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Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 14 May 2013

Session 4

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CONTENTS

EDUCATION AND CULTURE COMMITTEE
15th 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:

Marco Biagi (Edinburgh Central) (SNP)
Aileen Campbell (Minister for Children and Young People)
Professor Brigid Daniel (University of Stirling)
Mark Griffin (Central Scotland) (Lab) (Committee Substitute)
Professor Eileen Munro (London School of Economics and Political Science)
Michael Russell (Cabinet Secretary for Education and Lifelong Learning)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 5

Scottish Parliament

Education and Culture Committee

Tuesday 14 May 2013

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

Taking Children into Care Inquiry

The Convener (Stewart Maxwell): Good morning. I welcome everybody to the 15th meeting in 2013 of the Education and Culture Committee. I remind everyone present that electronic devices, particularly mobile phones, should be switched off at all times.

Apologies have been received from Neil Bibby; Mark Griffin is his substitute. Welcome to the committee, Mark.

Item 1 is oral evidence in our inquiry into decision making on whether to take children into care. I welcome to the committee Professor Eileen Munro, who is professor of social policy at the London School of Economics and Political Science, and Professor Brigid Daniel, who is professor of social work at the University of Stirling.

The theme of today's session is decision making in relation to neglect and permanence. Professor Munro recently conducted a review of child protection in England, and Professor Daniel recently co-authored a review of child neglect in Scotland. I expect that we will draw a number of lessons from today's evidence session that will inform the report that we will publish later in the year.

Members should indicate if they have questions that they wish to ask the witnesses.

Liz Smith (Mid Scotland and Fife) (Con): Good morning.

I want to ask Professor Munro a question that is probably very difficult to answer. The committee is wrestling with a problem. A number of stakeholders have said to us that there is a considerable need for consistency in decision making, but that does not always fit with the best interests of the child. I noticed that you said in your report that there was a bit of an imbalance between those things. Is having complete consistency across the board almost too much of an idealistic expectation, or can both things go together?

Professor Eileen Munro (London School of Economics and Political Science): I can see the value of consistency in terms of justice and equity, but if a person is making decisions about taking action with a family, they have to be influenced by their local resources. If they are thinking about whether they should remove a child, the question is not, "Should I remove the child or not?" but, "Should I remove the child, or can I work with his family and give them extra services to make them safe enough?" There will be great variation in resources around Scotland; even with the best will in the world, that will happen. People will be off sick and there will be a shortage, or there will be no foster care placements. I do not think that consistency should be given such a high status relative to thinking about a certain child in a certain situation; otherwise we will end up with rather mechanical and impersonal decision making.

Liz Smith: What can we do better to ensure that the child's best interests are looked after across the board and that people who are working to try to help them understand that consistency is not necessarily the most important thing?

Professor Munro: I did a review of the English system and know from the feedback that I got from Scottish social workers that life is not totally different here. I think that it is not quite as bad—that will make me popular here.

I will talk about social workers in particular, as they are the group that I know best. If we want social workers to focus on the best interests of the child, we must ensure that we do not tell them to focus on something else instead. In England, the reality had become that the priority was to please the inspection service rather than the child. The priority for a person's use of their time was always to keep their records up to date and meet timescales, and the quality of their work was not very visible or appreciated. Over time, we have therefore deskilled and disempowered workers a great deal. Obviously, you are in a better position than I am to know how true that is in Scotland, but some simple and well-known ways of working with families that are more effective than others tend to be overlooked, and people end up with somewhat hostile, adversarial and bitter relationships with families that alienate those families over time, and they will not like to come forward for help.

The more we can help workers to become skilled in showing compassion and respect for people as well as authority about what parenting is acceptable or unacceptable, the more we can provide a service that is genuinely supportive, rather than a service that is a rather phoney cover for policing.

Liz Smith: It has been put to the committee very strongly that the delay in taking some decisions is a significant problem. You mentioned that in your report. Do you have any evidence about what can make a difference to reduce such

delays, and therefore ensure that things progress much more quickly for the child?

Professor Munro: One of the things that happened in England is that we created timescales for little chunks of the process. There was an obsession with the assessment stage, but no one checked how people got on after that stage. That meant that—in an underresourced service—most of the energy went into the start of a child's journey to receiving help, with less attention paid to the later stages.

I am very opposed to fixed timescales for all children. Children are varied, and people should look at the child rather than at a timescale. It would be a good idea for all those involved with a child to have easy access—for example, on their computer screen—to the length of time since that child first caused concern, so that everyone can be aware that people have been worrying about that child for six months, two years or whatever. To have feedback about how long a child has been living in undesirable circumstances would be a much better motivator for caring professionals than some artificial timescale thought up by a committee.

Liz Smith: Would you say that the most important reason for delay just now is administrative difficulties?

Professor Munro: There is also a problem with the expertise of the workforce. If people are not confident in their skills, they dither and delay, and avoid making decisions.

The Convener: Professor Daniel, given your work in Scotland, do you have any comments on those questions about consistency?

Professor Brigid Daniel (University of Stirling): I endorse everything that Professor Munro has said. It would be very difficult to say that we will have consistency. One of the things that people ask for is an agreed threshold for action, but I think that wanting a threshold is to chase a rainbow—it is just not possible.

What we can have is consistency of approach and consistency of the principles that underpin practice. For example, there could be consistency of attention to the developmental stage of the child and to the extent to which its development was progressing as one would expect. You might expect academics to say that we need more research, but I do not think that we do. We need a more concerted effort to put into practice the research that we already have, because we know a lot about the principles that are needed to underpin effective practice—particularly with the area of neglect, which feels intractable and difficult for practitioners. We know enough now to understand what is associated with authoritative practice and that has to be the key.

We need to combine support, warmth and empathy with clear boundaries about what has to change, by what time, and what will happen if there is no change, while keeping a real focus on the child's development. In some ways that is quite simple, but in other ways it is quite complex, so it requires straightforward attention to the simple fact that the child's life is pretty miserable and needs to be improved, with a willingness to tolerate the complexity of all the different factors that might be affecting that. We need all the different professionals to pull together in understanding that.

The Convener: I would like your opinion of something that has come up in committee a few times, in particular when we spoke to young people who had been through the care system. It goes back to the issue of consistency in decision making. There are situations where a decision is taken to remove an elder sibling after a number of years in which they have been brought to the attention of professionals, yet younger siblings living in exactly the same parental home are left there. I know that a tension arises when we try to take each child in a family as an individual case, even though the difference between the responsibility and behaviour of the parents to each of those children does not seem to be great. What is your view about the tension between those two aspects?

Professor Daniel: The academic community has given that a name: the start-again syndrome. Marian Brandon has talked about that quite a bit. It is the tendency with each new child to think, "Now, here's an opportunity." When someone is expecting their next child, they often feel optimistic and think, "This time we'll be able to make it work." There is a tendency in the system to err too much on the side of not looking back at the history and the previous children who have been removed, and to be optimistic. Practitioners have to remain optimistic that people can change; otherwise, they would just give up and we would not have a social work profession.

The Convener: I am not talking so much about situations where a child is removed and another child is born subsequently. I am talking about cases in which there are two children in the home.

Professor Daniel: And one is taken and one is left.

The Convener: Yes.

Professor Daniel: A whole range of decisions will go into that. I can see how it might often be, and it might often seem, inconsistent. Partly, it depends on the extent to which people take children and young people's own views into account. One of the difficulties of neglect is that children do not always know what they are not

getting until they have a different experience, at which time they realise what they have been missing out on.

You have articulated the tension between treating each child as an individual and being sensible and consistent in decisions—and also looking at the potential fit, because if a child is being removed, there has to be a good place for them to go. That requires a very good alternative care system.

Professor Munro: There are certainly times when it can be a sensible decision to leave one child and remove another, but there are also a lot of times when it is a sign of rather poor reasoning, either because not much attention has been paid to the other child and not much effort has been made to talk to him and find out the quality of his life, or because people think, "The older child has become extremely disturbed in his behaviour and he's showing all the adverse effects of poor parenting. We'll wait until the next one is equally damaged before we remove him." Also, people can do it without considering what harm they will cause by separating the siblings. We need to consider the cost of that as well. There are times when it is a sensible decision, but there are a lot of times when it is a dubious decision.

The Convener: Thank you.

Neil Findlay (Lothian) (Lab): A number of the young people to whom we spoke who have been through care talked about being removed from the home, allowed back, removed again, and then allowed back again under what people refer to as the rule of optimism, which Professor Daniel mentioned. They told us that they wished that a decision had been made once and for all at an earlier stage because they felt that they and their relationships were more damaged by that continual movement back and forth. How do we deal with that issue? How can we prevent that from happening?

Professor Munro: Again, it is a question of the quality of the professional work. It depends whether they are returned home in the hope that things will go better or whether there is a plan to work with the family and monitor what is going on. Justice requires us to give parents a chance if we think that they have some potential to provide a home, because the child has a right to be with their birth family if possible. It is not just about the parents' rights; it is also about the child's rights.

Sometimes, we get that in-and-out pattern for good reasons. If there is a parent with a relapsing illness, the child might come into care every time the parent is chronically ill and has an acute phase, and then they will go back home again. However, it is often an example of poor quality assessment and a failure to make a firm decision and say, "That's it."

We want authoritative social practice, as Brigid Daniel said, but we also want that authority to be based on competence, not on ignorance. I think that we need to improve the workforce and allow it to operate at a skilled level rather than focusing on process and administrative details.

Professor Daniel: There are a couple of big research studies that back up what those young people are talking about. Elaine Farmer has done some research on reunification with children who have been removed from neglect, as have Jim Wade and his colleagues. Both those studies found a similar pattern: there is a tendency—not in all cases, but in some—for children to be removed from home and then returned to situations in which no one has done anything to fix the problem that led to the child's removal in the first place.

10:15

Objectively, anyone would say that that is a silly system. If you are going to remove a child from a situation, you need to do something to fix the situation before they go back. Both studies identify good examples of factors that are associated with the system working better. They include making proper plans for returning home; not returning the child too quickly, and taking the time to do it properly; and paying close attention to the features that have led to the children going into care in the first place. Those features often include parental substance misuse and mental health issues, which need to be dealt with through skilled, focused and concerted efforts.

The other approach that shows some promise involves the family drug and alcohol courts that are being trialled. They deal with issues authoritatively, and say that they need to see something change before the child goes back. That approach is associated with things turning out a bit better more often, on the whole.

If we can focus on dealing with the features that have led to the problems in the first place, it is perfectly reasonable to remove the child for a while, work on those things and then return them home. However, things might have just drifted, so the children just vote with their feet and go or make it very difficult for their carers to continue to look after them. Elaine Farmer describes the difference between passive practice and authoritative proactive practice, which is much more to do with local authorities and their culture of practice than the characteristics of children and families. Everything depends on the quality of the systems and the people who are working in those systems in different authorities. It would be useful

for the committee to have a look at some of the work in that area.

Neil Findlay: The cases to which I referred are not specifically to do with illness, although that depends on how we assess illness. A number of cases involved substance misuse and episodic events, in addition to continual mental health problems.

That links in with your comments about the deskilling of social workers. We have heard a number of times throughout our inquiry that social workers are not particularly engaged in the one-to-one preventative work and rehabilitative work that they may have undertaken historically. They are seen more as being the big baddie who comes along and does something bad to a family, and there are all sorts of issues around resources and the rest of it. Perhaps you can comment on that. Is that how social workers are now being seen? Do they still have that other role?

Professor Munro: If social workers are given the chance, they have a lot of those skills, or at least the appetite to gain them. I have seen—not only in the United Kingdom but in other countries—that, if you turn the system upside down and say that the primary aim is not just to comply with the administrative process but to get to know the family well and help them to parent better, you will find a radical improvement in the number of children who can stay safely at home.

