well highlight concerns that we would have to move on. It is difficult to know what the impact of all that would be, but I am sure that we are missing children for whom we should be providing additional support.

That does not mean that those children have to be received into care, but we have to respond and assess whether those children are in the right place to be nurtured and what the best options for those children are. That is why I back initiatives such as the national parenting strategy and the getting it right for every child approach.

Nobody would argue with the approach of intervening as early as we can. However, we must bring an element of good judgment to all that. Currently, the system does not have the confidence to make some of the difficult decisions early, with the result that children oscillate between home, care, home and care. I have just given the committee some of the figures that lie behind SCRA's decision making.

For too long, those children are left in limbo. Many of them eventually come into care. We have to reduce that movement—that change in circumstances—because it has the most impact on children's mental wellbeing, attachment, relationships and resilience for the future. That is

why I home in on the business of assessment, timely intervention and a system that has the confidence to make some of the more difficult decisions on our children and young people.

11:00

Neil Findlay: I think that you are right. You would probably struggle to find anyone in the country who disagreed with the fine sentiments in all the documents that are produced, but they have to be more than documents; they have to mean something on the ground, so that we do not end up with social work being just a crisis management service. We regularly hear from people that there has to be a proactive service that is working with families. Is that the direction that we should go in?

Tam Baillie: I have the privilege of being part of the early years task force, which is our opportunity for generational change. This is our opportunity to get in early with families and understand some of the dynamics, particularly with regard to attachment theory and the behaviours that we should support in parents. It is too early to say whether the momentum will be maintained, although I am on the side of the hopeful. This is our generational opportunity to make things better, certainly for our younger children.

Neil Findlay: Can I press you on that and ask how that can be achieved without cash?

Tam Baillie: I have already touched on health visitors, whom I feel strongly about. They are key to universal services as they not only support families but identify families who require additional support. There is some provision in the bill, but it will not kick in until 2016. We should do things now to improve those universal services.

Neil Findlay: I am sure that health visitors are just one small element of a bigger picture.

Tam Baillie: Yes. A number of changes will be needed. A lot of development that I am not privy to is happening in local areas already, as it is being initiated under the early years collaborative, which is in its very early stages. In the coming months, we will have a better idea of exactly how that is unfolding and whether that is prompting some of the developments that are required to achieve some of the ambition that is outlined in the early years collaborative.

Joan McAlpine: I have a quick supplementary on what Mr Miller said a few moments ago about a social work assistant writing a report that had made a clinical psychologist concerned. Do we have any idea how many or what percentage of reports that are written by social work assistants are used to make decisions?

Andy Miller: I am afraid that I have no idea. I do not know whether that information would be available from SCRA.

Tam Baillie: I do not think that that information is collected. I might be wrong; I will stand corrected if it is.

Joan McAlpine: Would such a situation concern you?

Tam Baillie: I have already expressed a lot of concern about the quality of assessments. The issue is not just about social work assessment. The New Orleans intervention model that I mentioned has input from specialist assessment staff, so that when the recommendation is made, it is about not just social work but health and clinical input. It is a much more broadly based assessment for the child, which is exactly what we need. It is not based on just one perspective.

Andy Miller: I did not mean to damn social work assistants with that example. It is quite possible for a social work assistant to do an assessment very well and thoroughly. Simply having the figures on which assessments were done by qualified social workers and which were done by assistants would not necessarily be helpful.

Liam McArthur (Orkney Islands) (LD): You have all rightly laid heavy emphasis on the importance of the quality of the assessment for confidence that the decisions that are taken are evidence based and so on. Obviously, there is a training component to that—I think that Mr Miller talked about that.

We have heard from the Association of Directors of Social Work that there is a problem in retaining experienced social workers. I presume that better assessments will invariably flow from better training and longer experience. Is there concern about the way in which the system currently works? Does that ring bells with you?

Tam Baillie: Yes. That is a long-standing issue. I have the opportunity to speak to numerous social work directors, and maintaining the most experienced workers at the coalface to deal with really difficult and complex matters is a common issue.

One of the key recommendations of "Changing Lives: Report of the 21st Century Social Work Review", which looked at how we would reform social work in the 21st century, was to do with the social worker's professional autonomy and freeing them up to do the task, rather than being weighed down by bureaucracy. We crank up the bureaucracy every time that we respond to tragic incidents, which means that social workers and the social work profession have a heavier bureaucratic burden, and we are in a place where we would not choose to be. We have to find a way

of lightening that load to allow people to flourish and do the job that they came into the profession to do.

Liam McArthur: Do you sense that there is a particular problem with children and family social workers because there are more high-profile, very difficult and sensitive cases in that area than in other areas?

Tam Baillie: I cannot comment for the whole of social work—you will need to take advice on that from the ADSW—but the particular pressures that children and family social workers are under and the requirements of the task are certainly an issue. During the review, there was a lot of feedback from social workers about the bureaucratic burden, which takes away from the skilled tasks that people come in to execute.

There is, of course, a need for constant and continuing professional development. I mentioned our growing knowledge and understanding of attachment theory. The research on that just keeps coming, and practice must be developed to take account of that.

Liam McArthur: You mentioned the importance of health visitors and the likelihood of their being named individuals under the upcoming legislation. Obviously, a range of professionals and people in the third sector are involved in the process. Do you sense that particular professions or agencies are easier to deal with as part of the process, or does that very much boil down to individuals in the system?

Tam Baillie: Are you talking about named persons in particular?

Liam McArthur: I suppose that named persons were the peg on which I hung my question. The concerns that gave rise to the question reflect the fact that vulnerable parents or children perhaps associate more with or have greater confidence in particular individuals in the system. Does that reflect the roles that those individuals perform or the individuals whom they are?

Tam Baillie: That is interesting. My experience is that children and young people tend not to be too bothered about the label of the person whom they are working with, as long as that person engages and is somebody whom they can trust, and that it is we professionals who tend to get hung up about labels and boundaries. That is one issue.

I do not have a panoramic view of interagency working in Scotland, but my hunch is that, certainly at the coalface, we are getting much better at joint interagency working, although there are particular problems with particular responsibilities. I have highlighted the position of health visitors, which I have talked about for a number of months, because of the need to improve the numbers in order to realise the ambitions that are behind named persons in the bill.

Liam McArthur: In one of our evidence-taking sessions, concern was expressed about the way in which certain professional services engaged with parents with learning difficulties in writing and orally in meetings. Do we need to reflect on that concern and make recommendations?

Andy Miller: It is certainly true that there is a common fear of social work among parents with learning difficulties. From the work that I have done, I have found that that is not always based on experience. I spoke to one family who had never had any contact with social work but were terrified of getting in touch to ask for help because they were terrified that what social workers did was take people's kids away.

I am not blaming social work, but that is a key part of the dynamic with all the professionals. It is often much easier for parents with learning difficulties to accept support from other agencies, such as third sector agencies.

I agree with Tam Baillie that interagency working is generally getting better and has been for a while. However, I have also noticed that there are almost never any formal interagency policies or protocols, so interagency working often depends on the individuals on the scene.

The Convener: I thank the witnesses for coming along. The session has been helpful and is helping us to kick off a number of evidence-taking sessions for the inquiry. I am sure that the evidence that the witnesses have provided will give us much to think about as we write our report later in the year.

11:11

Meeting suspended.

11:16

On resuming—

Post-16 Education (Scotland) Bill: After Stage 1

The Convener: The next item is an oral evidence session on the Post-16 Education (Scotland) Bill and the draft Scottish code of good higher education governance. We will take evidence from two panels this morning, and I welcome to the committee our first panel: Professor Russel Griggs OBE.

Professor, you should be sitting beside Professor Ferdinand von Prondzynski, who I am told is on his way—his train was delayed. If you do not mind, we will just kick off and he will, I hope, join us shortly.

I begin with a general question. You wrote your report on further education some time ago. Now that the bill has gone through stage 1, what is your view of the process that has led from your report to the current bill that is before Parliament?

Professor Russel Griggs: I am delighted to be here this morning to give evidence. I will answer that question in a number of ways.

When you sit down to do these reviews, it is a wonderful place to be because you can just think and say what you want in many ways. However, anyone who has done such reviews must understand that at some point they have to go back to the world of politics, where there are different nuances and ways of doing things.

I was asked recently what I thought of the bill, and my answer would be that it is okay. Like all these things, I do not think that anyone who has ever written a review has ever had everything—100 per cent of it—transferred into legislation.

With regard to the key areas, such as the need to move towards a better structure guided by a strategic forum with a bigger asset base for regions to build their educational provision, I am satisfied with the direction in which the bill has gone. The committee might be surprised to hear that I would have done some of that work more quickly, as I do not think that some of it has gone as fast as it needed to go. I would probably have been less flexible than the bill has been on some of the arrangements for colleges coming together, but I understand that there are political and other reasons why the approach in the bill has been taken.

I still think that we have a way to go in figuring out what we mean by outcomes. There is a lot of work for the Scottish Further and Higher Education Funding Council in getting outcomes down to a simple thing. If you want to turn dirty water into clean water coming out of a pipe, you test the water coming out of the pipe, not what goes on inside the pipe. There is still an awful lot of testing of what goes on inside the pipe rather than looking at the outcome, so there is more work to be done in that regard.