Work has been done on that as part of the Hackney model—I do not know whether you have heard of it. The London Borough of Hackney developed a radically new way of working with families by placing an emphasis on skilled engagement with them along with high-quality clinical supervision. The local authority has found that providing a much more intensive service to problematic families has meant that its overall costs have dropped because children can stay at home and there are no costs for removal, and the re-referral rate is also dropping.

Some other places are working with the signs of safety approach, which has a great deal of similarity with the Hackney model. Again, the emphasis is on getting to know the family and the extended family, and making it clear to them what is wrong with their parenting, not just by saying vaguely that they have mental health issues, but by telling them what that means for a two-year-old child and engaging their motivation. If the social workers can see that parents are not engaging, they will have to remove the child, but the signs of safety approach tends to lead to children being able to stay at home rather than being rereferred into the system.

Professor Daniel: The City of Edinburgh Council is using the signs of safety as well.

The picture is extremely mixed. A lot of social workers are doing a lot of brilliant work. The problem with preventive work is that we do not know that it has happened, because we do not hear about it as much. We are not very good at looking at where things are working well. I know from running a lot of post-qualifying provision that there are many social workers who are doing a great deal of creative work. I read a lot about the work that they are doing.

Part of the issue depends on the setting in which social workers work, so we need to think about the service and the profession. There are a lot of qualified social workers working in many different settings. Many social workers work in voluntary organisations delivering specialist support, which they do extremely well when they have the structure to do it. Part of the difficulty for social workers arises if they work in a setting that restricts their time to do that direct work, in which case the skills to do it become eroded, but there are many social workers who are doing it and, given the right opportunities—as Eileen Munro said—they can and want to do it.

In Scotland, there is a big push for early intervention and prevention to be delivered by the universal services. Whether we have enough health visitors is another issue, on which I am sure the committee has been lobbied separately. That is a strong and sensible approach, which involves reserving social workers for the heavy end. However, at the early stage we often need expertise in gauging the extent of the parents' capacity and willingness to change, with the support that they are offered. Health visitors and teachers can offer a lot of extremely helpful preventive support, but they sometimes need the skills of social work to assess whether the parents will be able to change quickly enough for the child's development.

We do not want too much of a split. We need the expertise of social work to be available across the board, rather than for things to be split by service and profession. Have I articulated that okay? Do you know what I mean?

Professor Munro: Yes.

Professor Daniel: If we rely on health visitors and teachers to do all the supportive work, although a lot of the work that they do is very good, they might flounder a bit when it comes to a more in-depth assessment of capacity to change.

Professor Munro: One of my recommendations in relation to the English system was that, rather than having to go through a 10-page referral form, people in the other services should be able to have a conversation about a concern with a social worker to help them to formulate their thoughts on whether the situation is worrying enough to ask for

a deeper assessment. Instead of always thinking of moving families across into child protection, we should recognise that families want consistency of relationships and bring in the child protection component when it is needed.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to pick up on a point that Professor Munro made. She said that it is the right of the child to be with the birth parents. Does that not involve making an assumption that that is the best thing for the child? How much weight is given to that, as opposed to—

Professor Munro: I said "if possible". That is in the United Nations Convention on the Rights of the Child, and it is probably in the Scottish legislation, too. Of course there are times when that is possible and times when it is not but, to a degree, the state has a responsibility to try to make it possible. The United Nations guidance says that there should be support services for families as well as a reactive child protection service.

Colin Beattie: I was coming on to the issue of how much weight is given to that. In the past, we have taken evidence that has indicated that many social workers are relatively inexperienced in making such decisions, which often leads to what has been referred to as the rule of optimism. How much weight is given to the right of the child to be with the birth parents? How much is that influencing inexperienced social workers to follow the rule of optimism?

Professor Munro: There is certainly a lot of evidence about the rule of optimism, although I am not sure whether it is limited to new social workers.

Society varies in the message that it sends. There are times when it says that a child should never be left in any danger, but it gets into a paddy when a lot of children are taken away. It is always a pendulum that we are trying not to let swing too far in either direction. The reality is that, if children are removed, a lot of mistakes will be made in removing children who could have stayed at home, but if the aim is to keep children at home, there is a higher probability that some of them will be harmed.

I am not keen on maligning social workers—

Professor Daniel: You have got the wrong people for that. [*Laughter.*]

Professor Munro: I do not think that newly qualified social workers should be making decisions of that nature. They are the most fundamental, important decisions that can be made, and they should be made by very experienced people.

Colin Beattie: In previous evidence that we have taken, questions have been raised about the level and quality of training of social workers and the support that they get in making these decisions. Will you comment on that?

Professor Munro: The places where I have seen fantastic improvements in the service that is given to families all have the feature of decision making being a group process and not the result of an individual talking to a supervisor in a rushed 10 minutes. The reclaiming social work model involves having a social work unit of five people including somebody with a clinical background in child and adolescent mental health services, so a good clinical component is included. If a group of people talk things through, between them, they can think of all the options, challenge all the evidence and do the kind of critical appraisal that we might get in a court of law. That is what is needed for such important decisions. Bringing in other voices and challenges is part of checking the quality of reasoning, and it makes it more likely that a good decision will be made.

Professor Daniel: I help to educate social workers and I think that we do not too bad a job. A combination of things is needed. Only so much can be fitted into a social work degree. What is really scary, and what we have to avoid, is what they are attempting to do in England, which is to slim it right back and have a much reduced, social work-lite kind of training. However, even with the best will in the world, we can only fit so much in.

A lot of the difference depends on the facilitating conditions. It depends on where people end up working and what support there is for continuing professional development. In places where on-going learning and development is supported, we see really skilled social work practice. Where that is restricted and where people are made to follow lots of guidelines, we see things closing in. As with all professions, the initial qualification is the start, and it is what happens next that makes a lot of difference to the quality of the practice that people develop.

In any case, it is not individual social workers who are making the decisions. They make recommendations but, as you know, there is a child protection investigatory system, which is a multidisciplinary system, and we also have the children's hearings system. We often have children going through both of those. A range of different decision-making bodies comes into play in the area, and social workers have to work with children to navigate through the system. Sometimes, they are thwarted in the things that they would like to happen by some of the structures and systems.

Liam McArthur (Orkney Islands) (LD): We have touched on the importance of assessments

again today. The panel that we took evidence from last week was consistent on that theme. Notwithstanding the risks that are associated with attaching too rigid timescales to how and when assessments ought to take place, they are clearly fundamental to the decisions that are subsequently taken. Last week, we heard evidence of cases in which complex assessments are made by people who do not necessarily have the experience to make them. Previously, we visited Glasgow to witness the New Orleans model, under which there is a far more joined-up approach to the way in which assessments are made.

Training and on-going professional development are clearly key to assessments, but do you have any recommendations about how we can improve the assessment process?

10:30

Professor Munro: I made a point earlier about group supervision, which is a very good way to help fill in the gaps. Someone might say that mental health issues are involved—this really irritates me—and somebody in the group will ask, "What exactly do you mean? What illness? What behaviour does it produce? How does it affect the parenting?"

I do not know what kind of assessment forms you have in Scotland, but in England we have a Government-produced integrated children's system, which has been very dysfunctional. It encourages people to put little blocks of data into different boxes on different screens, and people are surprised when they cannot pull the information together and get a full picture of the family. There is a lot of development work to be done around how technology can support, rather than hinder, good assessment. I am convinced that it could do a lot more to help people—to alert them when they have forgotten something and to ask them questions. Technology could be very useful, but so far we have used it more to gather data for management than to help practitioners think.

Professor Daniel: We have a very good assessment model in Scotland in getting it right for every child, which provides the basis for doing good, comprehensive assessments. We have the knowledge base, with the combined professional expertise, to undertake good assessments. We know that people often struggle with analysis, however. People are quite good at gathering lots of information, but the key is to take the time to work out what it actually means and to make sense of it. People need headspace time so that they can think it through and work out what it actually means.

Another difficulty is the tendency to reassess and reassess. An assessment can be a very good way for people to feel as if they are doing something, but it is a bit like writing lists. We have to tick things off the list and actually do them, and we sometimes get a bit stuck. There is an expression for that: assessment paralysis, where people get stuck in the assessment phase.

One of the challenges in the multidisciplinary field, which we will have to tackle when the Children and Young People (Scotland) Bill is implemented, is how to get different professions to trust one another's assessments, so that each one does not feel that it has to reassess. For instance, a health visitor might do an initial assessment, and the people at social work might decide that they then need to do their own assessment. In the Highland pathfinder project, lots of work was done to overcome that problem. That was pretty successful: a single plan and a single assessment were developed and everyone agreed to work together on producing one assessment, rather than everyone doing separate, bitty ones.

There is a very good, evidence-based, structured assessment model and we have the components in place, but attention needs to be given to some of the nitty-gritty stuff about how to put things into practice and how to work collectively to do that.

Liam McArthur: As regards that collective work, are there issues that we should be concerned about in relation to the different approaches that the professionals involved take, either to the assessment or to the analysis that flows from that assessment? Do you need that creative tension in order to come to the right decision?

Professor Munro: Yes—they would not be different professions if they had the same knowledge and skill, would they?

The Convener: Obviously, Liam.

Liam McArthur: Indeed.

Professor Daniel: I have seen lots of effective multidisciplinary practices. Things have changed dramatically over the past few years. Although it has been a little bit forgotten about, the child protection reform programme in Scotland was hugely influential in bringing universal services much more to the fore in terms of their responsibility for children's wellbeing. People in universal services no longer need to be convinced that they have a role in child protection—they know that they do. They worry about it and are not sure quite how best to do it, but that is a better place to be than people thinking, "That's not my job." Phrases such as, "It's my responsibility", "It's everybody's job", and, "We're all in this together" now trip off everybody's tongue. People are now

looking for support for the next stage of working out the intricacies of how things work on the ground and who takes responsibility for what. That will involve moving away from people covering their backs and the fear of being hung out to dry and so on.

Those things need to be worked through on the ground to enable people to do what they want to do, which is to work together for the benefit of children. I see a huge urge to do that. It is not as if we have to persuade people.

Liam McArthur: You have clearly described a degree of collective responsibility for what flows out of that.

Professor Daniel: Yes.

Liam McArthur: I certainly appreciate that people will come at this from different perspectives, but in giving effect to that collective responsibility, is there anything in how systems operate that suggests that responsibility for taking forward any actions falls between stools, or is who is responsible for which aspect clearly understood?

Professor Daniel: It is patchy and variable, and it depends on the quality of planning. Some areas have plans that make it clear who is responsible for what and when something has to be done by. In other places, that is much more open. There is a lack of consistency about being clear about who is taking what forward and what will happen.

Professor Munro: I do not know whether this applies in Scotland but it certainly applies in children's services in many other countries: a layer of the problem tends to get neglected. The very problematic families get into the child protection system and the mildly to moderately dysfunctional families get services. However, the families that are not bad enough to get a child protection reaction but which are too challenging for the universal services end up with nothing.

The committee would be better placed than I am to know whether that applies in Scotland, but there tends to be a bit of a gap. Universal services have upped their game and are dealing with more but they have not reached the point where the child protection service takes over.

Professor Daniel: I recognise that here when it comes to that bit in the middle—that nebulous grey area in the middle where everyone is a bit unsure about who is responsible for what.

Clare Adamson (Central Scotland) (SNP): I have a supplementary question on the technology that Professor Munro mentioned. From what you say, I envisage a move away from a basic case management system towards an expert system that would prompt certain responses in certain areas. Have you come across examples of that in practice elsewhere?