The strategic forum needs to focus on some of the issues that I set out in my review, such as looking at where the college sector goes. To go back to the point that I made in the very last paragraph of my report, we cannot just say, “This is how it is and this is how it will be for ever.” The bill is there to set out a platform on which everything else can be built, and I am content that it has started to move that process forward.

Liz Smith: Professor Griggs, you said that you are a bit concerned about some of the outcomes. Obviously, post-16 is designed to deliver better outcomes. Can you give us a bit of detail about your concern?

Professor Griggs: My concern is about the length of the outcomes. To me, there is still far too much detail about the “how”. If you take an outcome as the “what”, it must be the college or college board that runs the “how” to achieve that “what”, because there are many ways of getting from A to B.

The point that I made in my review is that we must give college boards the flexibility to have a short list of quite clear outcomes for what they are achieving but not make them hidebound by restrictions that do not allow them to be flexible, which they might have to be because of their local community or the type of student that they have.

In the work that the funding council has done to date—although the year 2 outcomes are better than the year 1 outcomes—I still feel that there is too much concentration on certain aspects. The situation varies from one college having a two-page outcome agreement to others having very long ones. My concern is about the amount of detail that the funding council still asking about in the middle around key performance indicators that are to do with the “how” rather than the “what”.

Liz Smith: Sorry, but I am a bit confused. I was not talking about outcome agreements but about the bill, because the outcome agreements are there in any case, irrespective of legislation. Can you be specific about how the bill could be improved?

Professor Griggs: I am fine with the bill but, as you know, I have spent a lot of my life worrying about how bills will work in practice through regulation. I am happy with the bill in terms of outcomes, but I am still concerned about how the funding council will take them into consideration, as it will ultimately have to create the outcomes.

Liz Smith: It is the outcome agreements that you are concerned about.

Professor Griggs: Correct.

Liz Smith: Right. On another theme, it was put to us by a couple of college principals when we took evidence that they were slightly envious of the university sector having a new code of governance. Would it be good to have that in the college sector too?

Professor Griggs: That is for the strategic forum to decide. I hope that the strategic forum will consider what things need to be common and done as a national standard. I would have no problem with a college code of governance, but it is up to the forum to consider whether it wants that.

Liz Smith: You said that the bill is okay, but that implies that certain things could perhaps be better. Do you think that having a code of governance would improve the college sector?

Professor Griggs: It depends. The question goes back to my point about outcomes, because it depends how restrictive the code of conduct would be and whether it was sensible restriction. I am not trying to avoid the question, but the answer depends on how you write something. If the code of conduct gave people a guideline or way of getting to whatever they want to do, without prescribing how to achieve it, that would be okay.

The Convener: I will interrupt proceedings to welcome Professor von Prondzynski to the meeting. I am glad that the train got you here eventually—thank you very much for coming along this morning.

Neil Findlay: Professor Griggs, saying that the bill is okay is probably one of the more positive comments that we have had about it. I think that we are likely to see a large number of amendments to the bill because of how it stands at the moment. A number of people have said that the bill should be delayed or taken away and brought back again. What is your comment on that?

Professor Griggs: I made the point in my opening remarks that, in many ways, we are having to wait too long for bits of the bill. Let me take my own position as an example. I am retiring as chairman of Dumfries and Galloway College, but we cannot look for my replacement until the legislation is passed. A number of other colleges will face a similar situation. If we are going to move on to a new type of governance of further education across Scotland, the sooner we move to it the better, because things are being held back just now. We have gone less quickly than I would have liked in some respects. I watched the evidence session to which Neil Findlay alluded, and I am not sure that I would agree with the argument of the person concerned.

Neil Findlay: Are you saying that you could not appoint someone under the existing rules?

Professor Griggs: We could.

Neil Findlay: Either you can or you cannot.

Professor Griggs: But they would be appointed only up to the point of the legislation, which means that they would then have to go through another process.

Neil Findlay: As is the case with any legislation, surely.

Professor Griggs: But we are talking about September or October. Are you sensibly telling me that I should employ a chair for two months to get to September?

Neil Findlay: Well, that is the opinion that you are expressing. Some of us would express the opinion that it would be better to delay the bill and get it right.

The Educational Institute of Scotland has stated:

"The complexity of the proposed structure will confound all but employees and public policy experts."

The cabinet secretary said that the structure is quite simple. If you agree with the EIS's view, do you agree that that is a problem in itself? If you agree with the cabinet secretary's view, can you explain the structure in a simple, quick way so that we can get our heads round it?

Professor Griggs: My structure was quite simple: we would move to 13 regional boards. The cabinet secretary has chosen, for his own reasons, to make the arrangement more flexible and to allow people to do things quite differently. I hope that there will be a bigger move over the coming years towards a more regional structure. Every piece of evidence that I have seen, both in this country and elsewhere, has shown benefit in cases where colleges have come together in a bigger community. I have not seen one example where such a move has shown disbenefit.

Neil Findlay: We are starting to see the practical implications of what is happening in colleges, particularly in Edinburgh, with an example that the committee has discussed several times—the closure of Edinburgh College's construction section at its Midlothian campus. Is that a positive outcome for the students of that area?

Professor Griggs: If the board of the college has considered how to use its assets properly to give the best education to the people in the area and has decided that it wants to put the construction part in location A rather than B, and if

that is the correct thing to do, I have no issue with it.

Liam McArthur: You spoke earlier about the bill's approach, and you used the analogy of a pipe and trying to turn dirty water into clean water. I take it from that that your impression is that there is too much of an inclination in the bill, either through ministerial powers or through the Scottish funding council's powers, to keep opening up the pipe and micromanaging the process so that whatever emerges at the end accords with the objectives that have been set.

Professor Griggs: I would go back to the situation before the bill was introduced. There has always been a concern in the college sector about the amount of information that the funding council and other organisations collect and about the reason for their collecting it. It has never been clear to college boards why the funding council and others collect some of it. I agree with you that we still have concerns that we are being asked for things that do not really affect outcomes and are just bits of micromanagement.

I understand, in essence, why some of those things have to happen. We all have to work within financial guidelines. There are instances, however, where that becomes restrictive or we end up using limited resource to do things for which nobody really sees the necessity. I still have concerns in that regard.

To be fair to the funding council, I said in my review that it would find it a big challenge to move towards an outcome-based framework. By its essence, the funding council is a bank and a data collection organisation. The council is experiencing a challenge in moving towards that framework as quickly as it can. Year 2 has been better than year 1, but a bit of work is still needed.

Liam McArthur: You refer to the role of the funding council as that of a bank and a data collection operation. There is a view that the funding levers are significant in both the further and higher education sectors and that they perhaps offer the best way to achieve the outcomes that we seek—as opposed to overlayering either ministers or the funding council with specific powers or responsibilities. Do we have the balance right? Does that reflect what your report sought to achieve?

Professor Griggs: I repeat that there is a way to go. The funding council is trying to move towards that approach—struggling would be the wrong word. There are still inconsistencies in how things are managed in different regions of Scotland, but the situation is getting better.

To answer your question directly, I think that there is still a way to go. The process must involve a greater focus on allowing boards to use the flexibility that they might need to adapt to the situations in their respective geographical areas, which could make the learning outcomes different from elsewhere. It is also a question of how boards get there.

11:30

Liam McArthur: So you would share the concern that has been expressed about there being a regional board that will presumably take a strategic view of a region while, at the same time, the funding council retains certain powers over course provision across the same region. Does that not represent a duplication of effort in some respects?

Professor Griggs: Yes, and the strategic forum needs to sort the issue out across Scotland to ensure that there is a consistent approach.

The Convener: Professor von Prondzynski, how well do you think the draft code, which has now been published, reflects your review group's work?

Professor Ferdinand von Prondzynski: There are a number of complex questions to address. First, what is a code of good governance actually for and what do we expect it to do? It might be worth saying that I do not think that it should be a substitute for legislation, and I have to say that I did not read the code from the viewpoint of whether it had covered all the points raised in the review of higher education governance, which I chaired. A code of good conduct is largely about ensuring that certain key principles of governance—integrity, transparency, legitimacy and openness—are upheld and sustained in higher education institutions, and I would have looked at the code with that in mind.

The code is not yet perfect—there are some amendments that could be made to it and I know that a process is under way to allow people to make such proposals—but on the whole it meets the objectives of a code of governance. It is good in that it is accessible and is written in language that is likely to be easily applied and it observes and maintains the main principles of good governance that I outlined. In that respect, it is not at all bad and is well worth supporting.

Although I know that the code has been criticised by some people, including members of my higher education governance panel, and although I understand some of those criticisms, I think that on the whole most of the issues that have been identified as not having been met in the code are probably issues that should be covered in legislation anyway.

The Convener: Thank you for that.

Liz Smith: The code has been quite heavily criticised; indeed, those involved with the open letter that we received say that they cannot support the proposed code in its current form and have put forward their reasons. Do you think that those criticisms are a bit strong?

Professor von Prondzynski: I understand the particular points that my colleagues on the panel wanted to make. My own view is that the code could still be amended in certain relatively containable aspects and that, with those amendments, it would meet such a code's objectives.

Liz Smith: As I understand it, the consultation period runs into June. By that time, you envisage that amendments will be made to the code that will make everyone happy.

Professor von Prondzynski: I am not in charge of the code and cannot say what amendments will be made after the consultation period ends, but things that I would think might improve the code could easily be incorporated into it without their changing the code's overall purpose and structure.