Professor Munro: There are some nice examples from medicine—you can type in "appendicitis" and immediately go to a website that tells you about it in detail. I am aware of a lot of experimental work being done in many countries. There seems to be a common pattern, with a Government investing billions in an extremely dysfunctional system and finally conceding that that system has to be scrapped. There is some progress. Even things such as putting a genogram into the software—not a genogram, but something that shows all the professionals involved—

Professor Daniel: An ecogram?

Professor Munro: Yes, an ecogram. Visually, that can help people's thinking so that they do not forget things—so that they do not forget the other child in the family, for instance. As regards the role of narrative relative to data boxes, it is fairly well evidenced that that is a much better way of getting the human thought process going.

The other thing to remember is that the deep thinking that is required to do a good analysis and make decisions is very effortful and human beings are lazy, so you find that people have to be encouraged to do it. There is so much drift in child welfare partly because it is so tough to make the decision that people delay—not because of their peculiarities but because human beings tend to behave that way. There again, I think that group supervision is really great in providing the encouragement and the challenge to get on and make the decision.

George Adam (Paisley) (SNP): Some of the evidence that we have already taken suggested that the structure itself is very complex, which can cause delay and other problems. Is there a better structure that would put the child—or the benefit of the child—at the centre?

Professor Munro: When I was asked to do the review of the English system, one of my early resolutions was that I would not recommend structural reorganisation because I am old enough to have seen many reorganisations, none of which led to a substantial difference. People are happy to get rid of the structure when a new idea comes along. I would not put my energy into structure. It is much more about the people and helping them to do the job.

Professor Daniel: We have what has been described as an interesting hybrid system in Scotland. We have the children's hearings system, which uses a welfare-driven approach that is very different from the system in England. We also have the investigative bit, which is quite similar in many ways. Although they have a sort of alliance, there are some complexities around how those

two systems align. For example, the child protection system might consider that a child had been neglected, whereas the children's hearings system might characterise that more as lack of parental care. Some children go through both and some go through one or the other.

That complex, hybrid system can work okay—or not. One of the difficulties with the hearings system is that people have been misusing it as a way of compelling local authorities to provide services rather than compelling the child and family to use them. Sometimes universal services will make a referral to a children's hearing because it feels that it is way of upping the ante when the family might not necessarily need some sort of compulsion. That is not a sensible way to use the system, which should not be about trying to unlock services. That is what we found years ago when we were doing the audit and review of child protection in Scotland.

It is useful to collect management information but because of the way in which our data are collected, the two systems do not link up. The child protection statistics are not linked with the children's hearings statistics, so we cannot say how many children are in both systems. We could do things to make it easier to know what is happening without necessarily dismantling the whole system. It seems a bit odd to me that those statistical systems are not tied together.

George Adam: Is there scope to merge the two systems and share information?

Professor Daniel: There is a lot of information sharing already. In some areas, the children's reporter attends case conferences, for example. In some places, there is a lot of information sharing and people work closely together. However, that depends on how the children's reporter and the local authorities work together.

Scotland is very passionate about its children's hearings system. Whenever people try to mess with it, there are a hell of a lot of squeals.

George Adam: I am just asking a question. [*Laughter.*]

Professor Daniel: There are those who argue that we have a child protection system in the children's hearings system, so why do we need something else? If we could move to the system as envisaged in the GIRFEC approach, in which both compulsory elements are reserved for when they are really needed, it would become less of an issue because we do not necessarily need to be shovelling children through either system if we provide the right support early enough. We could reserve the compulsory element for when we genuinely need to use compulsion. There is an issue with misuse of the system, as I said earlier. We could unpick the whole system, and it might be quite fun to start afresh, but it could deflect a lot of time and energy too.

George Adam: Thank you.

Mark Griffin (Central Scotland) (Lab): My original question has been answered in the answer to Neil Findlay's question.

On support for parents when children are returning to families, you mentioned how the decision to return children is sometimes incorrect. However, it might be the right decision in a lot of cases, but because of lack of support for the family, those children return to care. Professor Daniel outlined some of the support for families. Could the witnesses elaborate on that?

10:45

Professor Munro: Neglect has a thousand different causes, and no single way of responding would be relevant to them all. However, quite a lot can be achieved by workers showing warmth and authority and being clear about what they are bothered about. One of the realities is that parents often do not know why people are concerned about their parenting. With many parents, if we can explain why their parenting is having an adverse effect on the child, we can harness some motivation in them to try to change. We can then look at the wider family and their friends to see what other support the parents could have and how they could solve problems.

You could spend millions of dollars on buying expensive American manualised services, but a large component of why they work is that they ensure that the worker has time to create a therapeutic relationship with the family in order to motivate them, and can stay around consistently to keep on helping them and be clear about what needs to change.

I warn the committee that when people say that something works, they mean that in a controlled trial the service was found to be superior to services "as normal" in an American state. However, services "as normal" in Scotland are probably very different from that, so I think that it would be better to put your money into helping the existing workforce to do the basic things well.

Professor Daniel: There are quite a few principles of intervention on neglect that we know are more likely to be effective so—again—we are talking about consistency of principles. Recent research that Action for Children commissioned into the work in its family centres showed some promising signs of its effectiveness in improving situations, even with cases of fairly chronic neglect. We know that a good therapeutic relationship with one practitioner is needed and that the intervention needs to be sustained and

long term, and not episodic, so that we get away from the revolving-door situation. The intervention has to be really sustained, focused, structured, clear, authoritative and warm.

Perhaps particular techniques can be used, but a lot of it is about just sticking with it and being really determined. That approach gives good evidence of whether someone can, in fact, change because, if we try our best and someone still has not responded quickly enough, we know that we should take quick action to remove the child. We have good evidence that, whatever we throw at such situations, it will not make a difference.

Professor Munro: In places where people put more effort into working creatively and warmly with families, when a decision is reached that the family cannot parent a child well enough, their behaviour at that point is a lot less adversarial, because the parents often understand the reasons. They might be sad about it, but they appreciate that the decision is sensible.

Liam McArthur: Professor Daniel referred to the problem of the revolving door and episodic interventions and talked earlier about targeting interventions that avoid the need to go down the route of the children's hearings system or child protection. Last week, we heard evidence about a difference between the approach of children and families social workers and adult services social workers. The latter are perceived to take a longer-term approach because that sort of intervention is perhaps more characteristic of the work that they are involved in. Children and families social workers, perhaps because the timeframes for a child are obviously different, are more used to taking a short-term perspective and to trying to respond to difficult circumstances. Do you agree with that characterisation? Is there anything that we could and should do to rebalance that to ensure more of a long-term approach, or is that just the nature of the work?

Professor Daniel: That is an interesting observation, although a little more exploration might be needed into how prevalent the difference is, if there is a difference. Those who work in adult services certainly have a good understanding of the cycle of change, lapse and relapse and all that kind of thing. In particular, those who work with substance abuse have an understanding of those issues.

That adds to the point that multidisciplinary work means working not just across professions, but across different bits of the same system. As we join up some bits in our move towards more integrated services, we might pull apart other bits. Although we need health and social services that focus on greater integration within adult and children's services, the danger is that we will pull apart the children and adult bits rather than bringing them together to combine the expertise of those who work with adults and that of those who work with children.

In terms of throughput and what is considered to be a good outcome, one slight shift that is required in the children and families sector is that keeping a case open should sometimes be seen as being a better outcome than shutting a case and moving things on. We are driven by the aim, "Shut. Move on. Close. Go on to the next one". That is seen as success, but keeping cases open and working on them also needs to be seen as a successful outcome. That is a process, system and resource issue.

The process of getting adult and children's services to work closely together has dramatically moved on. There are still problems, but since the "Getting Our Priorities Right" agenda—there is another such publication coming out fairly soon—there has been a lot more attention paid by adult services to their responsibilities to working with those who work with children. More can be done, and there is readiness for that.

Clare Adamson: How can we move away from a system that is based on crisis towards one that is based on prevention and early intervention, and what barriers to that exist? Professor Daniel used the phrase "unlock the services", which I thought was quite telling; it suggests that there are gatekeepers, in dealing with the problems. You commented on the GIRFEC approach. Are we where we want to be with that? Are we moving in the right direction to make that a reality in terms of changing the service?

Professor Daniel: The rhetoric, the will and the evidence are all there; Harry Burns has never stopped talking about the need for early intervention. Of course, we will need some parallel funding for a while. Even if we have aspirations that early intervention will take away some of the crisis issues, we have in the meantime still to deal with crises. In speaking to people in local authorities, we find that the real tussle comes when we ask how they can justify moving their resources across while they still have a lot of crises to deal with. Local authorities will need support and clever financial thinking, or resource management, if they are to do both things at the same time. It is not possible just to switch from one system to another.

The Highland pathfinder offered hope; it showed that there has been a promising move upstream. However, a lot of resources and time were put into it in order to get to that place. That is why the other local authorities get grumpy, saying, "It was all right for the Highlands, because they got all that extra support". As I said, we cannot just switch from one system to another, which is why people, especially those who are in charge of planning resources, get frustrated when everyone suggests

a move to early intervention and prevention. Although the argument is well made, we are dealing with a bigger group of people—obviously, since the net is bigger—and so resources are spread more thinly. The question is: what do we do with the ongoing crises? Yes, the aspiration is good, but the aims need more working through.

Professor Munro: I am unable to comment on the Scottish situation in particular. However, it is worth looking at how much time is spent in the current system on making referrals and doing assessments while not providing a service. When I was doing my review, a couple of local authorities in England did a monitoring exercise of the life of a case and realised that—from the child's point of view—that child was referred, assessed and batted back and forth several times before receiving a service. If the first person in the process had been able to provide a service, a lot of professional time would have been saved. The current system of having very tight gate-keeping is extremely wasteful.

Clare Adamson: Do services use partners and other outside organisations as well as they might? A simple example is the reading and library initiatives: are they sufficiently used as services that could tackle some of the problems?

Professor Daniel: Again, such use is patchy. Eileen Munro's observation about the two ends of the spectrum and the middle bit is helpful. A lot of support is being provided in the community for low-level problems, and we are piling a lot in for the children whom we are really worried about, but it is hard to keep track of what is on offer for the ones in the middle. We still have a tendency to set up schemes and to give them just short-term funding, which means only that they have to shut down; by the time the local social work team has found out that a particular scheme is running, it is just about to be run down again. There is reluctance to refer people to schemes for which there is no secure funding.

A lot is going on out there, but provision can be a little piecemeal and it is difficult to keep track of schemes that keep starting and stopping. We need a much more sustained approach to services.

Clare Adamson: Have training and qualifications for social workers changed to reflect the new direction with regard to early intervention and GIRFEC?

Professor Daniel: Yes—we certainly teach GIRFEC on our programmes. The heads of social work courses meet regularly, and we also meet regularly with the regulatory body and get input from Social Care and Social Work Improvement Scotland. We have a lot of discussions with employers, too. There is a great deal of interaction and interchange on how things are changing and developing.

We need to look at the personalisation and self-directed care agendas that are coming in. There is probably always a bit of a lag, but most of us are out and about doing that type of thing, so we know what is going on and we must try to incorporate it.

However, some of that work needs to be done post qualification, because we cannot do everything on an initial course. Organisations need to learn and to provide opportunities for their staff to continue to learn; some are better than others at doing that.

The Convener: Does Liam McArthur want to go next?

Liam McArthur: My question has already been answered—I asked whether further research is required.

Professor Daniel: I said no, did I not? I am going to do myself out of a job, here.

The Convener: I will ask the question. You did say no earlier, but it will be helpful if you explain and expand on that a little.