Liz Smith: With regard to timescales, would you have preferred the process for amendments to have been completed by the time we had reached stage 2 of the bill?

Professor von Prondzynski: I suppose that it would have made it easier to assess the contents of the code's final form and that we do not have such an opportunity at the moment. In some ways, the answer to your question is yes, but this is where we are.

The Convener: Perhaps you might be able to clear something up for me. If the draft code in whatever form becomes the Scottish code, what will happen to the UK code? Given that the two codes do not exactly overlap point for point, what will be the status of the UK code post the implementation of the Scottish code?

Professor von Prondzynski: They do not overlap and, in fairness, it should be said that the draft Scottish code goes further than the code that was adopted by the committee of university chairs.

That latter code is a voluntary code put forward by university chairs across the UK. It is expected that universities would abide by it, but there is no framework in which they can be compelled to do so. We do not yet quite know how everything will play out in Scotland, but I am assuming, particularly in light of the bill, that there will be a statutory framework in which at least a comply or explain provision, which is also contained in the draft code, would also apply to Scottish universities. In other words, the status of the Scottish code will be greater or more effective than the existing UK-wide code.

I am sorry—I did not answer the question that you asked. In the circumstances you describe, convener, I would regard the UK code as having been superseded by the Scottish code and no longer applying to Scotland.

The Convener: None of it?

Professor von Prondzynski: No.

Neil Findlay: In the letter that we received from three of the five members of your committee, they state:

"The chair, and we three, were in agreement on all the proposed measures and, in particular, that they should be taken as a whole package if they are to have the greatest possible effect in making Scottish Higher Education more transparent, democratic and publicly accountable."

Three out of the five are saying that in the letter; given that you wrote the report, I am assuming that four out of five are saying that overall. If the report as a whole were implemented, would it make Scottish universities more democratic, accountable and transparent than what has been proposed in the code of governance?

Professor von Prondzynski: As I said a moment ago, the report that we issued last year cannot be completely implemented by a code of good governance, no matter what is in that code, because there are recommendations that we made in the higher education governance review that can be implemented only by legislation; they could not be implemented by a code.

To that extent, the complete implementation of the review will require legislation beyond the bill. As I understand it, the Government has indicated that it intends to introduce legislation on higher education governance more generally at some point in the present parliamentary session. I would expect that to be necessary in order to implement fully the recommendations of the governance review.

Neil Findlay: The letter says that the code

"ignores many of the recommendations of the von Prondzynski report that it could have addressed, and actively countermands others."

Do you agree with that?

Professor von Prondzynski: It does not contain some of the recommendations that we made but, as I said a moment ago, I do not think it could contain all of them because some of the recommendations would require legislation.

As for countermanding, there is a framework in the code for the appointment of chairs of governing bodies that is not in line with the recommendation made in the review. However, that was one of our recommendations that

requires legislation. In all fairness to the group that drafted the code, I do not think that it could have made that recommendation in the code; it would have been too difficult to implement by that route. If that recommendation were to be implemented, it would require legislation.

We all need to be aware of the fact that the code is just one part of a process, although it is a very important part. We recommended in our review that there should be a code of good governance for higher education and therefore the code is at least potentially an implementation of that recommendation. However, it cannot complete the picture.

I would prefer to say that one ought to look at the code by asking whether what it contains improves the governance position in terms of integrity, transparency and openness. We should not get too hung up on whether all the recommendations of the higher education governance review are contained in it. As I said, I am still of the view that some of the recommendations would require legislation.

Neil Findlay: Was it a mistake for the university chairs to decide to set up their own group to review the code without any representation from students, employees in the sector or trade unions?

Professor von Prondzynski: As I understand it, the process was that the chairs made an offer to run with the process of drafting a code and that there were subsequent discussions between the chairs—

Neil Findlay: I asked whether you thought it was a mistake.

Professor von Prondzynski: There were subsequent discussions between the chairs and the cabinet secretary, and I imagine that the process that ensued was the result of those discussions.

It is difficult for me to answer your question. I have been in favour of an inclusive approach to the management of this agenda, and that approach has been reflected in the higher education governance review and other statements that I have made. However, at the same time, we have a draft code, and I think that we need to look at what is in it and how appropriate it is.

Neil Findlay: Is your specialism the law or politics?

Professor von Prondzynski: My academic specialism?

Neil Findlay: Yes.

Professor von Prondzynski: I was a lawyer.

Neil Findlay: That does not surprise me, I am afraid, given the answers that we have received from you today.

Liz Smith: When you appeared before us some time ago, Professor von Prondzynski, you said that there was nothing radically wrong with governance in Scottish universities. At the time, I think that most committee members agreed with that point. What is not good about governance in Scottish universities now that requires not only a new code but further legislation? You did not indicate that that was the case when you appeared before us previously.

Professor von Prondzynski: The review that we submitted last year was quite clear on that point. We recommended a higher education statute and a code of good governance. That has been my position throughout the process. I apologise if I was ever ambivalent about that, because I did not intend to be.

You are absolutely right to quote me as saying that, on the whole, Scottish universities have conducted themselves extremely well—indeed, they are very successful institutions in the global higher education system. That is not a matter for dispute.

When it comes to governance and related matters, it is important that there should be a high degree of public trust and confidence. It is not just a case of me putting my hand on my heart and saying that my university applies the highest standards of governance if that is not clearly visible and is not accepted with confidence by those who observe what we do.

It was clear to us when we conducted our research and listened to evidence before we produced our report that there were large sections of stakeholder bodies with an interest in higher education that were not satisfied that good practice was definitely being applied in higher education. Although we did not conclude that there was a serious, fundamental problem, we took the view—which I still take—that it is important that there should be a high level of public confidence, which needs to be expressed in transparency and openness of procedures. I believe that the recommendations that we made will help the university sector to gain that sense of confidence.

Liz Smith: Thank you for putting on the record the fact that concerns were raised. Could you provide us with some evidence that was given to you that the current governance arrangements in Scottish universities do not deliver as good an education as they should?

Professor von Prondzynski: For a start, we looked at a number of submissions and took evidence from a number of people. I do not think that the substance of that evidence was that there

was something deficient in the provision of Scottish higher education—and it should be noted that it was not really in our remit to look at that. Rather, there was a suspicion, on occasion, that the way in which universities operated excluded parts of the university body and that significant parts of the higher education community, or stakeholders, did not have access to decision making or understand how decisions were made. The evidence that we received on that is public—it can be read.

We did not make a judgment about whether those comments were objectively justified; we just noted that such views were expressed. When that is the case, it is important that we have a system in which there is seen to be integrity and transparency and that the public can have confidence that that is the case.

Liz Smith: I totally accept that that is essential when it comes to accountability and transparency. What I am driving at is that one of the key issues is whether improving that delivers a better university sector. I am not clear that there is a great deal of evidence about that.

11:45

Professor von Prondzynski: The issue is not specific to universities. It is like asking whether there should be high standards of corporate governance in the corporate world. Society generally has accepted that there needs to be a high level of accountability and appropriate integrity of conduct, and that needs to be the case whether or not it can be proven that it has an impact on performance. Apart from anything else, there is always the risk that defective integrity and transparency will produce a problem at some point in the future.

Liz Smith: Do you accept that a key part of this discussion for us is the decision whether to legislate? It is perfectly possible to have transparency and accountability without legislating. The committee has to decide whether we need to legislate to get accountability and transparency or whether the same outcome can be provided through updating the existing code.

Professor von Prondzynski: We made 40-odd recommendations in our report. If you accept them as good recommendations, you must accept that some of them will require legislation—they cannot be implemented in any other way.

Liam McArthur: My question follows on from Liz Smith's questions. We have received evidence that the international comparisons suggest that the responsible autonomy model has generally delivered better results. The Shanghai table was referred to as evidence of that. How do you square what you have just said with the concerns in the sector that the move towards legislating in a number of areas will inevitably undermine that responsible autonomy? You have a role in the sector and I presume that you have a horse in this race.

Professor von Prondzynski: In the "Report of the Review of Higher Education Governance in Scotland", we agreed with that and reinforced the point that an autonomous system of higher education with autonomous institutions is an important ingredient in a successful sector. There is nothing that we recommended or that I would have wanted to recommend that would run counter to that.

As you say, there are global rankings and lots of other evidence to suggest that institutions in systems that have a high degree of autonomy perform best. That does not mean, however, that the public should take no interest in how institutions perform. Integrity and proper conduct need to be maintained even within an autonomous system, and—as I said a moment ago—that is not specific to higher education. We think that of the corporate sector, banking and all sorts of other autonomous sectors of the economy that need to apply high standards of good conduct. The situation is the same in higher education and universities.

The recommendations that we made were not calculated to overturn the idea of institutional autonomy, particularly institutional autonomy as regards strategic direction and conduct. Rather, they were intended to ensure that institutions conduct their business in such a manner that they are seen to be behaving to the highest ethical standards in a way that is visible to all the stakeholder bodies.

Liam McArthur: I concur with that. However, do you not accept the argument that an updated code that is further improved before it is finally settled on later in the summer and the funding levers that the funding council has at its disposal are sufficient to deliver a sector that is transparent and accountable but has the responsible autonomy to deliver not just in a national context, but in an international context?