Professor Daniel: The answer is yes and no.

The Convener: I have to say that your earlier answer was rather a surprise for me—I am not used to hearing a researcher say that no more research is needed.

Professor Daniel: We need a bit of research on how we can better put into practice research that we have already done. That sounds a bit convoluted, but it is probably the case. Quite a lot of the research that we are doing involves comparing different care outcomes for children, but we have not done much research into service as usual.

We do a lot of research on special manualised programmes and specific approaches, but we do not have enough information to know what is going on and how the collective activity of all those people with all that goodwill is supporting children at home. We need to support people to use more effectively the knowledge that we already have.

I do not want any more research that tells us that neglect is bad for children, for example. We have plenty of that and it is easy to do such research because we will find plenty of evidence. We need to think more about how we support people to work more authoritatively, and we could do some interesting developmental action research on that.

The Convener: Professor Munro, do you agree?

Professor Munro: Yes—I have been doing some such research in England and Australia. It is fascinating to work with the reform process, to see how it operates intellectually and emotionally and to see its impact on families.

We cannot make human life perfect, but—as Brigid Daniel said—we have at present some wisdom of which we are not making full use. We have ended up with a system that in many ways insults, alienates and demoralises parents, and probably makes them worse parents as a result. There is a lot that we could do with what we know already.

The Convener: I thank you both for coming along this morning; your evidence has been very helpful to our inquiry.

10:59

Meeting suspended.

11:03

On resuming—

Post-16 Education (Scotland) Bill: Stage 2

The Convener: I welcome members back. Today, we start our stage 2 consideration of the Post-16 Education (Scotland) Bill. I welcome to the committee Mike Russell, the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. Officials are, of course, not allowed to participate in the formal proceedings. I also welcome Marco Biagi, who has joined us because he has amendments that he wishes to speak to later on.

Everyone should have with them a copy of the bill as introduced, the first marshalled list of amendments, which was published on Friday, and the first groupings of amendments, which sets out the amendments in the order in which they will be debated. We will not go beyond section 4 of the bill today.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. All other members with amendments in the group, including the cabinet secretary, if relevant, will then be asked to speak to them. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my eye or the clerks' attention.

If he has not already spoken on the group, I will invite the cabinet secretary to contribute to the debate just before we move to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press the amendment, I will put the question on it. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when it is called, they should say, "Not moved." Please note that any other MSP may move such an amendment, if they so desire. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands in the air until the clerks have recorded the vote.

As the committee is required to indicate formally that it has considered and agreed each section of the bill, I will put a question on each section at the appropriate point.

Section 1 agreed to.

Section 2—Higher education institutions: good governance

The Convener: Amendment 12, in the name of Liz Smith, is grouped with amendments 7 and 23.

Liz Smith: One of the central issues in the debate about the bill is that of ensuring that the universities are able to maintain what they have defined as responsible autonomy—namely, full accountability and transparency when it comes to the use of public money, but also the ability to decide for themselves, without Government interference, how best to maintain the academic structures that will continue to deliver the exceptionally high standards of higher education to which Scotland is accustomed, and which have ensured that Scottish universities have maintained their competitive edge when measured against universities in the rest of the world.

That academic freedom is one of the key principles that have underpinned the university system in Scotland for hundreds of years and is the one that the university sector has identified as being the reason for its success. When the committee heard from four university principals, they made it plain that that academic freedom was a core part of the flexibility that is required to lead the field in research, innovation and knowledge exchange, all of which are increasingly regarded as the key components against which universities are measured.

The point is rightly made, too, that the most successful higher education systems around the world are those in which Government is less rather than more involved. Therefore, it does not seem to make much sense for Scotland to move in the opposite direction, by extending considerably the control of ministers and the Scottish Further and Higher Education Funding Council. In particular, the idea that ministers and/or the Scottish funding council could, in effect, be involved in university management was not agreeable to the sector, which is why I have lodged amendment 12, which seeks to remove the term "management".

On amendment 7, similarly, given the sector's comments, it would be inappropriate for ministers to be involved in imposing on universities conditions that would mean that part of the financial payments that they receive are fully tied to what the Scottish Government deems to be appropriate principles of governance and management. In effect, that would be a move to increase state control, which I do not think is acceptable to the sector.

On the issue of governance in general, I understand some of the concerns that have been raised, but I do not believe that there are significant problems that somehow have a detrimental effect on education in the university sector. Indeed, no witnesses could provide evidence to prove that the present governance structures were having a detrimental effect on the education that is delivered. For that reason, I and my party are very nervous about pursuing amendments that would restrict the democratic choices of staff and students when it comes to governance. If that approach were to be pursued, we would have to look at it extremely carefully, as I think that it would harm the university sector. That is what we have been told by those who are involved in the new code of governance.

I move amendment 12.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Amendment 7 would change proposed new section 9A of the Further and Higher Education (Scotland) Act 2005 by transferring from ministers to the funding council the power to identify the principles of good governance with which institutions must comply. Ministers would retain the ability to impose on the council a condition of grant that requires institutions to comply with principles of good governance, but amendment 7 would mean that it was a matter for the council—rather than ministers—to determine what those principles were.

The amendment—there will be similar amendments during the stage 2 process—addresses the concern to which Liz Smith has just alluded. There has been no intention to interfere in the responsible autonomy of universities, although there will always be different definitions of the words "responsible" and "autonomy" and how those link together. Throughout the process, we have made it clear that the intention is for governance to be improved but not interfered with. I have listened carefully to the concerns that have been expressed by members of the committee and in wider evidence. Amendment 7 strikes the appropriate balance between respecting the sector's autonomy from ministers and delivering an appropriate level of assurance on a significant level of public funding.

In that spirit, I am happy to support Liz Smith's amendment 12, and to remove the word "management" from proposed new section 9A of the 2005 act. The university sector has expressed concerns about the word and that its inclusion

would allow ministers to interfere in the day-to-day operation of institutions, but that was never the intention—clearly, that would be undesirable. The word was included historically, from the 2005 act, and with the intention of capturing the high-level strategic management issues that are more akin to governance than what is ordinarily understood by the word "management". Again, I have listened carefully to the sector's concerns and to the committee, and we accept that we should not take any risk. If there is a view that there could be interference, we should drop the word, and I am glad to do so.

I support the principle that underlies amendment 23. It is right and proper that the funding council should consult staff and students in exercising the functions under new section 9A of the 2005 act. Indeed, I have made that case throughout the extensive consultation process on the current code that the university chairs are developing, and I will lodge amendments to a range of provisions in the bill that will strengthen the position of consultation. The need for consultation is particularly clear should the committee vote in favour of amendment 7, which would transfer the power to identify what constitutes the principles of good governance from ministers to the council. The council would benefit from ensuring that it consults widely.

I have no problem with the objective, but amendment 23 is not necessary for its achievement. Consultation on the development of a revised code would be a critical part of any future development in the area, but as the provisions in the bill do not set out any parameters for developing such a code, I do not believe that a more explicit consultation duty is required or desirable in this instance.

I have said to the committee before, I have said in the chamber, and I confirm now that my clear expectation is that any governance code must be developed by sector leaders working closely with staff, students and all other interested parties. The level of consultation that is undertaken in developing a code would be one of many factors that the funding council would look at in determining whether any future code was accepted as good practice, and the existing powers in the 2005 act already enable the council to consult on such matters.

I invite the committee to support amendments 7 and 12 and urge Neil Findlay not to move amendment 23 on the ground that the matter is covered adequately elsewhere and is fully supported by the spirit of the bill.

Neil Findlay: I support amendments 12 and 7 for the reasons that Liz Smith and the cabinet secretary have set out.

Amendment 23 seeks to ensure that there is a duty on the funding council to consult when the principles of good governance are being developed. That would mean consultation with the stakeholders who make our higher education institutions the success that they are—namely, the relevant staff through their trade unions, students, the business community and other appropriate stakeholders. Throughout the process, we have heard about problems between those groups and a lack of or, indeed, problems with consultation in developing the current code. The amendment would go some way towards resolving those problems and ensuring that consultation takes place when the principles of good governance are being developed, amended or changed. By explicitly referring to that in the bill, we would make it clear that we are serious about those issues.

I will be moving amendment 23.

11:15

Liam McArthur: Amendment 12 looks relatively minor but is nonetheless an important improvement in providing reassurance about the limitations on the scope for interference in the running of our higher education institutions, and I welcome the cabinet secretary's indication that he will support it.

In turn, I will support amendment 7. Colleagues and the cabinet secretary will be aware of my concerns from the outset about the extent to which the bill will increase the scope of ministers to meddle in too many aspects of how our universities and colleges function. In many respects, those concerns remain.

However, I welcome Mr Russell's important self-denying ordinance, which improves section 2. It makes it clear that higher education institutions will be required to comply with standards of good governance as a condition of grant, as the cabinet secretary indicated, but in a way that better reflects the principle that universities should not be the subject of political direction, as Liz Smith said.

On amendment 23, last week we heard from Lord Smith and Simon Pepper, who defended the draft code of governance that has been produced and the process that gave rise to it. However, it was accepted that the draft code can and must be improved before it is finally agreed and that lessons must be learned about how revisions may be made to the code in future. Like the cabinet secretary, I expect those things to happen. Although I sympathise with the frustrations that we all share that have given rise to Neil Findlay's amendment 23, I am not inclined to support it.

George Adam: I, too, back Liz Smith's amendment 12. After some of our discussions with

and evidence from the university sector, it has become quite clear that in future there could be cabinet secretaries or ministers who want to tinker with day-to-day management. Knowing the current cabinet secretary, I know that that would be the furthest thing from his mind—he is a busy individual; however, I think that future proofing the bill is the best bet. I understand that the word "management" was used so that we could capture high-level strategic management in the process, but it is quite important that it is taken out at this stage, so that the bill is future proofed and so that we do not have any misunderstandings further down the line.

Clare Adamson: On amendment 23, although I share Liam McArthur's concerns, Professor von Prondzynski was absolutely clear that we want a more inclusive system of operation. In his evidence, the cabinet secretary has stated that the amendment is unnecessary because the funding council will be required to collaborate with a wide range of bodies in exercising its functions. Indeed, the list of bodies is wider than that proposed in amendment 23. We should take that as a reason why amendment 23 is unnecessary at this stage.

The Convener: As no other members wish to contribute, I will make a short contribution.

I very much agree with Liam McArthur's comments on the three amendments in group 1. I support amendment 12 for the reasons that Liz Smith laid out eloquently when she moved the amendment. I support amendment 7, in the name of the cabinet secretary. Making the SFC responsible for identifying principles of good governance is a welcome move. As the cabinet secretary and Liam McArthur have said, we have learned a lot about the consultation process and the code, and I, too, agree that amendment 23 is unnecessary.

I call Liz Smith to wind up and press or withdraw her amendment.

Liz Smith: Thank you, convener. I thank the cabinet secretary and members of the committee for their support for amendment 12. A very important balance must be struck, which is captured in the phrase "responsible autonomy" even if the definitions are slightly difficult.

Clearly, Scottish ministers must account for a large sum of public money. At the same time, to leave the word "management" in would be contentious, as "management" could involve interference in the day-to-day running. That would be totally unacceptable, not only to the sector but for lots of different reasons, given the social and economic changes in Scotland.

It is very clear to me, from the evidence that we have had over a long period, that the greatest success of Scottish universities is responsible autonomy, which, over time, has improved. I also believe that the strength of the university sector lies in its flexibility. We should be in no doubt that flexibility is an extremely important part of how Scottish universities are able to maintain their outstanding record, not just in the United Kingdom but across the international community. The change is very important and I am very pleased that the committee agrees with that.

I am happy to support amendment 7 on the basis that the temptation for ministers to interfere in some of the decisions will be removed—or, more accurately, reduced—which is welcome.

I turn to amendment 23. On the question of governance, I am nervous about writing too much on the face of the bill that could be restrictive and hinder some of the flexibilities within governance. There are issues about how students and staff would be able to act when it comes to the democratic decisions that are required, but those can be addressed in the new code. Therefore, I am not inclined to support amendment 23.

I press amendment 12.

Amendment 12 agreed to.

Amendment 7 moved—[Michael Russell]—and agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 13, in the name of Jenny Marra, is in a group on its own. Jenny Marra is not present, but I understand that Neil Findlay will speak to and move the amendment.

Neil Findlay: Unfortunately, Jenny Marra is stuck in the Justice Committee at the moment.

Less than a year ago, Scottish Labour led a debate on the introduction of gender quotas for all public bodies because of the chronic underrepresentation of women on them. The debate mentioned von Prondzynski's recommendation to improve the situation in university governing bodies, and we were supportive of that. At the time, the debate focused on the gender breakdown in university courts, and the situation has not improved greatly. At the moment, at the University of Aberdeen there are 20 men and five women on the court, and at Scotland's Rural College there are 14 men and one woman on the court. The numbers are very low indeed. Only the Glasgow School of Art appears to have a majority of women on its court. Clearly, there is a problem.

In his evidence, Ferdinand von Prondzynski said:

"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."—[*Official Report*, *Education and Culture Committee*, 7 May 2013; c 2323.]

He referred to his work in Ireland, where that approach succeeded. The boards of governing bodies need to reflect the society that they serve. Professor von Prondzynski believes that that could be achieved, and we believe that as well.

I move amendment 13.

Clare Adamson: I find myself agreeing almost completely with Mr Findlay, which is quite an unusual situation for me to be in. However, we differ in one respect. Under the Scotland Act 1998, we do not have constitutional competence over equalities issues. Therefore, putting what is suggested into the bill would make it a problem for the bill to comply with the provisions of that act. Although I fully support Jenny Marra and the Labour Party in seeking to address the gender imbalance, I do not think that the amendment is the way to do it at this stage.

Liam McArthur: I have referred to the evidence that we received last week and it was acknowledged that our university governing bodies' performance in respect of the diversity of their make-up needs to improve significantly.

Lord Smith was unequivocal in setting out his expectations about what needs to happen over the next few years and, likewise, Simon Pepper pointed to the compulsory nature of the code of governance and what he felt would be

"a major shift in the culture of governing bodies in Scotland."

Of course, both argued that once the new code is in place the process should be given time to happen, but there will be general scepticism that without more radical measures excuses can always be found to do the bare minimum if anything at all. That is why Jenny Marra's amendment 13 is very helpful. I share some of the anxieties that have been expressed about the operation of such a quota system, not least with regard to how it would reflect multi-year appointments and the composition of existing bodies, but I am in no doubt that drift and dither cannot be allowed to happen in this area. Amendment 13 offers an opportunity for Parliament to make clear its expectations about what is required to achieve the diverse and representative reflection of the talents that we want to govern our higher education institutions.

As I have said, I have some concerns about how such a quota system might work and will listen carefully to what the cabinet secretary has to say. However, Jenny Marra's lodging of this amendment at stage 2 has the benefit of giving us a little time to find out whether and how this kind of approach can be made to work. Even if Parliament does not agree to the amendment at this stage, it will send an unambiguous signal to the sector.

As Simon Pepper acknowledged last week,

"The proof of the pudding is in the eating".—[*Official Report*, *Education and Culture Committee*, 7 May 2013; c 2342.]

What is abundantly clear is that the ingredients in this pudding need to change significantly.

Liz Smith: I, too, agree with the general tone of the comments and share the view that this important issue must be raised. It is quite clear that it is a significant issue in some although by no means all universities.

I have to say, however, that I am very nervous about having a 40 per cent target quota; I do not find that helpful for a variety of reasons. Universities Scotland itself has made it plain why such an approach could be restrictive and have certain unintended consequences. Like Liam McArthur, I think that the new code of governance will result in a culture shift and, given the importance of that, I will not support amendment 13.

Michael Russell: I very much thank Jenny Marra for lodging amendment 13 and Mr Findlay for moving it. During its evidence sessions, the committee heard a number of valid concerns that I share entirely about the lack of diversity in university governing bodies. Indeed, I highlighted the issue at stage 1 and said that I would come forward with further thoughts on the matter.

The governing bodies of universities and colleges must properly reflect society and the institutions they govern. I stand to be corrected if members want to look at the full detail, but I think that only one college body—Kilmarnock College—has a majority of women; and Mr Findlay is also right to say that only Glasgow School of Art comes anywhere close to having any sort of balance. As I think the universities themselves are beginning to accept, some university courts are really disgraceful in this regard. Overall, representation in the sector is around 30 per cent, but we should and must do better.

In my discussions on the code of governance—and as I believe Lord Smith mentioned last week—I have made clear to the universities my hope that this area will be developed in a redrafted code, and I will reflect the matter in my guidance to colleges on future appointments.

Jenny Marra has lodged similar amendments to recent bills on police and fire reform and civil justice. Although they were rejected, we have considered the matter in considerable detail and, although I cannot support amendment 13 as it stands, I support bringing forward a provision that reflects the principle behind it. We have explored the feasibility of the kind of approach suggested by Jenny Marra and have found a number of serious legal issues that we must consider further. In particular, as Clare Adamson is right to point out, equal opportunities are, unfortunately, reserved. We think that setting absolute quotas for the membership of men and women of a governing body would not be within the Scottish Parliament's legislative competence and if the bill were to contain such a provision it would be ultra vires, which itself would create great difficulties.

That said, over the coming weeks I want to explore the issue further with the Minister for Commonwealth Games and Sport, who has responsibility for equality issues, and I encourage Jenny Marra and others to come forward to discuss the matter with ministers. There will be a willingness to have that discussion to ensure that we find for stage 3 an amendment that keeps us within devolved competence—alas—but which signals our very clear intention to make progress on improving diversity and equality in governance structures.

We have moved a considerable distance on this issue over the past few months. I urge Neil Findlay not to press amendment 13 but also urge him, Jenny Marra and other committee members to enter into that dialogue. There is a sincere intention to put something legal into the bill; unfortunately, this particular amendment would not be competent but we are desperate and desperately keen to find the right method of doing this. What we have at the moment is not good enough.

11:30

Neil Findlay: I wish to press amendment 13, although we will, of course, engage with the cabinet secretary should it not proceed.

When Professor von Prondzynski was asked about the issue by Joan McAlpine, he said:

"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."—[*Official Report*, *Education and Culture Committee*, 7 May 2013; c 2324.]

Therefore, I will certainly press the amendment.

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 13 disagreed to.

Section 3—Widening access to higher education

The Convener: Amendment 1, in the name of Liam McArthur, is grouped with amendments 14, 15, 2, 3, 16, 4, 19, 5, 20, 8, 21, 60, 61 and 6. If amendment 1 is agreed to, I cannot call amendments 14 and 15 because of pre-emption.

Liam McArthur: I will speak to amendment 1, but I will also touch on the other amendments in the group. I apologise in advance for taking a little time to do so, given the number of amendments in the group.

There were many disagreements at stage 1 about a range of issues. In the end, that resulted in the Government being unable to persuade any members but its own that the bill is able or in fact necessary to achieve the lofty ambitions that have been set for it. However, members will recall that the committee was united in supporting the general policy objectives, primary among which is the need to accelerate and extend the process of widening access to our higher education institutions. The cabinet secretary seemed to accept that consensus during the stage 1 debate, at least in his opening remarks.

I believe that there is a broad-based and genuine consensus on the issue, and with good reason. For example, few would dispute that, although some progress has been made on extending access, it has been painfully slow and started from a base that was hardly a beacon of progressiveness even in these islands, let alone internationally. Much more needs to be done, and some institutions are rightly under more pressure than others to up their game.

Of course, progress can be achieved only with the universities working closely in collaboration with colleges, schools and other partners. However, the onus will rightly be on universities to demonstrate that progress is being made. How do we help to achieve that? For my part, I still believe that the funding levers that are at the disposal of ministers through the Scottish Further and Higher Education Funding Council provide the most persuasive and effective tool if used in conjunction with beefed-up access agreements. I struggle to see what more is achieved through the statutory powers that Mr Russell seeks. However, in recognition of the parliamentary arithmetic, I believe that it is important that we make the provisions as workable as possible to reflect the evidence that we heard at stage 1.

In that regard, amendments 1 to 5 would make a number of important changes that I hope colleagues will support, although I appreciate that Neil Findlay, Joan McAlpine and Mark Griffin have sought through different means to achieve similar outcomes in certain respects.

One concern that we heard at stage 1 is that the Government's approach to widening access lays too much emphasis on the Scottish index of multiple deprivation. Although the index is critical, that approach seems to the committee to risk overlooking those from deprived backgrounds who live in more affluent areas as well as other underrepresented groups. That point was made forcibly in a letter to the Scottish Government last month from 12 charities representing a wide range of such groups.

My amendments would make the new power specific to widening access agreements and would clarify the respective roles of the minister, the funding council and individual institutions. The amendments would make the institution, rather than the funding council, the initiator in proposing the content of access agreements. That would reflect best practice and certainly would not diminish the potential for the council to agree only to those agreements that it believes are sufficiently rigorous and ambitious.

Finally in relation to the amendments in my name, and before turning to those of colleagues, I will say a little about amendment 61. I appreciate that the minister may feel that there is already an ample body of research and other evidence to inform widening access agreements and to determine what is or is not likely to work most effectively. Nevertheless, in the light of the glacially slow progress made in this area over the years, I think that an argument can be made that good practice either is not being shared as widely as it should be or is perhaps not as good as we might imagine. Either way, my amendment 61 seeks to address that apparent shortcoming.

I turn to my colleagues' amendments in this group. I appreciate that Neil Findlay is motivated by very much the same concerns. He, too, seeks to protect the interests of underrepresented groups, albeit in a more explicit fashion. I can see some problems with such a prescriptive approach, but I will listen to what he and the minister have to say before making up my mind on those amendments. I recognise that my amendment 1 will pre-empt Mr Findlay's amendment 14 and Mark Griffin's amendment 15.

Joan McAlpine's amendment 8 seems to have the same policy intention as some of the early changes that I have proposed, although it perhaps does not allow enough flexibility in ensuring that different access agreements reflect the needs and deficiencies of specific institutions.

Finally, although I have a great deal of sympathy with Marco Biagi's amendment 60—not least in its acknowledgement of the need for collaboration between universities and colleges in achieving meaningful improvements in widening access—it appears to ignore, or at least downplay, the role of the school sector in, if nothing else, helping to raise the ambition and the expectations of those we wish to see going to university in greater numbers.

I apologise that I have spoken at length on this group of amendments. I will attempt to make up for that in future groupings. However, this is a crucial area of the bill and we are some way from getting it right.

I move amendment 1.

The Convener: I call Neil Findlay to speak to amendment 14 and to other amendments in the group.

Neil Findlay: Although we see amendment 1 as an improvement on what is in the bill, amendment 14 seeks to widen access and add those with protected characteristics to the SIMD 20 group. Amendment 14 would enable, encourage or increase the participation of a range of people covered by the Equality Act 2010, which lists the following characteristics:

"age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation."

Amendment 14 is supported by a range of disability groups that have been very active in the issue and by the National Union of Students and others. We know that disabled people in particular struggle to access higher education and that, when they do so, they have difficulty in completing their studies. Widening access should be about what it says on the tin. Including the groups mentioned with the SIMD 20 group would assist disabled people in particular to access and complete courses.