Professor von Prondzynski: As in all these things, it is a matter of finding the right mix. Those things that can adequately be contained in a code should be contained in a code and should not be in legislation. That is why we recommended that there should be a code of good governance. A number of our recommendations would most appropriately be contained within that code.

Nevertheless, in higher education, as in other sectors, there is a need for some legislative grounding. There is already legislation; we are not recommending that legislation should be

introduced as a complete innovation in the system. In fact, one of the reasons why we recommended that there should be a higher education act is that the current legislation is complex.

A number of different statutes, some of them hard to understand, apply to different institutions. We think that simplification would help the sector. However, legislation at some level is necessary. We would not say that banking or corporate affairs could be handled just by codes of good governance and good practice; some legislation is necessary to underpin society's expectations of how those sectors operate. Higher education is no different. We were not recommending—and I am not recommending now—that the legislation should be intrusive or that it should undermine institutions' autonomy or flexibility of action. Those sorts of standards would also be applied in assessing any legislation that comes forward.

The Convener: Thank you. I welcome to the committee Jenny Marra, who has joined us briefly.

Jenny Marra (North East Scotland) (Lab): Thank you, convener. I apologise to the clerks and my colleagues for not giving prior notice.

I want to put a question to Professor von Prondzynski on his governance review and recommendation on gender quotas for university governing boards. Why was that recommendation made in your report?

Professor von Prondzynski: We made that recommendation because practice within the sector is pretty uneven. Some universities perform better than others on gender balance and diversity on governing bodies, and some universities could perform much better. I came to Aberdeen from Ireland where there was a statutory obligation to have a 40 per cent gender balance on governing bodies. That system worked well. As part of gaining the confidence of wider society, it is important for universities to show that the composition of their governing bodies reflects that of society. Clearly, we are not doing that if few women—and occasionally none—are on such governing bodies. I stand by the recommendation that we made. I think that it was a good one, although it could not be introduced easily by a code. Introducing gender quotas would probably require legislation, because if they were just in a code that would be open to legal challenge.

Jenny Marra: How easy would it be to legislate for that?

Professor von Prondzynski: I am not sure whether that is a legal or a political question. It would be possible to do so from a legal point of view; there are illustrations from other sectors of how to do it.

Jenny Marra: I have one final point. You said that the gender balance on a governing board should reflect wider society. Can you tell me a bit about the impact that a better gender balance would have on the institution itself?

Professor von Prondzynski: Occasionally there is a risk—outside the issue of gender imbalance or lack of diversity on governing bodies—that the particular range of skills and expertise available to governing bodies from their membership is limited, typically to particular aspects of economic activity. If greater diversity, including gender balance, were to be introduced and successfully implemented on governing bodies, the range of economic activity would be significantly widened and therefore the expertise and advice available to the governing body would be much more balanced.

Joan McAlpine: I concur with both Ms Marra and Professor von Prondzynski that gender balance is a good thing. You have a legal background, professor, and it strikes me that equality legislation is reserved to Westminster. If there was an attempt by this Parliament to legislate along those lines, would that not be ultra vires?

Professor von Prondzynski: That would depend on how the particular provision was framed. For example, if legislation was introduced that indicated that gender-based decisions would have to be made in relation to particular positions on a governing body, that would be a problem and I suspect that it would not succeed. However, if a statutory obligation was placed on governing bodies to maintain an overall gender balance, not specific to any particular appointment to the governing body, my advice would be that that should be in line with the legal framework. That was how it was in the system that I came from.

Neil Findlay: The group set up to review the code has seven members and two advisers, and only one of them is a woman. Do you think that we have a real challenge in getting the message across to those people?

Professor von Prondzynski: Probably, yes. I should say that the panel that I chaired was very aware of that issue during its deliberations. We were aware that we were an all-male group, and that that was not ideal.

Colin Beattie: A recurrent theme in your report is representation of students and staff, but the draft code seems to have watered that down considerably. Is it an area in which legislation is required? I would not have thought so, but is it a grey area?

Professor von Prondzynski: No. In that case, the code could usefully be amended. I agree with the point that is implied in your question, and our

recommendation in the review was that remuneration committees, nomination committees and bodies of that kind should contain staff and student representatives. That remains my view. It would be helpful if the code stated that.

Colin Beattie: The code could reflect that without any legislation.

Professor von Prondzynski: I believe so, yes.

Neil Bibby: You mentioned earlier that the code was not yet perfect, and you have just given one example of where you would like to see changes. What other areas fall short of your recommendations? Should there be amendments to the references to, for example, meetings in public; the role of students; consultation with staff and students; the abolition of, or transparency around, bonuses; details of how staff and students—

Professor von Prondzynski: Some of those issues probably do not fall under the code. For example, things such as remuneration and bonuses would have to be handled differently. I am not sure whether those things require legislation, but I am not sure that they are an issue for the code.

The main issue with the code is the one that I have just mentioned about staff and student representation. That should be provided for on decision-making bodies, particularly those that are relevant to appointments and remuneration, and ideally the code should say that.

The other points that I would have identified are more minor and technical. I do not have them in front of me, so I am not in a position to go through them in detail. For me, the issue that we have just mentioned is the fundamental one; the others are more technical in nature.

Neil Bibby: The code has been described as having been written by managers for managers and there is a view that students and staff should be much more involved in the Government's arrangements. The code has been drafted by the chairs of university courts. You say that the code should be amended. Do you expect it to be?

Professor von Prondzynski: The code was drafted under the direction of university chairs; it was not drafted by them. You will have other opportunities to explore that. The chairs had no direct impact on the drafting of the code. A steering group was set up for that, which had representation that went well beyond the chairs. In that sense, I do not think that the code was drafted by managers for managers, not least because chairs are not managers—I am, but chairs are not. I can understand politically why that comment was made, but it is probably not a fair one.

The code reflects two things: one is having a higher level of accountability, transparency and predictability in systems; and an important element is that the code is presented in an accessible way. In that sense, it is better than any other code that I am aware of, some of which are written in quite an opaque way. The defects that you have outlined are not particularly reflected in the code, which is not to say that there is nothing that can be improved. Indeed, the steering group that presided over the code's drafting took that view, because it has opened up the code to consultation and submissions.

12:00

Neil Bibby: Do you stand by all your recommendations in the report?

Professor von Prondzynski: In the higher education review report?

Neil Bibby: Yes.

Professor von Prondzynski: Yes, I do. There is only one that I have been persuaded might not be ideal, and I mention it because it is relevant to the code and our recommendations in that regard.

We recommended—at the time, I strongly believed that this was correct—that meetings of governing bodies should be held in public. That is still the ideal scenario, but I understand the point that people have made in response to that recommendation, which is that if such meetings were held in public, the willingness of governing body members to be critical of university management would probably be compromised. If they did not want to do it as a result, an element of monitoring and control might disappear.

I have been persuaded that that argument might carry some weight but, apart from that, I stand by everything that we said in the review.

Neil Bibby: You can see why there would be concerns about holding meetings behind closed doors that are not open to scrutiny.

Professor von Prondzynski: Yes, and it is important that such meetings should take place with the highest level of openness and transparency possible. For example, the agenda for any meeting should be publicly available before the meeting takes place, so that people know what is going to be discussed. There should be proper open publication of documents and minutes, and opportunities for people outside governing bodies who are aware of what will be discussed to make submissions so that their input can be taken on board.

The highest level of openness and transparency is always good, and ideally I would like meetings to be held in public. If I had not been persuaded by

the argument that it might shut down some of the discussion, I would still prefer that option, but people have made that point to me with some force, and I understand it.

Neil Findlay: You have given a skilful and lawyerly performance this morning—

Professor von Prondzynski: I do not take that as a compliment. [*Laughter*.]

Neil Findlay: You can take it as you will.

I find it difficult to see how you can stand by your report while saying that you support the code that has been developed, which dismisses so much of what your report contains. I find that difficult to follow.

Professor von Prondzynski: Would you give me an example of something that the code dismisses that was in our report?

Neil Findlay: We have only a few minutes—I could give you a list. My colleague Neil Bibby mentioned a number of things, such as representation, the agenda issue and meetings in public—we could go on and on. They are all in there.

Professor von Prondzynski: Yes, but I have agreed with the one example that you gave, where I think that there should be a change. The other points that you have mentioned are all for legislation.

Neil Findlay: I refer you to the letter from three of the five members of your group, which covers the points that have been made. Is there no contradiction between standing by your report and supporting the code that has emerged?

Professor von Prondzynski: No—there are a number of issues that will require legislation, as I have said. I remain in favour of that; it will need to be done, and I believe that the Government intends to do it. Therefore, I do not believe that there is a contradiction between my support for the review that I chaired and my support for the code, bearing in mind that I have said that some adjustments to the code would be desirable.

I never expected that the code would implement the higher education governance review; that is not what a code of good governance is supposed to do. I expected that, in the spirit of that review, it would introduce a framework of good practice in governance. Aside from some specific points that are open to amendment, I would say that, on the whole, the code does that.

Neil Findlay: Do you think that there is any merit in delaying the bill?

Professor von Prondzynski: Staying on the point that you raised, which is relevant to the bill, I believe that it is important given what the bill says about the principles of good governance that what those principles are should be known before the bill becomes law. In other words, there should be no ambiguity about which principles of good governance the act—if the bill is passed—supports.

If in the process of finalising the code we get a code that the Government accepts is appropriate—which is the Government's decision—and if it is clear to which principles the bill refers, the timing issue is no longer significant. If, on the other hand, we do not know to which principles of good governance the bill is referring, it might be more of an issue.

The Convener: To clarify that point, if the bill stays as it is and refers to the code, and the code is the current UK code, would that cause any problems?

Professor von Prondzynski: The bill currently includes a provision that would

"require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice".

That raises the question of what those principles of governance or management are. My point is that the reference needs to be clarified, and in the bill rather than in any accompanying commentary.

If that were a reference to the Committee of University Chairs code, I am not entirely sure that I would necessarily regard it as the most appropriate thing, given that we have said that there should be a specific Scottish code. The Scottish system of higher education is now significantly different from the English system, and it is appropriate that there should be specific guidelines of good governance for Scotland, which is why we made that recommendation in the review.

There is an ambiguity about that particular section of the bill, which probably needs to be sorted.

Joan McAlpine: A particularly distinctive aspect of Scottish higher education is the election of rectors by the student body to chair the court. In the University and College Union's submission, it suggests that the new draft of the code dilutes the important role of the rector as the elected chair of the governing body. Do you share its concerns?

Professor von Prondzynski: My reading of the code—I might need to read it again—did not lead me to that conclusion. If I recall correctly, the code recognises the rectors as having the right to chair governing bodies within those universities that have rectors.

As you know, we have recommended in the review that chairs of governing bodies should be

elected. I stand by that as I believe that it is the correct way forward, although I also believe that that cannot be implemented in the code of governance; it really requires legislation.

With regard to the system that exists at present—recognising that elected chairs are currently not part of it—what the code says is not bad. The problem at present is not only that the majority of the institutions do not have elected chairs of governing bodies, but that they have processes for appointing chairs that are occasionally quite opaque. It is difficult to see how appointments are made and the extent to which the processes involved are open. The evidence is, overwhelmingly, that chairs come from within the existing governing body, as distinct from there being external input.

The recommendations in the code—if we assume for a moment that we are not, or not yet, in a situation in which chairs are elected under a statutory regime—are an improvement on the position that currently exists. I would not be critical of that, but it does not change my view that our recommendation for elected chairs in the report that we submitted last year was correct.

Joan McAlpine: So it is an improvement, but not enough of one?

Professor von Prondzynski: For me, it is not the end of the road.

The Convener: I thank the witnesses for coming along this morning. We appreciate your time in coming to the committee.

12:09

Meeting suspended.

12:12

On resuming—

The Convener: Our next panel of witnesses will also give evidence on the Post-16 Education (Scotland) Bill but particularly on the draft Scottish code of good higher education governance. I welcome to the meeting Robin Parker, president of NUS Scotland; Mary Senior, Scottish official, University and College Union Scotland; and Lord Smith of Kelvin, chair, and Simon Pepper, committee member, from the steering group on the Scottish code for good higher education. Thank you for coming and giving evidence to the committee.

I will begin by asking Lord Smith to outline how his group went about taking recommendations from Professor von Prondzynski's review and recommendations from others in coming up with the new draft code.

Lord Smith of Kelvin (Steering Group on Scottish Code for Good Higher Education): We took von Prondzynski's report on higher education and employed two consultants to consult people in universities. We visited every higher education institution; saw 360 people in 80 meetings; and split those meetings into individual discussions with management, principals and so on, unions, staff and students, all of which are listed at the back of our report. At the end of that process, we sifted the evidence, had four meetings and reached our conclusions, which I think faithfully represent the evidence that we had gathered.

The Convener: Before we get into some of the detail, I wonder whether I can very briefly take you back to the consultation process. In oral evidence heard earlier in the year and in written evidence that we received for this meeting, the committee heard some criticisms of the process; indeed, some witnesses felt that they had not been properly consulted, that the meetings were short and shallow and that they did not have the opportunity to make a proper input into the process. How would you respond to those criticisms?

Lord Smith: I largely reject them. There were, I think, 80 meetings over a period of four or five months, which is an awful lot to pack in. Those who undertook the consultation saw people in different groups at each university and, depending on the number of people who were being seen, they had probably anything between half an hour and an hour for each meeting. Several hours were spent at each university, which was quite a commitment for the people undertaking that work. I do not think that we could have done much more. We did not see unions as a group or body; to do so, we would have had to have seen principals, chairs of court and a whole lot of other people.

As I have said, the work was undertaken by the consultants. We sifted their evidence very carefully, and Elish Angiolini, Simon Pepper and I as well as the three chairs of court challenged them on it. If people are saying that they were badly treated at the time, I have to tell you that I have no evidence of that. I have reports of all the meetings that took place, and we sifted through them very carefully. We consulted widely on this.

12:15

The Convener: Given that some of the criticisms have come from the unions and staff members in universities, I wonder how Mary Senior responds to those comments.

Mary Senior (University and College Union Scotland): When I gave evidence in February, I raised concerns about the whole process. I said that meetings were fairly short and were not

minuted and I expressed concern that when trade unionists were invited to give evidence they had to do so alongside other groups of individuals. In other words, there was no meeting with trade unionists alone to allow them to express views from a staff perspective.

Those concerns have been borne out in the draft code before us. As our written submission makes clear, the University and College Union is very concerned that the draft code does not truly reflect many of the recommendations in the von Prondzynski report, which was the result of a more inclusive process, or many of the concerns that the UCU raised with the consultants who met us.

The Convener: Do you accept Professor von Prondzynski's evidence this morning that he did not expect all his report's recommendations to have been covered in the code and that, in fact, some of them should be covered in legislation?

Mary Senior: Many of the recommendations in the von Prondzynski report could be encompassed in the draft code. I was interested to hear his observations on the recommendation about meeting in public, which we think is very important and embodies the principles of openness and transparency. It makes board or court members more accountable and ensures that officials or managers who make recommendations thoroughly test any proposals that they might bring to meetings. Holding meetings in public does not prevent difficult decisions from being taken; it just ensures that they are taken in a more inclusive and transparent way. Trade unions know that governing bodies have to take difficult decisions, but if we are able to test such decisions and take the views of staff and students, we can get to a better place in the institution in question.

Neil Findlay: As chair of the steering group, Mr Smith, did you express any concern about the lack of women, students or employee and trade union representation on your group?

Lord Smith: I took what I was given. Sometimes that is not a great thing, but I was given one woman, three independents—including me—and three chairs of court. That is the team I was given to play with.

Neil Findlay: But could you not—

Lord Smith: What? Have refused to serve?

Neil Findlay: It is glaringly obvious to everyone else that the group was lacking certain people.

Lord Smith: That is a different question.

Neil Findlay: Well—

Lord Smith: It is a different question. I note that there was no principal on the group, as there had been in the earlier higher education report, and there were no unions or students on it, although students had been represented before. Ferdinand von Prondzynski, who chaired the earlier group and stood by his recommendations, came to our meeting in Glasgow and presented at length; we spent about an hour and a half with him.

Sure, I could have turned round and said, "You've given me an inferior team here. There are people missing." However, we had at least one woman. By the way, she gave a very good account of herself. I do not know whether you know her, but she is a redoubtable lady, so we certainly had plenty of input there.

It is not impossible for independents to understand things such as women's representation. A lot of the things that we pushed in our draft report are about having more student representation and more female representation. I would be very disappointed if the code did not lead to a lot more of that when people work out their plans and build their goals into their future plans.

Neil Findlay: Following on from what you have just said about who was missing, I note that the UCU said:

> "We stated that the code development process was flawed from the start and it has resulted in a faulty draft code."

You implied just now that you might agree with some of that comment, given that what you were given—

Lord Smith: No, we had one—

Neil Findlay: Excuse me, but let me finish. You have expressed concerns here about what you were given, so would it not have been better if the group developing the code had been more inclusive and had included more stakeholders?

Lord Smith: First, I did not say that I was not satisfied with what I was given. You asked me whether I should have turned round and said that, but I did not. I was given a team that I think was a good one. We went out and consulted in a very detailed way: 360 people were asked questions in every institution. The team came back with that evidence and there were enough of us with completely independent minds to sift through it. I think that what we have brought out is a very progressive code.

Simon Pepper (Steering Group on Scottish Code for Good Higher Education): As an independent member of the steering group, I reassure the committee that the membership of the steering group does not represent any kind of bias. I was invited to participate and I accepted the invitation. My understanding of the logic behind the composition of the group was that it had to comprise some university chairs because they would be taking responsibility for the code's implementation. They have no sectional interest;

their interest is in general good governance of the universities.

The independents have no conflict of interest, and to have included any representatives of sectional interests on the steering group would, ironically, have been a breach of the principles of good governance that we are supposed to be promoting. I think that if you look at it in that way, you will see that the group had a fair composition. If any of us might be guilty of bias, I suppose that I would be the candidate for that, because my background is as a rector elected by students. When I was a rector, I was certainly a strong champion of students' interests. However, I do not think that anyone will criticise me for having exercised a prejudice in the proceedings. I hope that the committee is reassured about the composition of the group, because it has more rationale to it than perhaps meets the eye.