Amendments 16, 19, 20 and 21 seek to maintain consistency throughout the section. Amendment 21 clarifies the protected characteristics to which I have referred and refers to the relevant provision, namely section 4 of the 2010 act.

We need to ensure that access is widened in all our institutions and that the usual excuses for failure are not simply trotted out.

The Convener: I call Mark Griffin to speak to amendment 15 and to other amendments in the group.

Mark Griffin: I agree with many of Liam McArthur's points on amendment 1, and so I support that amendment. In the event that that amendment falls, I will move amendment 15 because, in relation to the section on widening access to higher education, I feel that an access agreement should be drafted by the institution and that the Scottish ministers should approve that draft rather than specify it themselves.

The Convener: I call Joan McAlpine to speak to amendment 8 and to other amendments in the group.

Joan McAlpine (South Scotland) (SNP): I regard the provisions on widening access as a very important step on the road to making much-needed progress on the issue. However, as I listened to stage 1 evidence, it seemed clear that the provisions in section 3 were often interpreted as targeting only those captured by the SIMD measure. I whole-heartedly agree with those who thought that the provisions had to be wider than that in order to be successful.

The purpose of amendment 8 is to make it absolutely clear that the provisions allow ministers to identify any group of people sharing a social or economic characteristic that is underrepresented to be the focus of efforts to increase participation. I believe that providing that clarification will help to ease the minds of stakeholders who are concerned about the limitations of the SIMD measure.

On Mr Findlay's amendments, I understand Mr Findlay's proposed approach to extend the definitions to protect all characteristics. Although I support the principle behind it, I do not think that it is appropriate in this section of the bill.

The Convener: I call Marco Biagi to speak to amendment 60 and other amendments in the group.

Marco Biagi (Edinburgh Central) (SNP): Thank you, convener. It is good to be back at the committee—however briefly.

Amendment 60 draws from the discussions that have been had about the need to provide support for best practice in widening access. Although there have been calls from certain stakeholder organisations to create a widening access unit, whether in statute or otherwise, I feel that an independent body along the lines of the English equivalent would be unnecessary in Scotland because that English equivalent was set up as a result of £9,000 per year tuition fees that we do not have here. However, there is value, as Liam McArthur has touched on, in having such a body of research and evidence so, rather than establishing an entirely new quango, I propose in amendment 60 that the Scottish funding council should take on board that duty.

The Scottish funding council is established, respected and independent. In the current Further and Higher Education (Scotland) Act 2005 that defines its roles, three key aims are set out: teaching, research, and a coherent system of higher education.

Section 20 of the 2005 act, which amendment 60 seeks to amend, is entitled:

"Council to have regard to particular matters".

The section includes a long list of issues that the council has to take into consideration in its activities, including

"skills needs in Scotland; ... issues affecting the economy of Scotland; ... social and cultural issues in Scotland ... sustainable development ... The ... United Kingdom context; and ... international context"

and

"educational and related needs".

I therefore think that section 20 of the 2005 act, after subsection 1, would be an appropriate place to insert a reference to widening access.

Paragraph (b) of subsection 1A that amendment 60 seeks to insert into section 20 of the 2005 act draws on the language that has already been used in the National Library of Scotland Act 2012 in giving the National Library of Scotland a duty to promote collaboration and knowledge sharing within its sector.

The Convener: Do any other members wish to contribute at this stage?

Liz Smith: I once again put on record the Scottish Conservatives' support for the principle of widening access, which we believe is important not just for intrinsic educational reasons but for social and economic reasons—our parliamentary record substantiates that claim.

Our views differ considerably from the views of others on how the widening access agenda is best achieved. The last thing that we consider desirable or indeed necessary is greater stipulation about which groups should be offered places. In particular, we fail to see why there has to be a

legislative underpinning when it is clear that the university sector believes that the outcome agreements can work just as well—indeed, I think that they are already doing so.

We have sympathy for amendments 1 to 5 that have been moved by Liam McArthur, but I have slight reservations about amendment 61. I also have some sympathy with some of the concerns that have been expressed about narrowing the measures. The SIMD 20 and 40 measures are far too narrow and we have taken on board a lot of what has been said on that. However, some of the other amendments are unduly overprescriptive policies that would have unintended consequences. I believe that they could be detrimental to universities' flexibility and could lead to considerable bureaucratic legislation in the future. On that basis, I will not support the other amendments.

Colin Beattie: The provisions on widening access are one of the most important parts of the bill, and I do not think that anyone around the committee table would disagree on the social and economic imperatives that drive that. A lot of the amendments in this group are perhaps driven by commendable intention. However, I have concerns that some of them would dilute or water down the effective implementation of widening access and that, in some cases, they would constrain choices.

11:45

The effect of amendment 1 is to remove the ability of ministers to set any widening access agenda by identifying underrepresented socioeconomic groups on which the efforts to widen access could be focused. The question would be one of how to target people. The amendment puts too many constraints on the Government.

Amendment 15 reduces the role of ministers in determining what an access agreement would look like, as ministers must approve a description of any such agreement. It is not clear at what stage ministers would do so. There is vagueness about that.

Amendment 2 goes a bit further than simply clarifying that agreements are negotiated. It puts the institutions concerned into the driving seat and allows them to submit proposals to the SFC on what actions it should take. The role of the SFC would be somewhat diminished to reaching agreement on proposals, rather than taking a proactive role in specifying to institutions what should be achieved.

Amendments 3 to 5 appear to be an attempt to deal with concerns over focusing on postcode areas. The amendments might prevent that from happening, but the provisions would then not be focused on any particular group. The difficulty with that approach is that it makes it difficult explicitly to target specific underrepresented groups.

I support amendment 8 from Joan McAlpine.

There seems to be some concern as to whether amendments 14, 16 and 19 to 21 are within the legislative competence of the Scottish Parliament, as equal opportunities are reserved. They introduce the concept of

"persons having any protected characteristic",

which seems to dilute the widening access provisions that the bill is trying to introduce. As things stand, section 3 is targeted at increasing participation among the people who are most underrepresented, which includes those from deprived socioeconomic backgrounds. Given the questions about whether those five amendments are within the Parliament's legislative competence and the question of diluting widening access itself, I do not support them.

Amendment 6 seems to be a technical amendment, and I am not clear why it is necessary. I do not think that that has been clearly explained.

I support amendment 60 from Marco Biagi. Amendment 61 appears to be much narrower in scope than amendment 60, in that it provides only for certain work to be undertaken, presumably by a specific person or group, rather than outlining the important broader principle of encouraging general collaboration across the tertiary education sector, as amendment 60 does. I do not think that amendment 61 works, and I would not support it.

George Adam: I back a lot of what my colleague Colin Beattie has said. I have concerns that Neil Findlay's amendments might dilute the primary focus on people from disadvantaged backgrounds. It is a sheer emotional thing for me. I have the constituency containing the council ward with the area at the bottom of the list for multiple deprivation. Young people in that area should have the opportunity to be everything that they can be in life. Education can be the pathway out of poverty for many of them.

For me, that is the most important part of the bill. We could argue all day about the type of Scotland that we want in future, but we all want what is best for our constituents and for young people in Scotland. We must not dilute the idea of giving people from areas such as Ferguslie Park in Paisley the opportunity to access higher education.

Clare Adamson: In reflecting on the comments that have been made, I think that the intentions of the members who have lodged amendments are clear. I will support Joan McAlpine's amendment 8, because it clearly gives the minister flexibility in

driving the widening access agenda. I will give a specific example from my experience on the Equal Opportunities Committee. Being a Gypsy Traveller is not a protected characteristic and Gypsy Travellers would not fall into any of the areas, but they are underrepresented. Amendment 8 gives the cabinet secretary an opportunity to look at such areas. Flexibility is key.

Michael Russell: Widening access is a very important area, and it is right that it is debated at some length. All the amendments in the group seek to bring new thinking to the debate, but at the end of the day there has to be a decision about how we widen access against the backdrop of a failure to make the progress that I believe society in Scotland has wanted to make for many years. We have to have absolute clarity about what we are going to achieve.

I will go through the amendments as briefly as I can. The cumulative effect of amendment 1 would actually be to restrict the roles and powers of ministers relating to wider access. It would only allow ministers to impose a condition on the council to require institutions to comply. All the other powers would be negated. The amendment would remove ministers' ability to identify particular groups in respect of which efforts to increase participation should be focused.

In a similar vein, amendments 15 and 2 would diminish the role of ministers in determining what a widening access agreement should look like. Indeed, amendment 2, by removing the funding council's power to specify the actions that institutions need to take, would put institutions in the driving seat when it comes to developing widening access agreements.

I regard amendments 1, 15 and 2 as undesirable as I believe that they would substantially diminish the effectiveness of the new section. Members might want to reflect that the lack of progress in widening access over the past decade means that it is essential that someone drives the agenda faster than the institutions have driven it themselves, and it is right that ministers should be the ones to do that. The status quo has not delivered any significant improvements to access in the past 10 years, so a new approach with a greater level of challenge is essential to drive progress. What Liam McArthur proposes with amendment 2 appears to be some form of self-regulation whereby institutions decide for themselves what should be done and simply require the SFC to sign off those proposals. That is not good enough.

Amendments 3 to 5 appear to be targeted at focusing section 3 on individuals rather than groups. I accept that there is some merit in that idea. It is important that the provisions are flexible enough not to exclude individuals whom we would wish the provisions to help but who do not readily fit into typical socioeconomic groups. However, the difficulty with amendments 3 to 5 is that they go too far the other way. The focus would be only on individuals, meaning that widening access agreements could not identify and target priority groups in which participation is low.

Joan McAlpine's amendment 8 achieves similar aims but without those difficulties. It provides a helpful clarification that the widening access provisions are not intended to focus solely on people who are captured by the Scottish index of multiple deprivation, important as that measure undoubtedly is. The amendment makes it explicit that ministers can require the council to focus on any group of people who share a social or economic characteristic and who are underrepresented in higher education. Clare Adamson made that point well. The amendment makes it clear that the scope of the provisions may extend beyond groups geographically defined by SIMD to capture, for example, people with low incomes even if they reside in more affluent areas, and other groups. I am happy to support amendment 8.

I thank Neil Findlay for lodging amendments 14, 16 and 19 to 21 as it has allowed us to have this important and wide discussion. I strongly support the principle that those with protected characteristics should be adequately represented in our higher education sector, and I believe that the bill will ensure that they are. However, there are certain difficulties with the amendments. Equal opportunities are a reserved matter. We have just discussed the issue in relation to gender equalities. As such, I suspect that there will be real issues with the competence of the Scottish Parliament to legislate in this area.

There are also policy reasons for not supporting the amendments. New section 9B of the 2005 act, which is inserted by the bill, has a sharp focus on the people who most need our help to access higher education—people from deprived socioeconomic backgrounds. All the evidence that we have clearly demonstrates that that is the area in which Scotland's problems with access primarily lie. It is therefore right that the bill's emphasis is on those people who most need our help. There is a risk that significantly extending the groups to be captured by the provision would dilute the effectiveness of our primary policy objective to get people from deprived backgrounds into higher education. Amendment 8 does not do that.

Amendment 6 seeks to remove an amendment to the 2005 act that makes it clear that ministers cannot impose terms and conditions on the funding council relating to the admission of students, except with regard to the widening access provisions. However, the effect of the

amendment would be to prevent ministers from exercising their powers in relation to widening access under the new section 9B(1) and 9B(2). That is consistent with the overall approach in Liam McArthur's amendments, but it is inconsistent with the approach that we not only are committed to but need to take.