Colin Beattie: In drawing up the code, you took into account both Professor von Prondzynski's review and the UK code. The implication is that you took the best from both to create the new code. However, there are a number of issues in Professor von Prondzynski's review that you do not seem to have addressed. For example, Professor von Prondzynski said earlier that he felt very strongly about the inclusion of student representatives and staff representatives, but that aspect seems to have been completely watered down and taken out. What was the reason for that?

Lord Smith: Just to be clear, you are saying that we said that there were to be no student and staff representatives where?

Colin Beattie: I did not say that. I said that what Professor von Prondzynski proposed has been watered down.

Lord Smith: I do not believe that to be true. I think that the code is very progressive. We asked people to produce goals and we said specifically that a nominations committee must include a student representative and a staff representative. We said that, when deciding on appointing chairs of court and principals and appraising a principal, students and staff must be taken into account, which is far removed from where we are today. I would hope that the levels of aspiration are serious when it comes to the female to male balance on boards and so on. I hope that people come up with decent percentages, on which they deliver—and that, if they do not, the Scottish funding council, the court of public opinion, peer pressure and people living in the community will see that the universities are not complying.

Colin Beattie: When you took the UK code into account, did you take any advice as to what the status of that code would be versus the Scottish code, particularly with regard to issues relating to the UK code that are not carried forward into the Scottish code?

Simon Pepper: We did not have our attention drawn to that issue, but our understanding is that the Scottish code that has been proposed does not go back on any commitments in the UK code. Indeed, we have identified a dozen or so examples where our code is a progression on the UK code. If there are issues where there appears to be some kind of gap, with the CUC code imposing more stringent requirements than we have, we would like to know about that and reflect on it.

Colin Beattie: I think that the UK code covers one or two things that are not explicitly covered in the Scottish code, for example estate management, student unions, health and safety and so on.

Simon Pepper: That was not drawn to our attention, and we would need to reflect on the matter if there is indeed a gap in those areas. Perhaps that was behind the convener's earlier question to Professor von Prondzynski about the relationship between the two codes.

The Convener: I take you back to the point about the involvement of staff and students. Professor von Prondzynski recommended that staff and students should be involved in the appointment and appraisal of principals, which should include membership of interview panels. The draft code says that staff and students should be consulted. I think that you said that they should be taken account of. Those are not necessarily the same things.

Lord Smith: We say that there should be staff and student membership of the nominations committee, which should come from the main court, if you like. There absolutely should be one of each on the nominations committee and two of each on the court. That is an absolute recommendation.

When we get into the realms of remuneration, it gets slightly tricky. We consulted on the issue, and some student representatives were a bit concerned about their position and whether they could act on a remuneration committee, or remco. If I were the principal of a university, I would allow both staff and student representatives on a remco. However, we are not in a position to force that.

There will be situations where a staff member may feel that it would be difficult or embarrassing to comment. A union representative sitting on a remco might find it difficult to act as a member of that committee and to forget about their position outside. It is quite a difficult role. I have been on many boards where people are in effect representatives of organisations and find it difficult

to leave that at the door. There absolutely should be influence by students and staff.

I feel quite passionately about this. I know that I am going on about it, but you can shut me up in due course, convener. The role of chancellor is no role at all—it is purely ceremonial at the University of the West of Scotland, but we have a number of outlying campuses in places such as Hamilton, Dumfries and Ayr, and indeed Paisley. I have seen the effect that we have in those areas. For example, if our university was not present in Dumfries, the effect on the economy would be catastrophic. Youngsters in such places will not go to Glasgow to go to university. They feel that Glasgow is quite alien to them. Of course, being a Glaswegian, I object to that proposition, but they find it quite difficult to move to the big smoke to go to university.

If people are in that position, we have to reach out to communities, to councils and to local youngsters. That is why staff and students should be mightily represented and listened to at all universities, particularly those that provide real pastoral care.

12:30

The Convener: Thank you for that. I will bring in Robin Parker now, because the NUS written evidence clearly shows that you are extremely concerned about what seems to be a lack of direct input from both students and staff.

Robin Parker (National Union of Students Scotland): I thank the committee for having me along. The first words that I want to point to are not from the NUS; they are from the letter from the presidents of the student associations. As regards the consultation, they said:

> "we do not think that quantity of these visits should become a misnomer for their quality, or indeed the end product."

It is important to note that we remain focused on the end product. The process has been led by the chairs and therefore it is rightly perceived as a self-regulation process. In terms of where governance goes next, we cannot continue with such a self-regulation process. The process needs to fully belong to the entirety of the higher education sector, which includes the staff and students who participate and who make higher education what it is.

To provide a bit of clarity on the specific points about staff and student involvement, the draft code points to

> "the involvement of staff and students"

in the nominations for the appointment of the chairs. That is a small step forward, but the code does not address the point about having two students on all university courts. Some university courts have two students and some do not. However, that is a matter for legislation, because the membership of university courts is dealt with through legislation.

The big oversight is in the appointment of principals. The draft code merely says that staff and students should be consulted, unlike the von Prondzynski report, which says that they should be full members of the interview panel. As this process has demonstrated, being consulted is not necessarily the same as being involved.

Mary Senior: Robin Parker has highlighted important points. When Lord Smith made his comments a wee while ago, he indicated how he would act and it was good to hear that. However, we need a strong code of governance because staff have not felt that they have experienced strong, fair and transparent governance. That is why it is important that the von Prondzynski report recommendations are encapsulated where possible in the draft code.

In some ways, I find it quite insulting that there is a view that trade unions cannot play full and meaningful roles on courts and governing bodies. Indeed, the von Prondzynski report recommendations are for two student members of the court, two staff members and one trade union representative from academic staff unions and one from support staff unions. That is because the unique role that trade unions can play in governing bodies has been recognised. Trade union representatives can say things and represent views in a different way from ordinary staff members.

It is concerning that that important point has not been recognised at all in the draft code. Indeed, the draft code does not use the words "trade union"—it does not really recognise that trade unions exist in our higher education institutions. The only time that "trade union" appears is in the annex that talks about the meetings that have taken place. We need to grapple with that issue because trade unions can play important roles on governing bodies and that recommendation seems to have been watered down.

We also have concerns relating to the current rectors of a number of universities. Currently, rectors are elected by students—in Edinburgh, they are also elected by staff—and rectors chair the governing body. In the draft code, that role seems to be taken away from them in that rectors would not automatically chair the governing body. They could be considered for chairing the governing body, but that would not automatically happen. We felt that that was a real step backwards, because von Prondzynski recommended that all chairs of governing bodies be elected, and perhaps even by a broader

constituency than just students and staff. The recommendation in the draft code is a step back in that respect.

The Convener: I would like to go back to Lord Smith and try to nail the issue about the election process and what is and is not recommended in the draft code. In the current situation, there is an automatic chairing of the court by the rector in some institutions. Is that being taken away?

Lord Smith: Absolutely not. However, having reread the draft code, I think that we have to change the language that we have used there. I ask Simon Pepper to comment on that, as he was a rector.

We were concerned about confusion. There were students who voted for a rector and thought that that rector would chair all manner of things, but that simply was not so in some cases. In order to be honest with the electorate, if nothing else, we are saying, "For goodness' sake, if there is a chair of court, tell people what that chair does and what the rector does, and be up front about that when people are going for election."

Simon Pepper has been there.

Simon Pepper: The legislation, which is from the 19th century, provides for the rector, who is elected by the students or, in the case of the University of Edinburgh, by the students and the staff, to preside at meetings of the court. I do not think that, in the entire history since then, there have been many rectors who have agreed to undertake all the functions of the chair that are now described in the code of governance. Individual institutions have always made their own negotiations with incoming rectors, who have been of various kinds. They have ranged—to use the recent Glasgow experience—from somebody who was in prison in Israel for the entire period of his rectorship, to, currently, a former leader of a UK political party. Rectors arrive with different capacities and degrees of willingness to engage.

The code is trying to say that, before someone proceeds very far, they should make it entirely clear where they agree that the role of rector starts and finishes and where the senior lay member, governor, convener or whatever the person who is appointed by the governing body is called takes over and undertakes the remainder of the chairing functions that are described in the code. It is important that all those functions are covered. We felt that the code would be derelict in its duty if it did not draw attention to a potential conflict there or confusion at least.

Lord Smith: I assure the committee, Robin Parker and Mary Senior that there will be a rewrite of the section in question, because it was absolutely not our intention to undermine rectors.

The Convener: Thank you very much for that. That is helpful.

Simon Pepper: I would like to go back to the question about specific nominations of representatives of particular interests who should have places on particular committees.

The Convener: Briefly, please.

Simon Pepper: The whole steering group entirely agrees with the principle that inclusion and participation should be maximised. There is no question at all about that, and I think that Lord Smith has already made that point. The issue is how the principles are put into practice.

One option, which is fair enough, would be to specify or prescribe exactly which members of which committees should come from which sources. Another option, which we have favoured, is to say that the really important things are the values, the sense of collegiate—I think that Mary Senior used that word—responsibility and behaviour, and how a sharing of the governing body's corporate responsibility works. We all know that good governing bodies work best because they inculcate a shared culture of collective responsibility. Our feeling is that, together, the measures that we have introduced—some people have said that each measure might be quite small—represent a significant advance on what is currently required under the CUC code.

We are sure that the result will be a significant change in the culture of the management of governing bodies and the sorts of outcomes that our colleagues are looking for: more inclusion and more significant consultation, which are perhaps better achieved that way than by mechanistic appointment of certain quotas in certain places.

Liz Smith: It is my understanding that, when you published your new code, Professor von Prondzynski was quite complimentary about the vast majority of it, albeit that he flagged up some key issues that he wanted to address. Is that your understanding too?

Lord Smith: That is my understanding. I would not want to quote the man, but he did write to me to say:

> "I am genuinely very impressed. I think you have done a really good job in capturing many of the key elements of our HE governance report ... the code is well written and accessible. It is also practical, in that it will allow institutions to be effective and decisive as well as demonstrating integrity and accountability."

I know that there are quite a number of small points that he wants to guide us on. I am sure that we will take those on board, because they will improve the language of the code. The most glaring example is the one about rectors. The impression that was given was not what was

intended, but if that was the message that came across, it is plain wrong and we have to change it.

Liz Smith: Given that the consultation period on the new code is running until June, do you believe that you could work with Professor von Prondzynski to improve the existing new code—if I can call it that—so that it will be better?

Lord Smith: Yes. We might not go 100 per cent of the way—we took an awful lot of evidence. He has already written to me privately about a number of the issues raised and I do not think that there is anything that I could not persuade the committee to go along with.

Liz Smith: Mr Parker, Lord Smith has just suggested that there does not seem to be a huge difference between the von Prondzynski version and the new code. You are saying that you definitely cannot support the proposed code in its current form. There seems to be a slight mismatch there.

Robin Parker: In the evidence from NUS Scotland we were quite clear about which matters and which issues we think have not been addressed in the draft code. It is welcome that Lord Smith has picked up on the point about rectors, which has addressed one of our points. I hope that the same approach can be taken on our other points. For example, we could find some way to involve staff and students in interview panels for principals. That should be made clearer—it is a tangible recommendation that would help.

Issues around remuneration have to be picked up. Von Prondzynski recommended that staff and students should be involved on remuneration panels, but the draft code just glosses over that. All universities in Scotland continue to receive a large amount of public funding. It is not surprising at all that the public and indeed MSPs are asking about remuneration, given that 88 members of staff in universities receive greater remuneration than the First Minister. That seems to be going far too far and something needs to be done to tackle the issue. We have made one proposal. The code could clearly go further than it does at the moment to tackle that issue.

Exactly the same point applies to fair gender representation on governing bodies. The code does not even mention the issue; it talks more generally about diversity and equality. Of course we want all forms of diversity and equality to be taken account of. Our university governing bodies should reflect the staff who work in the universities, the students who study in them and the wider public whom they serve. It is incredibly important that much more significant and tangible steps be taken. The code needs to go as far as possible in tackling those issues. Gender equality is a particular issue. Given that not a single woman chairs a university court in Scotland, we need tangible steps to be taken to tackle that issue.

Liz Smith: I accept what you say. I do not necessarily agree with every single point you make, but there is still time to consult. Is it your hope that at the end of the three or four weeks—or however long it is until the consultation period is finished—you will have come closer together?

Robin Parker: All the points that we are making address what needs to happen for the higher education sector to maintain its autonomy. If the sector does not tackle remuneration and the other issues that I have outlined, I expect that the political process will clarify things. If the code does not tackle remuneration, I would not be surprised if MSPs introduced amendments. That would be the right thing to do.

12:45

Liz Smith: Is it your understanding that it would be helpful to the committee and the Parliament for the consultation period, and the information from it, to be complete before we finally agree?

Robin Parker: The timescales run closely together. The most important thing is for the legislation to make it clear how the code will update itself and how the process will continue. Experience indicates that the code cannot be led in the main by the chairs themselves because that is far too much of a self-regulation role. We need a system that ensures that staff and students are involved in the maintenance of the code and that there is appropriate public involvement.

Liz Smith: We need to decide next week on our approach to stage 2, particularly on governance. It is not helpful to us that there is still some dubiety about how things will move together in the consultation period.

Robin Parker: Indeed.

The Convener: To be clear, MSPs will not be able to amend the code because it will not be in the statute. You said that we could amend it, but that is not actually the case.

Robin Parker: I meant that the bill should make it clear that the maintenance of the code should involve staff and students, and it should ensure that the code belongs to the sector. I think that that would be possible.

Liam McArthur: To follow up on that, if I get you right, you were not advocating an increase in the First Minister's salary.

On timeframe, you listened to Professor von Prondzynski acknowledge that, although he stood by all his recommendations, he always expected

some of them to be implemented through legislation. It has already been indicated that some changes will be made, not only in relation to rectors but in relation to staff and student involvement in the appointments process—he was strong on that in his evidence. He envisaged the other aspects coming through in the legislation anyway, so do you not see the potential for reaching agreement on an updated code with a focus on the amendments to the legislation that you, the UCU and others feel are necessary?

Robin Parker: I do not have Professor von Prondzynski's legal expertise, but it seems to me that, on diversity and equality on boards—particularly in relation to gender and remuneration—the code could go a lot further. The letter that I put together with Iain Macwhirter and Terry Brotherstone, which committee members will have seen, finishes:

"We continue to hope, and expect, that the full recommendations of the Review will be implemented as an integrated package whether that is through legislation or through a combination of legislation and the revised Code."

Liam McArthur: That suggests that there is more scope for agreement on a further improved, updated code than was, perhaps, evident from some of the public statements that were made immediately after the code came out. Is that a fair comment?

Robin Parker: From my point of view and that of the students whom I represent, those are really significant deficiencies in the code. The question is whether those points will be addressed.

Mary Senior: I welcome the discussion that we have had today and the fact that Lord Smith has indicated that there can be changes, but I will be deeply concerned if you tell us to go away and reach agreement because the NUS and the trade unions will not be involved after this point. We will make our written submission to the chairs of court by the deadline, which I think is 11 June, but are we just then to hope that they will take on board our recommendations? We do not really know that they will do that.

The UCU wrote to Lord Smith back in September, asking to meet him, and today is the first time that we have met him. Professor von Prondzynski indicated his concerns about the timescales, and the committee has a difficult decision to make, but we are deeply concerned that the bill will refer to a code or principles that we are not happy with.

We had a tremendous opportunity to put together a meaningful code that would make a difference. I am concerned that what we have got is no significant change to what already happens. As I said, we have had a useful discussion today, but I am not sure whether, in the short time that we have, there is a process for us to reach agreement. I am not trying to be difficult, but that is my concern. My members would be concerned if what we have here is what they are going to get in August. That is also the holiday period, and we need further scrutiny of the draft code.

The Convener: We have made some helpful progress on rectors. I thank Lord Smith for that. However, Robin Parker has raised the issues of interviews and remuneration. I saw you scribbling down some notes, Lord Smith. Do you have any views that you want to express at this point, given that you have been so helpful on rectors?

Lord Smith: It is not necessarily a concession.

The Convener: No, but I noticed you making notes.

Lord Smith: Simon Pepper may want to speak on both those subjects.

Simon Pepper: Without getting down into the detail, which might take some time, I do not think that the evidence that the committee has received comprises the full response to the on-going consultation. We look forward to hearing the supporting arguments behind some of the points that have been made today—indeed, we look forward to hearing any other points that people want to raise. The group's doors are open for suggested improvements, and we genuinely want to listen. I hope that we can close the gap that we heard about earlier.

There is another issue. In the end, whether we are moving far enough with the new code will be a matter of judgment for Parliament and the committee. We would claim that we are moving significantly further and that the changes that we have made—not least the fact that the code will be compulsory, which was not the case in the past—will cause a major shift in the culture of governing bodies in Scotland. If, in three to five years, the code is to be reviewed anyway in light of the experience of its early years, that is another safeguard. The proof of the pudding is in the eating, and if the pudding turns out not to be as expected it can always be adjusted in years to come.

Our firm advice is that the code will lead to the sort of changes that are being sought without being too prescriptive—we are confident about that. It should be borne in mind that we are talking about a very diverse sector with a variety of ways of operating.

Lord Smith: It should also be about continuous improvement. One of the clauses in the draft code states that boards should look at themselves every year, but that is too cosy. Every three years, there should be an externally facilitated look at how they are performing. We need to watch them. If the

code is in place in August, we should give peace a chance. However, it if is not working, something else must be done.

Neil Bibby: I have a couple of questions. One of the recommendations was that meetings should be held in public, which is different from what Professor von Prondzynski put in his report. He said that he changed his mind, given the implications for staff. However, we have just heard the UCU say that it is keen to have all meetings in public and that meetings should not be held behind closed doors. What is your view on that?

Lord Smith: Our consultation received an overwhelming response against doing that. We have tried to say, "Look, you are part of a community, so when you talk about making changes you have to publish your agenda and your minutes, and you have to consult people." By "people" I mean not just the university, but the surrounding district, as it were—stakeholders and people outside. The overwhelming evidence was that public meetings should not be held. There are examples: in Luxembourg, there was what amounted to a supervisory board; and in other areas, the process had to be abandoned because people would not criticise other people in front of witnesses and so on.

I know that in politics you people do this all the time; the process is absolutely open. Perhaps the higher education environment is more precious, but I would not like many of my private sector board meetings, for example, to be held in public. We can have a lot of discussion and argument behind closed doors and hope that we will present a united face. To do that with management and the court challenging people in public might be very difficult. However, we have gone as far against the consultation as I feel that we can. We have said that agendas and minutes should be published so that people can have their say. There is an argument for holding an absolutely open meeting once a year or so and seeing whether that works. If the effect of that is to drive the real decisions underground, we will not have made any progress. That is our concern.