Amendments 60 and 61 appear to be similar, but there are fundamental differences between them. The principles underlying amendment 60 are consistent with the prominence that we are seeking to place on widening access and the significant progress that we need to see on that. Establishing widening access is a key matter that the funding council must have regard to in the exercise of its functions, and that will help us to achieve that progress.

Widening access would sit rather neatly with the key matters that are set out in section 20 of the 2005 act to which the council must give regard: skills needs, issues affecting the economy and social and cultural issues in Scotland, as well as the education and related needs of students. However, there are technical issues with amendment 60 that require to be ironed out. It does not make it clear whether it is ministers or the council who are to identify the particular socioeconomic groups to which the duty is related. In addition, if the amendment is to relate to further education, it should probably also capture collaboration with or between regional strategic bodies. Furthermore, there are some consistency issues with the general duty to encourage collaboration placed on the council by section 22(8) of the 2005 act that require to be considered.

I do not necessarily object to the principle of Liam McArthur's amendment 61 but, in practice, it is narrower in scope than amendment 60. Amendment 61 simply provides for the funding council to ensure that the work is done to develop widening access. I assume that that work would be done by a specific person or group rather than through the application of the broader principle of the council promoting collaboration, but that is not clear. Amendment 61 could also be interpreted as something broadly similar to the function discharged by the Office for Fair Access in England, which exists to mitigate the difficulties caused by the introduction of tuition fees. That is not a problem that exists in Scotland.

I invite the committee to reject amendments 1, 15, 2, 14, 16, 19 to 21, 23 to 26 and 61 and to support amendment 8. I ask Marco Biagi to withdraw amendment 60 on the understanding that I will return with a similar amendment at stage 3. I am happy to discuss the matter with him as we develop that amendment.

Liam McArthur: I am conscious that I have had more opportunity to speak on this group of amendments than I get in some debates in the chamber. I will be as brief as I can.

As I have indicated, I appreciate what Neil Findlay is looking to achieve through his amendments. He is absolutely right about the range of underrepresented groups whose interests must be uppermost in our minds as we progress the provisions in this part of the bill. However, I share same of the concerns about the prescriptive nature of his amendments as drafted.

I thank Mark Griffin for his support for my amendment; I will return the compliment by supporting his amendment—although I think it unlikely that either of our amendments will be passed. I suspect that, if that were to happen, I suspect that we would be in uncharted territory.

Joan McAlpine was right in saying that the evidence that we heard at stage 1 was that the bill failed to capture the broader range of underrepresented groups that need to be addressed as part of the widening access agenda. I am happy to support her amendment 8.

It is certainly good to have Marco Biagi back. During the earlier part of this year, when flight delays were affecting my constituency, his attendance record at this committee was better than my own. However, although I have sympathy for his amendment 60—as I have said—I have concerns about the extent to which it glosses over the role that the school sector has in promoting the widening access agenda. That is perhaps something that can also be picked up on as the amendment is developed ahead of stage 3.

I thank Liz Smith for her comments. I share her concerns about the legislative underpinning that is felt to be necessary to the provisions. However, at this stage, there is scant evidence that the access agreements are having the effect that we would all wish to see. The funding levels remain critical in ensuring progress is made.

12:00

Colin Beattie talked in disparaging terms about putting universities in the driving seat on access agreements. I have no objection to universities being in the driving seat, albeit with the funding council having oversight and only agreeing to access agreements that are robust, rigorous and ambitious enough to meet our objectives.

George Adam is absolutely right that we should not lose sight of the desire to widen the scope of the widening access provisions and the socioeconomic factors.

In his remarks, the cabinet secretary seemed to have an issue with the diminishing of the role of ministers, and it would appear that the self-

denying ordinance in amendment 7 will be the exception rather than the rule. He also talked about putting institutions in the driving seat: obviously he was operating from Colin Beattie's script. He has the funding levers to achieve much of what we wish to achieve. I appreciate his concerns about amendment 61 so I am inclined to not move that and throw my support behind the approach taken by Marco Biagi.

I think that covers all the points that have been raised. I will press amendment 1.

The Convener: I remind members that, if amendment 1 is agreed, amendments 14 and 15 will be pre-empted.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1 disagreed to.

Amendment 14 moved—[Neil Findlay].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 14 disagreed to.

Amendment 15 moved—[Mark Griffin].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 15 disagreed to.

Amendment 2 moved—[Liam McArthur].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Liam McArthur].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 3 disagreed to.

Amendment 16 moved—[Neil Findlay].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 16 disagreed to.

The Convener: Amendment 17, in the name of Marco Biagi, is grouped with amendment 18. I call Marco Biagi to move amendment 17 and to speak to the other amendment in the group.

Marco Biagi: Amendment 17 focuses on the process of developing the widening access agreements, which will be important for taking forward our desired direction of travel on widening access. Given the importance of considering higher education institutions as broad learning communities, the process of developing the agreements should involve input from all sectors of those communities, including the staff and students as well as the institution's governing body. In that way, we will be able to ensure that the widening access agreements are not only better designed but the subject of wider ownership within the institution. Amendment 17 would also rescue some of the sense of Liam McArthur's amendment 2, in that the amendment will ensure that there is consultation with the institution.

Although amendments 17 and 18 attempt to do broadly the same thing, I draw a distinction between them in two areas. First, amendment 17 places the duty to consult on the SFC rather than on the individual higher education institution, which should already have established consultative procedures for the involvement of staff and students. Secondly, amendment 17 focuses on those trade unions that are recognised by the council rather than those that are recognised by the individual institution. Given the status of industrial relations, it would probably be better for the long term if the council approached unions that were generally representative of the staff body rather than only those that were formally recognised by the institution.

I move amendment 17.

Mark Griffin: Amendment 18 seeks to work towards the same principles as amendment 17, so I agree with most of what Mr Biagi said. However, where amendment 18 differs is that, in drafting the widening access agreement, the focus would be on the individual institution rather than with the council. Therefore, the institution would be under an obligation to consult representative trade unions and its students association. That is why I will move amendment 18.

Michael Russell: On amendments 17 and 18, I am happy to support the principle that an element of consultation with the staff and students of institutions should be injected into the process of widening access agreements.

Although I support that underlying principle, I have difficulty with amendment 18 because it would place the duty to consult on the institutions as opposed to the funding council in formulating a widening access agreement. Although in practice the widening access agreements will be the result of negotiation between the council and institutions, new section 9B—as we know from our previous debate—makes it clear that it is ultimately for the funding council to specify what actions an institution must take based on those negotiations. Therefore, it is more appropriate that the duty to consult is placed on the council, given that the council has the authority to specify what actions an agreement should contain.

Amendment 17, in the name of Marco Biagi, navigates a course through those difficulties. Therefore, I invite the committee to support amendment 17 and to reject amendment 18.

The Convener: I call Marco Biagi to wind up and to indicate whether he will press amendment 17.

Marco Biagi: I am content to press amendment 17.

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Against

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 2.

Amendment 17 agreed to.

Amendment 18 moved—[Mark Griffin].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 18 disagreed to.

Amendment 4 moved—[Liam McArthur].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Amendment 19 moved—[Neil Findlay].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 19 disagreed to.

Amendment 5 moved—[Liam McArthur].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 5 disagreed to.

Amendment 20 moved—[Neil Findlay].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 20 disagreed to.

Amendment 8 moved—[Joan McAlpine].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

The Convener: The result of the division is: For 6, Against 1, Abstentions 2.

Amendment 8 agreed to.

Amendment 21 moved—[Neil Findlay].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 21 disagreed to.

The Convener: Amendment 22, in the name of Marco Biagi, is in a group on its own.

12:15

Marco Biagi: Amendment 22 aims to ensure that there is a regular review of widening access. The first review would occur up to three years after the bill receives royal assent, and reviews would subsequently take place at three-year intervals.

The principle of having regular reviews is common in legislation. The Graduate Endowment Abolition (Scotland) Act 2008 includes a commitment to review the act's effect on widening access. In other areas, where large-scale changes or major policy initiatives have been undertaken, such reviews are—broadly speaking—commonplace.

The stage 1 debate focused on whether widening access agreements will work. Based on that concern, I think that there is a space for a requirement to produce an analysis at regular intervals that will allow MSPs, stakeholder bodies and all others to take stock of progress.

I recognise that there may be technical issues, not least because the amendments that have already been agreed have affected key terms in my amendment, but I will proceed.

I move amendment 22.

Liam McArthur: I welcome amendment 22. There is no doubt that successive Governments have struggled to make the sort of progress on widening access that we wish for. As Marco Biagi says, it is sensible to keep under review any legislative changes that we make in that area.

Universities Scotland has raised concerns about such a statutory provision and whether it would duplicate what happens already or what is set to happen. As with amendment 17, I have some concerns that amendment 22 does not necessarily reflect the wider role and responsibility of other aspects of the education sector in delivering on our widening access objectives. Nevertheless, I support the policy intention behind the amendment, and I am happy to vote for it subject to further refinement.

Liz Smith: Although the policy intention is fine, amendment 22 is unnecessary because review already takes place in the context of the outcome agreements. The amendment could be restrictive, as anything to do with widening access in schools, which is perhaps one of the most important policy areas that we have to deal with, would be outwith its jurisdiction. For that reason, I will not support the amendment.

Michael Russell: Amendment 22 raises important issues and has clear value, and I thank Marco Biagi for lodging it. The purpose of section 3 is to empower ministers in providing funding to the funding council to impose conditions relating to widening access to higher education for underrepresented socioeconomic groups in order to stimulate what we need, which is substantial progress. It makes sense that we should periodically review whether that progress is in fact being made. Indeed, the importance of rigorously evaluating progress is such that the question arises of whether we ought to review the position with regard to widening access for all underrepresented groups more expansively.

Given the way in which the amendment has been drafted, it would not require a comprehensive overall review of widening access. Instead, it would place a duty on the funding council to review and report at least every three years only on the impact of new section 9B of the 2005 act. That is important, but it should not be the end of the story. A broader review of access

could fulfil that function while assessing the overall national picture. For example, we should ask whether there are groups for which participation is falling, whether there are emerging priorities and where we can best focus our efforts and resources in future. Those are the sorts of issues that a more general review could tackle, which the review that is proposed in amendment 22 would not address.

Having given the matter a great deal of consideration, I intend to lodge an amendment at stage 3 that would place a duty on the funding council to review access in a more expansive and significant way. I ask Marco Biagi to withdraw the amendment—

Liam McArthur: Will the cabinet secretary take an intervention?

Michael Russell: Am I allowed to take an intervention? I am willing to take one.

Liam McArthur: I am breaking with tradition. Liz Smith and I made the point about the wider responsibility of the education sector as a whole in delivering on widening access objectives, and you have picked up that theme in a number of debates on the issue. What will you put in the amendment that you will seek to lodge at stage 3 to capture that wider responsibility?

Michael Russell: I am happy to take that away as an issue to consider—whether we can capture that, whether the funding council's role can be seen as being wider than simply dealing with the bodies that it funds and whether it could draw in that issue.

If we agreed to amendment 22, we would end up with a narrow review. Liz Smith is quite right to argue that the origins of many of the issues of wider access lie elsewhere. I have spoken about the issues at the school gate that we need to address. I am happy to include those points and to return, if I can, with a more comprehensive stage 3 amendment. I am also happy to have conversations about the matter.

Marco Biagi: Based on that assurance from the cabinet secretary, I am happy to withdraw my amendment.

Amendment 22, by agreement, withdrawn.

Section 3, as amended, agreed to.

After section 3

Amendment 23 moved—[Neil Findlay].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 23 disagreed to.

Section 4—Fee cap: students liable for higher education fees

The Convener: Amendment 9, in the name of the cabinet secretary, is grouped with amendments 25 to 28.