Robin Parker: I want to take us back briefly to the starting point as to why we need all these improvements in governance. The issue partly relates to the fact that there are still, quite rightly, hundreds of millions of pounds of public funding going into universities in Scotland. That means that there has to be a much more democratic and transparent approach to governance than there is in the private sector. The driver for all this is how we can increase that transparency. That is where the proposal to hold meetings in public comes from.

On the question whether there should be a compulsory code, one of the things that Mr Pepper said jarred slightly. The presumption so far from the committee of Scottish chairs has been that the code would be voluntary, on a comply-or-explain basis. It is very important, for a number of reasons—not least the fundamental principle that huge amounts of public funding go to Scottish universities—that the code should be a condition of grant with which universities have to comply. That is particularly the case when we are talking about publishing agendas and minutes of meetings, not all of which are published at present. If we are setting the bar that low, there has to be an expectation that universities will comply. If there is too much flexibility, issues will disappear in a sea of ambiguity, as it has been described elsewhere. Things need to be clear and tangible, otherwise they will not happen.

Simon Pepper: I want to respond to the comply-or-explain point. For me, that is not an option to opt out; it is an option for an institution to explain how it is meeting the code's requirements perhaps in a way that is different from that prescribed in the code. That does not weaken the principle. It is up to the judges—the external scrutineers, the SFC or whoever—to say whether they are satisfied, if the method that an institution chooses to comply with the code differs from that prescribed in the code. I hope that that is reassuring.

Lord Smith: It should be a condition of grant from the SFC. That is another point on which I agree.

On the comply-or-explain principle, the SFC has to use its discretion when institutions explain why they have not done something. I guess that that is where the ambiguity comes in. For instance, if a small, narrowly based institution—or, indeed, a larger institution that has a lot of private money coming in—feels unable to go the whole way on the issue, that might be difficult. The SFC should police the situation so that the institution does not get the money unless it complies.

The Convener: Thank you. That was helpful.

Neil Bibby: We have heard concerns about the draft code from the UCU, the EIS, the NUS, student presidents and three out of the five members of the von Prondzynski review. My question is for Mr Pepper and Lord Smith. Why is there that level of concern about the code?

13:00

Lord Smith: You can read the evidence that they have given. They are concerned about, for example, union representation on various committees and stronger staff representation on, say, the remuneration committee.

I have been inundated with people writing to me and phoning me to say that they think that the code is workable, well researched and easily understandable and will actually work. I imagine that some university courts are wondering just exactly what they are going to make of it because—I know that Robin Parker and Mary Senior do not agree with me—it will push them further.

Simon Pepper: I agree. If I was in the shoes of the critics to whom Neil Bibby referred, I would be doing exactly the same. I would want to push the issue as far as I could. However, they slightly underestimate the force that the package of measures that we are introducing will have. I am very confident that it will cause a major change. We know that some universities have looked at the draft and are saying that they will have pull their socks up, and that is what we are looking for.

Neil Bibby: You say that the code is workable and that you have had positive feedback about it, and I do not doubt that for a minute. However, although we hear you say that, we also hear evidence from unions and people involved in the von Prondzynski review who are concerned about the code. Can you see why we might be reluctant to proceed with the code if there is no consensus or if there are two different opinions and a stalemate? I do not want to misquote von Prondzynski, but he talked about establishing the general principles before proceeding, but we do not have a finalised code and we do not have consensus in the sector.

Lord Smith: I am not a politician so I do not understand how you deal with legislation—I do not understand all that. The code has been arrived at by honest people doing as much research as they can. There has been no establishment stitch-up, as someone described it. As a boy from Maryhill, I did not know that I had arrived in the establishment, but perhaps I have progressed a lot since I left Maryhill. People who know me know that I do not get pushed around.

I honestly believe that we arrived at the code by genuinely looking at the evidence. If it is not good enough, if people are not complying with it, or if the SFC does not apply pressure, it will have to be revisited. We took 19 recommendations and we completely accepted them in what we believe is the right way, subject to a bit more negotiation. Issues such as the Privy Council and the others that require legislation still have to be dealt with elsewhere, but we have done our best with the 19 recommendations that we thought we could apply.

The code could be in place by August. If it is not working shortly thereafter, people will know that. I do not know how long legislation on these things takes, but the whole thing might well be delayed. I hope that we get something workable.

I cannot help you with the legislation. If you believe that there is no agreement and you have to make a decision next Tuesday—hey, I do not know where you need to go from there. I think that I have indicated that Ferdinand von Prondzynski has fed several areas to us that we can accommodate, although they are relatively minor. You have heard what we think about the rector issue, which will require a complete rewrite. You have heard that we will look again at some areas. I believe that we have already dealt with the issue of membership of nominations committees. I will follow that through and see what it means for interview panels and so on because I do not know if I quite understand the issue. The remuneration committee issue is more difficult, but I will look at it.

I am quite happy to engage in some conversation about the code but I do not particularly want to meet all the unions in one block and then find that the chairs and then the staff who are not in unions need to see us, because I will never be able to deliver the thing in June.

Neil Bibby: You mentioned that you have been in dialogue with Professor von Prondzynski and that you are taking on board what the unions are saying. In the past two hours, we have not mentioned the Cabinet Secretary for Education and Lifelong Learning, who I understand will have the power to sign off the code. Have you spoken to him? Has he given his views?

Lord Smith: I have had a couple of conversations with him. We always have to be careful when quoting a politician, but I understood him to say that he was happy with a lot of the code although he felt that the language was not aspirational enough. He was very concerned about the rector issue, and he wanted to look at the remuneration area more. There are some pretty common themes coming through.

I think that we have dealt with the rector issue, and as for the aspirational language, I will look at it again. I have said on the record that I will be bitterly disappointed if the code does not move the needle quite a bit on percentages and the genuine involvement of females, students and staff in opening up higher education governance a bit more. However, it is up to the higher education establishment to set the goals. If the code does not move the needle, someone else will have to pick up the issue and take it forward.

Neil Bibby: Who initiated the contact with the cabinet secretary? Did he approach you?

Lord Smith: I actually cannot remember. I think that he got in touch with me, but it does not matter. He had not heard anything, and I simply wanted him to know that we were looking seriously at the

issue. Is it improper for the cabinet secretary to be in touch with me?

The Convener: Some people seem to think that it is, Lord Smith, but there you go.

Are there any other questions?

Neil Findlay: I have one final point. Mary Senior suggested that she had written to you but there had been no engagement. As always, I am trying to be conciliatory. Is it possible that that could happen?

Lord Smith: It is logistics, apart from anything else. I know that if I do not answer a question straight, you will call me a lawyer, and I am not a lawyer.

Neil Findlay: I would not insult you that much.

Lord Smith: If I have direct dialogue with the unions only, what happens then? Do I have to go back to the chairs of court and those who are not members of the unions?

Neil Findlay: Come on—we are talking about a significant group of the people who form the academic backbone of these institutions. Surely you must speak to those people directly.

Robin Parker: One of the principles set out in the code that is recognised by everyone is that staff and students should be involved at every level of the process. How that happens is complicated for staff and the UCU would like to see it go further, but staff and students have always been involved in universities' governing bodies. We should be taking that principle to the next level when deciding how the code is decided on and maintained.

Lord Smith: Mr Findlay, I have heard what you have to say, so let me take it away and we will see what we can do about having a direct dialogue, as long as it does not wreck the whole timetable and consultation in other areas. I am sorry, but I do not want to give you a direct answer right now. However, I have heard you loud and clear.

The Convener: Thank you.

I thank all the panel members for coming along this morning. We appreciate your giving up your time to assist us with our discussion of the draft code.

13:08

Meeting suspended.

13:11

On resuming—

Children and Young People (Scotland) Bill: Stage 1

The Convener: The next agenda item is consideration of our approach to the Children and Young People (Scotland) Bill at stage 1. We have before us a paper from the clerks, which, in effect, is the usual call for evidence. If members have no comments, are we content with the draft call for written evidence?

Members *indicated agreement.*

Children and Families Bill

13:12

The Convener: Agenda item 4 is consideration of a legislative consent memorandum on the UK Children and Families Bill. As members will remember, the committee last considered the LCM at its meeting on 16 April, when it agreed to seek clarification from the Scottish Government on the bill's implications for cross-border adoptions, given that Scotland has policies, processes and procedures that are different from those in the rest of the UK.

Members will be aware that we now have a response from the Scottish Government, which has been included with the meeting papers. Do members have any comments about that response or the LCM in general?

Liam McArthur: I raised a couple of points when the issue last came before us. The final paragraph of the Government's response, which sets out the arrangements for dealing with adoptions north and south of the border and, in particular, those that require more specialist matching, provides helpful reassurance.

I note that it is stated that the phrase

"'carve out' is commonly used when describing amendments to legislation",

so I look forward to that forming part of the lexicon of expressions that are used in relation to the constitution.

The Convener: As no other members wish to comment, the clerks will now draft a report to the Parliament on the LCM, which will be circulated to members prior to publication.

As the committee has agreed to hold the next item in private, I now close the meeting to the public.

13:13

Meeting continued in private until 13:35.

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