Michael Russell: Amendment 9 is straightforward in its terms, and I hope that its effect will be uncontroversial. It clarifies that the order-making power to be conferred on ministers is a power to set a cap on fees chargeable per academic year of a course, rather than to set a cap on the total fees that are chargeable for a course as a whole. I am moving the amendment to make it absolutely clear that the fee cap is to relate to a particular academic year at a Scottish institution. That is essential to ensure that there is no confusion among students or institutions as to what section 4 does.

In response to amendments 25 to 28, I have made it clear on many occasions that I view the fee arrangements for rest-of-UK students as a necessary evil, which I would dearly like to see the back of. The Government does not support tuition fees, and we have been consistent in our opposition to them in any shape or form.

As the committee is well aware, this is the first year when the new fee arrangements for rest-of-UK students have been in place, and they are having the desired effect of providing opportunities for Scotland-domiciled learners to access places at Scottish universities.

The provision in section 4 seeks to provide a basis for formalising the voluntary agreement that we have with the sector, and amendments 25 and 27 would detract from that. The aim of removing references to academic years seems to be that ministers should be prevented from setting the cap at more than the maximum total cost of the standard three-year degree course elsewhere in the UK. That fails to take account of the fact that some degrees elsewhere in the UK are longer than three years. Some are longer than four years.

The amendments would therefore not achieve their stated aim. All that they would do would be to constrain ministers' power under proposed new section 9C of the 2005 act to set the cap in such a way that fees for any course at a Scottish institution did not exceed the highest fees that would be payable by the person if they attended any course elsewhere in the UK. That could include courses longer than four years. The amendments would actually weaken the protection for rest-of-UK students that we have built into the bill's provisions. I am sure that that was not Mr Findlay's intention, but that would be the effect of his proposals.

I am aware of the concerns that Universities Scotland has raised in relation to the aspect of the bill that amendments 26 and 28, in the name of Liz Smith, seek to address, and I have looked again at the detail of the drafting in the light of those concerns. I am satisfied that the bill as drafted does not allow for the ambiguity that is claimed.

I would consider stage 3 amendments that helped with the matter in any sense, but the proposed changes under Liz Smith's amendments would introduce ambiguity to an already clear provision. I therefore cannot accept them—I would have accepted any such suggestion if it really clarified matters, but the bill is clear enough, and the amendments leave, and indeed increase, ambiguity.

I ask the committee to reject amendments 25 and 27, in the name of Neil Findlay, and amendments 26 and 28, in the name of Liz Smith.

I move amendment 9.

Neil Findlay: Rest-of-UK students in Scotland have some of the highest fees in the whole of the UK, and we appear to have legislated for a market in education through the introduction of variable fees. There are no minimum standards, protections or safeguards for RUK students, and there is no provision to address fears around fair access or the lack of it for the poorest RUK students.

The provision in the bill is to set the maximum amount chargeable by Scottish institutions to RUK students, linked to the maximum amount that they would be liable to pay in any given academic year elsewhere in the UK. That means that, due to the four-year degree structure in Scotland, we now have potentially some of the most expensive higher education fees in UK countries.

The amendment would, as a bare minimum, reduce the fee cap to ensure that the cost is faced across the entire degree and is equalised between Scotland and the rest of the UK, not just across academic years. Amendment 27 simply follows on from that.

Liz Smith: Generally speaking, I am content with the policy intentions of the section. However, I remain slightly concerned that the wording in this section does not avoid a possible interpretation that the fees charged by Scottish universities to Wales-domiciled students would have to be at the maximum of the Welsh university rate. Amendments 26 and 28 are designed to ensure absolute clarity on that. I am not convinced that that clarity exists just now.

George Adam: The debate on this issue rests on the fact that fees exist in the rest of the UK—although that debate is not for today. As the cabinet secretary suggested, these arrangements are a necessary evil at this stage. I cannot accept amendments 25 and 27, because they would undermine the arrangements that are in place already to protect our UK students. The cabinet secretary also said that there does not appear to be an average degree in the UK, given that degrees vary between three and five years. On the whole, amendments 25 and 27 could make matters even more difficult.

Michael Russell: I want to repeat two points that I made earlier. First, Liz Smith's amendments introduce additional ambiguity. I remain open to any suggestion that might come from the sector, Liz Smith or elsewhere for an amendment that would decrease ambiguity. We should not be adding ambiguity to the bill at this stage. Secondly, I ask Mr Findlay not to press his amendments. They are not sensible, as they would make the situation worse for students from the rest of the UK.

I press amendment 9.

Amendment 9 agreed to.

The Convener: Amendment 24, in the name of Neil Findlay, is in a group on its own.

Neil Findlay: Amendment 24 would require institutions to provide bursaries to students from low-income families from the rest of the UK so that they could afford the fees and increased living costs of coming to study in Scotland. We do not want low-income and working-class students from the rest of the UK to be put off from applying to universities such as St Andrews and Edinburgh because they have higher fees. Amendment 24 would ensure that students choose the institution and course that is right for them, rather than choose the price that is right for them.

I move amendment 24.

Liam McArthur: If the provisions that are set out in amendment 24 are not in place, they certainly should be. I share the view of NUS Scotland that the absence of an equivalent in Scotland of the Office for Fair Access is an unfortunate weakness in the arrangements north

of the border. Indeed, in the light of Universities Scotland's claims about the relative spending on bursaries north and south of the border, it is interesting to note that the level of participation at university among those from more deprived backgrounds appears to be better—and certainly is improving faster—down south than it is in Scotland. I will listen with interest to what the cabinet secretary has to say, but I think that the amendment is well made.

12:30

Michael Russell: I agree with some—if not all—members of the committee that the monetarisation of higher education has produced wrong and damaging consequences and should be rejected, and amendment 24 indicates the same. I am aware of the issue that Mr Findlay seeks to address. I have spoken to NUS Scotland a number of times about its concerns in that area, and we have developed and implemented proposals.

I believe that the proposed change is unnecessary, for two reasons. First, the proposals to improve access that we have set out elsewhere in the bill will create a framework in which universities will create opportunities for all learners who wish to pursue higher education in Scotland. In particular, the evidence that we have seen suggests that our universities are already delivering extremely competitive and helpful bursary packages for rest-of-UK students, and the amendment would therefore add additional complexity and bureaucracy where it is not necessary.

Secondly, the offers from our institutions compare favourably with those of their competitors, which has helped them to achieve significant increases in applications from students of all backgrounds from elsewhere in the UK. The Office for Fair Access that exists south of the border was established to mitigate a policy that I believe was wrong, and which we do not have in Scotland.

Neil Findlay: I will press amendment 24.

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 24 disagreed to.

Amendment 25 moved—[Neil Findlay].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 moved—[Liz Smith].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Neil Findlay].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

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

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 27 disagreed to.

Amendment 28 moved—[Liz Smith].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 28 disagreed to.

Section 4, as amended, agreed to.

The Convener: That ends today's consideration of the bill at stage 2. At next week's meeting, we will consider amendments to the remainder of the bill. The deadline for lodging amendments is this Thursday at noon.

12:34

Meeting suspended.

12:37

On resuming—

Subordinate Legislation

Public Services Reform (Scotland) Act 2010 Modification Order 2013 [Draft]

Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 [Draft]

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 [Draft]

The Convener: Under agenda item 3, we will take evidence on three related affirmative instruments. This is an opportunity for members to ask any technical questions or seek clarification on the instruments. The committee will then be invited under agenda items 4, 5 and 6 to consider separately the motions to approve the instruments.

I welcome to the committee Aileen Campbell, the Minister for Children and Young People, and from the Scottish Government: Kit Wyeth, head of the children's hearings team; Iain Fitheridge, policy manager in the children's hearings team; Gordon McNicoll, divisional solicitor and deputy director of the communities and education division; and Kate Walker, principal legal officer in the communities and education team. I see that the titles have not got any shorter since I was a minister.

I invite the minister to make a brief opening statement on all the instruments.

Aileen Campbell (Minister for Children and Young People): Thank you for the opportunity to introduce the three sets of subordinate legislation before us today.

I will start with the largest of the sets of legislation—the draft Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013. In summary, the rules set out the detailed procedures and timescales that are to be followed in the day-to-day management of children's hearings. The rules replace the existing Children's Hearings (Scotland) Rules 1996, which will be repealed on 24 June when the provisions of the Children's Hearings (Scotland) Act 2011 take effect.

Unlike the 1996 rules, the new rules set out clearly the steps for each type of children's hearing—for example, grounds hearings and hearings to review existing orders—in a user-friendly manner, which has resulted in the more

detailed and therefore larger set of rules compared with the 1996 rules that is before you.

The draft Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 will ensure that all those who need it have the right to participate in the children's hearings system. It widens the category of persons who can seek a review of a contact direction under section 126 of the 2011 act. It also amends the definition of "relevant person" to include all parents, as long as they have not had their parental rights and responsibilities removed.

The draft Public Services Reform (Scotland) Act 2010 Modification Order 2013 removes references to children's panels and children's panel advisory committees from the list of public bodies in schedule 5 to the 2010 act and adds Children's Hearings Scotland to it.

Thank you again for allowing me to introduce the instruments. I am happy to take any questions.

Liz Smith: I do not have issues with the draft instruments, but what criteria were used in assessing the children's hearings system? What measurements of the children's hearings system in its current form have you used to build and set out your policy objectives?

Aileen Campbell: You want me to talk about the road testing and some of the other things that we have done.

Liz Smith: Yes.

Aileen Campbell: There has been an extensive amount of work, and the three instruments have been road tested to ensure that they will work in practice.

Three different meetings, I think, were held during autumn last year, which were run by children's hearings training officers and led by the key people who drafted the 2013 rules. Other partners, such as reporters and Children's Hearings Scotland, were involved. A number of panel members from across the country were invited to participate in the events and test the draft legislation in order to flush out some of the issues that might have arisen. Changes were made to reflect the feedback and hone the legislation. The feedback was generally positive, although we had to change a few things. Nonetheless, we went through a good process to ensure that the orders would work correctly.

Liz Smith: Although the feedback was largely positive, what concerns were raised with the Scottish Government?

Aileen Campbell: People wanted to ensure that proper guidance was available on the right balance of information to be disclosed to the relevant people; that notification, the issue of papers and procedures and timescales were workable; and that the procedures for a child or relevant person who has a right to legal aid were clear. Those were some of the things that we got back from the road testing, which allowed us to ensure that we got things absolutely right.

The Convener: Having received a briefing on the instruments, we must consider formally—and separately—the motions to approve them.

Agenda item 4 is on motion S4M-06538 on the draft Public Services Reform (Scotland) Act 2010 Modification Order 2013.

Motion moved,

That the Education and Culture Committee recommends that the Public Services Reform (Scotland) Act 2010 Modification Order 2013 [draft] be approved.—[*Aileen Campbell*.]

The Convener: No members have any comments. I presume that the minister will not have to wind up in that case.

Aileen Campbell: No. You have had a long session.

Motion agreed to.

The Convener: Agenda item 5 is on motion S4M-06536 on the draft Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013.

Motion moved,

That the Education and Culture Committee recommends that the Children's Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013 [draft] be approved.—[*Aileen Campbell*.]

Motion agreed to.

The Convener: Agenda item 6 is on motion S4M-06537 on the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013.

Motion moved,

That the Education and Culture Committee recommends that the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 [draft] be approved.—[*Aileen Campbell*.]

Motion agreed to.

The Convener: The motions are agreed and the committee's report to Parliament on the instruments will confirm the outcome of the debate. I thank the minister and her officials for attending the session.

Meeting closed at 12:44.

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